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## Information Technology (Amendment) Act 2008 and Civil Liberties

**Pushkar Raj**

The passage of recent Information Technology (Amendment) Bill 2008 that received President's assent recently poses grave dangers to the personal liberty of the citizens available under the constitution. Section 69 (1) of the Act states `` where the central government or a state government or any of its officer specially authorized by the central government or the state government, as the case may be, in this behalf may, if satisfied that it is necessary or expedient to do in the interest of the sovereignty or integrity of India, defense of India, security of the state, friendly relations with foreign states or public order or for preventing incitement to the commission of any cognizable offence relating to above or for investigation of any offence, it may, subject to the previsions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the appropriate government to intercept, monitor or decrypt or cause to be intercepted or monitored or decrypted any information transmitted received or stored through any computer resource." Section (2) adds `` the procedure and safeguards subject to which such interception or monitoring or decryption may carried out, shall be such as may be prescribed.

These are the vast overriding powers available to police that means that the government can now eavesdrop on your emails, smses, phone conversations and all online activity. They will not need a warrant and merely a police inspector in his discretion will be able to raid a home to search, seize and haul off a computer user for questioning in the name of carrying out investigation into `an offense'. He does not need a warrant from a magistrate to do so. It is an unprecedented development.

Earlier the phone tapping was allowed under the Indian Telegraph Act of 1885 (ITA) in the interest of the public safety and its other sections provided that the government should formulate ``precautions to be taken for preventing the improper interception or discloser of messages". But since 1885, no government thought it proper to formulate any such precautions since all governments like to spy on their opponents and if possible citizens. It was only after 1996 that on a writ petition filed by PUCCL the Supreme Court laid down certain guidelines to use the power conferred under ITA 1885 that some semblance of discipline came to be introduced in the government power of phone tapping. The court laid

*(cont. on page 3)*

# SECTION 377 OF THE INDIAN PENAL CODE, 1860

K.G. Kannabiran

When I heard the news regarding the Delhi High Court's ruling on a PIL, filed by Naaz Foundation, decriminalizing consensual homosexual relations among adults, over the electronic media, my mind went to the trial of Oscar Wilde for practicing homosexuality and his subsequent imprisonment, and finally, his release from the Reading Jail where he wrote the Ballad of Reading Jail. The other one he wrote was De Profundis. Both are moving testaments of his genius. Any student who enters a college is expected to read great novels and that forms part of his liberal education. A young and fairly literate lawyer would have heard of Oscar Wilde's trial for Homosexuality. What was a crime in the Anglo-Saxon world was introduced as a crime by Macaulay in India much earlier. By 1891 Oscar Wilde was at the height of fame as a writer and his plays, particularly "The Importance of Being Earnest", was being played to crowded houses in London and it was in that year that he first met Lord Alfred Douglas, 22 year old son of the Marquess of Queensbury. This was the beginning of his undoing. Today, after almost a century, we heard people disapproving of the judgment regarding the non-applicability of Section 377 on consensual homosexuality among adults in the same way as in the days when Wilde faced the trial it was considered a despicable crime. The fact, that this practice has been designated a crime, affirms the existence of the practice and these practices were driven underground because they were designated a crime. The relationship between Wilde and Lord Alfred was distasteful to the father, the Marquess. He felt that his son was seduced to homosexuality by Wilde. Intending to bring about a show-down with Wilde he left his visiting

card at the club and written on the back of it was "To Oscar Wilde posing as a "Sodomite" - that was the original spelling. Oscar Wilde who was at the height of fame as a writer, and with considerable affluence at his command, walked into Marlborough police court and initiated proceedings for defamation. Perhaps he was of the view that it was not a crime and the Marquess of Queensbury had not only to prove that the statement he had made was true, but also that it was made for the public benefit. He was mercilessly cross-examined by Carson who was renowned for his cross-examination. The mastery of Wilde over the language was, in fact, his undoing. The evidence given by Wilde to Carson's questions might rate as fine reading but every time such answers were given Wilde was trapped into admitting of the crime he was accused of. Carson succeeded in his defense of the Marquess. But more was yet to come.

Against the advice of his friends to go away abroad, he stayed back. Lord Alfred forced him, as he stated in De Profundis "To stay to brazen it out, in the box by absurd and silly perjuries." He was arrested at the Cadogen Hotel for Homosexual offences. Before 1885 the law punished only acts against public decency or those tending to the corruption of youth. The Criminal Law Amendment Act of 1885, meant to suppress brothels, created the new offence without any debate. The law was fundamentally altered and came to be known as was required to be done by the Prosecutor, Charles Gill excepting to besmirch his reputation further, and while questioning him, the Prosecutor picked out a quotation from Lord Alfred's poem "Love that does not speak its name." His answer is worth recalling on this occasion, as that would provide the human and

substantive answer to the issue raised in this case.

"The love that does not speak its name' in this century is such great affection of an elder for a younger man as there was between David and Jonathan, such as Plato made the very basis of his philosophy, such as you find in the paintings of Michael Angelo and the sonnets of Shakespeare. It is that deep spiritual affection that is as pure as it is perfect. It dictates and pervades great works of art like those of Shakespeare and Michael Angelo, and these two letters of mine, such as they are. It is in this century misunderstood that it may be described as "love that dare not speak its name", and on account of it I am placed where I am now. It is beautiful, it is fine, and it is the noblest form of affection. There is nothing unnatural about it. It is intellectual, and it repeatedly exists between an elder and a younger man, when the elder man has intellect, and the younger man has all the joy, hope and glamour of life before him. That it should be so the world does not understand. The world mocks at it and sometimes puts one in the pillory for it."

Whereas in India gay relationships were an offence in 1860, it was made an offence in England twenty-five years later but they did not realize what they were doing. In De Profundis he wrote that his reason told him that laws were wrong and the system dealt with him unjustly and left him with no other option but to suffer. But he articulated what many could not and his articulation was put under scrutiny of Indian Courts. Macaulay's formulation of the offence was unjust.

\*Sir Edward Clarke QC was Wilde's Lawyer and the Marquess engaged Edward Carson QC to defend him. He had taken silk only a year before. □

(from page 1)

down that the power under the Act could only be used when question of sovereignty, security, integrity of India and relations with foreign countries are involved; it could also be used for public order or for preventing incitement to the commission of an offence. It further stated that the phone tapping order could only be issued by the Home Secretary of the central or of the state government and it would indicate the kind of communication to be tapped. On top of it the Court stipulated that the original order would have to be reviewed by a committee consisting of Cabinet Secretary, Law Secretary and Secretary for Telephone Communication at the central level and also a corresponding

Committee at the state level and if it considers that there has been a contravention of Act it will set aside the order and also destroy copies of interception material.

There are no such safety mechanisms under the new law and it is unlikely that the government under the present Information Technology (Amendment) Act 2008 will soon formulate 'procedure and safeguards' as provided in it. If it intended there was no reason why it should not have been part of the original Act. When the government showed no interest in formulating such provisions on Indian Telegraph Act 1880 for nearly sixty years after independence and people had to wait for the Supreme Court intervention there is no assurance that it will do so on the present Act.

In absence of such safety valves some people can be permanently under surveillance on whatever they do and wherever they go and the list can keep expanding at various levels without public knowledge as there is no centralized agency keeping record of such snooping. Even before passage of the Act in a report called the Electronic Police State India figured at 20th rank in a survey of 52 countries part of the club consisting of China, North Korea, Russia, Singapore etc. In short the Act is a bundle of poison for civil liberties of the citizens of the country with its various loosely defined provisions that are very likely to be misused by an unaccountable police force. It has a real potential of turning India into Orwellian '1984 land'. □

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## RESERVATION FOR DALITS IN PRIVATE SECTOR

**Rajindar Sachar**

*(Some time ago Ms. Mayawati, the Chief Minister of U.P. mooted the idea of providing 10 % reservation for Scheduled Castes and Scheduled Tribes in P.W.D. contracts/supplies. PUCL has always supported affirmative action for empowering the Dalits by providing opportunities to them in public as well private sector for their economic upliftment in accordance with the letter and spirit of The Directive Principles of State Policy contained in Part IV of the Indian Constitution. Given below is an article by Justice Rajindar Sachar, Retd. Chief Justice of Delhi High Court and former President of PUCL demanding and justifying such action much before Ms. Mayawati announced her intention to do so. We hope that this will not remain a mere declaration and would be implemented sincerely. The suggestion of Justice Sachar is worth considering by the Central Government as well State Governments - Ed.)*

For sometime past there has been a persistent demand from Dalits that law should provide reservation for scheduled castes and scheduled tribes in business enterprises and in works funded by the Governments and Public Sector.

This question has assumed urgency because of undesirable haste by which public sector is being dismantled, with the inevitable consequence of loss of opportunities for employment for large segments of Dalits.

It is no longer in dispute that because of the caste system large portions of the population in our

country have been deprived of the equal of opportunity in various walks of life. Pt. Nehru even in 1930 wrote "therefore, not only must equal opportunities be given to all, but special opportunities for educational, economic and cultural growth must be given to backward groups so as to enable them to catch up with those who are ahead of them.

Our Supreme Court has emphasized that the Preamble of the Constitution which directs the State to secure to all citizens justice will remain a myth unless first economic justice is guaranteed to

all.

In this context, it should not be forgotten that hitherto for centuries, there have been cent per cent reservations in practice in all fields, in favour of the high castes and classes, to the total exclusion of others. It was a purely caste and class-based reservation.

The employment - whether private or public - thus, is a means of social leveling. A deliberately conscious attempt to secure it to those who were designedly denied the same in the past, is an attempt to do social and economic justice to them as ordained by the

Preamble of the Constitution and also the mandate of Article 16 of the Constitution.

