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## “Democracy cannot Survive if Lawlessness is created by the State itself and the Power of the State is used to Suppress Dissent”

**Prabhakar Sinha, National President, PUCL**

The state of human rights in the country today is appalling .Even the most precious rights like the right to life, personal liberty, freedom of speech and expression and the right to dissent are under attack on the drop of a hat The Republic of India has far more draconian laws than the India under the British had .The people are deprived of their rights not only under extraordinary (black ) laws but also under ordinary laws .Our notion of violation itself seems to have undergone a change. We have ceased to consider the violations under ordinary laws as violation and have come to accept them as a way of life.

We have a draconian law like AFSPA, which gives the armed forces a license to kill and rape because the men in uniform cannot be prosecuted. In a recent judgment the S.C. has found more than 1500 cases of encounters only in a small state like Manipur, which need to be investigated to ascertain their genuineness. AFSPA has been taking its toll in different parts of the country since 1958. Such laws are a blot on any democracy and raise a question on the character of our democracy itself. There is an almost equally draconian provision in the Cr.P.C. since the pre-independence days, which give the police and security forces a license to kill. Its Section 132 provides that no policeman or member of the armed forces can be prosecuted for using force to disperse an unlawful assembly without the sanction of the government. Hundreds are killed and thousands are injured in the country in the firings on unarmed processions on account of this provision. Often the police claim to open fire on a procession or in other situations in self-defence causing death and injuries, but are not required to prove before a court of law that the use of that much force was necessary. The police use the same right of self defence which any person has, but while we have to justify the use of force before a court, the police are not required to do it. It is nothing short of a license to kill. Killing in fake encounters is rampant because there is no effective deterrent. In most cases, where the victims are from organisations which have taken to arms, the killing in fake encounters is with the complicity of the government. Then, there are 'disappearances'. There were thousands of such disappearances in Punjab during the Khalistan movement. There are thousands such disappearances in Kashmir.

Democracy cannot survive if lawlessness is created by the State itself. One may ask how to deal with those who do not believe in the constitution and challenge the State with arms. They should be dealt with according to the constitution and the law of the land. The State is the protector of the

constitution and the rule of law and cannot and should not be allowed to subvert the constitution from within. The best answer lies in following the treatment meted out to Nathuram Godse, Mahatma Gandhi's killer and Ajmal Kasab, the Pakistani terrorist involved in Mumbai terror attack of 2008. Every person regardless of the gravity of the crime he is accused of must be punished according to the law. Nobody should be killed in a fake encounter, in police custody or made traceless after arresting and killing him. The State cannot be allowed to murder anyone - a terrorist or any other kind of insurgent or a dreaded criminal - because it does not have the proof to get them convicted by a court. The State cannot be allowed to commit crimes in the name of the national interest. ***The rule of law is the highest national interest in a democracy and for the people under any system of government.***

The personal liberty of a person is safe only as long as the State does not want to deprive him of it. There are numerous lawless laws in the arsenal of the State to send any innocent person behind the bar. The Unlawful Activities Act, 1967, the National Security Act, 1980 and the Criminal Law Amendment Act are just a few of many such laws. In addition to the central laws, there are a slew of draconian laws to deprive one of his liberty enacted by the states. The trick is to create a fear psychosis in the name of some problem and enact a draconian law to solve the problem, and use it for other purposes. MISA, TADA and POTA were misused and had to be repealed, but the other such black laws continue to rule the roost at the cost of our liberty. To give an example of the lawlessness of POTA, Vaiko, an M.P. from Tamil Nadu, who was part of the NDA was detained under POTA. The whole world knew he was no terrorist but he had to remain languishing in jail. Our personal liberty is safe only till

the State does not want to take it away.

Kashmir is burning. The elected government has been unable to pacify the people. The lesson to be learnt is that the legal authority without moral authority is powerless before a people who begin to doubt its legitimacy. When the moral authority of a government is lost and its counsel to the people is ineffective, the government resorts to brute force as is happening in Kashmir. There has been curfew for about 39 days, 56 persons have been killed in police firing and hundreds have fallen a victim to pellets of whom many have been blinded. The atrocities committed on the people of Kashmir are atrocities committed on our democracy.

Teesta Setalvad is being hunted by the Gujarat as well as Central Government on minor charges to teach her a lesson for her temerity to have rioters of 2002 Gujarat carnage jailed. They include important BJP leaders including Ministers. Both the governments were hell bent upon sending her to jail. Her NGO is under attack now. Green Peace is under attack for its temerity to challenge the illegal order of the government stopping Priya Pillai (its representative) from flying to UK to brief a Committee there on environmental problems caused by the government policy in the country. Lawyers Collective is being targeted for its stance unfavourable to the present government.

Can a democracy survive if the power of the State is used to suppress dissent?

Anyone who feels and says that Kashmir should be given Azadi is branded a traitor. In many cases, an FIR is lodged against him/her. Kashmir is s problem and if a citizen is of the opinion that it should be given Azadi to solve the problem what crime does she/he commit? Do we not have the right to have an opinion on the Kashmir problem

and express it?

We, the citizens, have the right to think about various issues and express our views except those which are specifically barred by the constitution. The question is not whether giving Azadi is right or not, but whether a citizen has the freedom and right to think and say so or not. If someone criticises the armed forces for violation of human rights including committing rape, his patriotism is questioned. Such is the atmosphere this government has created in which Indian democracy has to survive.

A particularly dangerous development is the ruling party's student wing ABVP and the BJP government acting in tandem to suppress student's organisations with different ideological inclination/commitment. A student organisation was banned at IIT, Madras for criticising Modi. The initiative came from ABVP. At the Hyderabad Central University, it was again ABVP, which clashed with the Dalit students which led to Rohit Vemula's death. The modus operandi is for the ABVP to start a dispute to be followed by the intervention by the BJP government. This is a typical fascist tactic in which the government and the organisations affiliated to the ruling party work intandem. The tactic was on full display during the attack on JNU, when ABVP, lawyers and the police joined hands to best up all who was with the JNU students.

It is not only human rights which are under threat but our democracy itself. A democracy without human rights and the rule of law is a democracy only in name. It is a democracy in form without substance. We are all guilty of acquiescing in this development and guilty of abdication of responsibility as citizens.

***The above note is the text of the lecture circulated during a Press Meeting organised by PUCL UP in Lucknow on 20<sup>th</sup> August 2016*** □

## Let Not Article 370 of Indian Constitution Be Weakened (Re Jammu & Kashmir)

Rajindar Sachar, Former President, PUCL; Former CJ, Delhi High Court

The Supreme Court of India, notwithstanding some controversial decisions in the matter of constitutional interpretation has by far and large contributed to the upholding the rights and privileges of the States and individuals.

But with a decision '*Ajay Kumar Pandey Vs. State of J & K*' decided by Constitution Bench on July 19<sup>th</sup>, 2016 there has arisen the apprehension of interfering with the autonomy of J & K, guaranteed under Article 370 of the Constitution of India.

The Constitution Bench has decided that the Supreme Court has the power to transfer a civil or criminal case pending in any Court in the State of Jammu and Kashmir to a Court outside that State and *vice versa*. It was common case that the provisions of Section 25 of the Code of Civil Procedure and Section 406 of the Code of Criminal Procedure, which empower the Supreme Court to direct transfer of civil and criminal cases respectively from one State to the other, do not extend to the State of Jammu and Kashmir and cannot, therefore, be invoked to direct any such transfer. It was also common ground that Jammu and Kashmir Code of Civil Procedure, 1977 and the Jammu and Kashmir Code of Criminal Procedure, 1989 do not contain any provision empowering the Supreme Court to direct transfer of any case from that State to a Court outside the State or *vice versa*.

It was common ground that the provisions of Article 139-A of the Constitution which empowers Supreme Court to transfer a case pending before one High Court to itself or to another High Court also has no application to the cases at hand as the Constitution 42<sup>nd</sup> Amendment Act, 1977 which inserted the said provision itself has no application to the State of

Jammu and Kashmir.

Thus while accepting that a litigant has no right to seek transfer of a civil or a criminal case pending in the State of Jammu and Kashmir to a Court outside the State or *vice versa*., still the Court notwithstanding these formulations went on to answer the question whether independent of all these provisions contained in the Codes of Civil and Criminal Procedure there is there still a source of power which the Supreme Court can invoke for directing transfer of a case from the State of Jammu and Kashmir or *vice versa*. The Court has held that it has such a power invoking the principle of "access to justice" being a fundamental right and secondly the powers given under Article 142 of the Constitution. The court relied on *principle of our law that every citizen has a right of unimpeded access to a court and referred to Raymond v. Honey 1983 AC 1 (1982 [1] All ER 756) where Lord Wilberforce described it as a 'basic right'*. But with respect, the attention of the Supreme Court was not brought to the specific observations of Lord Wilberforce and its affirmation in this very case; emphasizing the exception that; "*a citizen's right to unimpeded access can only be taken away by express enactment... and we accept that such rights can as a matter of legal principle be taken away by necessary implication.*" Here in the present case the provisions mentioned above specifically negative the right of a litigant to have a case transferred out of J & K, but still the court has held otherwise.

