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Appointment of Outside Chief Justices - A Flawed Move Rajindar Sachar

At the Chief Justice Conference held in 2002 it was resolved that the policy of having outside chief justices of High Courts be discontinued. But the government was apparently not happy with it, because in such a case it would have no hand in the appointment because the senior most judge of a High Court would automatically have to be appointed the Chief Justice. Later on, however the Supreme Court collegium yielded to the government suggestion of outside Chief Justices.

Neither the precedents of India or other countries like USA and UK this practice prevails. In fact in U.S.A., in many states the State Supreme Court Justices whether elected, or appointed are not posted outside the State. No one has fault with this practice in U.S.A. or U.K. Why this gratuitous insult to Indian Judiciary.

Conscious of the failure of this experiment it is now sought to be lightened by suggesting that the senior most judge of a High Court whose turn to become Chief Justice has arrived, say in court A will be transferred to Court B, as the senior most puisne judge a few months before taking over as Chief Justice of Court B, and will therefore acquire familiarity with the new court. The logic is flawed.

I have never understood the logic of transferring the senior most judge whose turn has come to head the court in which he has worked for almost 10 to 15 years and with the functioning of which and also the lower judiciary he is most familiar. To transfer him out of the state to a new court for a period of one or two years to which he is a total stranger, most likely not even knowing the names of his colleagues, is a strange concept of advancing the administration of justice.

The lack of familiarity and adjustment to new surroundings of an outside Chief Justice will and has in the past greatly reduced his effectiveness to play a leadership role, It must be emphasized that the High Court exercises administrative control and superintendence over the whole of a state's judiciary. A Chief Justice of a High Court, therefore, plays a distinct role. An outsider as Chief Justice, who may not even know the names of districts in the state, nor even the names of senior Advocates will not be able to play an effective role. He may willy-nilly have to rely only on the opinion of a few select colleagues and officials which unfortunately may spell further disharmony in the High Court. Most of the outsider Chief Justices have (I can say from fairly reliable information) been merely content to do routine work and avoided taking any hard decisions even if urgently called for. All other professions give a preference to experience. Is there any special reason why the judiciary wants to devalue experience and, thus, reduce its own effectiveness?

Obituary:

S R Sankaran Is No More

"Of all the forms of injustice, the one that goes by the name of the law is the worst.

"If there was one person who felt the truth of the above sentence most acutely, it must be Sri S. R. Sankaran, who passed away on October 7th in Hyderabad for he wrote the words a few days before his death in his notes for an article.

"With the passing away of Sri S.R. Sankaran, IAS, on 7th October due to a cardiac arrest in sleep, people of Andhra Pradesh, and friends, colleagues and comrades spread across the country saw the passing of one of the finest strands in the history of post independence Indian state. There can be no better evidence of this than the unusualness of the funeral he was accorded: full state honours on one side and representatives of scores of radical, dalit and civil society groups paying their tributes on the other," wrote Anantha Krishna paying his tributes to the late S.R. Sankaran after his death.

"Sankaran will be remembered not simply as a very gifted and able civil servant, which he undoubtedly was, but more as a sensitive human being with innate empathy for the poor and the marginalized," wrote S.P. Shukla a former Finance Secretary, Government of India, "His years of Special Assistantship with Mohan Kumarmangalam, his Chief Secretaryship of Tripura, his term as Director of the Academy of Administration and finally his tenure as Secretary, Rural Development were rich with his own contributions. All along he maintained his unmistakable solidarity with the poor and the marginalised. His self-effacing style of work was as unique as his sense of humour and, on occasions, his thorn-less satire."

"During my visit to Hyderabad, I had taken the opportunity to go and see the two giants, K.G. Kannabiran (KGK) and SRS, to query them on my research project on the role of the Concerned Citizens' Committee (CCC) in Andhra in dealing with the issue of state violence and Maoist violence. THE CCC, a diverse group of fifteen members, was formed in Hyderabad in early 1997 to chalk out a possible civil society response to the serious situation that had arisen as a result of the ongoing brutal police encounter killings in the State and the equally brutal Naxalite response. Its aim was to break the psychosis of fear arising from the cycle of violence and counter-violence in the villages and to find a path to some democratic space in which the people could articulate their legitimate aspirations. The group traveled widely through the villages and met as many people as possible. It addressed both the Maoist leadership and the government with a view to winding down the violence. It did not attempt ideological critiques of the Maoists or of the government. As Convenor of the CCC, SRS clearly stated in 1998 that the idea was to initiate a democratic debate focusing on the aspirations of the people, their 'right to life, right to livelihood and right to dignified and honourable existence'.

"Both SRS and KGK, when I met them last, were forthcoming in their comments on the experience of the CCC and its possible relevance, with due modifications, in other parts of India affected by Maoist violence; but our discussion remained inconclusive. I was delighted when both of them promised to help me with my work. Further details were to be worked out when I visited Hyderabad later this year. Unfortunately, this was not to be. SRS is no more and the great KGK has had a severe medical problem," wrote K S Subramaniam, a former IPS officer and author of Political Violence and the Police in India who had worked with Sankaran as a colleague. "He was simple, modest and committed to the rural poor," he added.

S.R. Sankaran, who was 76 years old at the time of his death, was not only a role model to all bureaucrats but he was also deeply committed to the protection of civil liberties and human rights of the people. He closely worked with K.G. Kannabiran, former President of the PUCL, and K. Balagopal as an interlocutor between the Maoists in Andhra Pradesh and the Government in order to see that innocent people were not killed in fake encounters and violence from both sides. He was a Patron Member and donor of the PUCL. In his death the people have lost a great sympathizer of their cause and the human rights activists a great supporter, colleague and leading light of their movement.

The whole PUCL family pays its tributes to the memory of S.R. Sankaran.

PUCL family ☐

Cont. from pg. 1

Occasional matters of serious administrative difficulties can be sorted out by local Chief Justice because of his familiarity with his

colleagues which outside Chief Justice will never possess.

Though at present Court languages in the High Courts is

English, all records from lower Court are in local language. So a peculiar problem would arise - most of outside Chief Justices will not be familiar with

local state language and would have the records translated resulting in some lawyer bodies protesting it as an insult to the state language. And this problem will arise throughout the country.

Why are we bent on creating this morass - as if the judiciary was not already under serious attack.

The most adverse telling effect will be on the lower judiciary. They are to appraised every year by the full court. There are hundreds of them in each state. The full High Court is expected to jointly supervise their work and give them their assessments for the purpose of promotion. The outside Chief Justice will be totally unfamiliar with their work - how does he evaluate them - the usual course adopted is to take the advice of some of his colleagues. He can not get any feedback from the local lawyers because he would not be so informal with them. Is that fair to the lower judiciary.

Then the lottery of Chief Justice being sent to smaller court - say a Bombay or Delhi judge being sent to Guhati or Sikkam at the sole discretion of collegiums, influenced by law Ministry citing special

reasons. So human nature being what it is, the portals of collegiums would see the ungainly spectacle of judges gathering with a supplication to be posted to a bigger High Court - why does the collegiums wish to down grade the dignity and stature of prospective chief justices, some of whom are bound to become their colleagues after a few years.

This policy will also give a hand to the executive to creep in with its suggestions citing special reasons. The Collegiums may find it hard to refuse. So the evil of State patronage will permit Law Ministry to make a covert entry in the for bidden areas of appointment of Judges.

Let us not indulge in hypocrisy of judges being tigers and fiercely independent - yes they should be but practical life is different. We know to our shame how apparently Supreme Court Judges caved in during the emergency (1975) and how the threat of transfer kept many (and some even good gentlemen) on the quiet. Do not forget judges come from the same background as the rest of us mortals - if brilliant civil servants are being seen to cave in to the political masters, would not the same consideration apply to ordinary

mortals of judge. In any case the function of a judge is do judicial work - why throw him unnecessarily to a bait of blackmail by the executive.

Also why has the collegiums not considered it proper to have larger consultation amongst the judiciary. This self flaunting attitude is contrary to which we have always considered judiciary as one family. Surely the transient collegiums has no mandate to strike such a blow on the High Court judges.

I hope the collegiums will give it a small thought and think of the serious implication of having outside chief justice. This proposal has no plus point - rather all the minus point.

Judges are not decoration pieces to be placed in various rooms/places at the whim of the collegiums. This policy would weaken the bulwark of our Constitution - namely, the independence of judiciary-for as Justice Douglas of U. S. Supreme Court said "no matter how strong an individual judge's spine, the threat of punishment - the greatest peril to judicial independence - would project as dark a shadow whether cast by political strangers or by judicial colleagues". □

Press Release:

Kashmir: Punish the Guilty Not the People

PUCL is deeply concerned at the reported move of the government to take action against Ms Arundhati Roy and others for expressing their views on the Kashmir issue. It is not the people of India who are responsible for alienating a large number of Kashmiris and creating the present crisis but those who have ruled the country since 1947. They had ample time to win over the secular and peace loving people of Kashmir and provide them a life better than under any alternative arrangement. Instead, they have so alienated the people that thousands of unarmed men women and children defy curfew and do not care for embracing death in police firings.

PUCL believes that rise of terrorism in the state, which was unknown till 1989 despite our having fought wars with Pakistan on Kashmir too, is the result of the wrong policies of the government. After creating this mess, the political class appears determined to keep us - the citizens of the country- out of any discussion of the Kashmir issue by threatening us with legal action.

We strongly urge the government to desist from taking action against Ms Arundhati Roy or any other citizen for expressing any view-right or wrong- on the Kashmir problem, as it is our democratic right and also duty to apply our mind to

reflect on the serious situation of unrest created by the rulers and not us. Besides, any legal action taken for expressing an opinion, apart from being a blatant attack on our democratic rights, will make India a laughing stock, as the whole world has been watching a large number of unarmed Kashmiris defying curfew and bullets for 'Azadi'. We further urge the government to allow the people to speak freely on the Kashmir issue and listen to all shades of opinions of the people for the solution of the problem.