However, opponents of social transformation mischievously spread the canard that to legislate on a quota or reservation in private sector would be impermissible in law, a proposition totally unsound in law. Article 14, when it talks of equal opportunity, does not forbid reasonable classification. Therefore, if any provision is made to give some part of business or contracts which are funded by the Govt. and public sector to Dalits and backward classes, the same would be justified on the ground of reasonable classification inasmuch as it was to give benefits to a class or society which have been deprived of opportunity for hundreds of years and which can only be redeemed by providing them special provisions.

A similar situation arose before the United States Supreme Court in Fullilove V Klutznick. There was a "minority business enterprises" clause in the Public Works Employment Act of 1977 which contained a provisions that 10% of the federal funds granted for local public works projects must be used by state and local grantees to procure services or supplies from businesses owned and controlled by "minority group members", the later being defined in the Act as United States citizens who are "Negroes, Spanish-speaking, Orientals .....".

This provision was challenged as denying an equal protection clause provided under the 14th amendment of the US Constitution from which Article 14 of our Constitution has been adopted. The Court, while upholding the law, relied on official reports which were to the effect that the effects of past inequities stemming from racial prejudice have not remained in the past, and the reality was that past discriminatory

practices have, to some degree, adversely affected the present economic system.

The Court upheld the validity of the legislation as it contained provisions designed to uplift those socially and economically disadvantaged persons to a level where they may effectively participate in the business mainstream of the U.S. economy.

The arguments raised as to why the private contractors should be compelled and their choice in this particular manner be limited as to where the supplies will be received and whom they will sub-contract, was given short shrift by clarifying that it is not as if these prime contractors are being held responsible for any violation of anti-discrimination of law, but this legislation was enacted to prohibit practices which perpetuate the effect of discrimination being practiced, with a view to eliminate those barriers and to ensure that the minorities were not denied equal opportunity to participate in federal grants to state and local governments, which is one aspect of the equal protection of the laws.

Thus it is fallacious to say that if a similar law was made in India, non-Dalits will thereby be thus discriminated because as the US Court said "it is not a constitutional defect in this program that it may disappoint the expectations of non-minority firms. When effectuating a limited and properly tailored remedy to cure the effects of prior discrimination, such "a sharing of the burden" by innocent parties is not impermissible. The legislation was held to be only an attempt to remedy the ingenious and pervasive forms of discrimination against the Negroes where "the position of the Negroes today in America is the tragic but inevitable consequence of centuries of unequal treatment". The Court ended with ringing words "if we are ever to become a fully integrated society, one in which the

colour of a person's skin will not determine the opportunities available to him or her, we must be willing to take steps to open those doors." The same principle aptly applies to the position of Dalits in our country.

The non Dalits cannot in law complain of being deprived of equal opportunity. It is settled law that equal protection requires affirmative action by the State towards the unequals by providing facilities and opportunities to them over and above the others.

Every classification is in some degree likely to produce some inequality. But differential treatment does not per se constitute violation of Art. 14.

As Justice Homes of US Supreme Court said "if the law presumably hits the evil, where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied."

Our Supreme Court has held that "economic empowerment of the poor, in particular the Scheduled Castes and Scheduled Tribes, as is enjoined under Article 46, is a constitutional objective as basic human and fundamental right to enable the labourer, Scheduled Castes and Scheduled Tribes to raise their economic empowerment."

A look around will show the horrendous deprivation in the matter of employment, notwithstanding the Constitution providing for reservation for Dalits and backward classes. The backlog of vacancies for Dalits even after over 50 years of the adoption of the Constitution is appalling - thus there is 70% in Group A jobs and 45% even in D group, the lowest job of peons, Khallasis etc. In the public sector it is more shocking, being 88%. The backlog of appointments of S.C and S.Ts. is reported to be about a million in various govt. services.

Even now in many places the

country tea shops have two tumblers outside, and a Dalit is expected to wash his own tumbler. Such humiliating and inhuman behaviour is resorted to because Dalits do not possess the financial clout to assert their constitutional rights to equality and non-discrimination. Poverty is so enveloping amongst Dalits that of agricultural labour about 49% are Dalits, who are being denied dignity because without land ownership there is no respect in rural areas.

It is for this reason that it is

time when similar legislation, like the one passed in the US, is essential so as to give status in society to Dalits.

I feel that all political parties must be compelled to give as election promise that they accept this principle and will effectuate it, namely, that of funds spent by Central, State Govt., local bodies or public sectors in connection with public works projects etc. will carry an in built clause that, at least to start with, 15% (though on population basis it should be 22% - just as USA

provided 10% being the proportion of minority population) would be used to procure services or supplies from businesses owned and controlled by Dalits and the most backward classes. This commitment alone will now entitle the parties to Dalit votes.

Legislation as mentioned above may go a reasonable distance in atoning for past iniquities committed on Dalits and give them a somewhat equal place in our society as is the mandate of Human Rights. □

## THE U.P. STATUES CASE

Mahi Pal Singh

The judgement of a bench of the Supreme Court of India, consisting of the Chief Justice K.G. Balakrishnan and Justice P. Sathasivam, in the U.P. statues case on 10 July 2009 must have come as a shock to most people believing in morality in politics in a democracy. The Court refused to entertain an application filed by advocate Ravikant, alleging that the U.P. Government was speeding up work on the statues and proposed to install statues of BSP leaders, including those of Ms. Mayawati and party founder Kanshi Ram, in the 4 Km. long walled area along the banks of the Yamuna in Noida. "If the Cabinet has approved it, then we can't do anything. First, you should have gone to the High Court where some more petitions relating to it are pending," the CJI told the petitioner.

Ms. Mayawati, the Chief Minister of U.P. has cleared a large tract of land in Noida by cutting trees, 'the lungs of cities', and felling buildings for this park where statues of Kanshi Ram and her own statues have been erected in a large number. Statues of Elephant, her election symbol, have also been erected in dozens and that too in the design of the national symbol of four lions facing four directions on a single pillar. And this is being done

at a whopping cost of 2,000 crore Rupees of the public exchequer in a State where the state of education remains poor. The facilities required for the large number of statues and electric connections to far - because of the vastness of the area - comes from a poor Dalit family, she was expected to understand the difficulties faced by the poor better and take effective measures for their redressal.

Right from the time when the question of inclusion of rights in the Constitution was being discussed in the Constituent Assembly and economic and social rights were put in Part IV of the Constitution, making them unenforceable by any Court, they have remained unimplemented to this day on the pretext of fund constraint though they were supposed to be integral in the governance of the country as they were defined as 'The Directive Principles of State Policy' which would be 'fundamental in the governance of the country'. All Governments have been guilty of neglecting these principles and there has been no dearth of money for things other than implementing these rights, which are basic for the

upliftment of the standard of living of the people of the country. That is why the most powerful instrument of social change, the Right to free and compulsory Education up to the age of 14, as envisaged in Article 45 of the Constitution, has not been enforced so far.

It is true that the statues of people like Dr. B.R. Ambedkar, the most revered leader of Dalits, and Kanshi Ram who became instrumental in giving voice to the oppressed millions of the country, are a source of inspiration to those who wish to work for the establishment of an equitable social order and the intention of their 'bulldozing', as declared by the Samajvadi Party leader Mulayam Singh Yadav, cannot be justified. But it is equally true that the erection of her own statues and those of her election symbol can also not be justified on any count, whether or not approved by the Cabinet. This is blatant misuse of public money for promoting her political ends. Besides being politically immoral, this is also against the very spirit and letter of the Constitution of the Country. If the Court, the sole custodian of the rights of the people and the protector of the Constitution, refuses to interfere, it only adds insult to injury. □

**RESERVATION FOR DALITS IN PRIVATE SECTOR**

**PUCL Delhi :**

## **Anti-Emergency Day Meeting held at Gandhi Peace Foundation**

PUCL-Delhi and Janhastakshep organized a joint Anti-Emergency Day Meeting on "Anti Terrorist Laws - Emergency by Proxy" at 5.00 p m on 26 June 2009.

Shri Kuldip Nayar, (Justice) Rajindar Sachar, Retd. Chief Justice of Delhi High Court, Shri S.A.R. Geelani, Dr. Aparna, Dr. Sandeep Pandey, Shri Himanshu Kumar and Ms. Kamayani addressed the audience.

Dr. Anoop Saraya introduced the topic. All the speakers recalled the days of Emergency rule in which all fundamental rights were suspended, one lakh and forty four thousand people, including ailing Jayaprakash Narayan, Kuldip Nayar and all opposition leaders were arrested, and complete press censorship was imposed. As a result, Indian democracy was converted into a virtual dictatorship. Even the judiciary had come under political pressure. Justice Sachar called it the failure of our judiciary, which failed to live up to its Constitutional obligation to protect the fundamental rights of life and liberties of its people through its judgment in the case popularly known as the A.D.M. Jabalpur case.

Shri Kuldip Nayar stated how on the night of 25th June 1975 press censorship was imposed, electricity supply to the press area at Bahadur Shah Zafar Marg was stopped and vans carrying the newspapers were not allowed to leave. Although there were 110 presspersons present at the Press Club and 100 of them signed the resolution demanding the removal of censorship, most of them were afraid. There was such a fear of the Prime Minister that even Judges of the Higher Judiciary were afraid. So much so that when the Habeas Corpus case, popularly known as the ADM Jabalpur case came up for hearing before the Supreme Court, Justice H.R. Khanna was the only one of the five

senior-most Judges who dared to go against the Government. The line dividing the right and the wrong, and the moral and the immoral, had become very thin during those Emergency days. If that line is obliterated, nothing remains. Mrs. Gandhi did that in 1975. What is most worrying, according to him, is that even today there is no Laxman Rekha for journalists, Judges and politicians. He asked the youth if they would bear a regime, which runs on the power of money or muscle power or they would fight against injustice as some people did during the Emergency. He criticized the attitude of the media which does not make a mention of the Emergency even on its anniversary, does not cover any news of meetings held to commemorate the black day when it was imposed in the country although it was above all the press whose voice had been ruthlessly throttled with the imposition of unprecedented and complete press censorship. The media even seems to be toeing the official line when it gives prominence to governments' justification of use of ruthless force under the draconian laws even against its own citizens in the name of fighting terror and eschews from highlighting the real concerns of the people. However, seeing a large number of young people in the audience, he expressed the hope that the fight for civil liberties, human and democratic rights would continue even after those people who started the crusade against dictatorial tendencies represented by the Emergency regime.

