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Re-Interpreting Democracy, Reasserting the Constitution, Reimagining Human Rights! Taking Human Rights to the Masses: The Tasks before the PUCL

V. Suresh, General Secretary, PUCL

Note presented to the National Executive Committee meeting, 22nd June, 2019 at Delhi

In the background of the triumphant re-election of the Modi government for a second term covering 2019-2024, more concerns arise than merely the fact that we will witness a continuation of 5 more years of communally divisive, sectarian and majoritarian politics.

How should we, in the PUCL, understand the triumphant re-election of the Modi-led BJP on 23rd May, 2019 for another period of 5 years?

The 2014 – 19 period of Modi rule witnessed widespread hate crimes, lynchings, attacks on Christians, Muslims and other marginalised communities, including violence against Dalits; countrywide, severe agricultural and rural distress was starkly highlighted by massive farmer suicides. The severity of the economic crisis manifested in high unemployment, lowered growth rate, increased disparity and rising inequality; demonetization and GST led to the collapse of MSME sector rendering lakhs jobless and indebted. The Modi government showed their disdain for constitutional norms and institutional proprieties by willfully and deliberately misusing CBI, Enforcement Directorate and State Police for vindictive, vengeful action against their rivals. Constitutionally mandated institutions, respected for their independence, like the Election Commission, CVC and RBI, to name a few, were subverted and systematically made dysfunctional. Overall, there existed widespread anger that the lives of vast sections had not improved belying the promises of 'Aache Din'.

Yet everything changed after Pulwama and Balakot, as the Modi-Shah political machine whipped up patriotic and nationalistic fervor to such a pitch that anyone questioning them were seen as traitors or 'deshdroh'. The slogan of threat to India's national security and sovereignty and the call to all social sections to close ranks against the "enemy" or the "other" seems to have struck a chord with diverse sections, including Dalits, Adivasis urban and rural poor, who despite personal experience of failure of Modi's rule seem to have preferred to vote for Modi, the BJP and NDA rule in the end. The fact that behind this mobilization was also the slogan of a 'Hindu rashtra' seems to have more takers now, than ever before.

It is against this rather forbidding context, that we are meeting in Delhi to discuss how to move forward. It's very clear, the current mode of our functioning, even though important, is not sufficient to meet the challenges looming ahead of us. The danger is not just increased

violence by state and non-state players; the threat is to democracy, democratic principles and process itself. In a context of spreading divisiveness, the challenge is about being able to reach out to the hearts and souls of the ordinary people of India and to invite them to the task of rejecting the politics of hatred and communal polarization. The challenge is also about helping people re-engage with age old historical traditional practices of tolerance, harmony, peaceful co-existence and collective pursuit of well being, so that the common citizen becomes the leading force to once again building a more humane, caring, respectful and democratic society.

The challenge is also to help reinterpret the constitutional values of social justice, inclusion, fraternity, egalitarianism and dignity in such a way that people feel it's in their own self-interest to create a more inclusive, respectful and peace loving society. We will have to invent a new idiom, a new language, a new discourse and a new plan of action, if we have to be relevant in the coming years. We will have to reach out to the younger generation in a more direct, expressive, interactive manner; we will have to build bridges with the vast majority of ordinary citizens, who may have voted for Modi for a variety of reasons, but who in their hearts, respect peace and harmony, and

have not yet been transformed into violent, hate filled people.

We will have to learn to listen, to the voice of India. And from that listening, fashion a new programme for the PUCL. We will have to listen without allowing the intrusion of our own received "analysis" or "ism" or "political belief". As Prabhakarji has been so eloquently telling us for many years, we need to be able to truly reach out and build bridges with the ordinary Indian so that they too join the movement to protect, promote and deepen democracy arising out of their conviction that this is the only right path forward.

Are we up to it?

Dr. V. Suresh, General Secretary
□

Published in *PUCL Bulletin*, September 2017 (Revised Version):

Why and How "Secularism" in Our Constitution

Ravi Kiran Jain

Any discussion on secularism would need first to focus on two basic aspects: Firstly, the word 'secularism' has no substitute in any of our languages. Like the 'war' is the opposite word of 'peace', in common parlance in the Indian context, 'secularism' is understood by its antonym 'communalism', while in the Western context, 'secularism' is understood by its antonym 'theocracy'. Secondly, the word 'secularism' was nowhere mentioned in the Preamble of the Constitution when it was enforced. It was included in the Preamble by the controversial 42nd Constitution Amendment during the Emergency with effect from January 3, 1977.

It is interesting to note that the Preamble, though the Constitution opens with it, was not the first to come into existence. It was the last piece of drafting adopted by the Constituent Assembly at the end of the first reading of the constitution. The motion to adopt the Preamble was moved on the 17th October 1949. It was suggested during the debates that the Preamble be taken up when the Constituent Assembly would meet in November for the third reading as by that time the

Drafting Committee would also have submitted its final report to the House. Maulana Hasrat Mohani objected to the postponement submitting that unless the Preamble was passed on that day at the first reading itself, the Drafting Committee could not produce any report on the second reading. K.M. Munshi supported. Maulana Hasrat Mohani by making a humorous comment – "Once in my life I support the Maulana Saheb!" The President ruled that the Preamble should be passed on that day to enable the Constitution as a whole being passed in its second reading and the Preamble forming part of the Constitution. Several amendments were suggested to the Preamble but they were all negated. At the end, the President moved the motion – "That the Preamble stands part of the Constitution." The motion was adopted on November 2, 1949. The Preamble was added to the Constitution.

In the words of Justice Jagan Mohan Reddy in his judgment in ***Kesavananda Bharati v. State of Kerala, (1973 (4) SCC 225)***:

"The Preamble to the

Constitution which our Founding Fathers have, after the Constitution was framed, finally settled to conform to the ideals and aspirations of the people embodied in that instrument, have in ringing tone declared the purposes and objectives which the Constitution was intended to sub serve."

The question arises as to why it was introduced during the Emergency. Was it not a challenge to the wisdom of the Constitution-makers? The Constituent Assembly consisted of persons who had no partisan motive nor they had any axe to grind. They were men of vision; they inspired confidence, and were all products of the struggle for independence.

In the struggle for independence, the people of different religious pursuits had a natural worry as to what sort of religious freedom they would be able to enjoy in an independent India. When Mahatma Gandhi appeared on the scene and transformed the freedom movement into a mass movement in 1920s, it was realized that people could hardly be motivated to go the

whole hog for the freedom struggle unless they were assured that their religious beliefs and systems would be secure in a post-independent India and that they would not be marginalized and sidelined, in case they belonged to the minority community. It was in the pursuit of this very assurance that Gandhiji gave to the people the much-valued concept of '*Sarv Dharm Sambhav*'--the principle that all religions are equal. The Muslim League had boycotted the Constituent Assembly when it started its session on December 9, 1946, and it continued to boycott it even thereafter. Evidently the pressure worked, and on June 3, 1947, Lord Mountbatten announced the coming into existence of two independent States with effect from August 15, 1947.

On August 14, 1947, the President of the Constituent Assembly, Dr Rajendra Prasad remembered Mahatma Gandhi in the following words while speaking on the floor of the Assembly, "Let us also pay our tribute of love and reverence to Mahatma Gandhi who has been our beacon light, our guide and philosopher, during the last 30 years or more. He represents that undying spirit in our culture and make-up which has kept India alive through vicissitudes of history." And then he went on to say, "To all the minorities in India we give the assurance that they will receive fair and just treatment, and there will be no discrimination in any form against them. Their religion, their culture, and their language are safe, and they will enjoy all the rights and privileges of citizenship...To all we give the assurance that will be our Endeavour to end poverty and squalor and its companions, hunger and disease: to abolish distinction and exploitation and to ensure decent conditions of living." These words of Dr Rajendra Prasad on the floor of the Constituent Assembly were clearly influenced by the overwhelming concept of "*Sarv Dharm Sambhav*" which reigned supreme in the minds of the members of the

Constituent Assembly, and this later found ample manifestation in the provisions specifically incorporated in the Constitution. Article 15 says, 'The State shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them' and also Article 25 provides that "all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion". What needs to be taken note of is that absolutely nothing happened in the country from 1950, when the Constitution was enforced, to 1977 to hasten the urgency of bringing about a Constitution Amendment to incorporate the word "secular" in the Preamble of the Constitution.

As a matter of fact, the politics in the country remained during all these years focused on issues, people participated overwhelmingly and spontaneously in the poll process, and the public debates were focused primarily on the key issues concerning the masses of this country. In fact, cutting across all barriers of castes and religion, people voted on the issue of "*garibi hatao*" at 1971 Lok Sabha election. Paradoxically, however, the post-1971 years unfolded nothing effective to tackle the problem of poverty and economic disparities, but, instead, the State, literally dominated by one individual, gave place to a process of demolition of Constitutional institutions. Three Judges of the Supreme Court were superseded. Then followed the Emergency, letting loose a reign of terror, and one of its fallouts was the apex court verdict in ADM Jabalpur case. Against this backdrop came the controversial 42nd Constitution Amendment.

Nehru told the members of the Constituent Assembly on August 14, 1947, "The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity." The country was to achieve this objective on the basis of the principles contained in Part IV of the Constitution, which were "fundamental in the governance of

the country". Incidentally, in the Statement of Objects and Reasons in respect of the 42nd Constitution Amendment, similar expression has been used in the following words, "The question of amending the Constitution for removing the difficulties which had arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, had been engaging the active attention of government and the public for some years...It was, therefore, considered necessary to amend the Constitution to spell out expressly the high ideals of socialism, and integrity of the nation".

Paradoxically, after the word "secular" found place in the Preamble as a result of the 42nd Amendment that it was lapped by sections of opportunistic politicians to fuel a highly retrogressive and diversionary debate of secularism vs communalism and vice versa. What the country saw in its wake? The demolition of Babri Masjid and the resultant communal holocaust followed by Bombay, Surat attacks on minorities and in other cities in January 1993, thereafter Gujarat communal massacre and then the recent Muzaffarnagar communal riots.

