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Notify Freedom from Unwarranted Arrest Prabhakar Sinha

The provision in the Cr. P. C. under which any police officer is empowered to arrest a person without a warrant even on a mere suspicion of his involvement in the commission of a cognizable offence (under section 41 of the Cr.P.C.) has been a source of maximum police atrocity. A legacy of the pre-independence colonial law enacted to keep the subjects of the empire in fear and subjugation was not amended even after we became a republic and the constitution guaranteed the right to life and personal liberty. Even the most obvious question as to why a person accused of minor cognizable offences should be arrested and detained at all was not raised by the political class; neither was any effort to regulate the exercise of the enormous and arbitrary power made. In fact , this provision has been misused with impunity at such a massive scale as to make the right to personal liberty meaningless for the poor. Almost all the victims of killings in the police custody, fake encounters and torture are those who had been arrested under this law because in the absence of a warrant there is no prior record to prove that they were arrested. The police manipulates the record of arrest in the event of death, injury or illegal detention in its custody for more than 24 hours to justify or deny its role in the crime. Hundreds who just disappeared (i.e. who were killed and whose bodies were secretly disposed of) were people arrested without a warrant, that is without any record of their arrest.

The massive misuse of this draconian law and the misery it caused to the poor has been common knowledge to the people's representatives and the political parties in power at the centre and the states, but it failed to move them. In fact, they continued to turn a blind eye to the judgments of the Supreme Court which drew attention to the grave injustice done to the people and issued directions to mitigate the suffering of the helpless victims (Joginder Singh vs State of U P, 1994 and D.K. Basu vs the State of West Bengal,1997). In 1999, the Law Commission approached the National Human Rights Commission 'for a study leading to amendments in the law relating to the power of the police to arrest'. Thus, the issue of restricting the power of the police to arrest without justification and protect the right to personal liberty was taken up by Parliament following repeated prompting of these judicial bodies rather than respect for it inspired in the people's representatives. The amendment bill passed by both houses of Parliament has already received the President's assent and been published in the gazette of the government of India. But ironically, it has not come into effect because the Act itself stipulates that it would come into force with effect from the date of its notification in the Gazette.

The amendment Act restricts the power of the police to arrest anyone at will which it has been enjoying and abusing and continues to possess

even after the enactment of the amendment. According to the new provision, the police cannot arrest a person without a warrant if he is accused of an offence carrying a sentence up to seven years. Instead of arresting him, the police is empowered to give him notice of appearance before it to facilitate investigation, but he may be arrested if he refuses to respond. This provision excludes minor offences for which the police has been arresting the poor and misusing this power for

extortion. However, the amended Act empowers the police to arrest without warrant in cases where it may be necessary to prevent escape, intimidation of witnesses, destruction of evidence or prevention of further offence etc., but in such cases the reason for the arrest has to be recorded, which would naturally be subject to scrutiny. It also incorporates the recommendations made by the Supreme Court in D.K. Basu's case, which safeguards the interest of the arrested persons. If and when the Act

comes into effect, it is likely to drastically reduce death in police custody, fake encounters, disappearance of the arrested persons, torture in the police custody, indiscriminate arrest of the poor and inhuman conditions in jails due to overcrowding.

The draconian law and its rampant misuse are a blot on the face of our republic, which should be wiped out immediately by bringing the amendment Act into force. □

Begusarai PUCL:

World Human Rights Day

Begusarai PUCL Unit organised the following meetings on World Human Rights Day:

Hardiya Village

Inaugurating the programme on human rights day, Bihar PUCL general secretary and Editor of *Maanwaadhikar patrika* Mr. Ramashray Prasad Singh said, "All human beings are born free and equal in dignity and rights. A human rights owed to every person simply as a human being is inherently universal. Child nutrition and death of starvation in our country is also a human rights issue. We can not see to separate." The Programme was organized near primary school of Hardiya village at Begusarai (Bihar). Addressing the

gathering Mr. Singh said everyone is entitled to all the rights and freedoms set forth in human rights declaration, without distinction of any kind such as race, colour, sex, language, religion or other opinion, national or social origin or other status. Mr. Mahesh Bharti, Advocate Prabhakar Maharaj, Prabhakar Kumar, social activist Phulena Singh, Ram Lalit Yadav and others also addressed the meeting. The meeting was presided by ex-teacher Shiv kumar Mahto.

Bhagwanpur villege

Another meeting to commemorate the Human Rights Day was organized by Bhagwanpur unit of PUCL. PUCL State Council member Mr. Arun Kumar Singh said that we should we

should strive to make our society such that everyone can enjoy human rights. Mr. Vinod kumar, Visheshwar Sharma and others described different aspects of human rights. Bhagwanpur unit of PUCL opposed the amendment to the RTI Act 2005.

Baliya village

A third meeting on the occasion was organized by Baliya unit of PUCL. District Secretary of PUCL Mr. Umashankar Prasad said the assertion of a human rights is a claim on protection from threats from dominant groups and public authorities. Mr. Arun Gandhi and others also addressed the meeting.

A similar meeting was organised in DAV school Fertilizer. □

Demonstration against Amendment to RTI Act in Bihar

A demonstration was held by Begusarai PUCL on the issue of amendment to the RTI Act 2005 which has recently been approved by the Bihar cabinet. Delivering inaugural address Mr. Rampaksh Singh (Ex-District & session judge) said government is trying to make procedure of filing the application very expensive for the citizens and in a way taking it away from the people. Addressing the meeting after the demonstration Bihar PUCL General secretary and Editor of *Manwadhikar patrika* Mr. Ramashray Prasad Singh said that the RTI is a weapon of marnaliged citizens. He said making it more expensive is taking it away from the poor people who can use is

as a weapon against the powerful bureaucracy. This in a way is violation of human rights, he said. Mr. Singh added that the right to information remains a major fundamental right as rest of the fundamental rights are far from being enjoyed by the people.

He presented a charter of demands on the issue. These included:

- To withdraw the amendment to the RTI ACT 2005 by Bihar cabinet.
- To appoint 10 information commissioner with one chief information commissioner.
- To appoint ex-chief justice of High court as State Chief information commission.

- To give financial and administrative freedom to state information commission which will make it autonomous.
- To identify such officers who do not give adequate information about concerned matter
- To give more information on one application
- Government should launch programme to spread awareness of RTI amongst citizens.

Advocate Basista kumar Ambast, Rammurti Singh, Ramesh Prasad Singh, Prabhakar Maharaj, Umashankar Prasad, Alok Kumar Agrawal(ex-chairman city council), Mahesh Bharti, Faiter etc. also addressed the meeting. □

Jharkhand PUCL:

Dear Dr. Pushkar Raj,

It's a good news. Giridih District PUCL committee has been formed on 14th August, 2009. A day long meeting of the PUCL members was held at G.D. Jalan Dharamsala, Makatpur, Giridih, Jharkhand State on 14.08.2009. 57 members attended the meeting. They were functioning so long as members of Dhanbad unit. Considering their strength and initiative, State body decided to have their independent Branch.

Letter to the Editor

The meeting was attended by the State President, Shri Subrato Bhattacharjee and State Secretary, Shri Sunil Kumar Singh. Shri Bhattacharjee informed the members about the history of Human Rights Movements in India and the functioning norms of PUCL. He invited the members to read the booklet Know PUCL and to work under the frame work of the PUCL Constitution.

Naushad Ansari, Advocate Budhan Hembram, Ramdev Viswakarma, Somnath Mukherjee, Amin Akela, Moulana Shah Alam Nuri, Abdul Zalil Mirza and others spoke on the occasion.

At the end, 19 members preparatory committee was formed. Naushad Ansari and Budhan Hembram was elected as joint conveners unanimously.

S. Bhattacharjee, President, Jharkhand PUCL □

Right to No Vote Ugam Raj Mohnot*

In India, elections to local bodies, State Assemblies and the Central Parliament take place periodically. Usually the voters feel dissatisfaction regarding the elected representatives. Whosoever gets ticket, from any political party, contests the election. Election has become the game of money and muscle power. The voters usually feel that they are helpless. All concerned people say that all candidates are useless; still we have to choose a lesser evil. That amounts to the fact that all the candidates are usually undesirable as people's representatives - maybe a man of tainted character, a dada, a man counting on his multi-million worth of wealth. People feel that they have got no option except to choose one out of them.

The Conduct of Election Rules 1967 Article 49(O) provides right to no vote. The voter can go to the polling booth and ask the booth in-charge officer to provide him with as no vote form. The voter is not compelled to vote for either of the contesting candidates. He can decide not to vote for any of the candidates. Usually some voters out of apathy do not turn up to the polling booth while others say, "*Sab Chor Hain*" (all are thieves), chune jane par apne ghar bharte hain (on

being elected they only fill their own homes). Such people should go to the polling booths and cast "NO VOTE".

Merely out of apathy, if the voters abstain from casting their votes, naturally unwanted elements have their way. A lot of voters even don't know the right to "NO VOTE". To improve upon this electoral system, the voters should avail their right to NO VOTE. If large number of voters cast NO VOTE and the number of NO VOTES exceeds the number of the highest number of votes polled by the winning candidate, the voters can claim re-election on that account and the undesirable contesting candidates will be debarred from contesting in the re-election.

I may give here an imaginary example. Suppose, in a consistency there are 32851 voters and out of this number 21962 exercise their right to vote. 31 of the votes cast are invalid. There are 6 contesting candidates. The candidate getting the highest votes gets 4274 votes, number two candidate gets 3875, number three candidate gets 3443, number four candidate gets 3192 and the last candidate gets 3045 votes. In case 4302 voters cast in favour of NO VOTE, the number of such votes would exceed the number of votes

polled by the candidate getting the highest number of votes, which is 4274. That would imply that more voters don't like any of the candidates. Under the situation, the candidate getting 4274 votes cannot be declared to have won the election. This would mean re-election. But in that re-election all these contesting candidates should be debarred from contesting because they have already been rejected by the voters. This provision needs to be included in the rules to empower the voter really to vote according to his choice, and not being forced to vote in favour of one of the candidates whether he likes them or not.

