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## Peace In Kashmir Rajindar Sachar

The reaction to Prime Minister's statement on the question of autonomy is on expected lines - cynics say it is not enough but do not conveniently spell out the details. Concerned with Human Rights violations in J&K a team of PUCL, including me, has been visiting J&K since 1990 and given our reports critical of the government. I again went there in 1993. It was a sad experience, and on my return I said publically "I do not know how and in what manner Kashmir question will be solved with its nuances of Azadi, Plebiscite and greater autonomy. But one thing is certain and that is - India will remain the loser unless the face that it presents to the people of Kashmir valley is humane, compassionate and understanding. At present that face is ugly and insensitive." I never thought it could ever become worse. But unfortunately it has - the school children throwing stones are the targets of lethal guns fired by security forces. Even in common idiom "if you hit me with stones, I will return it with bricks". But the security forces have turned this on head by returning with bullets. There are limits, which no civilized government can cross - unfortunately Kashmir and central government let the security forces do that. The killing of three security guards at Sopore shows the dangerous situation.

It is a sad reflection on the working of political parties in J&K that they refuse to sit together to find acceptable solution, notwithstanding the fact that all of them have sometime been part of the government of J&K.

But equally the strategy of the central government is fudgy. Home Minister Chidambaram comes out with what he thought was a brilliant coup by agreeing to hold talks, and especially mentions Gillani as the pivotal point. Those who advised him seem to be totally impervious to the openly reiterated position of Gillani (that he is asking for plebiscite in the hope that J&K will opt for Pakistan).

It has to be recognized that youths throwing stones are expressing their sickness with all the parties in the valley and demand a permanent answer to the future of the valley. The Prime Minister's statement on the autonomy has given an opening. But it must be appreciated that this step would necessarily involve all political parties of India and including those of J&K. This requires immediate release of Yasin Malik, Shabir Shah and no restrictions on Maulvi Omar and even Gillani (of house arrests). All these leaders must be asked to come out clean with their concrete solutions instead of taking cover of asking India to sort out the Kashmir question with Pakistan. No doubt Indian and Pakistani governments will have to continue talks to arrive at a mutual agreement but prior to that if the government and parties in India arrive at an agreed solution, it is only then that a permanent solution can be worked out.

The puerile argument of Mirwaiz and Gillani that solution must be found for "the whole of J&K, which existed in pre-1947 as one unit with option to join Pakistan" is a non-starter. In that context it is well to repeat the opinion of Jurist Alistair Lamb (obtained by Pakistan) that "it can fairly be said that in deciding to accede to India, the Maharaja of Kashmir was well within his rights according to 1947 Act which had nothing to say about communal issues in this respect". Will these gentlemen now ask Pakistan to vacate the portion of J&K under its occupation?

And when they talk of the whole of Kashmir, will they also spell out what their plans to retrieve thousands of square miles in Aksai Chin (J&K) having been permanently ceded to China by Pakistan are. And while at this they may also explain to their constituents as to how to undo the Baltistan Gilgit package (an area of J&K in Pakistan), which has now by legislation been incorporated in its territory and Pakistan's direct control of Northern areas. So who is befooling whom with the so-called nostalgic mention of J&K being continued as a practical solution?

I do not believe that Pakistan or leaders like Gillani are so ill advised as not to recognize that the part of

J&K on the Indian side is sacrosanct and non-negotiable. Nor do I believe that all the parties in India can be so dense as not to accept the ground reality that considering the price that J&K has paid in terms of human misery during these two decades of militancy and alienation that has been built-up, now it would be illogical for Indian leadership to hope that talks can take place within the parameters of the normal Centre State relationships.

In order to give such reassurance, the Central Govt. should concede that apart from the subjects acceded in 1947, namely Defence, Foreign Affairs, Communication and currency to the Central Government, the rest of the subjects will vest in the J&K State Government. In order to further reassure the people of J&K the Central Government should agree unilaterally to withdraw all Central legislations, which have been extended upto date to J&K. It will then be upto to the J&K legislature to pass new laws or apply those laws with suitable modifications, as they feel necessary. Some well meaning people react adversely to this suggestion on the ground that this would be creating a special category unlike the other parts of the states. But why should it surprise anyone

because J&K is a special case and is so recognized in our Constitution by Article 370, which is non derogable. This suggestion of mine is only putting life to the original content of Article 370.

But that does not mean watertight separation of the two parts of J&K. In fact all efforts have to be made to continue the underlying oneness of the State. Thus so far as the borders between the two parts of J&K are concerned, they can be made as porous and as free as between the USA and Canada or even like as at present in the European Union. People belonging to each side should have no problem not only in traveling but also in even having trade with each other freely.

Of course ordering judicial enquiry into all these killings is an immediate need. As an immediate gesture Armed Forces Act must be withdrawn straightaway. Even an individual can use appropriate force, if necessary - of course subject to judicial scrutiny - so why keep this legislation alive when it is admittedly an impediment in peace returning to the valley.

The Holy Ramzan starts next week - may it usher in peace and understanding to all of us. □

## **PUCL Press Statement on Situation in Kashmir**

The PUCL strongly condemns the continuing killing of unarmed protesters in police firing in the Kashmir valley even if a few from the crowd might have pelted stones at the police or the security forces. The policy of bullets for brickbats followed throughout the country is inhuman even under a dictatorship and is totally unacceptable in a democracy. The government should have by now so trained and equipped the police and security forces as to ensure that in dealing with unarmed angry protesters in the country no life is lost on either side.

The PUCL would also like to draw the attention of the nation to the significant fact that the people of Kashmir had remained peaceful from 1947 to the end of 1980s and shown no inclination towards terrorism despite wars having been fought against Pakistan over Kashmir and Pakistan's efforts to foment trouble there. The present situation, in which a large number of people are alienated and disaffected, is the consequence of the mishandling of the situation and a callous disregard for the feeling of outrage of the people against the killing and disappearance

of a large number of innocent persons. Had the government policy been to punish the guilty policemen or members of the security forces perpetrating these crimes instead of protecting them by subverting the course of justice, people in such a large number would not have risen in the unarmed revolt to which we are a witness today.

The PUCL urges the government both at the centre and the state to protect the life and liberty of the innocent persons rather than protecting those who are guilty of unjustifiably killing them in fake

encounters, mysterious disappearances and indulging in the unacceptable practice of bullets for brickbats. It is only by guaranteeing the rule of law and winning the confidence of the people in the governments' commitment to fair

#### **General Secretary's Letter to all the National Council Members:**

Dear Colleague  
The PUCL National Council meeting is being held on 4th September 2010 (Saturday) at *Gandhi Peace Foundation*, 223 Deen Dayal Upadhyaya Marg, New Delhi-110002 from 4 p.m. onwards. It will be

#### **General Secretary's letters to all the States' General Secretaries and Presidents:**

1.  
Dear Colleague,  
The PUCL National Council Meeting and the Convention on the issue of 'Attack on Life, Liberty and Democratic Rights' is being held in

2.  
Dear Colleague,  
In the past PUCL has filed several cases in different High Courts and the Supreme Court. These cases have led to important policy changes at the state and national level. It is felt that a compilation of such cases should be taken up. Shri Sanjay Parikh, advocate, the

#### **Rajasthan PUCL:**

## **Sarada Burns Again Hindutva Groups Use Adivasis to Attack Muslims and Their Homes Fact-Finding Report: Udaipur PUCL**

The PUCL fact finding team led by Vice President of the State PUCL, senior advocate Ramesh Nandwana, District Secretary, Vinita Srivastava, State Executive member and lawyer Arun Vyas, other members of the PUCL Udaipur District - Shyam Lal Dongra, Kiran Singh, Shri Ram Arya, Hemlata, Rajesh Singhvi and Rashid conducted a fact finding of the recent communal events that took place at

play and justice that lasting peace can be ensured. Repression is bound to further alienate the people and lead to more unrest. The PUCL strongly urges the governments concerned to adopt a humane approach to end the

followed by the National Convention the next day, 5th September 2010 (Sunday) from 9:30 a.m. onwards on 'Attack on Life, Liberty and Democratic Rights' in contemporary India.