The Supreme Court then dealt with the question namely whether Article 142 of our Constitution empowers the Supreme Court to direct transfer in a situation where neither the Central Code of Civil Procedure or the Central Code of

Criminal Procedure empowers such transfer to/from the State of Jammu and Kashmir. The Court thereafter concluded that the powers under Article 142 are wide enough to empower the Supreme Court to direct such a transfer in appropriate situations, no matter whether Central Code of Civil and Criminal Procedures do not extend to the State nor do the J & K State Codes of Civil and Criminal Procedure contain any provision that empowers this court to transfer cases. It is unfortunate that the attention of the court was not drawn to a 7 judge's bench case '*A.R. Antulay V. R.S. Nayak*' (1998 (2) SCC 602) where the apex court held; "*Thirdly, however wide and plenary the language of the article, the directions given by the court should not be inconsistent with, repugnant to or in violation of the specific provisions of any statute. If the provisions of the 1952 Act read with Article 139-A and Section 406-407 of the CrPC do not permit the transfer of the case from a Special Judge to the High Court, that effect cannot be achieved indirectly*".

It is also unfortunate that the attention of Supreme Court was also not drawn to an earlier 5 judges judgment of Supreme Court (1998) wherein the court said, "Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly,.....that the Court will take note of the express provisions of any substantive statutory law and regulate the exercise of its power and discretion accordingly. It must be remembered that wider the amplitude of its power under Article 142, the greater is the need of care for this Court to see that the power is used with restraint without

pushing back the limits of the Constitution so as to function within the bounds of its own jurisdiction". More serious than the concerns mentioned above, this judgment has in an indirect manner nullified the mandatory provision of Article 370 of the Constitution. J & K.

PUCL Press Statement: 19<sup>th</sup> August, 2016

## Drop FIR against Amnesty Intl India!

PUCL condemns the actions of the Bengaluru Police in foisting a case of sedition, creating enmity and other charges against Amnesty International India and unnamed staff for holding a meeting on 13<sup>th</sup> August, 2016 in Bengaluru on human rights abuses in Kashmir in which families of victims participated. From the statement of Amnesty it is evident that the police had been informed about the meeting, were present at the venue and had observed firsthand the event and therefore had knowledge that the allegations of the VHP about the meeting were politically motivated and false. That the Karnataka police chose to register a FIR despite all this only highlights the dangers of arming the state with such draconian laws like the anti-sedition laws.

The 13<sup>th</sup> August, 2016 event itself was in the backdrop of the 2015 Amnesty International report "***Denied: Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir***". The Report focused on the travails of families of persons who lost their loved ones due to excesses by security forces. This report is in the public domain. Families of victims of State violence were present to narrate in first person, the situation in Kashmir and the difficulties in claiming justice and accountability in cases where innocent people are killed in encounters or enforced disappearances. The meeting itself included showing video films of testimonies of other victim

Legislature has specifically provided that court will have no such power to transfer cases from J & K Courts outside the State. In such a situation to invoke the powers of Article 142 to pass orders contrary to J & K legislation is a serious breach of Article 370 having

families, a panel discussion, musical performance and skit.

PUCL sees the recent registration of an FIR for sedition against Amnesty International, India and the witch hunt into the finances / funding of the organisation as yet another instance in the long string of events where the State has used right wing, majoritarian groups to stifle dissent, prevent discussion and control debate. There is a visible pattern across the country – from the incidents in JNU, Hyderabad Central University, Allahabad University, or the witch hunt against Teesta Setalvad and Javed Anand and their organisation CJP, Indira Jaisingh and Anand Grover of Lawyers Collective, Green Peace and now Amnesty International – where, in every meeting discussing human rights violations suffered by minorities and dalits, or excesses of security forces whether in Kashmir, North East or in Maoist regions, a small fringe group creates a commotion, which is used to first disrupt the meeting and thereafter to harass the organisers by slamming cases against them. Seldom is any action initiated against the individuals who disrupt meetings in the first place. For instance, in the present incident, the local police were informed and were present at the meeting. Why were the disruptors not removed by the police present in the venue or why was no FIR registered against the persons who appeared to have come prepared to disrupt and actually disrupted the meeting?

It also needs to be highlighted that

grave consequences. I hope the Union of India and State of J & K will seek review of this judgment to avoid serious Constitutional and political consequences, so as to ensure people of J&K that there will be no weakening of their autonomy. 17/08/2016 q

the repeated invocation of the anti-sedition offence (sec. 124 A IPC) over any other section of IPC is mainly to create a public opinion that those who demand accountability of the state and its agencies, including the police, para military and security forces, are essentially "anti-national". This creates a negative image about them amongst common people; the 'anti-national' tag, in turn, ensures that the state can further persecute them without much adverse public opinion.

It is in this context that we need to also notice that irrespective of political party in power, most governments tend to abuse the extremely coercive, anti-democratic, anti-sedition provision, sec. 124A IPC to silence dissent and crush criticism. There is little difference between a BJP government invoking sedition provisions against Dr. Binayak Sen in Chhattisgarh or the AIADMK government invoking sedition laws against peaceful, anti-nuclear protestors in Koodankulam in Tamil Nadu or cartoonist Aseem Trivedi being arrested in Maharashtra or the case launched by the TMC government in West Bengal against academics; more recently in the last one year itself, is the sedition case against JNU Students Union leader, Kanhaiya Kumar in Delhi, the Tamil folk singer Kovan in TN for criticising the government's liquor policy and against Hardik Patel for rallying the anti-reservation struggle involving Patels or Patidars in Gujarat; the latest to join this long list of

infamous sedition cases is the present case against Amnesty International India launched by the Congress government in Karnataka. In all these cases, what weighed were political considerations of the ruling parties and governments dealing a death blow to the rule of law and functioning of the criminal justice system.

It has been a long held position of PUCL that the anti-sedition law

(sec. 124A IPC) should be repealed immediately. It is ironical that in Britain itself the sedition clause has been repealed while India continues to retain it.

PUCL appeals to all concerned citizens, democratically minded groups and human rights movement to once again give a call for repealing sec. 124 A IPC and to launch a mass citizen's campaign to make ordinary citizens aware of the dangerous, anti-democratic

nature of this archaic, colonial era provision of law.

PUCL also demands that the Government of Karnataka and the Karnataka Police immediately withdraw the FIR lodged against Amnesty International, India for the meeting organised by it on 13<sup>th</sup> August, 2016 in the United Theological College in Bengaluru.

**Prof. Prabhakar Sinha**, President  
**Dr. V. Suresh**, General Secretary,  
PUCL National

## Freedom from AFSPA in J&K and Manipur

**Pushkar Raj**, Former General Secretary, PUCL National

As India celebrates its anniversary of independence from the British rule it, is worthwhile to ask when the people of Jammu and Kashmir and Manipur will get freedom from the Armed Forces (Special Power) Act 1958 (AFSPA) which is no less than being living under the colonial rule. The law that the British conceived in the wake of quit India movement of 1942, was first promulgated in 1958 to counter a parallel government established by the militant groups in the Naga Hills. In a war like situation the security forces were empowered to assert the sovereignty of the state against an armed 'internal enemy'. But presently in J&K and Manipur there are elected governments. In such a situation, AFSPA's use in the civilian areas does not stand scrutiny at first sight.

It needs no repetition that the AFSPA is a draconian piece of legislation and when in operation, a citizen is under a constant shadow of fear that he may be turned into a victim by the security forces at any time while going about his normal daily chores such as travelling to the office or visiting friends. As the region is declared a 'disturbed area', the security personnel can randomly question people and can be rude to the extent of causing bodily injury, rape and death while at the same time going unpunished, for under the law they enjoy

impunity.

Sixteen years back in November 2000, what is now known as 'Malom Massacre' ten innocent people, including an eighteen year old national bravery award winner waiting at a bus stop, were killed.

Evidently, it was a retaliatory use of force against the innocent people who were unarmed and going on their daily errands. It was a ghastly act of terrorizing and punishing innocent citizens under the shield of AFSPA. No one ever got punished!

For the last twenty six years, AFSPA is in operation in Kashmir. Thousands have got maimed, killed and disappeared. There are officially acknowledged unmarked graves and visible disfigured faces. Pellet gun wounds have left thousands of young men scarred in body and soul. It is justified to ask whether government is using AFSPA as a substitute for a policy on Kashmir. If so then government has been executing a blunder.

As a policy AFSPA can never succeed because the repressive laws have a tendency to alienate general public of a region, thereby expanding the support base of discontent of which militancy could be one of the off shoots that may also have some covert community support.