In this way, if the voters drop their apathy and exercise their right to NO VOTE, there will be a check on the unwanted candidates. It is useless to raise hushed voices. It is better to exercise the right to NO VOTE. Let us be conscious to exercise our right to vote and not leave things 'Bhagya Bharose' (leaving things to providence). In the last Lok Sabha elections, 1224 voters, a meager number though, cast NO VOTE. Greater consciousness will, however, help in the long run.

*The writer is an advocate in Rajasthan. □

The Importance of the Liberhan Commission Report

R.M. Pal

As reported in the Indian Express on 23rd November, 2009 (Justice) M.S. Liberhan Commission has indicted the BJP/RSS leaders for demolishing the Babri Masjid on 6th December, 1992. It has also indicted Atal Behari Vajpayee (although the report says that even though Vajpayee was not physically present at Ayodhya on that day, he too is responsible for contributing towards communalising the whole atmosphere in the country). If we see this indictment in the light of the statement at a rally made by Vajpayee, just a day before the fateful and black day in the history of the country, on 5th December, 1992 at Lucknow, telecast by some TV News Channels on 23rd November, 2009, the culpability of Vajpayee in the whole episode becomes more than evident, though some political leaders including Kalyan Singh, the then Chief Minister of UP, have tried to defend

him. As some of the RSS/BJP leaders have accepted the fact that since they wanted the Ram Mandir there, they had to demolish the Babri Masjid, there was no other option before the Kar Sevaks who had assembled there at the call of their leaders only for that purpose.

If one goes deep into the philosophy and practice of fascism, the whole episode starting from Mr. L.K. Advani's Rath Yatra and culminating in the demolition of the Mosque smacks of fascism. The most important aspect of fascism is to destroy the weak. It is not difficult to come to the conclusion that the BJP and RSS are fascist formations and are intolerant of others' religion, culture and language - the elements which make the country a grand home of diversities for which a big nation like India is known and respected everywhere, and on which its integrity

and survival depends.

As I have written on a number of occasions, the most dangerous enemy of the country is communalism. If communalism, which is nourished by cultural fascism practised by organisations like the BJP, the RSS and the Shiv Sena, is not wiped out from the soil of the country, we run the risk of destroying the country itself.

How seriously the central government takes the report and what action it takes in the light of the conclusions drawn by Justice Liberhan after a massive labour of 17 long years will show whether the communalists will be restrained from damaging the fabric of our secular society or whether they will continue to succeed in spreading communal hatred with impunity thereby endangering peace and unity of the nation. □

News:

Driver Gives Statement to Cops on 'Killed' Maoist

Sasaram: The charge of People's Union for Civil Liberties (PUCL) and other rights activists that Maoist Kamlesh Chaudhary had been killed in a fake encounter gained credence when the driver of the vehicle in which he was traveling appeared before the station house officer of Chenari police station in Rohtas district on Friday.

Kamlesh, a CPI (Maoist) leader and carrying a cash reward of Rs 1.5 lakh on his head, was killed on Nov. 9.

The driver, Munir Siddiqui, of nearby Sabar village, claimed that UP Police had picked up five persons, including Kamlesh, as soon as the vehicle entered Uttar Pradesh on Nov. 9.

Confirming the driver's presence, Rohtas superintendent of police Vikas Vaibhaw said the former's statement had been recorded. He also assured PUCL of an impartial inquiry and extending full cooperation in the matter.

Sources said after Kamlesh was killed

at a forest in Obara of UP's Sonbhadra district by police in an alleged encounter, PUCL swung into action, describing the encounter as "cold-blooded murder". The PUCL, in a memorandum to the National Human Rights Commission (NHRC), alleged that UP Police had picked up five persons, including Kamlesh from a village under Chenari PS and killed him in a fake encounter.

PUCL also requested NHRC to intervene and ensure the safe release of four others, who had also been picked up with Kamlesh. The PUCL feared that they might also have been killed in a fake encounter.

In the meantime, the SHO of Chenari PS on the instructions of the SP also mentioned in the station diary the disappearance of some persons of the area on November 10.

The hue and cry, raised by PUCL and other rights activists, forced police to release the others four days ago warning them of dire consequences

if they dared to open their mouths.

In his statement, Siddiqui claimed that police personnel in mufti spotted the vehicle at Naubatpur in UP's Chandauli district on November 9 and herded them on to another vehicle that was stopped by a policeman. The driver had to be freed near Obara when the tyre of his vehicle burst. Then, Rohtas police heaved a sigh of relief because PUCL had charged the SP with handing over Kamlesh to UP Police.

PUCL requested the SP to conduct an impartial probe into Kamlesh's killing by UP Police because the vehicle and four others traveling with the Maoist belonged to Rohtas district and they went to Varanasi away from the SP's jurisdiction.

The SP said police were also persuading Bharat Kharwar, who was also alleged to have been picked up by UP Police along with Kamlesh, to record his statement.

- Courtesy, Times of India □

News:

Justice Rajindar Sachar - Visit to Cairo on 5th to 9th Dec. 2009

Justice Rajindar Sachar, former President, Peoples Union for Civil Liberties was invited by Cairo University and the Building Global Democracy Programme to attend the workshop 'Conceptualising Global Democracy' in Cairo on the 5th to the 9th December 2009.

The Building Global Democracy Programme is a 5-year academic research endeavor exploring how global issues can be governed in democratic ways. It brings together academics and policy practitioners from all over the world. 'Conceptualising Global Democracy' is one of the programme's five main projects. It aims to increase understanding of this notion and address past oversights on the topic. The programme is convened by 10 convenors from all over the world, some amongst them being namely: (Cairo University); (Institute for Globalisation Studies and Social Movements, Moscow); (University of Warwick & London School of Economics). □

Remembering Balagopal

K.G. Kannabiran

Writing about Balagopal is to write about the history of the human rights movement. For him the Universal Declaration of Human Rights was the announcement of the rights that inhered in the people and the societies in which they lived. The third preamble to the Declaration "if man is not to be compelled to have recourse as a last resort to rebellion against tyranny and oppression, that human rights be protected by the rule of law" became the focus of all his human rights activities. Writing about him is to write about the metamorphosis from a committed believer in the Naxalbari movement to a human rights activist and he defined the terms of his transition.

The movement came at a period of crisis in the late 1960s and the only method governments knew to tackle unrest was to unleash repression. Pre-constitutional laws intended to suppress anti colonial struggles were all adapted by the President of India by way of abundant caution. By the time the Naxal Movement arrived at Shri kakulam, the Constitution was around eighteen years of existence, Nehru "the fixed asset" we inherited was dead in 1964 and after some delays the dynastic succession was found to be the proper thing for the country. Post Independence the ML movement threw a comprehensive challenge to the Constitution and its value system.

The Madras Suppression of

Disturbances Act of 1948, adapted belatedly and was of doubtful validity, provided the fig leaf legality for the government of integrated AP to be used against the nascent Naxalite movement. Of interest is the fact that the same law that was introduced to contain the Telangana Armed Struggle was adapted by the President and used to prevent the spread of the Naxal Movement. The forest areas from Shri kakulam to Adilabad were declared Disturbed Areas and the phenomenon of "encounters" was brought on to the agenda. The brutal methods employed remained unnoticed and quite a few hundreds were arrested in the Shri kakulam Tribal areas. More than a thousand activists were shot before the proclamation of Emergency in 1975. Warangal produced many fine intellectuals at this time who confronted the repression, making that town the storm centre for revolutionary activity. Varavara Rao who belongs to Warangal played a pivotal role in the movement. It was the pedagogues in AP who led this movement which spread like forest fire.

After the Emergency in 1975 this gross impunity was targeted, first by the Shri Jayprakash Narayan appointed Tarkunde Committee followed by Justice Bhargava Commission of Enquiry aborted by the Channa Reddy Ministry. It was during this period that Balagopal entering Regional Engineering

College Warangal witnessed the brutality employed by the police against Naxalites and this set the course of his future. He became an ardent adherent of the politics of the CPI ML PWG and later he joined APCLC. In 1983 he became the General Secretary of APCLC. At around this time he was implicated in the Police Inspector Yadagiri Reddy murder case and he was arrested under NSA. This was later withdrawn.

Balagopal's early writings, incisive and exquisite, show that he was of Peoples' War persuasion. Even after he came into the civil liberties movement his style was polemical, and he was always unsparing in his criticism. He extrapolated the Marxist polemical style into the civil liberties movement. I told him so though I was perhaps alone in feeling this way since most of the members composing APCLC were from the outer fringes of various factions of Naxalites. This zero tolerance style can be perceived in his reviews of A R Desai's compilation of peasant struggles or of feminist writings on the Telangana armed struggle and encounters. Had he continued in the ML party, he would have been the leading Marxist Leninist ideologue of the Maoist movement. Or perhaps he would have been apprehended and shot to be included in the roll call of dead/martyrs with which Gadar's performances always begin yerrarani jenda eniyaloo. The ML party needed in the civil liberties front, a powerful

mind to confront the establishment and broadcast the atrocities perpetrated on them. Writing about these would also help spread the movement..

Although Balagopal never lost faith in the politics of social transformation, he found the ML party's arbitrary political practice objectionable. After the break with the politics of the Peoples' War Group, he could no longer reconcile the vision with the arbitrary practices. The vision demands acceptance with all the distortions. He rejected Marx because the system based on his thought produced distortions even after the Soviet and East European experience - in China. He appears to have had in mind an inchoate idea of Social Transformation which would be catalysed by people trained in rights advocacy who would discipline the Right, the Left and governance. To my mind, he was moving closer to the ideas of Tom Paine that the government, like dress is the badge of lost innocence. He began to believe in the total empowerment of the people where leaders will only exercise delegated authority of the people. The existing representative system perhaps, in this view, strengthened by the 73rd and 74th Amendments, be the instrumentalities through which peoples' empowerment would manifest itself.