You are cordially invited to these meetings. Please intimate about

Delhi on 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

Supreme Court, has kindly consented to compile these cases in a booklet or book form. I write this letter to request you to send any case/cases that you might have taken up in the respective High Court or the Supreme Court. You can send the hard copy, soft copy or if either of it is not available please send the reference of the case so that it could

Sarada Udaipur, after a criminal incident in that area. They visited Sarada on the 28th of July and were prevented from going to the area due to curfew in that area where 70 houses of the Muslims were burnt down. The team met the affected families as well as leaders from all sides. It also interacted with the police and administrative officials. The following are the main findings

shedding of blood and to work for winning the confidence of the people who have been alienated as a result of their wrong policies.

**Prabhakar Sinha**, President;  
**Pushkar Raj**, General Secretary □

your arrival details to Shri Mahi Pal Singh, General Secretary, PUCL Delhi, at the earliest. His phone numbers are 09312206414, 09015020456 and his e-mail ID is <mahipalsinghrh@gmail.com>.

With thanks,  
Pushkar Raj □

convention in Delhi.

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

With thanks  
Pushkar Raj □

be searched from the High Court or the Supreme Court case history.

Please send these cases to Shri Sanjay Parikh directly (with a copy to the national office) on <sanjayparikh.advocate@gmail.com>, or 102 New Lawyers' Chambers, Supreme Court, New Delhi-110001. His phone number is 09891496748.

With thanks,  
Pushkar Raj □

of the said committee;

- On 2/7/2010, in Sarada, Udaipur, Rajasthan at 9 pm, Shezad Khan and two of his associates murdered Mohan Meena, who was dealing with illegal alcoholic substances, during a fight while drinking the said substance.
- From 3/7/2010 to 5/7/2010, members from the Adivasi

society, set afire the shops of innocent Muslim families. On 18/7/2010, Amrut Lal Meena, resident of Boripal (BJP), Kalulal Meena, Sarpanch, Gram Panchyat, Chavan, Vagat Ram Meena, Zilla Parishad Member and other Adivasi/tribal leaders declared that their major goal/objective was the destruction of Muslim families.

- On 14/7/2010, SDM and Dy SP held a meeting with both sides. The representatives of the Meena Society and Muslim Society both met and had discussions. The so-called leaders of the Adivasi Society who were mainly Bajrang Dal and members of the Hindutva groups stated that the goal/objective (war of destruction of Muslim families) would be rescinded only if the all the 3 accused in the murders of Mohan Meena should be ostracized from the society. This had be notified and published in the newspapers.
- On 14/07/2010, the Muslim Society members gave in to the demand and ostracized the three accused. This was notified to the Tehsildar, Sarada and the same was published in Dainik Bhaskar.
- So-called leaders of the Adivasis society went back on their words and on 18/07/2010 went all around the town distributing pamphlets on the continuation of their war on Muslim families.
- On 18/07/2010, they ensured that again rabble roused and got all members of the Adivasi society at one place and on 25/07/2010, they declared war and demanded that all the adivasi members bring weapons for the attack.
- PUCL got enough evidence that between 18/07/2010 - 24/07/2010, weapons were distributed to all the Adivasis in the area by different associations.
- On the night of 24/07/2010, in the villages of Pal Sarada, Pal

Saipur etc, Dhanraj Meena, Retired teacher, Kalu Shankar Meena, assistant secretary to the panchayat, Uday Lal Meena, Teacher, Durga Prasad Meena, Lalu Ram Meena, Ex. Member Panchyat Samiti and other Adivasis called for a meeting where weapons were distributed and they were instigating an attack on the Muslim colony.

- On the night of 24/07/2010, the Muslim Society members became aware of the meeting, hence the members informed the higher officials and the local leaders. They also prayed for the increase of security forces.
- On 25/07/2010, the Adivasi members got together for attack at the Students hostel in Sarada. A meeting was conducted till 4 pm. After the meeting, they attacked, looted and lit the shop of carpenter Shaukat Ali. After this the mob attacked the house of Ahmad Hussain, Rtd principal and injured him by pelting stones. To protect the family and to disperse the mob, shots were fired in the air. Later, it was reported that the Police had fired the shots.
- On 25/07/2010, the so-called bullies claiming to be leaders of the Adivasi Samaj, moved house to house and incited the adivasis to attack the Muslim person who had allegedly fired the shots.
- On the morning 25/07/2010, the adivasi society got people together by the beating of drums. The Muslim community prayed for an increase in their security to the authorities in vain. The Adivasi community attacked the Muslim colonies. The Police fearing for their safety brought the Muslim families to the police station. In their absence, the homes were looted and about 70 houses were set afire. The attacks continued in the presence of the District Collector and the Superintendent of Police of the District and other senior

officials. The rioters continued the burning and looting of the Muslim houses and the authorities watched in silence.

- On the night of 26/7/2010, the district authorities instead of stopping the violence, apprehending further violence by the adivasis moved the Muslim families out of the area first into the police station and later brought them to Udaipur. The Muslim Samaj committee provided shelter to the aggrieved persons at the Dargahs and other religious places. The Muslim community made arrangements for food and other necessities and the authorities did not take any action in this regard. The Government did nothing.
- The Adivasi rioters drove 500 Muslim families out of their villages (Chavan, Kejar, Salada, Mahuwara, Veeropoor (Jayasamanth), Sonaria etc) and they have all moved to the Muslim religious places.
- Until today 28/07/2010, the authorities have not taken any steps to provide either aid or justice to the families, who were victims of riots and are now living outside their villages.

The PUCL demands immediate relief to these families, and that their homes be reconstructed and measures should be taken for their security. They should be compensated with a minimum of Rs. 1,00,000 for the loss of their property. We demand that the so-called leaders of the adivasi samaj who incited violence is booked and stringent action be taken against the district police and administrators who were bystanders to the attack. This is the second such attack since 2005. Many of the Muslim families who had been displaced in 2005 had just returned have had to move again. A judicial enquiry needs to be instituted by the Government. Ramesh Nandwana on behalf of the PUCL, Udaipur District. □

**Delhi PUCL:**

## **Minutes of the extended Executive Meeting of Delhi PUCL**

An extended meeting of the Delhi PUCL Executive was held on 14th August 2010 at the National Office. The meeting was presided over by Fr. T.K. John and attended by Joseph Gathia, Suraj Dev Vasant, Surendra Kumar, Shiva Kant Gorakhpuri, Alka, Mahi Pal Singh and two new members.

The following decisions were taken:

The preparations for the forthcoming National Council meeting and National Convention to be organised at Gandhi Peace Foundation, New Delhi on 4th and 5th September 2010 respectively,

were reported and further responsibilities were decided;

A committee of Dr. D. Jagannathan, Mahi Pal Singh, Suraj Dev Vasant, Shiva Kant Gorakhpuri and Alka was formed to organise the programme of spreading awareness about human rights among the college students also focussing on the role of PUCL in defending human rights and civil liberties by organising meetings in different colleges of Delhi. The programmes focussing on residential areas already going on at Prem Nagar, Nangloi will continue under the Outer Delhi District committee.

Delhi PUCL will organise its day long Convention on 17th or 24th October 2010 at Gandhi Peace Foundation as per availability of space. It was also decided to include all members enrolled upto 31 August 2010 in the Convention. Another meeting of the Executive will be held after the National Convention to take further action in the matter.

Members were requested to contact potential donors so as to improve the financial position of Delhi PUCL and also to be in a position to help the National office.

Mahi Pal Singh, General Secretary, Delhi PUCL □

## **Equality of Opportunity by People's Participation in Human Development** **Ravi Kiran Jain**

*Continued from the last issue...*

The Supreme Court in Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan AIR 1997 SC 152 observed: "The Gram Panchayats, the Zilla Parishads and municipalities are local bodies. Part IX and IXA of the Constitution have brought, through Article 243 to 243 ZG, the Panchayats, Zilla Parishads and municipalities as constitutional instrumentalities to elongate the socio-economic and political democracy under the rule of law. Articles 243G and 243W enjoin preparation of plans for economic development and social justice. The State, i.e., the Union of India the State Governments and the local bodies constitute an integral executive to implement the directive principles contained in Part IV through planned development under the rule of law.