Secondly, under the protection of laws like AFSPA the acts of

omission and commission by the security forces allegedly result in mass killings, rapes, disappearances and torture. In the process the state loses legitimacy and moral authority to rule. This is what has happened in Kashmir presently. The elected Chief Minister of the state is unable to face her own people.

Interestingly, the AFSPA has come under scrutiny and fire of the judiciary many a times. Jeevan Reddy committee (2004) and Santosh Hegde committee (2013) questioned its content and operation. Irom Sharmila has undertaken, perhaps world's longest fast, against the law. The Supreme Court too recently held in its judgment that there cannot be an absolute immunity from trial by a criminal court (The Hindu, 9 July 2016). Then why is that the Indian government is not listening and treating its own citizens as enemy? It seems that the laws like AFSPA suit the establishment. The contention gets credence from the statement of Irom Sharmila, who in an interview said that the government and the army are colluding to defraud people implying that the both are beneficiaries of the 'disturbed areas' grants from the centre without financial and administrative accountability (*The Hindu*, 5 March 2013).

In Kashmir too, militancy has become an industry that serves an elite while common masses continue to be fodder for fire. The continuation of AFPSA seems to serve and benefit a powerful section of the establishment of the state including the Army, political leadership, police and civil administration as well as the 'separatists'. No wonder J&K continues to be India's one of the top corrupt states. It also serves to

brand victimized population as 'anti-national' therefore deserving punishment without invoking moral outrage in rest of India against the killings.

Recognizing that the unrest in Kashmir and Manipur is for justice, democracy, rule of law and right to be heard; and it is the only way to break the present jinx as Rajiv Gandhi showed in regard to Nagaland and Atal Bihari Vajpaee in the past attempted in relation to

Kashmir with accolades. It is about respecting the values enshrined in the preamble of our constitution and extending them to our own people who are also part of an 'independent' India. Unless we do so, Independence Day will have little meaning for the people of Kashmir and Manipur.

*Pushkar Raj is a Melbourne based writer. Formerly he taught political science in University of Delhi and was the National General Secretary of PUCL. Views are personal. He can be contacted at <raajpushkar@gmail.com> Q*

PUCL Press statement: 16<sup>th</sup> July 2016

## Why is Kashmir Boiling?

### ***A call to citizens to protest an encounter killing and brutal handling of after shocks***

PUCL Condemns Brutal Repression of Unarmed Protests in Kashmir and Urges the Indian State to act within the bounds of law to end terrorism in the state.

PUCL expresses its deepest concerns about the manner in which the Indian security establishment has handled the protests that erupted across the Kashmir valley as a consequence of the killing of Burhan Wani in a suspected fake encounter last Friday, 8th July, 2016. By many accounts, Wani was shot at from close quarters of about 4 feet in a cold blooded murder and not in an encounter. Two other persons accompanying Wani were also killed by a special team of the security forces. Such cold blooded killings camouflaged as "encounter" in an alleged gun-fight is unacceptable in a democracy. PUCL condemns both the Central Government and the PDP led J & K government for launching an operation to liquidate suspected or real terrorists in fake encounters instead of respecting the rule of law and prosecuting them.

During the last few months, many terrorists have been killed in Kashmir without noticeable protest, but following Burhan Wani's killing the valley is on fire. The widespread protests in the valley has led to the firing in which as many as 34 unarmed Kashmiris have been

killed and over 92 people injured including those hit in the eye by the so called 'non-lethal' weapons firing pellets, instead of bullets.

It is important for the rest of India to ask why there is so widespread and determined protest now when there was no protest at such a scale every time alleged terrorists were killed? The obvious reason is that though the protesters accept that those who fight with arms must expect to be countered with arms, as is the rule of war as well as peace, but to them, the killing of Wani was not in a real encounter but in a fake encounter after luring him to the place where he was killed with his two friends. Most lamentably, the circumstances and manner of Wani's killing are being concealed from the people, but the people of Kashmir know it and are seething with anger.

Some newspapers have reported the circumstances and manner of Wani's killing but placed it at some obscure place. For example, The Dainik Bhaskar, Muzaffarpur edition (11.7.2016 on page 17) has published an account of the encounter based on an interview of Upmita Bajpayee with an officer involved in the operation. According to the officer, a honey trap was set with a girl known to be close to Wani. She lured him to visit her at her house at the village Badmura. The security forces were

tipped and were also informed that the terrorists were not heavily armed. The house was surrounded and was set on fire to force him out, as the Islamists do not want to die in a fire as it is like 'Dokhaj' (Hell). As the fire raged, Wani reportedly came out supported by two of his friends. The security forces shot him from a distance of 4 feet. They also killed both of his friends though they initially wanted to capture them alive but killed them, too. The heading of news item is KHUD JAAL ME FANSA THA WANI, SENA NE GHERA TAB NASE ME THA, 4 FEET DOOR SE MARA GOLI (Wani walked into the trap himself, when the armed forces surrounded him, he was inebriated, was shot from a distance of four feet).

Kashmir would not have been on the boil if Wani were not killed in cold blood in a fake encounter after setting a honey trap. Most likely his death would have been protested like other cases of killing of terrorists in a real encounter but without the scale of current uprising.

It is important to point out that the alleged terrorists are being treated as worse than Nathuram Godse, who murdered Mahatma Gandhi and Ajmal Kasab, the Pakistani terrorist, involved in Mumbai terror attack of 2008. None of them was shot dead like Wani. They were

tried giving them the opportunity to defend themselves and finally punished according to the law. That is what the adherence to the constitution and the rule of law mandates and is the basis of our claim to be a civilized nation.

It is a shame that the rest of India is not protesting against the cold blooded murder of Wani and his friends. Their being a terrorist was not a greater crime than Gandhiji's murderer or Ajmal Kasab's role in

Mumbai terror attack. Our law as reiterated by the apex court from time to time does not permit killing of terrorists in fake encounters and treats it as plain murder. The general indifference or support for the killing of Wani in the rest of India smacks of a double standard and angers and further alienates the people of Kashmir.

The PUCL demands that regardless of the difficulties, the State must fight terrorism within the

frame-work of the constitution and the law of the land to win the trust of the people in the fairness of the Indian State and arrest further alienation of the Kashmiris. The lawless ways of the State are bound to add to the legitimate anger and alienation of the Kashmiris.

**Prof. Prabhakar Sinha**, President;  
**Dr. V. Suresh**, General Secretary,  
PUCL □

## President's Letter to PUCL Members on 20th July, 2016

Dear Members,

Our attention has been drawn to few mails of PUCL members critical of the statement of PUCL on the repression of the people protesting against killing of Burhan Wani in Kashmir. As you are aware, PUCL has a written constitution and the organisation has to take a position on any issue in conformity with its provisions. Whenever you have any doubt regarding the correctness of its stand, please judge it in the light of its constitution and draw attention to the deviation from it, if you find any. We would be happy to make necessary correction if we find that a mistake has been made.

PUCL has issued a statement on the ongoing repression in Kashmir (Why is Kashmir boiling?). It is not a statement on Kashmir problem in general or terrorism or terrorists as such. However, some members feel that PUCL should not use the expression 'terrorists' for the people using arms to achieve their objective (whatever it may be) and call them 'freedom fighters' or rebels fighting the occupying forces of India instead. PUCL uses the expression 'terrorist' simply as a description of a person/persons, who may be involved in acts viewed as a terrorist act without regard to his/her objective. It uses the

expression for those involved in the terror attack at Malegaon, on the Samjhauta Express, the terror attack in Mumbai and all other places including Kashmir.

PUCL does not support acts of terror or violence regardless of the cause for which violence is unleashed. It does not classify or categorise terrorists as good terrorists, bad terrorists or non-terrorists or freedom fighters. It has no information who among the terrorists in Kashmir is fighting for Azadi and is a 'freedom fighter' or who is fighting for Kashmir's accession to Pakistan and who is acting as an agent of the ISI. PUCL refrains from such an exercise. It also refrains from **offering solutions to political problems (not covered by its constitution)** as it would be going beyond its jurisdiction. PUCL was formed to fight to protect the civil liberties and democratic rights of the people so that they might fight for their **objectives democratically using peaceful means.**

It is pertinent to note in this context that PUCL does not support **use of violence as a means even for laudable goals.** The following make this point very clear:

**Art.2 of its constitution provides as follows:**

**"The aims and objects of the**

**organisation will be**

**2a. To uphold and promote BY PEACEFUL MEANS civil liberties and the DEMOCRATIC WAY OF LIFE throughout India. (emphasis added throughout).**

**2g. To secure the rule of law and the independence of the judiciary".**

**Historical context of PUCL's stand on use of violence as political means:**

The question of violence was forcefully raised by some members at the National Convention held in Madras (the present Chennai) on March 7, 1982. The context was the contention of some members that the Naxals should not be given the constitutional protection as they resorted to violence and did not believe in the constitution of India. The demand was firmly opposed and the following resolution was adopted on the question of violence:

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

**It appeals to all to use to the utmost, the agencies and methods available in an open society. Apart from other factors, violence even for laudable objectives will legitimise counter violence by the state and other**

groups.

