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Chief Justices' Conference 2009 Rajindar Sachar

No 'My Lord', the Chief Justice of India (or should it be 'your Honour' reiterating the 1971 decision by the present Supreme Court?), the judiciary does not "impliedly obey" the law passed by Parliament-the judiciary owes allegiance only to the Constitution of India and to their own conscience. That is why I am somewhat sad that the CJI should have indirectly suggested that judges are not willing on their own to file the statement of assets and the same to be made available to the public-especially when the judges do so in the USA, England and other Commonwealth countries. I can appreciate the anxiety to have some provision to prevent vexatious or scandalous accusations by mischievous persons (though it must be remembered that these hazards are common to all public officials whether in the executive or legislature). Of course, the self-patting by the legislators that they disclose their assets at the time of filing nominations, is conveniently side-tracked by the fact that it was only under the Supreme Court directions in the PUCL case that this requirement is now being followed reluctantly.

Nonetheless, a question may well be raised, not by the judiciary because it does not enter into public debate but by the electorate, namely, as to what percentage of legislators, including the Members of Parliament have filed or are filing their statements of assets regularly and whether such information will be available under the Right to Information Act.

Some may even embarrass the legislators by making a polite enquiry about the fate of the Lok Pal Bill which has been promised by different party governments for over the last 30 years-is it that legislators' accountability is less urgent than judicial accountability? It must be emphasised that overwhelming members of the bar and members of the judiciary themselves are in favour of a law on judicial accountability by a panel which will not only have an in-house membership but will also include a representative from outside jointly selected by the Prime Minister and Leader of the Opposition. Let the judiciary or legislature not try to score points against each other. Both are integral and essential to our democratic polity-only the demarcation of the functions of each is to be recognised and respected.

It is a heartening gesture that the Chief Justices' Conference has advised High Courts to increase their work period from the present 210 to 220 days, but this seems to have been watered down by suggesting an alternative of increasing half-an-hour extra every day. In my humble opinion, a straightaway increase of 10 days is the only correct method-increase of half-an-hour will be merely cosmetic.

May I also venture to suggest that on the same parity of reasoning the Supreme Court will also increase its work period to at least 200 days and full working day on Mondays and Fridays? Let me hasten to add, however,

(cont. on page 3)

The Right to Life and Personal Liberty : Appearance vs. Reality

Prabhakar Sinha

Right to life and personal liberty is a fundamental right guaranteed under Article 21 of the Constitution. Moving the Supreme Court or a High Court directly for its enforcement is also a right guaranteed by the Constitution. In fact, the apex court is its assigned protector, and the right to approach it directly for the enforcement of fundamental rights under Art.21 is also a fundamental right. In view of these, it would appear that the life and the personal liberty of a citizen in India are fully secure, and it cannot be trifled with. Yet, a large number die in police custody, fake encounters and frequent police firings. Besides, 1300 of the jails in the country are crammed with twice the number of prisoners they have the capacity to accommodate. Most of these inmates living under inhuman condition are under trial prisoners. Quite a few of them are languishing in the jails because they are too poor to move the court for bail, and their trial is not concluded in time due to the unmanageable number of pending cases in the courts. Probably, a majority of them are behind the bars for such minor offences that even if they had been convicted and sentenced, they would have served their term of imprisonment and been free by now. Additionally, there are prisoners under preventive detention i.e. people who have committed no offence, but are in prison because the authorities claim that they may commit certain offences.

In view of the guarantee of life and personal liberty enshrined in the Constitution, their deprivation at such a massive scale may appear puzzling, but its explanation lies in the wording of Article 21 itself. It (Art. 21) provides that 'No person shall be deprived of his life or personal liberty except according to the procedure established by law', which means that there is nothing sacrosanct about one's life or personal liberty so long as it is taken away according to the procedure established by law. The

Article is silent about the nature of the procedure thus giving the State almost a free hand to assume unbridled power to throw anyone behind the bar. While framing the constitution, care was taken to empower the State to assume the power of preventive detention also. (Under Art. 22). These provisions have been exploited by the successive governments both at the centre and in the states regardless of the party in power. They all share the contempt for the life and personal liberty of the common man and those opponents they consider inimical.

The provision to limit the guarantee only to the observance of the procedure established by law before depriving a person of his life and personal liberty without guaranteeing the fairness of the law itself was deliberately introduced. The alternative 'due process of law,' which would have given the citizens the right to question the 'justness' fairness or reasonableness of the law itself was rejected to enable the state to exercise almost unlimited power to legislate against the right to life and personal liberty. The people of India and Indian democracy continue to suffer the consequences notwithstanding the judgment of the Supreme Court in Maneka Gandhi's case that the law must be just, fair and reasonable because the attitude of the State to treat life and personal liberty lightly is now deeply entrenched in the psyche of the political class which has been ruling the country since independence. The Attorney General of Indira Gandhi's government had told the Supreme Court in an infamous case during the emergency that since the right to life and personal liberty (under Art. 21) had been suspended the State could deprive them at will and the victim had no legal remedy. The Supreme Court accepted the plea and left the entire populace at the mercy of the Executive. Had the leaders of the opposition not been the victims of Indira Gandhi's authoritarian rule and

spent months in jail during the emergency, the ignoble judgment of the apex court would have continued to be the law of the land. But, with the memory of their own bitter experience fresh in the mind, when the Janata Party men came to power they amended the Constitution to provide that Art. 21 cannot be suspended even during the proclamation of Emergency. However, the welcome amendment does not reflect a change of their mindset but only a temporary reaction of the victims of the Emergency getting an unexpected relief.

The conflict between the spirit of our democratic constitution and the mindset of the ruling parties manifests itself in bizarre ways. While the Supreme Court, according to due value to life, holds that death sentence be awarded in 'rarest of rare cases', and very few are actually executed on account of judicial verdicts, extra-judicial killings in police custody, fake encounters and police firings are rampant. All these killings are claimed to be in accordance with the procedure established by law, and so the killers are not treated as murderers but as public servants performing their duty, and are almost never punished except when there is irresistible public protest and pressure. The post mortem report of a person killed in the police custody prepared by an obedient medical officer records his death to be due to some natural cause (e.g. heart failure, ulcer, burst appendix etc.). Nobody believes the falsehood but no action can be taken because the deceased is claimed to have died of natural causes rather than been murdered. Fully aware of this shameful manipulation by the State, the National Human Rights Commission (NHRC) has issued a direction that the cases of custodial deaths must be reported to it by the District Magistrate and the S.P. within 24 hours of their occurrence, the post mortem examination must be videographed and be sent to it. Even

(from page 1)

that at least 70 per cent of 52 Saturdays are utilised by judges in completing judgments and orders unlike the executive who have all 52 Saturdays either as a holiday or on a foreign jaunt.

Similarly I hope the executive will also work out the days it works. On a rough pattern 104 (Saturday/Sunday non-working days) plus 30 days' leave with pay plus 10 casual holidays, plus at least 12 gazetted holidays makes a total of (365-156) only 209 working days. So why pick on the judiciary alone?

Parliament, even according to the Vice-President and former Lok Sabha Speaker Somnath Chatterjee, has much to answer-the sittings of Parliament are becoming less and less and actual work minimal. Let us in all humility remember what the great Saint Kabir said: "I went out to search a bad person, but could not find anyone but when I looked within myself, I realised that none was worse than me." To be honest, we all are in the embarrassing position of an emperor proudly standing in a bathtub but none pointing out anything till the innocent child shouted: "The emperor has no clothes." So none can point fingers at the other except the real sovereign under our Constitution-the people of India.

The Conference rightly did not approve the constitution of an All India Judicial Service. The whole idea is ludicrous - this was rejected as far

back as the 1985 Chief Justices' Conference. It is well known that in the court proceedings up to the district level are carried out in the language of the State. Thus only in the Hindi speaking States of UP, MP, Bihar, persons selected from these States could be transferred within. In all other States, that is, Andhra Pradesh, Tamil Nadu, West Bengal, Punjab, it is impossible to post a person from outside the State because of his non-familiarity with the State language. The illustration given of the All India Administrative Services like the IAS, IPS is completely off the mark. The requirement of their being familiar with the State language is rudimentary and only minimal-at a higher level they use English in the administration. Judgments of the courts are a serious business requiring a deep knowledge of the State language.

Also at present the High Court is the final controlling and disciplinary authority over the subordinate judiciary. But if you have an All India Judicial Service then will the disciplinary authority change every time a judge is transferred from one State to another? And also in an All India Administrative Service the authority of the Central Government is supreme with limited powers given to the State governments. Who then will be the ultimate authority? The Supreme Court obviously cannot take the load. So will the Central Government by this invidious tactic claim to be the ultimate disciplinary authority? This impinging by the

executive would be the surest way to strike at the independence of the judiciary.

It is regrettable that the Chief Justices' Conference did not decide that in the interest of continuity and familiarity with the working of the State judiciary, a local Chief Justice is a must-the present practice of appointing Chief Justices outside their parent courts and many a time for as short a period as three months or six months has dealt a severe blow to the prestige, harmonious working of the High Courts and serious laxity in the supervision of the lower judiciary.

As for the uncle-nephew nexus, a Chief Justice of a High Court had effectively enforced an order that the cases of relations of judges will not be posted before any other judge whose relations are also practicing in the same High Court.

Another embarrassing reflection on the judiciary is the misdemeanour cases pending for a long time against High Court judges being discussed publically because the Supreme Court is not taking a final decision.

I may sound harsh but let me put in a caveat by invoking: Justice Holmes of the US Supreme Court who said: "I trust that no one will understand me to be speaking with disrespect of the law, because I criticise it so freely.....but one may criticise even what one reveres..... And I should show less than devotion, if I did not do what in me lies to improve it." □

the videography is manipulated. The complaints of the kith and kin of the victim produces no result as the complaint against killings in fake encounters or in the police custody are investigated by the police personnel of the same department and the prosecution is conducted by the Public Prosecutors appointed by the government, which is an accomplice in the cover up. The police fire at and kill unarmed demonstrators almost at the drop of a hat and claim to have opened fire in 'self defence'. A few brickbats occasionally hurled are good enough a ground for them to kill in 'self

defence' because their statement itself is taken as an irrefutable proof of their claim without any judicial scrutiny. In fact the police have no special power of self defence and they exercise the same right of private self defence, which every person is entitled to do if there is sufficient threat to justify the use of force which can cause death or injury. But whereas others have to prove before a court of law that the threat to them justified the use of force to be exonerated, the police are allowed by the state to bypass this legal requirement. Courts are not inclined to entertain complaints by the people

because the police are presumed to have opened fire in the course of performing their duty and cannot be prosecuted without the sanction of the government. Thus, the police kill innocent people with impunity because of the claim of the State that the firing is justified and their victims have been deprived of their lives according to the procedure established by law. In addition to these underhand methods, there are laws like the Armed Forces Special Powers Act, 1958 in operation in Jammu and Kashmir, Manipur and some other parts of the country, which empowers even a Non-

Commissioned Officer to use force with impunity to the extent of causing death. The outrageous provision of the Act reads as follows:

"4. Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the Armed Forces may, in a disturbed area,

a. if he is of opinion that it is necessary to so do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable or being used as weapons or of fire arms, ammunition or explosive substance."