Then a nine Judges constitution bench of the Supreme Court in landmark case S.R. Bommai Vs. Union of India AIR 1998 SC 1918 observed as follows: "The

Constitution decentralizes the governance of the States by a four tier administration i.e. Central Government, State Government, Union territories, Municipalities and Panchayats. See Constitution for Municipalities and Panchayats: Part IX (Panchayats) and Part IX-A (Municipalities) introduced through the Constitution 73<sup>rd</sup> Amendment Act, making the peoples participation in the democratic process from grass root level a reality. Participation of the people in governance of the State is sine quanon of functional democracy. Their surrender of rights to be governed is to have direct encounter in electoral process to choose their representatives for resolution of common problems and social welfare. Needless interference in self-governance is betrayal of their faith to fulfill self-governance and their democratic aspirations. The constitutional culture and political morality based on healthy conventions are the fruitful soil to nurture and for sustained growth of the federal institutions set down by the Constitution.

Democracy implies people's participation not only in decision making about preparation of plans for economic development and social justice but also in execution of such plans. What should be the model of development can be decided by the people themselves.

Now under part IX and IX-A of the Constitution Panchayats "shall be constituted in every state" in the village, intermediate and district levels in rural areas and transitional area, i.e. to say an area in transition from rural area to an urban area. Kindly see Article 243-B and 243-Q of the Constitution. Now these panchayats are the creation of the Constitution and not creation of an ordinary Statute. These institutions are Constitutional functionaries. These institutions can be used to realize the rights contained in the Directive Principles of State Policy, which is evident, by the perusal of the relevant provisions of the Constitution. Article 243-G give power to the Panchayats in rural areas and Article 243-W gives power

to the Municipalities in urban areas “to function as institution of Local Self Government” having powers with regard to “the preparations of plans for economic development and social justice” as well as the implementations of the schemes for the economic development and social justice as may be entrusted to them including those in relation to the matters listed in Eleventh Schedule and Twelfth Schedule of the Constitution.

Article 243-G and Article 243-W of the Constitution read as follows:

243G. Powers, authority and responsibilities of Panchayat: Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—

- a. the preparation of plans for economic development and social justice;
- b. the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

243W. Powers, authority and responsibilities of Municipalities, etc.- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

- a. the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon

Municipalities, subject to such conditions as may be specified therein, with respect to—

- i. the preparation of plans for economic development and social justice;
  - ii. the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
- b. The Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

The Eleventh Schedule and Twelfth Schedule of the Constitution of India are reproduced below:

#### **Eleventh Schedule**

1. Agriculture, including agricultural extension;
  2. Land improvement, implementation of land reforms, land consolidation and soil conservation;
  3. Minor irrigation, water management and watershed development;
  4. Animal husbandry, dairying and poultry;
  5. Fisheries;
  6. Social forestry and farm forestry;
  7. Minor forest produce;
  8. Small scale industries, including food-processing industries;
  9. Khadi, village and cottage industries;
  10. Rural housing;
  11. Drinking water;
  12. Fuel and fodder;
  13. Roads, culverts, bridges, ferries, waterways and other means of communication;
  14. Rural electrification, including distribution of electricity;
  15. Non-conventional energy sources;
  16. Poverty alleviation programme;
  17. Education, including primary and secondary schools;
  18. Technical training and vocational education;
  19. Adult and non-formal education;
  20. Libraries;
  21. Cultural activities.
- 1Added by the Constitution (Seventy-

third Amendment) Act, 1992, s. 4 (w.e.f. 24-4-1993); 22. Markets and fairs; 23. Health and sanitation, including hospitals, primary health centres and dispensaries; 24. Family welfare; 25. Women and child development; 26. Social welfare, including welfare of the handicapped and mentally retarded; 27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes; 28. Public distribution system; 29. Maintenance of community assets.

#### **Twelfth Schedule**

1. Urban planning including town planning;
2. Regulation of land-use and construction of buildings;
3. Planning for economic and social development;
4. Roads and bridges;
5. Water supply for domestic, industrial and commercial purposes;
6. Public health, sanitation conservancy and solid waste management;
7. Fire services;
8. Urban forestry, protection of the environment and promotion of ecological aspects;
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded;
10. Slum improvement and upgradation;
11. Urban poverty alleviation;
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds;
13. Promotion of cultural, educational and aesthetic aspects;
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums;
15. Cattle pounds; prevention of cruelty to animals;
16. Vital statistics including registration of births and deaths;
17. Public amenities including street lighting, parking lots, bus stops and public conveniences;
18. Regulation of slaughterhouses and tanneries.

Kindly appreciate how wide is the powers of these institutions which includes a power of “preparing plans for economic development and social justice” and the execution of such plans. The development activity has

been brought at the grass root level available at the doorstep of "We the people of India" who will involve themselves in economic development and social justice, which means human development on the Fundamental Principles of governance contained in Part IV. Then kindly see the list contained in Eleventh and Twelfth Schedule of the Constitution. There is hardly any item in these lists, which might be required for the exercise of the collective right to development for the realization of social, economic and cultural rights as elaborated in Part IV.

In Part IX as well as in Part IX-A of the Constitution which relate to The Panchayats and The Municipalities respectively the word "district" has been defined in both the parts separately but the definition is the same and identical. Article 243 and Article 243 P provides as follows:

In this Part, unless the context otherwise requires "district" means a district in a state.

Before the insertion of Part IX and IX-A in the Constitution the word "district" was not defined. This word (district) has appeared in some of the provisions of the Constitution like Art. 233, which speak of "district judges in any state". But it was not defined. Now it has been defined. This word having been defined in the Constitution itself makes a "district" creation of Constitution. The existing revenue districts can be created by an executive action on administrative exigencies. But to achieve the objects constituted in Part IX and Part IX-A of the Constitution districts have to be reorganized. Art. 243-B of the Constitution provides that there shall be constituted in every State,

Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part. Art. 243C, which provides for composition of Panchayats, says: - Subject to the provisions of this Part,

the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State. "At any level" means "village level", "intermediate level", also at "district level". What would be this "district" for Panchayat at "district level" has to be determined by the criteria laid down in Art. 243-B and Art. 243-C and not by State Revenue Act.

Reading together Arts 243B and 243C in the context of the intention of the Constitution to constitute Panchayats at district levels in accordance with the provisions of this part, clearly goes to show that this "district level" is not the district level of a State Revenue Act.

The states as they existed when we became independent or became republic were the results of historic accidents. The states were reorganized by the States Reorganization Act, which was enacted on the recommendations of 1955 report of the States Reorganization commission. Now every state was required to constitute Panchayats at district levels in accordance with Part IX and IXA and for that purpose there should have been reorganization of districts. The districts as they existed since before the 73<sup>rd</sup> and 74<sup>th</sup> Constitution Amendment Acts are revenue districts. Those districts cannot become criteria to constitute district panchayats as constitutional entity.

Art. 243G and Art. 243W, which have been quoted in this note, provide the powers, authority and responsibilities of the panchayats and the municipalities and provide that the panchayats and the municipalities shall have the power to prepare plans for economic development and social justice. Art.

243ZD provides that there shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole. Sub Art. (4) of this art. provides that the Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State. A combined careful perusal of Art. 243G, Art. 243W and Art. 243ZD clearly goes to show that there is a constitutional entity at district level, which is akin to the Planning Commission of India. It may also be seen here that before 73<sup>rd</sup> and 74<sup>th</sup> constitution amendment acts there was Finance Commission of India (See Art. 280) which had the duty to make recommendations to the President as to the distribution between the Union and the States of the net proceeds of taxes etc. and the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India and similar other things. Now after these two constitution amendment acts there has to be a state finance commission in every state which likewise has the duty to make recommendations to the governor as to the principles which should govern the distribution between the state, the panchayats, and the municipalities of the net proceeds of the taxes etc., and the grants-in-aid to the panchayats and municipalities from the consolidated fund of the state.

In *Air India Statutory Corporation Vs. United Labour Union*, 1997 S.C., the Supreme Court says "The directive Principles in our Constitution are fore-runners of the U.N.O. Convention on Right to Development as inalienable human right and every person and all people are entitled to participate in, contribute to and enjoy economic, social, cultural and

political development in which all human rights, fundamental freedoms would be fully realized. It is the responsibility of the State as well as the individuals, singly and collectively, for the development taking into account the need fuller responsibility for the human rights, fundamental freedoms as well as the duties to the community, which alone can ensure free and complete fulfillment of the human being. They promote and protect an appropriate social and economic order in democracy for development. The State should provide facilities and opportunities to ensure development and to eliminate all obstacles to development by appropriate economic and social reforms so as to eradicate all social injustice. These principles are imbedded, as stated earlier, as integral part of our constitution in the Directive Principles. Therefore, the Directive Principles now stand elevated to inalienable fundamental human rights. Even they are justiciable by themselves.

