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Challenges before the Human Rights Movement Today

V. Suresh*

For the human rights movement in India, events of March 2015 exemplify the serious threat to human rights, rule of law and democracy in India. On 6th March, 2015, 2 shocking encounters occurred in the neighbouring states of Telengana and AP. The first incident reportedly took place between 530 to 600 am on 6th April in the Seshachalam forest areas of Chittoor district near Tirupati in AP. The special task force of AP Police and forest department officials reportedly killed 20 wood cutters in an `encounter' when the officials reportedly caught them red handed as they were cutting and transporting valuable red sanders wood. At around noon on the same day, the Telangana police reportedly shot and killed 5 suspected militants, all Muslim youth, at Alair in Nalgonda district while they were being brought from Warangal Jail to Nampally Court in Hyderabad. Very soon the lie behind the claims of the police got exposed. In the Nalgonda killings all the 5 youth killed were handcuffed and chained to their seats at the time of being shot.

In the Seshachalam encounters, it became apparent that the police claim of encounter was false; in quick succession, eye witness accounts and media stories emerged which indicated that what had occurred was actually a `massacre' of 20 persons, shot in cold blood by the police and forest officials, with the dead bodies thrown in the jungles to fabricate a scene of encounter. Eye witnesses testified before the NHRC highlighting that about 20 labourers going for work to AP were intercepted near the TN - AP border, taken to a remote location and there, reportedly shot dead. The hands of some of the dead bodies were said to have rope marks indicating that the hands were tied to the back before being shot; the bullet wounds also indicated that perhaps the dead persons were shot at close range.

Some of the victim families have approached the AP High Court which has ordered registration of FIR including murder charges and naming of the police and forest officials involved in the operation of 6th April. A re-post mortem of about 6 bodies has been ordered.

Both the encounter killings, more appropriately described as `massacres' exemplify the serious threat to human rights posed by the police and security forces and the enormous sense of impunity they enjoy. The DIG of the Special Task Force, AP Police, Shri Kanta Rao, is on record on 3rd April, 2015 to claim that he had sought permission from the State government to shoot or open fire on red sanders smugglers as an "effective move to curb wood smuggling" and that he was awaiting the

"nod from the State government for implementing the order which would involve no proceedings such as filing a case and prosecution." This is bureaucratic short hand for being given assurance of immunity from prosecution for shooting and killing people in name of encounters.

On 31st March, 2015 the Gujarat Assembly passed the Gujarat Control of Terrorism and Organised Crime Bill, 2015. This draconian Bill has many controversial provision including permitting the police to tap telephonic conversations and produce them in court as evidence, making confessions to police officers admissible in court as evidence not just against the person concerned but also as against others. The new Bill was a reworked version of the previous Gujarat Control of Organised Crime Bill, 2003 which had been returned twice before by the President of India in view of its controversial provisions.

Continuing the aggressive attack on minorities by different organisations of the Hindutva coalition, a senior leader and MP of the Shiv Sena, Sanjay Raut, demanded, in a signed article in the official magazine of the party, Saamna, that the minorities be disenfranchised so as to break `vote bank' politics. The expected protests and condemnations was met with the stock answer that the comments were quoted out of context. The demand, when seen against continuing attacks on churches and muslims, assumes ominous portents of the future of communal harmony and peace in India.

On 6th April, 2015 while addressing a Conference of Chief Justices and senior judges of the Supreme Court and High Court and CMS, Prime Minister Modi stressed, "At some point we will have to consider whether five star activists are driving our judiciary today or not. Isn't there an attempt to spread a fear in order to attempt to drive the judiciary?" The allusion to 5-star activists was a thinly veiled reference to activists like Teesta Setalvad who has been waging a long, and arduous battle seeking accountability and justice for the victims of the Gujarat pogrom of 2002 when hundreds of Muslims were killed, often with the tacit and covert support of the then Government led by then CM, Modi; it was also a reference to green activists like Priya Pillai of Greenpeace, which has been continuously exposing and challenging the `Modinomics' model as being seriously threatening to the social, economic and ecological health of India in general and damaging to tribal, dalit and marginalised people in particular. The breach of the constitutional protocol of respecting the doctrine of `separation of powers' between the 3 wings of government was not just the proverbial `slip of tongue' but an ominous indication of how the government was viewing judicial interventions which were seen as blocking `development'.

That these developments are part of a larger plan of action to push through anti-people legislation and policies became apparent with the re-promulgation of the Ordinance on the Land Ceiling laws. In this same month, the constitution of the National Judicial Appointments Commission came to be notified. Both these matters are now before the Supreme Court.

On the contentious land acquisition Bill, despite nationwide vociferous and strong protests the central government remains adamant that it will not re-consider the Bill or send the Bill to a Parliamentary Select Committee or to initiate a larger national consultation on the contentious provisions of the law proposed by the central government.

A refreshing development amidst the series of challenges to rule of law and human rights in India, is the SC judgment striking down sec. 66A of the Information Technology Act as unconstitutional. PUCL was also one of the Petitioners in this case.

In this month's Bulletin we are carrying a set of articles specially written for us on the above issues. We hope our readers will find the articles interesting and helpful to understand different dimensions of the serious challenge before the human rights movement.

***V. Suresh,** General Secretary, PUCL National and Editor, *PUCL Bulletin*

Blood in the Woods

C. R. Bijoy

On 7 April 2015, 20 wood cutters, mostly tribal people from the districts of Thiruvannamalai and Dharmapuri in Tamilnadu were brutally shot and killed by a special task force in the forest of Seshachalam forests of Chittoor District of Andhra Pradesh. It is symptomatic of the increasing conflict over resources. Crony capitalism and higher stake go together with increased use of violence of the armed kind, whether by the state or non-state actors. Laws often stand as mute totem helpless in preventing these bloodletting and scams.

Officially claimed as an 'encounter' killing in self-defence, rights activists from both Andhra and Tamilnadu have called the Seshachalam killings a premeditated murder. This is not the first instance nor is it going to be the last. While most such cases do not end up with killing, there are thousands apprehended for illegal felling of precious timber as sandalwood, red sanders and teak across all states. Thousands rot in the prison as under-trails, most often not even able to come out on

bail while many are undergoing prison sentences. The kingpins and those high-up colluders most often continue their crime unhindered. They know pretty well that there would always be many such expendable cannon fodder from amongst the many impoverished highly skilled wood cutters struggling to survive in the forest and forest fringe villages. Two questions that are lost in the cacophony of allegations and counter allegations are: why do these forest dwellers risk their lives and why are the forests open to such free runs by the forest mafia?

Rich Forests, Poor Forest Dwellers and Big Money

Traditionally the forest was an open access livelihood resource and cultural base for people living in and around the forest. The forests were constantly under their surveillance and protection. When these forests were notified as forests under the Indian Forest Act 1927, their customary rights in the forests were to be determined and recognised. But these were hardly carried out; their rights remained largely unrecognised. The result: Most of what they were doing in the forest, what their forefathers have done in the past, became criminal acts. They became criminalized for no fault of theirs.

The open access forest became closed under the tight grip and watch of the forest department. Their main task then was identifying commercially valuable timber for felling and transportation to the outside world. Those were the days when maximization of revenue from the forests was the main agenda of the British colonialists earlier and later of the governments of independent India. Only the tribal people knew the forest and had the skills to extract forest resources. The forest dwellers, mainly the tribal people, were used as bonded labours in lieu of continued access to the forests for survival; labour settlements were created within the forests for coupe felling. Large scale deforestation took place. Along with this, large scale illegal smuggling too flourished under cover of coupe felling initially, and later by selection felling based on forest working plans. With increasing market demand, the looting of the forests became open and upfront. Having antagonized the forest dwellers and with a meager human resources, the forest department most often simply buckled under the daring forest mafia. All they could do was to flex their muscles at the forest dwellers, who anyway had nowhere to go but live in and around the forests.

The access of forest dwellers to forests, their main source of sustenance and life, for collection of minor forest produce, food, medicinal plants, hunting small games, fodder, cattle grazing, fuel, water, cultural and spiritual needs were steadily restricted. Daily normal life sustaining activities became criminal offences simply because the forest bureaucracy and district administration failed to recognise them as per the Indian Forest Act 1927. They became criminals and encroachers in their own home lands. On the one hand their services were used for both legal and illegal activities by the forest bureaucracy, and the forest mafia in tacit connivance with the corrupt officialdom; on the other their continued access was also a threat to the illegal goings-on in the forest for fear that it will be opposed and exposed. These forest dwellers had to live on this double edged precipice of precarious existence. Forest dwellers were routinely arrested for minor forest offences, both real and fake. The number of cases had to be notched up in official records to show performance in forest protection; after all they were powerless people who can be easily hounded without any fallout. The big offenders - forest mafia - remained well protected and influential. The odd honest forest officers who dared to act had to face the brunt while most prefer to turn their face away lest they would get hurt. The forest bureaucracy itself was a divided lot, often in conflict with each other.

With the enactment of Wildlife Protection Act in 1972, more and more reserve forests began to be notified as National Parks (where all human activity is prohibited), Wildlife Sanctuaries (where only activities permitted by the Wildlife Warden are possible) and Tiger Reserves (since 2006). At the same time, the practice of coupe felling declined as a policy, reflecting the rapid depletion of forests; only `selection' felling as per forest working plan continued. The Forest Conservation Act of 1980 privileged forest conservation over revenue maximization. The forest bureaucracy was expected to make a shift from timber extraction to conservation with added emphasis on timber plantation under social forestry. Non-forestry activities was banned and permitted only after being given forest clearance by the Central government and Supreme Court (due to the pending Godavarman Case, popularly known as the forest case since mid 1990s). Forest diversion for non-forest activities also required the payment of Net Present Value of anything between Rs. 5.8 and 9.2 lakh per hectare of forest land diverted.

