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India - Secular Democracy and Composite Culture

Rajindar Sachar

I have read with chilling apprehension Arun Shourie's two articles in *Indian Express* (28th and 31st December, 07) because these are not merely his individual views but seem to represent the election oriented strategy of BJP. He presents Hinduism having a strong fundamentalist face of ferocious response not excluding violence. He also tells us that Hinduism's most sacred book *Bhagwad Gita* openly supports the maxim of "Wickedness to the wicked" - and for these *gems of wisdom* Shourie quotes Lokmanya Tilak as his source (I refuse to attribute this sacrilege to the great Tilak - I hope more knowledgeable people will scotch this heresy). No wonder Shourie ridicules Gandhiji for claiming his inspiration from *Bhagwad Gita* for his true law "Truth even to the wicked". Paradoxically Shourie's view of Hinduism as being capable of meanness and vengeful is such that no opponent of Hinduism had even remotely suggested. Uptill now most people readily accepted definition of Hinduism, as a way of life, as propounded by Sir Radhakrishnan. Thus "*Vasudhaiva kutumbakani*" (the world is one family) was proudly proclaimed by Hindus to show the spirit of tolerance. Of course unbiased knowledgeable people also accept that the same message of humanity and common good runs through all religions. Thus Holy *Quran* proclaims, "All the created ones belong to the family of God... so, an Arab has no precedence over a non-Arab, a White over a Black". And Christ said succinctly, "All are children of God."

I do not take Arun's articles as an intellectual exercise. As an openly converted Narinder Modi Cheer follower. Shourie wants to send a message of BJP for next 10k Sabha elections - that violence, deception will be the election tools and that minorities must know that if they wear different dress it will be treated as a conspiracy by the Muslims to stick together and be charged with offence of separatism.

Thus Shourie's objection to some Muslim women wearing head scarf is not on the ground of gender discrimination or at curbing the freedom and personality of women (incidentally Shourie must be seeing Muslim women in India and more in Lahore, Karachi without head scarves; as against Hindu women in villages in Rajasthan, Up covering their head and faces even when talking to a stranger.) But Shourie would not treat this as a cultural practice having nothing to do with religion. He would read it is a deliberate ploy by Muslims in India to show their separateness. I find this conclusion figment of imagination. Shourie and my family come from W. Panjab (now in Pakistan). May be Arun is too young to remember but even when after partition (1947) Hindus came to India all elderly ladies (*on page 19..*)

No Surprise about the Politics of Shourie!

My dear Rajindar, Thank you very much for the advance copy of your comments on Arun Shourie's two articles in Indian Express on December 28 and 31, 2007. Nobody will take his ideas seriously. Nothing disturbs or is disturbing. To quote Geeta, "Achaloyam Sanathana". I think it means 'unmoved is the Ancient'.

Of course Shourie has become an ideologue of BJP. When he joined the Band Wagon of JP, all the RSS and BJP fellows joined and the latter rode into power on the shoulders of JP. JP and the Socialists gave legitimacy to an otherwise reactionary movement. Hind sight and a dispassionate assessment will tell us that Indira Gandhi's only flaw was an attempt to impose an authoritarian rule. Nobody can fault her policies minus the authoritarian perversions. Her shifting the emphasis on to the Directives of the Constitution is not incorrect. Her attempt at relegating Part III is the authoritarian trend. She set up a country wide net work of Rural Banks to provide cheap credit to the *ryot*. We did not work these for it was brought about during the period of Emergency. Had they been worked diligently we would not have so many suicides by *ryots*. By ostracizing the politics of social transformation we have created space for the emergence of a pro-American lobby. Key Governmental positions have gone into the hands World Bank bureaucrats. Prime Minister is one

of them. He sincerely believes that Market forces can bring about social transformation, that too from an economic system whose chief population theorist Rev. Malthus said, "in the grand lottery of life some draw blank, let them suffer". The political thought that emerged out of this economics cannot be any better. That is why Ruskin called economics a pig's science! From that time Market forces became the guiding star of the peoples' destinies. His principles of population are operating in full vigour. Terrorist violence, epidemics, pestilence, natural disasters, and add to this increase in unnatural deaths in the form of deaths in communal and caste violence and vehicle accidents for decimating the population to bring down the supply level of employable labour. Mrs Gandhi perhaps would not have become a disgusting obscurantist politician as Shourie has become. He is perhaps the most successful iconoclast in recent years. He has destroyed concepts like Democracy, rational thinking, and the various concepts of social transformation in one and a half

decades. Coincidentally he is also World Bank plant who promoted American line of thinking. I call him a successful iconoclast because he has quite a following, though there are some who take him as a dangerous opinion maker. I am really surprised that you should expect him to be an enlightened Hindu. He is now on an exercise of how to preserve and propagate Hindu obscurantist practices as valid. He is not doing any thing different from all the godmen of the twentieth century. They may sublimate their hostility to Muslims but they do hate them. He represents the quintessence of Hindu apprehension: they are afraid that Hindu religion may be defeated by conversion. Divided into fiefdoms and kingdoms they learned to fight and to betray one another. United, after having sunk their identities, they are afraid that the only remaining identity – HINDU - is likely to be overwhelmed by conversion into other faiths. That is the fear. Arun wants to defend them against this fear. – **K G Kannabiran**, January 29 2008 □

Form IV

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I, Y P Chhibbar, hereby declare that the particulars given above are true to the best of my knowledge and belief.
– **Y P Chhibbar**, **Publisher**, March 1, 2008 □

Megha Kapoor¹

'All criminals should be treated as patients and jails should be hospitals admitting the class of patients for treatment and care. No one commits crimes for the fun of it. It is the sign of the diseased mind.' – Gandhi

The attitude envisaged by this statement could not be further from the reality of India's prisons and asylums, the state's supposed corrective and rehabilitative institutions. Instead, what is plain to see is a nominal regard for human life for those placed in institutional care. This is evidenced by the devastating number of people languishing in prisons and asylums awaiting trial and the conditions and circumstances of their detainment. It is further evidenced by the numerous and tragic examples of deaths in custody at the hands of institutionally inflicted torture.

There is the well-established assumption in law that an individual is deemed innocent until proven guilty beyond reasonable doubt. However, it is hard to reconcile this fundamental notion when confronted with the heart-breaking reality of the thousands of people held as under trials in prisons and asylums across the country.

A necessary pillar of any democratic system of governance is due legal process, which begins with apprehending a person suspected of a crime to securing a conviction or acquittal. In spite of this many are not afforded their right to be tried fairly in a court of law and in the meantime their liberty is stripped from them, despite the possibility of their innocence. An example of this legislatively enshrined discrimination is the denial of voting rights to under trials, which despite the questionable constitutional validity of such a denial, has been reinforced by the Supreme Court.² Section 62(5) of the 'The Representation of People Act' (1951) states that while persons under permanent detention, in other words convicted criminals, are granted the their democratic right to vote, while

under trials (those who have not yet been found guilty and as such must be presumed innocent) are denied thus democratic right. Such a position is grossly discriminatory and goes against Article 14 of the Constitution, which states that all citizens hold the equal right to vote. Furthermore, there is no sound rationale for such a denial, particularly when the fact that certain classes of under trials are permitted to stand for election but not permitted to vote is taken into account.

What makes the plight of many under trials in India even more appalling is the fact that scores end up being forgotten by the system and forced to spend the major part of their lives in prisons or asylums. Furthermore, many are accused of minor offences, which even if they were found guilty do not warrant incarceration. Or, in other cases even if a conviction were to be secured the accused have served their sentence many times over. Asylums and prisons across of the nation are replete with such examples. Mohammad Shaikh or 'Jimmy' (as he is affectionately referred to) who is now 71 years old has spent 50 years of his life languishing in Mumbai's Thane Mental Hospital³ all simply because the system forgot about him. He was initially detained in 1956 by the orders of the then Bombay Police Commissioner because the police found Jimmy 'wandering on the road, his speech incoherent'.⁴ It is for this act (one can hardly call it an offence) for which Jimmy was detained and spent the majority of his life in asylum. When authorities finally woke to Jimmy's case, on account of his old age, no paperwork, records or official documents pertaining to his admission to the asylum or his home or family's whereabouts could be located. In

short it is as if he never existed. In similarly heart-rending circumstances, 77-year-old Machal Lalung's case was only brought to the attention of authorities after Mr. Chaman Lal, Special Rapporteur in the National Human Rights Commission, spoke to Machal Lang personally. Shortly afterwards a news story was printed in The Indian Express Newspaper in 2005. Machal had already spent 54 years as an under trial in an asylum in Assam when he was finally released.