The Right to Development encompasses within its ambit all human rights and fundamental freedoms, including the right of self-determination. The Right of Development is of multi-dimensional character incorporating all civil, political, economic, social and cultural rights necessary for the holistic development of the individual and the protection of this dignity. Democracy implies people's participation not only in decision-making about preparation of plans for economic development and social justice but also in execution of such plans.

Human development report, 2003:  
Need for decentralisation and people's participation:

In the Human development Report, 2003 Chapter "Mobilizing grassroots support for the Goals", following observations have been made:

"The Millennium Development Goals

are national political commitments with the potential to provide ordinary people with a powerful tool for holding their leaders accountable for results. The Goals are exciting because they articulate the dreams of ordinary people: to have a school nearby with teachers who show up for work and with books and pens for students. To have at least a hand pump that provides safe water and that women and children can walk to easily. To have a local health clinic supplied with drugs and staffed by a doctor and nurse. It is widely believed that decentralization increases popular participation in decision-making because it brings government closer to people—making it more accessible and more knowledgeable about local conditions and so more responsive to people's demands. But does evidence support this idea? More important, does decentralizing authority and resources help advance the pro-poor agenda?

Decentralization involves a central government transferring to local entities some of its political authority and, crucially, some of its resources and administrative responsibilities. These local entities then provide some basic public services and functions. Multipurpose local councils have been created for this purpose in more than 60 countries. And in Latin America, except in a few small countries, nearly all legislative and executive authorities are now elected in 13,000 units of local government.

Decentralization efforts are strongly influenced by a country's size, population, history, political climate and geographic and ethnic diversity. These differences call for different arrangements between central and sub national levels, including devolution, delegation and deconcentration."

In Human Development Report, 2003 special emphasis have been laid to make out a case for decentralization. In chapter 7 of the report it is observed: "Where decentralization

has worked (and this is no mean feat)—as in parts of Botswana, Brazil, Colombia, Jordan, South Africa and many states in India (Karnataka, Kerala, Madhya Pradesh, Rajasthan, West Bengal)—impressive achievements have been made, including faster responses to local needs, More accountability and transparency and less corruption, Improved delivery of basic services, Better information flows, More sustainable projects, Stronger means for resolving conflict, Increased energy and motivation among local stakeholders, Expanded opportunities for political representation."

Human Development Report, 1993 provides as follows:

"The decentralization of power—from capital cities to regions, towns and villages—can be one of the best ways of empowering people, promoting public participation and increasing efficiency. Many industrial countries delegate 25% or more of total government spending to the local level. But the governments of developing countries remain much more centralized, delegating only 10% or less of budgetary spending and giving local governments few opportunities to raise funds through taxation or borrowing.

Where decentralization has taken place, it has often been quite successful, encouraging local participation, reducing costs and increasing efficiency. This is evident from experiences all over the developing world from the Rural Access Programme in Kenya to the *gram sabhas* in the Indian state of Karnataka and the local bridge construction in the Baglung district of Nepal.

Decentralization also increases the pressure on governments to concentrate on human priority concerns. Given a fair chance, local people are likely to choose ready access to basic education and health care rather than the

construction of distant colleges or hospitals.”

Chapter II of Human Development Report, 1993 deals with “Peoples’ Participation” wherein report speaks as follows:

“Participation means that people are closely involved in the economic, social, cultural and political processes that affect their lives. People may, in some cases, have complete and direct control over these processes; in other cases, the control may be partial or indirect. The important thing is that people have constant access to decision-making and power. Participation in this sense is an essential element of human development.”

Every year we are adding about 20 million newly born citizens who are being deprived of the basic human necessities for them to become responsible citizens. The lack of political will in not taking any measures for the implementation of population policy is causing serious disturbances in the society resulting in violation of Fundamental Rights of the people conserving their life and livelihood, education of children, drinking water, food safety, availability of jobs, house facilities and civil amenities etc. The exercise and enjoyment of human right is available only in a situation where reasonable wants for human existence exist and conditions gradually improve to become more conducive for leading life with dignity.

Late Nani A Palkiwala in the Jawahar Lal Nehru Memorial Lecture at Trinity College, Cambridge University, November 7, 1990 also gave an alarm bell with the followings:

“History will record that the greatest mistake of the Indian republic in the first forty years of its existence was to make far less investment in human resources-investment in education, family planning, nutrition and public health-that in brick and mortar, plants land factories. We had quantitative growth without

qualitative development. Our gross national product increased, but not gross national happiness. Different parts in India still live in different centuries, so far as basic amenities and cultural awareness are concerned. The quality of life cannot improve in India so long as the population keeps on increasing at the present alarming rate. In the time I shall take to deliver this lecture, the population of India will have increased by 2,000. It has been said that development is the best contraceptive. But development itself would not be possible if the present increase in numbers continues. Education, particularly education of girls, is another excellent contraceptive. But we have totally failed to use education as an instrument of national development. Two-thirds of our people, and four-fifths of our females, are literally illiterate after more than forty years of independence. According to the World Bank, by the turn of the century 54 percent of all illiterates will be in India.”

India’s population has grown from 345 million in 1951 to around 1162 million by May 2009. By all accounts, population growth in India has been rapid and such a massive base and excessive growth have important implications for socio-economic development and quality of life. India’s problem of excessive population growth is reflected in widespread hunger, poverty, unemployment, lack of physical and health infrastructure, increasing scarcity of basic resources like food, water and space in several parts of India despite concerted developmental efforts since independence.

A recent “Global Economic Prospects” report projects that one-fourth of India’s population would be below extreme poverty line, less than \$1.25 a day, by 2015. Our official estimates provided by the National Sample Survey in 61st Round based on the Uniform Recall Period

methodology yields a poverty ratio of 27.5 per cent for the country as a whole in 2004-05. Despite the declining trend in poverty ratio as per official statistics we still find that around 25 per cent of India’s population (around 29 crore people) still don’t have enough income or resources to afford even two square meals a day. Thus, the massive population base and its rapid growth still continue to be a major challenge to socio-economic progress and sustainable development.

The unchecked population is bringing disaster. Forest conservation, keeping rivers free from pollution, having pure air, pure water, providing primary education and other basic necessities to the people of India is becoming impossible day by day. The depletion of natural resources will eventually create a total chaos in the society. If chronic deficiency in basic material supplies, such as energy from water or mineral resources continues, the problem will persistently rise. The paucity of basic material supply to the poor and the weak will ultimately bring unrest, turmoil, conflict which may eventually lead to collapse of Indian Society.

It is significant to notice that J.R.D. Tata was able to perceive in 1951 that with the passage of time and with industrial growth the people would demand a better quality of life, and consequently there would be a demand on earth’s finite resources, it would cause environmental havoc, which is now clearly visible in our country in the massive deforestation, erosion of soil, silted waterways and recurring floods in the plane. Tata also pointed out that with the passage of time sustainable development would become a mirage.

In September 1969, J.R.D. Tata while speaking on “a Strategy for Human Survival”, in a symposium held by Noble foundation said -

“This strikingly shows that while economic development is, and

always will be, an essential prerequisite for raising standards of living and must be the compelling goal of every developing country, it cannot achieve the purpose by itself within an acceptably short period of time, unless accompanied by a low rate of population growth.

In 1952, India was the first country in the world to launch national program emphasizing Family Planning to the extent necessary for reducing birth rates "to stabilize the population at level consistent with requirement of national economy." In a country of over a billion people-with 20 million added every year – poised to take over as the world's most populous nation in another 20 odd years, it is sometimes hard to see family planning as a success. Launched in 1952, when the population was already a mammoth 369 million, the family planning program was designed primarily to get couples in the reproductive age to adopt safe contraceptive practices. Its symbol, the red inverted triangle, became as ubiquitous as the sign of fertilizers in rural India. Family Planning became a bad word against politicians after Sanjay Gandhi's forceful sterilization drive during the Emergency which is regarded as one of the major reasons for Indira Gandhi's defeat in the historic 1977 general elections.