In an interview on the Telugu novel Rago Balagopal expressed the view that Marxist worldview is deficient in certain respects and that his philosophical investigations have reached a certain satisfactory stage. Having said that, however, he never completed the task of elaborating his philosophical position. He was not the first either to make such a statement. Before him M N Roy, expelled from the Comintern, talked about transcending Marxism and formulated his thesis paving the way for the emergence of the Radical Humanists. Although this group did not make any headway in politics, it was prominent in the Civil Liberties Movement. Tarkunde, Advocate Dhuru from

Gujarat and MV Ramamurthi from Andhra come to mind.

Communist parties, whether they are parliamentary or "extremist", have the running tradition of intolerance of criticism or difference of opinion within the party. Balagopal therefore had to part company for his unsparing criticism of the party. In a collection of writings published in Telugu in 1998 on "The Three Decades of Naxalbari" (a collection of essays where Manoranjan Mohanty, G Haragopal, Venugopal, Varavara Rao among others were contributors), Balagopal also wrote a piece entitled "The Darker Side of the Naxalite Movement" (Cheekati Konalu) in which his first sentence was: "There are many who would like to write about the Naxalbari movement, but I am going to write about the darker side of the movement." His writing alone among the articles published in that collection was forthrightly critical of the arbitrary political practices of the movement. This called for a very high order of intellectual courage and the outspokenness of his style unflinchingly revealed to the reader the seamy side of their political practice. It is reminiscent of the collection of essays by people who were drawn into the Communist movement edited by Richard Crossman entitled *The God that Failed*. Balagopal's essay created a stir, an unsettling of faith in some of the sympathizers and others who had hopes in the movement just as *The God that Failed* did in the 1950s. But it had no lasting impact like *The God that Failed*. Balagopal's departure from the movement did not leave a lasting impression on the movement nor did it bring about any visible change towards the Maoists among the people with whom he worked.

Skeptical about Marxist worldview, Balagopal moved away from the idea of a revolutionary restructuring of the society in Marxist terms where violence plays the midwife. He also moved away from Mao's thought summed up in a very catchy aphorism "Power flows through the barrel of the

Gun." From a creative figure of speech used by Marx to an emphasis on power from the barrel of the gun.

Balagopal did not opt for a social transformation by violence. He opted for a social transformation through a struggle for rights. The problem is that rights campaigns will not lead to social transformation by themselves. When we talk about rights we are using the concept of right in the context of state power, and in the context of social domination in hierarchical societies by the higher castes in the social order. Though the writing of this essay led policemen to purchase quite a number of copies, it did not lessen the attack on human rights activists.

The characteristic response of the political party was polemical badgering - not introspection and correction. The attack from the party made it impossible for him to continue in the APCLC without friction and with dignity, but his career as a human rights person did not come to an end. He founded the Human Rights Forum in 1998 and by the time of his death he became known as one of the finest defenders of human rights in the country. This break made him a great rights activist. I am not aware, however, of any writing of his comprehensively setting forth his views on rights. One thing I know is that rights by themselves do not have a transformatory character.

The Declaration of Human Rights 1948, in the third Preamble to the Declaration states that if these rights are ignored governance will become tyrannical and the response is rebellion and that observance of these rights will ensure a stable government. Such an enunciation has an overtly political content. These are in the nature of prescriptions for the political stability of the states. The stress, since the Second World War, has been for a gradual and slow qualitative transformation in the state and its governance. Rights advocacy alone may not help bringing about social change, although it will create the awareness of rights and justice that will strengthen movements for

social transformation. In fact human rights activity was vibrant when it is linked to the politics of a party with a vision or in the fight against authoritarianism and for a return to a liberal democracy.

Balagopal was very close to me. Our association started in 1983 when he was elected to the APCLC as its General Secretary and we were together until 1993 when after around fifteen years I stepped down from the President's position. We met almost daily during the ten-year period. From 1994 when I was elected President of PUCL we were operating in the same sphere and we used to meet often and exchange notes. After his entry into APCLC we continued to fight human rights violations with more determination. He was possessed of a fine mind that commanded his pen. He first assisted me, in the Warangal Enquiry Commission against police excesses where they beat up some elected representatives. It was, I think, in 1997. By the time he had acquired a law degree from Bangalore. It was in Warangal that I got him his first black coat that would enable him to sit beside me and assist me. I later moved for his enrolment as an advocate and he helped me in the Bangalore Conspiracy Case against Naxalites which ended in a total acquittal. When Deendar Anjuman was banned under the Unlawful Activities Act 1967, we appeared together before the tribunal constituted under the Act. We had sittings at Hyderabad Bangalore and Delhi. The matter is pending in the High Court.

Balagopal was mauled and brutally attacked by the police quite a few times but this never demoralized him. I distinctly remember when the First Chairman Ranganath Misra along with Justice Fathima Beevi held their sitting in Hyderabad they visited Warangal for one day. When the Commission was holding the sittings in one room, in another Balagopal was pummeled in the presence of people present there. The press

reported the fact and the Chairman was hesitant of taking cognizance of the fact. In the evening I called him about the incident and he was not willing to proceed against the police. He was going to Nalgonda the next day. I told him I would be at Nalgonda the next day. When I was asked to sit next to the members, there was a protest and I went down from the elevated platform. I was also surrounded and fistied in the presence of the Chairperson and the other member. He saw this but helpless left in a huff. Anyway, in the full dressed enquiry in the guesthouse at Hyderabad on four encounters they held that three encounters were homicides required investigation and prosecution and in one incident they held we could not prove one case. The State Government never complied with the report.

We have been challenging encounter killings at various levels. In 1997 we secured a judgment, which recognized that these killings were homicides and need examination. Later a full bench reversed this decision with some wishy-washy reasoning and so it was referred to a larger bench of five judges. We argued and placed our views before the larger Bench along with other colleagues in 2008. The full bench returned a unanimous verdict that killings need to be investigated after the crime is reported. This case is pending in the Supreme Court. Balagopal and I appeared together in all these matters.

He was the only poor peoples lawyer in his generation with a reputation for competence. People knew that he was about the one lawyer who believed in their right to life. He wrested the right to audience from the court. In his competence that equaled the lawyers of the affluent he was visible. He made the Court conscious the he was appearing for a citizen or a collective of citizens for whose benefit the Constitution was created. His was a radical approach to the Constitution but he was bound by institutional norms. He accepted the

law as defined by precedents but did not stretch the limits of the principle or break new ground to innovate a principle to advance the jurisprudence of the poor. My view, on the contrary, has always been that appearing for the poor and as lawyers for social change one should always attempt to break new ground or innovate and strive for its acceptance. We must make the contentions and the conceptions we innovate familiar in courts if they are to be accepted later. The legitimacy of status quo and against social transformation is so strong in courts that it becomes necessary for lawyers of the poor to acquire the competence to contend with the opponents of social change. What is important is that poor people should be able to engage competent lawyers, more competent much more committed than the lawyers for the affluent. He built up a credibility, which assured respect from judges. He was a person of tremendous physical and moral courage. He remained untouched by fake encounters only because of his moral stature and fearlessness Balagopal's sudden death is a setback to this tradition.

We had initiated the trend of looking at law and the Constitution quite radically and Balagopal carried this trend forward and argued in a way that would embarrass socially sensitive judges. This jurisprudence of insurgence that we brought on to the agenda received a set back with his untimely death. When Subba Rao of PUDR was alive, he gave me the book *Law and the Rise of Capitalism* by Michael E Tigar and Madeleine Levy during one of my visits to Delhi. It was here I read about the concept of Jurisprudence of Insurgence. They illustrated this by Fidel Castro's attempt at stalling Batista's coup by filing a proceeding before the Cuban Court for the arrest and prosecution of Batista for attempting to engineer a coup and which was dismissed. Batista successfully engineered a coup and a few days thereafter Fidel Castro was produced before the Court for trial of a conspiracy. Today Castro is with us as the leader of the

only socialist country surviving innumerable attempts of assassination.

A long time back, when I was busy with the Commission of Enquiry chaired by Vashishta Bhargava in 1978-79 I used to discuss the politics of the communist movement with

Comrade Sundarayya. One day I told him that the days are nearing for him to draw a balance sheet of his life and asked how he proposed to do that. He was old and after talking about the split in the movement he told me that several brilliant young people were shot and tears welling in his eyes

continued "and for the people to produce even one such leader it might even take a hundred years. That would be the scale of setbacks". That statement comes back to my mind. To find another like Balagopal it might take another ten decades. A brilliant candle extinguished before its time. I weep for Balagopal-- he is dead.

Bhubneshwar PUCL: Press release

Police Repression on the Adivasis in Narayanpatna (Orissa)

The People's Union for Civil Liberties expresses serious concern over the ongoing police repression and brutalities on the adivasis and members of Chasi Mulia Adivasi Sangha (CMAS) in Narayanpatna Block of Koraput district.

Based on observations during a short visit to the area by one of its members, in response to the police firing of 20th November, 09 (in which two people have been killed and several injured and the subsequent arrests and torture of adivasis living in the area) PUCL is of the opinion that instead of addressing the real issues for which the CMAS has been fighting for i.e., restoring to the tribals their land taken over fraudulently by the non-tribals, the government is adopting a policy of repression, torture and terror to suppress the legitimate aspirations of the adivasis.