The Race between Two Major Political Parties

In 1984 Elections in which Rajiv Gandhi had a clean sweep, BJP could secure only 2 seats in Lok Sabha .The Sangh Parivar started a campaign for the construction of a magnificent Ram Janam Bhoomi Temple at the site and by 1985 built up a sizeable support in the Hindu Community.In January 1986, locks were removed from the mosque and Ram bhakts were permitted to offer prayers to Ram lala .It is said that the Prime Minister Rajiv Gandhi ordered the Chief Minister Veer Bahadur Singh to do so who got the District Administration to ensure this .The two major political parties BJP and the Congress started a race on pandering to communal Hindu sentiments .In 1988 ,Hindutva Organizations led by the RSS organized a mass

campaign for building a grand temple exactly where the Mosque stood .They claimed that the Mosque stood at the precise site where Ram was born .By the time of the fifth and final suit was filed in July 1989 the political climate had changed beyond recognition

Union Home Minister Buta Singh signed an agreement with the VHP on 17th August 1989,that bricks for constructing the temple would be allowed to be brought from all over UP without hindrance and collected at the plot No. 586 near the mosque .This agreement was in violation of an order of the Allahabad High Court given on 14th August that no construction activity could be taken at that spot.

Later ,the VHP announced that 'kar sewa' would be performed to lay the foundation stone .This was also a violation of the judgment given two days ago,prohibiting any such activity .This repeated defiance ,of the orders of the court did not weigh with the Prime Minister who inaugurated the campaign of Congress Party the next day from twin city of Faizabad ,

and announced that the objective of the party was to establish **Ram Rajya** .Soon thereafter the BJP President Advani ,at Palampur ,after the National Executive Meeting ,announced that the inclusion of the construction of the temple in its Election Manifesto "would fetch votes " for it .**It would thus appear that the two major political parties were in a race on this issue.**

Looking back, the communalism vs secularism debate has only resulted in throwing into the backyard the issues of removing poverty, illiteracy, disease, and inequality of opportunity. On the other hand, non-issues became issues and issues became non-issues in politics and polls, and what has been worse, it generated its own pernicious offshoot. Politics and polls got additionally hooked onto castes versus castes. The real issues, confronting the people, like poverty, disparity, exploitation, hunger, unemployment, illiteracy, power crisis, environment degradation, and water scarcity, alarming loot and destruction of our

forests, and population explosion have been sidelined. Likewise, criminalization of politics and corruption have also become non-issues.

There has been no difference between various governments at the Centre or the States during the last two decades on the question of following the economic policies on account which the forces of globalisation have slowly but solidly deprived India of its economic and political sovereignty so much so that the country has lost its right to determine its own agenda of governance and development, which now rests with the international powers, multinationals and world-funding agencies. The question is how long shall we permit this to continue by keeping the people involved the nationally detrimentally quarrels over secularism vs communalism or castes vs castes?

In The Race between Two Major Political Parties (read "Two Horses"), one horse (**BJP**) left behind the other horse (**Congress**) forever. □

The following is the text of the Address sent to the PUCL Rajasthan State Convention held in Ajmer on 8th and 9th June, 2019 on the theme, "Reconstructing present democracy and Democratic Institutions"

Message of Greeting to the Convention from Dr. V. Suresh, General Secretary, PUCL

I extend my greetings to all the members of PUCL Rajasthan as you start the 2 day deliberations of the State Convention. The convention theme highlights the crucial task before all of us in the PUCL today. In the 5 years of Modi Rule in 2014-19, all democratic processes and institutions have been systematically made

irrelevant and destroyed. Democratic principles have been assiduously subverted. Leaving in its wake a huge challenge before us in the PUCL about how to respond. We have to be creative and innovative in addressing the challenge. I am sure your deliberations will be able to go beyond the "box" as they say, and

come up with new insights on how to address the important task of re-identifying the task before the rights movement in general and PUCL in particular.

I have put down some of my thoughts and hope you find it useful and relevant.

Wishes from the entire PUCL community for a successful Rajasthan State Convention.

"Lok Sabha Elections, 2019: Revisioning the Relevance and Purpose of PUCL!" V. Suresh, General secretary, PUCL

Why the need to reinvent PUCL?

The world's largest democratic exercise in which over 900 million people voted to elect the new Central government to rule India ended on 23rd May, 2019 with a resounding victory to the ruling party, the BJP which won a huge majority on its own of 303 Lok Sabha members. Despite

the numerous complaints of faulty and rigged EVMs, false and forcible voting, distribution of money to influence voters and many other faults, the fact is that the people of India gave an unambiguous vote in favour of continuation of the rule of Prime Minister Narendra Modi, and the continuation of his brand of

politics for another 5 years between 2019-2024.

Two perplexing issues demand enquiry.

How is it that an overwhelming majority of the people of the country, including from the poorer, marginalised communities both urban and rural, voted for the Modi

government, despite the reality of crushing economic crisis across the country: rising inequality, sluggish and poor economic growth with almost all parameters indicating the onset of an economic crisis: decline in IIP (Index of Industrial Production), slowing of GDP, greater indebtedness, increased NPAs and so on. The cumulative effect of the catastrophic impact of demonetisation and a poorly planned and rolled out GST (Goods and Service Tax regime) has literally destroyed the foundations of MSMEs (Medium and Small and Middle level Enterprises) leading to the closure of thousands of units and the consequent rise in unemployment. Rising farm distress manifested in increased farmer's suicides across India and greater mobilization of farmer's movements in many states is symptomatic of the failure of the agriculture policy of the government. As though the economic crisis was not enough, the 5 years between 2014 – 19 also witnessed heightened social conflict with rise in hate crimes highlighted with ghastly lynchings of Muslims by self styled 'Gau Rakshaks' belonging to a variety of the rabidly fanatic, Hindutva espousing groups allied to the BJP and its ideological mentor, the RSS, on the allegation that they were butchering, transporting or trading in cow's meat, 'Love Jihad's' and moral policing. The long trend of deliberate and artificial stoking of communal animosities and differences by the RSS led Hindutva groups prior and after the Babri Masjid demolition on 6th December, 1992 was exemplified in the mass killings of Muslims in the post-Godhra riots in Gujarat in 2002 and hundreds of other such incidents of communal clashes. Historical evidence gathered by numerous human rights groups points out how the BJP – RSS led Hindutva forces deliberately engineered the Muzaffarnagar communal clashes in 2013, with a clear intention of aggravating communal passions to polarize voters and intimidate the minority communities into submission. A natural corollary of encouraging hate politics along communal animosities and conflict is that at some point, the violence turned away from violence against minority communities like the Muslims and

Christians and against members of the marginalised communities within the majority community itself. As a consequence of this during 2014 – 19 period of Modi's rule, the country witnessed rising incidents of anti-Dalit violence across India. The most dramatic of such incidents is exemplified in the Una incident in Gujarat where a number of Dalits were brutally flogged and mercilessly beaten with iron rods and wooden logs by upper caste Gau Rakshaks of Una town, all of which was consciously videographed and live streamed. Numerous incidents of lynchings of dalits in several northern states like Jharkhand, UP, Rajasthan, attacks of dalit leaders and youth for claiming equal respect and status and wages and so on have been reported from across India.

The crucial question is why did people vote for Modi and the BJP, despite the clear cut evidence of the miserable failure of Prime Minister Modi government's rule between 2014 -19 to deliver on most of his 2014 election promises of wiping out and ensuring return of black money, ensuring deposit of Rs. 15 lakhs in the bank accounts of each Indian, creation of over a crore of jobs during the 2014-19 period and so on, best highlighted by acute economic crisis and widespread and brutal social violence.

It is true that Modi and Shah cleverly used the political slogan of 'nationalism', 'threat to national security from Pakistan' and need for a "strong leader" to raise identity jingoism, patriotic fervor and stigmatizing of those who questioned him as traitors and betrayers. It is equally true that Modi – Shah duo and the BJP political machine used the Pulwama massacre of CRPF personnel in February, 2019 and the Balakot air strikes as part of the narrative to divert attention of the nation away from internal issues of economic failure to that of the importance of the need for a muscular, decisive, firm and strong leader.

It is but natural that the BJP use and exploit the strategy of polarizing the electorate by raising political temperatures using the political jingoism of nationalism and threat to India to woo, mobilize and garner support for its supreme leader, PM Narendra Modi. It is unnatural to think

that they will not do so. Especially when both Narendra Modi and Amit Shah and the BJP political forces showed that they would not hesitate to stoop to any lows in their mission to tarnish and bring down their opponents. The ugliest, misogynistic and condemnable of such utterances was made by Amit Shah during his campaign in Assam referring to the Muslims as "termites". When the supreme leaders of the BJP led by the PM Modi and the Party President Amit Shah themselves had no hesitation to break all political conventions of decency and decorum, it is not surprising that their leaders and party functionaries would also replicate the same. The ultimate scorn shown by the BJP was fielding terrorist case accused Pragya Thakur as the candidate opposing former CM of MP, Digvijay Singh in Bhopal. Notwithstanding Pragya Thakur who called the assassin of Mahatma Gandhi, Nathuram Godse as a patriot and the countrywide furore this caused, she not only defeated Digvijay Singh but won with a huge mandate.

What all those who are against hate politics and polarizing communal and majoritarian violence should note is that the BJP victory is the result of a long process of working to change the mindsets and attitudes of our co-citizens building on the logic, rationale and validity of the idea of changing India into a *Hindu rashtra*. The 2019 victory with a vast majority of Indians endorsing Brand Modi, and all its divisive politics, should be seen as the success of a 60 year long campaign assiduously planned and rolled out by the RSS and its various subsidiaries in numerous ways, including by influencing the development of school curriculum especially of the younger classes. Let us not overlook the impact of hundreds of thousands of Saraswathi Vidyalayas and youth Shakas, painstakingly built up by RSS pracharaks across the vast rural areas of India, including in distant, dusty villages and remote tribal settlements. The Hindutva campaign kept on working even when in the beginning there was not much support from the people. Much like the Christian missionaries they love to detest and hate, RSS and other Hindutva supporters were on a 60 year mission mode quietly working

amongst rural and urban poor.

The Historical Task before the PUCL: Building a New Narrative focusing on Respecting Differences, dignifying diversity, Creating Consensus and respecting the Constitution

There is legitimate concern about what to expect in the next 5 years of Modi era version 2. With a brute majority and pliant, unquestioning party MPs, there is no person, group or organisation to question the supremacy of PM Modi and Amit Shah, (who has since become the Union Home Minister). The virtual decimation of most political parties, the ineffectiveness of countering the violent hate filled rhetoric, their attempt to play the soft Hindutva card and the narrowness of their political stances relying upon caste, community and regional affinities alone are all factors which do not lend confidence that an effective alternative politics can emerge from the parliamentary political party formations.