Prabhakar Sinha, President, PUCL

Pushkar Raj, General Secretary, PUCL □

Karnataka PUCL:

PUCL is shocked to note the recent act of a dalit youth of Gulbarga who poured night soil over his body as a mark of protest. It is clear to anyone with a modicum of intelligence that no normal human being will take such an extreme step unless driven by the utmost desperation. And the facts of the case as widely reported in the media do tell us that it was utter callousness on the part of officialdom that drove Dharma Kumar to this act of desperation.

The issue in question was the contract for the pay-and-use toilets of Gulbarga city. The Jai Bheem Safai Karmikara Sangha had approached the Karnataka High Court in the matter. And the Circuit Bench had, as far back as

Press Release

September 29, 2010, ruled in favour of the Sangha and had directed the Gulbarga City Corporation to continue the present contract to the Sangha till fresh tenders were called. Despite this court order the Corporation had continued to keep the toilets under lock and key. To protest this illegal action the Sangha had staged a demonstration in front of the main gates of the Corporation office on October 15, 2010. It was during this demonstration that Dharma Kumar, a member, poured human excreta over his body. Upon this the in-charge Commissioner had reportedly come to the spot and directed that the toilets be opened.

But now, based on a complaint filed by the Health Officer of the Corporation the police have booked

cases against Raju Kulageri a JD(S) leader who is also the president of the Hyderabad Karnataka Yuva Horata Samiti, Dharma Kumar and a few others who had participated in the protest. This is nothing but a vengeful act and misuse of official powers. It is a suppression of democratic and Constitutional rights and can in fact, set a dangerous trend. PUCL demands that the concerned Health Officer and the higher official/s should be suspended, legal action should be initiated against them and stringent punishment awarded. PUCL also strongly condemns the biased action of the police in not booking the officials concerned for failure to implement the High Court order.

P.B.D'Sa, President □

Letter to Editor:

Freely Give Away Food Grain to the Poor, Before It Rots

In the context of a Public Interest Litigation (PIL) application filed in the Supreme Court by the People's Union for Civil Liberties (PUCL) working for promotion, protection and preservation of People's Rights, the Court asked an incisive question to the Manmohan Singh Govt. as to which is a better choice between allowing the food grains stored in the godowns to rot during the monsoon; or to freely distribute it among the poor? Before the food grains rot, distribute it freely. In reply, Center's Minister for Agriculture informed that it is not possible to freely distribute the food grains among the poor. "This is a suggestion made by the Supreme Court and it is not possible to implement it."

When the Additional Solicitor General of the Central Govt. informed the Court that it is merely a suggestion to freely distributed the food grains among poor, the two judge bench of the Supreme Court of Dalvir Bhandari and Deepak Verma in a scathing tone asked him to report

to his client (Centre's Minister for Agriculture, Sharad Pawar) that this is not a suggestion but a directive. The Judge also criticized Sharad Pawar's statement that 'sugar prices will rise', adding that such statements encourage hoarding.

The P.I.L. filed by the PUCL stated that a large quantity of food grain is procured but due to lack of adequate arrangements for storing it, it is kept in open by covering it with tarpaulin. Exact statistics were presented to show how large a portion of the food grain is rotting in the warehouses of Food Corporation of India. All these statistics are matching and corroborated by the report of N.C.Saxena, appointed by the Government, who also in the report has stated that either lacs of tonnes of food grain is rotting or otherwise wasted. The Supreme court has not just stopped by saying that this is not a mere suggestion but a 'directive' to distribute the food grains among the poor rather than let it rot; but has also asked certain important questions.

Why the survey is not conducted afresh to know who are the poorest among poor (BPL food card holders),

Why the directive of August 2005 has not been implemented for expanding the base of BPL food scheme? If its base is expended then landless labourers, marginal farmers, village workers, hutment dwellers can also benefit.

Why the suggestion of distributing food grains at the price at which it is given under the BPL food Scheme in the country's to the poorest 150 districts has not been implemented.

How much time will it take to set up adequate food grain storage facilities at the district and Panchayat levels?

Why punishment is not meted out to bogus/dummy card holders? Orissa has done it and as many as 2.5 lacs of bogus/dummy card holders have surrendered their cards.

The food grains may be allotted to the States on the basis of estimates of 2010 of BPL Card Scheme and BPL Families and not on the basis of the year 2000.

Work out the exact details of food grain storage capacity in different states of the country and

keep on augmenting it as per the requirements.

In the face of lashing and the questions raised by the Court, Minister for Agriculture, Sharad Pawar announced in the Parliament that directives of the Supreme Court shall be duly implemented.

The efforts mooted by the PUCL for realizing in actual practice the 'right to food', deserve congratulations.

Dinesh Shukla

Gautam Thaker, General Secretary, Gujarat PUCL ☐

People's Union for Civil Liberties Response to the Select Committee on the Prevention of Torture Bill, 2010

Introduction

In order to ratify the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, the Lok Sabha (Lower House of Indian Parliament) passed the Prevention of Torture Bill, 2010 (PTB, 2010) on 6 May 2010.

There is no doubt that torture is rampant and institutionalised in India. The National Human Rights Commission (NHRC) has recorded 16,836 custodial deaths, or an average of 1,203 per year during the period 1994 to 2008; these included 2,207 deaths in police custody and 14,629 deaths in judicial custody. Given well-established practices and consistent documentation of cases of persons being tortured to death in police and prison custody, it is not unreasonable to conclude that a number of those died in custody were subjected to torture. The cases of torture not resulting in death are not recorded by the NHRC. Further, the Central para-military forces and the Indian army remain outside the purview of the NHRC. The actual cases of torture are in reality in tens of thousands.

The Prevention of Torture Bill, 2010 falls far short of national and international standards. The PUCL urges the committee to amend the bill before finalising it for the Rajya Sabha in order to ensure that India fully complies with the UNCAT.

Shortcomings of the Prevention of Torture Bill, 2010

i. Restrictive definition of torture

The definition of torture under Section 3 of the PTB, 2010 is narrow and restrictive. It does not capture the spirit and essence of the UNCAT. There is no reference to 'other cruel, inhuman or degrading treatment or punishment' anywhere in the Bill.

ii. Lenient punishment for torture

Section 4 of the PTB, 2010 provides for a maximum of 10 years imprisonment for those who are convicted of torture. The Bill does not take into account Indian realities of custodial deaths as a result of torture. For India to comply with the UNCAT, punishments for torturers should reflect the gravity of the crimes committed, as stated in UNCAT Article 4(2). If torture leads to death, will the law enforcement personnel be still awarded 10 years imprisonment?

The Bill equates crimes by law enforcement personnel, including torture, with normal crimes. This is a serious omission considering that law enforcement personnel exercise the sovereign power of the state. Through being entrusted with carrying out duties by the state, they are afforded special powers and, thus, have a higher level of responsibility. Hence, the crimes committed by law enforcement personnel should receive harsher punishment than is provided under the Indian Penal Code.

iii. Limitation for cognisance of offences falls far below national law

Section 5 of the PTB, 2010 provides that "no court shall take cognizance of an offence under this Act unless the complaint is made within six months from the date on which the offence is alleged to have been committed".

The limitation of six months for taking cognizance is less than that for other comparable crimes under the Criminal Procedure Code (CrPC) of India. In its definition, the Prevention of Torture Bill includes 'grievous hurt' as part of infliction of torture. However, for normal crimes of grievous hurt there are no limitations under the CrPC.

iv. Justification of torture

Section 6 of the PTB, 2010 states that "no court shall take cognizance of an offence punishable under this Act, alleged to have been committed by a public servant during the course of his employment, except with the previous sanction" of the government.

The regime of prior sanction exists in many laws including Section 197 of the CrPC and has been consistently used in India to provide impunity by denying permission. This provision fails to address the requirement of Article 2 of the UNCAT that 'no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture'.

v. Issues excluded in the Bill

The Bill also does not include any text pertaining to the following provisions of the UNCAT, namely the need to:

- (1) ensure that an order from a superior officer or a public authority may not be invoked as a justification of torture (Article 2).
- (2) establish jurisdiction over acts of torture committed by or

against a party's citizens (Article 4).

- (3) ensure that torture is an extraditable offence (Article 8).
- (4) establish universal jurisdiction to try cases of torture where an alleged torturer cannot be extradited (Article 5).
- (5) provide a mechanism to promptly investigate any

allegation of torture (Articles 12 and 13).

- (6) provide an enforceable right to compensation to the victims of torture (Article 14).
- (7) Bar deportation, extradition or refoulement of any person when there are substantial grounds for believing he/she will be subjected to torture (Article 3)

Kavita Srivastava, Secretary, PUCL □

Report Encounter Deaths within 48hrs: NHRC To States

Tightening its scrutiny of police encounter cases, the National Human Rights Commission has directed all the state governments to report such incidents to it within 48 hours. "All the cases of deaths in police action in the states shall be reported to the Commission within 48 hours," the NHRC said in fresh guidelines on the procedure to be followed by police in cases of encounter.

The Commission, revising its previous guidelines under which police had to report cases of encounter only once in six months, has also made it mandatory for them to send a second report about all such deaths "within three months" from the date of incident. The second report should include post-mortem

report, inquest report, and finding of enquiry conducted by magistrate and senior officers concerned, the revised guidelines of the Commission said directing the states.

Earlier, the report of encounter cases was sent to the Commission by the DGPs of respective states. The reports will now be sent by Senior Superintendent of Police or Superintendent of Police of the districts concerned. The cases of culpable homicide lodged against policemen could now be investigated by any "specialised investigation agency" too, the guidelines stipulate. Earlier, it was only the state's crime investigation department which had jurisdiction to probe cases of culpable homicide lodged against policemen.

"Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognisable case of culpable homicide, an FIR to this effect must be registered under appropriate Sections of the IPC. "Such cases shall be investigated by state CBCID, or any other specialised investigation agency," NHRC's revised guidelines say. The Commission has also sought that not only the relatives of the deceased, but eye-witnesses, witnesses having information of the circumstances leading to the encounter and police station records "must also be examined" by the magistrates conducting inquiry into such cases.

Courtesy Deccan Herald □

Intern Report:

Law and Practice - A Study of Police Brutality With Reference to India Alimpan Chatterjee¹

Introduction

In his inaugural report as the first Special Rapporteur on Torture for the UN Commission on Human Rights ('Commission') Pieter Kooijmans wrote:

"Torture is now absolutely and without any reservation prohibited under international law whether in time of peace or of war. . . . [T]he prohibition of torture can be considered to belong to the rules of jus cogens. If ever a phenomenon was outlawed unreservedly and unequivocally it is torture. . . . If there

*was some disagreement [in the General Assembly] in respect to [the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment], it had to do with the methods of control and implementation. There was no disagreement whatsoever on the fact that torture is absolutely forbidden."*²

Another report of the Special Rapporteur on Torture for the Commission on Human Rights includes the following paragraph relating to India:

*"By letter dated 19 November 1999, the Special Rapporteur advised the Government that he had received information alleging routine torture in detention facilities throughout the country. The police and jailers allegedly torture or ill-treat new prisoners to obtain money and personal articles. Police are reported to torture detainees frequently during custodial detention."*³

Similarly, the US Department of State in February, 2000, reported regarding India as follows:

"The law prohibits torture, and

confessions extracted by force are generally inadmissible in court; however, torture is common throughout the country, and authorities often use torture during interrogations. In other instances, they torture detainees to extort money and sometimes as summary punishment.”⁴ . . .

The UN Special Rapporteur on Torture noted in 1997 that methods of torture included beating, rape, crushing the leg muscles with a wooden roller, burning with heated objects, and electric shocks. Because many alleged torture victims die in custody, and others are afraid to speak out, there are few firsthand accounts, although marks of torture often have been found on the bodies of deceased detainees. The UN Special Rapporteurs on Torture and on Extrajudicial Killings renewed their requests to visit during the year, but the Government did not permit them to do so. The prevalence of torture by police in detention facilities throughout the country is borne out by the number of cases of deaths in police custody. . . . Although police officers are subject to prosecution for such offenses under Section 302 of the Penal Code, the Government often fails to hold them accountable.⁵

Indian sources tell the same story, and make clear that oppressive police practices, common under British rule, have continued since India attained its independence. For example, a study of police methods in the state of Kerala concluded that the police in that state resorted to torture in a high percentage of cases. The Chairman of India’s National Human Rights Commission has said, ‘Daily the Commission receives petitions alleging the use of torture, and even of deaths in custody as a result of the acts of those who are sworn to uphold the laws and the Constitution and to ensure the security of its citizens.’⁶

Custodial Violence

Custodial Violence is no doubt a worldwide phenomenon inflicted upon individuals irrespective of their sex, age, or state of health. This worst form of human rights violation has now become epidemic in Third world countries like India. News of custodial violence is so common place that hardly a week goes by without any mention of police brutality in the media. The practice of custodial violence has become so widespread in our society that news of it no longer shocks the collective conscience of society. Such reports by the media are normally met with total apathy by the government with hardly ever any action being taken against the guilty cops.

Such growing incidences of custodial crimes should raise serious concerns in civil society as custodial crimes are particularly heinous and revolting in nature as they reflect betrayal of trust by the public servant against the defenceless citizens. It would be extremely naive to assume the custodial violence in most cases are confined to violent people like terrorists, dacoits and other hardened criminals as certain police officers and bureaucrats would like to have us believe. But to the contrary victims of custodial crimes, injury torture or death belong to the weaker section of society. The poor, the downtrodden and the ignorant who have little, or no financial or political power and hence are unable to protect their rights. Members of the weaker or poorer sections of the society are arrested informally and kept in custody without any charge or entry of such arrest in the police records. During such illegal detention they are subjected to torture which often leads to death of the victim. In such cases the bodies of the victims are deposited stealthily or thrown into public places in an attempt to make it appear like accident or suicide. The relatives of the victims

are in most cases unable to seek remedy from the law on account of their ignorance of poverty. However even if they do try to seek protection from the law there is hardly any speedy or effective remedy available resulting in the accused going scot free in most cases.⁷

Justification

What is even more reprehensible is the attempt to justify custodial torture than custodial torture itself. The state authority not only does it not deny the use of torture as an interrogation technique but also tries to justify the practice. Various reasons and excuses are giving in doing the same. Some of them are:⁸

- The use of violence acts as a deterrent. Many offenders do not repeat their crimes for fear of such violence.
- There is inadequate infrastructure to conduct a proper scientific investigation.
- It is also not considered violation of rights since people like terrorists and hardened criminals have denounced such rights by committing crimes against the society.
- Confessions are therefore essential for conviction in a court of law since most witnesses are unwilling to testify in a court of law.
- The legal system places too big a burden on the prosecution. In such situations any method to solve a crime is justified.

Often even the public expects the police to use violence. Petty criminals like pick-pockets are urged to let go after a good thrashing. The most glaring and gruesome example of such torture with the support of the public is the Bhagalpur case of 1980 where the policemen punctured the eyeballs of the suspect with a sharpened instrument and then proceeded to

pour acid into it resulting into permanent blindness. We have even seen recent episodes of such atrocities where a suspected thief was tied to a police motorcycle and dragged while onlookers cheered on.⁹

Other factors which may act as a stimulus is the fact that quite often promotion depends on the number of cases that a policeperson has solved and how quickly has he done it. There is also a combined pressure from the media and the public in instances of high profile cases to apprehend the criminal quickly. Such pressure often tends to lead policeperson to use third degree methods to get quick results.

Such incidents highlight the various discrepancies in societies approach towards custodial torture. This display of inconsistent approach by society towards custodial violence results in it being institutionalized by justifying it as a necessary evil.

The law

The Second World War brought to light the dangers of resting the entrustment of human rights of a person solely on the juridical boundaries of a nation state. The United Nation therefore adopted several international declarations, conventions and covenants seeking to define human rights which the international community shall seek to protect. Some of the important provisions which have been instrumental in this endeavour are the Universal Declaration of Human Rights (1948) (Art. 1, 3, 5, 6, 8, 9, 10 and 11); Draft Principles on Freedom from Arbitrary Arrest, Detention and Exile (1963) (Art. 10, 22(2), 24 and 26); Standard minimum rules for treatment of prisoners adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders (1965); International Covenant on Civil and Political Rights (1976) (Art. 6(1), 7, 9, 10, 14-16); Code of Conduct for

Law Enforcement Officials (1979) (Art. 2, 3, 5, 6); The convention against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987).

India has ratified and is signatory to all the above mentioned instruments and thus is expected to honour them by the world community by not only implementing them in national laws but also by strictly enforcing them.

The Indian law do protect the rights of the accused. Although the constitution do not specifically mentions any rights against custodial torture but such rights are embedded in Art.19, 20, 21, 22, 32 and 226 of the Indian Constitution. Prisoners also enjoy various other safeguards provided under the Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act 1861. Many rules and regulations relating to the treatment of a custodial person is also provided for in various Police and Prison Act manuals. The Supreme Court has also in number of cases have recognized such rights and have laid down steps to ensure that such rights are not violated.¹⁰

Conclusion

This paper has sought to highlight the fact that, that police torture is common in India, despite judicial and academic disapproval and despite both widespread public awareness of the fact and the apparent willingness of the Indian electorate to reject politicians who violate crucial rights. Such rejection from the Indian electorate creates a dilemma in the form that in case of a demand backed by coercion that the Indian government place greater weight than it has on the importance of eradicating torture seems paradoxically inconsistent with the basic rationales for the international law of human rights. Such a demand amounts to a claim that, in the event of a clash between the priorities purportedly established by the

international law of human rights and those valued by an electorate, a public official's first duty is to adhere to international standards—values preferred by other states rather than those preferred by the voters who have elected the official.

As such there is a need for civil society to step up and decide for itself its views on custodial violence. For unless there is a consensus in the Indian electorate there will not be any strong or definitive action by the government to eradicate the practice of torture. There should be an awareness and realization that custodial tortures in all forms and situation is degrading to human rights and a person's dignity.