Specific attention needs to be said to those under trials deemed mentally unsound, as these individuals are particularly vulnerable to being swallowed up and forgotten about in state institutions as they generally lack the capabilities or the capacity to be able to question authorities and ask for help. In reports sent by eighteen High Courts to the Supreme Court it was revealed that well over 350 mentally unsound under trials have been confined in custody for not just years, but decades.⁵ Kerala and West Bengal have shown themselves to be the most insensitive with 57 and 50 prisoners respectively rotting in asylums without trial. Madhya Pradesh had over 45 cases and UP with 35 cases. Delhi has reported 4 cases and Bihar with two cases.⁶ Among these statistics is 65-year-old Chandram, who has been held in a Kerala mental institute for over 38 years without trial – even if convicted of murder he would have been out in 14 years.⁷ Kumar Naika, 18-years-old, has been locked up in an asylum for half his life simply due to being accused of causing a simple hurt and injury (in other words hitting someone), a crime which if convicted of holds a maximum sentence of two years.⁸ To add insult to injury, his case report

shows that despite being held in a mental asylum, Kumar is not even mentally ill. Satya Pal, a 53-year-old schizophrenic has been detained in a West Bengal asylum for 28 years as courts are still yet to decide whether or not he was guilty of murder.⁹ 65-year-old Prakasho has been held in a mental institute for 34 years on account of an alleged kidnapping; he has been described by the UP government as “vaguely” suffering from “some sort of mental abnormality”.¹⁰ If convicted of this crime Prakasho would have been out of jail within 7 years. Indeed the implications of being an under trial extend beyond the individual in question Rahul Sonu is a three year old child who has been in a Tihar Jail ward now for more than six months with his father, an under trial charged with running a prostitution racket.¹¹ At this tender age his friends consist of all the other 200 under trials in ward number one of Tihar Jail.

A person in custody is in the protection of the state. He/she does not have any liberty to take recourse. In other words they are ‘completely dependent on the state’.¹² In June 2007, Delhi’s Tihar Jail saw seven deaths in custody, all within a span of one week. The NHRC (National Human Rights Commission) found, after an investigation into the seven deaths, that three of them were a direct result of custodial torture at the hands of Delhi police.¹³ This was alarmingly obvious given the fact that all these cases involved young men, in good health who died within days of arriving at Tihar prison. Among these three deaths was that of under trial, Amit Singh. The NHRC in its report claimed, “the death of Amit was *prima facie* due to custodial beating in police hands”.¹⁴ The NHRC made similar observations as to the circumstances of the deaths of Harish Raj and Vinod Singh; both

died after being tortured in custody.¹⁵ In light of the shocking negligence and abuse of power demonstrated by authorities at Tihar prison with regard to the events of June 2007, the Delhi High Courts’ position in the judgment of the case brought before the court by the widow of Sukhvinder Singh¹⁶ seems inconsistent with public interest, whilst spelling relief for police and Tihar jail officials. The threshold and burden of proof has been set very high for potential claimants wishing to gain to compensation as Justice Dhingra states that compensation can only be granted if there is a ‘gross violation of the fundamental rights of the deceased’.¹⁷ Indeed does not any violation of a ‘fundamental right’ warrant reparation? One cannot help but wonder where the courts plan to draw the line between a “mere violation” of the fundamental rights of an individual as opposed to a “gross violation”. One thing is for sure, family’s of the victims of deaths in custody that result from negligence and carelessness of authorities seem to have no hope in success as the Delhi High Court ruled against Sukhvinder Singh’s widow despite the fact that his death due to cardiac arrest could have been averted if a prison doctor had attended to him. A relieved Tihar Jail spokesperson said the judgment is hoped to lessen the “frivolous litigation”¹⁸ against the prison. Perhaps if it was recognised that there is clear evidence as to why people feel that they must undertake expensive, emotionally traumatic and lengthy time-consuming legal action then perhaps the ‘frivolous’ regard for human life exhibited by the authorities entrusted power could be rectified.

In conclusion I believe the standard of how civilised a nation is determinable by how that nation treats its most vulnerable citizens. However, it seems the balancing act between safeguarding society from criminals (suspected or convicted) and their criminal acts is being paid for at too

great a cost. Justice must be served to those who commit crimes and break the law, but this can never be achieved by criminal acts being inflicted by those who are mandated to uphold the law.

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¹Megha Kapoor did an internship at the PUCL, in her final year of a LL. B / BA (Major Political Science) at the University of Melbourne.; ²Anukul Chandra Pradhan v Union of India; ³Zaidi S Hussain, ‘50 years ago, they put him in an asylum and forgot all about him’, *The Indian Express*, September 11 2007.; ⁴Ibid.; ⁵Bhadra Sinha and Satya Prakash, ‘Prisoners of their minds, and of a heartless system: 350 languishing in asylums without trial’, *Hindustan Times*, September 7 2007.; ⁶Ibid.; ⁷Ibid.; ⁸Ibid.; ⁹Ibid.; ¹⁰Ibid.; ¹¹Teena Thacker, ‘For 3-year-old, Tihar is ‘ashram’ first, jail later’, *The Indian Express*, September 9 2007.; ¹²NHRC report; ¹³K Sriharsha, ‘Tihar Deaths: NHRC smell foul play’, *The Times of India*, November 9 2007.; ¹⁴NHRC report; ¹⁵Ibid.; ¹⁶Harish V Nair, ‘HC Order on Custodial Deaths’, *Hindustan Times*, December 22 2007.; ¹⁷Harish V Nair, ‘HC Order on Custodial Deaths’, *Hindustan Times*, December 22 2007.; ¹⁸Ibid.

This report is based solely on recent clippings in the reference library of the Peoples Union for Civil Liberties, National Office, Delhi. □

An Enquiry Report by Gujarat PUCL:

Silicosis - A Death Trap for Agate Workers in Gujarat

Workers working in the agate industries are dying of silicosis in regular interval for last 40 years in Khambhat. Families are wiped out totally. But there is no respite from the death trap of economically impoverished people of this area.

The agate industry is a household industry in the Khambhat region of Gujarat and its surrounding villages, employs over 30,000 people, many of them are women. The process of agate goes through mining, drying, frying, grinding, polishing. Agate stones are made into beads by heating, chipping, grinding, drilling, and polishing them for use in jewelry and other decorative items. Mineral dust, especially silica produced during the stone grinding causes pneumoconiosis, tuberculosis, bronchitis, emphysema, pneumonitis, and other respiratory effects. Mining and cutting of stone produces silica dusts and prolonged exposure causes silicosis among workers. Silicosis (also known as Grinder's disease and Potter's rot) is a form of occupational lung disease caused by inhalation of crystalline silica dust, and is marked by inflammation and scarring in forms of nodular lesions in the upper lobes of the lungs.

The workers were crushing the agate manually prior to 1960. The polishing machines run by electrical produced more finished product but ironically became a fatal factor because it produced more silica dust causing silicosis. Though more finished products made it a profiteering industry the exhaust system have not been installed or has not become mandatory for the manufacturer to reduce the inhalation of silica dust, one of the most important preventive steps to save the workers from silicosis.

The colours of the agate may mesmerize us but it takes away the colours of the lives of the workers and family. Gujarat is very

proud of the agate industry but has never paid any attention to the workers those who are waiting for the death

The Silicosis *Pidit Sangathan* (Silicosis Victim Association) of Khambhat drew the attention of PUCL towards the plight of the workers in Agate (Akik) industries in Khambhat, where the workers are drawn into the death trap and dying of Silicosis for last 5 decades. In 2006 12 died in Shakarpur village. 13 died in 2007. It is a matter of concern that the plight of the helpless workers drawn into the death trap has gone unheeded, by the Governments, both State and the Central.

Several memorandums had been submitted to the concerned authorities but with out any results. Many media had also highlighted the menaces of Silicosis. Ironically, the Govt. of India gave away a national award to a documentary film on Silicosis named 'Way to dusty death'.

A fact-finding team of PUCL with Shri Gautam Thaker, General Secretary, PUCL, Gujarat Chapter, Shri Dwarikanath Rath, Shri Dhiru Mistry, members, PUCL went to Sakharpur of Khambhat to conduct inquiry on 29/9/07. Shri Jagdish Patel who is working among the Akik workers and running a People's Training and Research Center helped the fact finding team along with his team mate Shri Jayesh Pramara and Ramesh Makwan.

Khambhat is one of the ancient ports in India known for trade and commerce from the period of Harrapan civilization and it is believed that agate industry is some thing 2500 years old in this area.

The agate industry was prevalent in many parts of Gujarat. But with the passage of time Khambhat has remained the only centre of Agate grinding keeping the thousands years of its old tradition.

Mines for agate are available at Zhagadia. The Agate grinding industry runs in Khambhat, Sakharpur, Metpur, Vadwa. About 30,000 workers are directly involved in these industries and 70% belong to OBC and Muslims.

The polished material per piece is sold at the price of Rs 1/- in local market, where as the price is Rs 2/- to 2.50 in Ajmer. Most of the agate grinding is a part of out sourcing business. The finished products are sold at higher prices and exported to many foreign countries. The agate is one of the most profiteering trades. It is with the Ministry of Commerce, Indian Gem and Jewelers Promotion Council. Both the Govt. and the businessmen earn huge amount of money out of the agate industry but they care least to take care of the workers those who are pushed to the death trap because of acute poverty and unemployment.

Agate is chiefly used to make ornaments such as pins, brooches, paper knives, inkstands, and seals. Because of its hardness and ability to resist acids, agate is used to make mortars and pestles to crush and mix chemicals. Because of the high polish possible with agate it has been used for centuries for leather burnishing tools.