Which only leaves the human rights movement, environmental rights groups, women's movement, autonomous Dalit and tribal rights movements and a number of other politically independent and autonomous "rights" based social movements to take upon themselves the historical task of rebuilding a national commitment to political

values and principles enshrined in the Indian constitution – a belief and commitment to the basic constitutional postulates of dignity, fraternity, equality, equity, inclusion and social justice; on democratic principles and processes of inclusion, transparency, accountability, participation; on the constitutional mandate of reducing social inequality, ensuring there is no concentration of wealth and resources in the hands of a few and bringing about distribution of wealth and resources amongst the wider section of the population; environmental justice, gender equality including the rights of the third gender and so on.

Learning to Listen!! Going back to Basics

We have no alternative but to go back to the basics of community organizing and mobilization. We need to meet with ordinary citizens, in the crowded settlements of urban areas and in distant rural towns and villages, and start a process of 'dialogue' with them. We need to keep aside our conclusions and analyses and truly and genuinely engage with people exploring the world of India, just now, as they see it; we need to be able to become friendly, genuinely friendly, with them so we can explore their aspirations, expectations, fears, apprehensions. We need to understand what

motivates them, inspires them, drives them. We need to do this as a genuine human endeavour to jointly co-create a more humane, congenial, caring and considerate society, in which all of us together argue, discuss, fight and debate but collectively find a means of countering the divisive politics of our period.

Unfortunately there are no blue prints to guide us on how to start this journey.

However, fortunately, we have within the PUCL family, a huge repository of vast social experience to draw lessons from and find out how to chart out our mission to give new meaning to our cherished values of respecting differences, dignifying diversity, strengthening secularism and creating consensus on not just respecting, but giving life to the constitutional spirit.

I wish the Rajasthan State Convention all success. I would have liked to attend the meet and learn from you all. I look forward to reading the report of your deliberations. PUCL Rajasthan has always led by example and shown the path to innovatively build a vibrant human rights movement strongly anchored in the constitutional spirit. I am confident the Rajasthan unit will once again show the way to reinventing a new purpose and pathway for PUCL in India.

Chennai/ 06th June, 2019 □

Press Statement: 12th June, 2019

PUCL Statement on Illegal Raid of Maharashtra Police on Fr. Stan Swamy in Jharkhand

PUCL strongly condemns the early morning raid today (12th June) by Maharashtra – Pune police in the residence of 83 year old Father Stan Swamy at Bagaicha Campus in Namkum, Ranchi, Jharkhand. The Maharashtra police allegedly conducted the raid and search without obtaining judicial search warrant and seized his computer's hard disk, internet modem and other storage devices and forced him to give his Gmail and Facebook passwords. It needs to be pointed out that the Maharashtra police had already conducted a raid on his residence several times last year.

The stated objective of the Maharashtra police of seizing and collecting evidence against Stan

Swamy does not bear scrutiny as the same police force had already collected all available electronic and other evidence during their search last year. The objective is thus very clearly to intimidate, scare and frighten all others – rights activists, democratically minded groups and concerned citizens – from extending any type of support to Stan Swamy and others. These activists have for some years now been opposing state terrorism let loose in Jharkhand by a corrupt mafia of corrupt police and government officials, greedy politicians and vested Corporate interests who have been attempting to grab valuable forest lands belonging to the Adivasis so

as to plunder and appropriate very valuable forest and common resources such as minerals, forest wealth, land, water and other common resources.

Fr. Stan Swamy has been diligently documenting the illegal actions of the state police and security forces brazenly violating all laws, arresting and imprisoning hundreds of local adivasis, extensive use of torture and numerous other rights violations.

The continued harassment, intimidation and terrorization of Father Stan Swamy is part of the same tactics used by the Maharashtra - Pune police, with the support of the Central government, to illegally arrest other rights

activists like Sudha Bharadwaj, Vernon Gonsalves, Arun Ferreira, Varavara Rao and detain Gautam Navalakha and Anand Teltumbde in the infamous Bhima Koregaon case. The aim is clearly to strike terror in the hearts of any citizen from criticizing the anti-people, undemocratic, brazenly illegal actions of the BJP led government

in Maharashtra and the Centre and in Jharkhand too by dubbing such activists as “urban naxals” thereby creating fear in the minds of ordinary people from raising their voices against open, brazen and defiant abuse of law by the police. PUCL demands an immediate end to the abuse of law by the Maharashtra police which is

launching a witch hunt to ensnare and entrap many more activists in criminal prosecutions. PUCL also demands an immediate release of all the 9 activists arrested so far in the Bhima Koregaon case and dropping of plans to arrest some others.

Ravi Kiran Jain, National President, PUCL; **V. Suresh**, National General Secretary, PUCL □

Chhattisgarh PUCL: Press Release: 14th June 2019

PUCL Statement for the Arrest of Mangelal Agrawal

PUCL strongly condemns the arrest of Mangelal Agrawal, resident of Musra, Dongargarh, Rajnandgaon for an offence under S. 124A - Sedition and S.505 IPC - public mischief, for allegedly spreading rumours claiming that the reason for power cuts in electricity supply in the state, is an illegal nexus between the government and inverter companies in the form of kickbacks. It is reported that the FIR was lodged at the complaint of Chhattisgarh State Electricity Board.

It is learned that charges U/s 124A have been dropped, which is welcome. However PUCL demands the withdrawal of S. 505 as well and the immediate release of Mangelal Agrawal.

PUCL condemns the act of the CSEB and the Police in lodging the FIR despite the law being settled with regard to S. 124 A. The Supreme Court in case after case since 1962, when the constitutionality of 124A was challenged, has held that a form of expression would amount to sedition only if it actually incites violence, causes violence. Unfortunately governments have been misusing the sedition law to

stifle freedom of speech and expression. Under the BJP government in the last couple of years there has been widespread misuse of S. 124A in the State of Chhattisgarh. 124A was invoked against Journalist Kamal Shukla for a facebook post which did not incite anyone to cause violence, 124A was also invoked against policemen for the peaceful protests held by families of policemen and civilians demanding better working conditions for the constabulary.

Apart from the use of S. 124A IPC to stifle the fundamental right to freedom of speech and expression and the right to protest, a large number of innocent tribals are charged for sedition. After spending years in jail majority of them are acquitted by the court. The new government has acknowledged the illegal arrests and prosecutions and has constituted a Committee headed by Justice A.K Patnaik, former Judge, Supreme Court of India to review all pending cases against tribal undertrials.

An offence under S. 505 is also not made out against Mangelal Agrawal. Mangelal Agrawal is accused of

having indulged in a thoughtless act of making allegations against the government without any basis which no sound ordinary citizen is likely to believe let alone panic and act against public tranquillity on the basis of what he said.

PUCL does not endorse or validate the statements attributed to Mangelal Agrawal, we however are clear that no offence is made out against him and demand his release.

PUCL would also like to remind the Chhattisgarh Congress Government that the Indian National Congress (INC) had explicitly promised the repeal of S. 124 A IPC. PUCL calls upon the government, those in public office, the police machinery, not act against the rule of the law.

PUCL has for the last several years documented cases of misuse of the sedition law and has campaigned for the repeal of the draconian sedition provision. In view of the report issued by the Law Commission of India on 30 August 2018 last year, we call upon the GOI to repeal 124A IPC.

Ms. Rajni Soren, Joint Secretary; **Degree Prasad Chouhan**, President, Chhattisgarh PUCL. □

Report of the Meeting dated 04.05.2019

Reconstitution of PUCL UP State Unit

The National Executive of PUCL had constituted a three-member Committee consisting of N.D. Pancholi, Sanjay Parikh and Sudha Bharadwaj- all national office-bearers of PUCL - to consider and resolve the problems concerning UP-PUCL. Due to the change in circumstances, the Committee was reduced to two members, i.e. N.D. Pancholi and Sanjay Parikh.

Initially, a letter dated 14.07.2018 was written by the said Committee for holding a meeting at Allahabad. However, for certain reasons, the meeting could not take place. Thereafter, in the National Council meeting dated November 2019 in Delhi and the 15th National Convention in Bengaluru on 28.02.2019 - 02.03.2019, it was decided that the two-member

Committee would fix dates to visit UP. The Committee was given authority to finalize procedure, process and method of final resolution of the issues. Dr. V. Suresh, National General Secretary, PUCL wrote a letter dated 12.04.2019 to National Council members and office-bearers of UP PUCL. In the said letter, the Committee was, among

others, given the authority to form a new *ad hoc* committee, to be guided by the national office-bearers until such time that proper elections are held, as mandated by the PUCL Constitution.

Pursuant to the decision taken at the National Executive as well as the letter dated 12.04.2019 by the National General Secretary, one of the members of the Committee, Sh. N.D. Pancholi had sent an email dated 16.04.2019 to UP PUCL members, referring to the letter dated 12.04.2019 of the National General Secretary, PUCL, informing that the Committee will be holding a meeting on 04.05.2019 at Allahabad around 11 am in Swaraj Vidyapeeth, Opp. University Girls Hostel, 21-B, Motilal Nehru Marg, Allahabad. Along with the email, membership list of UP PUCL was also enclosed and the persons to whom email was sent were requested to inform all other members of UP PUCL.

Pursuant to the above notice, Sh. Sanjay Parikh and Sh. N.D. Pancholi, held a meeting with members of UP - PUCL at 11 AM on Saturday, 4th May 2019 at Swaraj Vidyapeeth, Opposite University Girls Hostel, 21-B, Moti Lal Nehru Marg, Allahabad. A list of members who were present is enclosed. In the beginning, Sh. Sanjay Parikh read out the letter dated 12.04.2019, of the National General Secretary, informing them about the mandate of the Committee. Briefly, Sh. Parikh said that grave violations of human rights and civil liberties are taking place in UP and at this juncture, it is urgently needed that the UP PUCL, which is non-functional for considerable time, becomes active. He also stressed that at this juncture, all PUCL members have to work in coordination, forgetting minor differences, if any. N.D. Pancholi also stressed that the UP PUCL should become active keeping in view the serious situation prevailing in UP.

Sunil Singh highlighted the issue of large number of hunger deaths

taking place in UP, which the administration was trying to hide under one pretext or the other. Wajahat Hussain, Senior Advocate highlighted the issue of communalism, which PUCL must take up. Ravikiran Jain, Senior Advocate and President of PUCL, also stressed on the need to address the communal issues, which are dividing the society on the basis of religion and caste. He also said that in addition to civil rights issues, developmental issues should also be addressed as they are a part of human rights. He suggested that an *ad hoc* committee should be constituted which should take up the important causes on behalf of UP PUCL till the elections are conducted and UP PUCL is formed as per the Constitution.

Vijay Chawla from Kanpur wanted to raise certain disputes which had arisen between some members relating to some of the previous meetings in UP. However, everyone present in the meeting felt that keeping in view the prevalent situation, there is no need to touch those issues. The time has come to unite and go forward.