1. *Student of 1st year B.A.LL.B. KIIT Law School, Bhubneshwar.*
2. *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Report by Special Rapporteur, Mr. P. Kooijmans, appointed pursuant to Commission on Human Rights resolution 1985/33, UN Doc E/CN.4/1986/15 1 (1986)*
3. *Civil and Political Rights Including Questions of Torture and Detention: Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 1999/32, UN Doc E/CN.4/2000/9 98 (1999).*
4. *US Department of State, 1999 Country Reports on Human Rights Practices 2335 (2000).*
5. *James Vadakumchery, Human Rights and Police in India 89-91 (APH 1996).*
6. *J. Venkatesan, India: National Human Rights Commission Urges Government to Ratify UN Torture Convention, Hindu (Jun 26, 2000).*
7. *Law Commission of India. One Hundred Fifty Second report on Custodial Crimes. 1994*
8. *Based on interviews conducted with senior police officials on conditions off anonymity.*
9. *The Times of India, 28 Aug 2007, Cop caught on video dragging thief in Bihar*
10. *Kharak Singh v. State of U.P.(1964); Gobind v. State of Madhya Pradesh, (1975) 2 SCC 148; Prabhakar v. State of Maharashtra, A.I.R. 1966 S.C. 424* □

President Obama Raised Vital Questions about Democracy In India

George Mathew

For all those who are keen about the promotion of democracy, President Barack Obama's recent three-day visit to India has come highly encouraging. While issues relating to economic development, political process, terrorism and other matters of concern were on top of the agenda, the democracy advocates were closely observing what Barak Obama would state and commit about democracy. It was not disappointing. In his most keenly awaited address at the Central Hall of Parliament of India, President Obama devoted considerable time to the democracy development in the United States and India. He also spoke about the role played by both the countries in upholding the values of democracy. I quote

"... instead of being lured by the false notion that progress must come at the expense of freedom, you [India] built the institutions upon which true democracy depends—free and fair elections, which enable citizens to choose their own leaders without recourse to arms; an independent judiciary and the rule of law, which allows people to address their grievances; and a thriving free press and vibrant civil society which allows every voice to be heard. And this year, as India marks 60 years with a strong and democratic constitution, the lesson is clear: India has succeeded, not in spite of democracy; India has succeeded because of democracy. ... Now, India is not the only emerging power in the world. But the relationship between our countries is unique. For we are two strong democracies whose constitutions begin with the same revolutionary words—"We the people." We are two great Republics dedicated to the liberty, justice and the equality

of all people. And we are two free market economies where people have the freedom to pursue ideas and innovations that can change the world. This is why I believe that India and America are indispensable partners in meeting the challenges of our time.

... This leads me to the final area where our countries can partner—strengthening the foundations of democratic governance, not only at home but abroad.

In the United States, my administration has worked to make government more open and transparent and accountable to the people. Here in India, you're harnessing technologies to do the same, as I saw yesterday. Your landmark Right to Information Act is empowering citizens with the ability to get the services to which they're entitled and to hold officials accountable. Voters can get information about candidates by text message. And you're delivering education and health care services to rural communities, as I saw yesterday when I joined an e-panchayat [democratically elected village councils which has e-governance] with villagers in Rajasthan.

Now, in a new collaboration on open government, our two countries are going to share our experience, identify what works, and develop the next-generation of tools to empower citizens. And in another example of how American and Indian partnership can address global challenges, we're going to share these innovations with civil society groups and countries around the world. We're going to show that

democracy, more than any other form of government, delivers for the common man—and woman.

Likewise, when Indians vote, the whole world watches. Thousands of political parties. Hundreds of thousands of polling centers. Millions of candidates and poll workers, and 700 million voters. There's nothing like it on the planet. There is so much that countries transitioning to democracy could learn from India's experience; so much expertise that India could share with the world. That, too, is what's possible when the world's largest democracy embraces its role as a global leader."

As this was the most acclaimed speech the President made while he was in India, every word he said attracted national attention.

However, towards the latter part of his address Obama raised the issue which has been a talking point in international democracy forums: while India and the US enjoy democratic freedom, how the two nations are standing up for the freedom of others? Citing the military regime in Myanmar (Burma) and its suppression of democratic movements and human rights, Obama raised an inconvenient poser before the Government of India: "If I can be frank, in International fora, India has often avoided these issues."

Let me quote this part of Obama's speech:

"As the world's two largest democracies, we must also never forget that the price of our own freedom is standing up for the freedom of others. Indians know this, for it is the story of your nation. Before he ever began his struggle for Indian independence, Gandhi stood up for the rights of Indians

in South Africa. Just as others, including the United States, supported Indian independence, India championed the self-determination of peoples from Africa to Asia as they too broke free from colonialism. And along with the United States, you've been a leader in supporting democratic development and civil society groups around the world. This, too, is part of India's greatness.

Every country will follow its own path. No one nation has a monopoly on wisdom, and no nation should ever try to impose its values on another. But when peaceful democratic movements are suppressed—as in Burma—then the democracies of the world cannot remain silent. For it is unacceptable to gun down peaceful protestors and incarcerate political prisoners decade after decade. It is unacceptable to hold the aspirations of an entire people hostage to the greed and paranoia of a bankrupt regime. It is unacceptable to steal an election, as the regime in Burma has done again for all the world to see.

Faced with such gross violations of human rights, it is the responsibility of the international community—especially leaders like the United States and India—to condemn it. If I can be frank, in international fora, India has often avoided these issues. But speaking up for those who cannot do so for themselves is not interfering in the affairs of other countries. It's not violating the rights of sovereign nations. It's staying true to our democratic principles. It's giving meaning to the human rights that we say are universal. And it sustains the progress that in Asia and around the world has helped turn dictatorships

into democracies and ultimately increased our security in the world."

This has created some consternation in some sections. While the civil society, democracy and human rights activists are largely happy about this stance of President Obama, the government is on the defensive. An official has stated, "We have security reasons as well as strategic interests in engaging with Myanmar. We have a close and contiguous relationship with Myanmar... we share a civilisational relationship with Iran which we cannot ignore."

Immediately following Obama's address to Parliament Mr. Shashi Tharoor, Member of Parliament and former UN Under-Secretary General, in an article titled "Knight of the Generals" stated:

"Any Indian government's primary obligation is to its own people, and there is little doubt that the economic opportunities provided by Burmese oil and gas are of real benefit to Indians. There is also the strategic imperative of not ceding ground to India's enemies on its own borders. India confronts an inescapable fact of geopolitics: you can put your ideals on hold, but you cannot change who your neighbours are. India's government cannot be blamed for deciding that its national interests in Burma are more important than standing up for democracy there.

...But many Indian's are asking themselves what such a policy does to India as a civilization.

...It is a policy that is governed by the head rather than the heart, but in the process India is losing a little bit of its soul." (*The Times of India*, 10 November 2010)

One of the key achievements of the Presidential visit was that the United States and India have launched a US-India Open Government dialogue to promote

their shared goal of democratizing access to information and energizing civic engagement.

The Joint Statement says:

"Consistent with their commitments to open and responsive government, and harnessing the expertise and experience that the two countries have developed, the leaders launched a U.S.-India Open Government Dialogue that will, through public-private partnerships and use of new technologies and innovations, promote their shared goal of democratizing access to information and energizing civic engagement, support global initiatives in this area and share their expertise with other interested countries. This will build on India's impressive achievements in this area in recent years and the commitments that the President made to advance an open government agenda at the United Nations General Assembly. The President and Prime Minister also pledged to explore cooperation in support of efforts to strengthen elections organization and management in other interested countries, including through sharing their expertise in this area."

It is unlikely that the Government of India will change its position regarding democracy promotion in other countries especially in countries where it has strategic and economic interests. Therefore, the challenge before democracy activists in India as well as in other countries is how to "turn dictatorships into democracies and ultimately increased our security in the world".

President Obama's visit has ignited a fresh debate on democracy promotion in terms of universal value and not interfering in the internal affairs of a country or violating the rights of a sovereign nation. □

Inequality Continues To Be High In India

India continues to fare badly in the Human Development Index (HDI) with the country ranking 119 among 169 countries for the year 2010 as compiled by the United Nations Development Programme (UNDP).

Normally published annually since 1990, the HDI goes beyond a nation's Gross Domestic Product to measure the general well-being of its people under a host of parameters, such as poverty levels, literacy and gender-related issues.

The ranking was calculated by the UNDP in its Human Development Report (HDR) 2010.

However, India's ranking shows some improvement this time as it stood at 134 in 2009. The marginal improvement in ranking comes despite the fact that the UNDP has changed the methodology of measuring human development by incorporating dimensions of

inequality and deprivation in its ambit.

The UNDP for the first time floated three indexes to measure inequality and deprivation. These are inequality adjusted HDI, the gender inequality index and multi-dimensional poverty index. Under the new methodology, India has graduated to the category of "Medium Human Development Countries".

However, neighbouring Sri Lanka has fared well than India by moving to a higher slot of 91. Sri Lanka's ranking has gone up due to improved social indicators of literacy and life expectancy. Other neighbours such as Pakistan, Bangladesh and Nepal stood at 125, 129 and 138 respectively.

Significantly, the report, while analysing India's progress in the HDI scale, has noted that though Indian economy has made impressive improvement, inequality remains high.

"India has been identified as one of the top ten countries in terms of growth in income. However, the situation with respect to inequality and multi-dimensional poverty is not commensurate with country's growth performance," it says.

"The Indian government recognises that while economic growth has been impressive, the benefits are not distributed equally. To correct this, the government has to focus more on human development," UNDP Resident Representative Patrice Coeur-Bizot said while releasing the report.

Showing disparity in India's various segments of human development in the divergent socio-economic group, the HDR report shows that India lost 30 per cent overall on the new inequality-adjusted HDI due to inequalities in health, education and income.

(Courtesy: Deccan Herald) □

Was It Really An Encounter In Jamul On 15th October?

The Chhattisgarh police have claimed a big victory in having encountered two dreaded Naxalites from the Kanker district - Nagesh and his wife Tarabai in Jamul, Durg. Nagesh is said to have had 70 serious cases filed against him in various criminal courts in Bastar Division and a prize of 2 lakhs on his head. Similarly Tarabai is also said to have a prize of about 1.5 lakhs on her head and some 36 criminal cases pending against her. The incident is said to have occurred during the intervening night of 14th October and 15th October close to a railway overbridge at Jamul, a semi urban area adjoining the Bhilai industrial area, very close to the ACC company. The police claims that 14 rounds were fired, two Naxalites were killed and a third managed to flee and escape into the nearby forest.

Since the spot of the incident is barely one kilometre away from the Chhattisgarh Mukti Morcha Office

situated in a dense working class basti called Labour Camp, Jamul, we have had an opportunity to gather some preliminary information on this incident which makes us feel prima facie that this appears to be a fake encounter, and the deceased were more likely killed elsewhere and their dead bodies brought here. We are sharing these preliminary observations:

1. The spot of the incident has two dense labour bastis on either side, at a distance of one kilometre and half a kilometre. In the intervening night of 14th and 15th no unusual police movements were observed by workers in these bastis, and neither were any sounds of firing heard, though the police claimed that the firing continued through the night.

