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Democratic Rights Under Attack

Pushkar Raj

Governments are usually inclined to curtail citizens' rights. As rights denote power no State wishes that its citizenry be empowered to the extent that it questions State's acts of omission and commission. This is more so in the contemporary era, after the victory of liberal globalisation forces in the whole world. In other words capitalist of every colour and size everywhere has emerged stronger in relation to impoverished masses and India has not been an exception to this trend. Some of our well known, recognized, accepted and practiced rights are being questioned, limited and curtailed by the state. And this is being done in league with the capital. State appears to have become a tool of the capital and is out to suppress people's rights for the sake of its one need or other or sometimes for its sheer survival.

People are stopped from protesting when they are not paid their agreed wages and they wish to strike; farmers are told to vacate their land at a price fixed by the state and when they protest they are fired upon denying even the norms associated with 'firing on the unruly mob' prescribed under the law; forest dwellers, indigenous people are asked to clear off the forests for mining and other profit related purposes. People are uprooted and lose their freedom, livelihood and biosphere (resources?). When one questions the government on its policies and actions one's position is dubbed ideological and certain black laws are used to put the dissenting voices behind bars. Even education and health are being exploited for private profit as the state begins to withdraw from these two vital sectors systematically. As cities expand, agricultural land is becoming less and less leading to an agrarian crisis. Farmer is becoming either an unskilled labourer in the city or is under severe pressure by government policies leading to a spate of suicides in the rural areas.

It is a grim scenario. Earlier we had one hope that political parties would defend people's rights as they are composed of people, they represent people, they cannot survive without people's will. Therefore if anything went wrong with the rights of people, political parties protested and did not let that happen.

But unfortunately this is not so today. Political parties seem to have joined hands with the capital very blatantly. This is unusual but has happened in India because parties here are personalised or at the most family controlled. All of them have been uniform in suppressing the rights of people more or less without exception.

While BJP did not protect Muslims in Gujarat and many were killed in the post Godhra riots, Navin Patnayak government did the same in relation

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Interview with Justice Rajindar Sachar:

'Faith Has No Meaning In A Court'

Ajoy Ashirwad Mahaprashasta

Justice Rajindar Sachar, former Chief Justice of the Delhi High Court, has emerged as one of the most critical voices against the Ayodhya verdict. The author of the Sachar Committee report, which documented the poor conditions of Indian Muslims, says the judgment delivered by the Lucknow Bench of the Allahabad High Court on September 30 follows no legal precedents and has done injustice to the Muslim community by rewarding the Sangh Parivar, whose constituents demolished the Babri Masjid. Excerpts from the interview he gave to the Frontline:

The Ram Janmabhoomi-Babri Masjid dispute is not just a religious dispute but has occupied political imagination in India for the past two decades. How do you perceive the verdict?

The judgment can be summed up in two words: Crime piece. In 1992, a crime was committed. The Babri Masjid was demolished. But assume that the crime was not been committed and the matter had gone to court. Do you think the court could possibly, under any circumstances, order that the land be divided? Frankly, the grounds on which the organised Hindutva plaintiffs went and asked for land, they should have been thrown out on the grounds of remediation. You see, the masjid was there since the 16th century. They filed the suit only recently [in historical periods]. The Limitation Act dictates that a suit could be filed within a period of 12 years from the date of dispute. Legally speaking, the Sangh Parivar does not have a right even if a temple had been demolished to build the Babri Masjid, as the masjid existed before the period of limitation.

I have been writing since 2003 that a precedent to this case exists. [Quotes from one of his research papers] 'There was a masjid called Shahid Ganj in Lahore decided by the Privy Council in 1940. In the case, there was admittedly a mosque existing since 1722. But by 1762, the building came under Sikh rule of Maharana Ranjit Singh and was used as a gurudwara. It was only in 1935 that a suit was filed claiming that the building was a mosque and should be returned to Muslims. The Privy Council, while observing that 'their Lordship have every sympathy with a religious sentiment, which would ascribe sanctity and

inviolability to a place of worship, they cannot under the Limitation Act accept the contentions that such a building cannot be possessed adversely', went on to hold that 'the property now in question having been possessed by Sikhs adversely to the waqf and to all interests there under for more than 12 years, the right of *mutawali* [caretaker] to possession for the purposes of the waqf came to an end under the Limitation Act.' At that time, the court noted that the site was undoubtedly a gurudwara. It was not a question of demolition. The Babri Masjid is a much more political and sensitive site, as it was made out to be.

By parity of reasoning, even if a temple existed before the building of the masjid 400 years ago, the legal suit by the Vishwa Hindu Parishad and others must fail. On the contrary, the court dismissed the plea of the Sunni Waqf Board, which was valid under the Limitation Act.

Then, there is a second aspect. There is no clear finding that a temple existed beneath the masjid. Most people noted that there may have been ruins of some temple. The country's polity spans a period of around 5,000 years. Many Buddhist temples were destroyed to build Hindu temples and masjids. Some mosques were also demolished by some Hindu kings. Not because of any religious considerations but because of political compulsions of that time. Does this mean that you will secure the sanctity of all this through demolition and reclaiming? In the Babri Masjid case, there are contradictory opinions of many historians that there was no temple there at any time. How can a court decide on a dispute based on the Hindu faith that it is believed to be the birthplace of Ram? In a court,

faith has no meaning.

Then, there is a third aspect. Whether Muslims build a mosque or not is a different question. That is a Muslim choice. But since a mosque was demolished, the land should have been returned to Muslims. Many young people are disappointed. Many Muslims said they could have built a school or a hospital for all communities on the land but the land should not have been divided. The argument that the land should not go back to Muslims is not understandable. Even the Quran, it is said, says Ram and Krishna were prophets and Muhammad was the last prophet. Many Muslim scholars have come to this conclusion.

The judgment is ridiculous. Let us accept the controversial Archaeological Survey of India [ASI] report that there was a temple there. The Muslims could have also accepted. They could have chosen not to build a mosque there but the land should have been given to them. They could have built anything on it. It is their human and communitarian right. Even if the temple was destroyed, does displacing Muslims from a 500-year-old shrine make sense? The court is not competent to judge historical events.

The judges have quoted faith extensively. Your comments.

That is what I was saying. This is their finding that Hindus believe that the disputed site was the birthplace of Ram. In the process, they legitimised right-wing history, so controversial in historical polemics. How far can you go back to correct history even if you take religious faith into consideration? In a secular country like ours, it is totally impermissible. I don't want to use a

strong word but it is a political dishonesty. Our political parties refused to take a stand. The demolition wouldn't have taken place at all had the government taken a stand. Now each of these parties is saying that let the court decide. It is a political issue. In all the important areas of governance, the political parties say that the court should not interfere. But now, it is very convenient for every party to say that the court can decide. Political parties should take a stand. This is secular India after all. Judiciary has to hear a suit, give a finding. But in this case, neither legal precedents nor common laws were taken into account. The judges acted as guardians instead of ensuring justice.

The Sangh Parivar has indicated that it will revive the Ram Janmabhoomi Movement. This could lead to polarisation among religious communities. Has the judgment made a dent in the principle of judicial neutrality and objective rationality?

It is undoubtedly a pro-Ram Janmabhoomi judgment, inclined towards the majoritarian view. The Sangh Parivar is sensing a victory in it. But it would not be correct to castigate the entire judiciary as such. It definitely creates a dent in its reputation. The fact of the matter is that the images of Ram Lalla were placed there in 1949. It was an act of piracy. Muslims had been praying there for a long time. It was a mosque. When a Hindu idol was installed, it was natural for Muslims not to pray there as worshipping an

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to Christians in Orissa. If CPM did Nandigram, BSP did same in the Western UP two weeks back. If BJP brought POTA, the UPA came up with UAPA saying it was less tough but has ensured that it is used at the drop of a hat- framing more and more people under it. If one state party is reaping the benefits through telecom scam then another party has allegedly made money through the Commonwealth games scam.

In this bleak scenario people's

idol is against their religious ethics. That is why they stopped going to the Babri Masjid. That does not mean that their rights had gone. In 1949, the court had prohibited any kind of worship there. But now the court has ruled that in 1528 a temple was destroyed, thereby legitimising a controversial ASI report. Even if a temple was destroyed, you cannot come to the conclusion that the Babri Masjid was illegal.

This was a civil case of title dispute. But the matter is so politically sensitive that it indirectly legitimises the Babri Masjid demolition, which was a criminal act. What do you have to say about this?

Yes, this judgment has damaged a lot of things and made a dent in the secular ethics of India. It is like saying: destroy the mosque and give it to the Hindus. Two-thirds of the land is effectively going to the Hindus. Faith can be no grounds to reach a decision in a court of law.

The media have been asking the people to move on. Where should we move on? And move to what? You can't forget a crime. A court of law has to ensure that you cannot get away after committing a crime. The Muslims' right to their property is being taken away. The common law says that if a son kills his father, he is not entitled to inherit his father's property. But here the goons who demolished the mosque got what they wanted.