It needs to be noted that the police firing of the 20th Nov. has been largely reported as a 'self defense' response of the police when a large number of adivasis came to gherao the police station and began 'looting arms from the police station'. However, what is not being highlighted is the horrors of combing operation carried out by the CRPF in the area and that on that day the adivasis had in fact come to the police station to complain about it. In fact, a specimen of police brutality towards the adivasis was witnessed by the PUCL member during her visit to the area on the 23rd of Nov. While waiting in the vehicle for police permission, (now police verification and permission is required

to move anywhere in Narayanpatna) PUCL team member saw three adivasi youths, one of them looked 14-15 years old, being mercilessly beaten up by the police/CRPF personnel in the premises of the Narayanpatna police station itself surrounded and watched by a huge number of police and paramilitary forces. The three youths, if accused of any crime, could have been easily arrested and put behind bars. However, it was observed that the police and the security forces in Narayanpatna have no hesitation in torturing the accused before the trial. If such torture could be meted out to the 'accused adivasis' so openly in the presence of civil liberty activists one could imagine what might be happening in the seclusion of police lockups!

A number of adivasi people interviewed by PUCL spoke of the harassments meted out to them during the combing operation by CRPF. It has been alleged that women have been molested and men were beaten up. Even children were not spared. Household items were either broken or taken away. They have been accused of joining the CMAS and helping the Maoists.

While the presence of Maoists has been the rationale for deployment of security forces and combing operations, and the people protesting the excesses of combing operations are met with bullets by the police, the question of land for the adivasis remains unaddressed by the government. It needs to be noted that

the adivasis of Narayanpatna have been persistently demanding for the restoration of their land which has been taken away from them by the non-adivasis. However, the government has done nothing concrete in this regard and the Scheduled Area (Scheduled Tribe) Land Transfer Regulation of 1956 remains only on paper.

Even after the death of two people in police firing, the government, instead of assuaging people's real grievances, has resorted to further repression. Following the firing, nearly 30 people have been arrested for participating in the gheraoing of the police station on the 20th Nov. Massive combing operations are on in the area to arrest many more. People are so scared of the security forces that even the injured are not brought to the hospital for fear of being arrested. They are scared to go out to the field and harvest their crops.

The PUCL demands that the government should immediately put an end to the ongoing repression on the Chasi Mulia Adivasi Sangha and attend to the issue of land which has been the persistent demand of the Sangha. The government must initiate an inquiry into the firing of 20th November and initiate criminal proceedings against the culprits. The PUCL also appeals to all conscientious citizens to raise their voice against the police atrocities on the adivasis in Narayanpatna.

- Ms. Pramodini Pradhan, Convenor, PUCL Bhubaneswar □

PUCL Press Statement on Attack against IBN Lokmat

PUCL strongly condemns Shiv Sena activists' attack on IBN Lokmat offices in Bombay and Pune. It is a shameful act against freedom of expression, rule of law and civilized norms of society.

PUCL views repeated occurrence of these types of attacks, in Mumbai in particular and in other parts of the country in general, with great concern and believes that these incidents recur because master minds, instigators and perpetrators of these

incidents enjoy impunity. Till date not a single key leader of these attacks has been punished thereby tacitly lending support to violence on street by those who are responsible for maintaining law and order. It is precisely because of this reason that crude violence has entered even state legislature spectacle of which the whole nation witnessed recently undermining in turn the institutional sanctity and cherished constitutional values.

PUCL demands that the state government immediately order for a time bound CBI inquiry into the incident and take the strict action against any one found responsible for vandalizing office of the media house. The government must ensure punishment for those responsible for the incident thereby sending a strong message against deterring any future act of hooliganism by such outfits and contain culture of passive terror that these groups are spreading.

Pushkar Raj, General Secretary □

PUCL Press Statement on Attack on All India Women's Fact Finding Team

PUCL strongly condemns the attack on the All India Women's Fact Finding Team on 9th December that was visiting Narayana patna block in Koraput district of Orissa for a fact finding study on police firing on 20th November 2009. The team had informed the District collector in advance about their visit. PUCL is shocked to note that women's group was badly treated by the police and remained a mute spectator to the violence unleashed on them at the behest of the policemen in the police

station premise by the local goons. It is an act of blatant lawlessness and calls for severe action against the police station in charge. Surely these kinds of incidents do not happen without support from higher ups and it points to the fact that the district is in the grip of 'terror agents' of the administration who are out to suppress the truth by intimidation and violent means. It is absolutely unacceptable that police resort to firing at the drop of the hat on the protesting people, kill them and then

jail scores of them. It is equally reprehensible that state instead of initiating an impartial and credible inquiry into the incident should resort to terrorizing responsible citizens' group who visit the place. PUCL demands that the government of Orissa should take strict action against the officer in charge of the area and fix the accountability for prevailing reign of fear, intimidation and suppression in the area as per its constitutional obligations.

Pushkar Raj, General Secretary □

Review:

National Human Rights Commission, Annual Report: 2004-2005 Mahi Pal Singh

The National Human Rights Commission (NHRC), which was established on 12th October, 1993 under the legislative mandate of the Protection of Human Rights Act, 1993, released its twelfth annual report for 2004-05 signed by its Chairperson Justice (Retd.) A.S. Anand, and members Justice (Retd.) Shivraj V. Patil, Justice (Retd.) Y.Bhaskar Rao, R.S. Kalha and P.C. Sharma, covering the period April 1, 2004 to March 31, 2005, on 12th January, 2006. The annual reports of the Commission serve as an essential source of information on the human rights situation in the country.

As the report itself points out, in

democratic societies fundamental human rights and freedoms are put under the guarantee of law and therefore, their protection becomes an obligation of those who are entrusted with the task of their protection. The rights are broadly classified into civil and political rights on the one hand and economic, social and cultural rights on the other. While the former are more in the nature of injunction against the authority of the State from encroaching upon the inalienable freedoms of an individual, the latter are demands on the State to provide positive conditions to capacitate the individual to exercise these civil and political rights. The

object of both sets of rights is to make an individual an effective participant in the affairs of the society. Unless both sets of rights are available, neither full development of human personality can be achieved nor true democracy be said to exist.

The Commission's purview covers the complete range of civil and political, as well as economic, social and cultural rights. Areas facing terrorism and insurgency, custodial death, rape and torture, reform of the police, prisons and other institutions such as juvenile homes, mental hospitals and shelters for women have been given adequate attention. The Commission has urged the provision of primary health

facilities to ensure maternal and child welfare essential to a life with dignity, basic needs such as drinking water, food and nutrition, and highlighted fundamental questions of equity and justice to the less privileged, namely the Scheduled Castes and Scheduled Tribes and the prevention of atrocities perpetrated against them. Rights of the disabled, access to public services by disabled, displacement of population and especially of tribals by mega projects, food scarcity and allegations of death by starvation, rights of the child, rights of women subjected to violence, sexual harassment and discrimination, and rights of minorities, are rightly claimed to have been the focus of the Commission's action on numerous occasions.

Terrorism, Encounters, Custodial deaths and Disappearances

Terrorism poses a great threat to the life and liberties of people and in most cases of terrorist attacks the victims are innocent people. As such the menace of terrorism has to be fought resolutely and by all sections of society to defeat the objectives of terrorists. Human rights of people and the unity and integrity of the country have to be protected. At the same time it is equally important to ensure that the terrorists, whatever hue they belong to, are not able to harm the social fabric of society, vitiate communal harmony or disturb peace. Because of its multi-dimensional effects on society and individuals, it is too serious a matter to be left completely to the police and the security forces on the one hand and the politicians, who cannot free themselves from biases and communal leanings even in such serious matters because of the compulsions of vote-bank politics, on the other. Varied reactions of politicians on the recent incident of police encounter at Batla House at Jamia Nagar, New Delhi, in which two alleged terrorists responsible for the recent Delhi, Ahmedabad and Bangluru bomb blasts were gunned down by the Special Cell of the Delhi police and in which Mohan Chand Sharma, an inspector of Delhi police also sustained bullet injuries and later died in the hospital, and the incidents

of rape, vandalism, killings of innocent Christians and burning of Churches and houses of Christians in the states of Orissa and Karnataka by activists of the Bajarang Dal, which amounted to nothing less than (religious) terrorism, are examples of how politicians continue to react keeping in view their electoral politics only. Civil society has to act as a vigilant watchdog if civil liberties and democracy have to be saved. It is necessary to fight terrorism resolutely, at the same time taking care that innocent people do not suffer unnecessarily at the hands of the state machinery acting in a biased manner under the instructions of its political bosses or arbitrarily and in a reckless manner thereby misusing the powers given to it for protecting the life and liberties of people and maintenance of peace in society.

The Commission has rightly observed that the menace of terrorism has to be curbed and the war against terrorism has to be fought relentlessly but in doing so, no democratic society can be permitted to chill civil liberties of the citizens. In the fight against terrorism, sensitization level of human rights cannot be allowed to be sacrificed. A terrorist who violates human rights of innocent citizens must be punished but his human rights should not be infringed except in the manner permitted by law. A critical task of striking a fair balance by way of security concerns and human rights is to be performed and the need of proportionality must not be ignored. While fighting war against terrorism relentlessly, the State cannot be permitted to be either selective in its approach or to go over board and in effect declare a war on the civil liberties of people because the rationale of anti-terrorism measures is aimed at protecting human rights and democracy. Counter terrorism measures should, therefore, not undermine democratic values or subvert the rule of law. Keeping this in view, the Commission had recommended an inquiry into the case of five persons who were killed in Patribal by the security forces in the aftermath of the Chittisinghpura tragedy in the state of J & K, to look into the matter and to fix responsibility

on the delinquent public servant for the wrong doing. A CBI enquiry was ultimately instituted to look into the matter. The result of the enquiry later proved that those killed were not terrorists but innocent people.

The report states that in the light of the revised guidelines issued by the Commission on 2nd December 2003, 122 intimations were received from the various State Governments about killings in encounters during the year 2004-05. In all these cases, the Commission sought reports through adoption of the procedure prescribed under the guidelines in carrying out investigation of these encounter killings for ascertaining the genuineness or otherwise of the encounters. The Commission disposed of 46 cases after considering the reports received from the State authorities.