On 16<sup>th</sup> April 1976, the then Minister of Health and Family Planning Dr. Karan Singh made a statement in which he said:

"With 2.4 percent of the World's land area, India has about 15 percent out of world's people. It is estimated that our population as on January 1, 1976 has crossed more than 600 million mark, and is now rising at the rate of well over one million per month. Since independence 250 millions have been added, equivalent to the entire population of the Soviet Union with six times the land area of India. The increase every year is now equal

to the entire population of Australia with ½ the size of our country. If the present rate of increase continues unchecked our population at the turn of the century may well reach the staggering figure of one billion. Undisputedly, we are facing a population explosion of crisis dimension, which has largely diluted the fruits of the remarkable economic progress that we have made over the last two decades. If the future of the nation is to be secured, and the goal of removing is to be attained, the population problem will have to be treated as a top national priority and commitment."

The Minister of Health and Family Planning in the aforesaid statement further said -

"The very increase in population makes economic development slow and more difficult of achievement. The time factor is so pressing and the population growth is formidable, that we have to get of the vicious circle through a direct assault upon this problem as a national commitment. The President in his address to the Joint Session of Parliament this year reiterated the importance of stepping up family planning efforts, and the prime minister has on several occasion laid stress upon the crucial role that population control has to play in the movement towards economic independence and social transformation, especially in the light of 20 point Economic Programme."

State of the World in a report regarding the importance of stabilizing population says, "Stabilizing population is an essential step in arresting the destruction of natural resources that the basic needs of all people are met. Thirty-three countries now have stable populations, including Japan and the most of those in Europe. These countries- representing 14 percent of world population- provide a solid base for a population stabilization effort. The sooner the remaining countries follow, the better the chance of

stabilizing population at a level that the Earth can support.

A comparison of population trends in Bangladesh and Pakistan illustrates the importance of acting now. When Bangladesh was created in a split with Pakistan in 1971, its political leaders made a strong commitment to reduce fertility rates, while the leaders in Islamabad wavered the need to do so. At that time, the population in each country was roughly 66 million. Today, however, Pakistan has roughly 140 million people, while Bangladesh has some 120 million. By putting family planning programs in place sooner rather than later, Bangladesh not only avoided the addition of nearly 20 million people during this 25-year period, it is projected to have 50 million fewer people than Pakistan does in 2050."

National Population Policy 2000 in its introduction says "the overriding objective of economic and social development is to improve the quality of lives that people lead, to enhance their well-being, and to provide them with opportunities and choices to become productive assets in society." This policy has identified 12 strategic themes, which must be simultaneously pursued in "stand alone", or inter-sectoral programmes in order to achieve the national socio demographic goals for 2010. The first and second strategic themes as continued in that policy are given below:

*(i) Decentralised Planning and Programme Implementation*

The 73rd and 74th Constitutional Amendments Act, 1992, made health, family welfare, and education a responsibility of village panchayats. The panchayati raj institutions are an important means of furthering decentralised planning and programme implementation in the context of the NPP 2000. However, in order to realize their potential, they need strengthening by further delegation of administrative

and financial powers, including powers of resource mobilization. Further, since 33 percent of elected panchayat seats are reserved for women, representative committees of the panchayats (headed by an elected woman panchayat member) should be formed to promote a gender sensitive, multisectoral agenda for population stabilisation that will “think, plan and act locally, and support nationally”. These committees may identify area specific unmet needs for reproductive health services, and prepare need-based, demand driven, socio-demographic plans at the village level, aimed at identifying and providing responsive, people-centred and integrated, basic reproductive and child health care. Panchayats demonstrating exemplary performance in the compulsory registration of births, deaths, marriages, and pregnancies, universalizing the small family norm, increasing safe deliveries, bringing about reductions in infant and maternal mortality, and promoting compulsory education up to age 14, will be nationally recognized and honored.

*(ii) Convergence of Service Delivery at Village Levels*

3 Efforts at population stabilisation will be effective only if we direct an integrated package of essential services at village and household levels. Below district levels, current health infrastructure includes 2,500 community health centres, 25,000 primary health centres (each covering a population of 30,000), and 1.36 lakh subcentres (each covering a population of 5,000 in the plains and 3,000 in

hilly regions)<sup>4</sup>. Inadequacies in the existing health infrastructure have led to an unmet need of 28 percent for contraception services, and obvious gaps in coverage and outreach. Health care centres are overburdened and struggle to provide services with limited personnel and equipment. Absence of supportive

supervision, lack of training in interpersonal communication, and lack of motivation to work in rural areas, together impede citizens’ access to reproductive and child health services, and contribute to poor quality of services and an apparent insensitivity to client’s needs. The last 50 years have demonstrated the unsuitability of these yardsticks for provision of health care infrastructure, particularly for remote, inaccessible, or sparsely populated regions in the country like hilly and forested areas, desert regions and tribal areas. We need to promote a more flexible approach, by extending basic reproductive and child health care through mobile clinics and counseling services. Further, recognizing that government alone cannot make up for the inadequacies in health care infrastructure and services, in order to resolve unmet needs and extend coverage, the involvement of the voluntary sector and the nongovernmental sector in partnership with the government is essential.

It is really unfortunate that the political activity in this country ignores the insertion of Part IX and IX-A in the Constitution of India. Many debates take place on issues like corruption and criminalization of politics. There is no debate on the core issue of “Governance” on the Fundamental Principles contained in Part IV. The issues like corruption and criminalization of politics is the outcome of centralized system of governance with a strong bureaucracy, which works as a coordinator between the various evil forces. The debates of administrative reforms and electoral reforms etc. remain confined to the centralized politics. Now after the 73<sup>rd</sup> and 74<sup>th</sup> Constitution Amendment acts there are State Election Commissions in every state. Like Election Commission of India under Article 324 is constituted for the purpose of “superintendence, direction and control of the preparation of the

electoral rolls for, and the conduct of, all elections to” parliament and for the State legislature of every state, State Election Commissions are constituted under Article 243-K and Article 243-ZA for the purpose of “superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to” panchayats and the municipalities.

Elections have always been a large-scale event in India. Even by these standards the panchayat and nagralika elections following the 73<sup>rd</sup> and 74<sup>th</sup> Amendments of the Constitution have been an exercise on an unprecedented scale. According to the Ministry of Rural Development, there are 2,26,188 village panchayats in the country with 31,98,554 members. That works out to an average of about fifteen members per panchayat. At the intermediate level, which in some States is referred to as the Taluk, Mandal or Block panchayat, there are 5,736 such panchayats with 1,51,412 members. Additionally, there are 467 district panchayats with 17,935 members. Compared to this the number of urban local bodies and their elected representatives is rather limited. In 1998, there were 95 Municipal Corporations, 1436 Municipal Councils and 2,055 Nagar Panchayats.

The Supreme Court in Mohinder Singh vs. Chief Election Commission AIR 1978 SC 851 noticed Constitutional schemes of elections to the Parliament and State assemblies in the following words: “Before we proceed further, we had better have a full glimpse of the Constitutional scheme of elections in our system and the legislative follow-up regulating the process of election. Shri Justice Mathew in Indira Nehru Gandhi, (1976) 2 SCR 347: (AIR 1975 SC 2299) summarized skeletal fashion, this scheme following the pattern adopted by Fazal Ali, J. in Ponnuswami, 1952 SCR 218: (AIR 1952 SC 64). He

explained:

“The concept of democracy as visualized by the Constitution presupposes the representation of the people in parliament and State legislatures by the method of election. And, before an election machinery can be brought into operation, there are three requisites which require to be attended to, namely, (1) there should be a set of laws and rules making provisions with respect to all matters relating to, or in connection with, elections, and it should be decided as to how these laws and rules are to be made; (2) there should be an executive charged with the duty of securing the due conduct of elections; and (3) there should be a judicial tribunal to deal with disputes arising out of or in connection with elections. Arts. 327 and 328 deal with the first of these requisites, Art. 324 with the second and Article 329 with the third requisite (see *N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency*, 1952 SCR 218, 229): (AIR 1952 SC 64) (at p.68): Art. 329 (b) envisages the challenge to an election by a petition to be presented to such authority as the parliament may, by law, prescribe. A law relating to election should contain the requisite qualifications for candidates; the method of voting, definition of corrupt practices by the candidates and their election agents the forum for adjudication of election disputes and other cognate matters. It is on the basis of this law that the

question determined by the authority to which the petition is presented. And, when a dispute is raised as regards the validity of the election of a particular candidate, the authority entrusted with the task of resolving the dispute must necessarily exercise a judicial function, for, the process consists of ascertaining the facts relating to the election and applying the law to the facts so ascertained. *Smt. Indira Gandhi v. Raj Narain*, 1976-2 SCR 347, at pages 504-505): (AIR 1975 SC 2299 at pp. 2372,2373).”

