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Naxalism : Solution Lies in Dialogue Not in Violence

Pushkar Raj

The fight between security forces and Maoists in some parts of Chattisgarh and elsewhere in the country is a sad spectacle. It is an endless and mindless blood bath that is consuming innocent lives daily. While it is a clear case of war against one's own people by the state, Maoists too with adoption of violent means of struggle have undermined the liberal and democratic spirit of the Indian Constitution. While innocent civilian are losing lives, the ongoing mindless fight between the two parties is a clear case of impasse in which there is and will be no winner.

One cannot but condemn the beheading of police officer who went for normal household chore or killing of those in uniform performing their official duty. At the same time the Indian state cannot abdicate its responsibility of not addressing the basic needs of people in far flung tribal areas. These hapless people are denied economic and social rights on every step and when they question the system they are persecuted by police and bureaucracy. These persecuted masses fall prey to fancy ideologies of several types in turn grinding between state and violently opposing leadership. The state must address the root causes of the social and economic conditions that breed insurgency like situation where in a group of people are compelled to take arms against the state. The vested class centric development and consequent displacement and impoverishment of tribals must stop. The tribals and marginalized must get adequate opportunities for means of livelihood, education and health. On the other hand the Maoist must desist from using violent means of struggle that causes severe misery and deaths of the poor who they profess to help.

It is unlikely that India will fall prey to red revolution. Given the changed international and national political and economic situation and agreed dominant paradigm of development those possibilities seem remote now. A more sensible course of action could be strengthening of people's movement through democratic means. The task is difficult and marred by obstruction mainly by dominant groups and the state but is not impossible. Indian left has had a strong tradition in this field. After all it is in India that democratically elected communist governments have been functioning and more often than not they have demonstrated power of people's mobilization on vital social and economic issues. One must bear in mind that in a democratic country the ends achieved through the violence means are neither desirable nor lasting.

On the other hand the state cannot crush by force an uprising that is born out of a mix of deprivation of basic survival needs, perceived injustice, administrative callousness and sprinkling of alluring ideology. It needs to

(cont. on page 3)

Balagopal's Legacy Will Live For Ever

Manoranjan Mohanty

(The legendary human rights activist of India, K Balagopal, General Secretary, Human Rights Forum, died of a sudden heart attack in Hyderabad on 8 October 2009. He was 57.)

I cannot believe that Balagopal is no more. He came to Delhi last month to address an important meeting launching a Citizen's Peace Initiative calling for stopping the cycle of violence and urging for a dialogue between the government and the Maoists. We had been in constant touch to carry this initiative forward. At a time when the government's military campaign against the Maoists has been escalated and the Maoist attacks on the police have also continued unabated bringing enormous sufferings to the common people in the tribal areas Balagopal's leadership was most essential. The democratic rights community of India has lost an invaluable asset and India a rare intellectual who has contributed greatly to the progressive democratic thought of India.

Balagopal was the standard bearer for many like me for the working in the human rights movement. Together with Kannabiran and Haragopal he defined the meaning of human rights challenging mainstream ideas of liberals and Marxists. Civil Liberty above all was rule of law and therefore false encounter killings by security forces had to be exposed. From Andhra Pradesh to Kashmir to Manipur and Nagaland civil liberty groups took up this issue and today there is a significant opinion in the country that opposes false encounter killings. Even though such killings have not ended, but the impunity with which it was going on is today widely challenged. Balagopal's contribution to this campaign for civil liberties will be remembered for ever.

For Balagopal while in APCLC or in HRF civil liberty did not have a narrow meaning, but included common people's right to political, social, cultural and economic freedoms. He took up cases of atrocities against dalits, against women, against minorities and against nationality movements as a

part of the civil liberty movement. Andhra society has experienced a great momentum of creative transformation during the past three decades and people like Balagopal have contributed significantly to that process. India's democratic struggles for justice, dignity and peace have benefited enormously from his insights and leadership.

I have many memories to share. Let me just pick up one from our Adilabad experience. In April 1985 I was in a five member team together with Balagopal then the General Secretary of APCLC going to participate in a memorial meeting in Indravalli. The police stopped our vehicle and arrested us. We were in a lock up for two nights. The first night I tried to humour the team continuously, but he would give an only suppressed smile at best. When I went to do my shaving the next morning and wondered why he was not shaving he said- not under repression! That night we were transported through the deep forest to a town for being produced before a magistrate.. Past mid-night in the deep forest I whispered to him - now we should be ready to be encountered and I am proud to be in your company now. He gave a big laugh and said- you will be disappointed; these are not law and order police men- these are court constables, just wait they will stop and serve you tea. Yes, indeed, half an hour later we were sipping hot masala tea in the wee hours of the morning in a forest dhaba.

We got bail the next day in the court. The case was withdrawn by the NTR government on the initiative of many intellectuals later. Hundreds of people have had this experience together with Balagopal of facing repression together seeking to expose violation of human rights while upholding some human values.

Balagopal decided to break

with APCLC and formed Human Rights Forum to insist on one issue that human rights movement had to be an independent political force to uphold human values. It had to challenge the state to abide by its constitution and the laws and test all its institutions to prove themselves fulfilling their legal obligations. It also had also to challenge those who struggled for a new order to respect human values. He relentlessly exposed the army and police atrocities in J & K, North East, A P, Chhatisgarh, Jharkhand, Orissa and elsewhere. He also condemned many incidents of killings by the Maoists inviting their wrath, but on many occasions the Maoists themselves regretted some of the actions. The recent incident of beheading of a Police Officer in Jharkhand which must be condemned by all civil liberty forces is a possible case of that kind.

Many of us had argued with him as to whether he was not defending abstract values of humanism while struggling people had to contend with reality of oppression and violence of many kinds. He proved his point not only by concrete analysis of existing conditions of the political economy and that combined with a most sought after people's lawyer's skill and a trained Mathematician's precision but also by going into deep philosophical analysis of history of civilization and how humanity had to constantly create conditions of peace and beauty for each and all. The readers of Economic and Political Weekly had some access to his insights and much more was available to the privileged readers of Telugu. For Balagopal the commitment to human values had to determine our strategy of work at every level. This will be the abiding legacy of the great humanist fighter for democratic rights.

Manoranjan Mohanty is a Political Scientist and a Human Rights activist. ¶

(from page 1)

address the governance issues very seriously and see that resources meant for poor people are actually spent on them. It will have to address the root cause of abysmal poverty that breeds hunger, illiteracy, malnutrition pushing the 'falling millions' on edge where they are enticed to violent means as a solution to their misery.

In any case there are no winners in a war against one's own people. Besides that victory, if achieved is deceptive and self defeating.

The only way for a harmonious solution of the present deadlock is negotiations between the two parties- the government and the maoists. The onus in this respect lies with the government. There is no dearth of

eminent public spirited people in the country who could be credible ice breakers between the two sides. One hopes that the possibility of opening the channels of negotiations between the two parties are explored and an honourable solution to the ongoing violent struggle is sought to the mutual satisfaction of both the parties. ☐

K Balgopal is No More

The PUCL is bereaved at the untimely demise of one of our finest civil liberties activists and advocates Shri K Balagopal of Human Rights Forum, Andhra Pradesh. For the Human Rights movement the loss of Shri Balagopal at this juncture is very severe, especially when a situation of conflict is on in different parts of the country between insurgents and the government. His boldness, understanding and interventions were needed most in the present turbulent times.

We share our grief with his wife, son and the large group of friends and admirers that he had.

Sd./-

K G Kannabiran
(President)

Sd./-

Pushkar Raj
(General Secretary)

Condolence Messages

Balagopal's demise is a shock. I had met him in 1983 when Kannabiran, Varavara Rao, he and I went together to Indraveli. I had long discussions with Rao and him on the issue of violence. In 1984, I joined in a dharna in Hyderabad organised by APCLC in which Balagopal was present. Later, they came to Delhi and raised the same issue, but they argued that an alternative course to pursue democratic politics was not an option because of the structure etc. of our political parties. Then, Balagopal broke with PWG, and was under severe attack from old colleagues. What has surprised me is that he was only 52 when he passed away. That means that when I met him, he was only 28.

Surendra Mohan

I am deeply grieved by Mr Balgopal's premature death. We had spent several days working together at Patna in 1986. He had come to Patna in connection with a public enquiry conducted by a People's Commission comprising Justice Mr Poti and Justice Mr Mehta (former Chief Justices of Kerala and Himanchal Pradesh High courts respectively) into the massacre of innocent supporters of the C.P.I. (M.-L- Liberation) by the police at Jehanabad. We (i.e. Bihar PUCL) made the arrangements for the enquiry and presented the people's case before the Commission. I found in him a man of deep commitment and sincerity.

I had no occasion to meet him later, but we all remembered him with affection. All of us who worked with him deeply mourn his sad death.

Prabhakar Sinha, Vice-President, PUCL

Loss of K. Balagopal is a real blow to the human rights movement in India. He was deceptively simple in appearance, very knowledgeable in his understanding of issues, had clarity of thought and lived a life of commitment to the cause he took up. I remember him for his firmness, boldness, intelligence and integrity with which he worked yet the unassuming simple way of his life was admirable and has to be written a lot and spoken about to the youth. We have to work towards disseminating his writings and thoughts as a mark of respect for his life and work.

Sudha Ramalingam, Vice-President, PUCL

I am very sorry that Shri K. Balagopal has passed away. The country needed his services. He has left behind a void, which cannot be filled. May his soul rest in peace! Let us extend all possible help to the family, about whose requirements you know.

I share the grief of thousands of mourners including yourself and all members of PUCL.

P.P. Rao

It is with deepest sorrow that we write to share in the grief of the loss of a deeply respected friend and colleague, K. Balagopal. A fine and upstanding person with the deepest commitment to human rights and justice, this is a huge loss to the community of human rights activists in India, the legal community, and struggles for justice across the world. The vacuum created by his untimely loss hurts us all, particularly at this juncture, when Human Rights are constantly under threat of abuse by the bogeys of terrorism and extremism.