Sunil Saharsha Budhey, from Varanasi, said that PUCL should mould its activities in accordance with the need of the hour.

Ms. Seema Azad drew attention to various incidents of human rights violations, which are required to be investigated by the fact-finding teams of UP PUCL, as was done earlier.

Ramkishore, from Kanpur, said that UP- PUCL should immediately take up the cases concerning plight of safai karamcharies i.e. those who clean the manholes and manual scavengers, which exists in a big way in UP in spite of directions given by the Supreme Court. He also gave various other instances of human rights violations.

Ramkumar, from Kanpur, wanted a clarification as to whether the activities of PUCL were restricted to only violations of civil liberties and human rights or other issues

pertaining to development can also be raised by PUCL.

K.K.Roy, Advocate, emphasized that PUCL should vigorously take up 'SAVE THE CONSTITUTION' campaign.

Ms. Utpala said that there should be active interaction and coordination between the office bearers of the organization and that regarding important issues, fact-finding teams should be constituted.

Alok Agnihotri, from Kanpur, drew attention, amongst others, to the issue of amendments in the Enemy Property Act, through which the minority community is being targeted in order to deprive them of ownership rights of the property. He also referred to other issues regarding human rights violations.

O.D. Singh said that *ad hoc* committee should embark on its task at the earliest so that various issues confronting the people are taken up.

Members highlighted various issues like increasing incidents of killings by police in the name of encounters, the atmosphere of terror spread by the ruling dispensation, increasing atrocities on tribals, dalits, women, working class, minorities, overburdening of jails beyond their capacity, prevalence of the underground sale of spurious liquor, the continuance of the ill-practice of manual scavenging etc. There was short debate on the aims and objects of the PUCL, as raised by Ram Kumar, as to whether the same were confined to civil liberties/human rights only or that the same would also include other developmental issues. It was clarified by Ravikiran Jain, the President of PUCL, that aims and objectives of the PUCL are quite broad, and the terms human rights and democracy have to be given a larger meaning. It was quite encouraging to find that every one present in the meeting felt that UP PUCL should become active and should take up important issues.

After having an open discussion

and taking views of the members who were present, the members of the National Committee decided to form an ad-hoc committee with unanimous support and consent of all those who were present in the meeting: 1) **Ms. Utpala** – Convener; 2) **Ramkumar** – Member; 3) **K.K.Roy** – Member; 4) **Sunil Singh** - Member

The Members were also informed that the National Committee, if need be, may include one more member (5th member) from the areas in UP which are not duly represented. The name will be included in the *ad hoc* committee, if need be.

The said *ad hoc* Committee, will discharge its functions as UP PUCL in the following manner:

I. The *ad hoc* Committee will coordinate all the activities of UP PUCL from different districts. The Convener, with consent of all other members in *ad hoc* committee, is authorized to release statements on important issues, to take them up in the

Courts, including the High Court as well as constitute fact-finding committees. Prior information about Court cases will be given to the two-member National Committee.

II. The Convener is authorized to sign vakalatnama and sign affidavit on behalf of the UP PUCL.

III. The Convener and Members of the Ad-Hoc Committee will make efforts to revive the units, which are at present functional but not effective and those which are non functional.

IV. The *ad hoc* Committee may enroll new members as per the Constitution of PUCL but enrollment of such members will be by unanimous consent of the ad-hoc Committee and the same will be sent to the national office of PUCL. The *ad hoc* Committee will scrutinize the present membership list of PUCL and will work on streamlining it district-wise so that before the

elections of UP PUCL take place, the membership aspect is clear.

V. The *ad-hoc* Committee is constituted for a period of six months w.e.f. 04.05.2019, within this six-months period, all efforts should be made to ensure that the UP unit of PUCL is ready for elections.

VI. For any clarification, it will be open to all members of the *ad hoc* Committee to get in touch with Sh. N.D. Pancholi and Sh. Sanjay Parikh, members of the National Committee.

VII. The ad-hoc Committee is also requested to send a monthly progress report to the said Committee about its activities.

A copy of these minutes will be sent to the National General Secretary, PUCL and to the Convener of the *ad hoc* Committee, who will be at liberty to send it to other members of UP PUCL, if they so desire.

Sanjay Parikh and N.D.Pancholi,
Vice-Presidents, PUCL National ☐

Report sent by Sanjay Parikh on 15th May 2019 by email

Press Release on 20th June, 2019:

PUCL Statement Against lodging of FIR against Lawyers Collective & Sr. Advocate Anand Grover

People's Union for Civil Liberties is shocked at the lodging of an FIR against the Lawyers Collective, its President and senior lawyer, Anand Grover and other office bearers by the Central Bureau of Investigation (CBI). We condemn this vindictive and utterly unjustified act against this well known human rights and legal aid organization with a long history of fighting for the rights of ordinary people. PUCL deplors this undisguised attempt to intimidate and silence Mr Grover, as well as legal luminary and co-founder of Lawyers Collective, Ms Indira Jaising, and office bearers of the organization.

The lodging of the FIR by the CBI is nothing short of a brazen abuse of the process of law. The FIR follows an investigation into allegations of violation of provisions of the

Foreign Contributions Regulation Act (FCRA), 2010, launched in 2016. Then, orders for the suspension and cancellation of LC's registration to receive foreign funding were passed by the Ministry of Home Affairs. Lawyers Collective has refuted all the charges against it. Besides, the organization had challenged the cancellation of its FCRA registration in an appeal before the Bombay High Court, which is pending. The complaint registered against the Lawyers Collective, and its key functionaries, Ms. Indra Jaisingh and Anand Grover, constitutes a motivated, vengeful and vituperative act meant to silence not just the Lawyers Collective but also serve as a lesson to all others who dare to challenge the Central Government.

An extremely disturbing aspect of the case against Lawyers Collective is the manner in which it follows so closely on the heels of an extremely dubious PIL filed in the Supreme Court of India by 'Lawyers Voice', a self-styled organization headed by Neeraj, said to be a member of the legal cell of the ruling BJP. Ms Jaising has stood in defence of human rights defenders and was vocal on the procedural irregularities in the recent sexual harassment case in the Supreme Court. On May 8 this year, amidst vociferous protests of prominent lawyers and activists over the failure of due process in the sexual harassment charge against the Chief Justice of India, Ranjan Gogi, the latter heard and issued notice on the PIL, which sought an SIT probe into the

'inaction' of the Central government against the lawyers and their organization.

Seen against this backdrop, the sudden registration of FIR by the CBI strongly indicate a witch-hunt against 2 of the most outspoken and important human rights defenders in India. Indeed, a major aspect of the case made out against the organization was that its work violated various guidelines of the FCRA regulations including in lobbying work for passage of crucial rights protection legislations! Its important to point out that the Lawyers Collective and its team have taken up important cases throughout the 38 years of their existence. Apart from a range of cases relating to domestic violence, human rights, labour and womens' rights, Lawyers Collective has taken up the important Naz case on rights of the LGBTQ community, the Novartis case, the Sabarimala case, the triple talAAq

case and the Sohrabuddin case, in which current Home Minister and BJP leader Amit Shah was involved.

Grover has held an important position as the UN Special Rapporteur on right to health from August 2008 to July 2014. He is currently an acting member of the Global Commission on Drug Policy and is a member of the UNAIDS Reference Group on HIV and Human Rights while Ms. Jaising was part of the team of lawyers for the accused in the ongoing Bhima Koregaon case as well as the case against Kolkata Police Commissioner Rajeev Kumar, where she successfully fought the plea of the CBI to seek his custodial interrogation.

Clearly, the current dispensation finds such voices of conscience, as the Lawyers Collective and its office-bearers have been, as uncomfortable and inconvenient. The case lodged against the

organization smacks of vendetta for its exceptional work on securing rights for the marginalized. It is ill-conceived, vindictive, politically motivated and designed to have a chilling effect on all those who raise a voice of dissent.

PUCL demands that the state desist from these continuous attempts to browbeat the senior lawyers, Ms. Indira Jaisingh and Anand Grover, by embroiling them in multiple legal cases and procedures and misusing its powers to order the arrest and detention of all dissenters. PUCL demands that this witch-hunt against lawyers, journalists and human rights defenders cease forthwith.

PUCL demands that the case against the Lawyers Collective be dropped forthwith.

Ravi Kiran Jain, President; **Dr. V. Suresh**, General Secretary, PUCL National. □

In Memory of George Fernandes: His write up 'On the threshold of a Fascist State'

N.D. Pancholi

Dear friends,

3rd June was remembered as birth anniversary of veteran political leader George Fernandes, who died this year. Many friends paid glowing tributes to him. The eminent journalist Shri Jaishankar Gupta wrote an elaborative and inspiring piece on his life.

No doubt George was doyen in trade union movement in his earlier phase and played important role in the political developments of the country.

He had his achievements and failings. I also had the privilege of associating with him in trade unions movements as part of HMS (Hind Mazdoor Sabha) during seventies. Generally he came forcefully in support of civil liberties and democratic movements. I could not resist the temptation of publishing here what he wrote when I, along with the printer, were arrested on the charge of sedition for publishing a report on the attack by the Indian Army on Harmindar Sahib on 2nd –

7th June, 1985 and other atrocities in Punjab by the then government.

The 200 pages report was prepared by a five member team, including me, on behalf of the *Citizens For Democracy* (CFD) and its foreword was written by Justice V.M. Tarkunde, who was the President of CFD. There was hue an cry by the ruling party members of the Congress (I) shouting for the arrest of Tarkunde. The book was immediately banned and all its copies were confiscated by the police.

However, George Fernandes immediately re-published the said book within a week on behalf of his organization, Hind Mazdoor Kisan Panchayat, and started selling it openly, holding public meetings in several parts of the country. In the public meetings he would flaunt the book and declare, "I have published it and I challenge the government to arrest me". The challenge was never accepted. The interesting part was that while we

went on arguing for quashing the ban order in the Delhi High Court and the government assiduously resisting our petition holding that that the book was full of sedition and could not be published, George went on openly publishing its several editions. The book was being sold as a hot cake and its each edition mentioned that the book was banned by the government. 'The 'Preface' written by George Fernandes to the republished book "On the Threshold of a fascist state' is very interesting and relevant in the present circumstances as it high lights the importance and need for civil liberty organizations for preserving and promoting democratic values in the country. Though it attacks 'Congress I' of that time, in the present situation one has to substitute the word 'BJP' for 'Congress I' and it will be an almost fit.