S.A.R. Geelani mentioned how police and security forces in areas like J&K enjoyed complete impunity even if they indulged in grave human rights violations like killings and rapes. The Shopian incident in which two young girls were raped and killed by personnel

of the armed forces had become a regular feature in the State and laws like the Armed Forces Special Powers Act only protected the guilty and alienated the ordinary law abiding people.

Dr. Aparna explained how Armed Forces Special Powers Act was being misused in several states to suppress the genuine demands of the people.

Himanshu Kumar from Chhattisgarh complained how those working for the welfare of Tribals were branded as Maoists and arrested and jailed under stringent anti-people laws. He said that demolition of Vanvasi Chetna Ashram at Dantewada on May 17, 2009 was also a proof of the Chhattisgarh government's attitude.

All the speakers compared the present situation with that of Emergency. Laws like UAPA, MOCOCA, Special Security Acts were being used to impose a virtual Emergency rule by various state governments to silence the voice of dissent and to deprive people not only of their right to life and liberties, but also of their land and livelihood.

The Fact Finding Report of the demolition of the Vanvasi Chetna Ashram, Dantewada on May 17, 2009, prepared by the a PUCL National Fact Finding Committee consisting of Dr. Sandeep Pandey, Magsaysay award winner social activist from Lucknow, Janak Lal Thakur, former MLA, Dalli-Rajhara, Chhattisgarh, Sumit Chakravarty, senior journalist and editor, Mainstream, New Delhi, Kamayani Bali Mahabal, human rights lawyer and women's rights activist from Mumbai, Dr. Harsh Dobhal, editor Combat Law, New Delhi and Vijendra, from PUCL Chhattisgarh, Raipur, was released by Justice Sachar.

Dr. Binayak Sen, who was expected to attend the meeting but could not do so because of ill health,

sent a message, which was read out at the meeting. In his message he said that the numerous flagrant breaches of democratic norms and practice that characterized the emergency are alive and well today in the state of Chhattisgarh as well as in numerous other states across the country. We are particularly concerned at the way in which the so-called War on Terror has become the justification for the

untrammled deployment of armed force against our own citizens. He also thanked all those who had participated in the movement for his release while he was in jail during the last two years.

The meeting was presided over by Dr. George Mathew, President, PUCL-Delhi.

Thanking the guests Mahi Pal Singh, General Secretary, PUCL-Delhi, said that in many parts of the

country the situation was worse than that of Emergency. Those arrested during the Emergency were released after 18 months whereas today a human rights defender like Dr. Sen could get bail from the Supreme Court only after spending two years in jail even without any of the charges against him having been substantiated before the trial court. - **Mahi Pal Singh, General Sec., PUCL-Delhi (26 June 09).** □

## **Dr. Binayak Sen's Message Read Out at the Anti-Emergency Day Meeting, New Delhi**

**Dear friends,**

I am extremely sorry that due to unavoidable reasons, it is not possible for me to participate in the programme on June 26th, to commemorate the Emergency. On this occasion, we will be releasing a report on the bulldozing of the Vanvasi Chetna Ashram in Dantewada and other associated events. The numerous flagrant breaches of democratic norms and practice that characterized the emergency are alive and well today in the state of Chhattisgarh as well as in numerous other states across the country. We are particularly

concerned at the way in which the so called War on Terror has become the justification for the untrammled deployment of armed force against our own citizens, and for the comprehensive degeneration of the jurisprudence of Human Rights, as recently commented upon by the International Commission of Jurists.

The commitment to Human Rights and Civil Liberties and the values of justice, equity and dignity that are a proud heritage of the PUCL will remain our inspiration and our strength in the challenging days ahead. I would like to take this opportunity to extend my heartfelt

thanks to all those who associated themselves with the nationwide and international campaign for my release from prison earlier this year. The outcome of the campaign has vindicated our stand and is a glowing affirmation of the voice of the people.

Were member also at this time the many others who continue to be incarcerated under similar charges, the many prisoners who are victims of a legal system that makes nonsense of their lives, and the thousands upon thousands of our compatriots who remain displaced, terrorized, and hungry. □

**Binayak Sen**

**Begusarai PUCL :**

## **WORLD ANTI TORTURE DAY MEETING**

Begusarai PUCL organized a meeting to observe 'Anti Torture Day' on 26th June 2009 at Kachahri ground. On this occasion, Bihar PUCL General Secretary, Mr. Ramashray Prasad Singh explained the importance of 'World Anti Torture Day'. He said that there is no place for torture in a civilized society. Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act

he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. He added that Article 5 of the Universal Declaration of Human Rights says that 'No one shall be

subjected to torture or to cruel, inhuman or degrading treatment or punishment'.

PUCL state council member Bashishth Kumar Ambasth (Advocate), Prabhakar Maharaj (Advocate), Mani Devi (Advocate), Shakuntala Devi, Raj Kumar, Toni, Nandu, and many social activists and lawyers addressed the meeting. The meeting was presided over by Mr. Ramashray Prasad Singh.

Niraj Kumar, Sub Editor Manwadhikar Patrika, Begusarai (Bihar) □

Karnataka PUCL :

## REPORT ON THE CUSTODIAL TORTURE ON TEJASWIRAJ, PRESIDENT OF NATIONAL STUDENTS UNION OF INDIA, D.K.

PUCL representative met Tejaswiraj in room No: 210 at the AJ Hospital near Kottara junction, Mangalore. It is observed that his right leg and thigh are completely covered in bandage. He has difficulty in walking. The following is an account of the circumstances surrounding Tejaswiraj's arrest as narrated by him:

*The main accused Riyaz is a friend of a certain Radhakrishna's acquaintance. This person Radhakrishna is a childhood friend of Tejaswiraj. About one year ago, Riyaz was taken to a mobile shop in Falnir by one Sajid. Riyaz had made some purchases in that mobile shop through credit card. This was a fraudulent transaction.*

*Why did the police, who now claim that they have a CD of the CCTV recording of that transaction in the shop, had not taken any action for nearly one year? The Falnir mobile shop falls under the Pandeshwar PS and not under the Mangalore Rural station. Sajid, arrested recently by the Mangalore Rural police, gave them the name of his friend Majid. Majid was called to the Mangalore Rural PS on Monday (29th June). This person Majid gave Radhakrishna's and Tejaswiraj's telephone numbers to the police.*

*Immediately Tejaswiraj was called to the Mangalore Rural police station. The moment he set eyes on Tejaswiraj, the Sub Inspector, Prakash, said, "Oh, we have been waiting for long to get hold of you. Wait for 5 minutes."*

*All of a sudden Tejaswiraj's eyes were blindfolded and he was driven to some unknown location. Upon reaching there his blindfold was removed and he managed to see that he was at a house on top of a hill and the vehicle that had brought him was a private silver-*

*coloured Tavera. The location could be somewhere around Neerumarga.*

*Within five minutes SI Prakash made his appearance at this place. He asked Tejaswiraj to show the credit card. Tejaswiraj replied that he did not possess any credit card. But he was repeatedly beaten and subjected to roller treatment. Finally he could not bear it any more and said 'yes' and showed his ATM card and said that this was all that he had. SI Prakash abused him and said, "Now that I have caught you I'll show you what police is. You have a bias against the police hunh? .....I'll see to it that you won't get into politics any more. I have CCTV records of you inside the shop." He then called up the Kavoora SI Anantha Padmanabha and forced Tejaswiraj to apologize to him.*

*On the following afternoon Tejaswiraj was transferred to the Pandeshwar PS. There he was kept for 3 days since he had been charged under non-bailable offences. Finally on the evening of Friday the 3rd, he managed to obtain conditional bail. Immediately he got himself admitted in AJ Hospital. Though the hospital has now sent a medico-legal report to the Kadri PS, till now no one has visited the hospital.*

**Tejaswiraj has also made an important observation that there are four Muslim youths undergoing torture in the same house that he was detained in.**  
**Observations and comments**

Tejaswiraj is the president of the district unit of the National Students Union of India (NSUI) which is affiliated to the Congress Party. He has been very active in exposing and protesting the misdeeds of Sangh Parivar. He had led student protests against the

government-sponsored "Movement against Terrorism" organized by Akhil Bharatiya Vidyarthi Parishad (ABVP). This so-called movement was clearly meant to further divide the student community on communal lines. Thus Tejaswiraj has been a thorn on the side of the ABVP and its mentors, Rashtriya Swayamsevak Sangh (RSS) and Bharatiya Janata Party (BJP). The Sangh Parivar has been wanting to target him since a long time and now that there is a majority BJP government in power, the witch hunt has started. The targets are secular groups and persons like Tejaswiraj and the minorities.

It is a fact that the Dakshina Kannada police force has become saffronised to a great extent. This has happened over a long period of time and has been done systematically by the Sangh Parivar as part of their larger agenda. If Dakshina Kannada today has become one of the most communal hot spots in the entire country, then part of the credit is due to this saffronised police force. SI Prakash and many other policemen with diseased brains are the sad end-results of very, very clever RSS propaganda. Such policemen are unfit to be in the Indian police because they have no respect for the secular values of the Indian Constitution. They have been brainwashed by the RSS to such an extent that it has turned them into blind minority-haters. They arrest members of minority communities, especially Muslims, and subject them to torture on the smallest pretext/suspicion. During the recent attacks on Christian Churches, the Sangh Parivar bias of the police was very much in evidence. This has been witnessed and recorded on video. A report on the incident that appeared in the Kannada daily

newspaper "Karavali Ale" dated 6/7/09 is enclosed.