As the author of the Sachar Committee report, you have documented the poor conditions of Muslims. What kind of message

organisation like ours have a special responsibility in form of reaching out to the people and their movements. We must reach out to the masses and educate them explaining the game of the state and its apparatus of the vested interests. This is our humane and moral duty. This is our obligation to ourselves by virtue of being born into the human species. This we can do by making movements like PUCL stronger. This we can do by supporting all kinds of

has the minority communities got from such a judgment?

It will be a very dangerous message, of course. It is time the secular political parties took a stand. In 1946, Bihar was in flames. It was hit by Hindu-Muslim riots. Pandit Jawaharlal Nehru publicly wrote a letter that if the riots did not stop he would bomb the rioters from Delhi. Bihar was a Muslim League constituency, and the League was fuelling the riots. But the larger vision of political parties prevented a lot of mess. The state had to take a stand and reaffirm its secular ethics as granted by the Constitution. However, it is good to see that the organised Muslim opinion is adopting a healthy approach. But you can't tell them, as the media have been doing, to forget everything. It is a question of the community's belief in the system and India's polity. The good thing is that their reactions have been very restrained.

Why should the Muslims be asked to move on? The same question can be posed to the Sangh Parivar. Why don't they move on? Even with this judgment, they are feeling victorious but not satisfied. They want to build a Ram temple on the entire land there. If it is a question of Hindu sanctity, is it not a question of Muslim sanctity, too? To me, this judgment is a surrender to the rabid communal sentiment. It is only the weakness of political will that is responsible for the Ayodhya imbroglio.

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people's movements in whatever capacity we can. We must reach out to quality Indian citizens with potential of becoming agents of creating awareness amongst people that it is their basic human right to protest and protect their given rights that are being violated and taken away. The subject then becomes a citizen and questions the ruling elite collectively and authoritatively. When that happens then we will be entering into the era of true democracy. □

National Council Meeting: A Brief Report of Decisions on Organisational Matters

The last meeting of the National Council was held on 4th September 2010 at the Gandhi Peace Foundation, New Delhi. The following decisions were taken at the meeting:

1. On the recommendation of the Executive Committee, Clause 5 (a) of the PUCL Constitution was amended as follows:

'The National Council will meet at least once a year' in place of 'The National Council will meet twice a year.' (The amendment was made because it had not been possible to hold the meeting of the National Council twice a year in the past and it was felt that we should not have a

provision in the Constitution, which we are unable to comply with.)

2. It was decided that the National and State Units should enroll persons willing to donate an amount ranging from Rs. 1,000/- to Rs. 5,000/- per year. Out of this donation, 30% will be retained by the State Units and the rest will be sent to the National PUCL.

3. It was further resolved that in the year 2010 each State Unit shall enroll at least five donors.

The donors need not be members of the PUCL but would be entitled to receive free copies of the PUCL Bulletin for one year as a token

of appreciation for their co-operation.

4. In view of the rising cost of holding National Convention/National Council meetings, it was resolved that 50% of the cost of holding such meetings should be met by the host Unit and the rest should be shared by other State Units and the National PUCL.

5. It was also resolved that a Legal Cell consisting of those Advocates who would be willing to take up cases of the PUCL would be formed at the National Level and State Level, wherever possible.

Mahi Pal Singh, Secretary, PUCL □

Letter of Thanks for Colleagues who attended the National Council Meeting

Dear Colleagues,

On behalf of the National PUCL, I thank you and other members of the delegation from your State for your participation in the National Council Meeting held on 4th Sept 2010 and the National Convention held on 5th Sept 2010 at the Gandhi Peace Foundation, New Delhi, and making the deliberations lively and fruitful. We hope that you will continue to extend your co-operation in making the PUCL an effective organization in promoting and protecting civil liberties and human rights in the country in future also.

I take this opportunity to refer to the mail of Pushkar Raj, General Secretary, sent to all State Branches, dated 27 July 2010 in which a request was made to all State Branches to contribute a sum as per the State's capacity for helping in organising the Convention. Kindly send the requested amount at the earliest, if not sent already, and oblige.

Thanking you,

Yours sincerely,

Sd./-

Mahi Pal Singh, Secretary, PUCL

Copy of the General Secretary's letter written on July 27, 2010

Dear Colleague,

The PUCL National Council Meeting and the Convention on issue of 'Attack on Life, Liberty and Democratic Rights' is being held in Delhi in September 4 and 5. As you know the national office is not in a position to bear all the expenses involved in holding the event. To this end it was resolved in the PUCL Executive meeting held in Delhi on 18 July 2010 that the state units should be asked to contribute to the expenses for holding the council and convention in Delhi.

I request you to contribute money for the above mentioned as per your unit's capacity. An acknowledgment of this mail and your response on this will be highly appreciated.

With thanks

Sincerely yours,

Sd./-

Pushkar Raj, General Secretary

Letter for colleagues who did not attend the National Council meeting

Dear Sir/Madam,

As you already know the last National Council Meeting and the National Convention of the PUCL was

held on 4th and 5th Sept 2010 respectively at the Gandhi Peace Foundation, New Delhi on 'Attacks on Life, Liberty and Democratic Rights' in the country.

The National Council and the National Convention missed the benefit of your presence in the deliberations, which were quite lively and fruitful. However, we hope that you will continue to extend your co-operation in making the PUCL an effective organization in promoting and protecting civil liberties and human rights in the country in future as you have been doing in the past.

I am enclosing herewith the report on the National Convention, which will also be published in the October issue of the PUCL Bulletin. I take this opportunity to refer to the mail of Pushkar Raj, General Secretary, sent to all State Branches, dated 27 July 2010 in which a request was made to all State Branches to contribute a sum as per the State's capacity for helping in organising the Convention. Kindly send the requested amount at the earliest, if not sent already, and oblige.

Thanking you,

Yours sincerely,

Sd./-

Mahi Pal Singh, Secretary, PUCL
September 26, 2010 □

Ayodhya Judgement - Triumph of Faith or Constitutional Legality?

Asghar Ali Engineer

The much awaited judgment of the Lucknow Bench of the Allahabad High Court in the title suit filed by the Sunni Waqf Board, the Nirmohi Akhara and others was at last delivered and has been welcomed by some and criticized by others, mainly by litigant parties. Those who want to see the controversy end for once and all are arguing that the judgment will help bring about resolution of the dispute amongst all the three parties (Ram Lalla Idol has been treated by the judgment as a legal entity). Now the Hindus can build a temple and the Muslims a mosque, if they so desire and India can move on.

After all the controversy has to end somewhere and India should move on. Had the judgment achieved that it would have had some merit. But both the litigants are far from satisfied and want to challenge it in the Supreme Court. The judgment has utterly failed to bring about any reconciliation. And apart from this, the judgment has set a dangerous precedent.

While peace and reconciliation is very important, if it is achieved at the cost of Constitutional democracy and rule of law, it can do more harm than achieve such objective, if it succeeds. The judgment is based on faith, not on law. The two judges, without any historical proof and law of the land straightway invoked the faith of the Hindus that Ram was born at that place and that a 12th century temple existed there (while admitting that they do not know anything about history and archaeology) and gave portions of the land to Ram Lalla on one hand and Nirmohi Akhara on the other, and, as if as a concession, to the Sunni Muslim Wakf Board also. Many legal experts, therefore, apart from the litigants, have strongly criticized the judgment and feel that now only the Supreme Court may examine the whole dispute strictly from legal and constitutional viewpoint and deliver the final judgment though it may take a long time. Justice Khan, the third judge, though feels there is no proof of any temple being there yet felt that in the interest of peace and reconciliation

the land may be divided among the three litigants.

Thus, all the three judges have invoked values of peace and reconciliation rather than constitutional values of democratic India. Law is and must be indifferent to the faith of the litigants and even of the judges, and the judgment, in a democratic country like India, which has maintained the independence of its judiciary and the constitutional values for the last sixty years, must be based only on law without any compromise.

It is for the first time that High Court Judges have invoked faith disregarding historical facts and legal values and such invocation of faith can prove injurious to the rule of law. It is not the Court's concern whether reconciliation takes place or not, it has to function strictly accordingly to law. It is a different thing if it appeals to the litigants to find solution through negotiations rather than waste their time and resources in fighting in the court and it is for litigants to decide whether to accept the court's appeal or not. If they do not, the judges have to consider the law as supreme and deliver their judgment in accordance with it.

Those who are celebrating the judgment today as victory of peace and an end to a longstanding dispute are either unaware of long term consequences of such a judgment or do not care for our constitutional democracy. Whatever their reason for celebration, either way it is setting a dangerous trend in a court of law. Tomorrow other judges, motivated by their faith, may use this judgment as a precedent and deliver other judgments invoking faith. One judgment often becomes precedent for subsequent judgments.

Thus, stretching the argument, one can say that as in a democracy after all numbers count, and so the faith of the majority community will play a greater role than the faith of the minority community and the courts of law will thus become majoritarian in their attitude and all the legal values and the protection of the minorities and their faith in the constitution may be ultimately

subverted. This judgment must be seen in this light if we care for the majesty of law and our Constitution. While faith is very important for individuals and communities, the Constitution is of seminal importance for the country and the nation. India is a country of great diversity and multiple faiths and the Constitution guarantees freedom of faith and conscience for all, law is as important for the nation as the faith to a community. The Allahabad High Court judgment must be seen in this perspective.