It is a fool-proof license to kill, but the Supreme Court found it just fair and reasonable and declared it Constitutional.

The right to personal liberty so solemnly enshrined in the Constitution is ridiculously insecure and can be taken away by any lowly police officer on the drop of a hat. A Sub Inspector of Police has the power to arrest anyone on the suspicion of his involvement in the commission of a cognizable offence without having to justify its use. This power (under Section 41 of the Cr. P.C.) exercised by the police as their discretionary power has rendered Art. 21 totally meaningless as a guarantee of personal liberty. As if this unbridled power to rob the people of their personal liberty were not enough, it has been continuously supplemented by far more draconian laws than the Rowlett Act, whose opposition led to the massacre of Jallianwala Bag in 1919. Even after the first war of Independence in 1857 (in which a large number of Britishers were killed) when India was made part of the British empire and The Defence of India Act 1857 was enacted, no provision for Preventive Detention was made in it by the imperialist rulers. The Act was amended to

provide for it only during the First World War (1914-18). In sharp contrast, the Independent and democratic India lost no time in passing the Preventive Detention Act in 1950, which lasted till 1970, and was followed by far more draconian MISA (Maintenance of Internal Security Act) in 1971. When the victims of MISA during the Emergency, came to power in 1977, the notorious law was repealed only to be replaced (by Indira Gandhi's government) by more repressive National Security Act, 1980. TADA (The Terrorist and Disruptive Activities (Prevention) Act) was enacted in 1985 purportedly to fight terrorism in Punjab. When TADA had to be repealed in the nineties of the last century following its rampant misuse, it was replaced by another notorious law POTA (The Prevention of Terrorism Act). In 1967, The Unlawful Activities (Prevention) Act was passed, which has been amended following the Mumbai terror attack to make it more threatening to personal liberty, rule of law and democratic activities.

The Rowlett Act, which was opposed by the whole nation, provided that the local government would write to the Chief Justice of the High Court for the trial of a person accused of the offences covered by the Act, and the Chief Justice would constitute a bench of three judges to hear the case. However, the accused would not have the assistance of a lawyer and would have no right to appeal. The trial had to be held in camera. Under the Act, an accused could be committed by the local government to any custody for seven days, which might be extended to a maximum of fifteen days. What distinguishes this colonial 'black law' from the 'special laws' of democratic India is that under the infamous Rowlett Act thousands could not have been arrested in one swoop as was done under MISA at the night of 25/26 June, 1975 nor could 76000 people be sent to the jail as was done under TADA. A Mayawati could not settle scores with Raja Bhaiya (who is reputed to be a 'Bahubali' but is no terrorist) nor could a Jaylalitha wreak

vengeance on Vaiko (an M.P. with no criminal record). The provision for trial by three High Court judges of an accused underscores the fact that the colonial government had more concern about miscarriage of justice under a draconian law than the rulers of the democratic India.

The political class in India has no regard for a common man's personal liberty. It is not a coincidence that all the draconian laws (like The P.D. Act, 1950. MISA, 1971, NSA, 1980, TADA, 1985, POTA etc.) are so wide in their scope of application as to bring anyone, no matter how innocent, in its ambit. The immediate cause for their enactment has only been used by the governments concerned as a ruse to acquire more and more power. 19000 persons were arrested under TADA in Gujarat alone where there was no trace of terrorism during the 80s, but no question was asked about its misuse and the suffering of innocent people. The number of innocent persons who have fallen a victim to these black laws must run into lakhs, but there has been no debate about so framing the laws as to exclude the possibility of the victimization of innocent persons or of making those misusing the law accountable and liable for punishment. There has been no demand or debate in the political class ruling the country about paying compensation to the innocent persons who have been wrongly deprived of their personal liberty. There appears to be a consensus that the life and personal liberty of the people are not important enough to deserve protection though every black law contains a specific provision to protect those who may misuse or abuse it and deprive innocent persons of their personal liberty.

Had the judiciary played its role effectively as the protector of life and personal liberty, the picture would not have been so deplorable. Being the successor of the pre-independence judicial system, which was not separate from the Executive, our judiciary could not fully attain the spirit of separation (from the Executive), at least at the psychological level, necessary to play the role the

Constitution envisaged for it. The expression 'according to the procedure established by law' in Art. 21 reinforced its feeling of proximity with the Executive which culminated in the shameful verdict of the apex court, in which it was held that when an Emergency was declared and the right to life and personal liberty had been suspended the State was free to take away anyone's life or personal liberty and the court could not interfere (ADM Jabalpur v Shivakant Shukla, 1976 and Union of India v Bhanudas, 1977). Though departing from the previous position, the apex court held (in Maneka Gandhi's case, 1978) that a law must be just, fair and reasonable, its subsequent judgments do not show that this maxim emanated from a deep conviction. Had the test been applied to the draconian laws which vested vast and unbridled power in the Executive to arrest thousands without any accountability, they would have been quashed in their present form. Neither could a lawless law like The Armed Forces Special Powers Act have passed the test of being 'just, fair and reasonable'.

The lower judiciary, which deals with thousands of people arrested by the police without warrant and accused of petty offences, shows a callous disregard for personal liberty. Even with full knowledge that inordinate delay in their trial is inevitable, and the prisoners in the jail have to live under inhuman conditions, there is no effort to release those whose detention is not legally necessary. It does not require innovation or boldness but only doing their duty by observing the law. If they follow the letter and spirit of the Cr. P.C., bail would be the rule and jail the exception. The Section 437 of the Cr.P.C. categorically provides that bail should be refused only if the accused is charged with an offence punishable with death or imprisonment for life, and there is ground to believe that he has been guilty or if he is accused of a cognizable offence and has been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more or has been previously convicted on two or more occasions of a cognizable and non-bailable offence. It has been also provided that even they may be released on bail if

it appears to the court "that it is just and proper to do so for any other special reason." The rest are to be released on bail. Thus, 90% of under-trial prisoners continue to languish in jails in flagrant violation of the letter and spirit of the law. Personal liberty appears to be of so little value and importance to the lower judiciary that they refuse bail as a matter of policy in several classes of cases, and the accused move these courts only because they cannot approach the higher court bypassing them. If the lower judiciary is made to follow the provisions of the Cr.P.C. in their letter and spirit, an overwhelming number of under-trial prisoners would be free from unwarranted and unjust incarceration. However, the issue of personal liberty does not seem important enough to the judiciary - higher or lower- to merit their attention.

The gulf between the appearance and reality of this most basic right of man reflects the gulf between the form and substance of our democracy itself, and unless it is bridged, we will continue as the largest democracy in the world without being a real one. □

Srilankan Tamils

K. G. Kannabiran

Hannah Arendt writing on revolution says, "Though the whole record of past revolutions demonstrates beyond doubt that every attempt to solve the social question with political means leads into terror and it is terror which sends revolutions to their doom, it can hardly be denied that avoiding this fatal mistake is almost impossible when a revolution breaks out under conditions of mass poverty." This Empirical assessment sets out the consequences correctly. How does a movement for securing rights and recognition of a minority degenerate into? What are the compelling reasons that drive a people to take up social questions?. Is mass poverty not a social question which leads to unrest and if unredressed will lead to organized rebellion? Does any

revolution just break out or does it take a longtime to ripen into a rebellion? Sri Lankan Tamil issue like all minority issues commenced after termination of colonial Rule just as the Muslim Minority issue was raised in India resulting in the formation of Pakistan and was as bloody. .

The island nation was also a British colony and at the time of change of guards apart from the Sinhala majority ordinarily resident minorities were the Lankan Tamils, the Indian Tamils working in the tea plantations, the Muslims in the East and the Burgers. The idea of a Ceylon Federation even in the 1930s was present. But the idea of federation was not taken seriously and the Tamil Congress under the leadership of Ponnambalam then fought for equal representation in the Parliament.

Though the Tamil Minorities were around 30 percent they were fighting for an equal representation and empowerment with the majority community. British colonies after their occupation imposed an administrative integrity and unified peoples living under their occupation for purposes of better exploitation and this unified the different peoples in the colony and they fought together against this foreign exploitation irrespective of linguistic and racial differences...

When the colonizers left these colonies of disparate races and people found it is advantageous to continue the colony as a nation and never thought of working out principles for living together and later living together as equals became a political problem. This problem went unperceived the common enemy was

unrelenting foreign exploitation. In all these plural communities all were subjects to the British and were in that sense equal and not in the Constitutional sense.

the 1948 Citizenship Act and the Parliamentary Elections (Amendment Act) which disenfranchised the Tamil Plantation labour who formed about ten percent of the population and what happened to these parties and their role in governance was just a reenactment of Eighteenth Brumaire with due modifications. And in this the left there was also a willing participant. The vote was in short restricted to citizens of Ceylon. Despite the fact that India indentured labor for generations have been working in the tea gardens of Ceylon producing their main exchange earner. The litigator questioning the denial of franchise to Indian labor went in favor of the Government of Ceylon. The issue of Indian Tamil labour was dealt with politically by the Indian Government and the Govt of Ceylon and finally the Sirimavo-Indira Gandhi understanding led to four percent of the Tamil labour being absorbed in Lanka and the rest repatriated to India. The case of the Lankan Tamil Minority in Ceylon was still unresolved... Politicians habituated to selling off issues or soft pedaling them has been largely responsible for the politics of Tamils turn its faith in violence. A minority demanding 50 percent of seats in parliament lost ten percent of support when Indian labour was disenfranchised and a reduce minority fighting for recognition of equality of status and for equal opportunities and for preserving their culture and identity had to start afresh and the leaders basking in parliamentary comfort failed to work for the Tamil minority.. The Parliamentary process believes in postponing resolution of pressing political problems. All the national parliamentary parties and the left alliances had role in turning Issue of Tamils- a minority issue into one of Eelam problems and matters of right to life with dignity delay would lead to

attrition and therefore does not brook delay. Led to repeated public protests which progressively turned violent and to deal with the increasing violence ordinary penal laws are not enough.