Although the Commission recognizes the fact that terrorism and the counter measures taken by the State to meet this menace is a matter of great concern because systematic human rights violations for long periods of time are often the root cause of conflicts and terrorism; that tyranny and widespread neglect of human rights and denial of hope of better future provides a fertile ground for breeding discontentment and terrorism; that social, economic and political disparities in a large measure only provide fodder to this discontentment making the situation more acute and bringing in its fold more and more people; and that indiscriminately taken counter measures prove menacingly counter productive, yet the Commission has failed in some important cases to ensure that the matter reaches its logical conclusion.

Clarifying the legal position and the circumstances only under which the police could deprive a person of his right to life the Hon'ble Chairperson, Justice A.S. Anand in his letter dated December 2, 2003 to the Chief Ministers of the States observed:

"Death during the course of a police action is always a cause of concern to a civil society. It attracts criticism from all quarters like Media, the general public and the NGO sector.

The police does not have a right to take away the life of a person. If, by his act, the policeman kills a person, he commits an offence of culpable homicide or not amounting to murder, unless it is established that such killing was not an offence under the law. Under the scheme of criminal law prevailing in India, it would not be an offence if the death is caused in exercise of right of private defence. Another provision under which the police officer can justify causing the death of a person, is section 46 of the Criminal Procedure Code. This provision authorizes the police to use reasonable force, even extending up to the causing of death, if found necessary to arrest the person accused of an offence punishable with death or imprisonment for life. Thus, it is evident that death caused in an encounter if not justified would amount to an offence of culpable homicide."

The modified procedure, among other things, as laid down by the NHRC with the letter to the Chief Ministers stated: *"D. A Magisterial inquiry must invariably be held in all cases of death, which occur in the course of police action. The next of kin of the deceased must invariably be associated in such inquiry."*

These guidelines are rarely followed by the States. It is only after a lot of hue and cry is raised by people, road-blocks are erected, police stations are attacked and the matter is widely reported in the media that enquiries are conducted and in all such cases those claimed to be robbers and terrorists, and killed in encounters, turn out to be innocent people. It is only then that those police officials who are first presented as heroes of the law-protecting force turn out to be villains. What is worrisome is that governments refuse to order magisterial/judicial inquiries into the incidents of encounter deaths on the pretext that such inquiries demoralize the police force.

What is worse still is that the NHRC itself starts flouting its own guidelines, as happened in the much talked of Batla House encounter in New Delhi. In which an Inspector of Delhi Police and two young alleged terrorists were

killed. In spite of such demand from various quarters, including some human rights organizations, which pointed out many loopholes in the police story, the government of Delhi did not agree for a magisterial inquiry on the same old pretext of the police force getting demoralized. Even the NHRC did not hold an independent inquiry into the incident and accepted as true the whole story as given by the police, and later the Delhi High Court, relying on the report of the NHRC, declined to intervene. It is absolutely inexplicable as to why the NHRC did not adhere to its own guidelines making it mandatory for the government to order a magisterial inquiry thereby putting its own credibility too at stake. Trying to find a reason for such inaction, quoting a report by ANHAD's Shabnam Hashmi, Humra Quraishi, writing in Mainstream, dated August 15, 2009 said:

"It was expected that in these circumstances the NHRC would conduct its own investigation into the matter. The report dated 20th July, 2009 of the NHRC given to the High Court on 22nd July, however, shows that far from conducting any investigation into the matter, the NHRC has merely relied upon the police reports for their report. They have not even examined or investigated the above questions which were squarely raised in the PUDR petition on which the High Court order was issued to the NHRC. They have not even examined Saif, the third boy picked up by the police from the flat, nor even any of the witnesses of the Batla House area who had deposed before the People's Tribunal. They have just swallowed the police version hook, line and sinker. And this is despite the fact that there has been no independent police investigation or even a magisterial enquiry into the encounter as mandated by the NHRC's own guidelines."

"It is extremely unfortunate that the premier human rights body set up to investigate human rights violations is becoming a rubber stamp for the police. The same attitude of the NHRC was evident when the Supreme Court asked the NHRC to

investigate allegations of rape and murder against the Salwa Judum. The NHRC sent a team of essentially police officers who spoke mainly to the local police and other officials and gave a white- washing report.

"The time has come to seriously re-examine the manner of appointment of members of the NHRC and its powers. The present system of appointment by a committee of the Prime Minister, Home Minister, Speaker and Leader of the Opposition etc. is not working satisfactorily. All of them seem to want a toothless and tame body which will not question those in power."

"Since the NHRC report does not address or answer the disquieting questions raised by the several independent fact-finding reports about encounter, it is therefore essential that there be an investigation into the 'encounter' by an SIT appointed by the Delhi High Court." This report has been signed by Shabnam Hashmi, Colin Gonsalves, Harsh Mander, Moushimi Basu, Prashant Bhushan, Anoop Saraya and several other leading activists and legal experts."

Transparency cannot be brought about in such matters without the involvement of human rights organizations, NGOs, independent persons as well as media persons in the inquiry in such cases. The NHRC would fail in its mandate if it does not ensure observance of human rights norms by government agencies in such cases. The government should also realize that a demoralized and suspecting citizenry is even more dangerous than a demoralized police force and it ultimately leads to sympathy for terrorist/extremist outfits. Faithlessness in the law enforcing agencies also leads people to resort to street justice including beating and killing of suspected thieves/dacoits, beating of uniformed personnel and stoning/burning of police stations. Resorting to illegal and dubious methods by the law enforcing agencies is one of the biggest hurdles in the attainment of respect for law. It is because of the uniformed men indulging in more fake encounter cases than genuine ones that a five judge bench of the Hon'ble

High Court of Andhra Pradesh in its judgment on W.P. No. 15419/2006 filed by the Andhra Pradesh Civil Liberties Committee (APCLC), People's Union for Civil Liberties (PUCL) and others, dated 6 February, 2009 ruled that in cases of encounter deaths even "a magisterial enquiry (inquest) (u/Ss. 174 to 176 Cr.P.C.) is neither a substitute nor an alternative to the obligation to record the information as FIR and to conduct investigation into the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender(s) (u/Ss. 154(1), 156 and 157 Cr.P.C.)," making it mandatory to record an FIR in all cases of encounters and to investigate the genuineness of the encounter, leading to the arrest of defaulting police officers.

The Supreme Court vide its order dated 31.1.2003 referred for further investigation the case of disappearance of Dambarudhar Hazarika after his alleged release from its custody by the army personnel. A spot investigation by a team of its officers was conducted by the NHRC. 'However, despite the best efforts by the team, the whereabouts of Dambarudhar could not be traced and he continued to be missing. The Commission informed the Apex Court accordingly.' The report does not mention specifically whether the NHRC team tried to ascertain if he was really released by the army personnel or it was merely an 'alleged release' as the report mentions and that it could have been a case of custodial death, and if so, what action the Commission proposed to be taken in the matter.

Vide another order dated 12.12.96 the Supreme Court referred the Punjab Mass Cremation Case relating to 2097 cremations of dead bodies by the Punjab Police in the Police Districts of Amritsar, Majitha and Taran Taran of District Amritsar as unidentified during the period 1984-94 for further investigation. Vide its proceedings dated 11.11.2004 the Commission awarded compensation @ Rs. 2.5 lakhs to the next of kin of each of the 110 deceased persons who were 'admittedly in the custody

of Punjab Police at the time of their death.' Thus some justice was done by way of compensation in nearly 5 % of the total number of cases referred to the Commission. But what action the Commission took in the remaining 95 % cases who had surely been cremated by the Punjab Police and still were not 'admittedly in the custody of Punjab Police at the time of their death.' Did the Commission try to find out how those additional 1987 dead bodies fell into the hands of the police and from where? This is no secret that fewer people were shown as taken into custody by the Punjab Police during those days of extremism and terrorism and thousands of innocent people were directly killed in encounters or killed under their custody and shown as killed in encounters, and, worse still, neither shown as taken into custody nor shown as killed in encounters at all. Keeping that in view, as the Commission should have, what action the Commission took in the matter is not mentioned in the report.

The report also mentions that during his visit to Central Jail Ambala on 18.10.2003, the Chairperson, NHRC, came to know of the case of a mentally ill prisoner Jai Singh. It appeared that after his admission to jail in case FIR No. 28 dated 3.3.1976 u/s 302/34 IPC he was transferred to mental hospital, Amritsar on 9.5.1979. He was never produced in the trial court in the said case and continued as an under-trial prisoner for over 26 years. The matter was brought to the notice of the Hon'ble High Court of Punjab and Haryana and is under consideration of the High Court for appropriate action now. It is well known that people have remained in judicial custody even for longer periods of time, in one case for 54 years, without trial even prior to this case. Hundreds or even thousands could still be languishing in jails for want of appropriate action, and no one knows for how long. Providing succor in stray cases is a good sign, but the Commission does not mention what institutional mechanism it proposes to be developed so that a time would come when the country could proudly boast that there was no unattended under-trial in any Indian

jail languishing there for any act of omission or commission on the part of jail or judicial staff.

Foreign nationals kept in illegal custody in Detention Centres

The report mentions that acting on a complaint in 2003 from four Pakistani Nationals confined for more than one and a half months in Restricted Foreigners Camp Lampur, Delhi on release from Tihar Jail after undergoing imprisonment in connection with different cases under IPC and Foreigners Act for entry in India without valid documents alleging that no action had been taken by the authorities for their deportation to Pakistan, the Commission took up the matter and got them released and repatriated to Pakistan. However, when a team of the Delhi People's Union for Civil Liberties (PUCL) visited the Camp for a Fact-Finding Enquiry on the complaint of a Pakistani National named M.S. Khan detained there under similar circumstances, the team found that many foreigners are still detained there for periods ranging from six months to more than ten years. The team also met a Pakistani National detained there who had been brutally beaten up by the police there only a few days ago and a cut on his head had to be given many stitches. In spite of coming to know about such detentions it is inexplicable as to why the Commission did not send a team to the Camp to know the position of other foreigners detained there. Nor did it initiate any action to evolve a mechanism for monitoring the situation there on a periodic basis, as the report itself mentions, "Since appropriate relief, after intervention by the Commission had been granted to the four Pakistani Nationals, no further action by the Commission was considered necessary and the case was closed on 25.4.2005." If we are sensitive to the rights of our own nationals living abroad, we cannot be oblivious or insensitive to the human rights of foreign nationals living/detained in our own country.