Reportedly SI Anantha Padmanabha and SI Pramod are relations of the present District-In-Charge Minister.

This report is prepared by **P.B. D'Sa, James Lewis, Suresh Bhat** for PUCL, Dakshina Kannada Date: 7/7/09

#### **Copies of Report forwarded to:**

1. State Human Rights Commission to probe into the incident particularly into the torture chambers created by the Police in D.K. and take appropriate steps to stop custodial torture.
2. Superintendent Police. D.K. with a request to file an FIR on the basis of this report against

S.I. Prakash and others for torturing Tejaswiraj,

3. Inspector General of Police, Western Range for necessary action.
4. DGP & IG Karnataka State, Bangalore for necessary action and with a strong request to transfer all policemen who have been in the district for more than a period of three years. □

#### **LETTER :**

June 24, 2009.

#### **Dr. Manmohan Singh**

The Hon'ble Prime Minister of India  
Office of the Prime Minister  
Room No. 152, South Block  
New Delhi - 110 001

#### **Dear Prime Minister Manmohan Singh,**

As the newly formed UPA coalition government is just settling in to govern for the next five years, there is news that Commerce Minister Anand Sharma is already on his way to the United States (US) to bilaterally iron out differences to seal the trade deal that was launched during the World Trade Organisation's (WTO) 4th Ministerial Meeting in Doha. At stake in these trade negotiations are hundreds of millions of livelihoods in the farming and non-agriculture sectors that India has fought hard to preserve over the past eight years since the launch of the Doha Development Round.

It is well established by now that the last versions of the Doha texts that negotiators failed to reach agreement on in July and December 2008 respectively will do nothing to reduce US and European Union (EU) subsidies to their agriculture sectors. Yet, in return developed countries are demanding zero for zero cuts in non-agriculture goods in most sectors. It is also clear that negotiations on the Services agreement will not fulfill the Government of India's (GOI) demands on the free movement of Indian professionals, let alone Indian unskilled workers.

Furthermore, provisions to protect agriculture such as "special products" and "safeguards" have been diluted to such a degree as to make these provisions ineffective to protect our farm sector.

In a time when Indian export industries are shedding jobs across the country and the farm sector is in a state of distress, and when the fall-out of the current financial crisis is still being assessed and addressed, why is the GOI in such a hurry to seal the Doha Deal without sufficient public debate and a reality check? What will India gain from such a deal when financial analysts such as Bloomberg and major studies from institutions such as the World Bank, the Carnegie Institute and Tufts University have severely downgraded the estimates for gains from the Doha deal for developing countries as a whole? An estimate of \$96 to \$50 billion [1] in gains which amounts to less than half a cent per person in the developing countries. These gains are particularly insignificant for India given its GDP of over \$3.2 trillion. On the other hand, the Doha deal would have serious and far reaching negative impacts on India's rural areas, small and medium enterprises (SMEs), jobs and food security. UNCTAD estimates that tariff revenue losses alone from the Doha round would be close to \$60 billion. In the light of these realities, neither the Commerce Ministry, nor the Prime Minister's office has been able to make a convincing case for the conclusion of the Doha round of negotiations.

The UPA's slogan for the recent election campaign was Aam Admi Ke Badhte Kadam, Har Kadam Par Bharat Buland. For India's massive rural constituencies concerned with food and agriculture, the Congress stressed that the UPA "brought comfort and hope to crores of farmers" through the management of minimum support and procurement prices, loan waivers and credit. And it claimed that the UPA would ensure that the National Rural Employment Guarantee Act works effectively and that it would enact a national "Right to Food Law that guarantees access to sufficient food for all people, particularly the most vulnerable sections of society."

The right to food can only become a reality if the Commerce Ministry--that is currently jump-starting the WTO trade talks and negotiating 19 Free Trade Agreements (FTAs)--does not trade away our agriculture sector and rural economies. The NREGA will only work if those who earn their livelihoods from the farm sector continue to retain their means of income.

While most of the 153 WTO members are busy dealing with national priorities related to the financial and food crises, the UPA government is eager to bilaterally negotiate with the US on Doha. Why are we in such a rush, that even before a revised national budget and our trade policy have been formulated, we seem to want to compromise on crucial national interests in the name of multilateralism? And that too in a

bilateral talk with the US!

We understand that Minister Sharma will be meeting Mr. Kirk in the next days to see where agreements can be achieved on crucial issues such as safeguards to protect Indian farmers against unexpected import surges and subsidised US and European farm products. If the UPA is truly serious about strengthening India's "Aam Aadmi," then the Commerce Ministry must comprehensively assess and revisit the provisions it is negotiating in the WTO and in its FTAs from the perspective of majority of India's agricultural

producers, workers and SMEs rather than rushing to make compromises that will only benefit big business and corporations.

The UPA's commitment to farmers, workers and the right to food must be genuinely defended by Minister Sharma. With our agriculture sector and jobs in distress, the need of the hour is to hold firm and ensure that we exercise our right to protect our food, agriculture and other production, and to build robust farm, non-agriculture industries and services sectors. Otherwise it is unclear how the UPA will live up to

its own election manifesto.

**Yours sincerely,**  
Sd./-  
**(K.G. Kannabiran),**  
**President, PUCL**

CC to:

1. Union Minister of Commerce and Industry, Anand Sharma
2. Ambassador Meera Shankar, Embassy of India, United States
3. Minister of Agriculture, Sharad Pawar

[1] *Back to Drawing Board: No basis for concluding the Doha Round Negotiation; RIS Policy Brief, No. 36, April 2008, New Delhi.* □

## **THIRD V.M. TARKUNDE MEMORIAL LECTURE ORGANIZED AT INDIA INTERNATIONAL CENTRE, DELHI**

The third V.M. Tarkunde Memorial Lecture, which was called 'V.M. Tarkunde Birth Centenary Lecture' was organized by Tarkunde Memorial Foundation at 6.30 p.m. on 12th July 2009 at India International Centre, New Delhi. Mr. Soli J. Sorabjee, former Attorney General of India and President of the Foundation presided over the function. Dr. Kamal Hossain, a renowned jurist and former External Affairs Minister, the first one, of independent Bangladesh in the Ministry of Shaikh Mujibur Rehman, delivered the lecture.

Mr. Soli J. Sorabjee recalled how during the Emergency regime of Mrs. Indira Gandhi, Tarkunde had founded the Citizens For Democracy for fighting the demon of dictatorship and how Tarkunde and he had appeared in various courts with writ petitions for securing the freedom of people like Mr. Kuldeep Nayar, Mr. Bhim Sen Sachar and so many others who had been detained under the draconian provisions of the Maintenance of Internal Security Act (MISA). Later, he became the first President of People's Union for Civil Liberties (PUCL), which was founded by him

along with Jayaprakash Narayan, with Krishan Kant as the first General Secretary, to continue the fight for the protection of civil liberties and human rights in the country. As a Radical Humanist he continued the crusade for democratic values and secularism and championed the cause of the poor and the marginalized sections of our society through out his life. He also edited the highly esteemed journal 'The Radical Humanist' for several years and through his writings and life continued to promote scientific temper, rational thinking and a humanist view of life.

Welcoming Dr. Kamal Hossain, Mr. Kuldeep Nayar said that Dr. Hossain stood in Bangladesh for the same values for which Tarkunde stood in India. He was very close to Shaikh Mujibur Rehman and was instrumental in giving Bangladesh a secular, democratic Constitution, guaranteeing all the fundamental human rights to its citizens, including all the economic, social and cultural rights as enumerated in the Universal Declaration of Human Rights and also the Constitution of India. Even as an eminent and forceful lawyer, Dr.

Hossain appeared before the Supreme Court of Bangladesh to defend democratic values. So much so that Dr. Hossain parted company with the Shaikh and silently went away to Oxford, when the latter tried to forge a single political party in the country, as he did not consider it conducive for democratic values.

Mr. Ashok H. Desai, Vice President of the Foundation, gave the concluding remarks and thanked Dr. Kamal Hossain and other guests, including present and former judges of the Supreme and High Court, lawyers, journalists, academics and Human Rights activists who had gathered in large numbers to attend the lecture and pay tributes to the memory of V.M. Tarkunde or 'Bhau', as he was popularly known.

On behalf of PUCL a packet containing PUCL literature, including 'Selections from PUCL Bulletin' and Compilation of 'J.P. Memorial Lectures' was presented to Dr. Kamal Hossain by Mahi Pal Singh, General Secretary, PUCL-Delhi. (Report by: Mahi Pal Singh, General Secretary, PUCL-Delhi). □

### Third V.M. Tarkunde Memorial Lecture :

## CONSTITUTIONS AND THE CHALLENGE OF SOCIAL AND ECONOMIC CHANGE : QUEST FOR FREEDOM AND JUSTICE

DR. KAMAL HOSSAIN

*(At India International Centre, New Delhi on 12 July, 2009)*

I am truly honoured and feel humble as I stand before you to deliver the third Tarkunde Memorial Lecture. It is appropriate to begin with a tribute to an outstanding personality, who had done so much to earn respect as lawyer, judge, human rights activist and much more, a person guided by conscience to commit himself to the common good and the rights of the poor and the vulnerable - whose life and work we have assembled to remember and revere. When I read the tribute paid to Shri Tarkunde at the condolence meeting held on 2 April, 2004 and read a particular passage, I felt we had intuitively chosen the most appropriate topic for today's lecture. The passage which I had read was as follows:

"To apply the words of the preamble of the Universal Declaration of Human Rights (UDHR), 1948, Shri Tarkunde was one of those who kept alive "the hope of a new day dawning" with the "recognition of the inherent dignity and of the equal and unalterable rights of all the members of the human family in the foundation of freedom, justice and peace in the world."