***It affirms that even those who have taken to violence are entitled to due process of law. We believe that this commitment is the very faith of an open society and also adherence to this commitment is an effective way of converting all to the democratic and peaceful way of transforming our society".*** (Ref.: Know PUCL, p 67, edition, 2008)

I think that the provisions of the PUCL constitution and the resolution of the National Convention cited above should leave no room for doubt that the statement of the PUCL under discussion is absolutely in conformity with its constitution. ***The PUCL constitution does not allow it to support use of violence even for laudable objectives.***

However, I would like to cite one more provision of the PUCL Constitution, which would explain why divergent opinions exist among our members.

Art 2 of the PUCL constitution reads as follows:

**"2. Aims and Objects**

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

Thus, PUCL has among its members Gandhians, Sarvodayees, Naxals, other Marxists and persons with commitment to no political ideology. It is impossible to expect the position of PUCL to be in

conformity with the personal belief of all of its members holding different to antagonistic views. The very basis of all of us remaining in the PUCL and working together is our commitment to adhere to its constitution. It is not at all unusual that sometimes some of the members find the position of the pucl sharply in conflict with their personal view, but we have to accept that the stand of the pucl must be determined by its constitution and not by the personal views of its office bearers or some members or public opinion. In fact, the office bearers would be guilty of violating the constitution and abdication of their responsibility if they take a stand which is contrary to the PUCL constitution.

**Prabhakar Sinha**, President, PUCL.

**Note:**

\* PUCL has members for whom non-violence is an article of faith and also those who believe in bloody revolution. It has members, who do not believe in the Constitution of India and there are those who are deeply committed to the Constitution. There are members, who believe that unless there is a classless society the violations of human rights would continue and that PUCL should work for a classless society. There are members who believe that democracy would come to an end as soon as those working for a classless society come to power. PUCL does not endorse any one of these views held by its members and faithfully abides by its Constitution.

PUCL also refrains from taking a stand on political issues not covered by its constitution. A few examples given below show the possible consequences of deviating from this position.

During the Jharkhand movement,

there were members who were for Jharkhand state and wanted PUCL to work for 'the legitimate demands of the people of Jharkhand'; but there were as many others from Bihar, who were opposed to the demand. The same was the case during the Telangana movement. In fact, the President of AP PUCL unit demanded on several occasions at the meetings of the National Executive and the National Council that PUCL should take a stand in favour of Telangana State but realised that PUCL could not take a stand without violating its own constitution.

Similarly antagonistic views exist among the members on how to solve the Kashmir problem and what would be its right solution. However, realising the fact that **Offering a solution to the Kashmir problem would be going beyond the jurisdiction of the organisation; PUCL has refrained from offering any 'solution ' to the Kashmir problem till date and continues to do so. It would continue to refrain from offering solutions to political or other problems not covered by its constitution.**

On Kashmir also there is wide difference of opinion among PUCL members. There are members, who firmly hold that J & K is now an integral part of India and the issue cannot be reopened. There are members, who hold that the right of self determination should be given to all the 'nationalities' living in India and not only to the Kashmiris. There are members who hold that Nagaland should be given the right of self determination first. There are other more rigid views on Kashmir held by many of our members. **PUCL does not endorse any of them, but the members are free to hold and express their views in their personal capacity without involving PUCL.**

In Patna, on July 18, 2016, a Protest March was organised against the ongoing repression in Kashmir and in support of the right of self determination of the people of Kashmir. Several important PUCL members including a few NC members were involved in organising the event. They were also arrested and detained for a while, but they acted in their

personal capacity and not in the name of the PUCL. ***PUCL members are free to act according to their belief in their personal capacity on political issues not covered by its constitution.***

**Important Note:** Persons joining PUCL sign the following pledge:

"I subscribe to the aims and objects of the *People's Union*

*for Civil Liberties* and agree to abide by its Constitution. Please enroll me as a member".

P.S.: It is normal for other organisations/ persons to welcome PUCL's stand if it is in their favour and criticize it if it is not favourable to them. We should appreciate their right to do so and take the response in our stride. q

## Inviting Readers to Discuss the Draft National Education Policy, 2016

The Ministry of Human Resources Development (MoHRD) has released a Draft National Education Policy, 2016 and invited responses from citizens, academics, educationalists and others. It is important that the human rights community should also participate in the debate and

critically analyse the pros and cons of the proposed policy from the human rights perspective.

Prof. Vinay Kantha, PUCL National Vice-President has written this critique of the NEP, 2016 so that our members can be informed of the discussion going on nationally. We invite readers to contribute to the

discussion by sending in their comments, analyses and concerns directly to Prof. Vinay Kantha at <vinay\_kantha@rediffmail.com> with copy to <pucl.natgensec@gmail.com>. The last date for sending in written comments to the Ministry is 15<sup>th</sup> September, 2016. q

## Proposed Education Policy 2016 and Human Rights Perspective Prof. Vinay Kantha, National Vice-President, PUCL

### A) Nature and scope of human rights and education

Nature of human rights is primarily normative and ideological, and hence educational, in a wider and basic sense. Both the ideas of universal human rights and universal education aim at a redesign of society and redefine powers of state under a newly defined set of principles. Role of universal education has a definite and considerable overlap with the establishment of human rights and hence education is a natural site of intervention for the promotion or safeguard of human rights.

If democracy is meant to confer rights and dignity on individuals vis-a-vis the state, one of the key objectives of universal basic education is development of values of human rights and democracy in

early education. Universal education should be freely provided by the State to all children till an age at which they are well-equipped to take decisions about themselves. This, in turn, ordinarily implies inculcation of acceptable human and social values, as well as role as good citizens and capable useful individuals. Even beyond school education respect for human rights is fundamental in the constitution, that the people of India have given to themselves. If an educational policy flounders on this score, something is flawed in it.

### Which values and what kind of society?

Question of values may be a little problematic in the cultural context, but in the present Indian context values enshrined in the Preamble to the Indian constitution, which are

similar to the values of UDHR, like the idea of justice and dignity of every individual, principles of liberty, equality and secularism, among others, are fundamental and necessary. In fact these values define the very ethos of democracy, and the principle of Rule of law, rather than whims and fancies or prejudices of individuals or groups, including state functionaries.

They also give a perspective of rights - Rights of men and women, Protection of individuals from State power - broadening concepts of rights coming right up to right to development or third generation rights

These values can provide a bedrock of society different from the traditional and orthodox. Such a society will be just & egalitarian,

inclusive, liberal, secular & democratic

### **Human rights & Democracy**

Human rights and democracy have historically been viewed as separate, albeit parallel, concepts. However, understandings of both human rights and democracy are dynamic and varied, and recent re-conceptualizations of both ideas have led to the emergence of a discourse that recognizes their interdependence.

The relationship between human rights and democracy perhaps becomes more clear through an examination of civil and political rights, especially those articulated in Article 21 of the UDHR and Article 25 of the ICCPR, both of which ensure citizen participation in government through free and fair elections and through direct service and participation. These rights are related to the rights of expression, association, assembly, and movement, which are also interdependent with democracy, as well as the rights to liberty, security of person, and the guarantee of due process of the law. Further, economic, social, and cultural rights are also being increasingly recognized as being mutually dependent, if not integral, with democracy. Indeed, political and civil rights can be realized only by citizens who meet a basic level of physical security in terms of access to shelter, water, sanitation, and food, as well as education, healthcare, and employment or income. Socially, democracy is interrelated with rights to equality and non-discrimination, especially for marginalized groups including women and minorities. Culturally, the respect for diversity and pluralism inherent to democracy is linked to the protection of rights related to language, religion, or ethnicity. Thus clearly human rights and democracy are

interdependent, especially when defined in the broader conceptualizations of democracy as *substantive* democracy, and human rights as civil, political, economic, social, and cultural rights. Both can become meaningful if the common man is at the centre of discourse on either.

### **B) Background**

After independence India started its journey of socio-economic transformation with a well thought-out document, constitution of India, prepared by stalwarts after nearly three years long deliberations.

Combined with Nehruvian vision of development an educational policy was implicit in the Indian constitution, which bound us to a value system outlined right in the Preamble. When we failed to provide free and compulsory universal elementary education, need for a change of course and clear policy framework was strongly felt. A comprehensive exercise was undertaken by a Commission led by D S Kothari which resulted in the Educational Policy of 1968.

Among other things the Policy sought higher outlay of six percent of National Income, uniform 10+2+3 structure and a Common School System. A detailed manpower planning was attempted by the Commission. But except introduction of a uniform structure, not much substantial change came about. Indeed seldom such a massive well-conceived report is given so quiet a burial.