Imitating the British they enacted a Terrorist Act in 1974 and was repealed after two years and the I was reenacted in 1978. With the enactment and enforcement of these Acts the possibility of peaceful resolution receded into the horizon. This failure to recognize the minority status, refusing to accord them equality of status, led to armed confrontation. The choreology thereafter was bloody. The repression and discrimination was so intense and became unbearable that Elam was the only option left.

When Prabhakaran opted for armed revolt the decision was ill fated was a forgone conclusion. Before opting for violence atrocities against violence was condemned and the government was judged by the people as unjust. It did not silence criticism completely. Terrorist laws might have been abused; wrongful and illegal detentions might have been made. One may not be able to help the victims of harassment. The courts will be used as clearing house of information because the trials were public. An insurgency is a qualitatively different approach. The insurgents employ violence against public property and against civilian population. The destruction, the bloodied and torn and mutilated dead bodies are there for all to see. The violence employed by the insurgents is seen as violence and not the violence used by the state forces. One is authorized exercise of power and the other's illegal employment of power and analysts do not go to the first causes but would be midstream analysis where what will be seen is the death and destruction... If armed insurrection is prolonged and when stagnation sets in then the movement suffers from schisms and suspicions of the bonafides of the persons who have been sympathetic to the cause

but may differ with the leaders' way of employing violence. The Tamil movement alienated the support and sentiment of the Muslims in the East and the Sinhala in the rural areas of the island. The narrow chauvinism of Tamils leading to attacks on Sinhala villages led to a Sinhala backlash. The attack on Sinhala villagers were in fact an act of reprisal for the attack on Tamils in the north. Sinhala will not understand nor condone violence. The liberal Sinhala opinion was thus alienated.

"The Broken Palmyra" a collective study by five of the Faculty of the University of Jaffna the bloody history of this gruesome ethnic conflict also sets out the course violence was taking and they felt it created a whole lot of distortion where no rational debate was possible. These were all sympathizers of Tamil Cause but were disenchanted with the struggle that appeared to lead the Tamils nowhere. The problem with violence is with its nature itself and its inevitable progress to more malignant form. Violence dehumanizes and brutalises the user -- a marked intolerance for difference of opinion, a fanatical faith in ones own view, or a blind obedience to leadership, a conviction of infallibility, and a casual indifference to pain, suffering and life -- manifest themselves." They accuse all active participants in this whether they are army officers, militants belonging to various group and representative of undemocratic regimes of gross abuse of power or of justifying such exercise of power. Fasts, peace talks and other such events were stop gap arrangements to prepare for fresh attacks. An honest expression of difference should not lead to death. One of the authors of the Book Broken Palmyra, Dr. Rajanthiranagaa was shot for expressing doubts and honestly having doubts about the violence employed on 21st. September 1989. People are done away with as collaborators, suspected tool pigeons and for not being faithful to the moment. This has been the history which Chomsky faithfully

records while at same time taking cudgels against Imperialism. There will be revolutionary movements so long as unequal and unjust societies exist.

It was Marx who talked about transforming unjust societies and not by just interpreting the world and leave it at that. He also said that the power welders will not easily give up the power to change the social structure and allow rearrangement of social structure justly and equitably and all this can only be attained by violence. . By the time LTTE flowered into an organization to be reckoned with, the communist experiment collapsed armed rebellion as a means to bring about social change or a way of restructuring society became questionable. LTTE violence could make no progress. No international mechanism was put in place by the UN to intervene and effectively resolve the reasons for the civil internal conflict. There was an ongoing peace process for over a decade where LTTE was represented by Anton Balasingam. But it did not come anywhere near the solution. The peace or any previous attempts at cease fire gave both the parties some respite to plan their strategies to carry on this mayhem. Tamils converted human beings into bombs to ill innocent civilians and every explosion of a human bomb alienated the sympathies for the cause. Large number of people who never took sides in the dispute were killed; large number of Tamils were killed in this genocidal war, more Tamils. The Tamil movement lost men to fight for the cause. There was such depletion of manpower that it was rumoured that they were using child soldiers. The violence of LTTE courted unpopularity, however brilliantly Prabhakaran fought for the Tamil cause. If violence becomes an end of itself, the years spent in that very competent fight by a mere handful of insurrectionary men - handful they were as against a standing army of Sinhalese State - prove wastage of those years.

The victorious will assert that his way of resolving the dispute is the right way and he is sure he has postponed any debate on Tamil issue for generations to come and the Tamils will have to get assimilated on Sinhala terms. Assimilate to live like helots of the Sinhala society or perish. Rajapakhe, the President by the victory has to be rigid without giving in on any Tamil rights or be deposed. Prabhakaran has been killed but to think Tamil issue perished with him is to live in a fool's paradise.

Sinhala intransigence is against the lessons taught by history including the history of the Second World War. The Sri Lankan State is a Buddhist State. For it is constitutionally so defined. The Buddha gave to the world the concept of equality and non violence. After the horrendous killings in the Kalinga war Asoka embraced Buddhism. Here we have Buddhist state discarded the tenets of Buddhism and has been for over three decades embarked on mayhem on the Tamils. On enquiry a Buddhist monk in Colombo told me that non-violence is as between Buddhists and not as between Buddhist and non Buddhist. An illustration that once religion is brought on to the political agenda the humanist content in it is washed out

Hitler's politics was focused on a virulent Anti-Semitism. He projected a Jewish Conspiracy against the world people. He designed the Final Solution. The Second World War was against annihilation of Jews. Everybody can watch in the History Channel on his or her TV the systematic way in which more than a million Jews were exterminated in the Auschwitz gas chambers in the forties of the last century. Intolerance of Minorities and Scheduled Castes and Tribes lead to such carnages and we already witnessed these carnages despite what the Constitution ordains. Our Constitution was on the anvil immediately in the aftermath of the Second World War, obviously taking into account the Hitler and Mussolini's fascist political regimes. It has worked

out an elaborate scheme for equality and set out principles for governance of plural societies. Ceylon is also a liberated colony after the Second World War and has a modern Constitution and calls itself socialist.

The newly formed United Nations structured a Declaration of Human Rights for the first time focused on the Rights of world peoples. Says one of the preamble of the Declaration "Whereas it is essential, if man is not to be compelled to have recourse to violence as a last resort, to rebellion against tyranny against oppression that human rights to be protected by the Rule of Law.. That was humanitarian law which began to grow for the governance of the people. At the end of the war and in 1948 came the Convention against Genocide as a sequel to more than million Jews and perhaps he other nationalities living around Germany This Convention defined the Crime of Genocide - Convention on the Prevention and Punishment of the Crime of Genocide. Killing or attacking Tamils is Genocide and killing Sikhs, Muslims, Christians and Scheduled castes and the Tribes is Genocide. Targeting any religious ethnic linguistic or caste would be genocide and under the International Criminal Code now apart from genocide "crime against Humanity" is also an offence. And encounter killing of political dissent would be equally a crime. But the problem is the suffering people and their supporters cannot access these bodies for access and procedure instead facilitating access is making it impossible to access justice.

In this very case I presented, on behalf of PUCL presented a petition to the permanent of the Security Council. We were assured that our presentation would be considered. Then we were directed to approach the UN Human Rights Council. Which is no improvement on the late UN Human Rights Commission? The Council is represented by the Diplomats sent by

the respective countries. Butchers' deciding the Butchery enacted by one country is justified and in fact is laudable! Recently the U N Human Rights Council met the Resolution w sponsored BY Swiss and some others for prosecution of the Sri Lankan State for GEMNOCIDE OF TAMILS was put to vote and 26 countries were

against the Resolution and among them we were one and around 17 were for. The Sinhala State was congratulated for his victory and for ensuring that none of the brood of Prabhakaran survived. The diplomats enacted yet again a Munich, in the impossible circumstance putting a restraint on the pursuit of genocide

and encouraged and or congratulated the success of relentless pursuit of genocide- gross human rights violation condoning of which can only lead to a resumption of a violent revolts even if subjugated temporarily- - unless of course we cynically declare "in the long run we are all dead!" □

Let our People go Home Mano Ganesan MP

Leader of Democratic Peoples Front and Member of Parliament for Colombo District Sri Lanka
(English translation script of the Sinhala interview appeared in Ravaya weekly on 9th August, 2009)

How do you describe the current situation in the IDP camps?

President Mahinda Rajapakse's own advisor Vasudeva Nanayakara referred to the IDP camps as Hell. Former chief justice Sarath Silva called these camps as open prison camps. They commented in Sinhala language. I am looking for more suitable terms beyond these descriptions. It is a fact that these camps are being maintained contravening all accepted national and international laws. These camps symbols of disgrace to our national history, cultural traditions and people.

Do you propose actions beyond sending water bottles, clothing and food packets from the people of south to the refugees?

Sure. These people are neither beggars nor homeless street people. They are prideful people who lived honorably in their traditional villages, the villages and land of our ancestors who lived and shaped our heritage for thousands of years. It is very true that Buddhism and Hinduism carry the messages of kindness and mercy. But these people do not require mercy. They need no to be at anybody's mercy. This national problem cannot be restricted to water bottles, clothing, food packets and tents. Government is trying to cover it's nakedness by using the media excessively to telecast the 'merciful' supplies of such goods to the IDPs. I feel embarrassed as a member Sri Lankan state to note this shameless act of the government. This trend of portraying our people as poor beggars on the breadline should stop at once. Their legitimate rights

to live freely in their own traditional villages should be treasured and respected. I am talking this from my heart. I address this to the hearts of my Sinhala Buddhist brethren. I wish to engage myself in efforts to win over the hearts and minds of our Sinhala brethren in view of ending this national humanitarian crisis. Government is trying to wrap this humanitarian problem under the carpet. I call upon the goodhearted Sinhalese people to unite and defeat these efforts of the government.

How do you look at government's handling of the IDP issue?