The Universal Declaration of Human Rights provides an excellent starting point for the thoughts I would like to share with you. The Declaration adopted in 1948 by the UN General Assembly was truly an act of faith, of a shared commitment to constitutionalism, based on human rights as "the foundation of freedom and justice and peace in the world". The global reality at the time was one in which the majority of the world's people remained deprived of their human rights. They lived under colonial rule, while apartheid continued aggressively to promote racial discrimination and authoritarian regimes continued to oppress

peoples, who remained condemned to poverty, economic deprivation and social exclusion.

The Declaration was, thus, a bold expression of humanity's resolve to change the existing reality. It proclaimed in the opening words of its operative part that the Declaration would serve as a common standard of achievement for all peoples and all nations, so that every individual and organ of society should strive to promote respect for the rights and freedoms set out in that Declaration.

It was in effect a pledge to strive, at the national and international level to challenge colonialism, apartheid and authoritarian rule the world over and thus to universalize 'constitutionalism' and commit us all to concert our efforts to bring about social and economic change.

The Universal Declaration itself clearly reflected the aspirations and objectives of those across the world, who were actively engaged in movements for political freedom and for economic and social justice. The values set out in the preambles of our post-independence constitutions, in particular, the ones adopted in India and Bangladesh, express the objectives of the popular movements through which independence was attained, and reflected values and goals which are universally shared.

The emergence into independence meant for all of us the beginning of a quest for freedom and justice - for a free and just society, in which many and diverse expectations and competing interests would seek fulfillment. It fell to those placed in leadership roles to articulate those aspirations and to devise constitutional instruments and institutions to realize them.

Looking back to the early years, one is struck by the similarity of the language in which those aspirations were expressed. We had asserted our right to self-government, to

representative institutions to be established through free and fair elections, to the rule of law, to an independent judiciary, and through these institutions to strive for social and economic transformation of our societies, in which there existed unacceptable levels of social and economic inequality.

Our post-independence constitutions reflected the values of our independence movements which were based on assertions of human dignity and equality of "human rights", in the case of India long before these were formally accorded recognition in the Universal Declaration.

The Objectives Resolution adopted on 22 January, 1947 by the Constituent Assembly of India solemnly pledged to secure to all the people of India justice, social, economic and political, and to safeguard fundamental human rights of all, including minorities. It drew upon popular consensus as expressed in documents which went back to the end of the nineteenth century. These included: the Constitution of India Bill, prepared in 1895 by some eminent Indians, the proposal adopted by the Indian National Congress, at the special session in Bombay in August 1918 for the new Government of India Act to contain a "Declaration of Rights of the people of India as British citizens", followed by resolutions adopted at the Madras Session in 1926 (and the Karachi Session in 1932) that the future Constitution must include a declaration of fundamental rights. The Commonwealth of India Bill, finalized by the National Convention in 1926, embodied rights in terms practically identical with the relevant provisions of the Irish Constitution. The Sapru Committee (1944-48) in its report urged the incorporation of fundamental rights in the Constitution while recommending their further division into justiciable and non-justiciable rights.

Albie Sachs, the architect of South African Constitution has described a constitution as "the autobiography of a nation". Thus, the Bangladesh Constitution reflects the prolonged struggle extending over two decades, of a people seeking to liberate themselves from denial of political rights and economic deprivation. This is why Bangladesh's Proclamation of Independence in 1971 expressly declared that it was being made in exercise of the legitimate right of self-determination of the people of Bangladesh, and assured to the people of Bangladesh - equality, human dignity and social justice. The Bangladesh Constitution adopted in 1972 committed us to build "a society in which the rule of law, fundamental rights, freedom, equality and justice, political, economic and social, would be secured for all citizens." Political and civil rights were incorporated as justiciable fundamental rights, while economic, social and cultural rights were embodied as non-justiciable fundamental principles of state policy.

While the Universal Declaration remained a source of inspiration, the separate constitutional provisions for political and civil rights and economic, social and cultural rights can be taken to be a doctrinal overhang from the Irish Constitution, the Indian Constitution, and the separate International Conventions adopted in 1966 on Civil and Political rights on the one hand and Social, Economic and Cultural rights on the other.

The coming decades would see progress towards an integrated approach recognizing all human rights (political and civil and social, economic and cultural) to be universal, indivisible inter-dependent and inter-related. This was proclaimed in the Vienna Declaration of the World Conference of Human Rights in 1993.

The Rio Declaration (1992) had enumerated as its first principle that "human beings are at the centre of concerns for sustainable development". This followed the words in the Stockholm Declaration (1972), which had asserted:

"Both aspects of man's environment, the natural and the

man-made, are essential to his well-being and to the enjoyment of basic human rights - even the right to life itself".

The critical relevance of civil and political rights to the realization of economic and social rights has been underscored by the Nobel Laureate, Professor Amartya Sen, who as the author of the first chapter of the Human Development, 2000 spelt out the conceptual framework for it, thus:

"Civil and political rights give people the opportunity not only to do things for themselves, but also to draw attention forcefully to general needs, and to demand appropriate public action. Whether and how a government responds to needs and sufferings may well depend on how much pressure is put on it, and the exercise of political rights (such as voting, criticizing, protesting, and so on) can make a real difference." (A. Sen "Human Rights and Economic Achievements" in J. Bauer and D. Bell, eds., *The East Asian Challenge for Human Rights*, (1999).

National constitutions were to reflect this integrated approach. The new South African Constitution (1996), a state-of-the-art expression of constitutionalism, unequivocally secures all universally recognized human rights. As Albie Sachs himself explained:

"The fundamental constitutional problem, however, is not to set one generation of rights against another, but to harmonize all three. The web of rights is unbroken in fabric, simultaneous in operation, and all-extensive in character ... the achievement of first generation rights is fundamental to the establishment of democracy and the overcoming of national oppression. But for the vote to have meaning, for the Rule of Law to have content, the vote must be the instrument for the achievement of second and third generation rights. It would be a sad victory if the people had the right every five or so years to emerge from their forced-removal

hovels and second-rate Group Area homesteads to go to the polls, only thereafter to return to their inferior houses, inferior education, and inferior jobs." (A.Sachs, *Promoting Human Rights in a New South Africa*, 1990, pp.8-9)

The challenge of changing the institutionalized inequality inflicted by apartheid in South Africa was expressly entrusted to the South African constitution-makers. The Freedom Charter, a statement of political principles by South Africans opposed to apartheid, ratified at the Congress of the People in 1955, called for a social order in which:

"Education shall be free, compulsory, universal and equal for all children .... All people shall have the right to ... be decently housed, and to bring up their families in comfort and security ... [N]o-one shall go hungry; [and] Free medical care and hospitalization shall be provided for all, with special care for mothers and young children."

The 1988 Constitutional Guidelines for a Democratic South Africa, drafted by the ANC Constitutional Committee mandated that:

"The Constitution shall include a Bill of Rights based on the Freedom Charter .... The state and all social institutions shall be under a constitutional duty to take active steps to eradicate, speedily, the economic and social inequalities produced by racial discrimination. "

The mandate was clearly understood, as was expressed by Kader Asmal, a member of the Constituent Assembly for the ANC, thus:

"The struggle for liberation in South Africa was not only a struggle for the right to vote, to move, to marry or to love. It has always been a struggle for freedom from hunger, poverty, landlessness, and homelessness. Our Bill of Rights therefore must reflect ... the multidimensional and all-encompassing nature of the struggle for liberation."

The South African Constitution eliminated the dichotomy which was a feature of some of the earlier constitutions. Civil and political rights as well as social and economic rights are given the same status as constitutionally-recognized rights. The state's obligation with regard to the right to health care, food, water and social security is expressed in terms which provide that, "the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights." (Article 27)

The South African Constitutional Court has contributed significantly towards judicial enforcement of socio-economic rights, keeping in view that protection of these rights is dependent on the availability of resources. After initial hesitation in the *Soobramoney* case (1998(1) SA 765 (CC); 1997(12) BCLR 1969), the Constitutional Courts in its subsequent decisions in the *Grootboom* case (2001(1) SA 46 (CC) and the *Treatment Action Campaign* case (2002(5) SA 703 (CC) and the *Khosa* case (2004 (6) SA 505(CC), consistently rejected the State's argument of resource constraints. In the words of a commentator, in so doing the Court has tended to agree with the United Nations Committee on Economic, Social and Cultural Rights which has noted that:

"In order for a State Party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations." (General Comment 3, The nature of States obligations (Art 2 Para 1 of the CESCR) (5th Session, 1990)."

The Indian Supreme Court has been giving substance to directive principles, holding in *Kesavanda's* case, that:

"The Directive Principles and the Fundamental Rights mainly proceed on the basis of Human Rights. Representative

democracies will have no meaning without economic and social justice to the common man. This is a universal experience. Freedom from foreign rule can be looked upon only as an opportunity to bring about economic and social advancement. After all freedom is nothing else but a chance to be better. It is this liberty to do better that is the theme of the Directive Principles of State Policy in Part IV of the Constitution". The judgment went on to observe that the Objectives were "a precursor to the preamble to the Constitution and had set out in detail the objectives that were to be before the Constitution makers and that "those objectives have now been incorporated in the preamble to our Constitution."

In the *Ashok Kumar Gupta* case ((1997) 5 SCC 201, it was held: "It is but the duty of the Court to supply vitality, blood and flesh, to balance the competing rights by interpreting the principles, to the language or the words contained in the living and organic Constitution, broadly and liberally. The judicial function of the Court, thereby, is to build up, by judicial statesmanship and judicial review, smooth social change under rule of law with a continuity of the past to meet the dominant needs and aspirations of the present. This Court, as sentinel on the *qui vive*, has been invested with more freedom, in the interpretation of the Constitution than in the interpretation of other laws. This Court, therefore, is not bound to accept an interpretation which retards the progress or impedes social integration; it adopts such interpretation which would bring about the ideals set down in the Preamble of the Constitution aided by Part III and IV - a truism meaningful and a living reality to all sections of the society as a whole by making available the rights to social justice and economic empowerment to the weaker sections, and by preventing injustice to them.