About two decades later the bureaucracy came out with its version as the New Educational Policy 1986. The review permitted to the Committee headed by Acharya

Ramamurti was summarily disposed of by Reddy Committee, and a revised version came with a Framework of Action.

In the nineties District Primary Education Programme (DPEP) came with external support, which was followed by Sarva Shiksha Abhiyan for universal elementary education. In 2002 by 86<sup>th</sup> constitutional amendment, Article 21 A conferred the status of fundamental rights on elementary education in the age group 6 – 14 years, which led to the Right to Education Act 2009. Rashtriya Madhyamik Shiksha Abhiyan (RMSA) was introduced during the Eleventh Plan followed by Rashtriya Uchhatar Shiksha Abhiyan (RUSA) in the Twelfth Plan.

Thus over the last three decades the whole scenario as well as policy with regard to education has changed comprehensively. Importantly, about twenty years back the economic policy was also redefined and market policy acquired primacy over state institutions. Alongside globalization of economic policy, there has been a rapid expansion of the Information Technology (IT) sector.

A new policy is being proposed today for which a consultation process began in March 2015. It had only two parts: school education with its 13 suggested themes and higher education with 20 themes. Yet the agenda, explicit as well as implied, raises many questions and doubts. Whatever be the claims and counter-claims regarding the consultation process, a five-member Committee, headed by T S R Subramanian was constituted to

draft a document based on consultation.

Apparently not happy with T.S.R. Subramanian Committee draft Report on New Education Policy (NEP 2016) on 30 April, 2016 and government has issued a new document of its own with a title 'Some Inputs for Draft National Education Policy 2016'. Comments are invited on this document by mid-August.

C) What is the overall approach of Proposed National Education Policy?

The new document confirms that

The Government is going to facilitate the growth of commercialisation of education further. Also, the policy of Public Private Partnership will be encouraged to transfer public funds to private agencies.

So, the government doesn't speak about 'Common School System'- a commitment made in the first educational policy in 1968, and reiterated in 1986 policy. Thus multiple types of institutions would continue both in public and private sectors.

The government is going to proceed with globalisation of trade in education services, particularly at the tertiary level, by institutionalization of multinationalisation of accreditation along with legislation for allowing foreign universities.

Child labor is not going to be abolished and rather may be institutionalized by providing 'alternate schools'. Open schools, open colleges and open educational facilities on one hand and skilling on the other hand will be the main thrusts of the government and all disadvantaged will be pushed towards these areas. The apprehension is nearly

confirmed by the recent retrograde amendment in the child labour law.

Though government in the document talks of social justice, nowhere it talks about need of reservations, applying reservations to all institutions and at all levels and applying rule of reservation in privately run schools and colleges. There is no mention of the need of hostels and other affirmative measures to bring the poor and socially disadvantaged to the schools, colleges and universities.

Coming to the campus democracy, there is a likelihood of selective ban on student and teacher activists to curb opposition to the projects of neo-liberalism and possible saffronization in the campuses.

The medieval period of Indian history is not even referred to in the document and it makes a clear indication of the government approach to mitigate the contributions of the period in development of the civilization of this land. This approach leads to neglect or playing down of contributions of all religious and linguistic minorities, tribes and suppressed castes.

High level of bureaucratization of administration and centralisation of curricula may limit freedom of thought and on the other hand may also subordinate education system to global market in content and form. Uncalled for debates are being triggered. The constitutional principle that primary education should be given in the mother tongue is a pedagogically sound idea, and does not need to be opened up. Languages of the people is likely to be neglected. Mother

tongue as a medium of education may only be reluctantly accepted only up to class V and the state governments given free hand to introduce English as medium even at primary level.

The draft contains a section entitled, "Language and Culture in Education" (see page 30-31). In this section, it leaves it to the discretion of "the States and Union Territories, if they so desire, to provide education in the schools up to class V in mother tongue, local or regional language". The section also states that if the medium of instruction up to primary level is the mother tongue or local or regional language, then the second language will be English. The choice of the third language (at the upper primary and secondary level) is left to individual states and local authorities.

The document nowhere gives a clear theoretical or even historical understanding of what education stands for. It does not give full recognition to the fact that education was denied to vast majority of this country in the name of caste and gender. Neither the document notes the historical development of the present education system nor does it think for a scientific secular democratic education system for future.

It does not look like a policy document or like a document in preparation of a policy framework. It only tried to reorient the education system to sub-serve the interest of the corporate capital domestic and foreign on one hand and to communalize education on the other hand.

It should be kept in view that a Policy paper needs to be a comprehensive document, covering all relevant areas, starting with vision, aims and objectives reaching up to a framework for action including finances and monitoring plan. The structure of the draft paper, not to speak of the New Policy, is still unclear.

Model of development being followed in the country at least during the era of liberalization is accentuating disparity. It is causing threat to ecology & environment and depletion of natural resources, or their control and excessive use by some people or corporate houses. For the labour there are occupational hazards and for the people denial of rights. Insensitive handling of democratic protests by the state generally fails to respect human rights.

In the domain of education quality suffers. Curriculum, text books, knowledge systems etc may all be transformed against the interests of people and tenets of human rights. If events like 'Samajotsava or Saraswati Pooja in Karnataka, rewriting of textbooks in several states, and many other recent intervention are scripted in the above manner, a bigger narrative is being prepared through a new educational policy, which is under so-called consultation process

#### **D) Comments on some specific areas**

**Right to Education (RTE) and School Education:** RTE became a fundamental right in 2002, but the Act to implement article 21 A of the constitution came in 2009. It became effective from April 2010, but norms & standards of the

Schedule, not achieved as yet, though there was a three years deadline given in the Act itself (less than 10% schools are fully RTE-compliant!). More than 90% schools are not proper schools as stipulated under the Act. Grievance redress mechanism is either not in place, or it is not effective. True SMCs not to be found in respect of most government schools, not to speak of federations, which can play an effective role and exert pressure on the governments. Even the final deadline for teacher training has passed in five years. The opportunity afforded by the Act seems to be lost, or it was itself a diversionary tactics. Citizens have to understand that RTE is not merely an Act. Rather it is a full-fledged fundamental right which needs to be claimed, but no here also there is no preparedness either. Thus the need to galvanise the civil society.

There are several questions regarding RTE Act, 2009, which need to be borne in mind. Apparently it doesn't genuinely confer an enforceable right to our children? Further, quality issues are most important, more so for the children from weaker sections and disadvantaged groups. Yet there is hardly any firm assurance on that.

The RTE Act, 2009 must be implemented in full within a clearly defined timeframe, covering all habitations, especially those of marginalized groups, and including development of infrastructure and recruitment of professionally qualified teachers. Piece meal work will be counter-productive, for example, no detention policy without proper implementation of a system of continuous and comprehensive evaluation has already created so much of confusion.

**Closure of Schools Sanctified:** The new document states, 'Each

State will undertake a detailed exercise of school mapping to identify schools with low enrolment and inadequate infrastructure. Wherever possible, efforts will be made to convert existing non-viable schools into composite schools for optimum utilization of human, physical and infrastructural resources, better academic performance and cost effective management' This provision which in all probability would be included in NPE 2016 final document would only institutionalize the ongoing practice of closing schools in hamlets particularly in SC and ST colonies by different state governments after 'RTE Act 2009'.

**Early Child Education not Guaranteed:** The 'MHRD Document states that 'Research from around the world highlights the importance of early childhood education. However, participation in pre-school education remains low. Expanding access to early childhood education to provide equal opportunity to all children to prepare them better for formal schooling emerges to be a high priority task' (chapter 2 preferably through an enabling Legislative Act. But the document neither gives a constitutional guarantee nor promises a legal provision for early childhood education. It only talks about 'strengthening Anganwadies, shifting Anganwadies to primary schools wherever it is so possible', 'developing course material' and 'providing training for Anganwadi workers'.

**Pre-school and Secondary Education:** The elementary education is not universalized even after implementation of RTE Act 2010 for six years. Now universalization proposed to be extended to cover pre-school and secondary education by this document, but at best only through

a programme, rather than legislation.

If the government is really serious about providing quality education to all children, it should bring a new Act to cover Pre-School to Senior Secondary. The Act shall provide qualified teachers in number and kind and infrastructure minimum on par with central schools and Navodaya Schools in all government schools. It shall also provide for implementation of the Allahabad High Court Judgment which directs that all persons who get benefit or salary from government including judges, ministers, public representatives, officers, employees and teachers should admit their wards in government schools only. Such a provision, if in place, does not only give a great impetus to bring good educational legislations but also for their proper implementation.