On entering the Sakharpur, the PUCL team was surprised to find the dust of Silica have touched and covered the cable of electricity wire of the power supply. The roads, the walls were covered by the powder of Silica.

The team visited the places where workers are polishing the agate in the village of Shikarpur. The team met their families, discussed with group of workers in the office of Silicosis Pidot Sangathan and collected the first hand information about their livelihood, working environment, wages, health aspects, etc.

The team members went to the house of one worker Pratapbhai Gohil. He had just been

discharged from Khambat General Hospital from hospital after drawing fluid from his lungs. He was in his skeleton, could hardly speak. The photograph will speak itself about his condition. He was admitted in the hospital for 10 days and treated for silica tuberculosis. It was no wonder that he died on last 2nd October. This is just one case of chronic Silicosis.

There are so many patients here and there, waiting for death. We also visited the house of the patient suffering from silicosis both men and women. We came across houses where all the family members are engaged in polishing the agate and inhaling the silica. The children are not free from this but we were shocked to learn that no measures have been taken by the Government to save these workers from this deadly Silicosis. Last year, 12 workers died out of Silicosis. This year, already, 13 workers have died, by month of October. Those who are working in Agate industry, they lose their resistance power. They inhale the Silica dust which goes directly to the lungs. Tuberculosis and Bronchitis are very ordinary diseases among workers. But Silicosis is irreversible disease and it takes 6 to 7 years to get infected by Silicosis. The facts of Silicosis menace among the workers have been suppressed by traders, employers and Government machineries the workers treated in the hospitals are never or hardly, diagnosed as silicosis. Though all know that the workers have been infected of silicosis but on record it is hardly recognized, by the Govt. In apprehension of losing jobs, the workers themselves hide their infections.

The Factory Act usually applies where there are five workers but we are astonished to find that no Factory Acts is implemented here. Moreover the proposed one man Factory Act will be a direct attack on the workers those operating from their home and a concession

for the traders. The Govt. of Gujarat has already abolished the inspection of the industries. There is only one Factory Inspector for whole of district of Anand and the inspector seldom visit the area. As a matter of fact there is a shortage of 40% factory inspectors in the state.

In course of our visit at some place we reached the workers house during their lunch hour. The workers did not hesitate to invite all of us to join them in their lunch. But we were taken aback to come across the low calories food intake where as they need most nutritious food. The lack of nutrition is one of the causes that they are losing their resistance power.

Profiteering Trade

The workers engaged in agate industry work under a manufacture and most of the workers work in their own house, where the entire family members are also engaged. Those who work in the factory and those who work in the house meet the same fate of Silicosis. The workers grinding in the house goes to the traders at the end of the day to sell the agate and collect the money which is, is very vital for the sustenance of the family.

Nowhere in the world may the workers be joining this kind of deadly agate industry knowing fully well that he or she is in queue to die as his predecessors had died out of silicosis. The compulsion of the helpless youths reveals the gravity of poverty. Here death is inevitable and once one enters the grinding the agate there is no escape and one can just see the incoming death every momentum every day. This type ruthless compulsion for workers and their family members is very difficult to comprehend. It gives an idea of the workers working in medieval time and the early period of Industrial Revolution devoid of any Human Rights and the dignity to life. There is jungle law and the workers are free to die and the traders are free to exploit with the

indifference attitude of the Govt and its machineries.

One of the noted writers of Gujarat Shri Dilip Ranpura was very shocked to come across the workers in Shakarpur village. He was shocked to find a youth with a B.Com degree had joined the agate crushing knowing fully well that he had lost his brother, sister-in-law, sisters, and the children of his brothers. On being asked he said he had no option. It is the state of affair in the entire area. In one family in ten years eleven members died. This vicious circle of death is continuing for years.

Being shocked the fact finding team of PUCL tried to probe the state of affair of agate and fatal silicosis and available materials from different sources to give a first hand information and draw the attention of the respective authorities to prevent Silicosis.

The problem of Silicosis was first detected in the study taken up by Industrial Toxicology Research Centre (ITRC), Lucknow, in 1980. The report of ITRC appeared in press. A public interest petition was filed in Gujarat High Court. The High Court set up an inquiry commission. The National Institute of Occupational Health (NIOH), as a part of inquiry commission, carried out a survey. They installed exhaust system to measure the dust level which was very fruitful. NIOH submitted report to the High Court but no action has been taken. NIOH carried out an environmental epidemiological study during 1999-2004. It also studied the Silica dust in the environment and recommended the exhaust system with better design. The study has conclusively shown that it is the serious major environmental problem. As the workers are directly exposed to deadly Silica dust. Not only workers, but their family members including children are also affected. Many times we see mother polishing the agate with children in their lap. ITRC report

has shown that the small children are not free from Silicosis. The whole air is filled with Silica dust. And the people living in surrounding places are also not free from risk. In the recent study, it is found that Silica also causes cancer.

Prevention

The best way to prevent silicosis is to identify work-place activities that produce crystalline silica dust and then to eliminate or control the dust. Water spray is often used where dust emanates. Dust can also be controlled through dry air filtering

The Exhaust System

The NIOH recommendations of the exhaust system is deliberately ignored. The NIOH studies showed that the main source of dust in the agate industry is the grinding process. For the control of dust, a local exhaust system containing air-cleaning device was developed. Evaluation of the exhaust system by dust monitoring showed that there was 94% reduction in dust levels with the use of exhaust system. The exhaust system did not interfere with the work and the workers found it very useful as it facilitated the work by removing the dust, which hampered their sight. However, the owners complained of excessive power consumption. To reduce the power consumption without compromising with its dust control efficacy, a dust control device incorporated in the grinder has been developed. At present many small units have installed this type of exhaust system.

The Medical Facility

The prevalence of silicosis in male and female agate grinders was 39.8% and 34.2% respectively. About 19% of the male agate grinders and 22% of female agate grinders developed silicosis within five years. The overall prevalence of tuberculosis amongst male and female agate grinders was 37.4% and 40.3% respectively. Pulmonary function

abnormalities were found in about 51% grinders.

The mean "total" and "respirable" dust concentrations during agate grinding were 25.4 (14.5 - 35.1) and 2.74 (1.73 - 4.04) mg/M³ respectively, which are much higher than the prescribed limits. The free silica contents of the dust was 60%.

The Shakarpur village has no primary health centre. This village has been attached with Uddel village which is 12 kms away from Shikarpur. There is a sub health centre with only one room. The villagers have to spend Rs.20/- towards the traveling expense and avoid to Uddel.

There is one Community Health Centre in Khambat which is 2 kms from Shakarpur. There is only one female lady worker lady (FHW). She is to retire and looks after pregnancy, and a Govt. TB clinic under the TB control programme. There is no X-Ray machine. The Distinct level TB centre is in Petelad. Official diagnosis is never mentioned as silicosis. Safety and health is a fundamental human right of the workers.

It is wrong to think that the occupational diseases are the inevitable and there is no way out. This very notion has been percolated purposefully to ignore the workers. There is a lack of attitude of the Govt. as well as the traders.

The Agate industry is one of the most profiteering for manufacturers, traders and the government. Government earns from exports. But there is no welfare schemes for workers and their families. The government, traders and manufacturers know very well that the workers working in Agate industry are drawn into death trap like the moth. But no remedial measures have been taken. The traders are taking the advantage of the helpless conditions of poor people. Widows and orphans are left to

themselves. There is no marriage of the victim workers. Most of The widows and the orphans are compelled to enter the sane death trap or pushed to the abject poverty.

The Credit Trap

Workers working in Agate industry are in debt trap. The manufacturers lure them to take loan without interest. But, interestingly, they get less wage from manufacturers. It means the piece rate is different from workers to take loan from manufacturers. The workers are not free to change either the job or employer till they fully repay the debt. The workers are scared of the employers because of dire consequences they may face. If the workers die, the family members are asked to repay the debt. Under the circumstances, the family is compelled to work under the same employer.

What we felt that, the death is looming large in the village of Shikarpur one of the places of agate grinding in Gujarat. All the glitters are not gold. The sparkling agate tells a very different story, the story of anguish, pain, shock and ruthless exploitation and the violation of basic human rights. The so-called busy commercial life of the town Khambhat cannot conceal the fact of silent death shadowing the near by villages.

After analyzing the situation the PUCL team recommend the following points:

Recommendations:

1. All the employees be issued with the Identity card
2. Workers welfare fund be created with the aid of the Govt. and the traders. If necessary it should be implemented with a promulgation of an act through legislation.
3. The workers welfare fund be constituted with the representatives from workers, traders, Govt. and the voluntary organizations and the NGOs.

4. The silicosis patients be treated in the PHC and issued the health card. The Primary Health center must be opened on the spot.

5. The Silicosis patients be treated free of charge.

6. The patients dying due to silicosis are registered by the *Panchayats* and the Municipal body and the death certificates be issued mentioning the cause of the death.