The founder member of Andhra Pradesh Civil Liberties Council and later of Human Rights Forum, Balagopal was also an advocate who fought several cases to obtain justice for the poor without charge. Known for his principled stands and sharp legal mind, he lived and worked with utmost simplicity and commitment—a comrade and a friend whose loss is irreparable. We salute him and his life with a deeply felt Zindabad!

We convey our heartfelt regrets to his wife, Vasanta Lakshmi and son, Prabhata, and extend our support to them.

Aruna Roy, Nikhil Dey, Shankar Singh

For the Mazdoor Kisan Shakti Sangathan (MKSS)

I am deeply grieved to hear this news I am not in the country but filled with sorrow to hear it. My deepest condolences to his wife and family. I have this image of Bala as a man of deep convictions sense and balance and had enormous respect for his personal integrity when I saw him refuse important opportunities just to be with his son tutoring him and spending family time with him. It is a loss to us all and to the country whose civil liberties he was committed to safeguarding.

Maja Daruwala, Director, Commonwealth Human Rights Initiative

We, the members of various people's organizations in Chhattisgarh express our grief at the sad and sudden demise of Dr. K Balagopal, one of the most committed human rights activists in the country.

Although he has been actively involved in Andhra Pradesh Civil Liberties Committee (APCLC) and later in the Human Rights Forum (HRF), he was known to us through his creative interventions in various incidents of violation of human rights and State Repression on people's movements in Chhattisgarh. He demonstrated his courage and commitment by visiting disturbed areas in Southern region of Chhattisgarh in the midst of threats and intimidation by the State actors, and took concrete steps to tell the truth about gross violations of civil liberties and democratic rights.

His mild manners and humble ways in spite of his stature as an academician and human rights activist had enabled the grass-roots level people's organizations and rights activists in Chhattisgarh to relate to him directly, and get to know his deeper commitments for creating a just and equitable society.

We join in the nation-wide condolences at the untimely death of such a staunch human rights activist and commit ourselves to the cause for which he had devoted himself tirelessly and boldly. We pray for peace to the departed soul and solace to the family and friends.

Janak Lal Thakur, President, Chhattisgarh Mukti Morcha; Shashi Sail, National Alliance of Women (NAWO); Ganesh Ram Chaudhary, President, Chhattisgarh Mines Shramik Sangh; Sheikh Ansar, Secretary, Pragatishael Engineering Shramik Sangh; Dr. Saibal Jana, Shaheed Hospital, Dalli-Rajhara, CG ; Harshlata Kanwar, Chhattisgarh Mahila Jagriti Sangathan; Kumud Nandgave, Chhattisgarh Bal-Shramik Sangh; Gautam Bandopadhyay, Nadi Ghati Morcha; T G, Film-Maker & Human Rights Defender, Durg, CG; Vijendra, Joint-Secretary, CG PUCL.; Rajendra K Sail, President, GG PUCL

Kerala PUCL: Letter

Harassment of PUCL Activists

Dear Sir,

We are receiving complaints from areas in Quilon, Eranakulam and Malappuram to the effect that some police personnel working in the Special Branch are periodically intimidating and harassing the PUCL activists.

One Sri Balakrishnan, ASI, Tirur by telephone and other means is after Sri. K. Saidalikutty, President, PUCL Malappuram (Dist) Committee, Sri Kallikal Muhammed, Treasurer, Sri Alavi Kutty, Sri Muneer Kurumbady and a host of other PUCL activists under one ruse or another. Also, we are frequently getting frantic calls from Quilon, Kasarkode to the same effect especially after the Varkala incident.

You are quite aware that the

People's Union for Civil Liberties is an organization founded by Jayaprakash Narayanan during the Emergency and since then it has been in the forefront of defending human rights of individuals and organisations of the marginalized sections. In the backdrop of the Varkala incident, we feel the police has been given some unfettered right to trample upon the individual rights and personal liberty of the citizenry. It is true that the police have been bestowed with the solemn duty of protecting the life and property of the people and also to maintain law and order. At the same time, the police cannot be given an unbridled power to infringe the greater freedom of the community at large. The high handedness on the part of the police, that too with the patronage of the

unscrupulous politicians, would spell disaster to the social fabric of our society, would certainly undermine the democratic principles laid down in the Constitution and upheld by the Apex court of the land. If the police is given a free hand, the very edifice of our democratic set up would be a casualty.

It is therefore requested that the police be specifically restrained from intimidating and harassing the PUCL activists, and it should be ensured that the tenets of the Constitution are safeguarded, and the directives of the Apex court of the land are implemented.

With regards and thanking you,

Yours sincerely,

P.A.Pouran

Prof. Iqbal Ansari is No More

Prof. Iqbal A Ansari, a veteran civil rights' activist and National Council member of PUCL passed away on 13th October 09. Prof. Ansari was a tireless crusader for human rights in the country and was very closely associated with PUCL for a very long time. Without failing Prof Ansari would attend PUCL meetings and contribute with several vital suggestions on various important issues. His passing away is a great loss to PUCL PUCL condoles Prof Ansari's death and sends its heart felt condolences to the bereaved family.

- Pushkar Raj, General Secretary, PUCL.

Condolence Messages

The news of his passing away surprised and saddened me. The news so soon after Balagopal is most distressing. I had great argumentation on various issues when I was able to visit Delhi and over the phone. Recently demanded that I should write something for the blurb of the Book he was going to publish. He used to literally pin me down an hector. I suppose all of us are waiting to be put back in the closet one by one Please Convey my grief at his passing away and condole his family on my behalf as well. Thank you

K G Kannabiran

Letter for Condolence: October 24, 2009

Dear Mrs. Prof. Iqbal Ansari,

It was a shock to all of us to learn the sudden death of Ansari Sahib. He was with us at a meeting the evening before on 11th October, 2009. He had participated in the meeting very forcefully and effectively as usual. He was planning for number of programmes - but then God willed otherwise and we must bow to His Will.

The shock to the family of course is unbearable and so sudden. Our hearts go out with you, and we pray to God give you all strength to bear this grievous loss. The void created by the life partner of decades is unbearable but then we mortals can only pray and seek God's help in this tragedy. We all share your grief.

I have known Ansari Sahib for over a decade. His commitment to human Right and the poor sector of the society was an inspiring example for all human Right activists. On behalf of my wife and myself we offer our heartfelt condolences to you and other members of the family.

Ansari Sahib death is a great loss to PUCL and it also sends its respectful condolences. May God grant Peace to Ansari Sahibs soul.

Yours sincerely,

Sd./-

Rajindar Sachar

India: Largest Democracy Without Rule of Law

A Secular State Without Secular Justice

Iqbal A. Ansari

(Prof. Ansari was a prolife writer. He always reflected on issues of larger concern for human rights in the country.

We produce two write-ups that he recently wrote for PUCL Bulletin)

The latest example of the lawlessness of the Indian State is the recent report on fake encounter killing of Ishrat Jahan and three others by police officers in Gujarat in which most damning aspect is the collusive role of the Union Home Ministry .No less harrowing is to recall the media - official collusion in reporting the events as a definite case of L-e-T/J-e-M backed acts of terrorism aimed at enabling one mass murder wear the halo of martyrdom.

What does the Union Minister for Law and Justice, Mr.Veerappa Moily mean by stating that revelations

in Ishrat Jahan encounter case was a "very serious matter for the country and in any other foreign country Narendra Modi would have been in some other place" ? as reported by the Indian Express of 9Sep 09.It is an obvious admission of absence of rule of law in India ,which largely obtains in Western democracies, irrespective of their lawlessness while dealing with others .

Why do Advanis, Uma Bharatis,Kalyan Singhs ,Bal Thackerays,Singhals,and Modis enjoy not only impunity but respectability because even Human

Rights activists swear by Indian Secularism which means equal respect for all religions ,not effective equal enjoyment of human rights including equal protection of the law by all ,especially vulnerable minorities and weaker sections.

Have the human rights groups, like the PUCL, taken any notice of the Special Report on India by the UN Special Rapporteur on Freedom of Religion or Belief released in Feb 09 in which it has warned about repetition of Ayodhya /Mumbai 1992 and Gujarat 2002 if the guilty continue to enjoy impunity?

It is time that victims asked senior human rights and peace activists, who unambiguously gave their verdict of genocide/pogrom about Gujarat 2002, why did they not show any perseverance in demanding dismissal of the Modi government by the UPA government soon after its coming into power in 2004, followed by appointment of a special Tribunal for trial of members of the government and officials responsible for mass hate crimes on the additional ground of the Supreme Court's strictures about systematic subversion of justice in Gujarat and on the ground of its non-compliance

of norms and directions on relief operations by the NHRC. The fig leaf of Modi having won popular mandate was too thin to provide any real protection in the Court against exercise of article 356 by the Union Government if it had the will to punish the guilty and rehabilitate the victims. Whenever article 356 has been or will be appropriately used, it will be exercised against popularly elected government in the event of serious breakdown of constitutional functioning of the system in the state as was the justification for its recourse in 1992, which got upheld by the Supreme Court.

We know why the Government led by Manmohan Singh-Sonia Gandhi, who had stalled the functioning of the Parliament for a number of days in 2002 over their demand for dismissal of the Modi Government, lacked the will to try and punish Modi and company. They must have got terrified by the monster in the mirror, very palpable in 1984 but also by very many others like Nellie 1983, Hashimpura-Maliana 1987, Bhagalpur 1989 etc.

But why do we not muster courage and perseverance? ❧

Fear and Forgiveness: The Aftermath of Massacre

A Report on Release of Harsh Mander's Book on Gujarat' - by Iqbal A. Ansari

Prof. Irfan Habib's tribute to Harsh Mander in glowing terms that it was reassuring to know that the country which witnessed massacres like Gujarat has given birth to not only Gandhi, but a person like him, of whom we were all proud, summed up the sentiments of all teachers, students and social workers who had assembled under the Presidentship of the industrialist-philanthropist Mr. Zafar Alam in the forenoon of 16th September 2009 in the Arts Faculty Lounge of the A.M.U, Aligarh for the release of his book *Fear and Forgiveness: The Aftermath of Massacre* published by the Penguin in 2009. Prof. Habib characterized the Gujarat carnage, which constitute the background of the book, as not only an onslaught against Muslims but against the entire nation.