**Quality in School Education:** The MHRD Doc (Page no 9) states that 'the biggest challenge facing school education relates to the unsatisfactory level of student learning. Further Chapter 4.3 of the doc deals with 'learning outcomes' in schools. The document doesn't seem to realize that the learning outcomes depend, in the first place, on provisions available in the schools. If there sufficient infrastructure is not provided, sufficient teachers are not appointed in the schools and if the students are not supported materially and emotionally to participate in curricular process regularly, how come good outcomes emerge. The document speaks of vacancies in posts in schools but do not speak about the need of sanction of new posts in Lakhs of schools. Only a lip service is rendered for labs and libraries.

The option of Open learning for less fortunate further dilutes the

commitment to quality. Many of them will be diverted to open and distance learning. This is not confined only to higher education. Even at school education, the children of age 11 years will be covered by open schooling. They will not get liberal education but only vocational training. Please see paragraph 4.17.5 of the doc: 'The National Institute of Open Schooling (NIOS), in collaboration with Ministry of Skill Development & Entrepreneurship, will redefine itself to address the large potential demand for

**Centralization of Curriculum:** Rather than adhering to the paradigm shift marked by NCF 2005, MHRD document (4.5.3) states that 'for science, mathematics and English subjects, a common national curriculum will be designed. For other subjects, such as social sciences, a part of the curricula will be common across the country and the rest will be at the discretion of the states.' This is but centralisation of syllabus.

#### **Higher Education**

**Increase in GER in Higher Education:** Access in higher education is very limited particularly among the disadvantaged sections of the society. Even those who complete school education facing all odds are not supported by the existing highly commercialised education system to pursue their higher education. The doc neither gives proper recognition to the fact nor provides for the increase of the enrolment of the disadvantaged sections in higher education. India falls behind not only all developed countries but many a developing countries in net enrolment ratios in higher education. The MHRD document does not seem to bother about it. The current target is to increase GER to 25.2 per cent in 2017-18 and further to 30 per cent

in 2020-21.' (Page 7). While one is not sure meeting this modest target, one could be sure that this growth does not assure equal distribution of opportunities across the social sections. Disadvantaged students will have to go to open education facilities. Under Paragraph 4.21 the doc is on record "Instead of setting up new institutions, which require huge investments, priority of the Government will be to expand the capacity of existing institutions." So, more GER means more open learning. The first generation students will have only open colleges and universities.

**Higher Education and Employability:** The MHRD Doc states that 'a large proportion of the products of the education system are found to lack employable skills. This has substantially lowered the credibility of the higher education system. The utility of higher education in assuring employment remains questionable. Many graduate and post-graduate students do not get jobs in their respective fields. The task of enhancing the employability of the products of the education system ought to be accorded high priority' (Page 11). The statement of the document hides many facts and Implies that not only the graduates from liberal courses but also from professional courses are remaining unemployed in great numbers. Yet there is a calculated neglect of liberal courses, and an obvious preference for Vocational Education and Skill orientation.

**Splitting Universities:** "Efforts will be made to move towards a university system integrating UG, PG & doctoral studies, with faculty concurrently teaching both at UG and PG levels which will help improve synergies between teaching and research. Universities will be multi-disciplinary in nature

and not single discipline specific” This proposal will not be implemented because the commercialisation of education, which this government embraced, will not allow any progressive measure to be grounded. Further in paragraph 4.10.7, the doc states that a Teacher Education University will be set up at National level. This stands contradictory to the earlier statement that the 'universities will ... not be single discipline specific'. The document is self contradictory. Further, “The existing affiliating system will continue but with a maximum limit of 100 on the number of affiliating colleges. Universities having more than 100 affiliated colleges under its ambit will be accordingly restructured.

**Teacher Education continues in Private Hands:** The MHRD Doc states that 'In spite of the continued efforts for improving teacher quality and performance, the system for initial professional preparation and continuing professional development of school teachers continue to be characterized by several deficiencies (Page 11) Different state governments stopped establishing new teacher training institutes both at elementary and secondary levels leaving the field open private training institutes and colleges with the support of National Council for Teacher Education (NCTE) working directly under MHRD.

The best solution may be that all state universities, all medical colleges, engineering colleges and other colleges in states may be developed on par with central universities and other central institutions and the competition for fewer central universities is done away with. The other possibility, a mid way for time being, may be that the central institutes may allot seats to all states on the basis of proper and democratic rules formed for the

purpose and students selected by state level examinations on the basis of respective state level syllabi are given admission. Reservations should be followed strictly. The pressure of National Curriculum Framework and CBSE syllabus should be done away with and the state boards shall have full freedom to formulate their own curriculum and syllabi. It should also be considered that CBSE should be allowed only to give affiliation/recognition to central schools established by central government departments and not to give affiliation/recognition to private schools.

**Education and Culture:** The document has preferred the word 'culture' for the word 'value'. Education should give democratic values to the students. All commissions recommended value education but this doc proposes cultural education. This choice of word is not without significance. Further, the terms 'Secularism' and 'Socialism' are conspicuously missing in the policy initiatives (4.11.4) while they are only spoken about in introductory note (4.11). The introductory notes to the document are rich, but policy statements are meagre and stand in contradiction in all most all chapters. It is obvious that 'policy initiatives' will have more influence on the process of further detailing the policy for practical purpose than compared to the introductory notes. Obviously the introductory notes camouflage the real designs articulated in 'policy statements'.

Further, one may notice that the document qualified the word 'freedom' by 'responsible freedom'. This gives rise to suspicion that they want to stifle the campus democracy and suppress the academic community which is raising voice against their desire of commercialisation and sectarian

ideology. Any opposition could be labeled as irresponsible.

**Commercialisation continues:** The MHRD Doc (4.21) states that 'Education, in Indian context, should be considered a public good and there is a need for greater public investment in the sector.' The sentence is not only ambiguous as a policy guide, but self-contradictory. While the document notes that 'Commercialisation is rampant both in school and higher education sub-sectors as reflected in the charges levied for admissions in private educational institutions and the proliferation of sub-standard educational institutions', it fails to recommend clear measures to stem the rot. It further states that 'the earlier National Policies of 1968 and 1986/92 had recommended 6% of GDP as the norm for the national outlay on education, but the actual expenditure on education has remained consistently low. Hence, logically, the need to enhance allocations to the education sector to reach the desired target. However, things stand differently. It is made clear that “Instead of setting up new institutions, which require huge investments, priority of the Government will be to expand the capacity of existing institutions. Placing reliance on loans and performance-linked funding of higher education institutions to encourage excellence and efficiency, will be anti-poor. Internationalization will make it worse, leading to the allotment of the best facilities and faculties in the universities to foreign students who will pay more denying the same to the students of this country. The MHRD Doc (4.18.1) 'states that selected foreign universities, from the top 200 in the world, will be encouraged to establish their presence in India through collaboration with Indian universities.

**Disparities, equity and inclusion issues:** The MHRD document laments that 'large disparities remain at the senior secondary level. Many girls are not sent to schools; and many who complete secondary education are not able to pursue their studies at the higher secondary level and in colleges' (Page 13). But, the document does not provide any solution to this identified serious problem. The proposed intensification of commercialisation of education would only develop disparities further.

The document further states that 'the changing social contexts of education as well as the national concerns for achieving the goals of equity and inclusion demands a changed approach to education for enhancing opportunities for all learners to become successful in their learning experience and making all educational institutions responsive to the learning'. Yet this document does not speak about the need for reservations and hostel facilities. It provides no measures to support SCs, STs, OBCs and other disadvantaged people. Rather there is every possibility of denial of the existing rights, special measures and protections. Further, the expressions like 'their learning experiences' is fraught with confining some social sections to some vocations. The document states that 'skilling of students in tribal areas needs greater focus and steps will be taken to offer more skill based courses in schools after regular working hours in coordination with National Skill Development Corporation.' Clearly some skill based education will only be given to the tribal students. Such an approach is taken for minorities also elsewhere in the document.

**Bureaucratization and control:** The MHRD Doc states that 'The State will endeavor to implement the recommendations of earlier policies of 1968 and 1986/92 for the

creation of an Indian Education Service (IES), which is reiterated herein too. The IES will be an all India service with HRD as the cadre controlling authority. The doc has taken strength for its proposal for Indian Education Service from education Policies 1968 and 1986/92. There is a sea change in the situation from 1968 to the present day in approach of the central governments. Central governments, in the recent past, are trying to control education from the center unlike the governments in the period immediately after independence.

The document states that 'an independent mechanism for administering the National Higher Education Fellowship Programme will be put in place.' This measure would bypass the university autonomy and authority in providing fellowships and put the power in the hands of the MHRD in one or other way leading to corruption, nepotism and more so centralisation.

The MHRD document states that 'Periodic assessment of teachers in government and private schools will be made mandatory and linked to their future promotions and release of increments, as applicable.' This may prove highly dangerous. Not only that the teacher assessment could be highly subjective but also that it could influence the dignity of the teaching profession and would lead to subordination of the teachers to the village or locality big men.