2. Since it is the Pooja season and there were Pooja pandals set up in both the bastis and a third road that comes from Kohka leads to the celebrated Durga Pandal of Vaishali

Nagar where there was a special programme on the 14th night, therefore there were groups of people moving around on these roads late into the night at least upto 1am and nothing untoward was noticed.

3. When some youngsters went for a run in the morning at about 4am on the 15th, the dead bodies were lying near on opposite sides of the road near the Bogda Pul, but there was no significant police presence. In fact police presence starting increasing only at around 5am and even then there were more officers than men.

4. The local police personnel and Intelligence Bureau personnel had various different and contradictory versions of the encounter. One version was that the Naxalites were at Shivpuri Chowk which is several kilometres away, another version was that there were hotly pursued by the police right from Fareed Nagar

in Bhilai which is 6-7 kilometres away, still another was that the police had information of a secret meeting in the "kinnu garden" (plantation of orange trees) of ACC and so 7 police parties had closed in on them, another version was that the Naxalites were on their way to strike a deal for purchase of ammunition in Jamul, and finally one version was that when the vehicle of the Naxalites was stopped they suddenly opened fire and the police then fired back in self defence.

5. The story of a third person taking advantage of forest cover to escape is particularly implausible since the only "forest" there is an orange tree nursery of the ACC in which it would not be possible to hide, and where workers were doing their normal duties on both the 14th and 15th.

In the above circumstances, it would be essential that the mandatory guidelines of the National Human Rights Commission with regard to encounters are followed absolutely strictly in letter and spirit. In fact a

high power judicial inquiry should be instituted.

As far as the workers in this area are concerned, we are apprehensive since the long drawn battle (20 years) of Chhattisgarh Mukti Morcha (Mazdoor Karyakarta Committee) against the Swiss multinational cement giant Holcim is at a critical juncture. This militant working class organisation has become an eyesore for the big companies and its participation in the anti-displacement movement, campaign for the release of Dr Binayak Sen and against human rights violations of adivasis has earned it the wrath of the State. We are apprehensive that in the name of "security considerations", the working class movement may be suppressed or its leaders subjected to malicious litigation. The search for the "elusive" third Naxalite in the working class bastis could turn into a massive fishing expedition against politically inconvenient opponents.

This is not the only such incident in the plains areas or urban areas of

Chhattisgarh. Recently in the course of an "encounter" in Sankra Police Station of Mahasamund district, widow Himadri Patel accused the police having burst into her house and killed her elderly husband and his dumb farmhand in cold blood. In Rajnandgaon a girl student was shot in the leg while bathing at the village pond. 9 CPI activists including elected representatives in the Janpad Panchayat, a disabled person, and the petitioner in the Salwa Judum case in the Supreme Court - Kartam Joga - have been foisted with false cases under the Chhattisgarh Vishesh Jan Suraksha Adhiniyam. With the Chhattisgarh police talking of taking on the "Urban Network of Naxalites", there are great chances that every dissenter would be dealt with in this manner.

In these circumstances we feel that an All India Fact Finding Team must be constituted urgently to look into these issues.

Sudha Bharadwaj, On behalf of Chhattisgarh Mukti Morcha (Mazdoor Karyakarta Committee) □

Majority of POSCO Enquiry Committee Confirms That POSCO Project Is Illegal

Three of the four members of the committee set up by the Ministry of Environment and Forests confirmed that the POSCO project is illegal and that all of its clearances were obtained by breaking the law. The Committee has also found that the project has potentially very dangerous impacts on issues like water, air pollution, and the coastline, and none of this was ever properly evaluated. After a detailed discussion of the huge number of criminal actions by the company and the Orissa government, the Committee says (in the conclusion of the report):

"The POSCO project is an example of how a mirage of "development" can be used in an attempt to bypass the law. Such attempts, if allowed to succeed, will result in neither development nor environmental protection, but merely in profiteering. This will cause immeasurable harm to the nation and to the rule of law and justice in our society."

We particularly draw attention to the fact that the majority found that:

- o The Orissa government and the Central government have violated the Forest Rights Act and tried to grab forest land that belongs to the people. This is the second official committee that has reached this conclusion.
- o The project could cause environmental devastation particularly in regard to water, air pollution, coastal damage, danger of industrial disasters in case of cyclones, etc., all of which was ignored by the government.
- o POSCO suppressed facts and tried to get around the requirements of law.
- o The environmental, forest and coastal regulation clearances obtained by the project were all illegal and should all be revoked.
- o The forest clearance can only be given subject to the recognition of rights and the consent of the gram

sabha under the Forest Rights Act. Those who keep talking of the POSCO project as one of "national importance" should answer these questions: would any other country in the world tolerate such violations of their law? Would South Korea tolerate an Indian company grabbing their land, breaking their laws and threatening to cause an environmental disaster? Is this what development means - robbing thousands of their lands and threatening lakhs with water shortage and other catastrophes? As for the dissenting report of Ms. Meena Gupta, her position reflects her own interests. She was the Secretary that granted the environment clearance, and asking her to review it is like asking a thief to don a police uniform. Naturally she has said that all the clearances should continue. Her report is full of distortions, such as claiming that there are only 700 families in the area

(when over 4,000 will lose their lands and/or homes). She tries to cover up crimes by saying that it does not matter if the law was broken; all that is required is to impose some

additional "conditions."

We call upon the Central government to heed the voice of the people and the findings of the majority report,

withdraw all clearances and cancel this unjust, illegal and brutal project. Abhay Sahoo, Chairperson, PPSS □

The US Needs To Tap Into the Indian Education Market To Bail Out Its Broke Colleges

Anil Sadgopal

It is no mere coincidence that the only school President Obama will be visiting during his Indian trip will be a well-endowed private school in Mumbai. He did not opt to visit any of the 2,000 plus Bombay Municipal Corporation schools. This question may sound trivial to India's elite who have escaped from the public-funded education system. This, however, would not hold true for President Obama's country where a widely acceptable public-funded school system has been built up. Ironically, this American model of a Common School System based on Neighbourhood Schools has been itself under attack by the federal policy. The No Child Left Behind (NCLB) programme, initiated by President Bush, was designed to weaken the public-funded schools and promote privatisation. Hence, it faced stiff resistance. Yet, President Obama has not only continued with NCLB but has moulded it further in favour of privatisation. The Indian story is no different.

In 1991, following the formal declaration of the policy of globalisation, the Indian government accepted the conditionality of Structural Adjustment Programme (SAP) imposed by the US-led World Bank-IMF regime. This required that public expenditure be reduced on education, health and social welfare. In 1990, India spent 4 percent of its GDP on education. During the next two decades, public expenditure, as per SAP dictates, steadily declined to settle around 3.5 percent of the GDP.

The policy of reduced spending was initially tested in the 1990s as part of the World Bank-sponsored District Primary Education Programme in 18 states, covering almost half of India's districts. From 2000 onwards, these dilutions and distortions were repackaged and

'marketed' under a new label called Sarva Shiksha Abhiyan (SSA). The failure of SSA to provide elementary education (Class I-VIII) to India's 20 crore children in the 6-14 year age group by the target year of 2010 meant that policymakers rephrased SSA goals downwards and did not undertake a causal analysis to rectify it.

A multi-layered school system designed to exacerbate discrimination ensued; para-teachers to replace qualified, trained and properly paid teachers; school vouchers - an idea pushed by the economist Milton Friedman; public private partnership (PPP) for shifting public funds to private capital, NGOs and religious bodies; tax exemptions and subsidies (including land) to profit-seeking institutions; supporting commercialisation through student 'loans'; handing over policymaking to corporates; and a cynically orchestrated media campaign buttressed by internationally funded high-profile NGOs to destroy the credibility of the public-funded education system. The steady loss of credibility prepared the ground for mushrooming of private schools by the late 1990s.

The abdication by the State of its obligation under the Constitution was camouflaged by the rhetoric of economic growth rates and the Sensex frenzy. The 86th Constitutional Amendment Act (2002) signalled probably the first neo-liberal intervention in the Constitution. The flawed Right to Education Act, 2009, deprived children of their fundamental right to free education of equitable quality. Similar attacks on higher and technical education followed. Profit became a legitimate concept. Higher education became a private good offered to the WTO-GATS (General Agreement on Trade in Services). ASSOCHAM's estimates place the

value of the Indian education market at \$25 billion, which is predicted to rise to \$50 billion by 2015. Tapping this market is one of the central themes of Obama's delegation of 200 CEOs.

Four higher education Bills are waiting in Parliament to enable foreign universities to invest in our higher education. Another half-a-dozen in the same vein are in the offing. The systematic withdrawal of State funding from higher education in advanced economies, especially the US, has compelled their colleges and universities to fend for themselves. Earlier this year, there were protests in 10 US campuses in over 30 states against tuition fee hikes and funding cuts. The Bills in Parliament will bail out these fund-starved American institutions. This also implies a major distortion of goals, direction and knowledge content in our higher education, which would be dictated by market needs, rather than people's aspirations.

India has compromised itself by becoming a major global provider of low-cost skilled but subservient 'foot soldiers'. To be sure, this workforce includes academics such as nuclear scientists, bio-technologists, information technology specialists, economists, political scientists and linguists. These 'foot soldiers' reinforce the subjugation, hegemony and greed of global capital. This is why education was envisaged by Mahatma Gandhi as a civilisational question, rather than a utilitarian tool. Hopefully, President Obama and Prime Minister Manmohan Singh will hold consultations on Gandhi's historic *Hind Swaraj* (1908), rather than signing market-oriented agreements and laying a ritual floral wreath at Rajghat!