Forests soon emerged as the contested terrain for 'growth and development' for mining, dams and other infrastructure projects and its twin other - 'conservation'. Both these rapidly pushed the forest dwellers further down impoverishing them as never before in history though all these laws required their rights to be recognized. It is another matter that the Government of India accepted that a 'historical injustice' has been perpetrated on the forest dwellers in an affidavit filed by the Ministry of Environment and Forests in 2004 in the Supreme Court in the forest case mentioned above.

The net result of all these developments is that forest became even more closed. Forest dwellers

became excluded and their entry and access further curtailed. Conversely, this meant that the forests became open to the more powerful economic interests representing mining, dams, tourism and so on. As also for the mafia indulging in large scale illegal mining, poaching and felling of commercially valuable timber.

To illustrate, illegal mining cases during 2010 to 2014 for the country as a whole was a whopping 330,512 cases while it was 55,581 for AP and 1,736 cases for Tamil Nadu (Source: answer to Lok Sabha unstarred question no.486 of 14 July 2014). A substantial number of these cases are forest related. It is interesting to note that red Sanders command a price of Rs.15 - 20 lakhs per ton locally and many times more internationally. The AP government has plans to export the Red Sanders anticipating a few thousand crores in revenue which explains why the special operation on Red Sanders.

The situation clearly makes the local people, naturally and understandably, pitted against the forest department. The forest dwellers are prevented from enjoying their legitimate traditional livelihood access while legitimate diversion and destruction of forests run parallel to the illegal looting of the forests by the mafia. The officially sanctioned diversion and destruction of the forest wealth and their extraction is sanctified as a national endeavour for the nation's 'development and growth'. The forest dwellers have no share in the infrastructure and industries of both corporate and public sector. Rather their rights are not recognized; they are evicted and displaced without adequate compensation and rehabilitation. They not only become `development refugees' making way for 'development and growth', but also now `conservation refugees' making way for tigers, elephants and other wildlife.

The figures are alarming. At least 10 crore people live on forest land and 27.5 crore people are dependent on forest resources. They have been rapidly pushed to extreme poverty and desperate as they are, become an easy prey to the money lenders or to the forest mafia who offer them money and make them bonded labourers under fear of life and that of their family members. Many millions are forced to migrate to far flung places in search of work.

Tragically, there is no any security for the forest dwellers outside the forests. The revenue land under their occupation largely remains unrecorded and hence outside the purview of protection of revenue laws; the meager recorded lands that they have managed to bring on records are also not protected even by special laws for Scheduled Tribes. Article 244 of the Constitution requires that their lands be protected from alienation and restoration of alienated land. Tamilnadu is one state, unlike most other states in the country, where there are no laws to protect their titled land. In contrast, the neighbouring States such as Kerala has the Kerala Scheduled Tribes (Restriction of Transfer of Land and Restoration of Alienated Land) Act and Kerala Restriction on transfer by and restoration of lands to ST Act, 1999, and Andhra Pradesh has the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959 and the powerful Regulation 1/70. Moreover, tribal habitations in Andhra has mostly been covered under the Scheduled V Area while in Kerala the government has recently acceded to the demand for Scheduled Area and proposed Scheduled Area notification. Tamilnadu has not taken any step in this direction though the 10th Five Year Plan 2002-2007 recommendations of the Adidravidar and Tribal Welfare department of Tamilnadu include both the enactment of a protective land law for Scheduled Tribes as well for bringing tribal habitations under Scheduled Area. In the absence of a legal regime to protect the livelihood and lands of the tribal people, perhaps it is no wonder that the tribals of Tamilnadu are driven to such desperate measures as risking their lives for blood money not withstanding that they are very likely to be under the direct line of fire in the forests of Andhra for instance.

What is the solution?

The ill-conceived nationwide eviction from the forests ordered by the Ministry of Forests and Environment in 2002 resulted in large scale eviction and violence. However this also led to a nationwide struggle of forest dwellers for justice. Conceding the gross injustice, the Forest Rights Act was enacted in 2006 becoming operational with the notification of its Rules in 2008. A new paradigm of forest governance opened up in the country - from a colonial governance model to subjugate an invaded land and her people to a democratic governance as if people and forests mattered. The law conceded that the forest dwellers had rights and that these rights were unjustly ignored. The law provided a procedure for the recognition of these rights while recognizing the hamlet level Gram Sabha as the authority for determining these rights as well as for protecting, conserving, and managing forests. The forests, at least a sizeable part of the forests, were now to be handed over to these forest dependent communities to be governed by them with support from the forest department. Forest Rights Act has now even been accepted by a large section of skeptics as the way forward for both forests and her people. The Dongria Khondh succeeded in protecting their revered Niyamgiri Hills in Odisha from being scraped and dug out for mining. The Gonds of Gadchiroli of Maharashtra have, in a very short period, become affluent by becoming owners of forest produces, from their erstwhile status as mere wage earners.

However, this was not to be; at least

not yet. Sensing a loss of control over forest resources, a powerful lobby within the forest department resisted the law from without and within. Immediately, as though in a well coordinated move, the Forest Rights Act 2006 was challenged in a number of High Courts by retired IFS forest officials. In Andhra it was J.V. Sharma and Ors. vs. Union of India and Ors. (WP 21479/2007) and V. Sambasivam vs. Union of India and Ors. (WP 4533/2008) in Tamilnadu. However, none of the Courts stayed the implementation of the Act. Despite this the implementation of the Forest Rights Act has been poor. Official reports blamed the resistance from Forest Department as a major cause. Presently all these cases are transferred to the Supreme Court. As on January 2015, 29,92,853 hectares have been recognized in 15,57,424 titles in the country. This figure, impressive it may look like, is a mere 3.8% of total forest area and about 9 % of the reported forest land used by the people as estimated by Forest Survey of India during the seven years of its implementation. The forest dwellers are still waiting to see whether the governments will abide by their own law.

In Andhra for instance, more than 1,669 forest protection committees constituted by and under the control of forest department were issued titles for over 9.48 lakh acres of forest lands by the end of May 2010. The Ministry of Tribal Affairs, Government of India (DO Letter No 23011/11/2013[FRA]) held that these titles are in contravention of the law as such titles can be granted only to the Gram Sabha and not to the forest protection committee of the Forest Department. The Forest Department continues to defy this. The state has seen a meager 14,56,542 acres being recognized in 1,69,370 titles as on January this year.

In Tamilnadu, the Chennai High Court in the case of `V. Sambasivam vs. Union of India' asked the government to implement the Forest Rights Act and issue titles after getting clearance from the High Court. Despite this, the Tamilnadu government claimed that 3,723 titles are ready as on January 2015 but has not issued even a single title till date. At least 19 lakh ha of forest land are used by communities as per official data in Tamilnadu.

In the final analysis, the continued denial of rights to the tribal people of Tamilnadu only pushes them to utter desperation. Providing a protective legal regime and ensuring its implementation along with recognition of rights as mandated by laws alone provides the possibility of the tribal people of Tamilnadu to be free from exploitation by forest officials, forest mafia, contractors, money lenders etc. This alone would enable them to be free from the vice grip of poverty. At the same time, only when the forest become open, inclusive and under the watchful eyes of the forest dwellers, who are also often called 'eco-system people' for their symbiotic relationship and knowledge of their ecosystem, can forest protection and conservation becomes effectively possible. This is equally true of forests everywhere, whether in Andhra or Tamilnadu. The Seshachalam incident is the perfect outcome when the delusion of guns in trigger-happy hands takes over forest protection egged on by the fringe elements who naively dream of gun totting commando force taking over forests. For all we know, it might well be headed that way, whether it is the state or non-state actors, if these misplaced notions continue to thrive. Conservation is best done when those who know the forest manage the forest. Guns can only do what it does best: kill. But forest conservation is all about promoting life and co-existence.

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A shorter version of this article appeared in the op-ed page of the Hindu dated 16th April, 2015. □

Who Should Appoint Judges? The Judges or the Politicians?

Prabhakar Sinha

When the constitution came into effect on 26 January, 1950, the Executive enjoyed supremacy in the appointment, promotion and transfer of the judges of the High Courts and the appointment of the judges of the Supreme Court. Its power was questioned for the first time in 1982 in the Judge's Transfer Case (S.P. Gupta vs Union of India, 1981).The court headed by Justice Mr. P.N. Bhagwati upheld the supremacy of the Executive going to the extent of holding that the President (i.e. the Union Government) was only obliged to consult the constitutional functionaries as provided in the constitution but was not obliged to accept even their unanimous recommendation. Additionally he was free to appoint a person even without their recommendation.

This judgment was reopened in 1993 by the `SC Advocates on Record Association' case. In this case, the Supreme Court gave a startling verdict and arrogated the power of appointment of the judges of the Supreme Court and High Courts and the transfer and promotion of the judges of High Courts to itself. Under this system popularly known as the `collegium system', the recommendation made by the committee consisting of the Chief Justice of India and three senior most judges of the apex court is binding on the President. The President can only refer back the case of a recommended candidate to the collegiums for

reconsideration, but is bound to appoint him if the collegium recommends the name again. The collegium system has been criticised as being non-transparent and of also indulging in favouritism in some appointments.

The Modi government has successfully moved a bill to amend the constitution to set up a National Judicial Appointment Commission consisting of the Chief Justice of India as its Chairperson, two senior most judges of the Supreme Court , the Union Law Minister and two eminent persons to be appointed on the recommendation of a committee consisting of the Prime Minister, the Chief Justice of India and the leader of the largest party in the Lok Sabha. Thus, the power of the judiciary has been effectively curtailed. The Commission will have three judges and three others without the Chief Justice of India having a casting vote in the event of three members supporting a candidate and three opposing him. To prevent a decisive role for the judiciary, it has been provided that a candidate cannot be recommended for appointment if two members out of the six opposed his/her name. If the candidates sought the favour of the judges under the collegium system, they would need to seek the favour of the Law Minister and the other non - judicial members of the Commission now.