The programme started with recitation from Hindu, Muslim, Christian, Buddhist, Sikh and Jain scriptures on the theme of sanctity of human life. The book was formally released by Dr. Zakia Siddiqi. It was followed by reading of passages from the book by Dr. Sami Rafiq, Haris Qadeer and Dr. Amadani Sridharan. Dr. Sami Rafiq compeered the programme

Welcoming Harsh Mander, Prof. Iqbal A. Ansari, President Citizens For Peace and Human

Rights, which organized the programme in collaboration with the Dept. of Political Science of the A.M.U, observed that Harsh Mander combined rare intellectual and moral integrity with compassion, which has made him undertake dedicated work for all marginalized, poor and oppressed people. Muslims in his view are not only target of violence of hate groups but also suffer daily discrimination and are being treated as second class citizens.

Introducing the book, Prof. Ansari said that the book affirms that there cannot be any durable peace without punishing the unrepentant guilty and fully rehabilitating the victims. However going beyond legal retributive justice it explores chances of restorative justice, by a process of healing and reconciliation which required: (i) acknowledgment; (ii) remorse; (iii) reparation; and (iv) justice.

The writer feels that none of them obtained in Gujarat. Instead of even slightest signs of acknowledgment of guilt, Modi and his gang celebrated the event as Gujarat's Gaurav (Pride) - in the process Modi becoming a folk hero.

Prof. Ansari referred to passages in the book, which honestly brought out how the State's institutions, the rights groups and

secular intellectual class failed the victim group. However the book also points out that for the first time the efforts of civil society groups supported by the NHRC resulted in the reopening of cases and retrials leading to convictions under the direction of the Supreme Court.

Inaugurating the session, the Aligarh industrialist and philanthropist, Mr. Pramoad Kumar, pointed out the general state of lawlessness of the police and the law-enforcement system wherein false encounter killings and torture were common - which made situation like Gujarat passively acceptable by the people.

In his detailed analysis of the book, Prof. Masoodul Hasan, one of the most distinguished scholars of the A.M.U, observed that the book written in a superb literary style combining the clinical and the artistic technique and tools was the outcome of sincere heart searching of one who had a heart of gold. He expressed appreciation of the coinage of the term Nyayagrah for people's collective struggle for legal justice. Prof. Hasan also made copious references to Prof. Ansari's work as an activist and scholar, including his work in the area of communal violence.

While complimenting Harsh

Mander for his commendable work both as an activist and writer Prof. Hamida Ahmad regretted lack of any progress in the accountability of law-enforcement system since early 1960s. She recalled how Subhadra Joshi's visit after Hashimpura (Meerut) - Maliana massacre by the PAC in 1987 had inspired hope in her as a student, which was never fulfilled.

Dealing with reconciliation - the theme of the book - she appreciated that Harsh Mander distinguished between subjugative reconciliation of the oppressed to her inferior status and reconciliation with dignity among equals.

She made the perceptive observation that there was no question of acknowledgment of guilt by those who planned the carnage pursuing their agenda of hate and revenge. Recalling the oft-made observation including that by Harsh Mander that no riot could continue beyond a few hours, if the law was enforced impartially, she wanted to remove the distinctions caused by labels between 'riot' and 'terror'. Both were the same. She hoped that Indians would remind themselves that they treated Ashoka the Great and Akbar the Great not Alexander the Great, and would remove the blot of Modi becoming the Great.

Prof. Khwaja Shamim Ahmad acknowledged the heart moving narrative of the book, which touched him. He recalled the Aligarh riot of 1978 in which the PAC had done targeted killings of Muslims. Were the rifles scientifically trained to recognise and kill only Muslims? He put the question to Prime Minister Morarji Desai, when he observed that when riots broke out, police would resort to firing.

The retired district judge Dharam Sing Ram commended Harsh Mander's work, to which, he felt, we should extend support so that gross injustice to Muslims and other weaker sections could be removed, without which India's claim as a law-

governed democracy would remain hollow.

Dr. Mufti Zahid recalled Harsh Mander's initial sacrifice by resigning from the administrative service and undertaking the mission of rousing people's conscience. His sincere dedication to the cause made us regain hope. He felt that the facts of the incident of Ishrat Jahan's false encounter killing coming to light was a hopeful sign of accountability.

Dr. Asim Siddiqi paid tributes to Harsh Mander, whose columns in newspapers he looked forward to reading with interest every week; and was moved by his recent account of the Nellie massacre of 1983, in the Hindu. It appeared to him that he wrote from the heart.

Dr. Shakeel Samdhani recalled how as a mere Additional Collector he got anti-Sikh riot in Indore controlled, by calling the army without seeking permission from any political authority. Paying tributes to him, he observed that we should all seek inspiration from Harsh Mander's work.

Prof. Shamim Ahmad forcefully brought out pervasive injustice to Muslims, who were in a unique situation of victimhood. He gave a call for trial of Modi under some competent international authority.

In his concluding remarks Prof. Ansari pointed out that issues of justice, peace and reconciliation in Gujarat could not be dealt with in isolation. Gujarat 2002 is the outcome of the failure of the judiciary since December 1949 till 1994 in the Ayodhya cases. Why did Ayodhya happen? It needs to be publicly debated, like the current debate over why Partition happened, fixing responsibility for not only 6 December 1992, but all events since 22-23 de3cember 1949. He further observed that. to be able to cope with the post-Ayodhya situation of which Gujarat is an episode required paradigm shift from pre-1947 secular communal polarized public discourse to a more comprehensive model of peace & reconciliation for the entire

subcontinent making us rethink our concepts of nation, community, citizen and State in human rights perspective.

In his response Harsh Mander gave reasons for writing the book based on his experience in Gujarat since 2002 till date - especially the narratives of sufferings of the innocent victims, which needed to be recorded - as he discovered in Nellie (Assam) when he visited the victims of Feb. 1983 carnage, who narrated the 25 year old events as if they had happened in the recent past. Since his idea of India was based on equality of rights of all citizens, especially equal justice for all, he initiated Nyayagraha movement to struggle for securing legal justice while adhering to truth.

Apart from the narrative of the pregnant Kausar, whose abdomen was ripped open and foetus smashed, he recalled the effacement of Wali Dakni's shrine and overnight building of a road over it. However, it should be comforting to know that every night after the traffic comes to a halt Hindu devotees offer floral tribute to the Saint.

Referring to the findings of Ashish Nandy he expressed satisfaction over the fact that during 1947 holocaust 26 per cent of people on both sides of the Indo-Pak border saved life of the other community as compared to one per cent savers of Jews in the Holocaust in Nazi's Germany.

In his presidential remarks Mr. Zafar Alam, expressed his sense of pride for meeting Harsh Mander for the first time. He congratulated him as well as other human rights activists who were serving as catalytic agents for an ongoing change, and expressed his conviction that parliamentary democracy in India would be able to bring about structural reform in the model of governance so that recurrence of massacres and pogroms could soon become a thing of the past. ¶

Police Harassment of Minorities in Mangalore

Fact Finding Report on the sudden death of B. Muhammad of Gurpur, soon after the trespass of Bajpe Police into his house at midnight and subsequent harassment by Police.

On learning about police harassment to residents of Alayigudde Palla, a colony of minorities, (Vartha Bharati dated 09-10-2009), a team comprising P.B. D'Sa, Mohammed Kabir and Suresh Bhat paid a visit to the site on Sunday, 11th October around 5:00pm. The team met two families, two shopkeepers and 10 to 12 young boys between the ages of 17 and 25.

Alayigudde Palla is located behind the Sayyad Hasan Hydros Jumma Masjid in Gurupur which is about 20 km from Mangalore. There are around 10-12 poor and lower middle class Muslim families living here. This report pertains mainly to two families - Sheik Ahmed's and the other late B. Muhammad's.

Sheik Ahmed's Family

Sheik Ahmed and his wife live in a small rented house with their five children. Sheik Ahmed and Wasim, one of his three sons, work in Kuwait. The eldest one is Ruksana who has studied up to 12th standard (PU). She presently takes tuition classes. The second daughter Amra is in the 11th standard. Son Jasik is doing a Diploma Course in Civil Engineering at the BDPS institute and works as part-time assistant to a lawyer. The last boy is in his teens. Our impression is of a typical lower middle class, well-mannered and cultured family.

Late B. Muhammed's family

B. Muhammed(57) was a beedi contractor before his untimely death. His house is situated next to Sheik Ahmed's. Muhammed has left behind his wife Bipatamma and two sons, Bashir and Abdul Latif. Bashir(28) has completed 7th standard. He is married and is presently employed in a supermarket. Abdul Latif (18) who has studied up to SSC, works as a

salesman. This too is another typical lower middle class Muslim family which, being unable to provide higher education to its young members, is struggling to eke out a living.

Background

A shameful incident of moral policing by Muslim youth took place in Mangalore on the evening of 6th October, 2009. A group of around 50 Muslim youths confronted a Hindu youth and a Muslim girl having refreshment in a restaurant and they beat up the boy. This incident generated a lot of heat with certain media reports attributing the vigilante attack to a certain Muslim organization and the latter denying its role. The District Superintendent of Police later publicly stated that his department would catch the culprits and set the speculations at rest.

Present Happenings

It is reported that in the course of their investigation the police found that Jasik (Sheik Ahmed's son) was an eye witness. From that moment Jasik has gone missing. The police have started a manhunt for him. Just after midnight, at around 00:30a.m. on 8th October, a team of policemen landed in the Alayigudde Palla colony and knocked at the door of Sheik Ahmed's house. Sheik's wife refused to open the door since they all were women and minor children. The police party then went next door and woke up B. Muhammed and asked him to accompany them to the Sheik's house.

The policemen then entered Sheik's house and searched for Jasik but could not find him. It is reported by the family members that the police had no warrant with them and there weren't any women police present. They also allege that the policemen behaved in an extremely uncivilized

manner hurling abuses and threatening of dire consequences. The police party left the place a short while later.