Rights of the Disabled

Regarding the issue of the Rights of the Disabled the Commission itself is of the view that even after ten years

of the enactment of the Disabilities Act the mechanisms responsible to evolve a disability policy have failed to do so and despite international and domestic action taken the physically and mentally challenged persons in our country continue to face several obstacles in leading their life with dignity. A questionnaire, circulated by the Commission to various government departments and States and Union Territories to ascertain the number of schemes and affirmative action programmes introduced by them to guarantee right to health, housing, assistive devices, education, vocational training, employment and social security benefits did not get the deserved responses and 'it was difficult to draw any authoritative conclusion, as they were generally evasive, hiding more than revealing.' The States have been attributing their failure to implement the provisions of the Disabilities Act, 1995 to lack of economic capacity, an alibi put forth by all governments against implementation of all social welfare programmes, thereby continuing, in this case, the exclusion and marginalization of the persons with disabilities.

Right to Food

The Commission conducted many hearings on Starvation Death Petition between September 1997 and April 2004, and recommended several long and short term measures in 1998 and 2003, notable among the short term measures being Emergency Feeding Programmes and Old Age pensions and among the long term measures Employment Generation and Land Reform. A meeting on the 'Right to Food' was also held in January 2004. From among the nine issues that emerged from the meeting of the Core Group on the 'Right to Food', which was constituted under the Chairmanship of the Hon'ble Chairperson, some work was initiated only on the last part of the fourth one which stated: "Purchasing power of the rural people could be increased by rationalizing employment generation programs, increase in minimum wages and taking up food-for-work programs," through the implementation of the National Rural

Employment Guarantee Act. However, because of the unprecedented hike in the prices of food-grains and other essential commodities during the last four-five years, almost complete dislocation of the Public Distribution System in most parts of the country and mismanagement and high degree of corruption in the implementation of NREGA, it is highly doubtful whether the purchasing power of the rural poor and availability of food to them has made any improvement or deteriorated further, making realization of the 'Right to Food' a distant dream. A survey conducted in 2006-07, when the NREGA was in force in just 200 districts, at the behest of the Planning Commission, the Institute of Applied Manpower Research (IAMR) conducted a survey of 6,000 beneficiaries from across 20 districts across the country in a bid to evaluate the implementation of the scheme right from the stage of issue of job cards, besides studying its impact on arresting migration and on the quality of life of the households, revealed that it has been able to lift the standard of living of at least some of its beneficiaries living below the poverty line, as reported in The Hindu dated September 6, 2009. However, another report in the same paper paints a grim picture of the scheme in several districts of Bundelkhand, Madhya Pradesh where Bootha Ahirwar, a farmer from Majhora in the Bakswaha block said: "Rozgaar guarantee mein kyun kaam karein? (Why should we work under the scheme?). We have to pay bribes, face intimidation and still wages are never paid on time." Besides, there are reports from Bundelkhand, U.P. where poverty and starvation is forcing people to sell their wives and daughters. The only conclusion one can draw on the basis of the IAMR report is that programmes like the NREGA can be helpful in the direction of providing food security to the poor, whereas the Bundelkhand reports show how utterly they have failed in the absence of independent monitoring system, resulting only in increased corruption and wastage of public funds.

Right to Health

The Commission recognizes the 'Right to Health' as enshrined under Article 25 of the Universal Declaration of Human Rights (UDHR): "Everyone has a right to standard of living, adequate for the health and well being of himself and of his family including food., clothing, housing and medical care and right to security in the event of sickness and disability," and Article 12 of the International Covenant of Economic, Social and Cultural Rights (ICESCR): "The right of everyone to the enjoyment of highest attainable standard of physical and mental health." On the other hand the Commission is also aware of 'shortcomings in the present health care system', in the emergency medical care as well as normal medical care.

In this regard the Commission organized public hearings, suggested measures and advised setting up of various mechanisms for monitoring. However, as the government has been shedding more and more of its social responsibilities into the hands of private players thereby removing the tag of a 'welfare state', health care of the people has been becoming more and more costly and day-by-day it has been going out of the reach not only of the poor but also of the middle class people. Primary Health Centres have neither medicines nor competent doctors forcing people to run to the big hospitals in the metropolitan cities, which too fail to cater to the large number of patients. As a result even seriously ill patients are advised to go elsewhere, meaning thereby private hospitals, and most of them who are unable to afford the expenses to go to the big cities again and again and the high cost of medicines are left to the mercy either of cheap, unqualified quacks or abandon themselves and their loved ones at the mercy of nature and destiny, only to be deprived of their right to life in many cases.

So long as the government does not focus on the establishment of a welfare state, as mandated by the Directive Principles of State Policy enshrined in the Constitution of India, and assume total responsibility of the

health care of its people in a big way, mere hearings and setting up of committees, core groups etc. will remain only cosmetic measures. The Commission has not even touched upon this mandatory aspect of the responsibility of the State in its report.

Rights of Women and Children

The report gives an account of various measures initiated by it for stopping trafficking in women and children for commercial sexual exploitation and for the abolition of bonded labour, including employment of children of tender age not only in shops, homes and even hazardous industries. However, the ground reality is that not much success has been achieved in these fields in spite of various laws enacted by the government. A sustained social awareness campaign followed by action and continuous monitoring with the help and active involvement of social activists, NGOs, media persons, elected representatives and police officers needs to be initiated and strengthened. What is even more important is that poverty alleviation and social security measures are undertaken in a big way.

Enactment of laws like the Domestic Violence Act 2005, measures taken for prevention of sexual harassment of women at work place and initiation of efforts by the Commission for the preparation of a Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation, in consultation with the representatives of the Department of Women and Child Development, Ministry of Home Affairs, National Commission for Women, UNICEF, UNIFEM, Lawyers' Collective and the Joint Women's Programme, 'to sensitize the judicial officers to the overall issue of trafficking and to realize how women and children experience the process of law relating to trafficking and the functioning of related support services so as to enable them to proactively safeguard the rights of victimised women and children through sensitive interpretation of the law', have strengthened the position of women but so long as they do not get partnership in governance through

measures like reservation in legislatures across the country exploitation of women cannot be stopped. A lot will also depend on the implementation of the long awaited and now passed Right to Free and Compulsory Education Act, which will go a long way in empowering women and protecting the rights of children, provided it is implemented sincerely and honestly.

Human Rights of Scheduled Castes

The Commission recognizes that "Despite elaborate provisions in the Constitution and other laws, it is an unfortunate reality that social injustice and exploitation of Scheduled Castes and Scheduled Tribes and other weaker sections persist. There are reports in the press about atrocities against persons belonging to these groups and the frequency with which they occur is a cause for disquiet." As such Sh. K.B. Saxena, a senior retired civil servant, was requested to look into this issue. Based on his report the Commission asked the States, among other things, 'to identify atrocity and untouchability prone areas and prepare a plan of action; give elementary legal training along with sessions on confidence building to self-help groups of Scheduled Caste women and to identify an NGO in each district which can be approached in case of custodial violence or any other atrocity.' The Commission also states that it 'proposes to closely monitor the implementation of these recommendations in the coming years.'

The States have not paid any heed to them and things and the situation remain as grim as they had been at the time when this report was released. What kind of 'monitoring of the implementation of these recommendations' has been done by the Commission, remains to be disclosed.

Human Rights Education in India

The Commission recognizes the importance of human rights education in the country. Though awareness about human rights has increased in the country, it has remained mostly confined to big cities only and that too because of the efforts of NGOs

working in the field of human rights. There has hardly been any effort to start human rights courses at secondary and undergraduate levels by the government in the country. Government agencies, especially those connected with the maintenance of law and order, not only look down upon human rights activists but also project them as anti-national elements working for the protection of Naxals/Maoists and terrorists. This is also the case with the governments run by those political parties, which perceive members of the minority communities as anti-nationals and sympathizers of terrorists only because of their religious affinity. This attitude of governments and government agencies is the reason why even prominent human rights activists like Dr. Binayak Sen, whose services for the cause of human rights of the poor and vulnerable sections of society are recognized internationally, are incarcerated for years on purely concocted charges and hundreds of such activists are threatened, intimidated and even killed by police. Unless such activists get the place they deserve in society, an atmosphere conducive for the protection and promotion of human rights cannot be created in the country. Here they have to cry for their protection. That is the reason why People's Union for Civil Liberties (PUCL) has filed a Petition with the NHRC for initiating steps to develop appropriate jurisprudence for the protection of the human rights of the Human Rights Defenders.

Studies and Recommendation

The Commission has launched several studies in various fields of human rights violations and one can only hope that action based on the reports of these studies will improve the situation in the country. The Commission has also recommended ratification of various international instruments and protocols so that they become binding on the State under the International Law. Various annexure and charts given in the report help a reader to have an overview of the human rights situation in the country and the steps taken by the Commission. □

Mangalore PUCL:

Police Harassment of Minorities in Mangalore

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

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

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

Sheik Ahmed's Family

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

Late B. Muhammed's family

B. Muhammed (57) was a beedi contractor before his untimely death. His house is situated next to Sheik Ahmed's. Muhammed has left behind his wife Bipatamma and two sons, Bashir and Abdul Latif. Bashir(28) has completed 7th standard. He is married and is presently employed in a supermarket. Abdul Latif (18) who has studied up to SSC, works as a salesman. This too is another typical lower middle class Muslim family which, being unable to provide higher education to its young members, is struggling to eke out a living.