The amendment has been challenged in the apex court on many counts including the erosion of the independence of the judiciary. The government has, on the other hand, termed the collegium system legally untenable and has also contended that no country in the world has a system in which judges appoint judges.

Neither the contention of the petitioners nor that of the Union Government can be summarily dismissed. In fact, the issue should be decided with reference to the national interest rather than on the basis of purely legalistic arguments. The 1993 judgment itself cannot be justified on the basis of purely legal arguments, but is fully justified on the basis of its serving the national interest. Even a cursory look at what the Executive did to destroy the independence of the judiciary and the fundamental rights of the people by misusing its supremacy provides a rationale and justification for the 1993 judgment.

In 1973, the Supreme Court held (in `Kesavanand Bharti v Union of India') that though Parliament could amend any part of the constitution including the fundamental rights, it could not change its basic character. It angered Indira Gandhi, who had argued in favour of Parliament having unfettered power to amend any part of the constitution. The case was decided by a majority of one! Seven of the judges had rejected the contention of the government while a minority of six had upheld it. The authoritarian Prime Minister superseded three senior judges, namely, Justice Mr. K.S. Hegde, Justice Mr. J.M. Shelat and Justice Mr. A.N. Grover, who all had rejected her government's contention, and appointed a pliant Justice, Mr. A. N. Ray as the Chief Justice of India. It was a warning to the judges to behave or be prepared to pay a heavy price. Not content with this direct attack on the independence of the judiciary, she gave a call for a "committed" judiciary. Her attempt to have a committed judiciary did not go in vain and bore fruit during the Emergency when the Supreme Court upheld her government's contention that since the right to life and personal liberty had been suspended the State could detain any person, torture him or her or take his /her life at will but the court could not interfere (`A.DM Jabalpur v S.S Shukla', 1976).Justice Mr. H.R Khanna, who alone had the courage of conviction to give a dissenting judgment was superseded , and he was not appointed as the Chief Justice of India despite his ability and seniority. Several judges of the High Courts were also transferred for showing a spirit of independence and possessing character during this period.

Compared to the havoc played with the life and personal liberty of the people by the Executive enjoying supremacy in the appointment of judges, the harm done by the Collegium system is most insignificant. They might have indulged in favouritism in some cases or been guilty of some other shortcomings, but the harm done by them to the nation is nothing compared to the havoc played by the politicians .The judges have been appointing judges but they have not been deciding the cases of judges coming before them as accused, but the judiciary has to decide the cases of politicians in hordes both in their personal capacity or in their official capacity apart from judging the acts of the government .If the law had been allowed to take its course, very few politicians would have been outside jails. Should the political class with maximum vested interest in having a pliant judiciary be allowed to have a major say in appointment and promotion of judges? The crying need of the nation is to give them a minimum say.

The role of the politicians cannot be wished away and the voice of the people's representative should not be completely ignored in a democracy. The solution lies in finding a way out which accommodates the voice of the Legislatures, eliminates the shortcomings of the collegium system and protects the national interest by ensuring an honest, impartial and independent judiciary, completely free from fear. The solution, under the circumstances, lies in eliminating the supremacy enjoyed by the judiciary under the collegium system and providing it with the primacy denied to it under the amendment. It can be achieved by eliminating the provision of blocking an appointment if two members of the commission object and giving the Chief Justice of India (who is the Chair Person of the Commission) a casting vote in the event of a tie.

Modi's Jibe at Judiciary: The Criticism of Judicial Activism is Untenable

Rajindar Sachar

Prime Minister Modi's gratuitous comment about the judiciary being influenced by five-star activists was a cheap joke which brought down the prestige of the biggest political office of the country. And he made these observations at the Chief Justices' conference, which was also attended by chief ministers. The diatribe against the judiciary was uncalled for, and dangerous if allowed to be followed by chief ministers.

The remark shows ignorance of the kernel philosophy of a democratic country like ours where three wings - the executive, the legislature and the judiciary -- have an equal role within our Constitution, but still inevitably cannot help breathing down on each other's neck. Statesmanship and sobriety require a mature response from all. Unfortunately, Modi, a former Chief Minister, has not been able to find his feet of working in the broad contours of India's Constitution and that alone could be the excuse put forth by his apologists. Thankfully, the Chief Justice of India issued a dignified response that "Indian judges remain as fearless as they ever were".

In spite of the executive's unhappiness, the judiciary right from the beginning has not shirked from its path as explained by Chief Justice Patanjali Sastri (1951) thus: "We think it right to point out, what is sometimes overlooked, that our Constitution contains an express provision for a judicial review of legislation as to its conformity with the Constitution. If then, the courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the Constitution".

The criticism of judicial activism as such is, therefore, untenable. Courts have for long been judicially active in giving relief in social action litigation to labour, to victims of custodial violence, to victims of excesses committed by the executive. But as previously judicial targets were comparatively junior officials and certainly never involving politicians, the issue of judicial activism was not raised by politicians. This charge of alleged interference by courts has only now been made because the fire of judicial activism is coming nearer home to the high officials and politicians who had hypnotised themselves into believing that they were above the law.

The Prime Minister has, in spite of strong T.V. and public criticism, chosen to keep silent about five-star social activists from whom he alleges the judiciary is said to be threatened. Let me then share a few facts. The Supreme Court has passed various orders to uphold the human rights of people, especially of the deprived sections, at the instance of the People's Union of Civil Liberties, a human rights organisation set up in the dark period of the Emergency (1976) by Jayaprakash Narain, the Socialist leader. The PUCL's constitution forbids foreign donations. Its funds are raised locally. It challenged and got some relief from draconian laws enacted in the name of fighting terrorism like TADA, POTA and the Unlawful Activities Act both by the Congress and B.J.P. governments. It was at the instance of the PUCL that the Supreme Court directed the candidates to disclose information about their financial status and criminal cases pending against them at the time of filing nominations for an election. Such was the effrontery of all political parties, including the Congress, the B.J.P. and even the Left, that they unanimously passed a law specifying that, notwithstanding the Supreme Court verdict, the Election Commission would not follow that judgment. The PUCL had to move the Supreme Court second time to have this resolution of Parliament nullified and it is only then that the present system came to be followed.

Again, it was at the instance of the PUCL that the government was prohibited from telephone tapping at the executive's pleasure and Parliament was forced to pass legislation.

The right to reject a candidate at the time of an election, though recommended by the Election Commission, was withheld by both the Congress and NDA governments for over a decade till a directive was issued to the Central government on a writ petition filed by the PUCL. Directions to the government to supply food to the starving people of Orissa and poor people have been issued at the instance of the PUCL.

The bar on M.P.s and M.L.A.s to continue as members of their respective legislature after their conviction was the result of a petition by a citizens' group. So was the exposure of illegal allotments of Spectrum and coal blocks that were later set aside by the Supreme Court.

It is not necessary for me to go into details to recapitulate where, but for a judicial intervention, many of the urgent public matters would have remained in limbo. Thus the Supreme Court's declarations in gender harassment cases led to the framing of legislation. Similarly but for the Supreme Court the independent status of the Central Vigilance Commission would not have been established. Nor would police reforms have been put on the anvil so as to hold the police accountable for custodial illegalities, notwithstanding that police commissions recommending police

reforms in their reports submitted over decades back. This was all at the instance of civic-conscious citizen groups.

I am willing to concede that courts are now showing more activism than before. But this is a consequence of misfeasance of politicians. It will be a pity if ever a climate was created against the exercise of judicial activism because such an eventuality may lead to the loss of faith in the law as an instrument of social change and justice - an alternative course cannot be viewed in equanimity even by Modi loyalists because people, if denied justice through courts, would inevitably be driven to march through the streets.

Yes, I concede there have been decisions made at the instance of five-star personnel - but they are not at the instance of courts - they are the result of a direct link-up between the Modi government and the big corporate sector. The decision not to appeal in the Vodafone case resulted in the loss of Rs 8,000 crore to the government. The Modi government pressured the State Bank of India to guarantee loans to the extent Rs 6,000 crore to an industrial house close to the present political power for utilising funds to extract coal from Australian mines - ironical when our coal mines are remaining idle because the government says it is short of funds.

No, Mr Prime Minister, this cheap joke directed at the judiciary was totally uncalled for - more especially when you ignored such a wide, ever-expanding mole in the Central Government's own eye.

Courtesy: The Tribune, 10th April, 2015

Supreme Court Judgment on 66A of IT Act

The Supreme Court today reaffirmed its commitment to right to freedom of speech and expression enshrined under Article 19(1)(a) of the Constitution of India by striking down Section 66A of the IT Act. The Supreme Court held that the said impugned provision is not saved by Article 19(2). In its verdict, the Supreme Court emphasised that liberty of thought is paramount in the country. The said provision - Section 66A of the IT Act was challenged by Peoples Union for Civil Liberty (PUCL), who has been championing the cause of civil liberties and human rights in the country. In the Writ Petition filed by PUCL pertaining to electoral reforms, the Supreme Court had held that right to know the antecedents of a candidate is voter's right under Article 19(1)(a). One of the important aspect highlighted by the Hon'ble Court in today's judgment is that people have a right to know. The PUCL had argued that Section 66A has to be struck down because it has no proximate relationship with Public Order and is therefore, not protected within the exceptions provided under Article 19(2). The case on behalf of PUCL was argued by Mr. Sanjay Parikh, Advocate. This will be remembered as another major achievement by the PUCL.

PUCL's Fight for Digital Liberties

Apar Gupta

Last month the Supreme Court of India, in the case of Shreya Singhal v. Union of India held Section 66A of the Information Technology Act, 2000 to be unconstitutional. It also went further and held that any take down of material under Section 79(3)(b) which is published on internet platforms who operate as intermediaries, on the directions of users requires a judicial or an executive order. Earlier such "take downs" of content were caused on legal notices and private complaints without any legal determination by a court or a state authority. These holdings were significant and in part due to the efforts of PUCL where it joined common cause with several other petitioners. It is pertinent to note that that the PUCL writ challenged three distinct provisions of law in the interest of users in India. It was probably the only petitioner to extend such a wide challenge to further the cause of digital liberties online.