B. Muhammed went back to his house and within moments he had a heart attack. The family members rushed him to a hospital in Mangalore but he died at around 3:35a.m., some 45 minutes later. According to his family, Muhammed had no previous record of any heart ailment. The initial shock on seeing policemen at his doorsteps and imagining if his sons were involved in some unsavory incidents was probably the cause of Muhammed's heart attack and his sudden death. It is an admitted fact that the local minorities have been living under constant threat and it has increased several folds after the BJP has come to power.

Presently the Bajpe police led by assistant sub-inspector Raghava with his notorious prejudices is reportedly carrying out daily midnight knocks. Their modus operandi is to visit the houses between midnight and 3 a.m., bang the doors, abuse the women in filthy language, and threaten to kill them in an encounter and pass very objectionable remarks on their caste and religion and demand production of Jasik, who has left his house without any information because of fear of ill-treatment by the police. Sheik Ahmed's family is spending sleepless nights with the twin worries of the missing Jasik and his future and the policemen's threatening and objectionable behavior.

In our opinion the Muslims of this area appear to be decent and law-abiding citizens. Their children attend schools/ colleges and are trying to educate themselves. According to some locals they have been the victims of police

harassment for quite some time. Some months ago Suraj Shetty, a local ABVP activist, had been assaulted by unknown miscreants. At that time Bajpe police had promptly arrived in Alayigudde Palla and started harassing the residents. We were told that the police had arrested some innocent youths and initially charged them under IPC section 307 but later changed it to 107 etc. The young boys, all of them students, were subjected to torture and later released.

It is particularly noticed that police do not do their home work properly before calling a person to the station for enquiry. Based on false information given by fake informers innocent boys are picked up,

harassed and tortured. Often the police resort to blackmailing the neighbours and family members, especially womenfolk and the elderly, who are usually found at home.

We are also in receipt of information that a local Muslim lawyer of Gurupur is being subjected to all sorts of harassment by the Bajpe police. It is our opinion that this too stems from a planned conspiracy that has already claimed the life of the young Mangalore lawyer Naushad Kashmirji as its first victim.

This type of behavior on the part of Bajpe police speaks of a prejudiced and communal mindset and is very, very dangerous in the long run in

the sense that the frustrated innocent youths become likely prey for fundamentalist groups.

The fear complex existing among the residents of Alayigudde Palla is of an extreme nature. This sort of behavior on the part of the police may lead to more deaths and other undesirable consequences. It should stop immediately.

In the interest of a healthy society we demand that such errant policemen be suspended forthwith and departmental inquiry be initiated against them.

Yours faithfully,
sd./-

P.B. D'Sa, District President □

Killing of Two Cattle Traders

Members of People's Union for Civil Liberties (PUCL) and Karnataka Komu Sauharda Vedike (Communal Harmony Forum) (KKSVM) met on 13.9.2009 to discuss the issue of the recent tragic death of two young, Muslim cattle traders. Since the deaths seem to have occurred under suspicious circumstances leading to accusations of foul play it was decided to probe the matter further. Accordingly a team consisting of G. Rajashekhar (KKSVM), Mohammed Kabir (PUCL & KKSVM) and Suresh Bhat B (PUCL & KKSVM) visited the bereaved families and the place of incident on 18th September, 2009.

The Incident

Five Muslim youth Mohammed Mustafa (28), M. Asif (19), Dadapeer, M. Javid and driver M. Suhail (all in their twenties) of Bajpe, Mangalore had gone to Nelyadi (about 90 kilometers from Mangalore) on September 9, 2009 in a Toyota Qualis vehicle to purchase cattle. They started the return journey to Mangalore around 1:30 a.m. on September 10. When their vehicle reached Kootelu, they were accosted by a group of men said to be policemen on patrol duty. The Qualis is reported to have swerved towards the river and the occupants ran out and jumped into the river. Dadapeer was caught by the pursuers and was later arrested. The police could not trace the remaining four. A charge sheet has been filed against all under sections 4,5,8 of The Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964 read with section 11b of Prevention of Cruelty to Animals Act and section 379 of the IPC. Dadapeer has been

released on bail on the 17th. The dead bodies of Asif and Mustafa were found on 11th and 12th respectively. Javid and Suhail are still at large.

The Rescue Efforts

It was around 11 a.m. of 10th that the families of the missing men got to know of the incident from the two escapees. The relatives went to the spot with some swimmers and other locals and started the search operation. When this group of around 150 persons could not locate the bodies the relatives contacted the Uppinangady police and requested their assistance. But the police refused saying that they did not have the necessary resources and will come next morning. But reportedly a police jeep was doing frequent trips between Uppinangady and Nelyadi but didn't stop even once though the people had shouted for help. When no policeman turned up till 9 p.m. the district Superintendent of Police and the Uppinangady Inspector were informed. The Inspector reached the

spot with two constables and later called for fire brigade personnel. The authorities searched till 3 a.m. of 11th and then gave it up. But the people continued the search with the help of swimmers and a couple of requisitioned boats. Some locals also joined in and altogether a crowd of around 300 persons scoured the entire area. Missing complaints for Mustafa and Asif were lodged at Uppinangady PS. Mustafa's brother Rafiq lodged an additional complaint at the Puttur PS.

Some clothes were reportedly found at around 3 p.m. on 11th. The swimmers again searched in vain for the two bodies. Finally when it was too dark the people gave up and left for their homes. When they had reached a distance of around 15 km they received a call saying that one dead body had been found. They Inspector told them that the body was reportedly found in the water close to a nearby temple and he was at the spot. All of them went back. Asif's brother Dawood recognized the body as that of Asif.

On 12th morning around 7 a.m. the search for Mustafa was resumed by his relatives. They contacted the Puttur ASP who sent two constables. At around 9:15 a.m., some boatmen at Bantwal upon seeing a floating dead body informed Bantwal PS. Someone called Rafiq and all of them went to that spot. It was Mustafa's body and it was found in bloated condition. Apparently there were no injuries on his body. According to brother Rafiq, Mustafa did not know swimming and was afraid of water.

The Families

The team first went to Konchar at Bajpe. There are around 35 houses here. They were constructed by some benevolent person in the land belonging to the Jakri Byari Masjid. Ibrahim, 44, the owner of Rilwan Manzil has five children out of which 3 are girls and 2 boys. Mustafa, who had married Ibrahim's daughter 10 years ago, leaves behind his wife and two children. Dadapeer, originally a native of Bhadravati, is married to another one of Ibrahim's daughters. Married two years ago, the couple have two children. Ibrahim is a lorry driver and transports stones to MRPL. Ibrahim's married son Imtiaz and Dadapeer and Mustafa (two of the five youth involved in the incident) used to work with him. During the rains he is unable to ply his lorry.

According to Dadapeer the Toyota Qualis belonged to Asif's father Shamsuddin of Shantigudde, Bajpe. On the 9th the five of them had gone to Nelyadi and purchased three cattle. Two of them were bulls and one was a calf. They started their return journey around 1:30 a.m. on 10th. At around 2:00 a.m., the black Scorpio that followed them and three vehicles on the Minor bridge blocked their way. Suhail who was the driver of Qualis swerved the vehicle towards the Netravati river. On reaching near the river all of them got down and ran helter-skelter and waded into the water. According to Dadapeer there were 2 or 3 policemen and around the same

number of saffronwallahs. While Dadapeer was caught by the pursuers, the others managed to escape. He was taken to the police station where he was detained for a day and was in jail for six days before he was released on bail on the 17th. He says he was beaten and ill-treated by the police.

The team next proceeded to Shantigudde at Bajpe. This is a mixed neighborhood. Asif's father Shamsuddin stays in an own house named 'Badriya Manzil.' Shamsuddin who used to be a cattle trader earlier is now a used cars dealer. His wife Zohara, aged 40, is a housewife. They have three sons and a daughter. Ayesha, 18, is married. Of the sons, the eldest Shahil, aged 23, works as a driver in a tender-coconut transport vehicle. Dawood, 22, works at a plywood factory in Baikampady near Mangalore. Daughter, Ayesha, 18, is married. 19 year old Asif had been doing odd jobs such as vegetable transportation and trading etc. This was the first time he was into cattle trading. Shamsuddin is the owner of the Qualis involved in the incident. He says he has purchased it around three months back from a certain Razak of Kaup for a price of Rs. 3.5 lakhs. He says he has all the relevant records. Besides, he has taken a loan of Rs. 2.5 lakhs from Sri Ram Finance and the repayment works out to Rs. 7500 per month.

Mustafa the other youth that died was 28 years old. His father Ibrahim is no more. Mustafa had three sisters and three brothers. The eldest M.Rafiq, 49, is a mason and lives with his family in father's house which is located in Konchar at Bajpe. When the team went to meet him he was not at home. Only Rafiq's wife and his paternal uncle were at home. Abdul Khader, 45, is working in a hotel in Mumbai. Abdul Jabbar, 32, is employed in Saudi Arabia. Sisters Saramma, Bipathimma and Nebissa are married and live around Bajpe. Mustafa lived separately in a small hut with his wife and two children. He was a scrap trader earlier and had started cattle trading

business around 9 months ago. Rafiq's wife, who was rolling beedis, pointed to one of Mustafa's children. She made a telling comment that a family has lost its only precious bread-earner and nothing can bring him back.

The Incident Spot

In the afternoon the team visited the place where the incident reportedly took place. A local guide accompanied the team. The team went to the Kootelu Minor bridge on NH48 which is about 1.5 kilometers from Uppinangady town. Before this is the major Kootelu bridge where one can find the branch road towards Subramanya. Reportedly on that fateful night the Qualis was proceeding at a high speed. When it was a few meters before the Kootelu Minor bridge, suddenly three vehicles - a Maruti van, an Indica and a jeep - had appeared on the bridge and blocked the way and at the back was that Scorpio.