Courtesy Tehlaka □

The Great Indian Love Affair with Censorship Democracy's New Torchbearers Would Brook No Lenience to 'Sedition'

Ashis Nandy

"Patriotism," Samuel Johnson said nearly 250 years ago, "is the last refuge of a scoundrel." These days in India, the adage can be safely applied to nationalism. There is no other explanation of the threat to arrest and try Arundhati Roy on charges of sedition for what she said at a public meeting on Kashmir, where Syed Ali Geelani too spoke. I was not there at the meeting, but I have read her moving statement defending herself afterwards. I feel both proud and humbled by it. I am a psychologist and political analyst, handicapped by my vocation; I could not have put the case against censorship so starkly and elegantly. What she has said is simultaneously a plea for a more democratic India and a more humane future for Indians. I faced a similar situation a couple of years ago, when I wrote a column in the Times of India on the long-term cultural consequences of the anti-Muslim pogrom in 2002. It was a sharp attack on Gujarat's changing middle-class culture. I was served summons for inciting communal hatred. I had to take anticipatory bail from the Supreme Court and get the police summons quashed. The case, however, goes on, even though the Supreme Court, while granting me anticipatory bail, said it found nothing objectionable in the article. The editor of the Ahmedabad edition of the Times of India was less fortunate. He was charged with sedition.

I shall be surprised if the charges of sedition against Arundhati are taken to their logical conclusion. Geelani is already facing more than a hundred cases of sedition, so one more probably won't make a difference to him. Indeed, the government may fall back on time-tested traditions and negotiate with recalcitrant opponents through income-tax laws. People never fully trusted the income-tax officials; now they will distrust them the way they distrust the CBI.

In the meanwhile, we have made fools of ourselves in front of the whole world. All this because some

protesters demonstrated at the meeting that Arundhati and Geelani addressed! Yet, I hear from those who were present at the meeting that Geelani did not once utter the word "secession", and even went so far as to give a soft definition of azadi. By all accounts, he put forward a rather moderate agenda. Was it his way of sending a message to the government of India? How much of it was cold-blooded public relations, how much a clever play with political possibilities in Kashmir?

We shall never know, just because most of those who pass as politicians today and our knowledge-proof babus have proved themselves incapable of understanding the subtleties of public communication. They are not literate enough to know what role free speech and free press play in an open society, not only in keeping the society open but also in serious statecraft. In the meanwhile, it has become dangerous to demand a more compassionate and humane society, for that has come to mean a serious criticism of contemporary India and those who run it. Such criticism is being redefined as anti-national and divisive. In the case of Arundhati, it is of course the BJP that is setting the pace of public debate and pleading for censorship. But I must hasten to add that the Congress looks unwilling to lose the race. It seems keen to prove that it is more nationalist than the BJP.

It is the hearts and minds of the new middle class—those who have come up in the last two decades from almost nowhere and are middle class by virtue of having money rather than middle-class values—that both parties are after. This new middle class wants to give meaning to their hollow life through a violent, nineteenth-century version of European-style 'nationalism'. They want to prove to others as well as to themselves that they have a stake in the system, that they have arrived. They are afraid that the slightest erosion in the legitimacy of their particularly nasty version of nationalism will jeopardise their new-

found social status and political clout. They are willing to fight to the last Indian for the glory of Mother India as long as they themselves are not conscripted to do so and they can see, safely and comfortably in their drawing rooms, Indian nationalism unfolding the way a violent Bombay film unfolds on their television screens.

Hence the bitterness and intolerance, not only towards Arundhati Roy, but also towards all other spoilsports who defy the mainstream imagination of India and its nationalism. Even Gandhians fighting for their cause non-violently are not spared. Himangshu Kumar's ashram at Dantewada has been destroyed not by the Maoists but by the police. I would have thought that writers and artists would be exempt from censorship in an open society. As we well know, they are not. The CPI(M) and the Congress ganged up to shut up Taslima Nasreen by saying she was not an Indian. As though if you are a non-Indian in India, your rights don't have to be governed by the Constitution of India!

The trend of harassing political dissenters for their "seditious" writings and actions started early. It started with the breakdown of consensus on national interest in the mid-'70s. Indira Gandhi imposed Emergency and introduced serious censorship and surveillance, she claimed, to protect national interest, democracy and development. (She had foresight, for though she included development in her list, it took another two decades for the consensus on development to break down.) The difference between the 1970s and the first decade of the 21st century is that millions are now acting out their dissent and speaking out of their radical differences with mainstream public opinion. The whole tribal movement—wrongly called the Naxal movement, because the Naxals have taken advantage of the tribal problem—is an example of this.

There are times when a national consensus is neither possible nor

desirable. The best one can do is to contain the violence and negotiate with those who act out their dissent. That may not be easy in the case of the Kashmiris because their trust in us is now close to zero. Psychologically speaking, the Kashmiris are already outside India and will remain there for at least two generations. The random killings, rapes, torture and the other innovative atrocities have brutalised their society and turned them into a traumatised lot. If you think this is too harsh, read between the lines of psychotherapist Shobhna Sonpar's report on Kashmir.

What is it about the culture of Indian politics today that it allows us to opt for a version of nationalism that is so brutal, self-certain and chauvinist? Have we been so brutalised ourselves that we have become totally numb to the suffering around us? What is this concept of Indian unity that forces us to support police atrocities and torture? How can a democratic government, knowing fully what its police, paramilitary and army is capable of doing, resist signing the international covenant on torture? How can we, sixty years after independence, countenance encounter deaths? Could these

practices have survived so long and become institutionalised if we had a large enough section of India's much-vaunted middle class fully sensitive to the demands of democracy?

The answers to these questions are not pleasant. We know things could not have come to this pass if those who are or should be alert to these issues in the intelligentsia, media, artistic community had done their job. Here I think the changing nature of the Indian middle class has not been a help.

We are proud of our democracy-the consensus on democracy still survives in India-but unaware of a crucial paradox in which we are caught. The democratic process has created a new middle class, a large section of which is not adequately socialised to democratic norms in sectors not vital to the survival of democratic politics but vital to creativity and innovativeness in an open society. The thoughtless, non-self-critical ultra-nationalism, intolerant of anyone opposed to the mainstream public opinion, is shared neither by the poor nor the more settled middle class. Ordinary Indians, accustomed as they are to living with mind-boggling diversity, social and cultural, have no problem

with political diversity. Neither does the settled middle class.

Bankim Chandra Chattopadhyay, for instance, wrote an essay savaging the middle class in mid-nineteenth century. We had to study this in our school and it has remained a prescribed text in Bengal for more than a century. Today you cannot introduce such a text in much of India without probably precipitating a political controversy and demands for censorship.

Recently, at a lecture organised by the Information Commission of India, I claimed that the future of censorship and surveillance in India was very bright. It's not only the government that loves it but a very large section of middle-class India too would like to silence writers, artists, playwrights, scholars and thinkers they do not like. In their attempt to become a globalised middle class, they are willing to change their dress, food habits and language but not their love for censorship. We should thank our stars that there still are people in our midst-editors, political activists, NGOs, lawyers and judges-to whom freedom of speech is neither a value peripheral to the real concerns of Indian democracy nor a bourgeois virtue but a clue to our survival as a civilised society. □

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 □

Armed Forces (Special Power) Act

Misguided or Deliberate Policy: Armed Rebellion and Political Conflict Neingulo Krome

Mr. Chair, fellow panellists, distinguished participants of the Seminar on Armed Forces (Special Powers) Act, Ladies and Gentlemen, At the outset I want to thank the Just Peace Foundation for giving us this opportunity of deliberating issues of common concern in a most befitting

and elaborate manner, commemorating it with the completion of 10 years of Irom Sharmila's Fast unto Death against one of the most draconian and anti-democratic law in India. In this aspect, I also want to salute Ms Irom Sharmila for her courage and ability to demonstrate the highest humanly

possible sacrifice for the cause of not only the "ten slaughtered civilians at Malom Village" by personnel of the Indian Security Forces, but for humanity as a whole. Am sure, when she decided to protest to demand the removal of the AFSPA, she did not do it for fame or glory but just took out the best of the "humanity in

her" for the sake of millions of defenceless civilians and even for those people who are devoid of humanity and perpetrates inhuman acts against fellow human beings.

Having said that, going by the analysis of various international monitoring agencies, including those of the United Nations, it is clear that the Government of India made an "over-zealous effort to integrate the people of the North East into their so-called national mainstream by using the Armed Forces (Special Powers) Act". Therefore, this is a deliberate policy of the Government of India against the people of North East starting with the Naga Movement as one of the first group of people who asserted their identities as - Nagas and "not Indians" and launched a political movement which turned into an armed resistance movement under military compulsion. This Act was then enacted as The Armed Forces (Assam and Manipur) Special Powers Act of 1958 as the present State of Nagaland was just a district under Assam at that time and Manipur with the present Naga Hills districts a Union Territory. After Manipur became a full-fledged state in 1972 along with Meghalaya and Tripura, this Act was again amended in 1972 in order to extend this Act to the newly created states. Whatever the nomenclature or target group may have been at that point of time, the people of North East India as a whole, Punjab, Jammu & Kashmir and many parts of the Indian sub-continent now reels under the shadow of this "death penalty" - "Shot to kill" anyone on mere suspicion. This is what the Government of India is apparently seeking to address through the AFSPA.