Even Hinduism is not a homogenous religion. Today among the Hindus are counted, among others, Dravidians of South also. But Dravidian traditions are far different from Aryan traditions. If one goes by Karunanidhi's statement he has complained of the Aryan deities being imposed on the Dravidian ones. Thus even invoking the faith of the Hindus in the Allahabad High Court judgment is problematic. Apart from secular Hindus having faith in the constitutional values, the other Hindus having different culture and linguistic roots also may not subscribe to the same faith. Also such tendency of invoking faith may generate pressure on minorities in general, and certain religious minorities in particular, to give in to the majoritarian values.

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However, having said all this it does not mean that such disputes should not be solved through dialogue, negotiations and mutual agreements. No one will be more happy than myself if the Ayodhya dispute is resolved through dialogue and in the spirit of give and take. It is indeed a great initiative on the part of Shri Hashim Ansari, one of the main litigants who has been fighting this case since early sixties to meet the Hanumangarhi temple's main Pujari Shri Gyan Das after the judgment to intervene with the Nirmohi Akhara and put an end to the whole controversy through negotiation.

India is a great democratic country and such disputes about the past either must not be invoked at all, as

the future is much more important than the past, or, having been invoked, must be resolved through mutual understanding so that neither side should feel a loser. It is very dangerous that politicians should raise questions of history and use them for their political objectives. The BJP has done precisely that.

It is also regrettable that those who committed the crime of demolishing the mosque, which was unlawful, unconstitutional and undemocratic and also against the tenets of the Hindu faith and yet they are celebrating the victory of faith over the law. This is even more dangerous. The culprits of the demolition have not been yet punished, which is another violation of the Indian Constitution. The least one can expect is to punish whoever the guilty is or are.

Here in such cases civil society must play a vibrant role; our intellectuals, historians, religious leaders, litterateurs, peace activists and all those who stand for democratic and constitutional values must come forward and put pressure on both sides to carry on meaningful dialogue to find solution outside four

the walls of legal chambers to resolve this controversy.

Earlier also the Shankaracharya of Kanchi Kamakoti Peetham had taken initiative along with the Muslim personal Law Board in early 2000 to resolve the controversy but the VHP and others gheraoed him and stopped him from doing so. This time the Shankaracharya of Jyotish Peeth and the Dwarka Peeth, Swami Swaroopanand Saraswati, has once again indicated his intention to do so and this should be heartily welcome and members of the Muslim Personal Law Board should join hands with him.

It is also heartening and we must duly praise the efforts of the people of India to reject street violence decisively and stand for peace. Our common people have truly stood by peace and very firmly. They have displayed much more wisdom than our politicians whose lust for power never ends.

Along with this we should also recognize the fact that the Muslims of India have shown great initiative for peace and practically every Imam in every mosque appealed for peace consecutively for two Fridays

preceding the judgment, and told the Muslims to accept the judgment whatever it is, in favour or against. Contrast this with mid-eighties and the end of eighties when Muslims were greatly agitated for the Babri Mosque.

Our democracy has indeed made them realize that it is in democracy and secular values that their future lies and they must assert themselves for peace and prosperity of people of India together. Confrontation will bring only violence and destruction. All Hindus and Muslims and others have shown great solidarity this time to maintain peace marginalizing even extremists who used to issue statements in very shrill tone. They are issuing statements in much more subdued tones. It is the people of India who have made them behave. I, therefore, feel that the civil society must assert itself and give direction to our political leaders how to behave. If such initiative could be taken before the highest court's doors are knocked at, it will be much better. Only peace is our future and it is the civil society alone, which can ensure this in a democracy. □

Independent People's Tribunal on Operation Green Hunt in Jharkhand *(Held at Ranchi on 25th and 26th Sept 2010; Organised by: Jharkhand Alternative Development Forum)*

Observations of the Jury

The jury heard the testimonies of a number of social activists working among the Tribals in Jharkhand as well as a number of Tribals themselves, who have been directly affected by Operation Green Hunt, over the two days. The picture, which emerges from these testimonies presents a dismal and indeed alarming picture of Human Rights violations of the adivasi population of the State, which has driven them to unprecedented levels of desperation where their very survival is being threatened.

Over the last 60 years, more than 20 lakh acres of land has been acquired directly by the State in the name of various "development" projects displacing more than 15

lakh Adivasis from their homelands. This drive for acquisition of their land has become particularly acute during the last decade when 102 Memorandums of Understanding (MoUs) have been signed with a number of large private corporations, some of which are for thousands of acres of land involving the displacement of thousands of tribals in each case. Most of these MoUs are for mining or for setting up other polluting industries. These have however met with enormous resistance from the adivasis who have organized themselves and have so far successfully resisted the acquisition of their land as a result of which virtually none of these MoUs have so far been operationalised.

All this land acquisition of Adivasi land

has however been done without the consent or even consultation with the Adivasis. The MoUs were in fact signed in great haste and secrecy with no information at all to the people who were to be affected. All this is in complete violation of the PESA Act, which provides that all development in the Scheduled areas would be in consultation (which should mean consent) of the Gram Sabhas. This has led to a widespread feeling among the Adivasis that not only is their right of self-rule being flagrantly violated, but also their very identity and existence is being threatened. Many of them have consequently taken up the gun and joined the Maoists who have organized them to fight the State.

The government's response to this

has been Operation Green Hunt, which uses large sections of paramilitary forces against what they perceive as the single biggest security threat to the State. Interestingly, Operation Green Hunt is largely concentrated in the areas where the MoUs have been signed. The testimonies before us revealed that this Operation has led to and is causing enormous violations of Human Rights of the Adivasis in terms of all kinds of excesses by the security forces. A large number of testimonies before the Tribunal provided a sampling of the kinds of Human Rights abuses taking place: arbitrary picking up of Adivasis and their torture; arbitrary arrests of Adivasis, as well as of those who tried to highlight the abuses by the security forces, on false and trumped up charges; people even being killed in fake encounters or in custody. These abuses are only serving to drive more Adivasis to pick up guns and join the Maoists.

The Jury noted that the security forces involved in the abuses are hardly ever brought to justice and enjoy almost complete impunity. Unfortunately Jharkhand has not set up the State Human Rights Commission or even Police Complaints Authority as directed by the Supreme Court in their judgment on Police Reforms. The Courts too, which are supposed to examine allegations of torture, fake encounters and malafide arrests on false charges, have abdicated their responsibility with the result that innocents continue to rot in jails for years altogether and the guilty police officers are not punished, even when it is found that they have tortured people, killed them in fake encounters or arrested them on fabricated evidence. The Supreme Court's judgement on arrests and torture and the NHRC's guidelines on encounter killings are being wantonly flouted and no one is being held accountable.

The Jury therefore recommends that:

1. The Government must address the underlying causes of Tribal alienation by ensuring that PESA Act is strictly complied with and that there is no involuntary acquisition of Tribal land without the consent of the Gram Sabhas. The Adivasis must be given the effective right to decide the kind of development, which should take place in their areas.
2. All MoUs entered into by the government which involve the acquisition of Tribal land must immediately be made public and put on hold.
3. Operation Green Hunt be withdrawn in a phased way but there should be rapid withdrawal of paramilitary forces from Jharkhand.
4. The Government must make a full and complete disclosure of those killed by the security forces in Operation Green Hunt and also of those who have been killed detained and arrested under the UAPA.
5. The police and the security forces must be made effectively accountable for their human rights abuses by:
 - a) Setting up the State Human Rights Commission in a transparent and credible manner and which should also be armed with adequate powers;
 - b) Setting up Police Complaints Authority as directed by the Supreme Court;
 - c) The NHRC's guidelines regarding encounters, especially an investigation by an independent police agency and a Magisterial Enquiry must be strictly followed and the District SSP and DGP of the State be made jointly liable for non compliance;
 - d) The courts get each complaint
6. The SC & ST (Prevention of Atrocities) Act 1989 be diligently applied against security officers committing such abuses on Tribals. The State Human Rights Commission be charged with monitoring it.
7. A High Level Commission be set up to investigate some of the most egregious cases of encounter killings, torture and killings in police custody and also of arrests on false and fabricated charges.
8. Government of India should ratify the UN Convention on Torture and enact a law in tune with the spirit of the Convention.
9. The UN code of conduct for Law Enforcement Officials, including prosecutors, lawyers and Judges should be compulsorily observed.
10. The UN Basic Principles on the Use of Force and Firearms should be adopted and enforced.
11. The UN Standards and Norms in Crime Prevention and Criminal Justice should be adopted and enforced.
12. The International Convention on Civil and Political Rights ratified by the Government of India includes prohibition of torture, and obligates the State to hold detainees in officially recognized places of detention with names in registers accessible to all concerned.
13. The Government of India should issue a standing invitation to Special Procedures of the UN Human Rights Council, including:
 - a) Working group on Arbitrary Detention;
 - b) Working group on Enforced & Involuntary Disappearances;
 - c) Special Rapporteur on

- Extrajudicial, Summary or Arbitrary Executions;
- d) Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment;
- e) Most importantly Special Rapporteur on the situation of human rights and fundamental

- freedoms of indigenous peoples.
14. Compensation and other things for killing or torture or illegal arrest must be paid as committed by the Govt.
15. The Government should come out with a white paper as to the expenditure made on police vis-à-vis result thereof.