The team observed the mud track on the side down which the Qualis had gone towards the river Netravati. This happens to be a seasonal lane used by trucks that transport sand extracted from the river-bed. The sand quarrying season usually lasts from January to June. In March the river is a small trickle. The team observed that the mud track led straight to the river and hence the reports about the youth jumping into the river were incorrect. One has to wade into the river here and not 'jump.' The width of the river here could be about 150 meters. For the most part it is knee deep and gets to about 3, 4 meters deep towards the opposite bank.

The Relatives' Claim

The relatives of the two dead young men suspect foul play. They allege that the Uppinangady police were totally unhelpful. They say that the police are in league with the local saffron brigade. On the night of September 9th members of the local saffron brigade and the police were in the black Scorpio following the Qualis. They had arranged for the blockade at the Minor bridge in order

to force the Qualis towards the river. They murdered Asif and Mustafa and managed to catch Dadapeer.

The relatives allege that Mustafa, who could not swim, was forced to drown by not allowing him to wade towards the shore. He might have been blinded by the bright spot lights of the pursuers. There are questions about Asif's drowning too. The current in the river was not strong and Asif was a good swimmer. The relatives say that despite the elapse of nearly 40 hours from the time Asif is supposed to have 'jumped' into the river, his stomach was not bloated. It was as if the body had been thrown into the water a short while ago. Besides, there was an injury and dried blood on the one side of the temple and the nose. There were blue marks on both sides of the neck. Asif's brothers categorically assert that he knew swimming. Under the circumstances doubts arise about the cause of death. The relatives also claim that the cattle were bought in a legitimate deal and there was no theft and also there was no complaint of cattle theft registered at the station. They allege that the police never conducted proper enquiries. The clothes purportedly found at around 3 p.m. on 11th could not be the victims' because there were four sets and both bodies when found were fully clothed. Only a proper and impartial post-mortem and inquiry can bring out the truth.

The Police Version

The district Superintendent of Police has denied the involvement of members of any saffron outfit. He says it is a speculation that has started later. He has reportedly said that the policemen on duty on the night of 9th found the stolen Qualis with stolen cattle and chased it and caught one of the five thieves. On the allegation that the local police did not respond to calls for help, he says that the police had already completed their search operation, informed him and gone home. According to press reports, the Uppinangady police said they were

chasing the Qualis on a tip-off, and managed to stop it near the bridge. Upon seeing them all the five occupants of the Qualis ran. The police chased them but managed to catch only one, i.e., Dadapeer. They never realized that two men had 'jumped' into the river. The police then went back to the station as they did not possess the necessary resources to conduct a search.

Analysis

Let us try to analyze the events. The incident happened at around 2:00 a.m. of 10th. The police had managed to catch only one of the five youth who tried to escape. Out of the remaining four, two were supposed to have 'jumped' into the river. Significantly the police, citing lack of resources, never made any serious search efforts. Again, despite calls for help from relatives gathered at the site on 10th mid-morning, the police never responded. For a full 19 hours the police neither came to the site nor made any arrangements for a search. Compare this with the laudable speed with which the entire administrative machinery swings into action whenever adults and children fall into unused bore wells and open drains... And the media chips in with its 24x7 reporting.

It is a totally shocking and unforgivable lapse on the part of the Uppinangady police not to have launched a full scale rescue effort immediately. This is nothing but complete dereliction of duty. For the sake of argument only, even if it is conceded that it was a case of theft, still it is the constitutional duty of the police to immediately try and protect lives. It was, after all, a minor crime. Is death (or murder by saffronwallahs?) the punishment for such a crime? Compare this petty crime to the daily loot of crores worth of mineral resources... Or the loot of public funds in hundreds of huge scams like the latest coal scam... Or child trafficking... Or human trafficking... Or abduction... Or murder... Or terrorism... Or communal pogroms... Or extortion

by policemen... Or fake encounters... Or the misuse of seized vehicle by police inspector. The list is endless.

It is quite apparent that the reason for the police inaction is their communal bias. Their total lack of regard for right to life of these citizens is purely because they happen to belong to the minority community. It is strongly believed that there is a local mafia operating this cattle business in which some big-time cattle traders, saffron outfits and the police too are involved. There are regular 'hafta' payments. Those who dare to oppose or newcomers are not tolerated. The 'rescued' animals are usually deposited at a local 'goshala'(cow shelter) at Maani. From here it is quite common for many cattle to end up in slaughterhouses.

Why only cattle traders are being targeted but not the sellers is a subject matter for serious introspection. It has become a common practice for saffronwallahs to take the law into their own hands and mete out horrible and barbaric punishment to the poor cattle traders. The latter get publicly disrobed and beaten - like Hajabba, Hasanabba of Udipi... Or permanently maimed- like Nazir of Kulai with both legs broken... Or killed- like the Hindu cattle trader Patali Krishnayya of Udipi, Karani Mathin of Kandlur near Kundapur and probably Asif and Mustafa too.

Scores of construction workers including women and children being herded in mini-lorries and tempos and transported to work sites is a common sight in Mangalore and possibly in other cities too. All these take place right under the nose of the so-called 'cow protectors' and the police. Yet no action ever seems to have been taken against such cruel and inhuman treatment of fellow humans. A clear case of misplaced priorities if ever there was one.

Again, is the law against stray cattle being enforced strictly? What about enforcement of other laws

such as Cattle/Cow Preservation Acts; Registration of Cattle Premises, 1978 under the PCA; Cattle Disease Act; Municipal Corporation Acts; Preservation and Improvement of Animals Act etc.?

In the present incident, the Qualis was not a stolen vehicle. But, senior police officers have exhibited extreme carelessness and non-application of mind by issuing public statement to the effect that the vehicle was stolen. Such automatic statements about the vehicle and the cattle being stolen property are routinely issued almost every time. The saffron media, without bothering to check, gives wide publicity to such half-truths and untruths further vitiating the public mind.

Poverty, economics of transport, lack of education and a lack of knowledge of relevant laws is leading to such undesirable situations. Beef is still the cheapest food for Dalits, Christians, Muslims and many others in our country. In India cattle rearing goes hand-in-hand with agriculture. Hence cattle trading too must flourish. And here in the coastal districts of Karnataka, a majority of the cattle traders have traditionally been Muslims. They have been carrying on this business peacefully for hundreds of years. It was a mutually satisfactory arrangement. The cattle population too was quite stable and there were no complaints. That is, before the entry of Sangh Parivar's 'holy cow' politics. But the fact is, even today cows are still being bought from and sold to cattle traders. If anything, the volume of transaction has nearly doubled. The reason being the present imported variety of Jersey and Holstein cows are quite expensive to maintain once they stop yielding milk. Nobody except the rich can afford to keep such cows and the bulls. Hence they are invariably disposed off. And who else but the friendly cattle trader can come to their help? If the government goes in for a legislation to ban slaughter completely, as it is proposing to do, it is sure to lead to great distress among the farmers.

Perhaps they might even hesitate to rear cattle the direct impact of which will be felt by the co-operative milk sector. Hence the government must tread carefully in the matter.

A misplaced notion about the 'holy cow' has been deliberately spread throughout the Indian society by the Sangh Parivar. And it is purely meant for political gains. To demonize the Dalits and the minorities. Dispassionate studies of the Rig-Veda and other scriptures tell us that our aboriginals and Aryan ancestors were regular eaters of beef, mutton, pork, horse meat etc. But it is sad to see educated people falling for the malicious and mischievous and false propaganda of the Sangh Parivar. This is particularly true of the coastal districts of Karnataka where a virulent saffron media is wreaking havoc in the cities and hinterland.

It is extremely distressing that even senior IAS and IPS officers have been mesmerized by the Sangh Parivar's pernicious fascist propaganda against the minorities. They ought to know that through this propaganda the Sangh Parivar is out to implement the dreams of its ideologues Savarker and Golvalker... Dreams of turning India into 'Hindu Rashtra' - where 'the minorities have no place but if they still wish to remain they may do so only as second-class citizens'. It becomes the paramount duty of the senior police and other officers to educate their lower ranks about the true history of India and yes, to teach them to respect the Indian Constitution. That citizens have to remind the authorities of their constitutional duties today, 59 years after the adoption of the Constitution, is a sad reflection of the prevailing abnormal state of affairs.

Secular minded politicians and senior policemen and the public need to wake up and stem the rot in the system before we have another Gujarat on our hands. It is time to pause and ask serious questions about the conspiracy that is afoot to

mentally condition the society for a final Gujarat-like assault. Just take a look at the situation today. We appear to have reached a stage where the loss of two precious young Muslim lives fails to evoke a strong reaction from the society and a majority of the media. Such levels of insensitivity and a feeling of callousness is being deliberately cultivated and built-up. Those who justify today the killing of two Muslims for having traded in cows (bought or stolen is immaterial) are preparing the ground for future pogroms such as rape, loot, murder, tearing open wombs and death dance with murdered fetuses. Unfortunately a section of the media, again like Gujarat, is aiding and abetting such unconstitutional and dangerous tendencies... Sometimes overtly and sometimes covertly. One cannot help but wonder whether we really live in civilized times.

Demands

- 1 Appropriate and stringent punishment should be awarded to the guilty policemen of the Uppinangady PS for dereliction of duty.
- 1 A proper and impartial post-mortem of both the bodies of Mustafa and Asif should be conducted again to establish the true cause of death.
- 1 A CBI inquiry should be ordered into the whole incident in order to bring out the true facts.
- 1 Proposal for a total ban on cow slaughter should be dropped.
- 1 The government should declare cattle trading as essential service in view of its importance to the farming sector. It must arrange to provide suitable transport vehicles and necessary training, financial and other support to petty cattle traders. Alternatively cattle trading to be nationalized and all those presently engaged in trading and transport to be absorbed as regular employees. α

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 fourth part of the Report- Editor.)