It has to be noticed here that the Constitutional scheme relating to the elections to the Panchayats and the Municipalities after the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional amendment acts is absolutely similar to the Constitutional scheme of elections in our system relating to the parliament and the State assemblies as noticed by the Supreme Court in *Mahinder Singh Gill's case*. The Supreme Court has noticed Article 324, 327, 328 and 329 as the provisions for holding such a Constitutional scheme. We may refer to Article 243-K, Article 243-ZA, Article 243-O and Article 243-ZG to see this similarity of the Constitutional scheme. There is however one difference in the provisions of the Constitution so far as the legislative powers of making “set of laws and rules making provisions with respect to all matters relating to, or in connection with election and to decide as to how

these laws and rules are to be made”, between the matters relating to the elections of Parliament and the State legislatures on the one hand and the elections to the panchayats and municipalities on the other hand. There is a specific entry in List 1 of Schedule 7 namely Entry 72 providing as to who is the appropriate and competent legislature to make the set of laws. Entry 72 reads as follows- “Elections to Parliament, to the legislatures of states and to the offices of the President and the Vice President, the Election Commission. The formation or Constitution of the panchayats and the municipalities is a State subject. The State legislature has the power to make law regarding the panchayats and municipalities even after the 73<sup>rd</sup> and 74<sup>th</sup> Constitution amendment acts. There has not been made any specific corresponding entry in the State list regarding the power to make law relating to elections to panchayats and the municipalities like entry 72 in list 1 about the elections to parliament and to the legislatures of states but absence of such an entry does not make any difference in as much as entry 5 of the State list (list 2) gives powers to the State legislature to make law from the Constitution and powers of local self governments, which would also include the powers to make law for elections to the local self governments.

*To be continued in the next issue...*

## Judges' Accountability

### Rohit Prajapati

This is with reference to the report 'Truth about judges, if bona fide, not contempt, rules SC', (IE, August 17). Judiciary and Judges should not be above the law. Accountability of Judiciary is a must. Previously, even criticism of judges, based on facts, could attract punishment under the Act. In the year 2006, the Act was amended and "truth" as valid defence

against the criminal contempt was considered. And now Supreme Court has confirmed this provision. But this is not enough. We need debate about the accountability of the judiciary and even changes in the law. In the order dated 7th April 2006, Criminal Misc. Application Nos. 14828-30 of 2005, Justice B J Shethna observed ".... But, when the

ad interim relief was granted and the proceedings qua the present applicant-accused No. 3 stayed by Majmudar, J., then only the complainant had deliberately engaged a raw junior advocate, Shri S. P. Majmudar, son of P. B. Majmudar, J., having standing of hardly 2-3 years, with the sole intention that Majmudar, J make

exception to the matters and succeeded in his game when Majmudar, J refused to take up all these four matters. It would have been much better if the learned Judge had forced his advocate son to withdraw his appearance from all these 4 matters, or the learned Advocate himself offered to withdraw his appearance. That had not happened. Be that as it may. But, certainly, such an attempt on the part of the complainant, in my opinion, was prima facie case of contempt as it amounts to interference with the smooth, real, and clean administration of justice. ...."

"...Before parting, I must state that Rule 6 of Chapter II of Part VI of the Bar Council of India Rules says that 'An Advocate shall not enter appearance, act, plead or practice in any way before a court, tribunal or Authority mentioned in Section 30

of the Act, if the sole of any member thereof is related to the Advocate as father, grandfather, son, grand son, uncle, brother nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in law, brother-in-law, daughter-in-law or sister-in-law. For the purpose of this rule, court shall mean a court, Bench a tribunal in which above-mentioned relation of the Advocate is as a judge, member, or the Presiding Officer. ..."

".... When this was brought to the notice of learned advocate, Shri S. P. Majmudar, then he said that he had just more than 2 years of practice, during which he has made number of appearances in this High Court, but he was not aware about such rule, therefore, being a junior advocate, he may be pardoned. It is true that Shri Majmudar is raw junior advocate having just more than 2

years of practice, but from his own statement, it is clear that within a short period of 2 years he has filed hundreds of appearances in this High Court, which is not possible for any other advocate having even 10 to 15 years of practice. Every one is not fortunate like Mr. Majmudar. ...."

"... Presently, in this High Court when almost 50% of the close relatives of Hon'ble Judges are practicing, then some unscrupulous litigants are bound to try to exploit the situation by engaging such lawyers, more particularly, junior lawyers, whose matters are not taken up by a Judge with the intention to avoid or dodge the court of such Judge or Judges and make an attempt for favorable court. It is nothing but 'forum shopping'." The shocking quotes give a clear indication why accountability of judiciary is a must.

**Intern's report:**

## **Religious Intolerance And Communal Riots In India**

### **Prerna Dhoop\***

#### **Introduction**

The word "religion" means a system of Faith and Worship and man is basically a religious animal. True religion possesses two important limbs, namely, its philosophy i.e. the theoretical aspect and requires scientific and rational analysis, and its ritualistic injunctions i.e. not the mere performance of ceremonies but also embraces all modes of practical religion applicable to the mental and intellectual levels of one's personality. Thus religion does not denote blind faith, practice of rituals or belief in superstitions but it is a perfect and happy blending of reasoning, contemplation and performance of man's duties.

The world if divided into two compartments i.e. East and West, one can easily understand the location of birth of all the major religions of the world. Zoroastrianism, Christianity, Islam emerged in the

Western world while Hinduism, Buddhism, Jainism and Sikhism in the Eastern world. India is the only country in the world to have embraced all religions and cultures without hesitation and fostered all sorts of ideologies whether it is political, religious or philosophical. The strength of India lies in its national values like secularism, democracy, fraternity, universal brotherhood and tolerance.

An extract from the Journal of NHRC reads as "India is a home to almost all religions of the world and secularism is a fundamental tenet of the Indian constitution and political system. Every religious denomination has the right to establish and maintain institutions for religious, educational and charitable purposes, to own and acquire property and to administer such property in accordance with law. No religious instruction can be imparted in any education institution wholly

maintained out of state funds and no person attending any religious instruction without his or her consent. All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. Citizens residing in India have the right to conserve their distinct language, script and culture". The aforesaid clauses are enshrined in article 25 to article 31 of the Indian constitution that covers the Right to freedom of religion and Cultural and educational rights. Not only the Indian Constitution but international laws and conventions also aim to secure and achieve religious tolerance among all human beings. India being a signatory to some of the conventions has to abide by its clauses. As per Article 51 of the Indian constitution the state shall endeavour to promote international peace and security and foster respect for international law and treaty obligations.

The world as a unit aims to unite the ideas, beliefs and actions of all human beings of different faiths ensuring religious freedom to every man. The denial of religious freedom in various forms has led not only to untold misery but also to persecution directed against entire groups of people. Wars have been waged in the name of religion or belief either with the aim of imposing upon the individual or as a pretext for extending economic or political denomination.

The scenario today is a heartrending one! Religious freedom prevailed since 16th century but has never been practiced as such. Religious orthodoxy arises due to the lone belief in the ritualistic injunctions of a religion without any scientific and rational analysis. Religious orthodoxy impairs growth, development and personal relationships in a community. Conflict arises when an orthodox of one religious Faith superimposes his beliefs over the believer of another faith or considers his religion to be the supreme of all prevalent religions. Religion as such is based on positive values but religious orthodoxy alone produces counter values to religious tolerance. Today religion instead of promoting harmony creates disharmony, instead of curtailing violence it induces violence.

India is a Welfare State. The guarantee of maintaining Communal harmony is at the heart of a secular constitution. Multiculturalism, respect for all cultures equally, the right to freedom to practice any religion without the fear of being put to death must surely form the basis of any civilized constitution. Unfortunately, India in the past and in the present has been affected by several communal riots that have torn apart the nerves of the country and the pain of the losses is still felt. Most common among the innumerable riots have been between the Hindus and Muslims. The riots are an unforgettable and

dark spot in Indian history but it seems as if the marauders and the killers, who instigate such communal feelings among the people of different faiths, become oblivious to the pain and suffering of the victims.