Protective discrimination is an armour to realize distributive justice."

Chief Justice Bhagwati explained the rationale for the expanding scope of judicial review and the judiciary's pro-active role in promoting social and economic rights through public interest litigation. He emphasized that the constitutional promise of socio-economic transformation and an egalitarian social order called for a liberal judicial approach. Over the years the Supreme Court has contributed towards protection of socio-economic rights in cases involving child labour, (*Labourers Working on Salal Hydro Project v. State of Jammu and Kashmir* (1983 Lab IC 542), bonded labour (*Bandhawa Mukti Morcha v. Union of India* (AIR 1984 SC 802), environmental degradation and pollution (*Vellore Citizens' Welfare Forum v. The Union of India* (AIR 1986 SC 180), and access to education, *Sheela Barse v. Secretary, Children Aid Society* (1987) 3 SCC 50), gender equality, *Air India v. Nargash Mirza* (1981 4 SC 335), and in enforcement of the constitutional provision abolishing untouchability (*N. Adithayan, v. Travancore Devaswom Board*, AIR 2002 SC 3538). It has also approved of reservations by way of affirmative action in favour of the less privileged (*Indra Sawhney v. Union of India* (AIR 1993 SC 477)).

In Bangladesh the Supreme Court has played a pro-active role in entertaining public interest litigation petitions to protect the lives and livelihood of people from adverse environmental and ecological impacts of projects adopted without effective consultation with those affected. It has also admitted public interest litigation petitions and granted protection to slum dwellers threatened with forcible eviction, to factory workers exposed to risks to health and safety (fires in garment factories), environmental hazards (explosion in a gas field), corruption in granting of public land without following proper procedures, inhuman custodial practices (imposition of bar fetters in judicial custody and confinement of rape victims (in handcuffs) and other women in "safe" custody).

The constitutional mandate to bring about social and economic transformation is a pledge to the people. There is a legitimate expectation that constitutional organs, each in their own sphere, will make their utmost efforts to achieve that goal. The increasing resort to public interest litigation and the pro-active role progressively assumed by courts is in part the result of the deficits in discharging their role by other organs. In India, since 1970 to the present day, the Supreme Court role has been expanding its protective role through adjudicating on public interest petitions. By innovative interpretations of the right to life and other provisions, it has given protection to those being denied their socio-economic rights, including the right to housing, education and health. In South Africa the Court has moved from a hesitant beginning to positive enforcement. The criticism that such a pro-active role by the judiciary amounted to judicial overreaching into spheres reserved for other organs has, however, yielded to the view that such a role is justified as legitimate judicial realization of the Constitution's transformative social values. Chief Justice Chaskalson of the Constitutional Court explained its role, thus:

"What the Constitution demands of [the Court] is that a legal order be established that gives substance to its founding values—democracy, dignity, equality and freedom; a legal order consistent with the constitutional goal of improving the equality of life of all citizens, and freeing the potential of each person. The challenge facing us as a nation is to create such a society; the challenge facing the judiciary is to build a legal framework consistent with this goal.[109]."

I would argue that the constitutional mandate for social and economic change requires activism on the part of all the organs as well the citizens. Therefore, I would come down strongly in favour of judicial activism. I am aware of recent criticism in India that public interest litigation cases seem to be moving from issues affecting the

underprivileged in the 1970s and early 1980s, to a broad range of issues affecting the middle class in the late 1990s. Even supporters of the Court's activism it is reported have expressed skepticism and caution. But speaking from my own experience over the last two decades I would say that not only has Indian Supreme Court earned public respect and given hope to those segments of the poor and vulnerable who were marginalized and excluded, but has generated legal resources which others have drawn upon. In Bangladesh, we have provided meaningful protection to the poor and the vulnerable: to slum dwellers faced with forcible eviction, we drew upon the Indian precedent of *Olga Tellis* to generate jurisprudence which has protected thousands who would otherwise have been rendered homeless. We have been able to obtain protection for garments workers, who were victims of terrible fires and collapsed factory premises, by securing judicial directions to ensure safety in the workplace. A recent judgment has protected women students from sexual harassment. There is a legitimate expectation that there will be effective action taken by all concerned to implement those directions. The widely discussed recent judgment of the Delhi High Court obtained by the Naz Foundation demonstrates judicial courage and creativity in drawing upon the resources from many jurisdictions to protect persons who have been victims of social taboos. The rich discussion in the judgment of comparative constitutional jurisprudence is entitled to respect as is the following passage which characterizes as "the conscience of the Constitution, the fundamental rights and directive principles of state policy", thus:

"... The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement. The core of the commitments to the social revolution lies in Parts III and IV, in the Fundamental Rights and in the Directive

Principles of State Policy. These are the conscience of the Constitution." (Writ Petition No. 7455/2001, Delhi High Court).

Social transformation through enforcing of constitutionally-recognized socio-economic rights is an on-going process and can be described as work-in-progress. Change can only be ensured by identifying the barriers, which are placed in the path of social and economic change by powerful interests, and the means of overcoming them through a strategy of empowerment of citizens and a strengthened democracy.

It is worth citing the insights expressed by persuasive voices from the developed world. Former US Vice-President, Al Gore in a chapter entitled "The Politics of Wealth" in his recent work, *The Assault on Reason* (2007), writes:

"If political and economic freedoms have been siblings in the history of liberty, it is the incestuous coupling of wealth and power that poses the deadliest threat to democracy. If wealth can be easily exchanged for power, then the concentration of either can double the corrupting potential of both. Freedom's helix then spirals downward toward unhealthy combinations of concentrated political and economic power."

"That is what has happened throughout human history. Over and over again, wealth and power have become concentrated in the hands of a few who consolidate and perpetuate their control at the expense of the many."

"The derivation of just power from the consent of the governed depends upon the integrity of the reasoning process through which that consent is given. If the reasoning process is corrupted by money and deception, then the consent of the governed is based on false premises, and any power thus derived is inherently counterfeit and unjust. If the consent of the governed is extorted through the manipulation of mass fears, or embezzled with claims of divine

guidance, democracy is impoverished. If the suspension of reason causes a significant portion of the citizenry to lose confidence in the integrity of the process, democracy can be bankrupted."

"If citizens no longer participate, those among them who notice signs of corruption or illogic have no way to voice their concerns and summon the attention of others who, upon examining the same evidence, might share their dismay. No critical mass of opposition can form among individuals who are isolated from one another, looking through one-way mirrors in sound proof rooms, shouting if they wish but still unheard. If enough citizens cease to participate in its process, democracy dies."

A former EU Commissioner on Development from Germany, Dieter Frisch, wrote as follows:

"The rule of law cannot be replaced by market forces ... (a new culture is emerging where) the pursuit of fast and easy money by any means makes people who work hard appear naïve and foolish..."

The ethos of this new culture is well encapsulated in an aphorism attributed to the Hollywood star, Zsa Zsa Gabor: "What good is happiness if you cannot buy money with it?"

When societies promoting economic liberalization have ignored the need for law and social policies efficiently to regulate the operations of the market, uncontrolled freedom has tended to degenerate into licence to maximize private profit by any means and resulted in burgeoning corruption, fraudulent financial transactions involving banks and stock exchanges, the emergence of powerful criminal syndicates and growing violence paralleled by ruthless and lawless law enforcement.

Former Federal Reserve Chairman, Alan Greenspan, testified in October 2008 before the Congress and responded to the charge that he had failed when he had had the authority to prevent irresponsible lending and now the whole economy was paying the price. When charged

with having mistakenly opposed the efforts to regulate derivatives he admitted: "I made a mistake in presuming that the self-interest of organizations, specifically banks and others, were such that they were best capable of protecting their own shareholders and their equity." The press was then quick to confront him with his own testimony made in 2002, to the effect that "an infectious greed seemed to grip much of our business community", and "It is not that humans have become any more greedy than in generations past. It is that the avenues to express greed had grown so enormously".

Globalization and economic liberalization have significant implications for the implementation of economic, social and cultural rights, and, in particular, the rights of the poor and disadvantaged, and of women and children. The linkage between democracy, development and human rights is underscored by studies which have documented that "bad governance leads to incompetent - and often discriminatory - administration of social services and development projects, widening social gaps ...and constitutes a major obstacle to social development" and also "the impoverishing effects and basic inhumanity of gender discrimination - in terms of prescribed and limiting roles; lack of economic opportunity, health care geared to the needs of women and children, access to education, credit, land, income and property; and participation in institutions which enable popular participation" (J. Paul, "Incorporating Human Rights ...", ASIL (1995), pp.13-14.

We had been forewarned of these dangers several decades ago by the Nobel Laureate, our revered Kaviguru Rabindranath Tagore, thus:

"We have for over a century been dragged by the prosperous West behind its chariot, choked by the dust, deafened by the noise, humbled by our own helplessness and overwhelmed by the speed. We agreed to acknowledge that this chariot-drive was progress, and the progress was civilization. If we ever ventured to ask 'progress toward what, and progress for

whom', it was considered to be peculiarly and ridiculously oriental to entertain such ideas about the absoluteness of progress. Of late, a voice has come to us to take count not only of the scientific perfection of the chariot but of the depth of the ditches lying in its path."

As early as 1964 Pandit Nehru, in response to Andre Malraux's question: "What has been your greatest difficulty since independence?", had answered: "Creating a just society by just means.". Some five decades later those words have a strange contemporary ring as the quest for freedom and justice still continues in our societies.