Signed by:

1. Justice Vikramaditya Prasad (Retd. Judge, Jharkhand High Court)
2. Mr. K.S. Subramanian (IPS and former DGP, Tripura)
3. Mr. C.S. Jha (former CMD, ECIL)
4. Mr. Prashant Bhushan (Lawyer and Convener, Campaign for Judicial Accountability) ☐

Mobilisation Immobilised

Squeezed between the Naxalites and the police, NGOs abandon community

Richard Mahapatra

Why does a Left-leaning activist in Chhattisgarh always keep a copy of Mahatma Gandhi's Hind Swaraj? "The contradiction saves me from both the police and the Maoists," explained a well known activist working in Chhattisgarh's Bastar and Dantewada districts, which are affected by Left extremists, popularly known as Naxalites. Other activists have evolved other ways of escaping harassment. Head of a community based NGO working in Gumla district of Jharkhand has scaled down his activities by 40 per cent in the past five years—"I have unwritten directions on which areas to work on." An unwelcome change is creeping into the programmes and policies of NGOs and other civil society groups working in the Naxalite-affected districts of Chhattisgarh and Jharkhand.

This shows the shrinking space for development workers. They suffer the suspicion of both the police and the Naxalites. Six states, according to their intelligence departments, have put more than 125 NGOs and their workers under the scanner for their alleged links with Naxalites. Many of them have also received directions from the Naxalites to stop "certain" types of work (read: stop campaigns to mobilise people).

About a thousand NGOs operate in the 32 districts declared worst affected by Naxalites in nine states. Most of them help implement rural

development schemes dealing with basic services like water, health and education. They also mobilise people to access new government policies or programmes since government presence in these districts is negligible.

NGO workers don't openly articulate changes in their working sphere. However, once outside their areas of operation, they list the changes NGOs and other peaceful movements have undergone in the last one decade. Presence of armed police and the influence of the Naxalites have curbed NGOs' access to villages. Non-profit Gramin Punar Nirman Sahkarita Sansthan, which works in Gumla in Jharkhand, now hesitates to enter villages at night when people are at home and have time to listen to them. Ramyatan Sahu of the organisation says its agenda of mass movement to ensure people's right to livelihood is virtually abandoned. As a result gram sabha (village council) meetings are not held regularly.

Gram sabhas are an instrument ensuring people's participation in development work. In fact, they have nodal roles in implementation of the Mahatma Gandhi National Rural Employment Guarantee Act and the Forest Rights Act, crucial for rural development.

The situation is further exploited by government officials. Around 40 per cent of the village meetings in the state are fudged by block-level

officers; they cite the threat of Naxalites, said a planning board member of Chhattisgarh.

In Jharkhand the Naxalites hijack the meetings. The state does not have elected panchayats and holds gram sabha meetings on the 16th of every month. People say the Naxalites have dedicated cadre for attending them. "They dictate the agenda. It is held under fear because we don't know what they will like or how they will interpret our words," said Rajesh Minz, a resident of Jamgai village in Gumla. So attendance in gram sabha meetings across the Naxalite-affected districts is declining.

This unfolds a bigger story. Of late, activists have started talking about space for peaceful movements in the face of growing Naxalite influence. In the past six years most programmes, like the Forest Rights Act and land reforms, have been declared with the stated objective of curbing Naxalites' influence. Civil society groups have for long been trying to attract government attention towards underdevelopment and violation of peoples' rights over land, water and forests. But the state seems to have woken up only now, said Souporno Lahiri of the National Forum of Forest People and Forest Workers. The Maoist movement actually undermines the civil society, the same groups and people who are now branded Maoist sympathisers by the government, he added. For

those working on forest issues it is a bigger problem because they share the geographical space and issues with the Naxalites.

A Delhi-based activist working with forest communities said, "There is no outrage against the Naxalites among us. But we do feel they have harmed the cause (of forest rights) by diverting focus to violence." There are instances in Madhya Pradesh, Chhattisgarh and Odisha where

genuine demands for the implementation of the Forest Rights Act have been termed Naxalites-inspired by governments. Since the Naxalites also have their front organisations working on the same issues, they feel threatened by NGOs. "Naxalites want us to merge the community groups with their front organisations. That we can't do for fear of the police, so we abandon mobilisation inside forests," said a

member of an NGO working on forest rights in Odisha.

"Movements and people's organisations believe in and stand for mass democratic struggle for social transformation. But democratic space is shrinking and more so as a consequence of internal war between the Maoists and the State," said Lahiri.

Courtesy Down To Earth □

A Report on the State of Implementation of the Forest Rights Act

The Council for Social Development has released a summary report on the implementation of the Forest Rights Act in September 2010. After a meeting held earlier this year and a series of wide ranging communications with various organisations and experts, the Council reports that:

"All of the key features of this legislation have been undermined by a combination of apathy and sabotage during the process of implementation. ... Unless immediate remedial measures are taken, instead of undoing the historical injustice to tribal and other traditional forest dwellers, the Act will have the opposite outcome of making them even more vulnerable to eviction and denial of their customary access to forests. The testimonies made it clear that this is not merely a result of bureaucratic failure; both the Central and the State governments have actively pursued policies that are in direct violation of the spirit and letter of the Act."

Main Findings of the Report

Most of the participants in the review reported that all of the key features of this legislation have been undermined by a combination of apathy and sabotage during the process of implementation. In the current situation the rights of the majority of tribals and other traditional forest dwellers are being denied and the purpose of the legislation is being defeated. (repeated from 1st para)

The key violations revealed by the

discussions are as follows:

In several major States, implementation of the Act has hardly taken place.

All States have largely failed to respect the Act's historic provisions regarding the role of the gram sabhas: Gram Sabhas have been constituted at the wrong level and thereby rendered dysfunctional and ineffective.

Gram Sabhas have often been bypassed and officials, Forest Department and JFM committees have been empowered in violation of the law. Such violations include constitution of Forest Rights Committees and deliberate efforts to use Joint Forest Management to divide villages and substitute Forest Department-controlled JFM committees for community bodies.

There has been large-scale interference by the Forest Department in the rights recognition process. This takes the following forms:

Demands are made that claimants produce fine receipts or primary offence reports (PORs) from prior to 1980 (or from prior to the Act's cutoff date of 2005).

Demands are made that claimants should be on Forest Department "encroacher lists".

Undue appropriation of authority and control over decisions on claims, overriding and bypassing the roles of the *Gram Sabha*, the Sub Divisional and District Level

Committees.

Forest officials have occupied key implementation posts in state and central Tribal Welfare Departments and are imposing the Forest Department's perspective and interests on the process.

Imposition of conditions not required by law on both claims and on exercise of final rights.

Continued evictions of adivasis and forest dwellers in total violation of the law.

Continued application of contrary forestry legislations and efforts to subvert the law by passing new legislations that violate rights (such as in Madhya Pradesh).

All non-land rights in the Act – most of which are community rights – have largely been ignored in implementation. The Central and State governments have treated the Act as if it is a land title distribution scheme.

Sub-divisional level committees have arbitrarily rejected claims on the basis of illegal criteria, failed to inform claimants of the rejection and the reasons thereof, and failed to respect the democratic process mandated under the Act.

District level committees have been the site of a number of serious violations:

Rejections without any intimation or communication to the claimants.

Abdication of responsibility by other departments in favour of the Forest Department, which has been given

effective veto powers in most areas. Unilateral reductions in the size of land titles granted to the claimants without any reason being given and without any intimation to them. It is understood that this too is based on the Forest Department's interference.

Abuse of GPS technology to manipulate maps and areas of land for which titles are being given.

The process in most States that have implemented the Act has been marked by haste and a total failure to provide information or engage in awareness-raising or trainings, including with respect to areas where the Rules specifically require authorities under the Act to perform these duties.

Eligible claimants have been denied

rights, particularly in the case of other traditional forest dwellers, whose claims have been overwhelmingly rejected in all States. All States seem to be assuming that all OTFDs are ineligible unless they can produce documentary evidence of 75 years of continuous residence, when such evidence is not required under the Rules (besides, in many cases even the State governments themselves do not have records of that period).

Protected areas have largely been excluded from the implementation of the Act.

The Central government, and in particular the Environment Ministry, has continued policies that are in direct violation of the spirit and letter of the Forest Rights Act. These

include a forestation and plantation programmes that result in violations of rights; Joint Forest Management; and relocation from tiger reserves and diversion of forest land in favour of large projects, both without any respect for the rights of forest dwellers under the Forest Rights Act or for the procedures and safeguards provided in law.