2.2 Socio-Economic Contours of Kandhamal

Kandhamal, or the hills of kandhos, was part of the erstwhile Boudh-Phulbani. After the reorganization of districts, it became Phulbani on 1 April 1994 with two subdivisions, Baliguda and Kandhamal. Later, in June 1994, it was again renamed as Kandhamal. It is one of the centrally located districts with Rayagada in the south, Ganjam in the southeast, Nayagarh in the east and Kalahandi in the west. The entire district is full of hills and forests; cultivable land is scarce. According to Orissa Agricultural Statistics 2006-07, published by Director of Agriculture and Food Production, Bhubaneswar, out of the total geographical area of 8,02,000 hectares, 571,000 hectares (71.19%) is under forest cover and the net sown area is only 1,15,000 hectares (14.37%). Demographically, Kandhamal is a tribal majority district. According to the 2001 census, tribals constitute 52.7%. Among the tribes, Kandhos are numerically superior though there are Gonds and Saoras. Dalits account for 16.9% of the total population of which Panos form the majority. Others include Ganda, Ghasi and Dom. The remaining 30.4% consist of Christians (mostly Dalit Christians) and various other Hindu caste groups, such as Khandayat, Karan, Brahmin, Sundhi and Suda. In Kandhamal, these caste groups are referred to as Oriyas. In spite of scarcity of cultivable land, agriculture has remained the mainstay of the district's economy. It is dominated by marginal and small peasants (for details, see pp. 25-26). The majority of the workforce (cultivators 33.47% and agricultural labourers 36.1%, Census 2001) is engaged in agriculture. Despite the region being in the KBK zone, no efforts have been taken to effect any change in agriculture or in the pattern of land ownership. So, the agricultural economy of the region has remained crisis ridden and at subsistence level. Collection of forest produce and its trade is another major economic activity. Slash-and-burn cultivation is one of the main occupational activities

of the landless Adivasis. Beside kandulo (pulses), turmeric and ginger are largely grown in forest lands. Siali leaves, sal seeds, tamarind and mangoes are also collected from the forest by the Adivasis. Though we cannot precisely assess the number of people dependent on such minor forest products or the proportion of earning as constituted by these products from the district or state level data, there is some indication of it in village level statistics. A study of village Buluburu (Belghar) conducted by the Tribal and Harijan Research and Training Institute, Bhubaneswar states how Adivasis of the village depend on fruits, tubers and leaves collected from the forest for almost eight months in a year for their survival (Orissa's Kandhos, pp. 396). We have also learnt from the victims of violence that many earn their living by collecting and selling firewood from the forest.

However, the marketing of these minor forest products is not under the control of the Adivasis. Places like Tikabali, Raikia and Baligurha are important trading centres for forest products. According to the Gazetteer, Tikabali is noted for trade in minor forest products like tamarind and siali leaf. Raikia is noted for trade in turmeric, hill-brooms and tamarind. Baligurha is known for pulses, niger and mustard. The traders at these places are mostly non-Adivasis and "outsiders," known as Oriyas, who determine the prices of the products.

2.3 Land, Alienation and Contention

Over centuries, the Adivasis have cleared forests and made them cultivable or agricultural lands. Later, they were pushed out of these lands by more powerful people and rescinded to less fertile hilly lands - whether it is the 'dangar' cultivation in Rayagada district or the 'mal' as in Kandhamal. According to anthropologists and historians, this process of pushing the Adivasis to interiors began in the 10th and 12th century A.D. F. G. Bailey, who studied the Kandho culture during the 1960s, has said, "the Oriyas from the plains have settled here for 900 years and many of the new settlers are

landgrabbers" (Caste, Tribe and Nation by F.G. Bailey). One can get similar information from the myths and lore of the Kandhos that have developed around it. (Religious Ceremonies, Ordeals and a Legend about Oriya infiltration in Kondh Hills - U. N. Pattnaik, Adibasi, January 1970).

Moreover, when land defines economy, it not only becomes the source of livelihood, but also the source of dignity and power. F. G. Bailey observes, "The large Oriya villages are sited in the wider valleys, where the greatest amount of land suitable for rice cultivation is to be found. They occupy the best cultivating sites in the valleys, while the Konds occupy sites which are smaller and in remoter valleys. The fact that they occupy the best land indicates that Oriyas have established a dominance of some sort over the konds, who were unable to retain the best cultivating sites."

2.3.1 Under the British Raj

When the British forced its way into Kandhamal in the early part of the 19th century to suppress the meriah sacrifice and abolish female infanticide, it encountered stiff resistance from the Kandhos. The resistance was due to the fear that the British snatch their land and impose a tax on them. After this conquest by the British, the political and revenue administration of Kandhamals was organized through the Mutha system.1

The period from 1830 to 1870 saw a spate of rapid changes in the Adivasi society. After the entry of money economy and excise duties on the Kandhos' liquor production, we see increasing indebtedness among the Kandhos. This process was engendered largely by the colonial state. Poor Adivasis were further impoverished and were forced to give up their land while the domination of the money lender or the buyer of land began to grow. New courts or the judiciary did not help the poor Adivasis. The Kandhos were tricked into parting with their lands as is the case with Adivasis across the country under the colonial regime. The Kandhos rejected the modern colonial judiciary and

viewed it with suspicion because they were being coerced to part with their land. With justice inaccessible and further impoverished, they were left to the despotism of the money lender and shundhi, the liquor trader. Most certainly, the Oriya shundhi was the worst exploiter of the Kandhos.

In 1902, the colonial administration passed an order that no land can be transferred to non-tribals without the prior consent of the Deputy Commissioner. Again, Angul Laws Regulation of 1913 was promulgated to that effect. Despite these legal protections, tribal people lost land to non-tribals because they did not have record of rights and due to the sustained unscrupulousness of the revenue officials.

In 1921-25, the first survey and settlement operation was undertaken in Kandhamal. Out of the 50 muthas in Kandhamal, all villages in 9 muthas were surveyed because in those villages, non-Kandhos owned land. A survey revealed that more than one fourth of the land held by the tribals had passed on to the non-tribal. (District Gazetteer, 1983)

1 A mutha is a cluster of villages with a Sardar as its head with one or two assistants called Mallik. The head of the Mutha was appointed by the colonial administration to collect revenue and maintain law and order in the Mutha. In return, the Sardars were getting 12.5% of the gross demand of the land revenue as commission.

We are constrained by fragmentary historical evidence to talk of the Baligurha sub-division only and not the Phulbani sub-division, as it was under a different administrative authority during the British times. The revenue administration in Phulbani may not be a replication of that of Baligurha, but the fate of the peasant producers, it appears, was not greatly different from those in Baligurha. Throughout the late nineteenth and early twentieth centuries, the British tried many permutation and combination of revenue administration: the muthadar system, the zamindari system, then back to the Collector as revenue administrator and so on. Many land surveys were necessitated by these experiments, though the surveys were not covering the entire region or not completed at times (as in 1924). Land alienation from the Kandhos continued. Finally, the British passed

The Agency Tracts Interest and Land Transfer Act I of 1917 that "prohibited all transfer from hill men to non-hill men without express permission of the authorities."

2.3.2 Independent India

To protect tribal land, the Orissa Government passed the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribe) Regulation 1956. Despite such acts, the question of land alienation surfaced repeatedly and became contentious. In 1966-68, a land grabbing movement had started under the leadership of Ugrasena Mallick in Khajuripada area against sundhis (interview with Krushna Majhi, one of the leaders of the Kui Samaj Seva Samiti). The District Gazetteers (1983) mentions, "In 1970, the Adivasis of the Khondamals subdivision had started an agitation for the restoration of the agricultural lands of their forefathers which had been allegedly usurped by the non-Adivasis. They were being instigated by the Kui Samaj Samiti to commit offences of trespass and forcible reaping of paddy involving the lands under the occupation of the non-Adivasis. This for sometime had given rise to a serious problem of law and order in the district." In the present state of historical research, it is difficult to know more about land movements. However, after independence, the first survey of land started in 1977-78, but that too was not completed.

The issue of land remained unresolved. In 1994, when the Panos of Linapada entered the Shiv temple, it triggered an ethnic riot and spread to Phiringia, Khajuripada. During this riot, the Adivasis occupied the land of many Panos. After the riots subsided, the government announced the setting up of Camp Courts to settle land disputes as well as promised to set up review committees to monitor the situation every two months. Krushna Majhi said, "Some Panos went to the High Court regarding the disputes and after the riots the government also showed little interest to settle the land disputes. No progress was made in that regard."

Again, in 1998, to make the review committees work, the KCC organized a demonstration of 7000 people. In 2000, there was tension between the Adivasis and the Dalits on the issue of land in Kotgarh block (Subarnagiri, Majaguda, Judabali). Shyam Patmajhi, leader of the Pahadi Sangram Manch,

says, "The subcollector, after inquiries into records, returned the land to the real Adivasi owner. But, during the harvesting time, by the provocation of Nakula Nayak, local Dalits did not allow the Adivasis to reap the crop. As a consequence, there was a riot in which Adivasis damaged the houses of the Dalits and attacked them physically." Again, in June 2002, such a conflict arose in Daringabadi Block (Jhinhiriguda and Brahmanigaon panchayats). Around 500 Adivasis with 80 pairs of bullocks started cultivating the land under the possession of Dalits.

The district administration did intervene, but had to bow down to the wishes of the organized Adivasis; the Dalits left their village in fear, seeking refuge in the police station (Prajatantra, 7 July 2002).

In Gahana (Gadaguda panchayat of G.Udaygiri), Binod Mallik said, "There is no land conflict in our Panchayat. Poverty drove the Adivasis to sell their lands." Budhia Singh, the former Chairman of G.Udaygiri block claims that there are no land disputes in Padangi.

During the 1990s, small radical groups had organized landless people around the issue of land. Perhaps, the government, due to pressure, tried to change the 1956 Regulation in 2002 by making a provision that all land transfers from ST to non-STs between 4 October 1956 and 4 September 2002 must be verified to ascertain their genuineness, and the persons possessing such land must prove to the sub-collector by 4 September 2004 (later extended to 2005) that the transfer was legal. In all probability, this was in response to the growing tensions around land transfer from the Kandhos and the insistence of the KCC to look into these matters.