Thus with foregoing proposals with accreditation scheme etc education system in general, and higher education in particular, will be subject to surveillance and control of the government.

**Denial of dissent and freedom:** While raising questions is widely accepted as the beginning of creation of new knowledge, the MHRD unlike TSR Subramanian

Committee wants to allow political activities in the universities only for its own reasons. So, it proposes to empower the executive or the administration of the university to ban activists and organisations selectively. The period of research is normally extended to facilitate its completion. It depends on the guide and department. Now, university authorities will put their fingers everywhere whenever they choose, and decide which student will continue and which student will not be allowed extension of time.

#### **E) Further critique of proposal for NEP '16**

##### **a. No mention of constitution, or its principles, or larger goal of education**

The document seems to be shy about constitutional values, or values of human rights, or of larger aims of education. Education can be socially transformative, and individually uplifting. Ignoring all of these the framework within which themes are enunciated are crudely utilitarian. Rather than character-building or all round development, focus is kept on learning of basic skills at the elementary level. At the higher level, likewise, in place of pursuit of knowledge, use of technology and skill development is emphasized.

##### **b. No reference to Common School System**

Both the previous policies referred to Common School System, whatever might have happened to the idea. With apparent preference of a market-oriented framework of education, no wonder, it fades out from the policy discourse itself. Predictably it does not find mention in the questions which have been cleverly chosen to turn the discussion in one direction, which is surely away from the desired direction implicit in CSS.

##### **c. Teachers**

The discussion on teachers is nearly apologetic, talking merely

about their poor quality and need of training and accountability. Further, vacancies are mentioned ruefully along with enhancement of status. There is no question framed regarding their salary, emoluments, service conditions or factors defining status. Given the lowering of their status lately, large scale recruitment of para-teachers or contract teachers, at least a consultation was called for, if not a clear commitment.

Apart from training, the 1968 policy clearly stated:

*(a).....Teachers must, therefore, be accorded an honoured place in society; their emoluments and other service conditions should be adequate and satisfactory having regard to their qualifications and responsibilities. (b) The academic freedom of teachers to, pursue and publish independent studies and researches and to speak and write about significant national and international issues should be protected.*

The 1986 policy (in spite of its default due to introduction of instructors and NFE) also had a separate part devoted to teachers.

In fact the proposed policy is likely to rely on a framework of regulatory regime, rather than freedoms consisting of NAAC accreditation etc for state universities and non-democratic composition and functioning of academic bodies.

**d. New Concept of Knowledge: Knowledge as 'commodity'**

The document redefines knowledge merely as a 'commodity'. At one place it is explicitly noted in the following words in the context of Knowledge economy:

*"Knowledge economy has an important dimension of commercialization and marketing. It is argued that protection of knowledge will provide an incentive for the producers of knowledge to produce. The 'knowledge' or 'innovation' translated into a tangible good or 'product' that is protected also carries a price which can be charged from the user of knowledge. Innovation is thus considered a critical pillar of knowledge economy. It means that countries will have to make effort to transform its implicit knowledge i.e., knowledge embodied in brains into an explicit knowledge i.e., in forms in which it can be traded".*

Apart from some explicit provisions as above-noted once the system of school and higher education comes under the heavy a of state greater mischief may follow, paving the way for a society which is more controlled and less respectful of human rights.

**e. Who makes the policy?**

Themes have been defined from above (1968 policy came out of a very large consultation, mainly with experts- Indian and foreign; 1986 policy was apparently the agenda behind the proposed formulation.) While it claims an intention of initiating Grass root consultation process, Yet there is nothing on website in any local language. The process of village-level consultation would be a mammoth exercise (2.5 lakh meetings should have taken place during Aril- May 2015!), but there is no evidence of even its knowledge.

It is greatly Influenced by some

NGO reports, external agencies and corporate sector. Quality concerns comes with definite slant, vocational education and skill training, emphasis on technology (ICT) technology- enabled learning, open & distance learning, online courses, examination/assessment, governance/management, partnership with equity or social gaps, school standards/ ranking & accreditations, research, innovation, new knowledge.

**f. Government's responsibility, especially financial commitment not clarified.**

In fact the mention of PPP and the general tenor of document indicative of a preference for market-driven policy. There is hardly any indication or suggestion for strengthening the public system of education, which will necessarily require higher outlay. If we take a look beyond this particular exercise (or pretense thereof!), then scenario hardly inspires confidence, with budgetary cut on social sector, and various assaults on autonomy of educational system.

***At the end we must remind ourselves that for safeguarding our constitution and democracy, and expanding human rights, we have to work for building a secular, egalitarian, scientific and enlightened education system rooted in socio-cultural, religious and linguistic plurality of India, in consonance with the values enshrined in the preamble of the constitution. If an educational policy fails on these counts, it does not auger well for the country. q***

**Please Note:** In case of: **(1) Change of Address** - Always send your old address along with your new address with PIN Code. **(2) Money Order** - Please give instructions (if any) with your complete address in space provided for communication. **(3) Postal Order – Please do not send Postal orders. – General Secretary, PUCL**

## Subject: Memorandum on Incidents of Atrocities on Dalits in Gujarat

To,  
Shri H.L. Dattu  
Chairperson NHRC

Hon'ble Shri Dattu Saheb,  
I submit this memorandum before your honour in the context of incidents of atrocities committed on seven Dalit youths of Samadhiyala (Una) town in Gir - Somnath district of Gujarat, on 11<sup>th</sup> July 2016 in the presence of police and citizens. Incidentally, while the State and the Nation are celebrating 125<sup>th</sup> birth centenary of Dr. Babasaheb Ambedkar, the dreadful incident of merciless beating, in broad day light, by tying-up the Dalits has occurred at the above place. The incident was in connection with slicing off leather from the carcass of a cow. This type of activity has been normally practiced in Gujarat over generations, by some Dalit members, as a source of livelihood or a means of subsistence. The so-called proponents of non-violence to any animals, and other anti-social elements under the guise of 'protectors of cows' (Gau rakshaks), had misbehaved and severely beaten up in open, this Dalit member slicing leather off a dead cow. It is clearly emerging as if such elements have no fear at all, of the rule of the law. These elements (*Jeev Daya Premi!*) have become

rampantly lawless either in the guise of non-violence to creatures or under any other pretext.

Instead of reduction in the incidence of excesses over Dalits in Gujarat, it has been on the rise. On an average, in Gujarat, every year there are some 20 incidents of killing of Dalits and about 50 incidents of rape on dalit women. As per statistics given by the government, during the years 2010 to 2015 there have been incidents of 130 murders of dalits and 336 cases of rapes on dalit women. A total No. of 5,628 cases of atrocities / excesses on dalits have been registered.

During the month of September in the year 2012, some three Dalit youths lost their lives against the police firing in Thangadh town of Surendranagar district. For this, the Gujarat Govt. had instituted a high level Police Inquiry, whose report has not been tabled by the Govt. in the Legislative Assembly as yet, and dalits have not been administered due justice till this date. For inquiring into the above incident at Samadhiyala (Una), Gujarat Govt. has taken a decision to institute an inquiry through the C.I.D. Crime. By such an inquiry, will the truth really come out? How the victims shall get justice if the

role of police is being inquired into by its own sister department?

On the incident of 11<sup>th</sup> July, Gujarat Govt. has taken steps after a lapse or delay of six days i.e. on 17<sup>th</sup> July. Due to this delay, criminals get free hand and go scot-free. What benefits shall the victims get out of the inquiry by the C.I.D. Crime? You - (NHRC), are very well aware of role of the Gujarat Govt. during the riots in the year 2002. In that also, ultimately the NHRC had to intervene to secure justice for the victims and the aggrieved. Due to this, victims of the 2002 riots could indeed, to some extent, get some justice.

The intention of the Gujarat Govt. does not appear to be fair and true and alludes to be a face saving tactic. Only when there is thorough probe by your honorable Commission, then only the Dalits can hope to secure justice and relief. **The dalits of Gujarat look forward to impartial, just and fair investigation directly by the team headed by the Hon'ble N.H.R.C.**

We shall feel much obliged if your honor could give an opportunity for a personal meeting to briefly apprise on the above matter.