7. The Minimum wage be declared for the workers

8. The food and nutrition allowance be granted to the workers.

9. The workers working in the Agate industries be covered under Insurance. The Govt. should pay for the premium—the insurance should take care of the workers:

10. The workers dying due to the silicosis be paid the compensation from the Chief Minister's Relief Fund.

11. Anganwadi provision be made for the women agate workers with food.

12. The parents who have lost their sons and kith and kin be given monthly allowance for the sustenance.

13. Economic assistance be given to the workers to install the Exhaust system.

14. The awareness campaign be taken up by the health dept on silicosis, TB and other occupational diseases.

15. The loan be granted to the workers from the Workers welfare fund on low interest

16. The widows of the workers died due to the silicosis be properly rehabilitated economically.

17. The workers working in agate industries be given alternative training

18. The surviving children of the workers died due to silicosis be given education freely and boarded in the hostels, and the orphans staying with the guardians be given monthly allowance.

19. More funds should be allocated and spent for the research, awareness, training and publications for Health & Safety at work.

20. Directorate Industrial Safety & Health (DISH) should have more lady inspectors. Separate cell for Women workers need to be opened in DISH (Directorate Industrial Safety & Health)

21. State Government should come up with policy for occupational health & safety. To implement the policy it should have adequate budget. A separate cell within Health dept. should be set up for designing the programs to implement the policy on OSH.

22. All public hospitals must have OPD for occupational diseases.

23. Extra efforts need to be done for increasing notification of Occ. Diseases.

24. Committee - A high power committee may be formed by the Honorable Prime Minister to look into the problems and present recommendations. Ministry of Commerce and the Gems & Jewelry Export Promotion Council has a major role to play with Labor and Health departments.

25. Preventive Law - A law which would put responsibility on the shoulders of traders for the H & S of the workers would go a long way in preventing Silicosis. The economic relationship between workers, manufacturers and traders need to be changed. Traders are investing in raw material and out source various processes, particularly that of polishing where the hazard of silica dust poses. In this way they get away with any responsibility. Law should hold the traders as 'manufacturers' and not the poor workers. Here, too, implementation strategy should be well thought or it may meet the same fate as that of Factories Act. NGOs and workers will have to be involved in

implementation giving legal powers.

26. Compensation - These workers do not get any compensation for injuries at work including Silicosis. There is no well defined employer-employee relationship. Neither are they covered by ESI Act. In such situation until any legal reforms are implemented Silicosis sufferers should be paid lump sum compensation by Government. We recommend that all the victims in last 5 years be compensated. (List of workers died of Silicosis in years 2005 & 2006 is attached herewith. The list is not comprehensive)

27. Safer Technology -Since workers are not able to invest in installing local exhaust ventilation systems (LEV), financial help in installing the LEV may be made available through NABARD or CAP ART. Workers will have to be trained in maintenance of the system.

28. Workers will have to be empowered so that they can bear the additional electrical and maintenance cost of the LEVs.

Provide Alternative Job to Save them from Death Trap

The workers working in the agate industries are very eager to get themselves employed in any industry which can sustain them. But they are devoid of it. There is no scope provided to them for alternative employment. Years back the textile mill employed more than five thousand workers. This provided them a stable life relatively. After the closure of the textile mill the people living here left with out any hope.

Khambhat is known as one of the most famous port from ancient time. The port activities can be activated and the industries related to port and ship can be started. The closed textile mill can be reopened and the dues to the workers working in the textile mill be paid with the interest.

The Alternative

When the PUCL team consulted with the workers all desired for the alternative employment. Being scared of the death trap they are searching alternative job in near by places like Anand. But they are offered very low wage in industrial areas in Anand. As a result they are again pushed into the agate industry. Once running textile mill is closed compelling many to join this agate industry. Alternative industrial development should take place. The port activities can be revived and technical education centre be opened to train the youths in various skills such that they can opt out this fatal occupation. The workers, families and the residence feel very helpless and insecure. The Govt. must come out to rescue the affected people from the death trap.

Shri Jagdish Patel is working with the agate workers for last 20 years. The organization has been formed to focus the problems of the agate workers, who are the victim of Silicosis. He also looks after their welfare. An office has been functioning in Shikurpur village where they have program to save the children, help the widows and popularize the exhaust system and help the patients suffering from T.B and Silicosis.

This organization has taken up several awareness programs, persuading to the change the technology .Street plays have been performed. Health Melas were held. The machine prepared by NIOH has been demonstrated in the four-poster, handbills are distributed. Conferences are being held to formulate long term as well as short term measures. Apart from it the organization is continuously trying to help the victims, their families.

Shri Jagdish Pate I worked with Janpath and Ganatar. Attempts were made to popularize the exhaust system. Several memorandums have been submitted.

The PUCL Team: Shri Gautam Thaker, General Secretary, P U C L Gujarat branch; Shri Dhiru Mistry, Member, PUCL; Shri Dwarika Nath Rath, Member, PUCL.

Report Submitted to:

1-Ministry of Health, Central Govt.; 2: Ministry of Health Stat Govt.; 3: he Governor of Gujarat; 4: NHRC; 5: Human Rights Commission, Gujarat; 6: Ministry of Commerce; 7: Prime Minister of India; 8: Ministry of Industries, Gujarat; 9 ILO.

Annexure

Silicosis

Silicosis (especially the acute form) is characterized by shortness of breath, fever, and cyanosis (bluish skin) It may often be misdiagnosed as **pulmonary edema** (fluid in the lungs), **pneumonia**, or **tuberculosis**.

This respiratory disease was first recognized in 1705 by Ramazzini who noticed sand-like substances in the lungs of stonecutters.

Silica is the second most common mineral on earth. It is found in sand, many rocks such as granite, sandstone, flint and slate, and in some coal and metallic ores. The cutting, breaking, crushing, drilling, grinding, or abrasive blasting of these materials may produce fine silica dust. It can also be in soil, mortar, plaster, and shingles. Silicosis is due to deposition of fine dust (less than 1 micrometre in diameter) containing crystalline silicon dioxide in the form of alpha-quartz, cristobalite, or tridymite.

The induction period between initial silica exposure and development of radiographically detectable nodular silicosis is usually 10 years. Shorter induction periods are associated with heavy exposures, and acute silicosis may develop within 6 months to 2 years following massive silica exposure

When small silica dust particles are inhaled, they can embed themselves deeply into the tiny

alveolar sacs and ducts in the lungs, where oxygen and carbon dioxide gases are exchanged. There, the lungs cannot clear out the dust by mucous or coughing.

When fine particles of silica dust are deposited in the lungs, this ingest of dust particles will set off an inflammation. In turn, these stimulate fibroblasts to proliferate and produce collagen around the silica particle, thus resulting in fibrosis and the formation of the nodular lesions. Further more, the surface of silicon dust can generate silicon-based radicals that lead to the production of hydroxyl and oxygen radicals, as well as hydrogen peroxide, which can inflict damage to the surrounding cells.

Characteristic lung tissue pathology in nodular silicosis consists of fibrotic nodules with concentric "onion-skinned" arrangement of collagen fibers, central hyalinization, and a cellular peripheral zone, with lightly birefringent particles seen under polarized light. In acute silicosis, microscopic pathology shows a periodic acid-Schiff positive alveolar exudates (alveolar lipoproteinosis) and a cellular infiltrate of the alveolar walls.

Prevalence

Silicosis is the most common occupational lung disease world wide. It occurs everywhere but is especially common in developing countries

Protective measures such as respirators have brought a steady decline in death rates due to silicosis in Western countries. Unfortunately, this is not true of less developed countries where work conditions are poor and respiratory equipment is seldom used. For instance, life expectancy for silver miners in Potosi Bolivia is around 40 years due to silicosis.

Symptoms

Because silicosis is progressive, signs of it may not appear until years after exposure Symptoms include:

- Tachypnea or shortness of breath after physical exertion

- Dry or severe cough, often persistent and accompanied by hoarseness of the throat

- Fatigue or tiredness

- Changes in breathing pattern (rapid breathing or shallow breathing)

- Loss of appetite

- Chest pain

- Fever

- Gradual dark shallow rifts in nails eventually leading to cracks

In advanced cases, the following may also occur:

- Cyanosis

- Cor pulmonale

- Respiratory insufficiency

Patients with silicosis are particularly susceptible to tuberculosis (TB) infection - known as silicotuberculosis. The reason for the increased risk - 10-30 fold increased incidence - is not well understood. It is thought that silica damages pulmonary macrophages, inhibiting their ability to kill mycobacteria.

Types of Silicosis

Classification of silicosis is made according to the disease's severity, onset, and rapidity of progression. These include:

- *Chronic silicosis*

Occurs after 15-20 years of exposure to moderate to low levels of silica dust. Chronic silicosis itself is further subdivided into simple and complicated silicoses. This is the most common type of silicosis. Patients with this type of silicosis may not have obvious symptoms, so a chest X-ray is necessary to determine if there is lung damage.

- *Asymptomatic silicosis* Early cases of the disease do not present any symptoms

- *Accelerated silicosis*

- *Acute silicosis*

Silicosis that develops a few months to 2 years after exposure to very high concentrations of silica dust. Symptoms of acute silicosis include severe disabling shortness of breath, weakness, and weight loss, often leading to death.