The Ministry of Tribal Affairs has shown no seriousness or commitment to addressing any of these issues and has largely failed to even monitor the Act properly. Instead it has only gathered statistics on numbers of claims processed and made this the basis of a number of "awards" and proclamations that have no relation to the ground reality. □

UNHRC Report:

Right to Water and Sanitation Legally Binding

Geneva (1 October 2010) - In a historic meeting of the Human Rights Council, the UN affirmed yesterday by consensus that the right to water and sanitation is derived from the right to an adequate standard of living, which is contained in several international human rights treaties. While experts working with the UN human rights system have long acknowledged this, it was the first time that the Human Rights Council has declared itself on the issue.

According to the UN Independent Expert on human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, "this means that for the UN, the right to water and sanitation, is contained in existing human rights treaties and is therefore legally binding". She added that "this

landmark decision has the potential to change the lives of the billions of human beings who still lack access to water and sanitation."

On 28 July 2010, the General Assembly took a first critical step by recognising this fundamental right. However, that resolution did not specify that the right entailed legally binding obligations. The Human Rights Council - the main UN body competent in the area of human rights - in a resolution tabled by the Governments of Germany and Spain, with support from dozens of countries, has closed this gap by clarifying the foundation for recognition of the right and the legal standards which apply.

"I wholeheartedly welcome this resolution from the Human Rights Council, which signals a global

agreement that access to water and sanitation are no longer matters of charity," Ms. de Albuquerque said. "The right to water and sanitation is a human right, equal to all other human rights, which implies that it is justiciable and enforceable. Hence from today onwards we have an even greater responsibility to concentrate all our efforts in the implementation and full realisation of this essential right." [Catarina de Albuquerque is a Portuguese lawyer currently working as a senior legal adviser at the Office for Documentation and Comparative Law (an independent institution under the Portuguese Prosecutor General's Office) in the area of human rights. She was appointed as Independent Expert in September 2008 and took up her functions in November 2008]. □

Orissa: WSS Report On The Rape Of A Tribal Woman

(Women Against Sexual Violence and State Repression (WSS) is a network of women's organizations, human rights organizations and individuals, initiated by women concerned with atrocities and repression against women by state and non-state actors, especially in conflict zones.)

Women against Sexual Violence and State Repression (WSS)

Red Cross Bhawan, Bhubaneswar.

An all-India women's fact-finding team of four members went to Gajapathi district in Orissa on September 30 – October 1 to

investigate into the alleged rape, on February 12, 2010, of a 20 year old *adivasi* woman by security and police forces.

Village Jadingi along with other villages of Gajapati district have been subject to combing operations as the area is supposed to be having hectic Maoist activity. The arrest and rape of this woman has largely gone unreported and therefore there was a need to investigate. The team met the woman, her parents, people in her village, the *sarpanch*, *panchayat samiti* members, her two lawyers, local police station personnel, the jailer and the jail pharmacist. A telephonic conversation was made with the SP, Gajapati district.

Facts of the Case

According to the police diary, the woman – a Kondh adivasi, 20 years old, resident of village Jadingi, Adava Police Station, Block Mohana, Gajapati district, was picked up along with two others by SOG and other security staff led by ASI D. Mahapatra from their villages on 12 February, 2010. No woman constable was present at the time of her pick up.

The timing of the pick up was about 4 a.m. in village Jadingi, as per the testimonies of people in the village. Many villagers (more than seven, in the presence of the entire community) testified that the security personnel had forcibly entered their houses and beaten them up.

The woman was beaten up in front of her parents and other villagers. She was then dragged away along with three others (her brother and cousins) from her village. Subsequently, another two boys were picked up from Tangili, a neighbouring village. She was blindfolded while walking. Two of these boys were allowed to return after they had walked a few kilometers ahead of the village.

The police records, however, show that she was arrested at 4:30 p.m, which is almost 12 hours after she was actually picked up from the village.

She was gang-raped in the jungles before being brought to the police

headquarters. She has clearly stated this in her statement to the Magistrate, and also in her testimony to us. She was also shown obscene pictures on the mobile and sexually abusive language was used by the police/SOG forces.

She and her cousins were threatened at gun-point not to divulge any information about this incident.

Several people, including the *sarpanch* and her family members went to Adava Police Station to enquire about her and the others by about 10 a.m. on the morning of February 12 itself, but they were not allowed to go in and meet anyone, and were told that they had no information from the barricaded gates of the *thana* itself. They waited the whole day, but no information was provided to them about her whereabouts and safety.

A month later, the family was able to trace her to R. Udaigiri jail when some people of a neighboring village reported hearing that she was there. Upon meeting her, she immediately informed her parents about the rape incident.

Her father filed a complaint petition in the J.F.M.C. Udaigiri only in August 2010 about the incident of rape in custody. There has been a continuous atmosphere of tension and insecurity amongst the *adivasi* villagers in the area since this incident; people are voluntarily surrendering to avoid being falsely killed in encounters or arrested and getting stuck in jails uncertainly. All these factors, plus the fact that his daughter was engaged to be married in May 2010 and this kind of news would harm her future prospects played on the parents' mind before taking this decision. They have also written to the Chief Minister, State Women's Commission, State Human Rights Commission and Chief Justice of the Orissa High Court. They have received no response from anyone.

The Magistrate has taken the petition into cognizance, and has recorded

her and her father's statements. Despite the seriousness and gravity of the crime, the police has not taken any action in filing an FIR or initiating an enquiry against its own personnel. In fact, the SP does not feel that he should be doing anything *suo moto* even though he said he is well aware of the incident through various sources, including the media.

The manner in which she was picked up and the subsequent lapses in procedures clearly show that the security forces, the police, the court and the jail have completely disregarded all safeguards available for women in custody.

Ø She was picked up in the night hours from her residence.

Ø No woman constable was present at the time of her pick-up in the village.

Ø No custody memo was given to the family members.

Ø Instead of anyone from the family / village, a 'fake' witness has been recorded in the arrest memo (her family members and local *sarpanch* waited in front of the *thana* the whole day but they were not given any information and could have been called in as witness).

Ø Place of arrest has not been shown in the arrest memo.

Ø No medical examination was done at the police station or at the time of producing in the court.

Ø At the time of producing before the Magistrate, she was only asked to sign some papers and her fingerprints were taken. She was not asked anything about ill-treatment and whether she needs legal assistance or a medical examination.

Ø At the time of entry in the jail, she reported being severely beaten up with rifle butts by the security forces (this was confirmed by the pharmacist also). Instead of taking this as a serious human rights violation and probing further (which might have revealed the rape in the beginning), this was considered as

a routine case and was treated with simple pain-killers and other medicines.

Ø Only a cursory medical report has been prepared at the jail.

Ø Although it is mandatory that under-trial prisoners should be presented in the court once every 15 days, she has been presented in the court only once during the entire period of over seven months of judicial custody till the petition on the rape case was filed.

Demands

The Women against Sexual Violence and State Repression network demands:

Ø Criminal proceedings be immediately initiated against the police and SOG personnel who were part of the raid team on 12 February, 2010 for committing the heinous crime of rape and/or protecting the perpetrators.

Ø Procedures and safeguards for protecting women in custody must be strictly adhered to.

Ø Women in conflict areas are much more vulnerable to sexual violence and we demand a serious response from the district and state administration when a woman shows the courage to make such a serious complaint.

Members of the Fact Finding Team: Anuradha Talwar, (West Bengal); Shivani Taneja, (Bhopal); K. Anuradha, (Vishakhapatnam); Pramodini Pradhan, (Bhubaneswar). 2 October, 2010 □

Judicial Accountability:

A Challenge Before The Nation V.R. Krishna Iyer

Have some Chief Justices of the Supreme Court indeed been delinquent, or is Shanti Bhushan resorting to bravado? The truth should come out.

Shanti Bhushan is a distinguished Senior Advocate of the Supreme Court. The former Union Law Minister has been a public-spirited counsel of corrective strategy. Now he has, in a stroke of seemingly egregious expression of national conscience, raised a historic, heuristic challenge. He has questioned the integrity of the top brethren of the highest judiciary of the Republic, hurling charges of corruption against eight of 16 Chief Justices of the past. He has defiantly desiderated them in a militant manner. Take action for contempt of court against me, if you dare, he seems to say. And the media have publicised Mr. Bhushan's action, which sounds much like bravado.

Now it is left to the nation to move on this matter of paramount importance. This is an astonishing event — the rarest of the rare kind. If India is not a coward, if its swaraj is not merely soft and formal but firm and phenomenal, an appropriately high-level investigation, with consequential follow-up action that is punitive and reformatory, is imperative. This is no time to

hesitate or involve in an exchange of rhetoric. Nor is this the time for a guarded and diplomatic reaction. This is unprecedented: a succession of Chief Justices has been publicly accused by a Senior Advocate of standing, risking his career.