*The State and Democracy in South Asia Report (2008) brings home to us how formidable is the challenge of social and economic change that still faces us:.*

Once seen as a contradiction in terms which required a country to choose either political freedom or economic equality, the challenge of simultaneously pursuing the two goals is present in some measure in all parts of the world, but nowhere is the challenge as imposing as it is in South Asia .... If one needed any evidence to believe that freedom from want is still a distant goal in this region that South Asians experience the most intense forms of poverty, deprivation and destitution, this report lists it all. The per capita income in every country of the region ... is less than half the global average and below the global average for developing countries. Nearly a third of the people in the region still live below the poverty line. ... Literacy and enrollment figures are way behind the global average; nearly 40 per cent of the adult population is non-literate and only about half of the school going age children are actually enrolled in schools. Health indicators are equally dismal; one-fifth of the population is undernourished; infant mortality is higher than the global and developing countries' averages; the region has more patients of tuberculosis than in any other

region of the world. ... All this evidence presents us with the paradox of the co-existence of mass poverty and mass democracy.

Restoring justice to development calls for strengthening democracy, which in turn calls for re-generation of healthy politics. Politics must be re-generated so that it is once again the means for engaging the hearts and minds of all our people. It is through mobilizing of empowered citizens and their shared efforts that a just society can be built. Conditions need to be created in which citizens become aware of their responsibility to exercise vigilance, to articulate their priorities, to monitor the activities of those who exercise governmental powers, and to ensure that the checks and balances written into the constitution function as more than paper provisions. Human rights activism, popular mobilization and the strengthening of civil society in

support of the core democratic values gives depth to democracy. Effective national human rights institutions, press freedom, including independent radio and television, and an independent judiciary are critically important for a truly functioning democratic political order through which economic and social justice can be achieved.

I cannot do better than to conclude with the inspiring words of Aung San Suu Kyi, (Freedom from Fear, 1991):

"The quintessential revolution is that of the spirit, born of an intellectual conviction of the need for change in those mental attitudes and values which shape the course of a nation's development. A revolution which aims merely at changing official policies and institutions with a view to an improvement in material conditions has little chance of genuine success.

Without a revolution of the spirit, the forces which produced the iniquities of the old order would continue to be operative, posing a constant threat to the process of reform and regeneration. It is not enough merely to call for freedom, democracy and human rights. There has to be a united determination to persevere in the struggle, to make sacrifices in the name of enduring truths, to resist the corrupting influences of desire, ill will, ignorance and fear. Saints, it has been said, are the sinners who go on trying. So free men are the oppressed who go on trying and who in the process make themselves fit to bear the responsibilities and to uphold the disciplines which will maintain a free society.

"Let all of us sinners aspire to be saints. Let us go on trying."

I feel this is an appeal which Shri Tarkunde would wholeheartedly endorse. □

**Press Release:** Raipur, July 14, 2009

## **PUCL DEPLORES DEATHS OF POLICEMEN IN MAOIST ATTACK AT RAJNANGAON, CHHATTISGARH**

The Chhattisgarh Unit of People's Union for Civil Liberties (PUCL) has deplored the killings of 30 policemen in Maoist's attack on 12th July 2009 at Rajnandgaon district of Chhattisgarh. The PUCL appeals to the Government, Maoists and Salwa-Judum to put an end to killings and violence and create conducive environment for resolving the issues and concerns through political dialogue and peace talks.

The PUCL pays its homage to all police personnel killed in the attack by Maoists, especially remembering Shri V K Chaubey, Superintendent of Police, Rajnandgaon, who was known for his simple ways and strict discipline. PUCL expresses its condolences and solace to the bereaved families.

PUCL believes in the Right to Life guaranteed under the Indian Constitution and, as such, lives of

all citizens are valuable, which should not be taken away either for political or non-political purposes. PUCL has always affirmed its faith in non-violence and peaceful means to resolve differences and problems within the broader framework of the Indian Constitution, and has deplored the militaristic strategies and actions.

Efforts for peace talks have been also made by Sri Sri Ravi Shanker of the Art of Living Foundation, who in September 2008 called on the Chief Minister of Chhattisgarh Dr. Raman Singh at his residence soon after meeting Dr Binayak Sen, a public health specialist and leader of People's Union for Civil Liberties (PUCL) in the Raipur Central Jail. Later Sri Sri Ravi Shanker met Adv K G Kannabiran, National President of PUCL at Hyderabad, and wrote to Dr. Raman Singh for initiating peace

talks. PUCL demands that the CG Government should made public the steps taken in this regard.

PUCL has also demanded from Mrs. Sonia Gandhi, President, Congress (I) to make public the finding of a six-member Task Force constituted by her in October 2004 "to study the problem of naxalite violence in various states; submit a report which would identify factors responsible for the spread of violence and make an assessment of the impact of efforts made by the government to contain it; and will make recommendations on policies, plans and programmes for the central and state governments as also for the Congress party". The Task Force was asked to submit its report within three months and had Sri Sashidhar Reddy from Andhra Pradesh as its Convener, Mr. Ajit Jogi, Mr. Gajendra Singh Rajukheri, Mr. R C Khuntia, Mr. Nikhil Kumar,

and Mrs. Manju Hembrom as its members. The Chhattisgarh PUCL had submitted its Memorandum on this issue to the Task Force during its visit to Raipur.

The CG PUCL also demands that the proceedings of the in-camera meeting of the Chhattisgarh Vidhan Sabha held on 26th July 2007 to discuss the issues and concerns arising out of growing activities of CPI (Maoists) in Chhattisgarh should be made public to generate a public debate on it. The CG PUCL considers the in-camera meeting of Vidhan Sabha

against the letter and spirit of the Constitution as an institution representing people's interests and concerns should be transparent and accountable to the public. Making public of the Vidhan Sabha proceedings has become all the more important now as the State Unit of Congress (I) in Chhattisgarh was demanding imposition of President's Rule in the wake of Rajnandgaon incident.

PUCL also believes that it is no longer a matter between the State and the Maoists, and it should not be left primarily and purely in the

hands of the police to deal with it. Other enlightened segments of the society, including intellectuals, various political forums, human rights and social activists must discuss these strategies and agenda for establishing lasting peace, justice and human rights in Chhattisgarh.

**Sd./-**

**Rajendra K Sail President;  
Dr. Binayak Sen, General  
Secretary; Vijendra, Joint  
Secretary. □**

## **CROSSED AND CRUCIFIED PARIVAR'S WAR AGAINST MINORITIES IN ORISSA**

(This report by PUCL Bhubneshwar & Kashipur Solidarity Group, Delhi, April 2009 is being serialized in the PUCL Bulletin from the July 2009 issue onwards. Here is the second part of the Report-Editor)

The failure of the government to curb the violence forced people to leave their villages and take shelter in police stations. When the attacks intensified and spread to more villages, more and more people fled from their villages. The district administration had no option but to accommodate people in school buildings or in make-shift camps in school premises or in the nearby open fields. It was raining those days and one could imagine the condition of the relief camps. In the absence of sanitary facilities and non-availability of usable water, the conditions worsened. Small children were defecating in the campsite itself and dogs and cows were freely roaming around the camp. As a result, gastroenteritis and fever spread very fast. People had to run away from their houses with whatever they had on their body. In the relief camps, they had to manage with only one set of clothes

provided by the government (one saree, one petticoat and a blouse for women; a dhoti, a shirt and one pant for the men; and a shirt or frock for children). People often complained of the rotten rice and dal given in the camp. The condition of women was more precarious. They were not provided with sanitary napkins or clothes during the time of menstruation. Due to the trauma and the long trek in the forests, some pregnant women suffered miscarriages. According to news reports, 26 babies have been delivered in the relief camps till mid-October. Despite all these horrible conditions in which people were living, the government was stubborn enough not to allow other groups to provide relief material. It only left the people to suffer and rue their fate.

People had fled to the relief camps for physical security. But, even in the relief camps, they were not secure. Bombs exploded near the relief camp in G. Udaygiri and K. Nuagaon. Reports of water tanks being poisoned and yet another incident of a mob of lathi-wielding women trying to forcibly enter the Raikia relief camp further intensified the trauma of the people.

While Christian people, particularly from Kandhamal, were going through all these, the Sangh Parivar was gearing itself to intensify its anti-Christian campaign across the state in the form of the Kalash yatra (soil from Laxmanananda samadhi would be taken to each village in Orissa). Again, the government did nothing and chose to remain tight-lipped. Only when the Supreme Court, hearing a Public Interest Litigation, asked the state government what measures it had taken to contain further violence, the government submitted an affidavit stating that the Kalash yatra would not be allowed to take place. However, the government allowed the Sangh Parivar to organize the Shradanjali Sabha in Bhubaneswar where the Hindu fundamentalist leaders vowed to wipe out the Christians from Kandhamal. The meeting was attended by the BJP state president, among others.

The government's inaction in the beginning not only led to the rise in the death toll, but also to the increase in the attacks. Victims complained that the local police stations refused to accept the FIRs.

In certain cases, when the FIRs were accepted, the accused were not arrested. Rather, some of the accused became members of the so-called peace committees sponsored by the district administration. When the pressure mounted at the national and international level against the failure of the government to protect Christians and the issue of the imposition of Article 355/356 rose, the government was forced to take some action. It is worthwhile to mention that 38 days after the lodging of the FIR by the nun, the government arrested some people and handed over the case to the Crime Branch. Some arrests also took place in the first week of October. The Chief Minister himself admitted in an interview to CNN-IBN in early October that many of the arrested people belong to VHP and Bajrang Dal.