Diagnosis

Patient history should reveal exposure to silica dust due to occupation. Physical check up will reveal decreased chest expansion and abnormal breath sounds. Pulmonary function test will reveal reduced lung capacity.

Chest x-ray will confirm the presence of nodules in the lungs, especially in the upper lobes. Typically, it will also reveal eggshell calcification of the hilar lymph nodes. In rare cases, pulmonary nodules may also be calcified. In advanced cases of silicosis, coalescence of nodules may show up as large masses.

A computed tomography or CT scan can also provide a more detailed analysis of the nodules, and can reveal cavitation due to concomitant mycobacterial infection.

Treatment

Silicosis is an irreversible condition with no cure. Treatment options currently focus on alleviating the symptoms and preventing complications. These include:

- Stopping further exposure to silica and other lung irritants, including tobacco smoking.

- Cough suppressants.

- Antibiotics and antitubercular agents to prevent tuberculosis. These include isoniazid, rifampin, and pyrazinamide.

- Chest physiotherapy to help the bronchial drainage of mucus.

- Oxygen administration to avoid hypoxemia.

- Bronchodilators to facilitate breathing

- Lung transplantation to replace the damaged lung tissue is the most effective treatment, but is associated with severe risks of its own. □

Rajindar Sachar Refuses Padma Award

Justice Rajindar Sachar has turned down a Padma Award that was to be announced on the Republic Day. According to *Hindustan Times* it was on the principle that "recognition of merit or public service must be left to peer organisations", he maintained.

Justice Rajindar Sachar is a former Chief Justice of Delhi High Court. Recently he had headed the Prime Minister's High Level Committee on the Conditions of Muslim Minority. He is also a former President of the PUCL. – **Y P Chhibbar**, General Secretary □

Devkant Kakati No More

According to a late message received from the family of Shri Devkant Kakati, Convenor, Assam State branch expired on March 15, 2007. His wife also expired on the 29th of the same month.

Shri Kakati had worked to build-up the Assam branch of the PUCL with Late Shri Biren Bhattacharya and Shri Ajit Kumar Sharma. His death is a severe blow to the Assam State branch of the PUCL.

The Kakatis are survived by four sons and daughters, Shri Dhiraj Kakati, Shri Rajib Kakati, and Ms Anamita Chowdhary are living in Guwahati. The eldest child, a daughter, is settled in Chicago, USA.

The PUCL expresses the deep sympathies with the family. – **Y P Chhibbar**, General Secretary □

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Obituary:

Murlidhar Devidas Amte (December 26, 1914 - February 9, 2008)

If one tries to think of persons who can be called *Mahaatmaa* in the real sense of the term in modern India, three names come to mind easily: Gandhi, Vinoba, and Amte. One wonders how many of us know much about the later two.

Achaaraya Vinoba Bhave walked thousands of miles, moving from village to village, asking land owners to donate a part of their land as the share of *Daridra Naaraayan*. He was later joined by Jayaprakash Narayan. The two of them together collected lakhs of acres of land and redistributed it, or set up local committees to do so, to landless. Special laws were enacted to give legal sanction to this transfer of ownership through *Bhoodaan* and *Graamdaan*. It is on record that the land collected through these movements was much more than the land collected after the enforcement of Land Ceiling Acts!

Murlidhar Devidas Amte belonged to a family of *Jaagirdaars*. His family lived a luxurious life, so much so that Murlidhar Amte travelled in a car that was covered in tiger and leopard skins. He built up a lucrative career as a Barrister. Later he gave up everything and joined the freedom struggle. At the time of freedom he was 37 years old and by the time he was 40 he evolved a 'sustainable model of development' and a 'charter for responsible citizenship'. People in *Gandhi's Wardha* had no idea that a child, born on December 26 1914 in a *Brahmin Zameendaar* family and inheritor of 450 acres of land and a few kilos of gold, would one day become a *Mahaatmaa*, giving *Wardha* two persons to have this title conferred on them by the people. After marrying the daughter of a *Sanskrit* scholar he plunged in works for which he would be remembered for all times to come. He founded an *Ashram* in 1951 by the name of *Aanandvan* at Chandrapur in Maharashtra, a tribal area.

In 1960s, with the permission of his wife, he got leprosy germs injected in to his body to test leprosy medicines. The Government had allotted infertile land to set up *Aanandvan* for leprosy patients. He, along with his family and the resident of his *Ashram*, turned the infertile land into a fertile farm. He also set up schools and orphanages for the tribals and shelters for wild animals. In 1980s he travelled through out the country in his *Bharat Jodo Abhiyaan*.

His two sons and a daughter and his grand children all have worked and are working hard for sufferers from leprosy and for the betterment of the lives of the tribals. – **Y P Chhibbar**, General Secretary, PUCL □

Bihar:

Prabhakar Sinha Writes to the Chief Minister

On July 16, 2005 the police in Bihar had raided a house at Ranjitpur, district Sitamarhi, and had opened fire resulting in the death of an innocent young girl and injury to her mother Parvati Devi. It was made out at that time that Maoists were hiding in the house and it was an operation to nab them. PUCL investigated and found it to be untrue. Dr Prabhakar Sinha has written to the Chief Minister. Excerpts from Dr Sinha's letter are reproduced below:

The PUCL team, which enquired into the sad incident, found that there was no Maoist in the house and there was no encounter, and victims were innocent inmates of the house. The police raided the house and killed the innocent young girl on the basis of a rumour.

SAFHR Report:

Subsequently, the case was enquired into by the DIG, Muzaffarpur, and his report confirms our finding that the victims were innocent inmates of the house. I am enclosing our report as well as that of the DIG for quick disposal of the matter.

You have promised the people of the state good governance (Sushaasan), and we expect you to be even handed in punishing all law breakers including those in uniform. We request you to punish the guilty police men and pay at least Rs 5 lakhs to the kin of the victim girl. Even this amount is inadequate for loss of life which is irreparable. Smt. Parvati Devi should also be compensated for the injury caused to her.

I hope you would redeem your election pledge to the State. -- Yours faithfully, Prabhakar Sinha

(The report of the PUCL enquiry into the above incident was published by the Bihar PUCL on July 16, 2005 and can be seen in the document titled *Reports, Organisational papers, & Miscellany, 1981-2006* published by the Bihar PUCL. The copy of the report of the DIG mentioned above has been obtained recently by Prof Prabhakar Sinha using the RTI, hence the letter to the Chief Minister. Prof Prabhakar Sinha is former President of the Bihar branch of the PUCL and is a Vice president of national PUCL – **Chief Editor**). □

Campaign against Impunity*

Stop Custodial Killings, Torture, Custodial Rape, Illegal Arrests, Involuntary Disappearances, and Encounter Killings

Report of Planning Meeting, 4-5 January 2008, IICC, New Delhi

The two-day meeting to develop strategies for a countrywide campaign against the culture and practices of impunity was held in Delhi on January 4-5, 2008 at the India Islamic Cultural Centre, Lodhi Road, New Delhi 110003. About 40 human rights defenders, academics, lawyers and social and political activists from Andhra Pradesh, Assam, Chhattishgarh, Delhi, Gujarat, Jammu and Kashmir, Karnataka, Maharashtra, Manipur, Punjab, Tamil Nadu, Uttar Pradesh, and West Bengal participated.

Impunity - Freedom from Punishment for the Police and Security Forces:

During the meeting, while sharing their experiences of the routine abuse of human rights of the ordinary people of the country every day, frontline human rights defenders and activists observed the systematic violation of the 'rule of law'. The police and other law enforcement agencies of the states and the centre have become a law unto themselves. Time and again, these agencies were able to get away with breaking the law and procedures laid down by law. The resultant abuse of the fundamental rights of the people is being left unchecked and unpunished as the courts of the land are unable (or unwilling) to take action against errant police, security personnel and administration. This is the face of Impunity in the country. Immunity or the freedom from punishment enjoyed by the police and the security forces was not restricted to any particular state or region of the country. It is a national phenomenon. While almost all sections of the society were victimized by the practices of impunity, it was the religious

minorities, the *dalits*, the poor, and the human rights defenders, who were the worse affected.

'Legal' or 'Processual' impunity is embedded in provisions like Section 197 and Section 132 of Indian Code of Criminal Procedure (Cr.Pc.) as well as Section 6 of the Armed Forces Special Power Act (AFSPA). These sections provide that no police personnel or a members of the armed forces may be prosecuted in any court of law for any action 'purported to have been committed in discharge of duty' without the prior permission of the government. In fact almost every section of the Cr.Pc. provides some kind of impunity. For example Section 46 empowered the police to shoot to kill any accused who was charged with a crime punishable by death, if that accused person attempted to escape from police custody. The police of Andhra Pradesh state has made extensive use of this section to cover up the fake encounter killing of hundreds so-called *Naxalite* detainees.

Experience showed that the government habitually denied sanction for prosecution of members of police and security forces whenever any 'private criminal complaint' was filed against them. In many cases, the police routinely, refused to record First Information Report (FIR) against misdeeds of police personnel. In cases where due to sustained campaign by victims' families and human rights defenders, FIRs were lodged, these were never properly investigated. In the rarest of rare cases under immense pressure of the public the government ordered investigations by the agencies of the state governments or that of the centre into complaints against police or security personnel.