The PUCL Petition challenged three distinct provisions of law and asked not only for them to be struck down as unconstitutional but also, in case they were not struck off completely from the statute books then safeguards to be placed on them. In addition to impugning Section 66A of the Information Technology Act, 2000 it further challenged, provisions of the Information Technology (Procedure and Safeguards for Blocking of Access of Information by Public) Rules, 2009 and the Information Technology (Intermediaries Guidelines) Rules, 2011. The premise of PUCL's argument was that the fundamental right to freedom of speech and expression under Article 19(1)(A) has been unreasonably restricted by these provisions of law. It was further argued that such restrictions cannot be relaxed merely because of a difference in media. Hence, more restrictive measures which go beyond the constitutional safeguards cannot be made into law, merely because the content is published through the internet as opposed to it being broadcasted on television. This argument was accepted by the court which indicated in its judgment that, "[b]ut we do not find anything in the

features outlined by the learned Additional Solicitor General to relax the Court's scrutiny of the curbing of the content of free speech over the internet".

A large part of the opinion of the court on Section 66A was framed on the basis of the written submissions made by PUCL. For instance, the court placed heavy reliance on the several case laws on proximity of a legal restriction with the reasonable restrictions which allow such legislation. These cases included leading precedent of the Supreme Court, including the case of `Kameshwar Prasad vs. State of Bihar', `Superintendent, Central Prison v. Ram Manohar Lohia' and `S. Rangarajan Vs P. Jagjivan Ram'. On the basis of this and other arguments the court was pleased to strike down Section 66A.

Beyond 66A, the intermediary rules as stated above were also under challenge and presented a system of incentives created through law to incentivise private censorship. In a way any person could complain to any online platform or blog hosting service, such as Twitter, Facebook, or even Google and have material removed without any court or executive order. If such websites who only served as passive conduits for information posted by their users did not remove the content based on such private grievances they could have been held liable for abetment in court. This was also challenged by PUCL where the court gave needed clarity to the law and emphasised that any such censorship has to be under the process of a valid, legal order.

This is not to say PUCL's arguments succeeded to the threshold they were made. The Blocking Rules which were challenged continue to exist in their present form. These rules by themselves mandate secrecy and the judgment does not seem to consider it as problematic reasoning that judicial remedies exist to challenge such blocking orders.

Even with these reservations the Shreya Singhal judgement and PUCL's intervention is a clear articulation towards its commitment for civil liberties. These liberties have recently been enhanced by the internet which is serving as a technology to provide a voice to dissent. As the internet gains wider adoption in India, it can be anticipated that further controls and restrictions will be placed on it. A commitment to civil rights is an ongoing process for the price of liberty is eternal vigilance.

(**Apar Gupta** is part of the team of Advocates who worked on the PUCL petition before the SC) □

We share the `Final submissions' which were given to the SC Court. A reading of the SC judgment striking down sec. 66A reflects that they were accepted:

Written submissions of Mr. Sanjay Parikh, Advocate for the Petitioner on Section 66A of the Information Technology Act, 2000

1. The phrase "freedom of Speech and expression" contained in Article 19(1)(a) has been given a very vide interpretation by this Hon'ble Court in several judgments. The freedom of speech and expression includes "Freedom of propagation of ideas", "right to circulate one's ideas, opinion and views", "right of citizens to speak, publish and express their views as well as right of people to read" as well as the right to know about the affairs of the government. Case law for the above proposition is given below:

Vide PUCL Vs UOI 2003 (4) SCC 399 in Para 16, 24-27, 38-45.

In para 44 (page 440) this Hon'ble Court has given a list of decisions in which the meaning and dimensions of the phrase, "freedom of speech and expression", have been given.

2. Freedom of speech can be restricted only in the interest of the security of the State, friendly relations with foreign state, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. *The only restriction which may be imposed on the rights of an individual under Article 19(1)(a) are those which Clause (2) of the Article 19 permits and no other*. Case law for the above proposition is given below:

(I) Vide Sakal Papers (P) Ltd Vs UOI 1962 (3) SCR 842 at page 857, 862, 863 and 868

At page 863

"For, the scheme of Art. 19 is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for securing which this could be done. A citizen is entitled to enjoy each and every one of the freedoms together and cl. (1) does not prefer one freedom to another. That is the plain meaning of this clause. It follows from this that the State cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom. All the greater reason, therefore for holding that the State cannot directly restrict one freedom by placing an otherwise permissible restriction on another freedom".

At page 868

"To repeat, the only restrictions which may be imposed on the rights of an individual under Art. 19(1)(a) are those which cl. (2) of Art. 19 permits and no other"

(II) PUCL v. UOI 2003 (4) SCC 399 at 438

Para 39

"So legislative competence to interfere with a fundamental right guaranteed under Article 19(1)(a) is limited as provided under Article 19 (2)."

2. To bring a challenge within the exceptions contained under Article

19(2) it must be established:

(III) Impugned legal provision has proximate and reasonable nexus and not far-fetched, hypothetical, problematic or too remote;

(IV) The connection is immediate, real and rational;

(V) Impugned legal provision is clear, unambiguous and not vague;

a. Vide Kameshwar Prasad v. State of Bihar 1962 Suppl (3) SCR 369 at 371, 373, 374, 378, 380 till 385.

The question considered by this Hon'ble court was whether Rule 4A as far it lays an embargo on any form of demonstration could be sustained as falling within the scope of Article 19(2) and (3). Reliance was placed on the judgement in Superintendent, Central Prison v. Ram Manohar Lohia (1960 (2) SCR 821) and after acknowledging that the connection has to be intimate, real and rational it was observed:

At page 383-384

"The threat to public order should therefore arise from the nature of the demonstration prohibited. No doubt, if the rule were so framed as to single out those types of demonstration which were likely to lead to a disturbance of public tranquillity or which would fall under the other limiting criteria specified in Art. 19(2) the validity of the rule could have been sustained. The vice of the rule, in our opinion, consists in this that it lays a ban on every type of demonstration — be the same however innocent and however incapable of causing a breach of public tranquillity and does not confine itself to those forms of demonstrations which might lead to that result".

The Court struck down the entire Rule as it was not possible to separate the legal from the unconstitutional portion. (P 384).

b. Vide Superintendent, Central Prison v. Ram Manohar Lohia (1960 (2) SCR 821, at page 826, 827, 830, 832, 833, 834, 835, and 836)

Section 3 of the UP Special Powers Act, 1932 was under challenge in this case. After referring to the judgement of federal court in Rex v. Basudeva AIR 1950 FC 67, this Hon'ble Court observed that:

"The decision in our view lays down the correct test. The limitation imposed in the interests of public order to be a reasonable restriction, should be one which has a proximate connection or nexus with public order, but not one far-fetched, hypothetical or problematic or too remote in the chain of its relation to public order."

That is why it has been submitted that the phrase itself in an impugned provision should constitute the offence. For example, the expression, "annoyance", should result in the incitement of an offence or public disorder. The nexus cannot be established by giving hypothetical, imaginary or far-fetched meaning to the expression "annoyance" or "grossly offensive" etc.

Finally, while examining the impugned provision, this Hon'ble Court very clearly laid down the test to bring in an expression within Article 19(2). It stated:

Page 836-837

"We shall now test the impugned section, having regard to the aforesaid principles. Have the acts prohibited under s. 3 any proximate connection with public safety or tranquility? We have already analysed the provisions of s. 3 of the Act. In an attempt to indicate its wide sweep, we pointed out that any instigation by word or visible representation not to pay or defer payment of any exaction or even contractual dues to Government, authority or a landowner is made an offence. Even innocuous speeches are prohibited by threat of punishment. There is no proximate or even foreseeable connection between such instigation and the public order sought to be protected under this section. We cannot accept the argument of the learned Advocate General that instigation of a single individual not to pay tax or dues is a spark which may in the long run ignite a revolutionary movement destroying public order. We can only say that fundamental rights cannot be controlled on such hypothetical and imaginary considerations. It is said that in a democratic set up there is no scope for agitational approach and that if a law is bad the only course is to get it modified by democratic process and that any instigation to break the law is in itself a disturbance of, the public order. If this argument without obvious limitations be accepted, it would destroy the right to freedom of speech which is the very foundation of democratic way of life. Unless there is a proximate connection between the instigation and the public order, the restriction, in our view, is neither reasonable nor is it in the interest of public order. In this view, we must strike down s. 3 of the Act as infringing the fundamental right guaranteed under Art. 19(1)(a) of the Constitution.".

In support of the above finding, reliance was also placed another constitution bench judgement, Chintaman Rao v. State of Madhya Pradesh (1950 SCR 759 at 756). In this case, this Hon'ble Court also held that the entire section being void as infringing Article 19(1)(a) of the constitution must be struck down as the doctrine of severability is inapplicable — to enable the Court to affirm the validity of a part and reject the rest.

c. Vide S. Rangarajan Vs P. Jagjivan Ram 1989 (2) SCC 574 (at 586)(Para 21, 41, 45 & 53).

In para 45, this Hon'ble Court observed that the anticipated danger should not be remote, conjectural or farfetched and that it should be have a proximate and direct nexus with the expression. Thereafter, it was observed, "in other words, the

expression should be inseparably locked up with the action, contemplated like the equivalent of a "spark in a power keg". In para 51, this Hon'ble Court emphasised that freedom of expression cannot be suppressed on account of threats of demonstration and violence and that is the obligatory duty of the state to protect the freedom of expression. While concluding, the Court further emphasised in Para 53, content of Article 19(1)(a) and 19(2) as follows: "We end here as we began on this topic. Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself."