The Preface is as follows:

Preface

On the threshold of a fascist state

On the night of September 10, the Delhi Police arrested N.D. Pancholi General Secretary of the Citizens for Democracy (CFD), an organization which was founded by Jayaprakash Narayan and which has the distinguished jurist and civil libertarian, Justice V.M. Tarkunde as its chairman. The arrest was made following the release earlier in the day of this report prepared by the CFD on the Government's atrocities in Punjab. The report was drafted by a five person committee consisting of Mrs. A. Amiya rao, Aurobindo Ghosh, Sunil Bhattacharya, Tejinder Singh Ahuja and N.D. Pancholi.

On September 13, the newspapers reported that a case of sedition had been registered against the authors of the report and the CFD. It was also indicated in the reports that Justice V.M. Tarkunde would be arrested along with the other authors and office bearers of the CFD.

The Government's action need not shock us. With political parties of the Opposition not particularly active in fighting and exposing incidents of State violence, it is the civil liberties' organizations in the country that have been spearheading the movement against government atrocities on citizens, whether on a mass scale as in Punjab and Delhi, or on a group scale as in Bhanji in Bihar or Karamchedu in Andhra Pradesh, or on an individual scale as in deaths in police lock ups. These exposures have begun to unnerve the government, and hence the recent orchestration of attacks on the civil liberties groups and their leaders.

Several Congress-I members of Parliament have recently been using the immunity offered to them by Parliament to attack the PUCL, PUDR and other human rights and civil liberties organizations in the foulest of terms. They have alleged that these bodies are antinational and are financed by CIA funds, without adducing an iota of evidence while making such patently false and malicious

charges.

The case of the government and the Congress-I is simple: Their foul deeds and criminal acts shall not be exposed. They will run wild in Punjab, killing innocent people, they will organize mass killings of Sikhs in Delhi and elsewhere; they will promote criminals in politics and in public life; they will let the police kill people without provocation. If anyone should document these brutal and criminal acts and publish the reports, such individuals or organizations that do this must be scandalized, terrorized and suppressed. This is precisely what fascism is about.

It is not necessary to emphasize that if the government and the Congress-I succeed in silencing the voice of those engaged in the struggle for civil liberties and human rights, the biggest losers will be the working class and the toiling masses of our country. There is the experience of the emergency of 1975-77 before us, and that is why we cannot afford to be passive spectators when the civil liberties organizations are under attack. It is necessary to launch a resolute campaign against the government's attacks, and be willing to pay any price in the process.

For once, political parties with democratic and socialist inclinations have reacted with alacrity to the government's attack on a civil liberties and human rights organization. The two major Communist parties have maintained a studied silence, which, however, need not surprise us. The Communists remember civil liberties only when their parties or persons are under attack from the establishment, and then too not in a fundamental sense, but purely as an expedient. The Janata Party president Chandrashekhar's statement hits the nail right on the head when he says that "R. Gandhi's government was poised to launch a serious onslaught on various civil liberties groups, in its sustained attempt to suppress the civil rights of the people".

Chaudhary Charan Singh, president of the Lok Dal has also been forthright while stating that the Government's action in arresting Pancholi is a "grave threat both to the freedom of expression and civil liberties".

The utterances of Srikant Verma, who has been trying with such persistence to become the new court jester can be dismissed with the contempt they deserve. What, however, should cause concern is the silence of the retired and sitting judges of the High Courts and Supreme Court to Verma's remarks on the nature of justice that Tarkunde may have meted out when he occupied the bench. Even if they should not have much use for Tarkunde, their own self respect demanded that the retired and sitting members of the Bench administer a sharp rebuke to the spokesman of the ruling party at the Centre. Judges who cannot protect the honour of one of their own may not be able to protect the honour and interests of those who go to them to seek justice; and when they wake up to discover that, it may be too late to do anything, as at least some of them may have discovered to their horror when Mrs. Gandhi turned fascist in June. 1975.

One wants to hope that the trade unions and mass organizations will show some spine at this critical moment, and not only educate their members on the meaning and significance of the developing situation but also prepare them for action to safeguard the democratic rights and civil liberties of the people. It is obvious that the civil rights organizations are by themselves not capable of countering the attacks launched on them by the government and Congress-I, and if they should wilt under the pressure that is now applied on them, then there will be nobody worth the name that will be able to speak up for people's rights when the final crunch will have come.

October 2, 1985

George Fernandes □

Ram Punyani receives threats to life from right wing goons: FIR Registered, Mumbai

Noted academic and prominent civil society member, professor Ram Punyani has received threats and verbal abuse from unidentified goons on June 6. The former IIT Bombay professor, who is also a well-known rationalist, received the threats by phone at night. Punyani has now registered an FIR with the Mumbai Police. Given his persistent and relentless campaign for rationalist thought, a syncretic understanding of history --with lectures and workshops held all over India--these threats can only be seen as serious.

The first call was made to his landline at about 8:30 PM and received by Punyani's brother-in-

law. The caller was abusive and aggressive and kept alleging that Punyani was anti-Hindu. The caller threatened that Punyani must stop his activities or face the consequences. The caller said Punyani must leave in 15 days. Five minutes later, there was another call which Punyani received himself. Once again, using a very aggressive and threatening tone, the caller demanded to know if he was speaking to Punyani himself. The professor declined and the caller hung up, but this time his number could be identified. Professor Punyani's FIR may be viewed here: [Speaking to Sabrang India,](#)

professor Punyani said, "This is extremely concerning and disturbing. My family is worried about my safety. I hope the authorities take this seriously. This is not the first time that I have faced such intimidation."

The threatening calls are especially curious in light of a visit by 'plain clothes' police men to the professor's home in March 2019 on the pretext of some enquirers related to his passport. Such enquiries are usually conducted by uniformed personnel. Professor Punyani managed to get CCTV footage of these plainclothes men. □

Whither Secularism: Democratic Society and Minority Rights Ram Punyani

We are living in times where the social norms, the values of Constitution have been violated times and over again. The increasing atrocities on dalits, the lynchings of minorities in the name of Cow-Beef have changed the social equations in a drastic way during last few years. This in a way is part of the ascendancy of a politics of communalism which believes in narrow, sectarian religious identity as its defining point. This may get further worsened with the big mandate for Modi in 2019 elections. In the aftermath of elections leading to his return to power, Modi in his victory speech made certain observations which are very disturbing on one hand and also give an idea of shape of things to come.

He stated that this election campaign has unmasked the deceitful claims of secularists and that said that now they can't mislead the country. As per him secularism as a mask has been destroyed in these elections and that secularism was a cover for

minority appeasement. He states that minorities have been deceived and cheated by the parties claiming to be secular.

This statement is not just in the euphoria of victory. For communalism it has been a deeper agenda to do away with the practice of secularism. It is true that there had been aberrations and weaknesses in the practice of this concept, with fallacies like the reversal of Shah Bano judgment or opening the gates of Babri mosque for Shilanyas. The assertion that minorities have been appeased is a total lie. The reports of Gopal Singh Commission, Rangnath Mishra Commission and Sachar Committee tell us about the worsening plight of the Muslim minorities. Some fundamentalist elements within Muslim community have been promoted but the Muslim community as a whole has on one hand been economically marginalized and on the other been subjected to social insecurity. Going beyond the obvious one need to understand as to why the

shortfalls in the practice of secularism have dogged our nation?

Secularism has been defined and interpreted a various ways. In Indian context 'Sarva Dharma Sambhava' has been the major interpretation. Also that state will not interfere in the matters of religion and religion (clergy) will not dictate and state policy has been the major understanding of this concept, secularism, which is core and integral part of the concept of democracy. Some examples of this are in order. In the wake of demand for renovation of Somnath Temple, Gandhi said that Hindu community is capable of building its own temple. While his disciple Nehru did follow Gandhi's path in times to come. Same Nehru later called the dams, industries and universities as temples of Modern India.

Gandhi in his own way puts it up brilliantly when he says, "Religion and state will be separate. I swear by my religion, I will die for it. But it is my personal affair. The state has nothing to do with it. The state will look

after your secular welfare...”

Social scientist Rajiv Bhargava points out that secularism “...combats not just discrimination and other worse forms of inter-religious domination such as exclusion, oppression and humiliation. It is equally opposed to intra-religious domination, i.e. the domination (of women, Dalits, dissenters) within every religious community”

Secularism did not have smooth march in India. It came up with the rising classes during colonial period. The classes which came up with the changes like industrialization, communication and modern education. They called the process of comprehensive change as 'India as a nation in the making'. The streams like those represented by Bhagat Singh, Ambedkar and Gandhi made it the foundation of their political ideology and struggle for better society. They stood for Indian nationalism. While the declining classes of Landlords and kings shaken by the changes in social fabric and loss of their earlier hegemony came up with communal politics. This communal politics in turn had a bifurcation, Muslim communalism

and Hindu communalism. They dreamt of Muslim Nation and Hindu nation respectively. As Professor Bipan Chandra points out Communalism regards a community of one religion as a nation. In India it went through different phases of mild, moderate and extreme communalism. Its understanding is that people of one religion have similar interests, which in turn are different from those of other religion, and so the religious communities are made to pitch against each other. This politics regards the 'other' community as a threat to its' own self. At the same time the intra societal hierarchies are put under the carpet, as the deeper agenda of these groups is to maintain those hierarchies of caste and gender.

One of the weaknesses of practice of secularism in India has been the tremendous opposition from communalism which has been on a rise. While in Pakistan, Muslim communalism was strong right from the beginning; in India it has become stronger during last four decades or so. Its strength has been founded on the polarization, which is an outcome of communal violence. Its issues are those of

identity issues like Ram Temple, Love Jihad, Ghar wapsi and Holy cow-beef. It is this communalism which has stood as a counter to the secular ethos of the country; it is this which is the major obstacle for secularism being properly implemented. There are many factors which have been conducive to and helping in the promotion of divisive politics of communalism, one of them being the non completion of secularization process, the process whereby the power of landlord-clergy duo is abolished in a society marching towards democracy.

In India, due to colonial rule, the national movement had to direct its energy primarily against the colonial rulers, while the landlords-kings, to be later joined by some elite-middle classes, continued on the margins, giving the life breath to communalism, leading to partition of the country among other negative phenomenon in the society. Surely India's plurality and diversity, though currently under cloud, will not let the secular values being eclipsed by the sectarian politics, which is currently on the prowl. □

Statement on Encephalitis Deaths

Brain fever deaths in Bihar's Muzaffarpur:

Institutions associated with India's Freedom Movement call for focused action to wipe out scourge:

Institutions associated with prominent freedom fighters Abbas Tyabji and Mahavir Tyagi have called for socially conscious individuals and organisations to confer with immunologists so as to draw up and implement a plan to eradicate the encephalitis scourge and for national attention to be focused on this recurring catastrophe.