Yours faithfully,

**Gautam Thaker**, General  
Secretary, PUCL Gujarat

## Pitiable Condition of Dalits in the Midst of Incidents of Atrocities

Gautam Thaker

In Gujarat, incidents of atrocities on Dalits are on the rise year after year instead of reduction in it. On an average, every year in Gujarat, about 20 dalits are killed and some 45 No. of dalit women become victims of rape. As per statistics furnished by Govt. itself, during the period of 2010-15, incidents of 130 No. of murders of dalits, 336 No. of

rapes on dalit women and 5628 cases of victims of atrocities had been registered. Thus, on an average, every year, 1100 Nos. of dalits become victims of atrocities. Rape cases numbering 39 (2010), 51 (2011), 44 (2012), 70 (2013), 74 (2014), 58 (2015) and until April 2016, 27 have been registered. These can be treated as the

statistics of dalit women and their family members who mustered courage to lodge complaint with the Police Station. On going through the figures of rape cases against dalit women, one wonders, as to which path the society is treading? During last five years, in Gujarat, incidents of atrocities against dalit have been increasing every year

instead of reduction therein, which becomes evident from the above figures. Besides the episode at Una, during 2012 three youths had lost their lives in police firing in Thangadh of Surendranagar. The report of inquiry committee headed by Additional Secretary should be released with immediate effect because the C.I.D. Crime to whom this inquiry was entrusted had told while presenting a summary report before the Gujarat High Court that in this matter no one is found guilty

of crime. On 22<sup>nd</sup> May 2016 a team of "Gau-Rakshaks" had made an assault on dalits in Rajula town of Saurashtra, on 6-7-2016, dalit, Ramabhai Singarakhiya was murdered at Sodhaana near Porbandar. Moreover, on 10-7-2016 a dalit under-trial prisoner, named Sagar Babubhai Rathod had died due to atrocities by the police. These incidents also need to be inquired into.

For improving condition of dalits in Gujarat, special courts to deal with

cases of atrocities on dalts should be setup, reservation policy in the state be implemented and entire fund allocated in the budget for welfare of dalits should be fully utilized. Moreover, "Gau-Raksha" (Cow-Protection) Committees should be declared as illegal. The Govt. should form a Task Force / Committee in Gujarat to thoroughly look into the hardships meted out to the dalits. This Task Force should be comprised of Collector, S.P., dalit Leaders and representatives from activists etc.

## **PUCL Conducts Spot Inquiry by Personally Visiting Una to Inquire after Dalits Who Became Victims of Atrocities**

**Gautam Thaker, General Secretary, PUCL Gujarat**

While the State and the nation are celebrating 125<sup>th</sup> birth anniversary of Dr. Babasaheb Ambedkar, to make an on-the-spot inquiry in to the incidents of atrocities against 7 Nos. of dalit youths in broad day light and in presence of police and the public, which took place on 11<sup>th</sup> July 2016 at Samadhiyala (Una) in Gir - Somnath district of Gujarat, a team of People's Union for Civil Liberties (PUCL-Gujarat), under leadership of Manjula Pradeep (Navsarjan Trust) paid a visit on 25<sup>th</sup> and 26<sup>th</sup> July. In this team, Neeta Mahadev (Gujarat Lok Samiti), Meenakshi Joshi (M.S.D.), Govind Parmar (Advocate and Activist), T. P. Babaria (Activist and Local Leader) had joined. To assist them, Kantilal Parmar, Deena Vankar, Madhu Koradiya etc. had joined in this team. After making spot inquiry, they had presented a detailed report and had made special demands and recommendations before the National Human Rights Commission. Moreover, they had also presented their demands before the Gujarat Govt. and also before H.E. the Governor of Gujarat.

1) To review the atrocities committed against dalits during

last ten years, National Human Rights Commission should constitute a Task Force. A public hearing should be arranged on the atrocities committed against dalits in Gujarat by the NHRC only. The NHRC should ask the Gujarat Govt. to present a report showing the present condition of dalits. Moreover, NHRC should instruct the Gujarat Govt. to present a report on implementation of laws framed for protection of dalits.

2) Cow Protection Forces working in Gujarat and all over the country should be declared as "illegal" and should be banned.

3) NHRC should give direction to the Gujarat Govt. to present an action plan report about actions initiated and "Action Taken Steps", for prevention of atrocities in 11 districts which have been declared by the Gujarat Govt. as "atrocities-prone".

4) For the episode of Una, Gujarat Govt. should form an inquiry committee consisting of two No. of honorable sitting judges of the High Court.

5) Inquiry of this incident should be completed within sixty days and charge sheet be filed before the Court. For expeditious action, a special court may also be set up.

6) In the Court, for defense on behalf of affected dalits, at least two Nos. of reliable and expert lawyers should be engaged. Simultaneously police protection should be provided to the victims and their family members.

7) For collecting of important evidences, a special committee - Special Investigation Team should be constituted by the N.H.R.C.

It is hoped and expected that if the Gujarat Govt. indeed wants to provide justice then it should sincerely resolve the issues such as migration by the dalits, encroachment on land, offering land rights, and to end the evils like untouchability in the schools, refusal to fetch water, ban on entry in temple and situation like carrying of night soil over the head etc.

(The Author is the General Secretary of PUCL Gujarat and the National President of IRHA). □

## PEOPLE'S UNION FOR CIVIL LIBERTIES MEMBERSHIP FORM

The General Secretary,  
People's Union for Civil Liberties

**Dear friend,**

I subscribe to the aims and objects of the People's Union for Civil Liberties and agree to abide by its Constitution. Please enroll me as a member.

I remit herewith Rs 50/- (yearly)/ 1000/- (Life)/ 2000/- (Patron) membership fee. [See Clause 3(c) and (d) of the Constitution].

I also remit herewith Rs.100/- at concessional rate as the subscription of the PUCL BULLETIN (optional).

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*NB: Please send money in the name of the 'People's Union for Civil Liberties', preferably by DD/MO. In case of outstation cheques, please add Rs. 70/-. Please do not send Postal Order. **Always send the Membership Form to the State/local branch.***

**National Office:** PUCL, 270-A, Patpar Ganj, Opposite Anand Lok Apartments (Gate-2), Mayur Vihar-I, Delhi-110091 (Phone: 011-2275 0014)

*Contd. from 20*

Government has much to hide. The likelihood of kill count and other crimes rising is beyond doubt.

If ever India's democratic conscience is being tested, it is now. PUDR appeals that if we remain mute today while we witness the disgraceful behaviour of the Government of India which

persists with the criminal use of strong arm methods including of lethal pellet guns and bullets, as well as at the absolute lack of compassion exhibited by them, then we betray our own people who are coming under such relentless attack for demanding their right of self-determination. How many

more people must die and how many more years must pass before we stand in solidarity with the Kashmiri people for their just and democratic demand.

**Deepika Tandon & Moushumi Basu,** (Secretaries PUDR)

Share: <http://www.pudr.org/?q=content/pelletised-face-kashmir> q

PUDR Press Release 16<sup>th</sup> August, 2016

## The Pelletised Face of Kashmir

*Peoples Union for Democratic Rights* (PUDR) is horrified that the Rajya Sabha which debated the situation in Jammu and Kashmir on August 10, could not muster resolve to call for an immediate halt to use of pellet guns, which is not used anywhere in either India or the world for policing. Since the killing of Burhan Muzzafar Wani on July 8, the onslaught on unarmed innocent civilian continues by the armed forces and state police in the Kashmir Valley. The Central Government has decided to add more troops in one of world's most heavily militarised region empowered by legal immunity for any crime/atrocity committed by them against civilians. Protests are being met with tear gas shells, pellet guns and bullets.

In Qazigund in South Kashmir, three people- two women and a man were killed by members of the 9 Rashtriya Rifles contingent of the Indian army on 18<sup>th</sup> of July. In another incident, a 26 year old Riyaz Ahmed Shah, who worked as an ATM Guard was killed in Karan Nagar while he was on his way back home on his scooter. His body was lying in a pool of blood on the deserted road. This case exposes the false narrative created by the Central Government around the usage of 'force' against the 'unruly' mob as Riyaz was not part of any protest. In fact, he worked in the morning as a salesman and in the evening as a guard. The doctors at the Shri Maharaja Hari Singh hospital (SMSH) found over 300 pellets in his body and exposed the official account which alleged his

death was due to a road accident. Amir Bashir Lone, a resident of Shopian District met with a similar fate when he was shot with pellets on his head.

The statistics from the ground zero is alarming, with over 6000 people injured, 300 of them blinded by pellets, 40 odd maimed, and 60 people killed in past one month itself. In an unique protest, medicos who have been treating injured civilians' under most onerous condition, sat on a protest on August 10, covering their one eye with a bandage expressing their angst against the un-abating use of pellets and demanding their immediate ban. Another disturbing feature is the systematic arrest of thousands of youth and night raids being conducted across Kashmir. The scale of this operation can be gauged from a poster issued by the Police in Narwara, Eidgah in Old City of Srinagar which carried a list of 117 youths being sought by Police with a warning that they will be booked under the dreadful Public Safety Act. Given the record of yesteryears, when youths were subjected to torture in custody, the fact that most are being sent across to Jammu, away from their family and friends, fills us with fear at their plight.

Instead of addressing the root causes behind Kashmiri people's disenchantment with Indian State, the Government is moving towards an all out offensive by replacing or complementing existing forces with Army. Government of India has refused to allow a visit by an All Party delegation, because the

*Contd. on page no. 19*

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