Background

A shameful incident of moral policing by Muslim youth took place in

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

Present Happenings

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

The policemen then entered Sheik's house and searched for Jasik but could not find him. It is reported by the family members that the police had no warrant with them and there weren't any women police present. They also allege that the policemen behaved in an extremely uncivilized manner hurling abuses and threatening of dire consequences. The police party left the place a short while later.

B. Muhammed went back to his house and within moments he had a heart attack. The family members rushed him to a hospital in Mangalore but he died at around 3:35a.m., some 45 minutes later. According to his family, Muhammed had no previous record of any heart ailment. The initial shock on seeing policemen at his doorsteps and imagining if his sons were involved in some unsavory incidents was probably the cause of Muhammed's heart attack

and his sudden death. It is an admitted fact that the local minorities have been living under constant threat and it has increased several folds after the BJP has come to power.

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

In our opinion the Muslims of this area appear to be decent and law-abiding citizens. Their children attend schools/colleges and are trying to educate themselves. According to some locals they have been the victims of police harassment for quite some time. Some months ago Suraj Shetty, a local ABVP activist, had been assaulted by unknown miscreants. At that time Bajpe police had promptly arrived in Alayigudde Palla and started harassing the residents. We were told that the police had arrested some innocent youths and initially charged them under IPC section 307 but later changed it to 107 etc. The young boys, all of them students, were subjected to torture and later released.

It is particularly noticed that police do not do their home work properly before calling a person to the station for enquiry. Based on false information given by fake informers innocent boys are picked up, harassed and tortured. Often the police resort to blackmailing the neighbours and family members, especially womenfolk and the elderly, who are usually found at home.

We are also in receipt of information

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

This type of behavior on the part of Bajpe police speaks of a prejudiced

and communal mindset and is very, very dangerous in the long run in the sense that the frustrated innocent youths become likely prey for fundamentalist groups.

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

consequences. It should stop immediately.

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

Yours faithfully,

sd./-

P.B. D'Sa, District President □

Citizens Initiative for Peace: 16 November 2009

Press Release

We welcome the reports that the Government of India and the CPI (Maoist) are agreeable to the idea of talks. In the present situation talks are the only way to come to a resolution of any problem, however difficult it may be.

We reiterate that the talks should be unconditional, and that they should be held at the central level. We propose the following steps to expedite the dialogue:

Security forces should not move forward and should cease all operations

Maoists should cease all operations

This ceasefire should take place immediately

In order to enable villagers to resume their normal life the security forces must withdraw from schools,

dispensaries and other civilian buildings, as recommended by the NHRC. The Maoists must also give a commitment that government institutions like schools, ration shops etc. will be allowed to function.

We hope and trust that both sides will carry on the talks with an aim to finding solutions to the concrete problems faced by the people of the affected regions. Any disagreement in the first round should not lead to the breakdown of talks. There should be a series of talks to arrive at mutually agreed solutions.

Rajindar Sachar

Manoranjan Mohanty

(on behalf of CIP)

Members of the Citizens Initiative for Peace include: Rabi Ray, Rajindar Sachar, Mahasweta Devi, Rajni Kothari,

K G Kannabiran, Admiral Ramdas, Ajit Bhattacharjea, Kuldeep Nayar, PB Sawant, Muchkund Dubey, Surendra Mohan, B K Roy Burman, D. Bandyopadhyay, B D Sharma, S R Sankaran, Binayak Sen, Amit Bhaduri, Randhir Singh, Medha Patkar, Aruna Roy, Annie Raja, Sumit Chakravartty, Sujato Bhadra, Teesta Setalvad, Lingaraj, Manoranjan Mohanty, Ramachandra Guha, Sandeep Pandey, G Haragopal, KB Saxena, Harsh Mander, D Narasimha Reddy, Meher Engineer, Pushkar Raj, Shabnam Hashmi, SC Behar, Bhagabat Prasad Rath, Swadhin Pattanayak, Harivansh, Himanshu Kumar, Praful Samantara, Kavita Shri vastava, Saraswati Swain, Rabindranath Sahoo, Madhu Sarin, Nandini Sundar, Ravi Hemadri, S.R. Darapuri, Sudhir Pattnaik, Suhas Borkar, Satya Sivaraman, Apoorvanand, Ajay Dandekar, and many others. □

Crossed and Crucified

Parivar's War against Minorities in Orissa

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

3.2 Christianity in Kandhamal

Christianity is nearly one-and-a-half century old in Kandhamal. After the British conquest, Baptist missionaries started their activities during 1859-63 in Kandhamal from Russelkonda (Bhanjanagar). Working in Kandhamal was not easy for them. Kalazar and smallpox took a heavy toll. In the early 20th century, the Baptist missionaries set up camp at G. Udaygiri. The Roman Catholics worked from their stations at Digi and Katingia in the 1880s. After several

years of work, in 1914, Bisi and his family members first converted to Christianity (Barbara M. Boal, The Khonds). And, in 1920, on the Kumbharikupa hill, the foundation for the first church building was laid. These missionaries were the pioneers in setting up modern centres of education and health in Kandhamal. Any achievement that the district has today in these fields is because of the efforts of the missionaries. The first Middle English school in the whole of Boudh- Khondmals was established

in 1914 at G. Udaygiri (Gudripari) and two Upper Primary schools were established in Malikapodi and Konbagiri and two high schools, O. J. Milman High English School and Hubback High English School, were established in G. Udaygiri by the Baptists. For medical facilities, they set up the Moorshead Memorial Christian Hospital in 1939. The Roman Catholics also established Primary, Middle English and High Schools in Raikia area. These schools went a long way in providing

education not only to Christians, but also to non-Christians (The District Gazetteer, 1983).

In the colonial times, it was Dalits who mostly converted to Christianity in the G. Udaygiri, Raikia and Tikabali areas. Post-Independence, Christianity spread to other areas of the Baliguda subdivision like Kotagarh, Tumudibandh and Daringbadi where mostly Adivasis adopted Christianity. Discussing Kandhos' acceptance of Christianity in post-independent India, anthropologist Felix Padel writes, "Christianity offers a strong support system, including skills of literacy and an ideology of justice and equality that helps counteract exploitation by non-tribals. Since these, including the majority of Government officials now, are mostly Hindus, Christianity offers an alternative identity that has a powerful appeal" (Sacrifice of Human Being).

However, he further says it created some frictions in the tribal community, especially at the time of observing rituals and festivals. And, Barbara Boal observes, "to be a Christian in these hill tribes is still on the whole to gain prestige, though joining a local congregation undoubtedly leads to fragmentation within the village." But, Christianity in Kandhamal grew, and so did the churches. The charge that missionaries, taking advantage of poverty, are converting Adivasis was raised during 1960s. The then Swatantra Jana Congress Government passed the Orissa Freedom of Religion Act, 1967 and declared to take action against the missionaries. As a result, several of the English missionaries were arrested in 1968 and later released.

During our visits to Kandhamal, we heard some allegations against Christians having disrespect towards traditional customs and practices of the Adivasis. Jamesh Chandra says about an incident in Nilungia, "Sukanta Nayak, a teacher, is an influential man in the village. He is a Dalit Christian. He cut down two trees disregarding the opinions of the Adivasis of the village. That was a

sacred place for them. Although they did not do anything, they resented this action. Secondly, the Christians disrespect their traditions. When a person dies, they do not use the usual bathing place till the ritual is over. But, Christians do not follow this practice and use the bathing place". Santanu Pradhan questions, "Why do they (Christian preachers) have to tell in a derogatory way the Adivasis are worshipping stones, trees, hills and jungles?"

These allegations are few and far between and there was no case of violent antagonism between Christians and non-Christians till Hindutva politics gained ascendancy in Kandhamal. It is not uncommon to see Hindu Adivasis marrying Christian Adivasis or observing rituals and festivals together. We had a chance to meet the villagers of Gahana (Gadaguda GP) when a Mada (death) ceremony was about to begin. "The deceased was a Hindu and his wife is a Christian. They would perform the rituals according to their tribal tradition and there is no conflict over this," the villagers told. Binod Mallick of the same village said, "My grand father, a Hindu had given land for the church here. I am also a Hindu and have given land for the graveyard because the earlier one was near the roadside and children feared to go by that road. We lived in harmony." From Church sources, it has been learnt that by the year 2006, there are about 521 churches and prayer halls in Kandhamal. (Communalism in Orissa, IPT Report, 2006) In Kandhamal, the Christian population, according to the Census report of 2001 stands at 1,17,950, which is 18.19 percent of the total population of the district. It has been argued that the percentage of Christian population is increasing at an "alarmingly higher rate" and unless they put an end to conversion, the Hindus or Adivasis are going to be a minority in a few years time. It is true that there has been an increase in the proportion of Christian population in Kandhamal and the growth rate is higher than that of the Hindus.

However, their percentage rise of their population is exaggerated wildly, willfully ignoring that it is due to a low base starting point. While discussing the growth rate of a particular community, the normal population growth should also be taken into account. We are giving these pictures to show the real state of affairs and for an informed discussion to begin so that wild exaggerations and prevarications being paraded as "fact," "truth" in a Goaeblean style can be checked. It is important to note that there has been an increase in the Christian population in some districts of Orissa. However, the growth of population of a faith does not per se give rise to communal violence. Had it been so, Gajapati, Sundergarh would have seen violence of the same magnitude as that of Kandhamal. What distinguishes Kandhamal from other regions is the interplay of Hindutva politics in the district for a considerable period. Following is an account of the role of the Hindutva politics.

3.3 Hindutva Politics in Kandhamal

While understanding the exponential rise of Hindutva politics in Kandhamal, we need to understand how Hindutva politics entered Kandhamal.