It is evident that Adivasis constitute about 52.7% of the population and own 77% of total land in Kandhamal. On the other hand, Dalits are about 16.9%, but they own about 9.09% of total land. As the Dalit Christians are included in other categories, the percentage of Dalit ownership of land may increase marginally. A study conducted by a government research institution states that the sundhis have grabbed land. And, therefore, how true is the allegation that Dalits (Panos) are land grabbers? The tables also show that in all categories, there is small section that owns a large amount of land. But,

in Kandhamal, there is no struggle against large land owners, which is generally seen in other land movements. The official statistics on the land holding pattern does not clearly reflect the ground reality. It is therefore obvious that no proper survey of land or settlement records have taken place. Who should be blamed for this lapse, the state government or the Dalits in Kandhamal?

Further, though Lambodar Kanhar, alleges that Panos are land grabbers, he could hardly cite cases of land grabbing. This is despite the fact that he submitted a list of 503 fake caste certificate cases to the district administration. Interestingly, Brahmananda Behera, Secretary of Pana Kalyan Samiti in a written memorandum submitted to the Chief Minister of Orissa dated 2 October 2008 has invited KCC to cite cases of land grabbing by Panos so that the land can be returned to the Adivasis. But, KCC is yet to respond to that.

Finally, for the sake of argument, one may concede that there are a few cases of land grabbing by Panos. But, does that justify blaming an entire community and creating an atmosphere of hatred?

3.1 Social Equation: Adivasi, Pano and Oriya

Panos, numerically the minority social group in Kandhamal and judging by economic indicators the most depressed as well, is made out by the media to be the villain of the drama that is taking place in Kandhamal. They are always referred to as thieves, cheats, molesters and rapists, or even in the memorandum dated 29 September 2008 submitted by the Secretary, KCC. This social ostracization runs deep in history too. Macpherson, the British Officer in charge of meriah suppression in Kandhamal, wrote in 1865 "The Panwa is proverbially indispensable to every Khond hamlet. His duties are to provide human victims...; to carry messages, such as summons to council or to the field; to act as a musician at ceremonies, and to supply the village with cloth... They use both the Khond and Oriya languages.... They are treated with great kindness, but as an inferior and protected, perhaps a servile race. They are never neglected at a feast; any injury done to them is promptly resented. But they are never allowed to bear themselves as equals". This

graphically maps their status in the society. And this reflected in their material possessions and existence as well.

O' Malley, another British official, observed in 1908, "In the Khondmals, the Pans were the serfs of the Khonds. They worked on their farms and wove cloth for them, in return for which they obtained a small area of land, grain for food and all their marriage expenses; they used also to procure victims for the meriah sacrifices. Their serfdom was so well recognized that if a Pan left his master and worked for another, it caused serious dissensions among the Khond community. To this day there is a settlement of Pans - a kind of Ghetto attached to every large Khond village, where they weave the cloth the Khonds require and work as farm labourers". This is indicative of the wretched existence the Panos were condemned to largely by the neglect of the civil society and the state.

A century after Macpherson's observations, the Boudh- Khondmals Gazetteer 1983 confirms, "The picture remains more or less the same today except for the Meriah sacrifice".

Yet, the equation of master-serf, patron-client between Kandho and Pano communities is more metaphorical than real. In Kandhamal, the agrarian economy of the hilly and least fertile terrain could barely support both the Kandhos and the Panos even at subsistence level. Economy apart, their degree of mutual dependence in matters relating to socio-cultural life was quite considerable. The equations between these communities were different in different areas. For example, in Kandhamal (blocks like Phulbani, Phiringia, Khajuripada), the Panos are untouchables to Adivasis so also to Oriyas; the social segregation is quite sharp. But in Baligurha subdivision (Kotagarh, Raikia), it is difficult to distinguish between Pano and Kandho. Economically and culturally, in matters of language, food, and so on, they are similar. Untouchability was nonexistent between these communities. So when Nikhil Utkal Kui Samaj Union was formed in 1929, many people from Pano community were also its members (interview with Krushna Majhi).

III. Politics of Domination: Past and Present

It is but natural and human to

break the yoke of subordination. In the absence of any political process to redeem the situation, sometimes, individuals take to stealing as a strategy for survival. To label the entire community of Panos as thieves is unjustified and exaggerated. But the image of Panos as cunning and unscrupulous persists and is perpetuated by political leaders too; bureaucrats too talk in the same language though informally.

The Panos being outcastes of Hindu society were forced to migrate to these less fertile and rocky terrain. Some of them were also bought by Kandhos to work as their farm labourers. And it had been happening for over a century, as testified in the records of the British times. During the British period, the opening of the roads and communication, regular markets offered opportunities. Panos took to small trades, worked in government-sponsored works as daily labourers, supplementing their work as farm labourers. On the other hand, though some Kandhos availed of such opportunities, relatively they remained less exposed to the changes and remained confined to their material and cultural moorings. Some of them, of course, thought it was beneath their dignity to take to trading activity, noted F.G.Bailey. The colonial state certainly subverted the clan structure of social order of Kandhos, the Mutha system etc, substituting it with modern bureaucracy and judiciary. This meant a decline in their political power. Moreover, it was difficult for the Kandhos to interact with such institutions because of their language. Panos, on the other hand, were conversant in both languages.

Therefore, their importance grew. However, it was the Oriyas who could make the best use of the modern education that the colonial administration provided. In addition, Oriyas benefited most from colonial arrangements in terms of the economic and political power. During the campaign against meriah suppression, some of them had rendered their services to the British. This created an opportunity for them to be close to the administration. After the conquest, Dinabandhu Pattanaik, the de-facto ruler of Kandhamal went to the extent of appointing some Oriyas as Mutha Sardars, thus combining economic and political power in one hand. He opened up liquor trade in Kandhamal

and gave licenses to Sundhis which became a cause of land alienation of tribal people. This became so much of a problem that in 1872 some Kandho Sardars appealed to the administration to impose tax on liquor shops.

Besides these changes in economy and political power, Christianity had a bearing on the social situation in Kandhamal during colonial period. Kandhos had suffered defeat at the hands of the British in the course of meriah suppression and they saw the missionaries as part of the foreign power. Secondly, culturally they were a much settled community having their own religious practices. So, initially a few of them embraced Christianity. But the situation for Pano was totally different. Even in a tribal set-up, the tag of untouchability did not leave them. They had to suffer social exclusion. Here Christianity offered a sense of meaning and identity to their existence. It was truer in case of the poorest in the community. During colonial times, it was the Dalit community that was attracted to Christianity more than any other community.

After independence, a new set of rules and institutions were in place to emphasize a sense of equality which undermined the old equations. Mutha system was completely abolished, thereby abolishing the powerful symbol of the old power structure. The Temple Entry Act was passed in 1949. This provided the Pano community, who were not allowed to enter the temple, with an opportunity to assert their rights by entering the temple. But this assertion was strongly opposed by the village Oriya community. It did not

result in any physical conflict; rather the matter ended with Pano community building their own temple. However, this cultural assertion clearly shows the shifting equation in the social relations: subservience is no more acceptable. The reservation in government jobs and education had a role to play also. Compared with Adivasis, Dalits fared better. But again the lion share of education and job-reservation went to the Oriyas.

Significantly, the temple entry attempt was the reason behind the 1994 Kandho- Pano conflict. Even the Pano Kalyan Committee, in a pamphlet of 14 June 2006, states, "even now, at many places in the district, people are prevented entry into the temples. This social malaise should be opposed soon." This means temple entry has been a point of cultural assertion by the Dalits. The emergence of the traders as an "influential" community in the 1960s and 1970s in Kandhamal is an important dimension of the social reality. According to the District Gazetteer of 1983 (p. 50), many people migrated into the Phulbani, Baliguda and G. Udaygiri regions during 1961-71, which was the boom time for trade and commerce. This was one of the reasons for the sudden spurt in the district population. The traders in Raikia and Tikabali are also immigrants. These people are known as Kumuti, Patro or simply Oriyas. These people solely control the marketing of both agricultural and forest products of the Kandhamal district. Their economic position made them influential both socially and politically. Commenting on the communal tensions in Phulbani during

the 1980s, Nazir Akhtar says, "though rioting was led by men of VHP and missionaries, there is another set of people behind the scene.... They are the businessmen and money-lenders, who have been exploiting the Advasis since many decades. Their invisible hand has fanned the flames of communal riots. To spread their influence in the region, they are engaged in fierce competition which has led to the communal tension and conflict. The businessmen of the neighbouring districts also have actively participated in this. To safeguard their own vested interests, they systematically pushed the Advasis into a communal cauldron. The invisible hand of the traders is becoming sharper in relief. In the destruction of the Catholic Church in Raikia on 26 August 2004, some traders had actively participated" (The Indian Express, 17 March 1989, Communal Tension in Phulbani). The victims testify to the role of the businessmen in the recent riots. When asked why the businessmen were against Dalit Christians, a riot victim of Baliguda said, "I opened a provision store in our lane. Previously, people used to go to the shop of the Kumuti. Now they are coming to mine. So there is a drop in his sales and profit. The grudge is due to that only." A journalist in G. Udaygiri, said, "you see the shops of Kumutis, Patros and Brahmans in towns. Now in panchayat headquarters, harijans have opened shops. Earlier people only used to buy from the shop in the towns. So there is a drop in profit of these town-based people.

(Contd. in the next issue of the Bulletin)

Prof. Abu Baker is No More

PUCL has noted with sorrow and a deep sense of loss the death of Prof. Abu Baker in June, 2009. He was an eminent educationist and a former Professor and head of the Faculty of Education of Jamia Millia Islamia University, Delhi. He was connected with organisations like the Indian Council of Social Science Research, NCERT, Delhi University, and Institute of Social Analysis and Communication, Delhi. He had also been associated with AID India Trust, Bharat Gyan Vigyan Jatha, Democratic Secular Forum, Schumacher Institute, and others. He was also Chairperson of the Delhi Minorities Commission.

He had a deep commitment for the protection of civil liberties and human rights and was a life member of PUCL. He was also a former President of the Delhi State branch of the PUCL. His death is a great loss to the civil liberties movement.

The whole PUCL family conveys its heartfelt condolences to the bereaved family and friends of Prof. Abu Baker.

Pushkar Raj, General Secretary, PUCL.