The Mahavir Tyagi Foundation for Political and Economic Decency

and the Abbas Tyabji Educational and Charitable Trust have issued the following statement today, 19 June 2019:

The encephalitis scourge has been affecting east Uttar Pradesh and Bihar (India) for decades. The death roll this year of suspected encephalitis cases in Bihar's Muzaffarpur has already crossed 100. This is at the gates of Champaran, the site of Mahatma Gandhi's first major intervention after returning from South Africa.

Gandhiji had invariably intervened in public health issues both in India and in South Africa and his work at the time of Plague in both countries

is well known.

In this 150th birth anniversary year of Mahatma Gandhi we call upon conscientious individuals and socially-sensitive organizations, particularly Gandhi-related organizations and organizations working for medical inclusion, to draw national attention to this continuing catastrophe and to confer with medical personnel and immunologists on ways to control and wipe out this scourge both by way of all possible relief and further focused research.

Sent by **Anil Nauriya**

<instituteone@gmail.com> on 19th June 2019

Report on the Jharkhand State Executive Committee Meeting on 16th June, 2019

Dear Sureshji,
Yesterday I witnessed the Jharkhand PUCL EC meeting. My train was 4 hour late, So I was there after 1PM. According to Fr.Solaman they had detailed discussions before my arrival. He will sent you the report. When I was there, there were 21 People (20 men and One lady, the female participant was not a PUCL member, today she filled the membership form) attending the meeting. The State president was chairing the meeting. Election held in the presence of Election Officer Ramsevak Tiwari.

President: S R Nag. **General Secretary:** Arvind Avinash. **Vice-Presidents:** 1) Fr. Solaman; 2) Kamlesh Sav; and 3) Shashi Sagar Verma. **Secretaries:** 1) Anil Arun; 2) Ranjan Kumar; 3) Navab Ali. **Organising Secretary - S N**

Pathak.
Before State Conference the president will decide other council members from deferent districts. According to my objection about none of female office bailers, Arvind Avinash replays that now they don't have any female active members, they will nominate female members in council.

The end of session passed the following resolutions:

Resolutions

1) Jharkhand PUCL strongly condemns the 2nd raid on the premises of Human right activist Stan Swamy in Namnkum Ranchi on Bhima Koregaon incident. Jharkahnd PUCL demands immediate release and dropping of case on Sudha Bhardwaj, Shoma Sen, Arun Ferreira, Vernon Gonsalves, P. Vara vara Rao and others.

2) Jharkhand PUCL condemns the attack on the junior doctors in WesBengal and calls upon the Government to probe the violence and take legal action against the perpetrators of violence. PUCL also calls upon the striking doctors to respect the right to life of the sick specially the vulnerable communities and the poor. It calls upon them to explore such methods of protest that may not stop the medical services to the poor and the common people.

3) Jharkhand PUCL condemns the state's indifference and inability to stop the continual starvation deaths in Jharkhand. It calls upon the administration to reach out to the most vulnerable people and implement the Constitution entitlements properly.

With warm regards,

Ajay TG, National Organising Secretary, National PUCL.

Note: During the election period, there was a lot of complaints and criticism about the EVMs and questions raised as to whether the EVMs could be manipulated and compromised. There was also a demand that there should be counting of all the VVPAT Slips first, in the selected 5 % Assembly segments in each parliamentary seat to check if the VVPAT slips matched with the number of votes cast. This was not accepted by the ECI and courts also refused to entertain this demand. We are sharing this note sent by Shabnam Hashmi which summarises the key issues raised in the context of demand to junk EVMs and go back to counting ballots, as many other countries have also adopted after evidence surfaced of doubts about EVM tampering or manipulation in their countries.

Appeal to Political Parties to Reject EVM to Safeguard Electoral Process and Save Indian Democracy, 18.6.2019

After the results of the 2019 Lok Sabha elections were announced, political parties as well as several political commentators are trying to understand the social and political reasons leading to the 2019 verdict. These analyses have largely focussed on political and organisational limitations of the opposition compared to the RSS-BJP. While we recognise the urgent need to address these political and organisational challenges, it is equally important to recognise the threat to Indian democracy being posed by the use of EVMs. It is, indeed, the X factor, the one concern in Indian politics which we can ill afford to ignore in our fight to defend the idea of India.

During the 2019 Election, several

startling facts regarding EVM have come into public domain. To begin with, let us look at a few of them.

Mismatch in EC Figures: There is a serious mismatch between the voter turnout/votes polled data on the EVM and the votes counted data on EVMs, both shared by the EC, in 373 constituencies which went to poll in the first four phases of Lok Sabha Elections 2019. (<https://www.thequint.com/.../lok-sabha-election-results-2019-....>). This citizens web portal has mapped this data after the third, fourth and sixth phases of the elections (<http://AAamjanata.com/>). Also watch this Video: <https://youtu.be/95Kosnp8uZg>.

Storage and Safety of EVM's: Just days before Election result,

several videos of EVMs being stored in illegal cars and shops and moved, surfaced on social media p l a t f o r m s . (<https://www.indiatoday.in/.../evm-manipulation-videos-on-twit....>). These stories surfaced only after seven phases, that is May 19, 2019. Unfortunately, there was no vigilance maintained by the Opposition Parties nor even civil society after the first phase of elections were conducted on April 11, 2019.

In November 2018, the ECI had made public a SPO SOP (Standard Operating Procedure for Storage and Safety of EVM machines, a copy is available. The SOP matter is well stated and broadly represents the spirit of the

protection mechanisms for EVMs. However, it is lacking in rigour in one respect. Each EVM machine is like a cash box. It must not be let out of the control, supervision and protection of the relevant authority from the moment it leaves a factory through its entire journeys to and from a polling booth up till the moment it is sent to be scrapped. Any interruption in the monitoring schedule leaves the EVM open for its chip to be removed and substituted by an agent that wishes to manipulate the machines voting output.

Therefore, the chain of supervision must not be only from the storage area to the polling booth and back. This transportation and storage chain has to be now managed electronically through digital means. This would require each EVM to be tagged with an identification barcode or equivalent and its every movement by out of a storage facility, on a transport vehicle, its lodging at a poll booth, its transport out of the poll booth, back on to a vehicle to a transit storage area, to the final storage room each of these events has to be clocked digitally with a time tag and a GPS tag.

If even for one leg of the chain i.e. from a transit storage to the final storage the journey is not digitally tracked, there is every opportunity for either the machine to be substituted or for a chip to be removed from the machine and replaced. To make this abundantly clear in the Election Commission of India's notification dated November 13, 2018 in paras 2, 3 and 4 there is no specific mention relating to the transit movement of the EVMs. Just to be under lock-and-key in storage is not enough. It is the moment of transportation and relocation that offers the scope for tampering and no satisfactory response to this is available.

Missing and Replaced EVMs: A public interest litigation in Bombay High Court also points out that 20 lakh EVMs have gone missing from the possession of the EC! (<https://frontline.thehindu.com/cov er-st.../article27056139.ece>). The fact that EVMs are manufactured

by the Electronics Corporation of India and Bharat Electronics, under the direct control of the Central Government, is a further cause of serious concern.

Malfunctioning of EVMs: 351 New EVMs malfunctioned in Gujarat on counting day and results did not show up on the screen, leading to the counting of VVPATs for these machines. If such a high number of new EVM machines can malfunction in one state alone, is it not important for the EC to clear the air on their reliability?

(<https://indianexpress.com/.../lok-sabha-elections-2019-gujar.../>)

Note: This Interview with a former CEC clarifies some and complicates other answers. He defends the EVMs but urges more transparency in VVPATs. We need to have a responsible study group looking at this with evidence. The PIL in the Bombay HC needs to be studied carefully.

There is an unimaginable scale of possibility of manipulation through EVM and if we restrict ourselves only to political and organisational factors behind the 2019 verdict, and if we ignore the EVM factor completely, we are sure to arrive at a wrong conclusion for course correction. Presently every opposition party is doing an introspection of its campaign and organisation. The reports of these meetings that have emerged in the public domain tell us that opposition parties are ONLY blaming factors within and amongst themselves (factionalism, inability to mobilise, wrong political strategies and slogans, etc.). This approach is partial and is likely to be self-defeating. This is not to say that introspection and self-criticism is not needed. It is simply to say that this it is NOT enough.

It is important to take into account the possible X factor, namely EVM tampering, to complete the analysis. If EVM is indeed a factor, then failure to recognise this would lead to serial mistakes in course correction strategies for the following reasons:

The very real possibility of EVM tampering endangers a crucial dimension of India's democracy i.e.

peoples right to free and fair voting. It is worse than open booth capturing because it would enjoy far greater legitimacy, as it would be invisible, technology-driven and could steal peoples mandate without being discovered.

If EVM tampering is a possible factor affecting the outcome, it is outside the control of the opposition parties but within the control of the party which is in power and which can have a de facto control over the Election Commission. Therefore addressing this factor requires special political planning and strategy.

Suppose the political and organisation strategy of Opposition parties is by and large correct, and it is the EVM that tilted the final balance towards their defeat, then non-recognition of EVM factor will push political parties to doubt their correct political/organisational strategies and push them in a wrong direction of course correction, leading to serial errors in future strategies.

The depth and scale of BJP victories in the Hindi heartland states and the total elimination of major opponents should raise alarm bells about the real possibility of EVM tampering. It was encouraging to see how opposition parties came together since last October to demand return to ballot papers or counting of all VVPAT slips. However, this was not pursued consistently and attempts were not made to build a mass campaign on the ground. It is now proved beyond doubt that the opposition strategy so far on EVMs of hesitant petitioning of a compromised EC or the Supreme Court without building mass struggle has failed miserably. The hesitation within opposition parties, driven by the fear that they would be perceived as already defeated if they talked about EVM tampering, should no longer deter them as they have already been so squarely routed. If there is the slightest chance that EVM tampering is in play, then no crucial election of significance might be won by the opposition even after they have correctly mended their other

weaknesses. BJP may still allow for some sporadic and marginal victories to the opposition here and there, so that people and the opposition remain permanently confused about whether or not to question EVMs.

EVM tampering can manufacture a distorted political narrative, demoralise the opponents and derail united strategies. For example, even if we were to assume that BJP was a front runner in the recent polls, the EVM tampering may have guaranteed their victory with 100% surety. More significantly, if the EVM tampering helped BJP to expand its winning margin and push its vote share above 50%, then it has become a handy tool to make BJP appear invincible and fan despondency in the opposition camp, spawning the narrative that even a united opposition can never defeat BJP, as the latter's vote share was anyway above 50%.