The government had blundered from the very beginning. I am telling this because I believe that no lawfully elected government can perform similar to that of a terrorist group. All those human rights violations of LTTE are matched and even surpassed by this government. The violations continue to occur. I believe LTTE's non state terrorism has come to an end. But this government's state terrorism is existing widely. I cannot find any streak of humanism anywhere in the so called humanitarian operations of the government. At this very moment over three hundred thousands of our people are being detained behind barbed wires and their movements restricted against their free will. Is it not state terrorism? Government's initial statistics talked about seventy thousand people. But it is now over three hundred thousand. The numbers of people gathered today were not anticipated by the

government. This government at that time air dropped leaflets calling the people to come into the government held territory. People accepted the invitation and came into government territory. But the government had no ability of infra structure basis to house this large number of people. This government will never acquire that ability. Therefore our people are becoming mentally and physically sick patients on a daily basis. The physically sick die. The mentally sick commit suicide. Children, Women and Elders are becoming orphans. Especially the conditions of our women have become very vulnerable. Our people are forced to wait in long queues for toilets, baths, water, food and medicine from dawn to dusk. Our people are becoming members of a 24 hour line-up society. The government is behaving very indecently to cover these realities. Elected Parliamentarians and media personnel are not allowed to visit these sites independently. No such restrictions imposed in any such camps housing displaced people anywhere in the world. This is the reality. They are not welfare villages. I refer to these camps as open prison camps. This is the treatment meted out to our people by this government.

While some sections disapprove, certain others approve government's handling of the displaced people. How should a responsible government act at such juncture?

Only politically cruel and communally insane persons approve such inhuman conditions. These are

small numbers of persons. But through excessive media coverage they attempt to interpret this as the majority opinion. But I do not think that majority of our Sinhala Buddhist people approve this. This is not a private problem of the government. First of all this government should understand this. Therefore the 'Northern Blossom' (Uthurata Vasanthaya/Vadakkinn Vasantham) program cannot be implemented according to the plans drawn as per the government designs. At this hour of national crisis, the government should form an inter-party commission powered to take independent decisions. This commission should be authorized to question and receive answers regarding the governmental executive decisions and acts. Need of the hour is transparency. According to the reports received by us, over two hundred and fifty thousand people demand to go back to their villages independently. These people do not require any governmental assistance. This is the demand of the people who wish to continue living in their traditional village lands where their

ancestors lived over thousands of years as an ethnic nationality. Neither this government nor any force on earth can deny this traditional and historical right of our people. I wish to state this very categorically. We will never accept the efforts of the government to create new townships changing the demography. Government is magnifying this problem to undue proportions to suit its own political agenda. The less government we have the better said Emerson. But this government is administering everything from toileting to sleep bed and from birth to death of the displaced Tamil civilians. This government has made everything government in every aspect of the displaced Tamil civilians by supervising and interfering in every stages of their personal lives. This is nothing but systematic insult and injury to the Tamil civil layers. Government is purposefully postponing the resettlement of the civilians. Government again and again talks about landmines. I will not buy this story. The mined territory is only about 10% of the total land. All

knowledgeable civilians know this. Our security forces reached Vanni heartland from all directions well through the territory. Let our people go home. It should occur with immediate effect. It is the need of the hour. Under the circumstances, our priorities number one, number two and number three are letting our people going back to their homes.

Today rights to life and speech are under threat in the north and as well as in the south. What is your intervention in this regard?

I live in the south. But I never gave a round of applause when the rights to life and speech were violated in the north. I am for an undivided Sri Lanka. I always provide my highest most respect to our national flag. But when such rights were publicly violated in the north, I did not raise our national flag. I did not bring insults to our national flag by engaging in such activities. Do not wait until the arm of tyranny taps your door. Be on your alert. Get together. Join hands. This is my call. ☐

Punjab PUCL :

In the High Court of Punjab & Haryana at Chandigarh

CWP No.16546 of 2004(O&M)

Date of Decision: 4.7.2006

Peoples Union for Civil Liberties, PanchkulaPetitioner

Versus

State of Haryana and othersRespondents

CORAM; Hon'ble the Acting Chief Justice

Hon'ble Mr. Justice Ranjit Singh

Present : Mr. U.S. Sahni, Advocate, for the petitioner;

Mr. Randhir Singh, Sr. DAG, Haryana.

Mr. S.P.Singh, Advocate for the intervenor.

HARJIT SINGH, ACJ (ORAL):

This order will dispose of the CWP No. 16546 of 2004, CWP No.1190 of 2006 No. 17140 of 2004, CWP No.7825 of 2006 AND CWP No.9551 OF 2005.

The facts have been taken from CWP No.16546 of 2004. The petitioner is the People's Union for Civil Liberties, Panchkula. The facts of the case are as under:-

The grievance raised in this and the connected writ petitions is that Khaap Panchayats of three villagers, namely, Asanda, Baproda and Kharhar, District Jhajjar were interfering in the marriages of different sub-castes within the members of the Jat community. Specific incidents have been highlighted in the other connected writ petitions. The prayer of the

petitioner is that the interference of the Khaap Panchayats was wholly unjustified, and that they had no business in commenting on the validity of a marriage between two consenting adults. Several cases of such interference have also been highlighted in the Annexures.

Notice of motion had been issued in all these connected matters and a comprehensive reply

has been filed in CWP No.1190 of 2006. In the meanwhile, on an application, an intervenor has been allowed to join the proceedings and is represented by Mr. S.P.Singh Advocate.

The learned counsel for the petitioners has argued that the action of the Khaap Panchayats was wholly unconstitutional and completely against all social norms. It has also been pleaded that the successive State Governments had been mute spectators to the misdoings of the Khaap Panchayats and that such a state-of-affairs should not be allowed to continue. In the comprehensive reply filed on behalf of respondent nos. 1 to 3, a positive stand had been taken that the victims of the Khaap Panchayats had been provided adequate personal security and that FIRs had been registered against those who had committed and offence. An additional affidavit has been filed

today on behalf of the State Government basically reiterating the contents of the earlier written statement and further pointing out that the members of the Khaap Panchayats had been warned and advised not to interfere in such matters in future and that Dharam Singh, president of the Khaap Panchayats concerned had been specifically warned and admonished by the police in that direction. In view of the above situation, we put in to learned counsel for the petitioner as to the other steps which could be taken in a matter which was primarily a societal and not a law and order problem. They have given two suggestions which we have noted down, the first suggestion is that such an event occur or was likely to occur, the officials concerned should act decisively in the matter, and the second that the District Magistrate and the S.P. concerned should call

the presidents of the Khaap Panchayats and warn them to be careful in future and further advise them that to such behaviour would be tolerated. We accordingly direct that the above suggestions will be kept in mind-by the State Government and that the State Government will act accordingly. We also note from Para 6 of the additional affidavit filed today in court that the State Government has already proposed that if a member of a Khaap Panchayat, who also happens to be a member of a Panchayat elected under the provisions of the Haryana Panchayati Raj Act, 1994 misconducts himself and supports the illegal acts of the Khaap Panchayats, he will be proceeded against under its provisions.

With these observations the present writ petitions are disposed of. □

Mizoram PUCL : Letter :

The Hon'ble Chief Minister, Mizoram, Aizawl.

Through: The Hon'ble parliamentary Secretary to the Chief Minister

Subject: Constitution of Mizoram State Human Rights Commission

Sir,

1. With reference to the above subject, you may be aware that parliament of India passed The protection of Human Rights Bill in 1993 (which was amended in 2006) bringing into force the protection of Human Rights Act, 1993 from September 28, 1993 covering the whole of the country. You may also be aware that State Governments were expected to constitute a state level Human Rights Commission as given in the Act if they so desire.
2. That Sir, 17 State in the Union of India have till date constituted their own Human Rights Commission, and that Mizoram unfortunately is not among these states having its own HR Commission would not have missed your attention. As you are well aware, Mizoram has been facing criticisms from several

quarters over human rights violations from time to time although this is not to say that Mizoram is among the state of India which has a long adverse list of human rights violations. At the same time, it may be underscored that protection of human rights had not been foremost in the action of the state Government ever since the underground movement for independence was commenced by the Mizo National front in 1966. This resulted in the formation of an organization called people's Conference by the retired army Brigadier T. Sailo in the mid-1970s which sought the protection of human rights which, in those troubled times, had been grossly violated by army personnel operation in Mizoram.

3. Being situated between two foreign countries and given the

demography of the Mizo people in Bangladesh and Myanmar and in the India state of Tripura, Assam and Manipur which all have boundaries with Mizoram, there have been social and economic problems for our state in dealing with the influx of political and economic migrants from these foreign and domestic neighbors, both Mizo and non Mizo which have sometimes resulted in violations of human rights bringing about severe social upheavals in the state. You, Sir, may also recall the late 1990s over the Bru (Tuikuk) problem which till date remains to be solved.

4. Given the above facts, people's Union for Civil Liberties Mizoram Branch consider it essential the Government of Mizoram constitute a Human Rights Commission as per The protection of Human

Rights Act, 1993 not only to protect the rights of these migrants from other countries and neighbouring states, but also to insure the Mizoram citizens are not subjected to distorted facts which they are sometimes subjected to when people from outside the state conduct rights violations inquiries in the state. The facts become distorted simply because rights activists from outside Mizoram do not have access to a body such as a State Human Rights Commission which can be relied on to supply

truthful and factual information because they are constitutionally constituted.

5. As such, Sir, Mizoram PUCL earnestly pray that your Government view the matter of constituting a State Human Rights Commission with all seriousness and as one of pressing urgency especially in the light of the latest episode about rights violation as given out by the New York-based Human Rights watch concerning Mizo brethren from Myanmar

which has brought shame and embarrassment not only to the Young Mizo Association and the Government of Mizoram, but to the Mizo society as a whole; an incident which Mizoram PUCL believe was brought about by the absence of such a body in state.

Sincerely yours

Sd./-

(David M Thangliana, President,
PUCL Mizoram Branch) □

Chhattisgarh PUCL :

Preliminary Report of the Fact-Finding Team on State Repression

(Based on visits from October 1 to 4, 2007)

I. Introduction:

The People's Union for Civil Liberties (PUCL) has been concerned about growing state repression in Madhya Pradesh, especially in the districts of Betul, Harda & Hoshangabad. It has been receiving reports from various quarters, including the victims. The PUCL has also been apprised of various steps taken by the victims for relief, which includes approaching the District Courts, the High Court of Madhya Pradesh at Jabalpur, the Tata Institute of Social Sciences (TISS), Mumbai, the Human Rights Law Network (HRLN), Mumbai & Bhopal, the Chief Minister, the Government officials, Political Parties, Social Action Groups, and other Human Rights organisations.