Unfortunately even when such investigations established prima-facie cases against the accused police or security personnel, the guilty persons went unpunished as bureaucrats in the ministries of Home and Defence deny sanction for prosecution of the guilty.

This practice has divided the citizens of India into two categories - one who are ruled by law, who can be punished by the law courts for their misdeeds - and the other who are protected and cannot be punished by law courts unless their employer, the State sanctions their prosecution. The freedom enjoyed by the killers of the Dalits and minorities - be it the Sikhs, Muslims, Christians and Buddhists - whether it was in Parasbigha, Bhagalpur, Delhi, Kanpur, Maliana, Hasimpura, Merrut, Mumbai, Ahmedabad, Baroda, Godhra and many other parts of the country since independence, bear testimony to this double standard of our political system.

A National Phenomenon:

Indian democracy is sixty years old, yet some of the core issues like police reforms and repealing old colonial practices which treated the Crown's officers as superior to the 'native subjects of the colony' have not been abandoned. It was observed that a vocal section of the middle classes and the media tend to support the continuation of some of these undemocratic practices in the name of 'protection of honest and good officers'. Why 'honest and good officers', who were law abiding, need to be 'protected', by putting them outside the law, remained a mystery. This is perhaps symptomatic of the colonial legacy that the ruling elite and the middle classes of India have inherited from the British.

In our caste and class divided society a vast majority of the people are condemned to live in

abject poverty. The *Adivasis*, Dalits and the religious minorities suffer systematic marginalisation and denials, while a small minority continue to enjoy the lion's share of the benefits of development and democracy. The process of privatisation of public assets is pushing enormous numbers of the poor to the margins. The massive take over of farmlands, grazing land, forest areas and water resources, the entry of high tech, job-crunching and capital intensive business into almost every sector of economy, including small retail business is driving the rural and the urban poor deeper into poverty. The alienation of the poor from the state and the growing confrontation between the haves and the have-nots is symbolised by the fact that while 'shining' India celebrates the arrival of more Indian multi-billionaires on the world scene, hundreds of thousands of farmers are being forced to take their lives as they are unable to make two ends meet. The use of the principle of eminent domain to take away the sources of livelihood from the poor, and the use of the police and security forces to keep the agitating and protesting masses at bay is indicative of a growing duality in our polity where some citizens are 'more equal than others'. Increasingly, the law enforcement machinery serves the elite. The criminal justice system has become a facade for denial of justice to the excluded. The laws of evidence and the court procedures are so loaded against the poor, that they can rarely get justice. Their truth, agony and life experience have no value the castles of law. The elected representatives of the people are busy amending the Code of Criminal Procedure making it more effective for control of crime- step by step removing the little protection that the law ever provided to the 'accused'. The parliament does not plan to repeal

such sections of the Cr.P.C. like 197,132, and section 6 of AFSPA.

Enactments of several national security and anti-terrorist laws have further vitiated the entire criminal justice system. Also, the post-September 11 global, social, political context legitimized the use of military methods to counter 'terrorism', and made the practices of impunity more rampant. Practices of impunity exist not only in the so-called 'disturbed areas', but the anti-terror agencies of the states all over the country are violating the fundamental rights and human rights of the people. The repeated pronouncements of the Prime Minister and the Home Minister of India that left wing extremism was the most serious threat to India's internal security and that it must be dealt with ruthlessly, has given greater validity to the targeted harassment, illegal arrests and killing of social activists who are opposing the government's pro-rich development policies. The recent experiences of Singur and Nandigram in West Bengal, Kalinganagar and Jagatsingpur in Orissa and Bastar in Chattishgarh are witness to the continuing failure of the State, the judiciary, the national human rights institutions in protecting the human rights of the people. In Nagaland, Manipur Assam, Andhra Pradesh, Punjab, Jammu and Kashmir, Gujarat, Maharashtra, Bihar, Chhattisgarh, and many other places in the country, the fundamental cause of this abysmal situation is Impunity. It was also noted that the situation in the states of Northeast India and in Jammu and Kashmir, was particularly bad, as people lived under virtual martial law regimes without the protection of constitutional safeguards.

Failure of Judiciary:

Several participants observed that the judicial response to the system of 'prior sanction' which is at the core of IMPUNITY has been

rather erratic. One participant pointed out that in 1932, even during the rule of the British, the Madras High court had held that that any abuse of authority by an officer in the performance of duty would not be protected by sections 197 & 132, yet the courts of independent India have continued to waver on this issue. In this context, it was said that the judges being a part of society, reflected the prejudices of their class and caste. Indeed, the class and caste of the judicial, executive and police officials was a significant element in understanding the practices of impunity. In addition there were pragmatic aspects like the dependence of the district and sub-division judicial officers on the local police for vehicles and security, which impinged upon the functioning of the judiciary. Some of the participants, particularly from Andhra Pradesh, Karnataka, Gujarat, West Bengal, Jammu and Kashmir, and Manipur talked about an amorphous social nexus between the police and judiciary. It was also said that the judiciary often showed immense tolerance for police misbehaviour. The human rights defenders were unable to speak openly against the inconsistent behaviour of the judiciary and its leniency towards the police for fear of being charged with contempt of court.

Human rights defenders from Andhra Pradesh, Chhattisgarh, Maharashtra, Tamil Nadu, and West Bengal observed that impunity persisted not only within the courts, security agencies, and governments' departments. There were numerous instances where non-state actors, particularly the state sponsored armed groups like Village Volunteer Force, SULFA and *Salwa Judum* or sometimes cadres of the ruling political parties were found to enjoy freedom from punishment for murder, torture, rape, loot, arson, and extortion under the protection of the agencies of the State. In the name

of development, particularly in the designated Special Economic Zones, private security forces employed by the corporate sector have been allowed to beat up and forcibly evict poor people from their lands which were being forcibly given away to the big companies and multi-national corporations.

In addition, disappointment was expressed at the failure of national and state level human rights institutions (e.g. NHRC, SHRCs, Minority commission, Women's Commissions, etc.) in protecting rights.

While Impunity was a systemic problem, the participants agreed that the levels of impunity within the judiciary, in particular, needed to be explored, proven, and challenged. Considering the judiciary's inconsistency in dealing with the prosecution, it was suggested that we should expose the broader gamut of protective nexus that exists among all the agencies.

The Campaign:

It was obvious that combating the all-pervasive practices and the culture of IMPUNITY was not going to be an easy task. Garnering support of the media and the middle classes would be quite difficult, particularly as a large section of the upward mobile middle classes have come under the sway of the politics of neo-conservatism and indeed are demanding tougher laws. What was going to prove even more problematic was the focus on the judiciary, and exposing its systematic failure to protect and uphold the constitution.

Enlisting the attention and sympathetic involvement of the media was emphasised as crucial but it was recognised as a formidable challenge in view of the media being driven by a free market ideology and pro-capitalist globalisation bias. As a result, the media hardly noticed the happenings at the grassroots level. Even when it did, after the event of

a gross violation, it rarely engaged seriously or bothered to follow through in covering subsequent developments.

Impunity starts at the stage of filing of the FIR and prevails through out the process. As this process remains obscure from the eyes of the media and the middle class consumers of the media products, the media often fails to see the collusion of the police, the executive and the judiciary in defeating the ends of justice. On the contrary, much more impunity was being built in the guise of police reforms. Unfortunately, significant sections of the middle classes, influenced by the global media campaign on terrorism, seem to want tougher policing and are ready to surrender their civil liberties, in name of protecting 'security', without questioning whose security was at stake - the state's or the citizens.

The consensus that emerged in the discussion was to focus on the judiciary as a specific Campaign Strategy. However, in focusing on the judiciary, it was argued that it was not enough to focus only on the higher judiciary, but also on middle and lower levels if impunity was to be eradicated. This campaign must demonstrate how the system subverts the right to justice and how the process of giving 'sanction' is used to protect the guilty. The seamless connection among all the agencies that have a constitutional duty to oversee the functions of the police and other law enforcement agencies lies at the root of the culture of impunity. In view of the attitude of the media and the middle classes in supporting the erosion of civil liberties and human rights and reinforcing a culture of impunity, it was imperative that the campaign against impunity focuses on procedural lapses and confronts the judiciary and the government with proven facts.

It was recognised that individuals and associated

organisations present at the meeting, as well as others, had built up valuable documentation of cases, (e.g. Campaign against Torture,) a network of human rights defenders at the grassroots, and legal aid services. Several participating organisations were already engaged in campaigns and were mobilising people at the grassroots for social justice and democratic rights. Many participants also offered to work together with other stakeholders on this campaign and to pool in their resources to give greater strength to the campaign. It was recognised that this must be drawn upon and consolidated as a valuable resource base for the Campaign.

It was recommended that the campaign should focus on certain critical aspects that contribute to the perpetuation of impunity and the subversion of the rule of law:

1. Processual Impunity: how section 197 or other sections are used by the state to prevent the due process of law from taking its course. Need to challenge the nature of power, lack of transparency, the way the sanctions regime has been used.