4. Merely because the internet has a wider reach and speed in publishing information and also its implications, the content of Article 19(1)(a) cannot be diluted. The restriction has to full fill the parameters under Article 19(2). The tests propounded in Kameshwar Prasad (Supra) and Ram Manohar Lohia (Supra) are required to be established to invoke Article 19(2).

a. Vide Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal, 1995 (2) SCC 161 at 195, 208, 213, 226, 228.

In this case, this Hon'ble Court was considering what telecasting means and what are its legal dimensions and consequences. After referring to the judgements on Article 19, in para 37 the following question was posed:

"*The next question which is required to be answered, is whether there is any distinction between the freedom of the print media and that of the electronic media such as radio and television and is so, whether it necessitates more restrictions on the latter media.*"

There is a detailed discussion on Eric Barendt's book titled, "Broadcasting Law" as well as the judgement of the US Supreme Court in the Red Lion Broadcasting Case, 395 US 367. In para 43 the law on freedom of speech and expression under Article 19(1)(a) as restricted by Article 19(2) was summarised. It is also held that (vide para 45), burden is on the authority to justify the restriction.

The question which was posed in para 37 has been answered in para 78, where the court stated that (at page 227):

"*But to contend that on that account the restrictions to be imposed on the right under Article 19 [1] (a) should be in addition to those permissible under Article 19 [2] and dictated by the use of public resources in the best interests of the society at large, is to misconceive both the content of the freedom of speech and expression and the problems posed by the element of public property in, and the alleged scarcity of, the frequencies as well as by the wider reach of the media. If the right to freedom of speech and expression includes the right to disseminate information to as wide a section of the population as is possible, the access which enables the right to be so exercised is also an integral part of the said right. The wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial. The virtues of the electronic media cannot become its enemies. It may warrant a greater regulation over licensing and control and vigilance on the content of the programme telecast. However, this control can only be exercised within the framework of Article 19 [2] and the dictates of public interests. To plead for other grounds is to plead for unconstitutional measures."* [Emphasis supplied]

5. The expressions which have been used in 66A have not been defined. This can be compared with Section 66 where the term dishonestly and fraudulently have been defined and given them same meaning as provided in the IPC. In 66B, 66C, 66D, 66E, 66F, 67, 67A and 67B the offence for which punishment has been provided has been defined. However, in 66A, the expressions, grossly offensive, menacing character, annoyance, inconvenience, danger, obstruction, insult etc. have not been defined. These expressions are absolutely vague and are subjected to different interpretation. None of these expressions can be if subjected to the tests of proximity and nexus can either cause incitement of an offence or public disorder. It is only by imaginations hypothesis and subjective inputs that these expressions can be brought within the sweep of Article 19(2). What can cause annoyance to a person may not cause annoyance to another; the subject matter which is alleged to cause annoyance can be totally innocuous; it can also be objectionable. But Article 19(1)(a) does not allow the distant, far-fetched and imaginative interpretations to bring an expression within Article 19(2). It is for this reason that Section 66A violates Article 19(1)(a). It is not permissible to bring in the definitions of these expressions, given in IPC offences for upholding Section 66A.

6. By a general or vague provision, the right of speech and expression cannot be curtailed. Section 66A is general and vague, therefore, arbitrary and unreasonable and violative of Articles 14 and 21 of the Constitution. The basic principle of legal jurisprudence is that a law is

void for vagueness if its prohibitions are not clearly defined. Such laws result in unfairness and are attendant with dangers of arbitrary and discriminatory applications. Case law in support of the above proposition is given below:

a. Vide Kartar Singh Vs State of Punjab 1994 (3) SCC 569 at 644 (Para 112) and page 648 (Para 130).

7. The intelligible differentia between the medium and of print/ broadcast, real life speech and speech on the internet, is that speech on the internet travels faster. There is however, no rational nexus between creating new categories of criminal offences and any permissible aim sought to be achieved under Article 19(2). This is especially noticeable in the case of Section 66A, rather than other offences such as Cyber Terrorism or Hacking as covered under the Information Technology Act, 2000.

Re: Secretary of Ministry of Information and Broadcasting v. Cricket Association of Bengal, 1995 (2) SCC 161 at 195.

8. Section 66A is also bad in law inasmuch as it mixes up minor and major offences and does not contain any differentiation between the penalties for them. It includes, "criminal intimidation" and, "annoyance" both as bundled together within it and violates the principles of proportionality. Similar offences already exist under the Indian Penal Code, 1860 which applies to online content equally. These offences have definitions and ingredients providing adequate notice. This is not so in the case of Section 66A which merely contains phrases. Hence, this also leads to a mixing up of major and minor offences, in a bundle of phrases under 66A leading to the same penal consequence. In support of the above proposition, case law is cited below.

Vide Om Kumar and Ors v. Union of India (2001 (2) SCC 386)

"On account of a Chapter on Fundamental Rights in Part III of our Constitution right from 1950, Indian courts did not suffer from the disability similar to the one experiences by English Courts for declaring as unconstitutional legislation on the principles of proportionality or reading them in a manner consistent with the charter of rights. Ever since 1950, the principle of, "proportionality" has indeed been applied vigorously to legislative (and administrative action) in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India – such as freedom of speech and expression, freedom to assemble peacefully, freedom to form associations and unions...."

9. International Covenants to which India is a party such as the ICCPR (Article 19) have been interpreted with respect to the access on the Internet. Specific reference is made to the summary of recommendations of the Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, dated 6 May 2011. The Report recognises the importance of right to freedom of expression protected both under the UDHR as well as under ICCPR, at the same time it is also considered the new and expanded horizons of internet which may pose serious concerns. Paragraphs 10 to 19 are important. Paragraph 16 is quoted below for ready reference.

Para 16

"The Special Rapporteur welcomes the recently adopted general comment No. 34 of the Human Rights Committee on Article 19 of the International Covenant, which underscores that when a State invokes a legitimate ground for restriction of the right to freedom of expression, it must demonstrate in specific and individualized fashion precise nature of the threat, the necessity and the proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat."

Further Para 29 and 37 are also important.

Para 29

"As highlighted in joint papers for a series of expert workshops on the prohibition of incitement of national, racial or religious hatred organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2011, the Special Rapporteur remains concerned by the vague formulation of some domestic legal provisions that prohibit incitement. These include combating "incitement to religious unrest", "promoting division between religious believers and non-believers", "defamation of religion", "inciting to violation", instigating hatred and disrespect against the ruling regime", "inciting subversion of state power" and "offences that damage public tranquility". Such vague and broad terms clearly do not meet the criterion of legal clarity."

Para 37

"The four types of expression examined above (III.A) fall under the first category of the types of expression that constitute offences under international criminal law and/ or international human rights law and which States are required to prohibit at the domestic4 level. However, as they all constitute restrictions to the right to freedom of expression, they must also comply with the three-part test of prescription by: unambiguous law; pursuance of a legitimate purpose; and respect for the principles of necessity and proportionality."

The conclusions and recommendations are contained in Para 78 to 92 which were read out and not reproduced herein below.

Filed by [PUKHRAMBAM RAMESH KUMAR] ADVOCATE FOR THE PETITIONER

A Short Note on the Rajasthan Prevention of Witch Hunting Law, 2015

Kavita Srivastava

On the 9th of April, 2015 the Rajasthan State Assembly passed a law on the Prevention of Witch Hunting, becoming the fifth state in the country to have recognised this practice as a crime against women which has to be prevented and punished. The other states who have passed the law include of Bihar, Jharkhand, Chhattisgarh and Orissa.

It took 15 years for the State to finally pass a law against a practice, which has seen many women ostracised and forced to live with absolute indignity of being called a "dakin", many who have been dispossessed and evicted from their homes and fields, many who have been brutally injured, stripped, paraded and many who lost their lives. These battles were lonely battles fought in the village. Every group belonging to the women's movement in Rajasthan has actively taken up these issues with the State, since the decades of the eighties and have had to face a real challenge with the criminal justice system.

Whether it was Mahila Jan Adhikar Samiti working in Tonk and Ajmer districts, who under the leadership of Indira Pancholi or Bhanwari Bai took up more than fifty cases in the late nineties and in the decade of year 2000, including of six who were killed or Tara Ahluwalia of Mahila evam Bal Chetna Samiti, who has worked with more than 65 cases in just Bhilwara district or Nisha Sidhu of the NFIW, who filed an ongoing PIL in the Rajasthan High Court in 2011, demanding justice for these victims, mostly from Jaipur district or whether it was the Ekal Nari Shakti Sangathan or the Sathins of the Women's Development Programme in the State or the mahila samuh of SWRC Tilonia in Ajmer District or the Raj Samand Mahila Manch who dealt with several cases of women being injured, paraded naked and evicted after being labelled a witch or us from the PUCL who dealt with the first case in the monsoon of 1995 and have been regularly working on issues of justice for hundreds of these women or th the Rajasthan state women's commission, with the 2nd chairperson sending the first draft of a law in 2005, all of us have raised several issues regarding this practice as it exists today.

That mostly, single women, are labeled a "Dakin" and attacked as it was the most convenient way of grabbing their land and dispossessing them of their properties. That the dominant caste plays a major role in building consensus, inflicting atrocities and labelling a women in the village as dakin. That it is not just one woman who is tortured but the whole family. That the police and administation are always in a mode of denial and when pressurised the maximum they do is file a case of simple riot or battery or restrain both parties, as if the woman is also responsible for the making of the witch. The culture around the making of the woman as a Dakin and its perpetuation was never attacked by the police, the administration and the entire criminal justice system. The most important need was to rehabilitate and resettle the woman and compensate them.

Will this law address these issues? These were the question that women's groups asked when they discussed the bill and sent their comments to the MLAs and the speaker after the bill was placed in the Rajasthan Vidhan Sabha on 31st march, 2015.