On perusal of available documents and primary information collected by the PUCL Team, the complaints/grievances are of the following nature:

1. That the District Administrations at Betul, Harda and Hoshangabad districts were using exclusive and specific repressive measures targetting particular political parties, social action groups working on the issues of people's human rights guaranteed under the Constitution of India, political and social activists, and the people themselves (mostly tribals in this case), who were basically denied of rights to land, water and

forest, etc.

2. That the provisions of the Madhya Pradesh Rajya Surakshya Adhiniyam 1990 (generally described as Black Law) were invoked against political and social activists which includes harsh measures like externment from six to nine districts for a period of one year.
3. That a series of criminal cases were registered against the political and social activists, which included kidnapping, attempt to murder and dacoity etc.
4. That people, mostly tribals, struggling for the right to life & control over livelihood resources like jal, jangal and zameen, have been harassed on day-to-day basis by the Forest Department, including physical assault, destruction of crops, plantation and houses, etc., and registering criminal cases leading to long periods of incarceration in Jail;
5. That in the process, the people, mostly tribals, were being deliberately denied access to their homes, forests, land and livelihood resources and, in turn, uprooted and/or displaced due to such repressive measures;
6. That the democratic space available to the citizens and organisations within the broader framework of the Indian Constitution to express their grievances through peaceful demonstrations and protests (like

Dharna, Rallies, Public Meetings, etc.) was being denied by the District Administration by adopting to various un-democratic, illegal and repressive measures against the target groups, organisations and activists. Physical assault, abuses and attacking the dignity of the demonstrating citizens and activists by the police administration were part and parcel of their brutal repressive measures;

7. That such repression was at the behest of certain political forces/elements, business/commercial interests, etc., in the region who were the biggest losers due to the activities initiated by these people's organisations/political parties.

The PUCL constituted a Fact-Finding Team (FF Team) to look into these complaints/grievances:

1. Mr. Chittaranjan Singh, Organising Secretary, National PUCL & Vice-President, UP PUCL (Ballia, UP)
2. Mr. Shyam Bahadur "Namra", Poet, Educationist & Social Activist working in Tribal Areas, Founder Member, PUCL (Anoopur, MP)
3. Adv Rajendra K Sail, President, Chhattisgarh PUCL (Mahasamund, CG)

The FF Team visited the region (Betul, Harda & Hoshangabad) from 1st to 4th of October, 2007, and has prepared its Preliminary

Report. The Final Report will be prepared and submitted to the General Secretary, National PUCL, New Delhi within a fortnight from now.

The FF Team visited the affected villages, met a cross-section of people, including the victims, government officials, representatives of the press, political parties, lawyers, social organisations, NGOs, intellectuals, etc. A separate list is being annexed herewith. (Annexure I)

The Team also studied and inspected various documents related to the incidents.

During its visit, the FF Team was also approached by various individuals and organisations about cases of human rights violations ranging from attack on minority rights, women's rights, children's rights, right to food, right to work, right to housing, and police atrocities, etc. Although, such cases were not directly falling within the Terms of Reference (ToR), the FF Team looked into these with utmost care and consideration it required. However, FF Team is of the opinion that these complaints of human rights violations in these three districts must be looked into separately.

II. Findings:

At the very outset, it must be mentioned that several of these issues and concerns are under the purview of the Madhya Pradesh High Court at Jabalpur and/or other courts of law. Thus, the FF Team would refrain from making any judgment on these issues and concerns. However, it believes that the facts and figures it has collected should form the integral part of this report, as it would help in establishing the truth, and exposing the undemocratic, illegal and un-constitutional activities of the State per se.

A. Target of Repression:

1. The systematic and planned repressive measures by the District Administration have been targeting the following political parties, people's organisations &

social action groups, including their leaders/workers:

- a) Samajwadi Party, b) Madhya Pradesh Kisan Sangharsh Samiti, c) Samajwadi Jan Parishad, d) Shramik Adivasi Sangathan, e) Kisan Adivasi Sangathan

2. The obvious objective of taking such repressive measures against these political parties, people's organisations, social action groups, leaders and workers is to contain their growing political influence and/or increasing mass appeal due to their focused democratic action and rights-based approach in dealing with the people's basic problems like food, forest, land, work, shelter, etc.
3. The mass education and action initiated by these political parties, people's organisations, social action groups, leaders and workers has led to exposing corruption, illegalities, irregularities and non-implementation of various government schemes (including welfare schemes), meant to directly benefit the people;
4. The emergence of these political parties, people's organisations and social action groups in the recent times in the region and their direct participation in elections has led to political imbalances primarily amongst the traditional political parties, more so in the present Ruling Party, the Bhartiya Janata Party members;
5. The commercial/business interests represented and/or protected by politicians and political parties have been affected by the activities of these political parties, people's organisations, social action groups, leaders and workers, even leading to action by the High Court, like in recovery in the illegal mining in the forests, etc.

B. Externment Proceedings:

6. The initiation of proceedings under the Madhya Pradesh Rajya Suraksha Adhiniyam 1990 (especially the externment proceedings) against the targetted parties and activists is purely politically motivated, and prima facie appears to be baseless in

so much as in majority of the cases:

a) the criminal proceedings quoted in the notices served by the District Magistrate of Betul to 3 political workers (Mr. Milind Khatarkar, Mr. Manoj Agrawal and Mr. Anil Soni of Samajwadi Party) u/s 5(a) & (b), have been recommended to be withdrawn by the State Government itself in the interest of justice (Annexure II)

b) the criminal cases cited in the notices served by the District Magistrate of Harda to two political workers/social activists (Ms. Shameem Modi & Mr. Anurag Modi of Samajwadi Jan Parishad) u/s 5(b) (at a later stage of the proceedings other sections were added), all these were initiated on the basis of the letter written by Superintendent of Police and Divisional Forest Officer of Harda on 5/6/07 to the District Magistrate Harda. In the said letter no where encroachment is attributed to either of these two activists (Shamim and Anurag) or their organisation to which they belong. The copy of the letter is attached herewith. (ANNEXURE III)

c) Some of the evidence appears to have been either manufactured or manipulated in order to suit the charges made in the notices. For example, an audio-cassette recording and its manuscript of a speech made by Ms. Shameed Modi has been produced by the Police Department as an after-thought, although no mention of the same has been made in the notice served by the District Magistrate. The contradictions and discrepancies in the video-recording and the manuscript of the speech require strict scrutiny to establish its authenticity.

7. Without going into the merits or demerits of the case, the PUCL's stand is clear that such laws like the MP Rajya Suraksha Adhiniyam 1990 are undemocratic and un-constitutional and, therefore, need to be repealed. The existing normal laws of the land, like the Criminal Procedure Code & Indian Penal Code, etc., are sufficient to bring

to book the culprits through due process of law;

8. An objective analysis of the use of such repressive laws like the MP Rajya Suraksha Adhiniyam 1990 has revealed that it has been selectively used to target the political opposition or to benefit certain vested interests represented by political elements. The case in point is demonstrated by the list of citizens in Betul and Harda (supplied by the District Magistrates) against whom such proceedings were initiated during the past one year. (ANNEXURE IV)

C. Repression on Tribals:

9. The major conflict between the tribals living in the forest areas and the Forest Department has its roots in the age-old demand of settling them on forest land. The recent legislation named the Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 conferring forest land rights with the cut-off date of 13.12.2005 has resulted in a new spurt of activities leading to gaining control over forest land by the landless. Interestingly, the DFO, Harda District has also recognized four major causes of the problem of encroachment in his report as follows (in that order!):

"3. Major Causes of the problem of Encroachment:

1. Demand for Agricultural land by the Adivasis

2. Repeated Settlements are also leading to the encroachment. For example, in the year 1976 tribals were settled, and then in 1980 it was done, and in the present the Bill dated 13.12.2007, settlements are to be done in accordance with the provisions of the Bill.

3. Increase in the family population is the major cause of encroachment.

4. Adivasi Organisations also instigate and motivate the villagers for encroachments." (ANNEXURE V)

10. However, instead of finding a peaceful and long-term solution within the broader framework of the recently passed legislation, the strong-arm of the government

is coming heavily on the vulnerable tribals resulting in present conflict and confrontation. Although, the government officials the FF Team met recognize the need for a positive solution to the present conflict between the "tribals" and the "forest/police administration", no one seems to be coming forward in doing so partly because of political considerations/pressures.

11. The tribals in the region are constantly facing harassment by the Forest Officials, which include taking bribe (both in cash and kind), destruction of their crops, houses, family belongings and, very often, physical and sexual assault;
12. The tribals, on the other hand, have been struggling to lead a dignified life through hard work, which includes tilling the land and growing food through meagre means, collecting forest produces, migrating to near-by places in search of work, etc. That too without any visible support from the Government, especially the Forest Department, through various welfare schemes meant to benefit them;
13. The tribals dwelling in the forests the FF Team visited were denied of basic rights to education, food, water, shelter, health, work and security;
14. The tribals organized by these political parties, people's organisations, social action groups were all the more subject to harassment and brutal repression by the Forest and Police department. Even the tribal women and children were subjected to severe repression and atrocities.

D. Destroying Democratic Space:

15. The democratic and peaceful activities of these parties and organisations have been crushed by biased bureaucrats obviously trying to please their political bosses in dereliction their Constitutional duties; that too by resorting to illegal and brutal means;
16. There are examples of blatant violation of civil liberties & democratic rights of the people's

representatives from Janpad Panchayats, Gram Panchayats, etc., where they were forcefully/ illegally detained by police and revenue officials without even bothering to show cause as to why and under which law they were illegally detained. Later, it became clear that such illegal and unconstitutional means were adopted purely to prevent the people's representatives to expose large scale corruption, irregularities, and atrocities of the involved officials before the Chief Minister of the State and/or the higher administrative officials. No records were maintained of such unlawful and unconstitutional activities of the police and revenue officials. The case in point is that of the members of the Kisan Adivasi Sangathan (Annexure VI)

17. The District Administration, especially the police administration, has demonstrated utter contempt for the guidelines provided by the Supreme Court in Justice DK Basu case. (Annexure VII) Many government/police officials even do not have any knowledge about the DK Basu Guidelines, although it is mandatory to display these prominently at each Police Station, according to the judgement of the Supreme Court of India.
18. The established democratic institutions like the Gram Panchayats, Gram Sabhas, etc., are totally by-passed and/or ignored in resolving some of these conflicts, and the role and place of such democratic institutions is not even recognized by the District Administration/Political Parties in preserving and promoting the fundamental rights of the citizens like the tribals living in forest areas;
19. The Social Action Groups, People's Organisations and Activists have resorted to peaceful forms of agitation within the democratic framework of our country. It is clearly established that the District Administration itself has recognized this fact through granting of permission to hold rallies, public meetings,

demonstrations etc. No evidence is available to show that these organisations, groups and activists were resorting to violence or adopted un-parliamentary means to protest.