Take action or face collapse. This is not a matter for ordinary public interest litigation. Until now, in no democracy would such an event have happened. There is not a moment now to relax or show amoral indifference or inaction. Should India keep quiet and go into slumber in the face of Operation Bhushan Bravo now, the world will judge this democracy as a bundle of brave words that, when it comes to action, is a flop show. This is not an hour to relax or retreat from duty. This is an open offensive against the highest court. The court, with vast powers of adjudication of justice and writ jurisdiction, has been put in the dock, so to say. To remain deaf or dumb to this situation will be a shock and a shame. When the judicial system suffers seppuku, we become a society sans justice.

This is a crisis beyond Mr. Shanti Bhushan and Chief Justice S.H. Kapadia themselves. The extraordinarily epic charge demands a trial. How can the court close its eyes and pretend to be asleep? Wake

up and walk with your head high, and create a tribunal as unique as the situation. To fail here will put the nation's reputation under grave suspicion.

The judiciary is constitutionally empowered to be critical, to quash and be a corrective. It could issue creative writs or directives binding the functional process of the Executive and the Legislature. What about the judges if they are not efficient, competent and capable, and with a vision and mission to transform the social dimension of any policy or action that is violative of *suprema lex*? In the United States, Chief Justice Earl Warren produced a racial revolution that U.S. President Eisenhower could not achieve. In the Commonwealth, visionary judges have shown their ability to transmute society through judicial activism.

Even in India, public interest litigation has revolutionary potential if our 'robed brethren' are really socialist and secular. They do not always possess in plenary fashion such a dimension in terms of perception or vision. On the contrary, some of them often tend to yield to class bias and political pressure by multinational corporations, or class-oriented prejudices. Indeed, some of them seem to be slowly succumbing

to corruption by powerful vested interests. This is a grave danger.

Yet, the controversy raised by Mr. Shanti Bhushan poses a serious peril before this Republic's crimson future. Our tryst with destiny, articulated in the historic address by Prime Minister Jawaharlal Nehru, cannot be implemented since final adjudicatory powers under Article 141 and 144 lie with the highest court. To remain inert and indifferent to the attack is to be amoral and unethical to constitutional mandates. If this Republic is a live constitutional instrumentality, it has received stab wounds on its chest. Our Supreme Court Judges do have a moral stature.

If Parliament has a sense of shame, now is the time to act: it cannot wait till tomorrow. Mr. Shanti Bhushan has dared the court. Of course, he will get an opportunity and has an obligation to the nation to prove the truth of his charges. Not to act on the matter will amount to cowardice, timidity, bankruptcy, and an unworthy submission to his audacious invasion on the credibility of India's highest moral authority, the Supreme Court.

Parliament must act. Let the Prime Minister move a resolution asking the two Houses to meet and pass a motion appointing the highest-ever quasi-judicial body to sit and inquire into any judicial retreat from their oath of office. This will involve issues of grave importance. It is no longer Bhushan vs. the Supreme Court. It is the people's right to have a paramount Supreme Court of justice.

This nation is greater than Mr. Shanti Bhushan and it cannot have a moral backbone if these charges are not publicly enquired into and consequent changes are made — so that the Supreme Court may shine supreme.

Any Commission or Tribunal that is created should not be confined to the charges in its ambit of enquiry. The public must be able to bring any other charges against the judges of the highest court. This will be a historic, epic tribunal to try its own judges without fear or favour and cleanse the system of any bad elements. Frame a performance prescription, punish any guilty judges.

Or if Mr. Shanti Bhushan fails in his bid, let him face the consequences of his phenomenal folly. There should be no secrecy but only transparency, no contempt proceedings to hide delinquent conduct. This will be an epic battle more important than the making of the Constitution — a national hearing by a superlative tribunal. I suggest the Chief Justices of all the High Courts plus the Speaker and the Chairpersons of the two Houses sitting as a body assisted by the Attorney-General and the Solicitor-General. During the course of these proceedings, ad hoc judges may be appointed to hear cases. The marathon process will involve sittings on three days a week. The other four days could be set apart for their regular judicial work. Such a tribunal will be unique — a brave judicial odyssey. For, never has there been such a spiritual or civil challenge to a nation's supreme body.

Let us not be afraid of doing the right thing at the right time. Anybody who comes up with charges must suffer punishment if these turn out to be unproven. Nobody can escape after leveling allegations frivolously, nocently, malignantly and mendaciously. Mr. Shanti Bhushan and Prashant Bhushan will either go down in history as tremendous challengers of evil or run afoul of the law for having raised frivolous charges. Justice shall be done to the judges, and equally to those who have leveled unproven charges. Those who seek to defile the system through blackmail will be punished, unless they are able to back up and prove the charges.

The collegium

Meanwhile, there is one more item of great relevance and importance to be considered by Parliament. This involves the collegium created by a judgment of the Supreme Court to make appointments and recommend the transfer of judges of the higher courts. This instrumentality is the creature of a judgment with no foundation in the Constitution. It constitutes a usurpation of the powers of the Executive with no guidelines whatsoever. It has played havoc and deserves to be demolished by parliamentary correction, by means of an amendment to the law. The collegium is answerable to none, and acts without transparency. Instead of waiting for a larger bench to eliminate it, a constitutional provision must extinguish this instrument. □

Bonded Child Labour: A PVCHR Case Report

People's Vigilance Committee on Human Rights (PVCHR) came to know through the victim (Mohd. Basir) about the suffering of his three children at the hands of the power loom owners. These children were being ill-treated and very often beaten by the power loom factory owners for forcing them to work for a longer time and bonded for them.

Case details

The three sons of Mohd. Basir, residents of house No 19/232A Lallapura, Varanasi city, India were working as bonded child labour in the power loom factory of Mr. Jameed Hazi of Khalik and his mother-in-law Jamal S/o Hanif near to Makkhu Baba Masjid, Lallapura, Varanasi city, India for the last six months.

1. Mohd. Ali s/o Mohd Bashir aged about 13 years old.
2. Mubarak Ali s/o Mohd Bashir aged about 11 years old.
3. Murad Ali s/o Mohd Bashir Aged about 9 years old.

In the six months these children were only remunerated with a total of 3800 INR (first installment of 1800

Rupees and second of 2000 Rupees) and they stopped going to their work when they were not paid by the owner during their festival Eid.

These children were being ill-treated and very often beaten by the above said power loom factory owners for forcing them to work for a longer time. The children were employed on the work from 7 am to 11 pm. They were given just 30 minutes break during this time for lunch.

Bashir has 4 sons and 4 daughters. He has no means of livelihood for his family members other than pulling Rickshaw in Varanasi City. His 17 Years old daughter has been suffering from serious illness for the last few months and it has added up the hardships to his family.

For the miner children, who have been working for 16 hours in a day, such long hours of work proved harmful for their health and they became ill and could not continue their work. But the above named

owners of the power loom factory threatened the children and their parents to send them to work. It is also informed that the children were being paid much less for their work.

On 22nd September 2010 PVCHR sent letters to the National Human Rights Commission, the District Magistrate, Varanasi and the State Human Rights Commission, Lucknow.

Background Information

This is also known as slave labour and is one of the worst types of labour for children and adults, alike. In fact, in 1976 the Indian Parliament enacted the Bonded Labour System (Abolition) Act; therein declaring bonded labour illegal. However, the fact remains that this system still continues. According to certain experts approximately 10 million bonded children labourers are working as domestic servants in India. Beyond this there are almost 55 million bonded child labourers

hired across various other industries.

In Varanasi district and other parts of Uttar Pradesh people from the socially and economically marginalized communities are still exploited for forced labour. People from these communities are treated inhumanly; physically abused and are paid nothing by their employers.

The law against bonded labour - the Bonded Labour System (Abolition) Act, 1976 - provides for punishment for compelling a person for bonded labour. In addition to prescribing punishment for forcing persons into bonded labour, the Act by a declaration freed everyone from bonded labour and prohibits contractual agreements facilitating bonded labour and continuation or extension of any pre-enactment agreement of similar nature. The Act also writes off all pre-enactment debts and liabilities that had resulted in forced labour. □

PUCL Karnataka Convention

Resolutions

1. Resolved that the bill proposed by the Government of India on Torture should be passed only after a public debate in the country, as it is full of loopholes and negative clauses.

2. The proposed police reforms are not being honestly pursued and implemented by the Central government in spite of Directives from the Supreme Court, mainly because of objections and non cooperation of the State governments. It is therefore resolved that the Government should implement police reforms as suggested by the Supreme Court without further delay.

3. It is resolved that the judicial reforms suggested by Law Minister Mr Veerappa Moily should be expedited.

4. The problem of the Adivasis, tribals and others living in the forests

and in under- developed areas is not related to law and order. It is the failure of both the State and Central Government in neglecting the legitimate rights of these poor people.

It is resolved that the Government should stop military and police action and develop the areas. It should abolish all the SEZ projects to create conducive atmosphere for peace and development in these areas.

5. Human Rights (HR) activists are harassed in the State of Karnataka by foisting baseless cases. It appears that the sole aim of the State is to curb the activities of the activists. It is resolved that the HR activists democratic right to criticize the State should not be curbed since the activities are in the spirit of the constitution and freedom movement. The State should stop harassing the Human rights activists.