The law takes into cognizance the role of the witch doctor and not just individuals involved in the crime, along with punishments from one year in prison to life, The law falls short of providing rehabilitation and compensation to the survivor as an entitlement. The burden of compensation has been left to a process of collective fine from the village and also the courts. Schemes will be made by the Government in due course, however, the Government responsibility towards immediate providing relief despite the Rajasthan High Court Order of 22nd January of provisioning retrospectively 200000 Rs. to every victim has been completely ignored. Secondly, the burden of preventing this crime has not been put on the district administration and the police, other than declaring the area violence prone. There is nothing in the law which talks of action or punishment against dereliction of duty, like in the prevention of atrocities against SC & ST, 1989 and finally the much touted section of collective fine from the village, used by former Chief Minister of Madhya Pradesh Digvijay Singh in the case of the Bundelkhand Sati of year 1999 and thwarted by a stay of a local court, would also be a non-starter in Rajasthan where even today jati and village panchayats are made to flourish whoever be the party in power as they are the vote hunting and gathering agencies for these parties.

The law could have been strengthened in the stage of passage if there had been pre legislative public consultation or had there been a chance with the Standing committee to come out with a stronger bill. It could have been a model bill for the country.

However, now that the law has been passed we hope that the lack of formation of rules will not delay its implementation.

The Rajasthan Prevention of Witch Hunting Bill, 2015: a short critique

- It lacks a preamble, thus not giving a framework for the interpretation of the law.
- It has problems in definition particularly in its definition of a "witch", the language is sloppy. The brutality of the acts that a woman is subjected to has not been captured in the definition of witch hunting.
- It has disaggregated punishment clauses, by giving a minimum of seven years for even death caused by such an

act, is diluting the gravity of the offence.

- There has been no Institutional burden been put in the law on the traditional panchayats, including the jati and the village panchayats, thus keeping intact the vote banks of parties through these institutions. This burden should have been put in as a sub-section of the law itself
- The issue of dereliction of duty by the administration and the Police has not been dealt with. Like in the SC & ST prevention of Atrocities Act, 1989, it should have been in this law itself, in order to put the burden of the offence as an abdication of State. Thus making the district administration and police accountable.
- The issue of compensation and rehabilitation has been dealt with as part of a process of collective fine, which is non-workable. And then left compensation to the order of the judicial court, which maybe a long drawn out process. The law says that schemes will be made for rehabilitation which have not been spelt out. Showing the non seriousness of the Government.
- The work of the last two decades has consisted of putting the burden and responsibility of rehabilitation and rebuilding the life of the survivor on the local administration and the Government. It ought to include planning for the restoration of the survivor back into the village, her house, protecting her life apart from other support.
- This attitude of lip service and undermining the process of rehabilitation and restoration of dignity is a major lacunae of the law. This ought to have been put in place before the law was passed.
- While the criminal part of the law can be prospective coming into force after its passage, but the rehabilitation and compensation should be put in place retrospectively as per the order of the Rajasthan High Court Jaipur bench calls on the Government to pay all such women Rs 200, 000 as interim relief.

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Kavita Srivastava, General Secretary, PUCL, Rajasthan

Press Release: 07th April 2015

PUCL Statement on the Encounters Massacre of 20 Wood Cutters in AP

PUCL strongly condemns the massacre or encounter killing of 20 wood cutters / labourers in Seshachalam forest area carried out by a Special Task Force group consisting of armed police and forest officials of AP yesterday, in the early hours of 7th April, 2015. What makes the massive killings unjustified and unacceptable is for the reason that the Special Force armed with automatic weapons was allegedly attacked by wood cutters with stones, sticks and sickles. Even the police do not say that the wood cutters attacked them with fire arms. In such a scenario, the shooting down of so many people is unconscionable, illegal and indicates an excessive use of force with the clear and deliberate intention of causing large number of casualties. The police are legally bound to explain why they did not follow prescribed `Standard Prescribed Procedures' requiring the police to first give a warning, then shoot below the knees thereby debilitating law breakers rather than shooting to kill.

What makes the encounter of 20 wood cutters suspicious is the fact that Mr. Kanta Rao, DIG of STF - Red Sanders Operation has been quoted by the Hindu of 3rd April, 2015 as saying that he had sought permission from the AP Government to shoot or open fire on red sanders smugglers as an "effective move to curb wood smuggling" and that he was awaiting the "nod from the State government for implementing the order which would involve no proceedings such as filing a case and prosecution."

That the massacre took place within a few days of this news report makes the entire encounter incident sinister and also supports the view that the AP Government had given permission to the STF officials to shoot to kill maximum number of people. If true, such a policy nod from the government, and effectuating such a directive by the police is unconstitutional, against the rule of law and the entire killings amounting to cold blooded murder. Even if the wood cutters were indulging in illegal activities, the task of the government and officials is to enforce the rule of law which means to prosecute them in a manner known to law; not to usurp the law and kill people using weapons given by the authority of law to enforce the law.

PUCL demands that a FIR be registered in the case against the police and forest department officials involved in the planning and execution of the encounters, which should also include the charge of murder. Investigation should be handed over to an independent agency, the CBI, which should enquire into the manner of conduct of the Special Police Force and their compliance with prescribed legal procedures and the laws of the land.

PUCL would like to point out that the SC has laid down guidelines in the case of `PUCL vs State of Maharashtra'.

What causes concern is that those killed are the lowest end of the illegal timber cutting trade. Those who have been shot dead are reportedly poor tribal labourers from Dharmapuri, Salem, Villupuram and

other areas in Tamil Nadu who are lured into the trade by a well organised gang of labour contractors. The key mafia leaders who are making huge profits from the trade are rarely arrested as they are able to buy protection from the bureaucracy, forest officials, police and politicians. The smuggling of red sanders and destruction of valuable forests can stop only if the focus shifts away from catching the lowest end wood cutters and labourers while letting the kingpins go scot free. An effective strategy will need to ensure that:

(i) the key kingpins of the illegal timber trade are arrested;

(ii) all their transport hubs neutralised and the storage yards destroyed;

(iii) their key protectors within the officialdom are identified, prosecuted and convicted.

Only if the senior most officials and prominent politicians supporting the trade are prosecuted can the illegal timber trade be stopped.

It is important to point out that for the last nearly 10 years hundreds of expert wood cutting tribals from hill areas like Kalrayan Hills, Yercaud, Kollimalai, Yelagiri in districts like Salem, Erode, Villupuram, Tiruvannamalai etc have been systematically enticed by the illegal mafia who have made use of their peculiar but specialised wood cutting skills. Instead of viewing these as negative traits, the Government of Tamil Nadu should consider these skills as highly valued skills and give these tribal youth training in specially conceived `SKILL DEVELOPMENT' programmes focusing on carpentry and related areas and also support their entrepreneurial enterprises in wood craft, bamboo manufacture and bamboo craft works and other value added processing of Minor Forest produce.

Dr. V. Suresh, General Secretary, PUCL National

Press statement: 12.4.2015

PUCL Condemns Prosecution of FFT of Human Rights Groups by AP Police for Visiting Encounter Site in Forest Areas of Chittoor, AP

PUCL strongly condemns the registration of a FIR by the AP Forest Department against a team of human rights activists drawn from national level human rights organisations which visited , on 11.4.2015, the site of the encounter in Chandragiri Mandal in Chittoor district, AP in which the police shot dead 20 wood cutters. The Fact Finding Team included human rights activists from Civil Liberties Committee - AP, People's Union for Civil Liberties (PUCL), People's Union for Democratic Rights (PUDR), Human Rights Forum (HRF), CPDR and other organisations.

It is learnt that the forest department officials booked criminal cases under AP Forest Act, 1957 against 12 human rights activist for visiting the site of the alleged encounter situated inside Reserved Forests without permission. In fact, when the FFT members met the DFO of the area, he reportedly threatened to launch the prosecution against them as a means of intimidating them

PUCL considers the criminal prosecution as an act meant to terrorise and intimidate the Fact Finding Team of human rights organisations from exposing to the world the utter lies and falsehoods of the AP police and forest department's regarding the encounter which allegedly took place on 6th April, 2015 between 530 to 600 am . The action of registration of a criminal case against the team of human rights activists *has to be seen as a hostile and bullying action to silence citizens from challenging the government about the total abuse of power leading to shooting to death of the wood cutters.*

The sinister and motivated nature of the FIR registration has to be seen in the context of the fact that it includes Mr. Chikula Chandrasekhar, General Secretary, Civil Liberties Committee-AP, who had filed the PIL against the AP Government before the AP High Court seeking judicial enquiry and prosecution and arrest of police officials concerned. It is thus clearly an act to intimidate the PIL Petitioner from pursuing the PIL in which the High Court has expressed its mind about the need to register a FIR including offence of murder in encounter deaths, independent investigation and implementation of guidelines in encounter cases issued by the Supreme Court tin the case of `PUCL vs. State of Maharashtra'.

Such a hostile action could not be the action of local police and forest department alone but should be considered to reflect the official policy line of the AP Government which does not want the truth of the encounters to be exposed.

PUCL would like to highlight that the human rights team was visiting the encounter site only for the purpose of gathering information about the actual location and understand the context of the firing so as to check the veracity of the police story that they fired in `self defence' against hundreds of wood cutters who rained stones, sticks, sickles and arrows against them. The FFT was visiting the area also because of the substantial allegation that the 20 persons were killed elsewhere and their bodies thrown at the site shown to be the encounter site. A site visit therefore was vital for the FFT to come to an independent, unbiased and factual assessment as to whether there was truth to the stand of the AP Government about the encounter.

PUCL stresses that visits of `Fact Finding Teams' and their reports are well recognised by human rights bodies of the UN, NHRC and even courts in India as an accepted and legitimate way of bringing to the light of public scrutiny incidents of human

rights violations committed by state forces.

Thus the fact Finding Team's visit to the site of encounter, situated in Reserved Forest area, will have to be seen as a legitimate part of human rights groups' activities which is distinct and different from other instances of entering into reserved forest areas without permission. Thus while technically entering into reserved forest areas may be a violation in law, the invocation of the law in the present circumstance is only indicative of the state using its coercive powers to silence, intimidate and stifle public exposure of its complicity in the cold blooded massacre of 20 wood cutters and passing it off as an encounter. PUCL calls upon all democratic minded citizens and human rights concerned persons to raise their voice demanding respect for `rule of law' and against state resorting to encounters as a way of terrorising civil society.