E. Political & Economic Interests:

20. The series of repressive measures by the state machinery against these political and social activists have gained momentum in the recent times due to threats they have posed to the political and commercial interests of the select few who have been the major beneficiaries of the system, so far. This is clearly evident in the Court's order where recovery of Rs. 4.5 Crores has been directed from the Contractors involved in illegal mining of forest/stones in the area. (ANNEXURE VIII)
21. This point also gains strength in the findings of the Election Commission of India, where it clearly indicates that the illegal detention of one of the candidates in the Lok Sabha elections in 2004, Ms. Shameem Modi, was due to political pressures and vested interests. Interestingly, the recommendation of the Election Commission of India calling for an enquiry and action against the erring officials is still pending. (Annexure IX)

III. Recommendations:

1. The Madhya Pradesh Rajya Surakhsha Adhinyam 1990 must be repealed forthwith, and all proceedings initiated under this draconian law must be dropped

against all. If the District Administration has any evidence against the erring groups and individuals, these must be filed under the normal laws of the land like the Cr.P.C., and IPC etc., and the State should not hide behind the Black Laws;

2. The Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 must be implemented in "letter and spirit" without any further delay. The Central Government must issue notification and prepare the rules and regulations under the Act. The role and place of the established democratic institutions like the Gram Sabhas, Gram Panchayats, etc., must be recognized in resolving the issues related to land, etc.
3. An impartial enquiry be conducted by a Former Judge of the High Court into the systematic state repression and forest/police atrocities on the citizens of Betul, Harda and Hoshangabad. Till such time, all criminal cases and arrests against the political and social activists must be stayed. (It may be noted that the High Court of MP at Jabalpur has already done so in some of the cases.)
4. Some of the names of politicians and government officials appearing again-and-again in supporting and instigating such atrocities and repression on the ordinary citizens, social and political activists, people's organisations etc., must be made

public, and enquiry should be instituted of their complicity in the crimes committed by the State against its own citizens;

5. The PUCL must explore the possibility of approaching the State Human Rights Commission, Madhya Pradesh, and also the High Court of Madhya Pradesh at Jabalpur in fulfilling the above demands.
6. Immediate relief and rehabilitation must be provided by the Government of Madhya Pradesh to the victims of such a state repression, including adequate compensation for the damages done to them.

IV. Vote of Thanks :

We are grateful to all organisations and individuals, including the tribals and government officials, who provided relevant material and information through various means (documents and dialogues), and gave us an insight into the draconian designs of the State Machinery in crushing its own citizens, whose security and well-being is their constitutional duty.

Chittaranjan Singh, Organizing Secretary, National PUCL; Shyam Bahadur "Namra", Member PUCL, Poet & Educationist; Rajendra K Sail, President, Chhattisgarh PUCL. Camp Address: H-12, Anupam Nagar, P O Shanker Nagar, Raipur, Chhattisgarh 492007. 5th October, 2007 □

Memorandum

August 22, 2009

To,

Honourable Shri Ashok Chavan, Chief Minister of Maharashtra

Through

The Resident Commissioner, Maharashtra Bhawan, New Delhi

Subject : Public Appeal for C. B. I. inquiry in the case of a brutal attack on Ms. Shamim Modi - a TISS faculty member and an eminent socio-political activist of the country.

Ref.: Crime No I-229/09 Manikpur P.S, Vasai (W), Mumbai.

Respected Sir,

Ms. Shamim Modi, an Assistant Professor at the Tata Institute of Social Sciences (TISS), Mumbai and an eminent social-political activist of the country was brutally attacked by

the watchman, hailing from Nepal, in her apartment in Vasai on 23rd July 2009. Despite sustaining 118 stitches, she could survive because of her sheer courage and presence of mind. Her powerful political opponents from

Harda, Madhya Pradesh had apparently planned to get her killed by using the watchman and make it look like a simple robbery case. However, Shamim survived to reveal the story, including the exchange that

took place between her and the assailant during the brutal attack. The Maharashtra police are clearly trying to cover up the brutal attack on the life of a whistle blower, stating it to be a simple case of robbery.

The police role needs to be under scanner because of many instances in this episode. The assailant was in Mumbai for two days before he fled to Nepal. In order to make it look like a case of simple robbery, the police even doctored the victim's statement. On 23rd and 24th July 2009, the police had recorded Shamim's statement in which she had categorically told the senior PSI of Manikpur Police from her hospital bed that the attack was not for money and she feared the former Revenue Minister Kamal Patel from Harda, Madhya Pradesh and his business partner Natwar Patel's hand was behind it. At the time of recording Shamim's statement, Dr Rajani Konantambgi, Reader of TISS and the victim's brother were present. These facts can be ascertained from the interview she gave to various media persons. Within a few hours of the incident, Shri Anurag Modi, her husband and an activist himself from Harda, Madhya Pradesh, spoke to the Senior Police Inspector (SPI) of Manikpur Police Station Shri Ashok Pawar over the telephone and informed him about their social and political work in Madhya Pradesh and the repeated threats to the life of Shamim Modi, including two earlier attacks on her. He also informed the SPI about the security provided to her by the local police on orders of the Hon'ble High Court, Madhya Pradesh. Although, immediately after this on

23rd July itself, the SPI provided her with a round the clock police security at the hospital, yet he acted to ensure that these facts did not become a part of the FIR and investigation.

The police have not only manipulated Shamim's statement in such manner that it is made to look like a simple robbery case but also manipulated her husband Anurag Modi's statement. On 27th July 2009, when Anurag Modi visited Manikpur Police station to deliver his statement, much to his surprise, his manipulated 'statement' was ready with the police! This prompted him to cross-check his wife's statement lying with the police and, after examining the said 'statement', he was stunned to find that this, too, had been entirely doctored!

It was only after two independent delegations viz. one comprising the TISS teaching faculty, administrative staff and students met the Additional Chief Secretary, Department of Home, in Mumbai and handed over a memorandum signed by about 700 of them and another delegation comprising several social groups, led by the Ex-Education Minister of Maharashtra, Prof Bhai Vadiya and the renowned social activist Ms. Medha Patkar, met the S.P., Thane (Rural), that finally Shamim's own statement was re-recorded by the police on 3rd August 2009.

On the basis of her fresh statement, we submit the following demands for your consideration:

1. Shamim's statement of 3rd August 2009 should form an integral part of the FIR and, on this basis, an FIR under Section 307 should be

registered against the assailant as well as against the former Revenue Minister of Madhya Pradesh, Kamal Patel and his business partner Natwar Patel for hatching a political conspiracy to eliminate her.

2. The roots of the attack seem to lie in another state viz. Madhya Pradesh and the assailant is apparently from across the national border. There are ample concrete instances in this case of malafide and callous attitude on the part of the Manikpur Police. Therefore, there is sufficient ground to make an urgent appeal to you that the investigation of the aforesaid be transferred to the Central Bureau of Investigation (CBI) forthwith.

3. Provide adequate security to Shamim Modi and her family.

Hoping for your effective intervention to ensure justice to a TISS faculty member and an eminent socio-political activist of the country,

Yours sincerely,

Rajindar Sachar, Former Chief Justice of Delhi High Court, Shri Surendra Mohan (veteran socialist leader and former M.P.), Swami Agnivesh (social activist), Shri Sumit Chakravarty (Editor, Mainstream), Shri Prashant Bhushan (Senior Advocate, Supreme Court), Shri Kuldeep Nayar (senior journalist and former M.P.), Prof. Anil Sadgopal (Former Dean, Education, Delhi University), Prof. Anand Kumar (Jawahar Lal Nehru University), Dr. Rajkumar Jain (Delhi University), Dr. Shamsul Islam (Delhi University), Shri Anil Nauria (Advocate, Supreme Court), Dr. Yogendra Yadav (Centre for the Study of Developing Society, Delhi), Dr. Ajit Jha (Delhi University), Dr. Rizwan Kaisar (Jamia Millia Islamia, New Delhi), Dr. Prem Singh (Delhi University), Dr. Kumkum Yadav (Delhi University) □

In the last week of August a delegation comprising Sri N D Patil (leader of the Jagatikikaran Virodhi Kruti Samiti, Maharashtra), Professor Shivaji Gaikwad and Snajeev Sane (leader, Samjwadi Jan Parishad) met the state Home Minister Sri Jayant Patil. The Home Minister, after long deliberations, has assured CBI enquiry into the murderous attack on Prof. Modi on the last 23rd July in view of the long history of harassments of and attacks against her by two BJP leaders from Harda district of Madhya Pradesh. The state would soon ask centre for it: Editor.

PUCL Condoles the Death of G S Bhargava

PUCL has noted with great sorrow the passing away of Veteran columnist G S Bhargava on September 22, 2009. Mr. Bhargava was a noted political commentator, former Resident Editor of the Indian Express, Hyderabad and Assistant Editor of the Hindustan Times. He was also Principal Information Officer to the Government of India from June 1978 to April 1980 in the post Emergency era. He was a strong supporter of civil liberties and democratic freedoms.

The entire PUCL family conveys its heartfelt condolences to the bereaved family and friends. - Pushkar Raj, General Secretary, PUCL

Gujarat PUCL :

PUCL team of Gujarat inquires into the death of a labour employee

With the growing industrialization in Gujarat, the problems of safety and welfare of workers have become complex. Golden corridor from Nandesari to Vapi, Alang ship breaking yard, Kandla port, everywhere exploitation of industrial workers is on increase. Most of the industrial units in Gujarat are private and since labourers are unorganized, this exploitation continues unchecked.

Adani power plant is under construction at Shiracha, 20 kms away Mundra. Its capacity is 4620 M.W. and according to company sources, it is the 3rd largest thermal project in the country. Its construction is expected to be completed by 2012. There are 8 to 10 thousand workers employed through 50 contactors. Resident colony of the workers is adjacent to power project under construction.