Here, it is important not to fall into the trap of blind 'support' vs 'rejection' of the possibility of EVM tampering. The point is that the Indian voter should not be asked to blindly trust machines and accept the 'assurances' of 'experts'. Every voter, irrespective of their level of literacy, education, or expertise should be able to transparently verify, with their own eyes, that their vote that has gone into the box will be counted. This is the reason why paper ballots are preferred even in advanced countries where the best technology is cheaply available. The voter deserves to be completely convinced about the efficacy and legitimacy of the electoral process. This is paramount in a democracy.

Whether or not EVMs were tampered with in this particular election, the point is that any machine can be tampered with, and machines are only as trustworthy as the institution and individuals that control them. The credibility of the EC institution was at an all-time low in the 2019 Elections, with blatant bias, unanswered questions, patently false information, opaqueness and glaring unexplained errors marring

the whole exercise of polling and counting. If the ECs credibility is under question, should we not assume that EVMs too might be tampered? Opposition parties need to take steps towards building public support for a return to paper ballots.

Possibilities of EVM Tampering: Let us look at some of the key arguments being offered in defence of EVMs. Let us ask ourselves: what is the nature of this defence? Is it being suggested that technically speaking EVMs can never be tampered? Or is it being suggested that tampering of EVMs would require the involvement of thousands of people and several institutions, which is highly unlikely? It is clear that EVMs can be compromised. There is no technological reason to prevent the tampering of EVMs. Yes, this would require a serious compromising of institutions and institutional mechanisms. In the given political climate in India, where we are witnessing the complete breakdown of several institutions, we are therefore left with little confidence that tampering could never have happened.

In particular, the track record of the ECI in the EVM controversy has been dubious, to say the least. In fact, the ECI itself has allowed for doubts regarding EVMs to creep in: They have supplied patently false information in response to serious questions.

The regulations and safeguards that are supposed to prevent the tampering of EVMs have often been publicly flouted.

The ECI has said several times that the software used in EVMs is One Time Programmable (OTP), and thus cannot be rewritten and tampered with. The ECI has also consistently claimed that unlike machines in Europe for instance, EVMs in India are stand-alone devices unconnected to the Internet. This lack of internet connectivity in the use of Indian EVMs has been highlighted time and again to suggest that EVMs cannot be hacked because they cannot be remotely controlled via the internet. We now know that

these claims no longer stand up to strict scrutiny.

A response to a Right to Information (RTI) query tells us that the software in EVMs is not OTP and can indeed be rewritten (<http://www.humanrightsinitiative.org/d.../BEL-EVMs-RTI docs.pdf>). Similarly, it has been proved that remote access software can be (illegally) installed in EVM machines, thus enabling them to be manipulated via the internet by external agents (see for instance <https://www.nytimes.com/.../the-myth-of-the-hacker-proof-voti...> which states that machines used in the 2016 US Presidential Elections were compromised).

In addition, EVM manufacturers and distributors admit that EVMs are not always GPS-tracked and transported under strict supervision. According to a recent RTI query, around 20 lakh EVM machines are effectively missing. In another RTI response, the ECI refuses to share the GPS data of trucks transporting EVMs. (refer to the detailed point above).

In 2010 senior members of the National Democratic Alliance (NDA) raised serious concerns in a 200-page long book with a foreword by L K Advani asking if India's democracy was at risk because of Electronic Voting Machines (EVMs).

Some Key issues: Ethical hackers have time and again challenged the ECI, pointing out security flaws. But the ECIs response has been found wanting.

The hard coded software on the microchip, which is supposed to be one time programmable only is shared with the concerned companies by the ECI, opening up avenues for manipulation.

The microchip itself can be changed owing to physical access to EVMs.

When EVMs are tested by a technical team, only the logic and flow of logic is checked and not the microchip or the code itself. This opens up the possibility of flawed or compromised code.

A mixture of old and new EVMs are used. The new ones, like any electronic device have more

advance security measures and the old ones may be vulnerable.

Given this backdrop, fears of mass EVM tampering or swapping refuse to wither away. During the 2017 assembly elections in Uttarakhand, serial numbers of some EVMs used during the polling process (and recorded in forms submitted by the ECIs Presiding Officers for the concerned booth) did not tally with the serial numbers in the EVMs used during counting, (<https://twitter.com/gurdeepsappal/status/1130732673545265153>).

The Uttarakhand case has been pending in the HC for 2 years now, with no verdict.

In other words, some of the tall claims being put forward by the ECI have by now been completely debunked, thus leaving us with little trust in the ECI and its many assurances. We need to ask: WHY is the ECI (and the BJP) so reluctant to allow for 100% verification of EVM votes through VVPAT slips? Why are they so reluctant to address ANY of the concerns? What is the reason for this lack of transparency? Why are they constantly trotting out false pieces of information?

Botswana is witnessing strong

political debates over use of EVMs imported from India. In response to several objections raised by the Opposition Botswana Congress Party (BCP) in the Botswana court, the independent election commission (IEC) in Botswana, over the past one year, has repeatedly requested the EC of India (ECI) to depose in Botswanas courts and demonstrate the infallibility of EVMs imported from India. The ECI has till now failed to comply and there are reports that faced with this challenge it is now planning to design an EVM for Botswana that is different from the one used in India!!! <http://www.sundaystandard.info/masisi-heeds-sir-ketumile%E2...>, <https://economictimes.indiatimes.com/.../article.../64393693.cms>).

Why is the ECI so reluctant to stand up before institutional scrutiny of its own EVMs in Botswana? In India, the ECI is arrogantly escaping from all questions and demanding that we unthinkingly trust its self-certification. And when institutions such as Botswanas IEC ask accountability from it, the ECI runs away.

Platitudes and Self-Certification Cannot Substitute Transparent

Public Scrutiny

The fact of the matter is: platitudes, opaque expert opinions, and self-certifications by the ECI cannot assure credibility of the EVM-based electoral process. In a democracy, it is important that the voter trust the final verdict of the elections. The individual voter cannot be asked to unthinkingly trust the ECI and the EVM machine, even as serious concerns are raised. This situation is not sustainable in the democracy. Therefore, it is our collective responsibility to address this issue with the seriousness it requires.

We appeal to all political parties to urgently recognize the threats posed by the manipulations of EVM that compromise a free and fair election. We urge you to initiate immediate measures for public awareness regarding possible manipulation by EVM. We also request you to move forward to reject EVM and revert back to paper ballot, and if necessary to boycott election to press forward this demand. We must collectively intervene to safeguard our democracy and for transparency in the electoral process. .

Received from **Shabnam Hashmi**
□

Forget being a rich man's democracy, we are not even a democracy: ADR's Jagdeep S Chhokar¹

Ajaz Ashraf, *Caravan*, 15th May, 2019

India is often hailed for its democracy, for empowering its poor and ordinary citizens to participate in the electoral process and play a role in shaping the country. This narrative has increasingly come under strain since the Supreme Court, through its March 2003 judgment in *Union of India vs Association for Democratic Reforms*, made it mandatory for candidates contesting elections to disclose their wealth, educational qualification, and criminal cases pending against them at the time they file their nominations. The Supreme Court judgment came after the Association for Democratic Reforms, or ADR, a non-governmental organisation working on electoral reforms, moved the Delhi high court in 1999 for an order asking candidates to disclose

information that would help voters make an informed choice. The high court ruled in the ADR's favour. The union government went in appeal to the Supreme Court, which upheld the high court judgment.

The candidates' disclosures, including those made for the 2019 Lok Sabha elections, show that our democracy has gradually become the preserve of the wealthy and criminals. According to a report by the ADR, in the ongoing elections, nearly 19 percent of candidates have pending criminal cases against them, while 13 percent of candidates have cases of a serious nature such as murder, attempt to murder, rape or crimes against women. Meanwhile, 29 percent of the candidates have assets worth Rs 1 crore or more, an increase from 16 percent in the 2009

elections.

Amid the 2019 Lok Sabha elections, the independent journalist Ajaz Ashraf spoke to Jagdeep S Chhokar, one of the founders and trustees of the ADR, about political funding, the notion of voters having a choice and the subversion of Indian democracy. "The choice of a voter is pre-constrained by the choices made by a set of political parties," Chhokar said. "We have a charade of elections. Every five years we convince ourselves that we are a democracy."

Ajaz Ashraf: What are your parameters for judging the quality of any democracy?

Jagdeep S Chhokar: A defining characteristic of a good democracy is representativeness—whether every citizen has a sense that he or

she has a say in how the society is being governed. If a candidate is elected from a Lok Sabha constituency on the basis of 15 percent votes, can he or she be truly regarded as the people's representative? That is why the Law Commission of India recommended in its 170th report that a candidate should not be declared elected unless he or she gets 50 percent plus one of the votes cast. But in a really good democracy the person should get 50 percent plus one of the registered votes. To use a cliché, democracy is a continuous journey without a destination to reach. That is why we should look at the degree of democratisation. Some countries have a higher degree of democratisation than others.

AA: A 2014 analysis by your ADR colleague, Trilochan Sastry, showed that for just about every party, a greater percentage of candidates with a serious criminal record win compared to those without any such record. Why is this?

JSC: Why do people vote for criminal candidates? One reason is that they are Robin Hoods, who rob the rich and give to the poor. They also compensate for the state's failure. If I have a grievance against you, I can go to court, but it will take years to resolve the issue in my favour. But if I go to a local strongman, he will solve my problem in two days. The strongman is seen to render a service which the state should have. The ADR did a survey of the perception of voters between October and December last year. We had a sample size of 2.75 lakh people, with 500 respondents in each constituency. About 30 percent of them said they vote for a candidate with a criminal record because he or she belongs to their caste or religion. Politicians also project that they have been falsely implicated in cases. Or that cases pending against them are frivolous in nature. For instance, politicians often claim that a violation of Section 144 [of the Indian Penal Code, which, when imposed, disallows an assembly of more than four people] is not a serious offence.

AA: But isn't it true that there are instances of politicians being falsely implicated in criminal cases? For instance, the AAm AAdmi Party claims that several of its members of

legislative assembly have been implicated in false or frivolous cases by the central government, which controls the Delhi Police?