6. It is resolved that every district court should act like the Human

Rights Court as per the provisions of the article 10 of the Human Rights Act and immediately implement the same. In this connection the Government should popularize the utility of the District courts as Human Rights Court.

7. Human rights activists have been prevented from entering certain areas (grey zones) like the industrial zones, SEZ, zones like the Dantewada, Jangalmahal and other North Eastern States. The democratic right of every human rights activists to access into these grey zones should not be curbed or denied. It is resolved that entry into these zones should be made available.

PUCL –K State council thanks the Shimoga unit of PUCL for their wonderful effort for organizing the conference and the state EC meet.

Dr. V. Lakshminarayana, General Secretary, PUCL Karnataka

Date: 11-10-2010 (Mysore)

Karnataka State Executive Committee Office Bearers for the Period 2010-2012

1. **Patron:** Prof Hasan Mansoor
2. **President:** Mr P.B.D'Sa
3. **Vice Presidents:** 1.Mr Suresh Bhat, 2. Mr B.V.Seetharam, 3. Dr E. Rati Rao (Ms.), 4. T.R. Krishnappa
4. **General Secretary:** Dr V. Lakshminarayana
5. **Secretaries** 1. Mr Sarjashankar Haralimata, 2. Ms Arati Chokshi, 3. Mr Kabeer
6. **Treasurer** Mr N. Divakar

6. Members nominated for the National Council

1. Ex-officio: Mr P.B. D'Sa & Dr V. Lakshminarayana
2. Remaining two members to be nominated.
7. All the members of the State council are elected as the state E.C. members

The following sub committees were formed in order to study the problems related to various serious issues.

1. Committee for the study of problems of *safai karmachari's*:

Convener: Mr Y.J. Rajendra

2. Committee for the study the problems related to flood rehabilitation: **Convener** Mr Srajashankar Haralimutt
3. Committee for the Protection of Human Rights Activists. **Convener** Mr Adithya
4. Committee to assess the working of the Human Rights Commissions (NHRC, SHRC, SWC etc)

Convener Dr V. Lakshminarayana □

PUCL Delhi:

Minutes of the 17 October 2010 Delhi PUCL Executive Committee Meeting

A meeting of the Delhi PUCL Executive Committee was held at the National PUCL office today which was presided over by Shri N.D. Pancholi. The following members were present in the meeting:

1. N.D. Pancholi
2. Suraj Dev Vasant
3. Mahi Pal Singh
4. Ajit Jha
5. Maharaj Singh Rana
6. Sanjay Chaurasia
7. Anil Dalal
8. Jaipal Nehra
9. Ravi Kiran Jain (Special invitee)

The following decisions were taken unanimously after deliberations:

1. The first part of the Convention of the Delhi PUCL to be held on 5 December 2010 from 10.00 a.m. onwards at the Gandhi Peace Foundation, New Delhi will be in the form of a seminar on 'Present Challenges and the Role of the PUCL' and the following speakers will be invited to speak on various challenges facing the people of the country from Human Rights perspective: Prabhakar Sinha, Rajindar Sachar, Ravi Kiran Jain, Surendra Mohan, N.D. Pancholi and Kavita Srivastava. Apart these

speakers, some more speakers can also be invited to speak on the occasion. The speakers would choose any topic of their choice to speak on within the broad topic of 'Present Challenges and the Role of the PUCL'.

2. Considering the expenses of the daylong Convention, including tea, lunch etc., it was decided that participants will make a friendly contribution of Rs. 100/- each during the registration time of 10.00 to 11.00 a.m. on the Convention day. However, no such contribution will be accepted from the invitee speakers and media persons covering the event, if any.

3. Members enrolled up to the end of November 2010 will be entitled to participate in the second session of the Convention which will consist of presentation of the General Secretary's report, Treasurer's report, discussion on the two reports and the resolutions to be presented for consideration and passage, and the election of the new office bearers and the Executive Committee for the next two years.

4. Since there is no State Council in Delhi, the Executive Committee

also considered the proposal regarding the new office bearers to be presented before the Convention for election. It was decided to elect a President, two Vice-Presidents, a General Secretary, a Treasurer, four Secretaries and seven or eight Executive Committee Members to make the Executive broad based in the light of the increasing amount of work proposed to be undertaken by the Delhi PUCL.

5. Members were also informed regarding the decision of the National Council to enroll at least five potential donors who can donate at least Rs. 1,000/- per year to the PUCL, out of which 30% share will be kept by the State PUCL and the rest of 70% will go to the National PUCL and that such donors will be supplied the PUCL Bulletin for one year as a mark of recognition of their co-operation to the PUCL. They were also informed that every National Council Member from the state has to donate Rs. 1,000/- every year to the National PUCL.

After a vote of thanks by Mahi Pal Singh the meeting ended.

Mahi Pal Singh, General Secretary, PUCL-Delhi □

A Report on Dalit Atrocity At Brahmagiri Block of Puri District, Orissa

Atrocity happened yet again against three Dalit girls when they were denied entry into the temple in Ranapada village, Brahmagiri block of Puri District. The incident happened when three girls from the Bauri community (Dalit) named Chandana Bhoi (19 years), Sulochana Bhoi (18 years) and Guni Bhoi (22 years) on 28th August evening were stopped from entering "Maa Kalika temple" in Nuapada by a non-Dalit man Karunakar Palei. When he saw these three girls inside the temple he shouted abruptly and told the priests that they are Dalits and how had they been allowed to perform puja inside the temple. He abused the girls by criticizing their caste and said, 'who gives you this right to enter the temple.' At that time the three girls said "why are you behaving like this, are we not human beings or Hindus". But none of the non-Dalit people present there listened to them and lastly the priests and local non-Dalit people refused to perform puja and reprimanded them and advised them not to come again to the temple and they were told to give an immediate penalty of Rs. 50,000. They were threatened and forced to accept the penalty charges.

29th August: After being denied entry inside the temple, on 29th August three girl victims filed an FIR and registered a case no. 160 (36) against Karunakar Palei as per 341, 294, 323, 806 sections. 6th September: After one week of the incident on 6th September Puri district administration had organized a meeting in the chamber of the sub-collector with Dalit and Non-Dalit political leaders. In this meeting Dalit leaders raised the question about their constitutional rights on temple

entry where there was strong protest from non-Dalit leaders where they openly said in the meeting that Dalits are not allow entry inside the temple. In this regard local district administration tried to make a compromise between Dalit leaders and non-Dalit leaders but failed to do so. 8th September: After the meeting with the district administration on 6th September which was not successful, non-Dalit people organized a meeting on 8th September in Nuapada near Maa Kalika temple (where the incident happened). In the meeting upper caste people from 54 villages congregated and planned to attack and murder the Dalit people of Ranapada village. In the meeting it was decided to form a committee of 22 people. The formed committee mobilized and provoked the upper caste people and they went to Dalit Sahi of that particular village shouted at them and threatened to kill them. As per their planning and decision taken by the upper caste people, Dalit people were attacked by non-dalit people. Dwijaraj Pradhan a non-Dalit man shouted, saying that "today we will beat up all the Dalits, all Dalit people come out of your houses otherwise we will kill you", at the same time 5 Dalit people from Dalit Sahi of Ranapada village - Gadadhar Bhoi, Golekha Bhoi, Kalu Bhoi, Nakula Bhoi, Iswar Das and Rajkishore Bhoi had gone to the market. They were attacked and beaten up by the upper caste people. Gadadhar Bhoi was locked by non-dalits in a small suffocated cabin. Non-Dalit people were planning to set fire to that room in the midnight hour but fortunately the police arrived to control the situation and Gadadhar Bhoi was rescued by police. When

police arrived to protect Dalit people they were also attacked by non-Dalit people as per the information. 9th September: After the incident happened on 8th September Dalit people registered cases against 73 non-Dalit people who had attacked the Dalits.

15th September: On 15th September the non dalits again organized themselves in Raibidhar market of Nuapada village for vengeance against Dalits. To prevent any tussle in that village police force had been deployed in the Brahmagiri village market. The meeting was on without any prior permission, so police asked them to vacate the place but the non-dalit people did not listen to the police. Inaction on the issue led to untoward incidents such as stone throwing on the police as well as on police van. Few police were injured and subsequently the police started charging at a crowd of people with batons. Later on two more platoon of police forces were called up and they staged a flag march on the spot. Tortured 80 Dalit families are living in hunger The violence and attack on dalits are so horrendous that dalit people are now living in constant fear, and insecurity. They are not being supported by the district administration or any other political parties even. They are living in hunger since the last few days. Upper caste people have blocked the roads around the Dalit Sahi of the village and are watching them so that they are unable to come out of the village for daily wages also. Out of these 80 families most of them are daily wage earners. The situation is hindering them and they are sleeping empty stomach as they are unable to leave their village to earn. Schools and colleges are closed

after the incident. Puri district administration is also silent and victims are not getting any support and relief from the local administration.