At 11.30 P.M on 6th May 2009, while the construction work was in progress, the employee named Mohammed Mustika Ansari from Bihar, accidentally fell down from the height of 228 feet from the chimney. Due to defective operation of the lift, in which he was being carried away, he lost his life. He was brought from Bihar and was an employee of Simplex Engineering co. After this fatal accident, for two hours, no official of the company came at the site. According to some workers, similar accident had taken place on date 17/4/2009 and the dead body of the worker was hurriedly disposed off by the company in ignorance of other workers. Being aggrieved by the apathy and fearing similar fate of the dead body, workers at the site pelted stones and resorted to violence. Police was called in by the private security guard. After 24 shells of tear gas in vain, the police fired 16 rounds in which 3 workers were injured. According to police, only two were injured. It is feared that private security guard might have fired.

Hearing the news of accidental death of a worker and police firing at Adani Power Plant at Shiracha near

Mundra, People's Union for Civil Liberties (PUCL) formed a four member team which visited the site on 14th May, 2009.

Members of the team met company officials, Mr. Abhay Tamhane, Head of HRD and Mr. G.S. Pareek, Chief Security Officer. After a hot dialogue with company officials and security guards, members of the team were at last successful in interviewing some of the workers. But they were prevented from entering the workers colony. It was learnt that the victim was paid Rs. 8.50 Lakhs compensation.

The inquiry committee, after visiting the site and having interviews with affected people, officials and other concerned, came to the conclusion that.

- There was the violation of the Article 21 of the Constitution of India with regard to Right to life and Right to live with dignity.
- There was also a violation of various other labour laws like Minimum wages Act. 1948, Abolition of Contract Labour Act 1970, Interstate Migrant Labour Act, 1979.
- No warning was issued before firing and in firing all three workers were injured below abdomen, which was again a violation of norms of firing.
- There was total apathy of the local administration, including the Assistant Labour Commissioner and the District Collector. It seemed that inadequate wages, lack of minimum facilities including pure drinking water and toilets, absence of security instruments, apathy on the part of the Company and the Contractor, led to the violence.

Our Recommendations :

1. While framing its land policy and giving priority to industrialization/ industrialists, the State Government should not overlook the provisions of Articles 21, 38, 39-B, 39-C and 47 of the Constitution of India.

2. Registration of all the workers should have been made compulsory.
3. Safety of the workers should receive the top and foremost priority.
4. Hygienic conditions of the workers should be looked after.
5. No night shifts at the site of construction.
6. At the time of initiation of the construction works, a committee consisting of the employer's representative, employee's representative, N.G.O. and Government representative, should be formed to see whether relevant provisions of Constitution and Labour legislations have been complied with or not.
7. Human dignity in terms of Article 21 of every employee should be taken care of.
8. With increasing figures of development, exploitation should not be underestimated.
9. The registration of the migrant labourers should be done in both -home state and state of employment,
10. Recruit Labour Welfare Officers and Additional Labour Commissioners according to the number of industries and labourers.
11. Formation of independent machinery for the Grievance Redressal of the Workers' Human Rights in which representation of eminent citizens of the state should be included.

Investigating Team :

Prof. Ashwin Karia, Vice-President, Gujarat P.U.C.L; Tapan Dasgupta, Political-Social Activist, Vadodara; Meenakshi Joshi, Convenor, All India Mahila Sanskritik Sangathan, Gujarat; Kaklesh Bhavsar, Advocate, Ahmedabad

Date of release : 4th June, 2009; □

Letter : 26th August, 2009

To,

Hon'ble Justice Wadhwa

The Chairperson, Wadhwa Commission, New Delhi

Subject: Submissions for Public distribution System review in Gujarat to the Commission between 22nd August 2009 to 30 August 2009

Respected Sir,

We would like to begin our submission with some crucial fundamental issues which people in general are facing in the context of the Public Distribution System.

(1) Lack of any redressal mechanism for people's complaints on PDS: The people in general are not ready to speak-out because they are threatened with conversion of BPL cards to APL cards and also taking away of Antyodaya cards. Conversion of BPL cards to APL cards seems to be done randomly as many people with BPL numbers have received APL ration cards in lieu of their BPL ration cards.

This is primarily happening because of the attitude of the state machinery as they looked at the BPL card holders as beggars but not as the citizen who has been granted 'right to food'; as their fundamental rights. The same state machinery when they provide the over-subsidized facilities to MLAs, MPs etc. they provide such facilities to them as bosses with extraordinary respect and dignity.

That is why it is very crucial that the appropriate action should be taken by the commission which can become a deterrent to the present heavy handed behaviour and attitudes of the implementing machinery.

(2) Disaster and Project affected people (PAP) in Vadodara, South Gujarat: Since 1968 (Ukai Dam), Koliyari Dam, Sardar Sarovar Dam, Wanakbori, Panam Dam, Industrial estates, ports and JUNRM have displaced lakhs of tribal villages, urban poor and rural communities over the past 30-40 years. The rehabilitation of these populations has no guidelines for ensuring their food security, entitlements to PDS in

any policy of the state. The displaced populations first concern is to ensure safe, secure environments and food security of their families before livelihoods are restored. Recommendation: All PAP's should be issued PDS subsidized ration cards for a period of at least 5 yrs in their rehabilitation package or till such time as their rehabilitation is completed.

(3) We also strongly feel that there isn't a proper functioning structure in place which can monitor and analyze the functioning of the Public Distribution System at regular intervals.

(4) We demand that the commission should direct the authority to adopt the appropriate structure and evolve the methods which will monitor and present the report at regular intervals about the functioning of the Public Distribution System. And for that they should organized the public hearing at regular intervals to get real feedback from the people.

(5) The commission should direct the state to appoint the committee for above monitoring in which ordinary people and people's organizations representatives are also being included as members.

(6) In view of the negative repercussions on the complaining persons, an improved complaint and redressal mechanism needs to be instituted.

(7) Large number of people who have lost their employment due to recession are having APL card and now because of their present condition they want to convert their card from APL to BPL which needs special attention and immediate intervention by the commission.

(8) Coarse grains need to be included in the PDS, this will reduce leakages as there is lesser incentive to shopkeepers and bulk-purchasers to get these grains

(9) Food prices have shot-up through the roof. Even APL card holders should receive a monthly supply of grain, oil and kerosene in the current situation.

Following are the points raised by people in their written submission in local language and some of the points orally represented before us.

(1) Right to Dignity and honor is not maintained at all in the PDS. The whole department staff, right up to the ration shop-keepers, treats people with utter contempt. This needs to change immediately.

(2) The conversion of BPL to APL and issuing of Antyodaya cards seems to be random and ad-hoc at best. This needs to change and the process needs to be made transparent.

(3) Implementation of PDS is pathetic and haphazard in interior areas, specifically the Tribal belt of Gujarat, tribals, dalits and minorities areas in urban area also.

(4) Quality of grains is very bad and when people raise this issue they are put down and also treated as beggars.

(5) Randomly some of the BPL card holders are made APL and no proper reasons are given to them and when people raised this issue they are put down.

(6) Functioning of the PDS is ambiguous and ad-hoc.

(7) There is widespread black-marketing of PDS grain. This needs to be stopped.

(8) Quantities allocated to ration card holders is not adequate, this needs to be increased.

(9) Wheat flour given to Antyodaya

card holders is full of chaff, worms and often inedible. This needs to be changed right away.

(10) LAHRC: Shakti, Tapi district: Written repeated complains on PDS filed before block officer, Mamlatdar, District of Surat, MLA and Chief Minister office are never got any redressal or an written acknowledgement of their complaints.

(11) No, Sarpanch, Bhadkuwa, District Surat: No sarpanches or Panchayats receive any information on stocks released, number of APL BPL approved in their village from the department. Hence it is difficult for them to monitor the FPS or make them

accountable. (12) Resolutions of Gram Sabha's on the Antyodaya, BPL sent to Taluka offices are not honored. All decisions regarding the same are taken by executive branches.

We will also further submit our further submission if needed by 1st week of September 2009.

Kamal, Sahiyar (Stree Sangathan), Vadodara, Rohit Prajapati, Member, PUCL Gujarat; Michael Mazgaonkar, Paryavaran Suraksha Samiti, Gujarat; Virsingbhai G. Vasava, Mozda Collective, Narmada District; Kantibhai Mistry, Jyoti Karmachari Mandal, Vadodara; Amrutbhai Patel, Shakti Kanooni

Sahay, Songadh, Tapi District; Madhav Chouhan, Sarvodaya Parivar Trust, Valsad District; Yusufbhai Sheikh, Antarik Visthapit Hakk Rakshak Samiti, Vadodara; Noel Parmar, Sahaj Shishu Milap, Vadodara; Swati Desai, National Alliance of People's Movements, Gujarat; Rukshmaniben Choudhari, Sarpanch, Bhadkuwa village, Tehsil Mangrol, District Surat; Sejal Dand, Anna Suraksha Adhikar Abhiyan, Gujarat; Ushaben D. Gamit, Sarpanch, Dedi village, Tehsil Songadh, District Tapi; Induben Gamit, Adivasi Sarvangi Vikas Sangh, Kapura village, District Tapi. □

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 third part of the Report- Editor.)

1.7 Role of the Media

It is commonly perceived that the duty of the media is to question, investigate and report facts. In the context of Kandhamal, the unquestioning acceptance by a large section of the media of what the Sangh Parivar wanted people to accept is a matter of serious concern. For example, the New Indian Express (25 August 2008) reported, "The State Government again harped on the Maoist theory a day after the brutal killing of Swami Laxmanananda Saraswati. But, is it not too convenient to be true? The left radicals have always stayed clear of religious issues and there has been no precedence of any attack on such grounds. Why would the Maoists, whose armed struggle thrives on the very faith of the local and indigenous populace, target a leader who enjoyed such a support base in a tribal district? This is something that defies logic. While the Government has a point behind masquerading the reason, it is about time it came to terms with the rise of Christian militancy in the State."

On the same day, The Samaj questioned the Maoist connection and gave its own theory. It argued, "The activities of Laxmanananda were not opposed to Maoists' interests. So, why

would the Maoists attack Laxmanananda and his disciples? On the other hand, there were attacks on Laxmanananda several times in the past. His dedicated work to stop conversion and bring back the Christian converts to Hinduism had become a problem for some people, particularly for those who, by taking advantage of the poverty of the Dalits and Adivasis, were converting people through many kinds of allurements."