Its efficacies can be summarised on the fact that, rather than integrating the people of North East or wherever political conflict exist, it has only alienated the people and increased social and political unrest with the multiplication of armed resistance groups. And in so far as the personnel of the Indian Security forces are concerned; they have effectively executed various categories of protecting "national

security" in exercise of powers conferred under the AFSPA, such as; (and I quote from the report of the People's Union for Democratic Rights, Delhi after the Supreme Court's Judgement on the Armed Forces (Special Powers) Act in 1997 was pronounced under the caption "An Illusion of Justice" published in 1998)

- a. Extra-judicial killings
- b. Extra-Judicial deprivation of the liberty of people, specially in villages including;
 - (i) Grouping
 - (ii) Illegal imposition of curfew
 - (iii) Long periods of detention at army posts and camps
 - (iv) Use of churches and schools as detention or interrogation centres
 - (v) Setting up of illegal interrogation centres
 - (vi) Rape, molestation and sexual harassment of women
 - (vii) Forced labour
 - (viii) Looting of homes
 - (ix) Desecration of places of worship, specially churches
 - (x) Torture which is mainly carried out with a view to extract confessions which is a serious crime under section 330 and 331 of the Indian Penal Code. The torture includes, beating with rifle butts, kicking with boots and hitting with blunt weapons, giving electric shocks, breaking limbs, depriving person of food drinks and sleep, hanging a person upside down and beating on soles, burying a person alive, stripping, blindfolding and hooding, stuffing chilli powder into eyes, nose and private parts, tying of hands and feet and suspending a person over fire with a bamboo in between the hands and legs, threats to shot, interrogation at gun point. (unquote)

However, these reports do not include killings through fake-encounters, which almost became a daily practice in Imphal valley in the recent times, so also in Jammu and Kashmir and parts of North east

India, including the many parts of the "so-called" mainland India wherever social, economic and political conflict persists. There are also so many practices of harassments like checking and frisking, interrogations on the streets, etc. which need not be discussed in details.

Nevertheless, based on the foundation of such experiences, even before the AFSPA was enacted in 1958, for the Nagas, the Assam Maintenance of Public Order of 1953 was enough to raze our entire villages to ashes. And even after AFSPA was enforced, another Act called the Nagaland Security Regulation of 1962 was passed. These were subsequently followed by the Unlawful Activities Prevention Act, in 1972, Maintenance of Internal security Act (MISA) under Indira Gandhi's Emergency in 1975 and so on. Needless to describe, but the sufferings of the people were just too much to bear even for people who were mere witnesses. Under such circumstances it is only natural that Civil Rights Movements are launched. Naga Peoples Movement for Human Rights (NPMHR) is one such Civil Rights Movement in Nagaland which was formed in 1978 to respond to the need of the time. Similarly, in the context of the North East as a whole, we also had the North East Coordination Committee on Human Rights (NECOHR). When Oinam incident took place in 1987, Civil Rights groups of Manipur came together and formed the Coordination Committee on Oinam Issue (COCOI).

Likewise in the backdrop of heightened violence in Imphal valley in the 70s and 80s, various likeminded people from different background came together to take up human rights issues under the banner of Civil Liberties and Human Rights Organisations (CLAHRO). There was also another umbrella organisation called the Coordination Committee on Human Rights (COHR) consisting of various communities of Manipur, like Kukis, Meiteis and Nagas etc. and jointly defended the civil population of Manipur from the excessiveness of the Security forces. And of course now we have the Human Rights Alert

(HRA) and others which I may not be well aware of. But if we are to move "towards a life with dignity" to confront those mechanism which strips us of our dignity and our very life itself, civil rights movements must be strengthened at all cost, although we must acknowledge, whether for good or for bad, armed resistances have played its own share of restoring dignity. Because in the absence of any strong Civil Rights Movement no Government will listen to the pleadings of "suffering souls" as long as they can comfortably remain in their respective powers. Therefore, the main challenge before us today is to question ourselves, how we can build a strong Civil Rights Movement. Even now we do have many such movements which are all strong in their own ways, but are fragmented in terms of team-work. If our visions are common and if we can live and

work on those ethics together, at least on common issues, I see no reasons why we cannot have good team-work.

Let me end this presentation with an analysis as a footnote which say; "The Armed Forces Special Powers Act contravenes both Indian and International law standards. This was exemplified when India presented its second periodic report to the United Nations Human Rights Committee in 1991. Members of the UNHRC asked numerous questions about the validity of the AFSPA, questioning how the AFSPA could be deemed constitutional under Indian law and how it could be justified in light of Article 4 of the ICCPR. The Attorney General of India relied on the sole argument that the AFSPA is a necessary measure to prevent the secession of the North Eastern

states. He said that a response to this agitation for secession in the North East had to be done on a "war footing." He argued that the Indian Constitution, in Article 355, made it the duty of the Central Government to protect the states from internal disturbance and that there is no duty under international law to allow secession".

"We who believe in freedom cannot rest" - Ella Baker (An African-American civil rights leaders).

Thank You!

(The writer is a former Secretary General, NPMHR, on; Civil Rights Movement. He presented the above Paper in a Seminar on "Armed Forces (Special Powers) Act" during the Festival of Hope, Justice and Peace held at Imphal from November 2 - 6, 2010)

Custodial Torture And Murders In West Bengal: Complaint To The Chairman, NHRC

This present report is based upon the incident that happened in a village located near Indo-Bangladesh border in the district-Murshidabad, West Bengal where the victims (one of them was minor by age) were forcibly captured by the perpetrator BSF personnel on 1.9.2010. Several local people had been witnesses of the fact that the victims were taken into custody and forcibly taken to BSF Camp by the perpetrator BSF personnel. The family members of the victims and local had been to the said BSF camp but the victims were neither released nor handed over to the police. The perpetrator BSF personnel reportedly committed heinous assault upon the victims, shot them to death and threw their bodies into the river Padma in order to conceal their crime. Upon recovery of the bodies of the victims from the river, several marks of gun shot injuries and other marks of brutal physical assault were found on the bodies of the victims.

The local police station refused to take any complaint against the perpetrator BSF personnel accused in committing murder of the victims.

One complaint was lodged before the Superintendent of Police, Mursidabad urging for taking due steps in order to prosecute the perpetrator BSF personnel for committing murder of the victims and subsequent attempt to conceal the crime by throwing the bodies of the victims into the river. But till date reportedly neither any prosecution nor any kind of probe has been initiated against the accused BSF personnel.

This time the incident of the killings of the victims is not as a result of the exercise of the right of self-defense by the perpetrator BSF personnel as they died in the custody of the perpetrator BSF personnel. Moreover no complaint from side of Border Security Force was ever lodged against the victims till date.

The incident of killing of the victims is a cold-blooded crime and the accused BSF personnel must be prosecuted under the law in the ordinary court of law.

Name of the victims: - (1) Jiarul Haque (deceased), son of Mr. Kaosar Ali Sarkar, aged about-23 years, by faith-Muslim, resided at village-

Khamarpara, Post Office-Katlamari, Police Station-Raninagar, District-Murshidabad, West Bengal; (2) Mustakim Seikh (deceased), son of Mr. Lalu Seikh, aged about-15 years, by faith-Muslim, resided at village-Sarandajpur, Police Station-Raninagar, District-Murshidabad, West Bengal, India.

Name of the perpetrators: - (1) The Camp- In-Charge and all staff of Mini BSF Camp of Giridhari BSF Company Head Quarter, Battalion no.105, Border Security Force, Police Station-Ranitala, District-Murshidabad; (2) the officer-in-charge of Raninagar and Ranitala Police Stations; (3) the Superintendent of Police, Murshidabad.

Place of incident: - (i) At Nirmalchar located under the jurisdiction of Ranitala Police Station and (ii) BSF Mini Camp situated under the jurisdiction of Ranitala Police Station.

Date & Time of incident: - On 1.9.2010 at about 4 pm and afterwards.

Case Details: - The victim Jiarul Haque used to work in Kerala for

earning livelihood for the family. On 31.8.2010 he came to his residence in the district-Murshidabad to celebrate Eid with his family members. During his stay he noticed that the house of his residence was in dilapidated condition. In order to repair the dwelling he on 1.9.2010 at about 10 am in the morning went to Nirmalchar situated under Ranitala Police Station to cut some 'Kashbon' one kind of bush which is used by the local villagers to repair their houses. At about 4 pm in the afternoon two jawans of Border Security Force (BSF) from Out-Post no. 10 arrived at the spot and they without showing any reason whatsoever forcibly picked up the victims Jiarul Haque and Mustakim Seikh (aged about-15 years), son of Lalu Seikh to the nearest BSF Mini Camp. In the BSF Camp the victims were subjected to heinous physical assault and they were tied with a stand in the said camp. The victims were forcibly picked up by the said BSF jawans in presence of several local people namely Rejaul Haque Sarkar, Abubakkar Seikh, son of Hikmatulla Seikh and many other local villagers.

The family members of the victim and the local people tried to meet with the victims in said BSF Camp. But all their efforts went in vain and they could not make any contact with the victims during their detention in the said BSF Camp. In the next morning on 2.9.2010 the family members of the victims came across with the news that the BSF killed the victims and threw their bodies into the river Padma in the last night.

Thereafter on 3.9.2010 the bodies of the victims were recovered from the river Padma with the help of several local villagers, members of Gram Panchayat and In-Charge of both Giridharipur BSF Company Head Quarter and Kaharpara BSF Company Head Quarter. The place of recovery was situated under the jurisdiction Ranitala Police Station which was duly informed about the recovery of the bodies of the victims. The police of Ranitala Police Station

sent the bodies of the victim for Post Mortem Examination to Lalbagh Sub-Divisional Hospital, Lalbagh, Murshidabad. The family members of the victims and several other local villagers were present at the place of recovery and they noticed that both the victims Jiarul Haque and Mustakim Seikh had gun shot injuries on their bodies. Beside that both the bodies of the victims had other forms of injuries.

On 13.9.2010 Mr. Kaosar Ali Sarkar, father of the victim Jiarul Haque had been to Raninagar Police Station for lodging complaint against the accused BSF jawans for murdering his son Jiarul Haque but the police of Raninagar Police Station refused to take any complaint on the plea that the complaint had to be lodged at Ranitala Police Station under which jurisdiction the bodies of the victims were recovered from the river. Then Mr. Kaosar Ali Sarkar moved to Ranitala Police Station for lodging complaint but reportedly his complaint was not accepted by police.