The communal violence bill, 2005 which was introduced in the Rajya Sabha is yet another law which might exist in the books but does nothing in reality to punish the law breakers; rather it empowers the state governments and the police forces even more, who in most of the cases have been the root cause behind the communal havoc and in instigating one community against the other.

There is an urgent need to have a strong, effective and a result oriented legislative backup so that law enforcement agencies can bring destabilizing forces to book. Promotion of peace and security is very important to ensure a violence free society. This can be done by imparting human rights education amongst the citizens of the country and spreading the message of harmony, brotherhood and peace across the Nation.

#### **Religion and Religious Freedom**

A religion is like a manual; it guides us in our day-to-day actions, which affect us and also the people around us. Thus human life and human values are synonymous with religion. The main belief that Christianity propagates is, "God created Man in His own image, in His own image he created Man" and the three basic principles of Christianity that justify human rights values are Human Dignity, Human Equality and Human Responsibility. The standpoint of Islam in respect of human rights revolves around three points i.e. Equality in the value of human beings, Equality before law in the right to speak and Equality in Economic affairs. The ancient Indian religion was Sanatana Dharma and the ancient sages of India were mainly concerned with solving problems

throughout the world. It was universal peace (Vishwa Shanti) that they aimed at. In order to achieve this goal the sages never gave themselves to any national religion. The concept they cherished was 'dharma' which has a worldwide application and included in its sweep almost all religions of the world. Dharma is for respecting all religions and according to Dharma all religions are good. Thus all religions basically in some form uphold Human Values and Human Rights. Main commandment of all the religions is, "Love Thy Neighbour as thou Loveth Thyself". International and regional human rights instruments recognize at least four rights directly related to religion and belief: the right to freedom of thought, conscience, and religion, the right to equal protection of the law, including the prohibition of discrimination on the basis of religion, the right of persons belonging to religious minorities to profess and practice their religion, and the right to protection from incitement to discrimination, hostility, or violence. All the major international human rights instruments recognize the right to freedom of thought, conscience, and religion, including not only the freedom to hold religious beliefs, but also the freedom to "manifest" those beliefs.

#### **Religious Intolerance - An Age-Old Phenomenon**

Indo-Aryan conquest - the time since 2000 BC when the Aryans resided in India, it has been found that colour and caste prejudice appears to have been as strong as it is today. In order to protect themselves from the black aborigines and to preserve their purity of stock, the Aryans set up the colour bar, the barrier of Caste and Untouchability, which weigh heavily upon the neck of Hinduism. Then in the later Vedic Age the caste system and other prejudices took a more evil shape when the position of the Brahmins was raised to a high

level. To counter the evils of Hinduism, two revolutionary movements Jainism and Buddhism came to the rescue of all those people who had been discriminated against on the basis of caste, sex, creed and religion. These religions laid down the importance of tolerance, love and compassion for all living beings. Shankaracharya the young messenger of Hinduism revived religious feelings among the Hindus by cleansing the religion of all unwanted superstitions and dogmas. Sikhism, another offspring of Hinduism, laid emphasis on service of the entire community without any ill feeling towards anyone.

In 711 AD, the Muslims invaded India and the practice of forced and voluntary conversions into Islam began. Aurangzeb encouraged religious intolerance. He sought to make his empire a Muslim empire disregarding entirely the rights of his Hindu subjects. He destroyed temples, forbade celebration of Hindu festivals, reimposed Jaziya, replaced Hindu officials by Muslims.

Akbar on the other hand was one of the most tolerant kings of India. He held a parliament of religions in his court to discuss religious issues and problems faced by his subjects. Asoka, the most religious king ever, was very tolerant and spread the message of peace, harmony and brotherhood across south Asia.

The British rule in India was the period during which India became the land of riots. The British policy of Divide and Rule stirred up communal feelings among the Indians. The partition of Bengal in 1905 and the partition of India in 1947, which led to the birth of Pakistan, were the result of intolerance created among the masses. Both these events, which changed the course of Indian history, were a result of religious distrust and dissatisfaction. Even after independence religious intolerance has been present in the

country and many communal riots have tried to tear apart the social fabric of the country.

### **Reasons for Discontent, Hostility and Prejudice in a Pluristic Society Using Various Models**

Studies are trying to show that an "aggressive" drive or a "need" for conflict is inherent in man. Universal psychological mechanisms have proved how motivation and cognition have laid grounds for a conflict between groups. Human beings become highly individualistic by overlooking the collective good of the nation. Several theories have been propounded to show how conflict takes place and how the level of intolerance rises in a society.

1. Realist conflict theory: This theory states that it is due to the incompatibility of goals between different groups that results in differentiation and antagonism. For example, the differences between the goals of the Indian National Congress and the Muslim League resulted in the partition of India. Swami Chinmayananda has said: "When the members live together with an integrated programme and strive with diligence and devotion for the achievement of a common goal, one sees the formation and glorious achievements of a nation."
2. Social identity theory: Social categories are employed by people to whom they can easily identify with. These social groups are constituted on the basis of status, nationality, ethnicity and gender. Thus in this way a society gets broken up into several 'social groups'. For example the condition of Dalits and Harijans in our society is pitiable who are socially looked down upon even now.
3. Theory of relative deprivation: This concept has been used to

explain a wide variety of phenomenon like protest behavior, participation in riots, collective violence or social movements. The major assumption underlying this theory is that a person or group's satisfaction is not related to the objective situation but rather to the situation relative to other person or group. This theory specifies the conditions associated with feelings of discontent. Discontent arises on the basis of comparisons with a "better off". Individuals believe that they have a right to improve their condition and that they are entitled to it.

Hindu-Muslim relations clearly illustrate a sense of mutual distrust and are frequently characterized by violence. While it is true that in many areas of the country Hindus and Muslims live peacefully, by and large Muslims tend to maintain an exclusiveness from the majority Hindu community and attempt to preserve their past traditions and religion. The change in relative status from the position of political and social dominance for nearly four hundred years to the present position of economic and social disadvantage, particularly in the post partition independent India, has further contributed to their sense of alienation from the majority community.

Studies and research have shown that religious identity begins to crystallize quite early in childhood and by the age of 8 to 9 years ethnocentrism is well established in a child and children learn to prefer their own religion. Ethnic identities and prejudices are significantly influenced by parental behavior and attitudes. Studies also show that social tension and low education adversely affect national integration.

Group formation is not always on the basis of religion but religious communities too are divided on the





situations on the occasion of religious festivals.

5. The local newspapers and media play a very important role by spreading rumours and playing up certain prejudices.
6. In the years 2003-2005 there was no major and widespread communal violence. The Gujarat riots of 2002 were enough to shake the nerves of the entire Nation and its people. Asghar Ali Engineer is of the opinion that if the police are under strict instruction not to allow communal incidents and politicians do not interfere, no riot can continue beyond a few hours.
7. Communal riots are not the regular phenomenon between the Hindus and Muslims alone, but violence might take place between any two communities. For example the Kandhamal violence involved the Christians, the Punjab violence included the widespread killing of Sikhs. In India most of the major riots have occurred between the Hindus and Muslims. Both these communities have diverse religious practices, traditions and ideologies. These are brought to conflict by wicked communal forces in the country and tension arises where innocent people are the main sufferers.
8. Failure to implement a uniform civil code has reinforced differences between Hindus and Muslims. The religious personal law systems of India have not helped any community as such. The preservation of these separate laws has served to deepen the division between the majority Hindu population and minority religions, particularly Islam. The personal laws have also perpetuated - and arguably enhanced - tensions between these two groups by reinforcing

identities that oppose one another.

9. Proselytism is the practice of converting someone into another religion. There is a conflict between the right of the proselytizer to manifest his religion or belief and the right of the target of proselytism to the peaceful enjoyment of his freedom of religion without injury to his religious feelings. Some philosophers and judges feel that proselytism constitutes the "rape of the beliefs of others". The purpose of restrictions imposed on the rights of the proselytizer, is not to prohibit all manifestations of religious belief of this kind, but rather only to proscribe certain coercive or harmful expressive conduct undertaken with the aim of trying to change the religious beliefs, affiliations, or identities of others. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
10. Communal violence has entered a new phase with the Christians and members of other minority religions being made the victims of planned attacks like the Kandhamal violence 2008. Tribal population in the rural areas is being instigated to get involved in attacks on Christians and Muslims by inciting their sentiments.