2. Encounter and Custodial Killings: The law requires that every encounter killing must be investigated to establish how 'death' had taken place. Killing in self-defence is not a ground for exemption from investigation. This has to be proved in an independent court of law. The state must follow the procedure laid down by law. It also needs to be proved that the force used by the agencies of the state during the encounter was the minimal force as is recommended by law. As a part of the campaign we should investigate 10 incidents of so-called encounter killings and custodial killings. Not the event so much as what the government departments did to establish the genuineness of the 'encounter'. These investigations will expose

the systemic and technical flaws in the investigations and show how the government subverts the law. This is necessary to establish that Right to life which is fundamental to our system is being violated and the state is subverting the very process that it is to provide.

3. Police Firing: There are established procedures in law for investigation of the incidents of police firing. It is important to ask whether the government follows these procedures. As a part of the campaign we should investigate whether the government followed the procedure to examine the incidents of firing on citizens was justified or not. It is again necessary to expose the failure and weakness in the system. The purpose of the campaign is to build a body of arguments, advocacy material based on our enquiry on the functioning of the state. How Section 197 is being used and abused to prevent prosecution.

It was recognised that we must develop a multi pronged approach. While we should target the media and the middle classes, we must also reach out to mass organisations, trade unions, women's rights groups, environmentalists, youths and students organisations - many of whom are involved in related struggles, though their focus may not be Impunity. It was repeatedly emphasised that, in the light of the mounting attacks on the poor and human rights defenders, there was urgent need to merge individual campaigns into a larger coordinated one.

Concluding Decisions of the Two-day Workshop:

All participants unanimously agreed to actively participate in the campaign against IMPUNITY. The following decisions were approved by all present:

1) Title of Campaign: "Campaign against Impunity".

2) Central Coordinating Organizations: SAFHR/ CHRI.

3) State Partners: i. Kolkata, West Bengal, ii. Mumbai, Maharashtra and Ahmedabad, Gujarat, iii. Madurai, Tamil Nadu and Bangalore, Karnataka, iv. Raipur-Chhattisgarh, v. Imphal, Manipur, vi. Varanasi, Uttar Pradesh, vii. Srinagar, Jammu & Kashmir, viii. Delhi.

4) Focus of the Campaign:

- ♦ Role of State & its institutions: what has been done or not done in the realm of impunity, failure of various institutions in performing constitutional duties

- ♦ Judiciary including Human Rights Institutions - overall stress on procedural lapses at all levels of the judiciary and state and national institutions.

- ♦ Twin focus:

- Region/ State specific focus; issues which are state specific as well as common issues with cross cutting features (area specific planning keeping in view dynamics/ needs of that particular area/issue)

- National level campaign, keeping judiciary as a central focal point

- ♦ Demand repeal of the sanctions regime in Cr.Pc. and other laws.

- ♦ Demand to sign and ratify Convention against Torture on 60th anniversary of UDHR

- ♦ Side by side linking with international campaign against impunity (UPR, 60th UDHR)

- ♦ Linking impunity with Right of Life and propaganda of national security

- ♦ Demand Repeal of Armed Forces Special Powers Act.

5) Need to build a strong network and support system among various partners Human Rights Organizations/ defenders for their protection.

6) Need to develop the 'central focal points' (SAFHR/CHRI) as the repository of documentation,

campaign materials, and resources and for its dissemination among partners.

7) Need for regular periodic meetings of this working group to review the progress of campaign

8) Minutes of this meeting along with the list of final decisions will be circulated among the all partners who have attended this meeting.

Prepared and circulated by: South Asia Forum for Human Rights (India)

**Impunity: Exemption or freedom from punishment, harm, or loss <laws were flouted with impunity>, Etymology: Middle French or Latin; Middle French impunité, from Latin impunitat-, impunitas, from impune without punishment. In the international law of human rights, it refers to the failure to bring perpetrators of human rights violations to justice and, as such, itself constitutes a denial of the victims' right to justice and redress. □*

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 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 □

Letter: Accused's Right to Counsel

COPY

Dear Mr Kannabiran,

I would like to bring to your notice that it has been reported that the accused who were allegedly making attempts to do acts of terrorism in Ayodhya, and recently in Lucknow at the time of Rahul Gandhi's visit there, and also some who were detained allegedly for involvement in blasts at *Sankat Mochan* temple in Varanasi were assaulted by mob including lawyers within courts premises at these places. They were also denied right to counsel – and those lawyers who offered their service including one from Delhi were prevented from doing so. Bar Associations are reported to have passed resolutions barring lawyers to take up the cases of “terrorists” (read accused).

In view of the fact that in quite a number of cases inquired into by PUCL and media persons those accused have been found to be innocents, whom police has charged with acts of terrorism under political calculations or for

reward and promotion, it can be assumed that there are fair chances of those charged with terrorism or attempted terrorism at the three places in U P Are innocent.

In view of this the lawyers and their organized body seem to be obstructing fair trial of accused Muslim youth, which has increased their frustration with the justice delivery system, which explains (though not justifies) their selection of targets of serial blasts in U P

The PUCL was constituted to uphold rule of law, of which fair trial is an important pillar, which is based on assumption of innocence, and on the right to a competent legal counsel of the choice of the accused. Even murderers of Mahatma Gandhi and Mrs. Indira Gandhi were not denied the right of defence.

Without the availability of such legal counsel Mohd. Haneef would not have been acquitted by the Australian court of the charge of aiding terrorism in the U.K. And S

A R Geelani would have not been saved from the gallows.

In view of this it is time that the PUCL (especially U P State branch) played a proactive role, to uphold rule of law which alone can inspire confidence among sections of the frustrated Muslims youth. It requires the following action:

Inquiry into allegation of physical assault of accused including by lawyers at Faizabad, Varanasi and Lucknow, and into collective decision of lawyers not to allow the accused to get the services of any lawyer for defence. Inquiry may include violence or threat of violence against the accused in jails, where trial is being held.

I am sorry to note that in spite of there being distinguished jurists from U P, who hold office of responsibility in the National and State PUCL, no statement deploring the role of lawyers has come out till date. With regards. Yours sincerely. – **Prof Iqbal A Ansari**, 08.12.07 □

Martyrdom of Ram Naresh Sharma:

Leaders and Advocates Vow to Eliminate Criminals

“The Constitution of India provides that every citizen is equal before the law. But a special section of society who has gained access to the corridors of political power with the help of muscle, money, and fire arms consider itself above the law. APP and Human Rights activist Shri Ram Naresh Sharma was brutally murdered only due to his opposition to this particular section. The society will have to destroy the dangerous motives of the criminals. The participation of public is essential in this movement. The martyrdom of late Sharma who did not succumb to the criminals' threats and allurements has agitated the whole state. The need of the hour is to take up a pledge to participate in the continued struggle against the

criminals”, said Prof Prabhakar Sinha, the National Vice President of PUCL, while addressing the Tribute cum pledge meeting on the occasion of the *Dwadash Karma* of late Sharma at his native village Safapur on the 19th November 2007. This meeting was held jointly by the District Lawyers Association and the PUCL and was presided over by Shri Ramashray Prasad Singh, District President of PUCL. Representatives of Bihar State Bar Council, Yogesh Chandra Verma, Rameshwar Sinha, Prem Kumar Jha, Shailendra Mohan Sinha, and Ram Charitra Prasad said that the martyrdom of late Sharma would create a new history.

The meeting demanded a monetary compensation of Rs 25 lakh to his family beside a Government job to one member of

his family and guarantee of safety and the security of the Advocates all over the State. Prof Kameshwar Sharma highlighted the various aspects of his life. On this occasion Ex-MPs Shri Shatrughna Prasad Singh and Shri Ram Jeevan Singh, Begusarai MLA, Shri Bola Prasad Singh, MLCs Shri Basudeo Singh, Shrimati Usha Sahni and Shri Tanveer Hasan, MLA, and Ex-MP Smt. Renu Devi, JD(U) District President Prof Parmod Sharma, Shri Rajendra Prasad Singh of CPM, Barauni MLA Shri Rajendra Singh, President of District Lawyers' Association Shri Shah Izzurrahman, Teacher leader Shri Ram Pratap Singh, Ex-*Mukhiya* Shri Ramashis Prasad Singh, Vice-President of Bihar State Bar Council and senior journalist Shri

Baleshwar Sharma, Shri RCL Das, Ex-President of Bihar State PUCL, State Council Member Shri Nand Kishore Sharma, Shri Chun Chun Rai, General Secretary of Congress (I), Ashok Yadav, RJD President, Shri Arun Singh and Shri Ramesh Singh of Traders' Association, Advocate Shri Ramesh Kumar Singh of PUCL, Shri Phulena Singh of the Bharat Sewak Samaj, Shri Suresh Prasad

Singh of CITU, Advocate Shri Chandrashekhar Singh and Shri Niraj Kumar of Amnesty International while addressing the meeting took a pledge to continue the struggle against crimes and criminals. All the guests present there paid tributes by offering flowers on the oil painting of late Sharma. The representatives of various political parties, Advocate clerks, Jogendra faction and Gope

factions of the non-gazetted employees confederation various social organisations and the villagers attended the meeting in a large number. All present offered floral tributes to him. The meeting was conducted by the State Vice-President of PUCL and journalist Shri Arun Kumar. – **Pankaj Kumar Singh**, December 17, 2007

□

Copy of Letter:

Torture of Dalit Youths in Maharashtra

To, Justice Shri S Rajendra Babu, Chairperson, National Human Rights Commission, Faridkot House, Copernicus Marg, New Delhi- 11 00 03.