On 14.9.2010 Mr. Kaosar Ali Sarkar, father of the victim Jiarul Haque lodged written complaint before the Superintendent of Police, Murshidabad against the perpetrator BSF personnel for murdering his son Jiarul Haque and another victim Mustakim Seikh. In the said written complaint Mr. Kaosar Ali Sarkar prayed for initiating prosecution against the perpetrator BSF personnel for committing murder of his son.

The police of Ranitala Police Station started one unnatural death case vide Ranitala Police Station U.D. Case 6/2010 in respect of the unnatural deaths of the victims Jiarul Haque and Mustakim Seikh.

There was no complaint against the victims from the side of the Border Security Force in police station till date. This clearly indicates that the apprehension of the victims was illegal and the perpetrator BSF personnel intentionally in order to conceal their crime murdered the victims and threw their bodies into

the river Padma.

Reportedly it came to our knowledge during fact finding that the police Ranitala Police Station registered one criminal case vide Ranitala Police Station Case no. 318/2010 dated 16.9.2010 in the matter of unnatural death of the victims and except the case number no other information (such as the time of registration of the FIR, penal provisions under which the FIR was registered, the particulars of the complainant and the accused persons) was available to us. On 12.10.2010 at about 5.45 pm the duty officer of Ranitala Police Station namely Mr. Nirmal Das was contacted over telephone but the said duty officer did not inclined to furnish any information. Then the Second Officer of the police station namely Mr. Sanyasi was contacted over telephone but he also did not inclined to furnish any information.

Hence we seek your urgent intervention in the following manners:-

- The whole matter must be neutrally probed by a judicial magistrate appointed under the provision of section 176 (1-A) of Criminal Procedure Code as the victims died while in the custody of BSF.

- The accused perpetrator BSF personnel must be booked under the law by registering a specific criminal case against them under proper penal charges for committing murder of the victims and subsequent attempt to conceal their crime and the criminal case should be investigated preferably by Criminal Investigation Department (CID), West Bengal.

- The family members of the victims must be given adequate reparation, support and protection.

- The witnesses of this incident must also be given adequate protection from any possible threats and harassments.

Kirity Roy, Secretary, Banglar Manabadhikar Suraksha Mancha, (MASUM) & National Convenor, Programme Against Custodial Torture & Impunity (PACTI)

Fresh Allegations Of Sexual Assault By Security Forces In Chhattisgarh

Aman Sethi

Kunjami Mangli's torn blouse and a lock of her hair that she says was cut off when she was sexually assaulted by the Chhattisgarh police's Koya commandos.

A young woman carries a torn blouse and an undergarment and a lock of her hair in a clear plastic bag that rarely leaves her side. Kunjami Mangli (name changed) of the Bade Bidme panchayat in Chhattisgarh's Dantewada district preserves these items as evidence of the events of the night of October 12.

"Four uniformed policemen burst into my house at 2 a.m.," said Mangli, speaking through a translator. "They ripped off my blouse and brassiere and sexually assaulted me."

"I was sleeping on the floor, one policeman put his foot on my head, pulled my hair and cut off a lock with a knife," said Mangli. "The three others pulled up my petticoat and tried to rape me." Mangli said her ordeal lasted about 15 minutes, even as her mother pleaded with the men to spare her daughter.

Mangli and her mother said the assault was perpetrated by the Koya Commando wing of the Chhattisgarh police. The Koyas are a commando unit raised from Adivasi special police officers, a tribal police corps recruited in the aftermath of the 2005 Salwa Judum, and is at the forefront of the Chhattisgarh police's battle against the CPI (Maoist), a banned organisation committed to the overthrow of the Indian state.

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'other' side. Without political mobilisation on a large scale, mere law and order approach to these problems will be woefully inadequate.

(ii) The Central and the State governments to initiate steps that will ensure the credibility, the integrity, and accountability of the government machinery at various levels not necessarily confined to administrative hierarchy, and

(iii) In the context of the specific situation in Jammu and Kashmir, Punjab, and other parts where sporadic terrorism is being

Villagers say the October 12 raid began with an eight-hour blackout in which the adjoining panchayats of Bade Bidme and Phulpar were plunged into darkness. The police raid continued through the night during which, villagers say, policemen assaulted Kunjami Mangali and arrested Kunjami Bhima from Bade Bidme's Kunjamipara village and picked another five men from Phulpar panchayat's Domarpara and Koyalipara villages. In the last month, 12 residents of Bade Bidme have been arrested on the suspicion of aiding Maoists.

Villagers also accused the Koya commandos of breaking into houses and stealing utensils and jewellery. Kunjami Hidme, 26, of Kunjamipara said the search party had stolen Rs. 3,000, a pair of golden earrings, a necklace and silver anklets from her home.

The raid ended at 4 a.m. Electricity returned a few hours later.

The sexual assault on Kunjami Mangali is one of an increasing number of cases in which Adivasi women have allegedly been targeted by the security forces; both State and Central paramilitary forces stand accused of assaulting and raping young women during search operations.

In a June 8 report in *The Hindu*, three teenaged girls from Mukram village in Dantewada district stated that they were brutally assaulted by SPOs

witnessed, to associate and involve credible persons from different parts of the country, not as decision-makers, in various organised ways with all the 'law enforcing' measures. This will mean their being live witnesses, sounding boards, and reviewing agencies in the case of arrests, detention, interrogation and firings. Similar arrangements should be made to facilitate reporting on the activities of the violent agitators, terrorists, and insurrectionists. These measures, which ensure continuous monitoring of developments should

attached to the 62nd battalion of the CRPF. The National Human Rights Commission directed the Chhattisgarh police to conduct an inquiry and submit a report on October 1. A spokesperson for the NHRC said the police were yet to file a reply, and that the deadline for the inquiry had been extended to November 9.

On September 11, *The Hindu* published the testimony of two girls from Pachangi village in Kanker district, in which they accused personnel of the Border Security Force of sexual assault. BSF Director-General Raman Srivastav ordered a prompt internal inquiry.

When contacted on Sunday, BSF DIG Ram Avtaar said witness statements had been collected and the inquiry report would be submitted "soon."

On October 12, the women of Bade Bidme and Phulnar gathered on the streets at Palnar to protest the assaults and to stop the police from arresting their men. "The policemen assaulted me with rifle butts," said Markam Bhime, mother of Kosa Bhime, who was arrested that morning.

The Chhattisgarh police have consistently maintained that all such accusations are taken very seriously and inquiries are under way. Police efforts are complicated by the fact that most victims are too traumatised to file official complaints.

act more as effective deterrent than post-mortem of the traditional time consuming, judicial and quasi-judicial, agencies.

"The convention also calls upon all champions of civil liberties and members of the PUCL in particular, without identifying with any of the involved groups, to take vigorous and prompt initiative on these matters and act as catalysts in the creation of new institutions and fresh practices that will promote and consolidate their principal cause."

PUCL Resolutions On Violence

It is being noted that there is some ambiguity amongst some of the PUCL members on PUCL's stand on the issue of violence. Following are two resolutions passed a few years back that clarify the organisation's stand on the subject. - Mahipal Singh, Secretary PUCL.

Question of violence

(a) Resolution of the National Convention held on March 7 1982, at Madras (now Chennai)

"The PUCL reaffirms its faith in the democratic way of life.

"It appeals to all to use to the utmost the agencies and methods available in an open society. Apart from other factors, violence, even for laudable objectives, will legitimise counter-violence by the State and other groups. (emphasis added)

"It reaffirms that even those who have taken to violence are entitled to due process of law. We believe that this commitment is the very faith of an open society and also that adhering to this commitment is an effective way of converting all to the democratic and peaceful way of transforming our society".

(b) Statement adopted at the National Convention held at Pune on May 26 & 27, 1990

"With the increasing resort to violent agitations, terrorism, and insurrectionary and associated devices to attain political ends, and as a sequel the response of the state machinery the basic civil liberties and human rights of the great majority in the country are in jeopardy and are likely to get further curtailed by the State on the one hand and the perpetrators of violence on the other.

"The present state of affairs in Jammu and Kashmir, the Punjab, the North-east, and other parts of the country, especially in Andhra Pradesh and Maharashtra, range from virtual insurrection to organised terrorism. The late, hasty, panicky, inarticulate, and *ad-hoc* reactions of the governments, both at the centre and in the States, amount to unleashing measures, which not only aggravate the situation but, because of their very nature, constitute a frontal attack on residual civil liberties. Even with all the goodwill, which is not that widely prevalent

among the law enforcing authorities, they may find themselves in an unenviable position of liquidating the rights of the citizen for what may appear to them and their mentors, a higher cause.

"It must be recognised that such movements do not emerge without warning and without some cause and therefore a minimal mass base, and one of the main aims of such movements is to prevent the exercise on the rights by their adversaries. Not to generate advance signals of warnings and to respond to them promptly and the inability of the democratic body politic to resolve an issue involved within the democratic framework is a reflection, in general, on its inadequacies and, in particular, a failure of the State apparatus in the country.

"The persistence of these trends over extended areas are a threat to the integrity of the country, to its nascent democratic polity, and to the very survival of civil liberties and human rights.

"In this context, it should be specially noted that those indulging in violence, terrorism, and insurrection are not belligerents but citizens of the country and hence the principal objective of the State response should be to bring them into mainstream of democratic polity by neutralising the effectiveness of their ill-conceived strategy.

"The Convention therefore calls upon:

(i) The public and all political parties to demand creation of suitable institutional framework in order to resolve underlying causes in a peaceful and humane manner and where already violence and insurrection have raised their head, to organise masses to isolate the 'other' side, erode their bases, instill confidence among the community in their ability to combat unarmed the

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