By the beginning of October, there was a decline in the incidents of overt violence. And, the government began to claim that normalcy was being restored in the district. However, the situation was far from normal. The perpetrators of violence were still at large. But, the government claimed that people were leaving the relief camps and returning home. It also claimed that the number of people in the relief camps had come down to 13,000 from nearly 24,000. However, all people were not returning home. Thousands of people left the relief camps and went to several towns and cities in search of work so that they could survive. These people had no confidence to return to their villages and rebuild their lives. One section of people did return to the villages, but only after accepting the Sangh Parivar's condition that they convert to Hinduism. While most of the vernacular media was silent on this, some of the national dailies did highlight the fact. Conversion to

Hinduism a condition for Christians to return home in Kandhamal-The Hindu reported on 10th October 2008. Photocopies of application forms, expressing one's desire to return to Hinduism, were circulated in the relief camps. People were asked to sign and return it to the local RSS leaders. Without addressing this issue of forced conversion to Hinduism, the administration continued to persuade people to return to their villages. The only thing the government did was to supply a register in each relief camp for people to record complaints of forced conversion, if there were any. The violence intensified as the government was hesitating to take any resolute action to stop it. Only after international pressure, arrests began. Some innocent people were also arrested in the process by the police. Even some school children, it is alleged, were arrested. The situation worsened with the midnight raids on the villages by the Central Reserve Police Force. On the one hand, thousands sought safety in the relief camps, on the other hand, an equal number, in fear of police atrocities, sought refuge in the jungles nearby. Even continued clamping of curfew affected normal life adversely. Daily wage earners were the worst affected. The lack of mobility and employment meant that their meager savings got exhausted. Due to curfew, the peasants also could not market their vegetables and it was wasted. Thus, it was a huge humanitarian crisis as well.

The Orissa Government announced the setting up of two fast-track courts in Kandhamal for expediting the trial of cases related to the violence. However, these courts are yet to function till the time of writing this report. The government declared the following relief and rehabilitation measures

for the victims: Rs. 2,00,000/- (two lakhs) to the next of kin of the deceased; Rs. 20,000/- for partially damaged houses and 50,000/- for fully damaged houses; Rs. 15,000/- to Rs. 40,000/- for damaged shops and Rs. 2,000/- for loss of bicycle. On the advice of the Supreme Court, the government also declared assistance for building churches and prayer houses. In addition, the government announced to open 8 new Tehsils in the district to hold special camp courts at the Revenue Inspector headquarters to look into the land issue, to appoint a team of 10 police inspectors to inquire into the allegations of fake caste certificates and to recruit 500 Adivasi youths as Special Police Officers. While the state's response in preventing and containing the violence in Kandhamal was a failure, other parties, such as the Sangh Parivar were active in many ways to perpetuate violence. The media too, through its silence on certain issues and its assertions validating the incidents largely, failed to place people's suffering or the barbaric violence in perspective. We look at the role of the Sangh Parivar first.

#### 1.5 Role of the Sangh Parivar

From the beginning, the Sangh Parivar rejected the police's suspicion of Maoist involvement in the killing of Laxmanananda and his disciples. It continued to reiterate that he was killed by Christian groups for opposing conversion and cow slaughter. Even after the Maoist leadership admitted on camera on 5 October 2008 on NDTV about its role in the killings, the Sangh Parivar refused to accept the fact. After the communal violence of December 2007, the Sangh Parivar had emphasized the Maoist connection with the evangelists. The organizer, the Sangh Parivar's mouthpiece, (13 January 2008) had written, "Involvement of Maoists in the

Kandhamal violence is becoming increasingly clear. They were summoned by the missionaries of this district to attack the Hindus. The nature of attack and arms and ammunition being used for that purpose make their suspected involvement more clear." But, after the killing of Laxmanananda, the Organizer (7 September 2008) took a complete u-turn. It wrote, "It is a well-known fact that the Naxals generally attack such rich people who possess much money, property or ammunition. In order to snatch them away from them, Naxals make them target. But Swami Laxmanananda who dedicated his entire life for the poor, downtrodden, Harijans and Vanvasis did possess nothing so valuable, then why would the Naxals attack him? Naxals have no business with religious matters. All the previous 10 attacks were made by the Christians, not by Naxals. It will not be out of place to mention here that in 2006, in an interview with this correspondent Swamiji had narrated about some true incidents how Naxals used to come to his reformation programmes and attend his religious, cultural programmes. Swamiji had no rivalry with Naxals. Hence the government's Naxal attack plea is not at all believable."

After the Jaleshpeta incident, senior leaders of Sangh Parivar started visiting Orissa and Kandhamal. Praveen Togadia of the VHP landed there even before 24 hours had elapsed to participate in the last rites. We have already discussed the consequences of these visits. The Sangh Parivar lost no time to announce a series of programmes to spread the anti-Christian venom and hatred in the entire province of Orissa. The first one in the series was the "Orissa Bandh" on 25 August 2008. As already mentioned, during the bandh, there were attacks on the

Christians and their property and institutions. This made the Organizer say, "the swamiji is even more powerful in death." The next in the series was the plan of a Kalashyatra. Under pressure from the Supreme Court, the Orissa Government did not allow this. The third issue was the Shradanjali Sabhas- memorial meetings- throughout the province. In all these meetings, anti-Christian hate speeches, threats and provocative statements were made consistently. Almost all the meetings made the following demands: End to conversion and end to cow slaughter to restore peace in Kandhamal. On 6 September 2008, the Shradhanjali Sabha held to pay homage to Laxmanananda passed four resolutions. These were: (1) conversion will not be allowed (2) people who converted to Christianity will be brought back to Hinduism (3) cow slaughter will not be allowed and (4) cattle transportation to slaughter houses will not be allowed. Later in the month, BJP leader L.K. Advani visited the state and condemned the violence in the district, but called for a national debate on conversion.

The fourth set of programmes was about mobilizing sadhus, sanths and the Maharaja of Puri, Shankaracharya for a hate campaign against the minorities. The sadhus sat on a dharna and demanded: (1) the murderers of Laxmanananda be arrested and (2) action be taken against Sister Meena because her allegation of rape is false. The objectives of the yajanas organized by them were to eliminate the enemies of Hinduism.

The Gajapati Maharaja of Puri and Shankaracharya of Puri Govardhan Pitha have been vociferous in demanding an end to conversion and cow slaughter in the state. "The killing of swamiji is not an attack on his person; it is an

attack on the Indian culture. It is a 'do or die' situation for our religion and culture. If we don't understand it, fifty years from now, we Hindus will not be able to come out of our homes," said Divyasingh Dev, the Gajapati of Puri, presiding at one of the Shradanjali Sabhas. The Nikhil Utkal Matha- Mandiradhish Seva Sangh, an organization of assorted Hindu religious organizations, demanded, among others, the expulsion of non-Hindus from Orissa.

In the long campaign of violence against minorities, the Sangh Parivar used its pet slogans as "minority appeasement," "religious conversion" and "Hindus becoming a minority in India." It will not be out of place here to talk about its strategy of violence and spreading myths and lies.

Since the colonial times until the Gujarat pogrom, the Sangh Parivar has always attacked minorities with two-fold objectives: (1) to terrorize the minorities and (2) to push them into misery. As this is not widely opposed, the fears and vulnerability of the minorities intensify and consolidate. Therefore, religious identity becomes their sole defence. They then develop a parochial mindset where the religious, or sometimes even fundamentalist, leaders influence minority opinion and gain further legitimacy. In addition, the basic questions of livelihood and development become less important or unimportant. On the other hand, the Sangh Parivar by spreading the myth of the threat from minorities gains acceptability and emphasizes a monolithic Hinduism. Thus, it successfully glosses over the caste-class divide within Hinduism. It is common knowledge that the Sangh Parivar looks at Hitler and Nazis as its ideals. Hitler's Propaganda Minister Goebbels had the following strategy: repeat a lie a hundred

times and it will become the truth. This is most religiously followed by the Sangh Parivar. The issue of religious conversion thus was cleverly manipulated in Kandhamal as the only issue that the Sangh Parivar is out to set right. Through this campaign, they rendered basic issues as secondary in Kandhamal.

#### 1.6 The Kui Coordination Committee (KCC)

As in the violence of 2007, the KCC's role during the violence of August- September 2008 needs to be seen critically. As mentioned earlier, the Sangh Parivar and the KCC converged in seeing the Dalit Christians as their enemy. Before commenting further on KCC-an organization proclaiming to protect the interests of Adivasis of Kandhamal-it needs to be told that except Lambodar Kanhar, no other voices are coming from KCC, at least in the media. Some Adivasi leaders have informally told us that he is the self-proclaimed secretary, and nobody has elected him. In the light of this, we need to see the shifts in his statements as the position of KCC.

At a yajna organized by the VHP in April 2006 at Chakpada, Lambodar Kanhar had issued a leaflet emphasizing a separate religious identity of the Adivasis and thereby, contesting the VHP's position that Adivasis are Hindus. He had even gone to challenge the VHP to allow Adivasis to pour liquor into the pit of the yajna (because Adivasis use liquor in yajna as opposed to the Hindu practice of using ghee). But, to maintain a separate identity, the KCC, led by Kanhar, neither followed any consistent plan of action in the past nor did it do anything later. Rather, KCC's anti-Dalit position, primarily, on the question of fake caste certificates veered towards an anti-Christian position without

considering the fact that a large number of Adivasis (whose interest KCC wants to protect) follow Christianity. The KCC's position manifested itself in a bandh call on the occasion of Christmas in 2007, though it denies any communal connection. In the present communal violence, Lambodar Kanhar, giving interviews to various people or organizations, told that he was not against the Christians. However, he blamed the Christians for Laxmanananda's murder (The Sambad, 9 November 2008), endorsing the view of the Sangh Parivar. He even went on to say, "the 2007 communal violence was the result of the exploitation and torture by the Panos and Christians (The Sambad, 15 October 2008)." Although he had said that opportunists had taken advantage of the bandh call, he claimed that no Adivasi was involved in the recent communal violence (The Hindu, 1 October 2008). "We have urged our tribal brothers to keep a safe distance from both the warring groups." But, in another interview, boasting that he could stop the violence, not the gun of the government, he says, "so, I gave the message, don't burn and break churches. The attack stopped" (Tehelka, 14 February 2009).

When in early October, large-scale arrests started, he raised his voice against the arrests and demanded the withdrawal of CRPF from Kandhamal. And, so did the Sangh Parivar. It is pertinent to mention that in the 2008 communal violence, several Adivasi Christians have suffered, but KCC did not utter a word about it. When questioned about this issue, Kanhar has remained evasive.

*(Contd. in the next issue of the Bulletin)*

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