Intervention of Dalit Adhikar Sangathan Odisha: On 2nd October a team consisting of few advocates from State SC and ST Youth & Student Council, state convener and staffs of Dalit Adhikar Sangathan Odisha, staffs from ActionAid, staffs from Lohia Bichara Mancha and staff from Odisha Dalit Adhikar Manch had visited the village and talked with villagers as well with local administration including IIC Brmhagiri, ADM, BDO and PD (over phone).

Some of the concerning observations are –

1. Out of 80 families most of them are share croppers. After the incident the land has been taken back by the land lords.
2. Most of the families are also daily wage earners but nobody is giving work to them.
3. MGNREGS is not being carried out though all of them have job cards.
4. PDS is available but to limited facilities. The local shops of grocery and vegetables do not sell them any product. They are just living on plain rice from home.
5. The Local ICDS center is open sometimes but not functioning properly. However people are not aware about the types of services that should be available in Anganwadi Centres. Hence most of the beneficiaries are depriving of the services. As per the situation is concerned they are in need of food, so the issue of anganwadi Centre should be taken into consideration.

6. Dalit children were not allowed to the schools, very recently since the last couple of days children are being allowed, but there is a doubt that they may not be accessing MDM which is need to be checked out.

7. The violence and attack on Dalits are so horrendous that Dalits people are now living in constant fear, and insecurity. They are not being supported by the district administration or any other political parties even in terms of any relief material and compensation. After discussing with villagers, the team also met to ADM and IIC Bramhagiri where ADM assured to look into the matter. He said villagers should apply for NREGS work immediately as there is some NREGS work is available in block. But when the villagers today (4/10/10) submitted application and demanded for work under NREGS to the ABDO, he did not accept it by saying that he needs a common demand. Hence the people felt harassed. On 5//10/10, after our telephone BDO Bramhagiri visited Ranapada village. He promised to provide work and people submitted their application for work to BDO, the receipt was not given by the BDO. The villagers also made a resolution that work should be provided to clean Badakunda pond which is around 50 acres where work can continue for a long period of time and we have also met District Collector. He said that cleaning of grass from pond work has been stopped for the time being.

Case Study: In a fresh incident Harekrushna Mallik of Gokila Village (Suasa Bangala Sahi) was

physically assaulted by Khyatriya patronage people on 05.10.10 when the victim was going for medical by bicycle to treat his aunt. A group of people of the mentioned community blocked his road and instructed to go on walking without wearing their shoes. The victims did so and passed the village. After passing the village Mr. Mallik tried to ride his bicycle the culprits followed him and scolded using slang languages quoting their community name. When he protested the culprits slammed him and threatened. Now only one narrow from his street is blocked by the upper caste people by dirting that place. In another incident a banana plantation was damaged by the upper caste people. One Prem Plan operated school was forcible closed by the upper caste people

Demands of Brahmagiri Dalit people:

1. Immediately Government should declare Brahmagiri as an atrocity prone block.
2. Action should be taken against the accused and immediate arrest of all the accused who were involved in the attack. Apart from this, people who are regularly practicing untouchability in the villages' action should be taken against them. 3.
3. 80 Dalit families of Ranapada village should get immediate relief, compensations and two square meals immediately as they are in hunger. 4.
4. For the safeguard of life and property of Dalit people there should be appointment of police force in that village at least for 6 months. 5.
5. Orissa Temple entry Act-1956, PCR act-1955, SC/ST atrocity Act-1989 and Rules 1995 should

be implemented and monitored properly.

Apart from the above mentioned demands Brahmagiri Dalit people are asking for justice. If the Government will not take immediate steps for the

safety of their lives and properties then they will go on protests against the government. They are also challenging that, if the Government will not meet their demands soon then they will abandon the Hindu

religion for a dignified life and will convert rapidly to another religion and for this they are planning to motivate all the Dalit people from the state.

Source: Grey youth ☐

UP: Atrocities Against Minor Dalit Girls

A delegation of the Dist. unit of All India Democratic Women's Association (AIDWA) met the district administration of Kanpur with regard to 2 horrific cases of atrocities perpetrated on minor dalit girls.

In the first instance, a young dalit girl in Ghatampur block was raped by some three upper caste boys in a field. When the Inspector of the

thana, also a dalit, refused to register an FIR, the poor girl committed suicide. The thana personnel have now been transferred but that is no punishment. AIDWA demands that they be suspended and criminal cases lodged against them including abetment to suicide. The criminals must be apprehended and jailed.

In the second case a minor dalit girl

was raped and murdered in Chandni Nursing Home allegedly by a ward boy. AIDWA has demanded his arrest and also stringent action against the Nursing Home for having failed to protect a young, helpless patient in the ICU.

Subhashini Ali
6 Sept 2010 ☐

Madhya Pradesh: Atrocities Against Dalits Dalit Huts burnt over Wage hike

(The United Nations Human Rights Council and other concerned international and national bodies keep ignoring the fact that Indian caste system is worse than racial discrimination and it is still rampant in every part of India. Nowhere in the world people are suppressed to that level as it is done in India which is quite evident from daily wage of Rs. 10, just one fifth of a dollar value. And when these poor seek better wages somewhere else then their huts are burnt and they are forced to run for survival.— Report sent by Anup Dutta, Bhopal and Dr. Jugal Kishore, courtesy Mail Today dated 22 September 2010)

Nineteen Dalits were thrashed and their shanties torched by members of the Gujjar community in Madhya Pradesh's Vidisha district on Wednesday. Their crime was a demand for higher wages as farm hands for the Gujjars. What actually angered the Gujjars was that the Dalit farm hands had shifted to a nearby village for work, where they were paid more than Rs. 10 - the amount given by the Gujjars - for a day's toil.

"The Dalits were beaten up and their houses burnt by the Gujjars after they demanded higher wages in Silarpur village. The victims are out of danger but the doctors have recommended X-rays for seven," Girish Bohra, SDP of Ganjbasoda, said.

The incident took place in the afternoon when over two dozen armed Gujjars surrounded the Dalits attending a terwi ceremony of another villager. A victim said: "They

(the Gujjars) never made full payment to us. We were beaten for demanding our wages and when we asked them to raise them." Soon after the attack, the remaining Dalits, including 14 women who are still undergoing treatment at the Tyonda Primary Health Centre and Basoda Primary Hospital, started migrating en masse.

"Members of both the communities have deserted the village," Harisingh Raghuvanshi, BJP MLA representing Basoda, said.

The Vidisha district administration has decided to turn a local school into a temporary relief camp for the Dalits and announced a compensation of Rs. 10,000 each to the families.

"A search is on to arrest the attackers. The government has announced financial assistance and free treatment to the 19 victims," Bohra said.

The attack, ironically, came on the day Madhya Pradesh Chief Minister Shivraj Singh Chouhan claimed that his government was committed to the welfare of the poor.

"The state government is committed towards the welfare of every needy person and community," Chouhan had said on Wednesday at the national seminar on the 'Welfare of Poor of General Category - Challenges and Opportunities' organised in Bhopal by the state commission for welfare of the poor of general category.

The Chief Minister had added that the state government wished to work for the welfare of the poor regardless of caste and creed. "This is the duty of a welfare state," Chouhan said, adding that the state had provided scholarships to the tune of Rs. 33.12 crore on the recommendation of the commission. ☐

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ill-conceived strategy.

"The Convention therefore calls upon:

(i) The public and all political parties to demand creation of suitable institutional framework in order to resolve underlying causes in a peaceful and humane manner and where already violence and insurrection have raised their head, to organise masses to isolate the 'other' side, erode their bases, instill confidence among the community in their ability to combat unarmed the 'other' side. Without political mobilisation on a large scale, mere law and order approach to these problems will be woefully inadequate.

(ii) The Central and the State

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

(iii) In the context of the specific situation in Jammu and Kashmir, Punjab, and other parts where sporadic terrorism is being witnessed, to associate and involve credible persons from different parts of the country, not as decision-makers, in various organised ways with all the 'law enforcing' measures. This will mean their being live witnesses, sounding boards, and reviewing agencies in the case of arrests, detention, interrogation and firings. Similar arrangements should

be made to facilitate reporting on the activities of the violent agitators, terrorists, and insurrectionists. These measures, which ensure continuous monitoring of developments should act more as effective deterrent than post-mortem of the traditional time consuming, judicial and quasi-judicial, agencies.

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

PUCL Resolutions On Violence

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

Question of violence

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

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

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

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

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

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

“The present state of affairs in Jammu and Kashmir, the Punjab, the North-east, and other parts of the country, especially in Andhra Pradesh and Maharashtra, range from virtual insurrection to organised terrorism. The late, hasty, panicky, inarticulate, and *ad-hoc* reactions of

the governments, both at the centre and in the States, amount to unleashing measures, which not only aggravate the situation but, because of their very nature, constitute a frontal attack on residual civil liberties. Even with all the goodwill, which is not that widely prevalent among the law enforcing authorities, they may find themselves in an unenviable position of liquidating the rights of the citizen for what may appear to them and their mentors, a higher cause.

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

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

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

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