Dr. V. Suresh, National General Secretary, PUCL

Passage of "GUJCTOC" Bill Strangulating the Voice of Dissent

Gautam Thaker

A controversial "Gujarat Control of Terrorist Activities & Organized Crime" Bill was passed in Gujarat Legislature Assembly on 30th March 2015. GUJCOC Bills were also passed in the years 2004 and 2009 in the Gujarat Legislative Assembly which are still pending before H.E. the President of India awaiting his clearance. This controversial bill was passed in the past for three times during last 12 years. H. E. the Presidents, A.P.J. Abdul Kalam and Pratibha Patil had suggested amendments in it and during the corresponding periods, respectively, Sundarsinh Bhandari and Kamala Beniwal were Governors of Gujarat. While Lal Krishna Advaniji was the Home Minister in the Centre during the year 2004, the rationale for passage of this Bill again in the Legislature Assembly is not understandable.

Under the GUJCTOC Act, rampant powers have been vested with the Police. E-mail and phone tapping shall be recognized as proofs / evidence. Custodial arrest of the convicts shall be extendable up to 180 days whereas the confessions made before the Police Officer shall be treated as valid before the Court. Conversation, correspondence etc. have been recognized as evidence. Moreover, he will not be granted anticipatory or regular bail. On the face of it, this Act is contrary to the laws of the Constitution and the Centre. Some of the provisions, being inconsistent with the Articles of the Constitution, amount to breach /violation of the Constitution. How can there be any law which is contrary to the law of the Central Govt.? If the rights of the judiciary are entrusted to the Police then it could result in fabricating statement using third degree tactics over the innocent people. Is it fair to entrust such powers to the Police? In this Act, provisions have been made which are contrary to the Transfer of Property Act, Indian Evidences Act and Indian Criminal Procedure. It is said that this Law is being enacted because Government's priorities are for maintenance of peace, safety and security in Gujarat. Its purpose is to see to it that law-breakers by indulging in organized crimes including terrorism and those tampering with the safety and security of people of Gujarat by committing criminal acts are given deterrent punishment and that none of the innocent is penalized in any way. Necessity for enacting this law has arisen to ensure safety of people of Gujarat especially in view of 1600 Km. long coastal area of Gujarat and areas bordering with Pakistan. Aim of bringing in this Bill by the Government is to counter-act terrorism and to strengthen and sharpen the teeth and claws of laws. In order to deal with the criminals sincerely and honestly, adequate powers already vest with the Police in terms of many laws of the present day and by using it, peace and stability can be established in Gujarat. It will be enough if the existing laws are strictly implemented. If laws alone can check the terrorism, then terrorism in the country could have been checked while the law of POTA was in force. Although, the present Act is a step ahead of the POTA one wonders how will it be possible to prevent terrorism. Real need is of sincerity to implement and enforce the laws. Even with the honest implementation of the laws currently in force, terrorism will have no place anywhere. In the past, acts such as MISA, TADA and POTA had been introduced but they had succumbed to the rage of the people. Misuse of above three Acts was made by discriminatingly targeting against poor, minority, aggrieved and deprived sections of the society. At that point of time, 95 per cent of the people convicted under those Acts were acquitted as innocents. A fear has also emerged that this new Act will be used against the Activists and the common people too. Going by one report, under the PASA, Police had arrested as many as 11,916 anti-social elements during the period from 2009 to 2014 in Gujarat, against which the Government could prove its actions to be true, before the Courts and the Advisory Boards, in only 1,124 cases. The reason behind increase in anti-social activities in Gujarat is mainly due to higher contribution of collusion among police and the politicians. It is difficult to understand as to how the rights without any limit, being vested into the hands of Police under this new Act will be in the interest of people of Gujarat.

Impartial implementation of the existing Acts is the main testing tool of to-day's times. No provisions of the Articles / Clauses which are against civil liberties can in any way be given any validity. Fight against terrorism is a national one, but at the same no ruler should wink at or lose

sight of the concerns of civil liberties and human rights. Instead of enacting laws under a new label which take away the right and liberty of an individual, Govt. should make implementation of the other existing laws with firm will power and the same will bring out desired results. Over a period of time, it has been proved with such Acts that instead of the convicts / criminals, innocent people have been put behind the bars. Violence and terrorism cannot be dealt with merely by enacting laws. If such Acts become a permanent feature of our regime then it is entirely against the spirit of democracy and human rights. Really speaking, this may give rise to emergence of a "Jungle Rule" in the country. With such an Act, there will not only be violation of rights of liberties but will simultaneously give rise to corruption among the police department and the law enforcement agencies and due to that there will be upsurge in the obstacles in our economic progress. No Act which aims at threats to the fundamental rights of the people can survive in a democratic nation. All the peoples, concerned citizens, activist and human rights organization should join their hands together to non-violently, in a Gandhian way, by arousing people's awareness and constitutionally, in as much as possible, oppose "GUJCTOC" Act which aims at nullifying human values and principles of democracy.

**Gautam Thaker, General Secretary, PUCL Gujarat (M. 09825382556)*

PUCL Punjab & Haryana: Press Statement: 27th March 2015

Bapu Surat Singh: Punjab's Irom Sharmila

Human Rights Violations by the Punjab Government and Punjab Police regarding the Surat Singh Khalsa fast unto death.

PUCL Punjab-Haryana expresses deep concern over the health and well being of Sh. Surat Singh Khalsa who has been on a fast unto death for the last 68 days, and the indifferent and insensitive response of the Punjab government. We fear for the health of Bapu Surat Singh, considering his age and poor health. It is imperative the Punjab Government responds with a sense of urgency and alacrity to the democratic demands of Bapu Surat Singh who seeks release of all prisoners who have completed their terms of imprisonment but have been kept in jail for many years.

Baba Surat Singh has been on a fast since 16/01/2015. Initially the government did not respond; however on 08/02/2015 he was detained, and forcibly brought to Civil Hospital, Ludhiana under police cover. Till 26/02/2015, there was no restriction for his family to take care of him and to be with him. However in order to break his resolve, the police undertook inhuman and unacceptable practices; first his family was prevented from being with and taking care of him. Next, restrictions were placed on visitors and visitors were intimidated and scared off by the police by noting down their personal details and mobile phone numbers with the warning that they will get into trouble if they continued to visit Bapu Surat Singh. On 26/02/2015, 4 persons were taken into custody; this included Ravinderjit Singh, son of Sh. Surat Singh Khalsa, as also Surinder Singh, Gurbinder Singh and Damandeep Singh. Two of them were released on the same day and Damandeep Sin was released in early March. But Ravinderjeet Singh, Baba Surat Singh's son has still not been released and continues to remain in jail.

PUCL is shocked by and also condemns the cruel and callous manner by which the Punjab Police with the support of the medical authorities, have reportedly stitched a food pipe to his forehead to force feed him thereby breaking his fast, in a manner reminiscent of the way in which Irom Sharmila has been force fed over many years in Manipur. Apart from being an outrageous tactic adopted by the Punjab police and medical authorities, we are extremely disturbed to hear that Bapu Surat Singh is suffering from an infection due to the stitching of a food pipe on his forehead in a manner which is unhygienic, unscientific and against medical ethics. Such an act of stitching the food pipe to his forehead, if true, amounts to inflicting torture, inhuman, cruel, degrading and illegal treatment. Bapu Surat Singh is engaged in a non-violent, democratic act of asserting his democratic right to protest; he has a right to a dignified life and dignified way of going through his protest fast. The state is denying him this right to protest with human dignity.

PUCL expresses concern that Baba Surat Singh has been detained under the provisions of sections 107/151 of the Cr.P.C., without following the due procedure. PUCL believes that given the law of the land, there is no reason for not granting bail to those arrested.

It must be reiterated that Bapu Surat Singh Khalsa was a teacher in government primary school throughout his life, till he resigned his government job in 1984 as a protest against the mass killings of the Sikhs. In 1986, he went to jail for the release of Sikh prisoners arrested in connection with the 1984 anti-Sikh pogrom and Operation Blue Star. He has been active in public protests demanding justice and accountability for human rights excesses right from the time of opposition to Rajeev Longowal Accord to re-entry of the police forces into Golden Temple in 1986 to release of Sikh political prisoners who have completed their term of imprisonment. It should be noted that despite being imprisoned for one year under the National Security Act he was not prosecuted for any offence.

Bapu Surat Singh s a passionate advocate of human and prisoner's

rights not just in Sikh causes; he participated in number of protest movements for the similar human rights cause elsewhere too. In the 1st Anna Hazare agitation in New Delhi, when Anna was on hunger strike fast from 05/04/2011 to 09/04/2011, Bapu Surat Singh also remained on fast in Ludhiana in support of Anna agitation against corruption.

PUCL respects the fact that Bapu Surat Singh was forced to embark on a fast unto death for the release of political prisoners who have completed their terms of imprisonment and been in jail for long years due to the insensitive and uncaring response of the Government of Punjab to earlier non-violent, democratic protests and programmes by him and others. He returned from the US in November 2014 (where most of his family resides, though he himself remains an Indian citizen) and sat on public protest by denying himself food at his ancestral village Husanpur, Ludhiana on 16/01/2015.

The Punjab Government has claimed that the release of political prisoners in Punjab is also not being processed because of the interim stay by the Hon'ble Supreme Court of India in a 5 judge bench matter titled Union of India v. Sriharan @ Murugan & Ors., regarding the interpretation of the relating to remissions and release of prisoners wherein the SC has stayed the release of life convicts across the entire country vide order dated 09/07/2014.