A large section of the media refuted the Maoist connection and blamed the Christian community without any credible evidence. The remarkable feature of this reporting was the striking similarity it had, in terms of language, logic and details, with the reports of the RSS mouthpiece, The Organizer. So, can't we say that these reports wanted us to believe what the RSS wanted? Let us now see what a section of the media wanted to and could hide. By relying on the baseless theories of religious conversion and blaming the Christian community, rather cunningly, it could camouflage the organized role of the Sangh Parivar in the violence. This role was not analysed with any objectivity. During the campaign of barbarity and violence against the minority, the forced conversions

conducted by the Sangh Parivar did not find any mention in the media. Instead, citing VHP statements, it was said, people converted voluntarily (Dharitri, 30 August 2008). Why was not OFRA applied in this case-this remained uncontested in the media. The media had no scruples in believing and propagating that during a phase of intense violence, people chose to "return" to the Hindu fold "voluntarily." Finally, when the Maoists distributed their pamphlet, gave statements in the electronic media, owning responsibility of the death of Laxmanananda, none in the media-who had been slandering the Christian community-thought of owning moral responsibility and tendering an apology.

The rape of the nun on 25 August 2008 initially did not find the prominence it deserved. After The Hindu reported it in detail on 30 September 2008, the local dailies picked up the thread. The Samaj (24 October 2008) carried the headline, "The Nun's Rape is a Big Lie," and went on to say, "that the two lady doctors have said the nun is in the habit of sexual intercourse." Dharitri (28 October 2008) opined that "the said nun is used to sexual relations."

The rape charges are to be decided in the court of law. Before that,

why is the media engaged in a slander of this kind? Further, the allegation of rape and the private sexual life of the victim-how are the two related? And, with what objective has it been presented to the public by the media? Does that mean women with a sexual life can never bring about charges of rape? Or, is it that raping sexually experienced women is justified? There were pictures of consequences of violence shown in newspapers, but it did not represent the situation of the victims in the relief camps. Statements made by Sangh Parivar leaders found lots of place. But, when it came to the voice of the victims of the violence, it was miserly. The Press Council of India stipulates that the media during violent riots should primarily be the vehicle of peace and goodwill. But, in the Kandhamal violence, the media completely ignored the people who were brave to fight for human values and some of them gave their lives for it. On the whole, the role of the media was anything, but professional. Here, we would clarify that the lack of professionalism does not rest on the poorly paid or unpaid reporters and journalists. Rather, it is the work of the owner-editor-publisher that we are referring to. As has been opined by Professor Mrinal Chatterjee of IIMC, Dhenkanal, (Oriya Language Press: Status, Problems and Prospects, presented at the University of Pune in February 2007) that the major vernacular dailies are always partisan, and are mostly controlled by the politicians. And on this occasion, we would like to add that their partisanship bordered on the unethical and the fascist.

1.8 Human Solidarity

Amidst the madness of violence, hatred and mistrust, there have been a number of instances of human fellow feeling and solidarity that stand out as beacons of hope. One such instance is that of the response of the people of Malikapodi Panchayat. Jamesh Chandra Pradhan, the sarpanch of this panchayat, said, "After the killing of Laxmanananda, the incidents of violence started pouring in from various places. The atmosphere was so scary that people did not venture out after sunset. I decided not to allow any kind of violence to happen, at

least, in my panchayat. I toured village to village and organized meetings, met Christians and assured them of full security. We organized night vigils at various places. Despite all this, some Christian families went to the G. Udaygiri relief camp. It saddened me. Each day, I went to the relief camp to talk to them and to persuade them to return to the village. After three days, they returned. In their absence, their houses remained untouched. Neither is a house damaged nor is anyone physically injured in my panchayat. I feel very happy about it; I was able to do my human duty. Some evil elements (did not say clearly who they are) were trying to create mischief; they even threatened me. I did not care. I think God will judge me if I have done right or wrong."

Dandapani Mallick of Damikia (Bodukia Panchayat, Baligurha Block) says, "In 2007 December, the RSS people were planning to attack Christians. Sensing this, we formed village committees in 4 villages and did not allow anybody to enter. This time also after Laxmanananda's killing, we sat on the road and did not allow the RSS people to enter our villages. They came on 27 and 28 August 2008, but we did not allow them."

Santanu Pradhan, Vice President, Nikhil Utkal Kui Samaj Union (G. Udaygiri), Kanbageri says, "In the periphery of G. Udaygiri NAC, we organized meetings and told people not to participate in the violence. We also took a decision not to allow anybody to create mischief in our area." As people poured out from Kandhamal and sought refuge in nearby kasbas and towns, relatives living on scarce means themselves began sheltering many families each. We met people living in groups of 30-35 each and incognito for fear of being traced by the local Bajrang Dal elements. Relatives outside Orissa too were taking in people. With the current reality of high cost of living and unaffordable housing options, one can well imagine to what extent village acquaintances and relatives stretched their resources to stand up in support. And, they too shared the anxiety and trauma they felt as well as the risks involved.

The Orissa Government in one of its reports to the Centre on the Kandhamal situation has said that "the ongoing conflict in Kandhamal district has its genesis in the age-old ethnic divide and discord between Kandha (one of the Scheduled Tribes) and Pana (one of the Scheduled Castes) communities... There are long standing disputes between Kandhas and Panas on issues arising out of land alienation and certain other perceived discriminations... The ethnic divide between the Pana and Kandha communities got accentuated on religious lines due to conversion of large number of Panas to a different religious community. The communal riot in the district in December, 2007 was also a fall out of such issues. In this backdrop of mutual distrust and animosity, the tenuous bonds of peaceful coexistence between the two communities got destroyed by the brutal murder of Swami Laxmanananda Saraswati, who was in the forefront of the campaign against the alleged forcible conversion of Hindus" (Communal and Ethnic Conflict in Kandhamal District, Government of Orissa). There are a few recurring themes around the situation in Kandhamal that lead to differences in perspective whether it is with some intellectuals, the Sangh Parivar, the Orissa Government, journalists or even among people in Kandhamal. These pertain to issues of land, ethnic tension between Kandhos and Panos, the politics of Hindutva, and the religious conversion and reservation politics. These themes or issues, it appears, have long histories. We shall provide here a glimpse of the histories beginning with a brief history of Kandhamal.

2.1 A Brief Note on Kandhamal

As an administrative unit, Kandhamal today, has a much shorter history than that of the Kandhos and Panos. It is quite chequered also as its territory and boundary underwent changes repeatedly by those in power. A few points from that history are as follows. Till the colonial period, the social history of Khondmals (the Kandhamal subdivision of the present Kandhamal district) is hardly known except for some sketchy references here and there. During the process of

the Meriah suppression, the British annexed Kandhamal on 15 February 1855 as part of the Feudatory State of Boudh. "It is noteworthy that the maps prepared under the directions of the Surveyor General of India shows that even up to the year 1903 there was no line of demarcation between Baudh and Khondmals. The name of Khondmals does not even find a place on that map. It is only later that the southern hill tracts of Baudh have been designated as Khondamals by Government" (Completion Report of the Baudh Settlement of 1907 quoted in Boudh-Khondmals District Gazetteers 1983).

II. The Issue of Land: A Historical Sketch

After this conquest, the British Government appointed a Tahsildar (Dinabandhu Pattanaik) to administer the tract under the charge of Superintendent of Tributary Mahals. In 1891, it became a sub-division under the Angul district and continued to remain under it till 1936. It became part of the Ganjam district after Orissa became a separate province in 1936. The Baliguda sub-division of the present Kandhamal district was part of the Ganjam Agency Area under the Madras Presidency since its

occupation by the British. In 1949, it was attached to the Boudh-Khondmals district. The Kandhos and the Panos, in their dispersed hamlets and settlements, it is often said, were relatively autonomous. In 1837, Mr. Ricketts reported that the Boudh Raja had no power over his Khond subjects, and in 1844, Mr. Mills, another administrator of the region, stated, "the Khonds had long been at feud with him (i.e. the Boudh Raja), paid no revenue, were under no kind of control, and were in the habit of making encroachments on the lands of the Raja" (O' Malley, Bengal District Gazetteer, Angul, 1908). But, this statement was made at a time when the British were trying to systematically bring the subjugation of the Kandhos and Panos as revenue producers. And, it has been seen at times that such statements were bargaining statements by the Raja (and other intermediaries) to give less to the British, despite collecting regularly from the Kandho and Pano peasants. Madhaba Kanhara and Nabaghana Kanhara were two influential chieftains who defied the authority of not only the Raja, but also the British authorities during this time.

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

NATIONAL COUNCIL MEETING AND NATIONAL CONVENTION

The National Council Meeting of PUCL will be held in Ranchi, Jharkhand on 31 October 2009. It will be followed by the National Convention on 1st November 2009. All units are requested to inform their respective National Council and other members about it. For venue and accommodation inquiries please contact Jharkhand PUCL President Shri Subroto Bhattacharjee on <pucl@sify.com>. His cell phone number is 098351-82368. His other phone numbers are 0657-2426578/2423462.

Besides this I repeat my request made earlier of sending the names of National Council members from all the states who have not sent it so far.- Pushkar Raj, General Secretary, National PUCL

ORGANISATIONAL QUERIES

We receive from time to time queries/requests from new members regarding the PUCL identity card and also regarding the privileges of the Life members and Patron members as compared to Annual members.

The three types of membership, i.e., Yearly, Life, and Patron, do not represent a hierarchy of membership. All members are equal. Life membership and Patron membership simply afford an opportunity to those who desire to contribute some extra money to the PUCL to strengthen its financial position. No membership carries any privilege. All members shoulder the burden of fulfilling the aims and objects of the PUCL. The PUCL does not issue any identity cards to its members as they are not supposed to take initiative independently. - Pushkar Raj, General Secretary

REGISTERED
Postal Regn. No.:
DL-(E)-01/5151/2009-2011
Posting : 1-2 of same month
at New Delhi PSO
RNI No.: 39352/82
Date of Pub.: Oct. 1, 2009
Office : 270-A, Patparganj
Opp. Anandlok Apartments
Mayur Vihar-I, Delhi-110091
Tel.: 22750014. Fax:(PP) 42151459
E-mail : puclnat@yahoo.com
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Website : www.pucl.org

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PUCL BULLETIN

Chief Editor : Pushkar Raj
Editor : R.M. Pal
Editorial Board : Rajni Kothari, Rajindar Sachar, Amrik Singh, R.B. Mehrotra, Chief Editor, Editor.
Assistance : Babita Garg

Printed and Published by: Pushkar Raj, General Secretary, PUCL, 270-A, Patparganj, Opp. Anandlok Apartments, Mayur Vihar-I, Delhi-110091 for People's Union for Civil Liberties
Printed at: Jagdamba Offset Printers, H-28, Jagat Puri, Delhi-110051