Subject: Complaint against the Torture and Other Cruel, Inhuman or Degrading Treatment or punishment of a Dalit Youth Chandrakant Gaikwad and his friend Milind Jondhale in Nanded district of Maharashtra all through the night of Jan 5th 2008.

Dear Justice Rajendra Babu,

The Forum for Fact-finding Documentation and Advocacy is seeking the immediate intervention of National Human Rights Commission against the Torture and Other Cruel, Inhuman or Degrading Treatment or punishment of a Dalit youth Chandrakant Gaikwad and his friend Milind Jondhale for eloping with an upper caste girl by relatives of the girl in Sategaon village, Nanded district of Maharashtra State.

Dalit youth Chandrakant Gaikwad and his 15-year old upper caste girlfriend Premala Jadhav flew last Jan 5th 2008 to the house of Milind Jondhale, a friend of the Dalit youth, in Khamareddy in Andhra Pradesh. That night enraged relatives of the girl caught them at Milin's house and brought them to Sategaon in a jeep where the assaulters had gagged Chandrakant and Milind while

torturing them all through the night of Jan 5th and piercing their eyes.

The Forum for Fact-Finding Documentation and Advocacy raises its concern against this barbaric practice, and it has no hesitation to say that the rights of Chandrakant Gaikwad and his friend Milind Jondhale have been grossly violated. It is in our understanding that torture and inhuman or degrading treatment or punishment is a human rights violation under article 5 of the Universal Declaration of Human Rights (UDHR): "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment," and under Article 7 of the International convention on Civil and Political Rights, of which India is a party. Torture is also a violation of customary international law, which is binding upon all states. Under Article 2(3)(a) of the ICCPR, state parties are obliged to ensure an effective remedy for persons whose rights have been violated. The acts of torture are clearly based on caste discrimination of the Scheduled Caste (Dalit), which violates the human rights under the Scheduled Castes and the Scheduled Tribes (Prevention of atrocities) Act, 1989.

The enraged relatives of the 15-year old girlfriend, Premala Jadhav admitted the dalit youth Chandrakant Gaikwad and his friend Milind Jondhale in two

hospitals in an apparent attempt to keep the crime under wraps, but they also warned Gaikwad's parents against approaching the police.

The Universal Declaration of Human Rights (UDHR) contains in Article 7: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

In the concluding observations, the United Nations Committee on the Elimination of Racial Discrimination (CERD) in March 2007 asked India "to provide effective protection to members of scheduled castes and scheduled and other tribes against acts of discrimination and violence". Further the Committee had urged India "to ensure that members of scheduled castes and scheduled and other tribes who are victims of acts of violence and discrimination have access to effective remedies and, to that effect, encourage victims and witnesses to report such acts and protect them from acts of retaliation and discrimination; ensure that complaints under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) and other criminal law provisions are properly registered and investigated, perpetrators

prosecuted and sentenced and victims compensated and rehabilitated; and establish and make operational special courts trying atrocity cases as well as committees monitoring the implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in all States and districts, as mandated by the Act".

The torture and other cruel treatment against the Dalit Chandrakant Gaikwad and his friend Milind Jondhale exposes that the violence against the Dalits continues and the State has completely failed.

FFDA requests you to intervene by taking following measures:

Direct the State Government of Maharashtra to investigate the matter by an independent authority

and report to the National Human Rights Commission within 4 weeks time;

Direct the State government of Maharashtra to submit the status report on the caste based discrimination and torture and to take legal action against the perpetrators under ST and SC Prevention (of Atrocities) Act.

Direct the State government of Maharashtra to provide security to possible target groups and to bring the perpetrators to court of justice;

Direct the State government of Maharashtra to pay interim compensation of INR 5 Lakh to the victims each for its failure to protect the victims;

Direct the State Government of Maharashtra to pay INR 2 lakhs each, and 50% of 2 lakh must be paid on FIR as per the SC/ST (POA) Act, 1989.

Direct the Central government of India to take immediate steps to ratify the United Nations Convention against Torture and other Cruel and Degrading Forms of Punishment, 1987;

Direct the Central Government of India to produce the action take report before the NHRC and CERD in response to the concluding observations made by Committee on the Elimination of Racial Discrimination (CERD) in March 2007; and

Take any other measures that NHRC deems fit.

FFDA is looking forward to your kind intervention. Thanking You. Sincerely. – **Subash Mohapatra**, Director, Forum for Fact-finding Documentation and Advocacy, – January 13, 2008 □

(from page 1...) and even younger generation coming from rural areas and even many from urban areas willingly continued covering their heads in public as a part of cultural tradition they had been brought up in, and yet they were all devout Hindus. Carried to the extreme the conclusion would be that men in south (who wear *dhoti*, they are trying to forge a separate force against North (where we wear pyjamas). *Dhoti* is worn by Hindus and Muslims in South – so where does the communal divide come in.

Shourie of course has his pet theory that Islam was spread in India by sword. But this false premise is repudiated by Vivekanand the greatest exponent of Hinduism thus – “The Mohammedan conquest of India came as a salvation to the downtrodden, to the poor. That is why one-fifth of our people have become Mohammedans”. He denied that it was all the work of sword and fire and said that to call it so was “the height of madness”. He also told Hindus not to talk of the superiority of one religion over

another. Even toleration of other faiths was not right; it smacked of blasphemy. He pointed out that his guru, Sri Ramakrishna Paramhansa, had accepted all religions as true.

Vivekanand in fact profusely praised Islam and remarked that “without the help of practical Islam, theories of *Vedantism*, however fine and wonderful they may be, are entirely valueless to the vast mass of mankind. For our own motherland a junction of the two great systems, Hinduism and Islam – *Vedanta* brain and Islam body - is the only hope”. Vivekanand was not, as Shourie obliquely was referring to “Islamic body” as brutal strength but to the freshness of approach and message of equality brought in by Islam.

Vivekanand castigated the orthodoxy thus “No man, no nation, my son, can hate others and live; India’s doom was sealed the very day they invented the word *mlechchha* and stopped from communion with others”.

Shourie castigates Christians because they speak against idolatry and refers to

Ramakrishana Paramhans devotion to the Goddess of Dakshineswar and which according to him restored respectability to the image of idolatry. The greatness and spiritual height of Ramakrishan Paramhans is undisputed. His devotion to Goddess was his way of becoming one with God. But then Christians are not the only ones against idolatry. There have been and are great souls and intellectuals who speak against the practice of idolatry. This is what Swami Dayanand one of the greatest exponent of Vedas and Hinduism in 19th century, (though born in a priestly family and brought up to worship idol of Shiva) has to say “that there is not a single verse in the Vedas to sanction the (on next page...)

J & K PUCL: Press Statement

Right to Information Act

Balraj Puri, Convenor PUCL J & K State, has urged the state Chief Minister to take measures

J & K PUCL: Press
Statement

Right to Information Act

Balraj Puri, Convenor PUCL J & K State, has urged the state Chief Minister to take measures to implement its declared decision to bring the J & K Right to Information Act at par with the national act on the subject, as was desired by the governor who had sent the bill back to the state government for reconsideration without giving his assent.

While it is understandable, he said, that the atmosphere in the last session of the assembly was not favourable to reconsider the bill, he questions the wisdom of returning the bill to the governor under the plea that it is a money bill on which, vide the constitution he is bound to give his assent.

According to the legal opinion sought by the Commonwealth Human Rights Institute, quoted by Puri, a bill vide section 77 of the state constitution shall be deemed to be a money bill if it provides for imposition, abolition, remission, alternation of any tax. As none of the provisions of the J&K RTI bill involves any changes in the existing taxes, he argues, the government should have reconsidered the bill returned to it by the governor for the purpose. - Balraj Puri

(from previous page...)
invocation of the Deity. and likewise there is nothing to indicate that it is right to invoke idols". He also said, "Idol worship is a sin." His remedy, in his own words: "Under a righteous government these lovers of idols (priest) would

have been compelled to earn their living by breaking stones; making bricks and carrying materials for building purposes or doing the like work."

I am firm in my conviction that any attempt to dilute the composite culture and inclusive democracy of our country can only bring harm. Maulana Azads soul stirring speech (1940). puts it in beautiful prose, "I am a Muslim and proud of the fact. I am ir. dispensable to this noble edifice. Without me this splendid structure of India is incomplete. Everything bears the stamp of our joint endeavour. Our languages were different, but we grew to use a common language. Our manners and customs were different, but they produced a new synthesis... No fantasy or artificial scheming to separate and divide can break this unity". - 23/01/2008

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