A Study on the Death Penalty In India

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Introduction

Crime is an evident part of society, and everyone is aware that something must be done about it. Most people know the threat of crime to their lives, but the question lies in the methods and action in which it should be dealt with. In several parts of the world, the death penalty has been apportioned to those who have committed a variety of offenses from the time of ancient Babylon to present-day America. The Roman Empire made use of the death penalty liberally, as did the Church of the Middle Ages. The present articles look at the various aspects of the issue.

History of The Use of Capital Punishment In India

India has used capital punishment throughout its recorded history. Although Hindu law does not affirmatively advocate the use of the death penalty, it does not reject its use. Furthermore, it justifies the use of capital punishment for certain serious offenses against individuals and the state. Under Hindu law, punishment is designed to eradicate evil, rather than to inflict pain; consequently, death is not designed merely to serve retributive or deterrent purposes. Hindu law recognizes, however, that those determining the appropriate sentence for a particular act must consider both the objective circumstances of the offense and the subjective limitation of the offender. Despite its general acceptance as a morally viable form of punishment, some Hindu rulers and members of the Hindu intelligentsia have rejected the use of capital punishment.

Although capital punishment was used in India prior to British rule, the British were responsible for

enacting "a systematized penal code which strictly limited the number of capital offences and laid down the procedure for criminal trials." This criminal code was not created in a single effort. The British rulers crafted the code over nearly seventy years by making gradual adjustments to the Muslim Criminal Law. The first alteration occurred in 1793. The Bengal Resolution of 1793 dictated that the motives or intentions of one found to have committed murder controlled whether he might be subject to capital punishment.

Starting in 1827, the British began drafting more specific laws regulating the use of the death penalty. The Bombay Regulation XIV of 1827 authorized the death penalty as one of several available punishments for cases of murder where the offender had "purposely, and without justifiable or extenuating cause, deprived a human being of life, or who . . . committed or assisted in any unlawful act, the perpetration of which is accompanied with the death of human beings." The framers of this regulation stated that they were convinced that the death penalty ought to be very sparingly inflicted, and they proposed to employ it only in cases where either murder or the highest of the offences against the State has been committed. Finally, on October 6, 1860, the Governor-General of India signed the new Criminal Code into law. Although the governing penal code during British rule was amended periodically, the death penalty was retained until India gained independence in 1947.

In the years immediately following independence, the Government retained the British

policy on capital punishment, as the new Legislative Assembly found it to be "an inopportune time for [its] abolition." In 1956, the Legislative Assembly began considering whether it should abolish the death penalty. The federal government of India sought opinions on the issue from all of its States and learned that all were vehemently opposed to abolishing capital punishment. Despite this unanimous sentiment, the Legislature considered and debated whether to abolish the death penalty on three separate occasions from 1958 to 1962. After conducting a thorough examination of the Code of Criminal Procedure and the Indian Penal Code, in September 1967 a special commission established by the Ministry of Home Affairs submitted a special report on capital punishment to the Government. This commission reported that after considering the many issues involved within the context of India's unique conditions, the Government could not "risk the experiment of abolition of capital punishment."

Although the Penal Code has been amended such that capital punishment is authorized for a more narrow class of offenses, the death penalty has continued to be a commonly used method of punishment in India.

Constitutionality of The Death Penalty

Article 21 of the Indian Constitution, entitled "protection of life and personal liberty," states that "no person shall be deprived of his life or personal liberty except according to procedure established by law." This provision by itself provides little guidance as to the legality of the death penalty in India. The language seems to suggest

that so long as a law provides for punishment by death, the death penalty is lawful. In addition, Article 72 of the Indian Constitution bestows on India's President the power to grant pardons "in all cases where the sentence is a sentence of death," as well as among other cases.

In the famous case of *Jagmohan Singh v. State of Uttar Pradesh*, The Indian Supreme Court has indicated that the language of both Articles 21 and 72 implies that the use of capital punishment is constitutionally permissible if done according to a procedure established by law.

Looking at the Constitution alone, the courts apparently have ample opportunity to apply the death penalty without significant restrictions. Surprisingly, however, even without explicit protection against cruel and unusual punishment, the Indian Supreme Court has played an active role in crafting limitations much like those applied in the United States. In *Sunil Batra v. Delhi Administration*, the Supreme Court explained that Article 21 of the Indian Constitution could embrace the functions of the U.S. Constitution's cruel and unusual clause and invalidate "what is punitively outrageous, scandalizingly unusual or cruel and rehabilitatively counter-productive."

Discretion In Death Sentencing

Both the Indian Legislature and Supreme Court have crafted guidelines specifying the degree of discretion a sentencer may exercise. The Indian Court shares the belief that arbitrarily imposed death penalties are unconstitutional, yet it has "doubted the wisdom" and the possibility of achieving total control of such discretion through legislative guidelines." In *Bachan Singh v. State of Punjab*, the Indian Supreme Court explained that "the impossibility of laying down standards is at the very core of the criminal law as administered in India

which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment."

The Indian judiciary is not alone in rejecting the impulse to codify in rigid guidelines what its judges may and may not consider when sentencing eligible criminals. In fact, the Royal Commission on Capital Punishment considered the merits of codification of the various considerations which weigh or should weigh with the court in the exercise of discretion long before the U.S. federal government began to place restrictions on capital sentencing. After careful study, the Royal Commission concluded that it is both difficult and dangerous to attempt to enumerate the circumstances that judge's should not take into account in capital sentencing, the circumstances judges should take into account only in relation to other circumstances, and the circumstances judges may consider independently. The Commission explained that:

"the exercise of the discretion may depend on local conditions, future developments, evolution of the moral sense of the community, state of crime at a particular time or place and many other unforeseeable features Codification of these considerations may . . . be too wide and too narrow at the same time."

In rather lengthy dicta, the Court in *Bachan Singh* case suggested ways in which the courts might channel sentencer discretion. Rather than attempting to formulate "exhaustive standards," the Court repeatedly admonished judges to look at each case as an individual unit. In addition, the Court cautioned that a standardization of the sentencing process which leaves little room for judicial discretion to take account of variations in culpability within single-offence category ceases to be judicial. It tends to sacrifice justice at the altar of blind uniformity.

The Indian Penal Code does provide for a mandatory death penalty in cases where a convicted offender already serving a sentence of life imprisonment commits murder. The Indian Supreme Court has not explicitly condemned mandatory capital sentencing, but dicta in many of its death penalty decisions strongly suggests that the constitutionality of the death penalty is contingent upon the valuable safeguards of the life and liberty of the subjects in the cases of capital sentences. These decisions demonstrate that the Indian Supreme Court has construed the Constitution to permit capital punishment only in those situations where the crime is exceptionally despicable and the mitigating factors do not support a case for leniency.

The Indian Government has followed the example of a majority of American states and has constructed lists of aggravating and mitigating circumstances which judges are required to consider. Unlike the sentencing statutes in the American states authorizing capital punishment, neither the Indian Penal Code nor the Indian Criminal Procedure Code explicitly list the factors which judges must consider. However, these factors have been listed in many Indian Supreme Court decisions as well as unofficial compilations of Indian law. The Indian judiciary and legal establishment appears to be in a dilemma because although the Court believes that the Legislature is the appropriate body to enact sentencing guidelines, the Legislature is unwilling to codify any rigid rules that will impede individualized consideration. Until one of these objectives gains prominence, unofficial rules and the piecemeal guidance contained in Supreme Court decisions will be the only guidance provided to Indian judges.

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Executive Clemency In India

Article 72 of the Indian Constitution explicitly bestows on the President the power to grant pardons "in all cases where the sentence is a sentence of death," yet it says nothing about how this power is to be exercised. The Indian Supreme Court has indicated that the President has complete discretion and the courts shall not interfere with his actual decision on the merits.

Although the language of the Constitution suggests that the President's discretion in granting clemency is unfettered, the Indian Supreme Court has a limited power of judicial review. This power ensures that the President considers all relevant materials before reaching a decision. For example, in *Harbans Singh v. State of U.P.*, the Indian Supreme Court exercised its power of judicial review in a case where the President granted a pardon for one perpetrator of a crime yet failed to grant a pardon for the prisoner's accomplice after having reviewed both petitions carefully. The President commuted the first prisoner's sentence to life imprisonment and approved the second prisoner's death sentence. The Court was hesitant to interfere with an explicit exercise of executive authority and indicated that "in the interest of comity between the powers of the Supreme Court and those of the President of India, it would be more fitting if the Court were to recommend that the President of India may be so good as to exercise his power under Art. 72 of the Constitution." Nevertheless, the Supreme Court used its power of judicial review to commute the death sentence to life imprisonment.

The Indian Penal Code and the Code of Criminal Procedure also authorize clemency in capital cases. Section 54 of the Penal Code provides that, "in every case in which the sentence of death shall

have been passed, the appropriate Government may, without the consent of the offenders, commute the punishment for any other punishment provided by this Code." The Indian Legislature has not qualified this power, leaving the reasons for commutation solely to the President or Governor's judgment. Although the Code of Criminal Procedure provides a significantly more detailed description of executive clemency power, the executive's discretion remains virtually unlimited.

In exercising his authority to grant or deny pardons, the President is entitled to examine any evidence de novo. When he does consider the evidence afresh, the President is treated as independent from the judiciary. Consequently, he may grant relief if he finds that a mistake was made in the trial or at any other time in the trial process. This power is different than merely having the ability to hear newly acquired evidence. In effect, the President acts as a final forum for appeal where the normal procedural rules are no longer binding.

Conclusion

The Indian judges generally have sole discretion once a person has been convicted of a capital crime, the Indian legal system has constructed nearly the same guidelines and precautionary measures designed to ensure that the death penalty is employed as fairly and consistently as possible. Though human rights groups have long advocated abolition of death penalty in India, government has not heeded to their demand till now. Till the demand of abolition of death sentence is accepted, it is imperative that both the Indian Supreme Court and the Legislature continue their efforts to construct a death sentencing structure that is as fair and consistent as possible. They must continually analyze whether death penalties are imposed arbitrarily. □

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