As the Dalit movement of the 1960s alerted the RSS to the fact that Hindu society was not as homogenous as it seemed, the RSS started talking against untouchability. Secondly, Adivasis who did not form part of the institutionalized Hindu religion began embracing Christianity. Thus, RSS created the Vishwa Hindu Parishad (VHP) in 1966 to systematically work among these sections to create a Hindu consciousness to convert them to Hinduism. Anti-Christian missionary propaganda was part of the RSS agenda since its creation (Swami Shradhananda, Hindu Sangthan: Saviour of the Dying Race, 1926). The Bharatiya Jan Sangh, the political front of the RSS, organized an anti-foreign missionary week in November 1954. It seemed to the RSS that by providing educational and medical facilities, the Christian

missionaries were able to convert Adivasis, and so the RSS followed suit to win Adivasis over to the Hindu fold. In 1969, with this agenda, Laxman Sethi, known as Swami Laxmanananda Saraswati, came to Chakapada, nearly 50 km from the district headquarters, Phulbani. He had already been part of the Goraksha Andolan (Save the Cow Campaign) and was a member of the VHP. He set up an ashram and a Sanskrit school in a predominantly Adivasi area. (In 1979, Vanavasi Kalyan Ashram, another outfit of RSS, specifically created to work among Adivasis, took over the management of this ashram.) Interestingly, this place is within a range of 30-40 km from G. Udaygiri, Raikia and Tikabali where Christianity and its institutions developed in the initial phase. Secondly, these were emerging as trade centers of the district and remain so even today and traders, who were mostly upper caste Oriyas, sensing economic opportunities, rushed to these places from Ganjam, Aska, Nayagarh, etc.

In this ashram-run school, though students from other social groups are admitted, Adivasis constitute nearly 90 percent and 80 percent of the students reside in the ashram. Students get a stipend and teachers their salary from the state government. All of them participate in the shakhas conducted outside the ashram premises. The inmates get regular training in the RSS doctrine. They also propagate Hindu religious practices, rituals and festivals and campaign against aspects of Adivasi culture, such as dhangda-dhangdi dance in which unmarried boys and girls dance together, which is also a social mechanism to choose partners. This was viewed by the ashram as kusanskar. Besides this, the ashram organizes religious congregations like nam sankirtan and yajnas once or twice a year and campaigns against liquor consumption with the support of the administration. The ashram also helps local peasants in farming and cattle rearing. (Pralay Kanungo, RSS' Tryst with Politics).

In 1989, a Chakapada-like ashram was set up at Jalespeta, for girls only, called Shankaracharya Sanskrita Kanyashrama. Again, it was a Sanskrit school run on the lines of Chakapada. Here too, the students, the majority of them Adivasi, get a stipend from the state government. They have been made members of the Rashtira Sevika Samiti, the women's wing of the RSS. They propagate various Hindu rites and rituals among Adivasi women. The pass-outs of the ashram schools help in spreading "Hindu consciousness" across Kandhamal, and a number of them, subsequently, become Sangh Parivar activists (Interview with Kedar Mishra, a journalist of Oriya daily Anupam Bharat who has extensively written on Kandhamal).

Besides these, Malanchal Chhatrabas, a hostel for tribal students at Raikia and two dispensaries at Cutingia and Kurtamgad were opened by Vanavasi Kalyan Ashram (VKA).

In the 1970s and 1980s, VHP/VKA concentrated on the campaign against beef eating and other anti-Christian propaganda. Most people had regarded Laxmanananda as a Baba who is doing something good. But his campaign incurred resentment from some Kandhos as well as Panos in areas like Kotagarh, Tumudibandh, and Ghati area of G. Udaygiri as it was their food. (Interview with Krushna Majhi).

However, it was the anti-Christian propaganda that kept growing. Nazeer Akhtar in a report in The Indian Express (17 March 1989) writes that the anti-Christian voices became strident in 1981 due to the efforts of Swami Laxmanananda Saraswati. The Swami gave a concrete shape to an organized agitation against Christianity. With a view to arouse religious consciousness among the tribals and Harijans, the Viswa Hindu Parishad had been taking out in procession, a Jagannath Rath, to different villages." They also organized satsangs in villages where they discussed

national problems blaming the two minorities, Muslims and Christians. During the Ram Janmabhoomi campaign, when the Sangh Parivar was organizing anti-Muslim campaign all across India, VHP/VKA was trying to intensify anti-Christian propaganda in the tribal dominated areas of Phulbani, Gajapati, Mayurbhanj, Keonjhar and Sundergarh (Pralay Kanungo - RSS's Tryst with Politics). Finally, the VHP/VKA went for the reconversion or paravartan drive. For the first time in 1987, attacks against the Church began in Kandhamal (Interview with Bijay Pradhan, a RSS sakha leader till 1992, now works in an NGO- World Vision). As a result of these concerted efforts, communal violence increased in Kandhamal (specifically Raikia, G. Udaygiri, Tikabali, Bamhunigan areas).

This report also mentions, "in 1985, there were 12 clashes, but in 1986 and 1987, the number of clashes rose to 13 and 20, respectively." It also states, "A leader of VHP, Swami Laxmanananda Saraswati, has so far reconverted about 18,000 converted Christians into Hinduism." The twin activities of the Hindutva forces (attacks on churches and reconversion) continued in Kandhamal. Some of the incidents given here are collected from the book, Faith Under Fire.

1. On 2 and 3 October 1988, Christians were brutally attacked in Katingia.
2. On 24 January 1989, a priest and a church were attacked in the Sadingi village, Pobingia GP.
3. Churches were attacked in Sahaliguda, Duringpodi, Budaguda, Nuagan and Madhiguda.
4. In 1997, in the Betticola village (G. Udaygiri) Christians and a church were attacked.
5. On 26 August 2004, the Lady of Charity Catholic Church, Raikia was vandalized.
6. In Chakapada, around April 8-10, 2006, about 342 Christians were reconverted to Hinduism on the

occasion of the birth centenary of M. S. Golwalakar, the second RSS Chief. The ceremony was attended by Biswa Bhusan Harichandan, the Minister of Law and other ministers, MLAs and MPs.

The trend continued to 2007 December and then to 2008 August with more virulence.

3.4 The Conversion "Debate"

The invoking of the debate on conversion by the BJP and its allies is done each time a brutal assault on Christians happens anywhere in the

country. However, converting or getting converted cannot be a reason for barbaric violence on large sections of a particular community. Even as a few reports and voices against this injustice get expressed, the larger goal of Hindutva is fulfilled - casting a doubt among the silent majority of this country of India being the land of Hindus and people of all other religions as being extraneous to this identity. This undermines the latter's citizenship, rights, and freedom of expression and simultaneously exposes them to the tyranny of

populist opinion that is engendered by conservative and divisive forces. It is therefore imperative to address a few crucial points of the so-called "debate".

The concept of conversion as invoked by the Sangh Parivar and its allies is quite problematic. Firstly, conversion has been dealt with as an act by which somebody is made to change one's faith. The role of the preacher and missionaries becomes dominant in this definition. The one who changes faith is robbed of her/his agency and becomes a non-entity.

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Her/his voice, thought, imagination and experience are relegated to the background. Primary to the act of changing one's faith should ideally be the considerations of the person who decides to change her/his faith. If the convert were the famous singer Suman or author Kamala Das, the matter might be different. But, in the Sangh Parivar-sponsored debate on conversion, the consideration, experience and imagination of the Kandho or Dalit convert has no place at all. Following is the account of a few experiences of the converts. A Christian Adivasi, an old man from Baliguda, said "I became a Christian since I was young. I gave up alcohol since. I have become a good man. I have never fought with anybody. I have learnt to live in peace and with truth. Our Adivasi religion also has peace and truth. But its festivals/celebrations are expensive." A middle-aged man from Kalinga panchayat says, "I was ill. I was vomiting blood. I was with my brother. Doctors tried hard, but my vomiting did not stop. It was early in the morning. I dreamt of a bearded old man with a stick standing beside me. After that I recovered. I remember having seen a similar dream during my school days. I believed Jesus has cured me. And I became a Christian. I was the secretary of the Shiva temple committee of our village for seven to eight years. When I converted to Christianity, of course, my village folks were sad."

A woman of Katingia said, "we became more clean after converting to Christianity. We had good clothes and had education."

A 67-year-old-man from Raikia said, "I was not forced to be a Christian in 1956 as we are being forced today to become Hindus. It was only after conversion that we were able to raise our heads in society. And please do not ask me how life was before becoming a Christian." Do these voices figure in the "conversion debate"? And, do they not tell us of the deep-seated inequality of the oppressive caste structure from which people stepped out?

Secondly, it undermines a citizen's right to choose one's own faith and to practice, profess and propagate one's own religion as guaranteed by the Constitution of India (Article 25.1). Therefore, citizenship and nationality are not based on religion. But, in the definition of the Sangh Parivar, dharma bhumi is pitrubumi-nationality is based on religion. People following religions that originated outside India, such as Islam and Christianity, are foreigners or outsiders. Therefore, they must be eliminated or at the least reduced to second-rate citizens. Madhusudan Das was a Christian and he was the founding father of Oriya nationalism. Will the Sangh Parivar call him an outsider or a foreigner? Allurement is another plank in this "debate". People who level such charges do not define what allurement is. They only allege that conversion is happening only because the Christians take advantage of the poverty of the Dalits and Adivasis. They also point fingers at the Christian-aided schools and hospitals. But, such debates do not ever address the fundamental question as to why the Adivasis and the Dalits are so poor.

In cities in Orissa, there are Christian run schools and other institutions of higher education. And, children from affluent families study there. But, the motives of those schools and institutions are never questioned. Is it because those institutions cater to the needs of the rich?

Hinduism is eulogized when people from the West embrace it as their faith or when new temples are built. No allegation of allurement is brought forward then. Pralay Kanungo writes how 10,00,000 Christians have converted to Hinduism, Sikhism, Islam and Buddhism. Since 1960s, the Hare Krishna movement and shakhas have proliferated in huge numbers. How does one interpret this? Will it be justified to say that these conversions happened through deceit or were forced conversions through allurements? (Contd. in the next issue of the Bulletin).

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