However, at the same time, PUCL believes that legal and political options exist with the Punjab and Central Governments, and since the SAD led Punjab government and ruling party at the Centre are part of the ruling coalition (NDA) in the Centre, and thus even if the SC has denied relief, as claimed, of vacating the stay on remissions /release of life convicts, the State Government can always attempt to persuade the Union Government to take up the issue with the SC by filing a interim application, as the Union of India is the petitioner in the said case.

PUCL believes that the arrest of people on 26/2/15 (or thereabouts) including Surat Singh's son, subsequent release of two persons and continued incarceration of two persons clearly supports the inference that these acts are meant to intimidate, silence and crush both the protest and any possibility of democratic support.

PUCL believes that the Punjab Police and Punjab Government are not only engaging in scare tactics and intimidation but actually doing acts which constitutes a brazen violation of human rights and fundamental rights to peaceful, non-violent protest.

Demands:

- PUCL demands that the Government of Punjab immediately ensure the safety and good health of Bapu Surat Singh by removing the food tube reportedly stitched forcibly on his forehead and allowing free access to him by his family members and supporters.
- The Government should also come forward with a concrete action programme to meaningfully address the human rights issues raised by Bapu Surat Singh thereby enabling him to end his fast, by using all legal and political options available.
- PUCL also demands that all persons who have been arrested/detained in connection with the peaceful fast by Bapu Surat Singh, and those arrested/detained for raising the issue of release of political prisoners in Punjab may be released immediately.

R.L. Batta, President, PUCL, Punjab & Haryana; Arjun Sheoran, Org. Secretary, PUCL, Punjab & Haryana

PUDR Press Statement: 12th April, 2015

Condemn Targeting of Democratic Rights Activists' Team inquiring into Seshachalam Killings

Peoples Union for Democratic Rights (PUDR) strongly condemns the slapping of cases against activists of a team of several civil liberties and democratic rights organisations from across the country who conducted a fact-finding into the recent killings of 20 red sanders "smugglers" in Chittoor district. Members of CDRO (Committee of Democratic Rights) and other human rights groups had visited the two 'encounter' sites on 10th April. When the team tried to speak to the forest officials to get their version of events they were threatened with dire consequences. Subsequently several team members were booked by forest officials yesterday, 11th April, for trespassing. Entering into a reserved forest area without authorisation is an offence under Sec 20 of the Andhra Pradesh Forest Act, 1957. Other charges may also have been applied. That this is a targeted, selective, and blatant act of harassment is all too obvious as media teams have been freely visiting the sites since 7th April itself.

Significantly, those booked include Mr Chiluka Chandrasekhar- advocate and General Secretary, Civil Liberties Committee (CLC - erstwhile APCLC) - who filed a PIL into the killings. It was on this basis that the AP High Court issued directives including registration of the case as unnatural deaths, observing the SC guidelines into encounter killings, preserving the bodies and a post mortem by a team of forensic experts.

In a Press Conference held in Tirupati on 11th April the team had released an interim report of their investigation. The team particularly highlighted the cold-blooded killings of 20 persons which are being passed off in the police version as 'random' deaths which occurred in 'self-defence' when attacked with stones and axes by over 100 red sanders "smugglers", resulting in the deaths of 20 of the coolies. The rights' team when they visited the

two sites found no other bullet marks, or blood spots except where the bodies fell, as should have happened in a random firing. The bodies were found in close proximity to each other rather than scattered over a large area. Moreover neither of the sites had no stones that the coolies could have hurled. The team questioned as to what happened to the rest of the coolies at least some of whom must have been injured in the "random", and allegedly untargeted firing.

In the light of the above, the registering of a case against the activists is obviously an obstructionist move intended to pressurise and prevent rights groups from actively pursuing the matter both in and outside the court. The Court clearly believes that the incident merits further inquiry. An independent fact-finding by a civil rights team is a civil society initiative in furtherance of the same. The registering of cases against the activists seems highly motivated and hints that a cover-up operation seems to have been already set in motion.

PUDR demands that:

1. An independent inquiry in which the AP police has no role as they are the accused.
2. The concerned policemen be booked under Sec. 302.
3. The charges against the 12 team members be dropped immediately

Megha Bahl, Sharmila Purkayastha, Secretaries, PUDR (www.pudr@org)

PUCL Uttar Pradesh:

PUCL Kanpur demands for re- appeal in the case of Hshimpura Mass Kill Incident!!

Whatever happened in Hashimpura be condemned as low but that it is not just the human body unite killing is killing human compassion and belief in our society and our government is expected to protection and justice. Innocent of any investigation and evidence to kill people just because they come from a different religion reflects the narrow mindedness of our society as well as in the promotion of religious frenzy that added fuel. set aside governments say they want a secular society On the other hand, the same instructions and case as there is Hashimpura extremely contradictory things so clearly that the main objective of our governments are communal and ethnic politics public concerns do not matter for them called.

So sensitive and inhuman judicial process in the case of a 28-year jail sentence in the decision to walk and then came back out without any penalty, the judicial system of our country's poor displays and this proves that India is so free India's population is still in the hands of the slave handcuffs may not be fair but is still in captivity.

So as a civil society PUCL Kanpur demands to the Uttar Pradesh government for re -appeal and justice in this case, otherwise we will move to protest and strike against government functioning.

K.M. Bhai, PUCL Kanpur

TN PUCL: Press Statement: 26th February, 2015

PUCL Press statement -Assault on writer in Tamilnadu

The People's Union of Civil Liberties (PUCL) strongly condemned attack on writer Puliyur Murugesan at Chettipalayam near Karur in Tamilnadu. The PUCL understood that the writer Murugesan was forcibly taken away from his house in Chettipalayam by a group of caste outfit people on Wednesday 25.2.2015 and indiscriminately attacked him.

The reason behind the attack was the writer's recent short story collection 'Balachandran Enroru Peyarum Enakku Undu' allegedly hurt their community sentiments. Despite the writer gave complaint before police, they does not take any proper steps to neither file proper case nor arrest the culprits.

After the grabbing freedom of express incident happened to writer Perumal Murugan the same way writer Puliyur Murugesan faced threat from caste outfits. There is method in their madness. The role of police and problematic role of the state authorities in the entire episode in virtually doing nothing to enforce the rule of law and safeguard fundamental rights of speech and expression. To the contrary, the officials through their action have indicated their tacit support to the agitators. This raises key issues of the role, obligations and responsibilities of state authorities in enforcing fundamental rights especially rights under Art. 19(1)(a) and 21 and the consequences of the state authorities not fulfilling or performing their constitutional obligations. Though number of such instances of attack on creative artistes have occurred in Tamil Nadu with the state authorities playing a silent or indifferent role in protecting the writers' fundamental rights to free speech and expression. It is ground reality of role of state in Tamilnadu.

Hence PUCL demands that the state government initiate immediate action against persons who assaulted writer Puliyur Murugesan and ensure safety and security to him and his family and protect fundamental rights in democratic society.

Prof. V. Saraswathi, President; **S. Balamurugan,** General Secretary, PUCL Tamil Nadu & Puducherry

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Statement of PUCL Chhattisgarh on the Recent Attacks on Security Forces by Maoists

The PUCL Chhattisgarh condemns in no uncertain terms the recent series of attacks by Maoists on security forces in the Bastar region over the past 72 hours, in which tragically 7 STF jawaans, one BSF jawan and 6 CAF jawaans lost their lives and several others were grieviously injured. In the first incident of 11th April, a group of 400 Maoists had ambushed in broad daylight a group of STF jawaans engaged in combing operations near Pidmel village (block Polampalli) in Sukma district, killing 7 of them; on the night of 12th April, Maoists attacked a BSF Camp at ChhoteBaithiya under Bande Police Station in district Kanker killing one BSF jawan, following an incident of torching vehicles carrying ore and mining equipment of the Jayaswal Neco mining company; and on 13th April 6 CAF jawaans were killed when the anti- land mine vehicle in which they were going for search operations was blasted, about 3km away from the CAF Cholnar Camp near Kirandul in district Dantewada.

The PUCL reiterates its strongly held belief against this violence and reaffirms its faith in the democratic way of life and appeals to all to use to the utmost the agencies and methods available in an open society under our Constitutional framework. It restates its long held stand that the increasing resort to violent means to attain political ends, and the response of the state machinery, threaten to cause even further curtailment of the basic civil liberties and human rights of the great majority in this country which are already in jeopardy.

The present spate of incidents makes it amply clear that the civil war like situation in Bastar region is far from dying out. The Raman Singh government had claimed more than 300 Naxal surrenders in the last few months, but it looks like the allegations of the opposition, and the findings of the media that these were mostly ordinary villagers, have substance. The Modi Government too is relying primarily only on stepping up military presence whereas the present incidents show that the lack of local intelligence in military operations, largely due to the alienation of the local people, is a major cause of the fatalities of the security forces. PUCL is concerned that after this incident, there are likely to be knee-jerk reactions from the security establishment including indiscriminate arrests in search operations or retaliatory killings of ordinary villagers which will only add to this alienation.

In the past months there have been mass gatherings of thousands of adivasis at Kukanar, Chintagupha and Tongpal in District Sukma; and Kuakonda in District Dantewada, demanding release of innocent villagers, protesting against beating and torture, and demanding filing of an FIR in the case of police killing of adivasi Nuppo Bhima in Rewali Village etc. These events could have been treated as an opportunity by the state administration to come closer to the adivasi people and win their confidence by dealing with their grievances. Unfortunately those adivasis who have attempted to approach the police or administration, or the courts are being harassed or persecuted.

PUCL and other democratic organisations have long been suggesting that the way to de-escalate violence in the Bastar region would be to resettle adivasis in the abandoned villages, grant forest rights, restore health and education facilities, bring back ration shops, and assure people that development projects will only be started with prior informed consent. Treating the adivasis like an alien enemy in occupied territory can only worsen the situation.

Sudha Bharadwaj, General Secretary, Chhattisgarh PUCL (Mobile No. 09926603877) □

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