#### **Ways to Mitigate Communal Violence**

Communal violence is like a ferocious animal, which might devour the entire society regardless of one's religion, status or caste. The first step to reduce the incidences of violence is by reducing inequalities within a society and to relieve the sufferings and hardships of the poor.

The State has to ensure that no community in particular is stigmatized or treated as inferior by other citizens. All communities should get sufficient chances to represent themselves in public offices, police forces, and local administration and in the political sphere. Government should aim at increasing the literacy rate in the country and should avoid playing communal politics. The version of Hindutva given by the Sangh Parivar is antithetic to the very essence of Hinduism. Secularism in its true sense should prevail. The state should ensure equal development of all areas and specially the communally sensitive areas. Special security should be provided during religious festivals, which are starting points of communal riots. State backed communal riots should be seriously dealt with; any politician guilty of arousing communal passions must be prosecuted and reprimanded. Media should do unbiased reporting since it has mass coverage and local newspapers and television channels should not spread rumours to worsen the communal situation. India must take care to move away from religious personal laws and towards a uniform civil code, as envisioned by Article 44 of the Indian Constitution. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.

#### **The Communal Violence (Prevention, Control And Rehabilitation Of Victims) Bill, 2005**

The UPA Government tabled the communal riots bill in the Rajya Sabha on December 5, 2005. A demand for such a bill had been made in the light of an increasing atmosphere of communalization across the country and particularly in the light of the events of Gujarat 2002. In the deeply troubled situation that the Nation is passing through,

the bill was awaited with great hope by not just the minorities, but by other citizens as well who are intensely concerned about imminent and serious threats mounted against the secular character of our society and polity. Some police and IAS officers who were invited to participate in the discussion on the draft bill pointed out that there was no need for such special law as present laws are sufficient to take care of any such situation. The problem is that these laws are not properly implemented. The need is to implement these laws effectively and punish the culprits who create disturbances in the society.

The basic problem with the Bill is with the foundation of objectives on which its entire edifice is constructed. This foundation of the Bill is so flawed that its architecture cannot be remedied by improvements in specific components. The preamble of the Bill itself states that the Bill aims 'to empower the State governments and the Central Government to take measures to provide for the prevention and control of communal violence which threatens the secular fabric, unity, integrity and internal security of the Nation and rehabilitation of victims of such violence'. But the fact is that there is a long list of episodes of national shame and trauma like the Gujarat riots, Bhagalpur Riots, Delhi Riots and some more, in which democratically elected state administrations were openly partisan and negligent or even actively complicit in the massacre of segments of the populace that followed a different faith from those of the majority of their fellow citizens. During the Gujarat Riots of 2002 the state did little to control the violence for weeks, refused to set up relief camps or to rehabilitate the victims. Almost four years later, many more than half of those who lost their homes are unable to return because of continuing fear.

The definition of 'communal violence' given in the Bill is very narrow and does not include communal crimes like hate speeches and mobilization, spreading ill-will and distrust between communities, communal literature and textbooks as well as classroom teaching, discrimination in employment, forced ghettoisation and so on. The Bill does little to address gender violence, which has become the feature of most communal incidents, where the bodies of women are used as battlefields to establish dubious male superiority. In the Gujarat riots sexual violence was the most common of all the crimes against humanity. The Bill needs to protect the dignity and confidentiality of the survivors of violence at all stages, from recording of complaints and statements, to investigation and trial. There should be mandatory services of counseling and medical attention to the survivors. There is no provision, which defines the rights of the victims to rescue, relief and rehabilitation. The Communal Riots Bill, 2005, has got many drawbacks and hence may not come into effect as it is, it requires fundamental changes and alterations. Thus the Bill in no way quenches the thirst of the citizens of this country awaiting a Law, which helps in mitigating the widespread incidences of communal riots.

A Law should have an inherent feature of delivering equal justice to all the citizens of a country without any discrimination, prejudices or biases towards any community, person or group.

### Conclusion

In the war between two communities it is only the innocent who are killed, the marauders and killers go unnoticed and unpunished while those who gain from the violence sit peacefully in their positions, protected from all such pain and carefully planning out their next strike. Communal Violence would never come to an end until the people

of the land realize the importance of unity, brotherhood and the True Essence of Their Religion.

In memory of the 2,000 men, women and children killed in the state led genocide in Gujarat in 2002 and the 2,00,000 who lost their homes and dignity one Ashok Gupta has written the following poem worth pondering upon:

### Shame

I should be ashamed  
of raising issues that divide  
- they say.

But how can I forget  
those they killed  
mutilated and those they left  
still hiding their nakedness.  
I will shout from the rooftops  
make memorials of poems  
I will draw from the eyes  
of the killers  
not blood, but tears.

### Bibliography

1. Journal of National Human Rights Commission, India, Vol-7, 2008.
2. Communities and Victimization by Karen Evans and Penny Fraser, Victimization: Theory, Research and Policy.
3. The Idea of Public Reason Revisited by John Rawls, The Law of Peoples.
4. Religion and Law in Independent India by Robert. D Baird.
5. Communal Riots in India- A Chronology (1947-2003) by B Rajeshwari.
6. Commentary: Putting Gujarat in Perspective by Steven I. Wilkinson, Religious Politics and Communal Violence.
7. Hindu-Muslim Inter-group Relations in India by S.K Ghosh and Rashmi Kumar.
8. The Supreme Court and Demolition of the Babri Masjid by N.A Noorani, Constitutional Questions and Citizens Rights.
9. Privileging the Local: The 1984 Riots by Veena Das.
10. Godhra; Crime against Humanity by Teesta Setalvad.

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| 11. Communal Violence in India by Gopal Krishna.   | Columbia Journal of Gender and Law, 2006.   |
| 12. Religious Freedom and Human Rights by C. Joseph Barnadas, Human Rights in India.   | 16. Communal Riots in Post Independence India by Asghar Ali Engineer.   |
| 13. The Scenario of Human rights, Violence and Terrorism in India by Justice S.R Nayak, Journal of the National Human Rights Commission, 7 (2008). | 17. Drafting A Law to Prevent Communal Violence by Asghar Ali Engineer.   |
| 14. From Religious Personal Laws To A Uniform Civil Code by Shalina A. Chibber, Indiana Law Journal 2008.  | 18. Various Monthly Issues and Publications of the magazine Communalism Combat.   |
| 15. Normalizing Violence: Transitional Justice and the Gujarat Riots by Ratna Kapur,   | *A Second Year BBA/LLB student of KIIT Law School, Bhubaneshwar, worked as an intern during the months of April to June 2009. |

## Aims and Objects of PUCL as given in the Constitution of PUCL

### Aims & Objects:

The People's Union for Civil Liberties will try to bring together all those who are committed to the defence and promotion of civil liberties in India, irrespective of any differences which they may have in regard to political and economic institutions suitable for the country.

The aims and objects of the organisation will be:

- (a) To uphold and promote by peaceful means civil liberties and the democratic way of life throughout India;
- (b) To secure recognition to the principle of dignity of the individual;
- (c) To undertake a constant review of penal laws and the criminal procedure with a view to bringing them in harmony with humane and liberal principles;
- (d) To work for the withdrawal and repeal of all repressive laws including preventive detention;
- (e) To encourage freedom of thought and defend the right of public dissent;
- (f) To ensure the freedom of the press and independence of mass media like radio and television;
- (g) To secure the rule of law and independence of the judiciary;
- (h) To make legal aid available to the poor;
- (i) To make legal assistance available for the defence of civil liberties;
- (j) To work for the reform of the judicial system so as to remove inordinate delays, reduce heavy expenses, and eliminate inequities;
- (k) To bring about prison reform;
- (l) To oppose police excesses and use of third degree method;
- (m) To oppose police discrimination on the ground of religion, race, caste, sex, or place of birth;
- (n) To combat social evils which encroach on civil liberties, such as untouchability, casteism, and communalism;
- (o) To defend in particular the civil liberties of the weaker sections of society and of women and children;
- (p) To do all acts and things that may be necessary, helpful, or incidental to the above aims and objects.

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