JSC: The Supreme Court in its [Union of India v Association for Democratic Reforms] judgment made it very clear that candidates need to disclose only those cases which were filed six months before the notification of any election. They are required to disclose only those cases in which punishment can be for two years or more of imprisonment, and in which charges have been framed by a court of law. Cases in which a judicial mind has been applied to frame charges cannot be called frivolous. AAP MLAs, therefore, do not have to disclose cases which the court dismissed or in which charges have not been framed.

AA: I suppose the very idea of democracy is negated when criminals become lawmakers.

JSC: It may sound heretical, but people have no choice but to vote for candidates with criminal cases pending against them. Assume there is a constituency in which ten candidates are contesting. How many do you think have a real chance of winning?

AA: Only those candidates who belong to the three big parties.

JSC: The ADR's reports have a category called Red Alert Constituencies. These are constituencies in which three or more candidates have criminal cases pending against them. Nearly half of our 543 Lok Sabha constituencies are in the red alert category. If the top three candidates most likely to win belong to three major parties, what choice do voters have? Either I go and vote for a candidate who does not stand a chance of winning or—if I want to have a say in governance—for one of the three candidates with criminal cases pending against them.

AA: Money in politics is also a factor undermining democracy. What sense do you have about the sources of funding of political parties?

JSC: There are two ways of finding out how much and from whom political parties get their funds. In case a political party wants to avail of 100 percent tax exemptions, which it

is entitled to under Section 13 (A) of the Income Tax Act, it has to maintain a factual account of its income and expenditure and file income-tax returns. Political parties have to also submit to the Election Commission a statement on every donation of Rs 20,000 and above that they receive. The ADR collected statements from both these sources.

When we first compared the statement of donations to that of political parties' incomes, we found that, on average, donations above Rs 20,000 constituted about 20–25 percent of their total income. This means that anywhere between 75 percent and 80 percent of their income was from unknown sources. Over the last few years, the figure of 75–85 percent is now down to 60–65 percent.

One of these unknown sources was titled as “proceeds from sale of coupons.” But nothing is known about who bought the coupons, for how much and for what purpose. It is widely believed that this 60–65 percent is just a small fraction of the money that political parties receive.

AA: Did the ADR try to find out what these unknown sources were?

JSC: We had the Central Information Commissioner declare the six national parties as public authorities. Our idea was to file applications under the Right to Information Act and have the national parties disclose the identity of these unknown sources of income. All the six parties refused to accept the CIC's verdict. The case regarding this is in the Supreme Court. The government has submitted an affidavit that political parties should not be public authorities under the RTI Act.

AA: Can we get a sense of the donor's identity from the rule that makes it mandatory for parties to disclose every donation of Rs 20,000 and above?

JSC: The problem is that the rule does not say whether donations above Rs 20,000 should be in cash or cheque. There is thus no limit laid down for cash donations. Assume I am a political party and you give me Rs 20,001 in cash and want a receipt, I will then have to declare it. But if someone gives me Rs 200 crore in cash and does not want to take a receipt, I can show it if I want to, but I don't need to. The Rs 20,000-

rule sets out the limit for disclosure. It does not limit the amount of cash donations a party can receive.

AA: But the government imposed a limit of Rs 2,000 on cash donations in 2017. Has that made the funding of political parties more transparent?

JSC: The problem is that this limit applies only when a party declares what it receives in cash. It can still receive Rs 200 crores in cash, without documentation, and therefore, need not declare it. The impression created that a political party cannot receive above Rs 2,000 in cash is patently wrong. It is, in fact, a lie. If a party wishes to declare whatever it receives in cash, why would it not take it in cheque? I don't wish to take names, but there was a party which disclosed an income of Rs 800 crores, but also said that none of its donations was above Rs 20,000. A political party can say today that it received Rs 39,99,80,00,000 from two million people who donated Rs 1,999 each. It can show the amount as part of its income, but it will not be required to disclose their names.

AA: Do you see the influence of political funding on government decisions?

JSC: When one doesn't know who has paid how much to a ruling party, every government decision becomes suspect, whether taken in national or public interest or to favour XYZ. Both the Bofors and the Rafale deals seem to be in this category. [Both refer to defence-purchase deals, under the Rajiv Gandhi and Narendra Modi governments, respectively, which faced allegations of corruption.]

AA: Can the electoral-bond scheme improve the quality of our democracy?

JSC: The electoral-bond scheme was introduced in the 2017 budget speech of the finance minister [Arun Jaitley]. It was mentioned under the section titled 'Transparency in Electoral Funding.' [Electoral Bonds are bank notes that donors can purchase at the State Bank of India and donate to political parties. The parties must encash the note within 15 days.] A few hours after the finance minister presented the budget, he told the media that "these bonds will be bearer in character to keep the donor anonymous." It set

alarm bells ringing. The contradiction was obvious—transparency is not possible without disclosing the donor's identity.

AA: But a donor's identity will be known as soon as he or she buys an electoral bond from a bank.

JSC: The scheme says that the designated branches of the State Bank of India authorised to sell electoral bonds will collect the complete KYC [Know Your Customer] particulars of the person buying the electoral bond. It also says that the SBI will not reveal the buyer's identity unless there is a court order in a criminal case asking for the information. It is next to impossible to get such a court order.

The SBI, however, knows the buyer's identity. The buyer can give the electoral bond to a party's treasurer in person or drop it in, say, the donor's box. But how does a citizen know who donated the money through the electoral bond? Assume the same party is in power and gives a contract to XYZ. It could well be that XYZ is the donor who gave an electoral bond to the party. How am I to know that?

AA: Let me flip the question. I am a political party and I receive an electoral bond of Rs 200 crore. Given the way the system works, the government will know who gave me Rs 200 crore and...

JSC: There is no doubt that the electoral bond scheme has the potential of choking the flow of funds to all political parties. You buy an electoral bond worth Rs 100 crore and you start driving to the office of a particular party, you will likely get a call from the ruling party's functionary. You are very likely to end up at the ruling party's office. The data of 2017–2018 shows that out of Rs 220 crore of electoral bonds, Rs 210 crore went to the BJP, Rs 5 crore went to the Congress and the remaining Rs 5 crore were not cashed. There is a rule which says that if electoral bonds are not encashed within 15 days of the purchase, the amount goes to the Prime Minister's Relief Fund.

AA: Any idea why Rs 5 crore remained unclaimed?

JSC: One explanation could be that the recipient [party] thought that the ruling party will know the donor's identity and the former did not want

to be seen taking money from him or her.

AA: Is funding the reason why the number of political parties in India has continued to grow?

JSC: Some years ago, the number of political parties in India was 1,500. The then Chief Election Commissioner wrote a letter to the prime minister saying that out of 1500 parties, only about 200 contest elections and the remaining are not even traceable. He suspected that these parties have been floated to avail of tax exemptions and turn black money into white. Today, the number of political parties has grown to around 2,600.

AA: What is the modus operandi for using political parties to turn black money into white?

JSC: Assume you have Rs 2 crore in cash. You give Rs 2 crore to a political party, X, which claims to have received the amount from its supporters in parcels of Rs 1,999. X parks the money in the bank and issues a cheque to you, declaring that it is the fees for the services you rendered.

AA: What was the idea behind asking candidates to submit affidavits declaring their wealth?

JSC: The idea was to ensure that unaccountable money is not used for winning an election. For instance, you should not use money earned from supplying narcotics to fight elections, although there are candidates who may be making their money through this channel. The other idea was to ensure that the wealth of victorious candidates do not increase disproportionately by the next election.

These expectations have been belied. We have data to show that candidates who lose one election and then fight the next one, their wealth increases by x times. However, during the same period, the wealth of candidates who become MLAs or MPs increases by 2x, and that of candidates who win and become ministers by 3x, even 5x.

AA: Wouldn't the value of assets of candidates witness a natural increase because of the market factor?

JSC: The value of assets of every citizen should increase by the same proportion. But this is not the case

with those who successfully contest elections. As a politician climbs up the democratic ladder, his or her wealth seems to keep increasing.

AA: When candidates submit affidavits before elections, the media puts out headlines saying that there are so many crorepati candidates. Isn't Rs 1 crore as a measure for determining who is a wealthy candidate rather low?

JSC: The absolute number is not important. The question is: can a person who has Rs 100 crore understand the trials and tribulations of a daily-wage earner? I don't think so.

AA: Are we a rich man's democracy?

JSC: Forget being a rich man's democracy, we are not even a democracy. We have a charade of elections. Every five years we convince ourselves that we are a democracy.

Let me narrate a story. After the Government of India Act, 1935, [which introduced direct elections,] was enacted, provincial elections were called. In Bombay, Vaikunthbhai Mehta, who was very popular because of his role in cooperative societies, came under popular pressure to contest in the elections, even though he was not interested in doing so. He wrote a postcard to Mahatma Gandhi explaining his dilemma. Gandhi replied that he must contest in the election subject to two conditions—he should not ask people for their votes and he should not spend a paisa on his election. As Gandhi's loyal follower, Mehta filed his nomination paper and sat at home. He won with an overwhelming majority.

Let me ask you a question: Where does the government come from?

AA: MPs elect it.

JSC: When I ask this question to people, they say they elect the government. I ask them how? They say they go to the polling booth and vote for a candidate. But tell me, where do candidates [who have the potential to win] come from?

AA: They come from a political party.

JSC: You are right. The choice of a voter is pre-constrained by the

choices made by a set of political parties. If the voter doesn't have a choice, can you then call ours a democracy? Suppose you become a candidate, win an election, become an MP, and a bill comes to the Lok Sabha. Do you have a choice to support or oppose the bill?

AA: No, unless I want to lose my seat for defying the party's whip.

JSC: So the voter's choice is pre-constrained by the choice of a set of parties. The choice of MPs is completely controlled by their parties. Where does the government come from? It comes from political parties. Are political parties democratic?

AA: No, they are not.

JSC: If the government is made by entities that are completely undemocratic, can you call ours a democracy? Our democracy is hollow. We are not a democracy because our parties are undemocratic. This impacts everything, including the representativeness of our democracy.

AA: Yet, 84 years ago, we had the phenomenon of Vaikunthbhai Mehta winning the election without campaigning and without spending a paisa.

JSC: It is not possible now because political parties are no longer democratic. There is a complete disconnect between the voter and the people's representative. The voter is of no use to a person unless he or she is a candidate. But he or she cannot become a candidate unless he or she gets a political party's blessings. When a person gets a ticket, he or she is more beholden to the ticket-giver than to the voter. The disconnect between the voter and the representative is the root problem of our democracy. A party's candidate should be chosen by its primary members. Will such a candidate need to spend the kind of money as is done today? No.

¹<https://caravanmagazine.in/politics/c/hhokar-democracy-elections-funding>
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