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Editorial:

The Long March to Protect Human Rights in India!

In the wake of the retirement of the then incumbent Chief Justice of India, Dipak Misra (who retired on 2nd October, 2018), a flurry of cases with came to be decided in the last fortnight of September upto 01st October, 2018 with great, and equally, grave implications for the future of constitutional laws and human rights in the country. A few cases stand out for attention, all marked by the fact that they were not unanimous rulings but had minority, dissenting judgments being passed. Notable was the split verdict in the Aadhaar case with the majority of 4 judges including the then CJ, Dipak Misra, alongwith Justices AM Khanwilkar and Ashok Bhushan agreeing with the majority ruling authored by Justice AK Sikri, upholding various aspects of the Aadhaar law while Justice Chandrachud gave a long dissenting judgment. The 1448 pages long judgment will be discussed for long for the numerous issues which were considered in the case. The other important cases in which there were split rulings related to the case of the arrest of 5 prominent human rights activists by the Maharashtra police in the early hours of 28th August, 2018 in a well planned and orchestrated move by the Pune / Maharashtra police in Delhi, Faridabad, Hyderabad, Thane and Mumbai respectively. In this case the majority ruling written by Justice Khanwilkar and concurred by the then CJI, Dipak Misra, held that the arrests of the activists was not illegal while giving one month's time to the activists to approach the appropriate courts for grant of bail, during which period they were allowed to remain in house arrest in their respective homes. Justice Chandrachud wrote a string dissenting ruling pointing out to the various illegalities in the arrest and holding that the arrests could not be supported; the role of the police also came up for censure. The third ruling was in the context of the issue of entry of women in the age group 14-50 to the Sabarimala temple in Kerala. In this, the majority view favoured the entry of women as an extension of the fundamental right to equality while the lone dissenting ruling of Justice Indu Malhotra held that the court should not interfere in matters of faith. Irrespective of whether one agrees with it or not, the minority ruling of Justice Indu Malhotra is important as part of constitutional analysis. These judgments apart there were a few other equally important cases including the SC ruling striking down sec. 377 Criminal Procedure Code which decriminalised homosexuality between consenting adults thereby upholding a long pending demand of the LGBTQ community. Of great import was the ruling in the issue of reservations for SC/STs in promotion in which the SC introduced the notion of `creamy layer' in the context of SC/STs which till then was used only in the context of reservations for MBCs/OBCs.

Many of these judgments are of great importance and will need to be thoroughly discussed and analysed for their implications to human rights

jurisprudence. We start the process by carrying a few articles on issues related to a few of these judgments. We invite readers and members to participate in the discussion.

In the meantime, the Delhi High court held the arrest of Gautam Navalakha, of pUDR, as illegal and consequently he came to be released from house arrest.

The minority ruling of Justice Chandrachud in the Romila Thapar case and the order of the Division Bench of the Delhi High Court are very crucial orders which uphold the rights of citizens against arbitrary, capricious and motivated prosecutions launched brazenly by police with impunity. Both the ruling expand the protections against abuse of power by the police and also spell out the importance of procedural compliance as a measure of protecting human rights. We shall be carrying more analytical articles to help readers and human rights activists understand the wide scope of the fundamental right to life under Art. 21 and various procedural laws.

During this same period, the government has also launched major action against a number of environmental groups which have been challenging the government's policies on a range of environmental protection laws. The offices of Greenpeace were raised and their bank accounts frozen. Elsewhere people have been prosecuted in very apparent trumped charges. This is apart from activists and campaigners challenging human rights violations. It's very clear, that in the coming months as elections approach, human rights activists will have to brace up to new challenges and will also have to unite to assert the primacy of the rule of law, the Indian Constitution and human rights.

Dr. V. Suresh, Editor and General Secretary, PUCL National ❑

Subverting the Constitution

Ravi Kiran Jain

Given the secular orientation of the Indian Constitution, it simply cannot accommodate the corporate backed Hindu Nationalist agenda. Hindutva forces cannot bring in a "Hindu Rashtra" within the term and provisions of the Indian Constitution as it now stands.

It nonetheless can be done only by drastically amending the Constitution of India. So long as Kesavananda Bharati (AIR 1973 SC 1461) holds the field it is not possible to do so in as much as Kesavanands has held that the Parliament in its power under Article 368 to amend the Constitution has no power to change the basic structure of the Constitution. Para 599 (Expressing the Majority view) of the Kesavananda case reads as follows:-

> "The basic structure of the Constitution is not a vague concept and the apprehensions expressed on behalf of the respondents that neither the citizen nor the Parliament would be able to understand it are unfounded. If the historical background, the Preamble, the entire scheme of the Constitution, the relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the Constitutional structure (These cannot be catalogued but can only be illustrated).
>
> 1. The supremacy of the Constitution.
> 2. Republican and Democratic form of Government and sovereignty of the country.
> 3. Secular and federal character of the Constitution.
> 4. Demarcation of power between the legislature, the executive and the judiciary.
> 5. The dignity of the individual (secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.
> 6. The unity and the integrity of the nation."

It is important to note here that the word "Secular" was inserted in the Preamble of the Constitution by the Constitution's Amendment Act w.e.f 3.1.1977 whereas in the Kesavanand's case "Secular" was held to be a basic feature of the Constitution on 24.4.1973.

In S.R. Bommai (AIR 1994 SC 1918) Para 28 reads as follows:

> "Notwithstanding the fact that the words 'Socialist' and 'Secular' were added in the Preamble of the Constitution in 1976 by the 42nd Amendment, the concept of Secularism was very much embedded in our constitutional philosophy. The term 'Secular' has advisedly not been defined presumably because it is a very elastic term not capable of a precise definition and perhaps best left undefined. By this amendment what was implicit was made explicit. The Preamble itself spoke of liberty of thought, expression, belief, faith and worship. While granting this liberty the Preamble promised equality of status and opportunity. It also spoke of promoting fraternity, thereby assuring the dignity of the individual and the unity and integrity of the nation. While granting to its citizens liberty of belief, faith and worship, the Constitution abhorred discrimination on grounds of religion, etc……..... These fundamental rights enshrined in Articles 15, 16, and 25 to 30 leave no manner of doubt that they form part of the basic structure of the Constitution."

This aspect has been concluded in

S.R. Bommai in paragraph 88 in the following words:

> "These provisions by implication prohibit the establishment of a theocratic state and prevent the state either identifying itself with or favoring any particular religion or religious sect or denomination .The State is enjoined to accord equal treatment to all religions and religious sects and denominations".

The current political scenario in India is much worse then what was experienced and witnessed during the emergency from mid 1975 to early 1977 (A period of only 18 months). The situation leading to the declaration of Emergency was an inevitable result of a chain of events starting from the 24th April 1973- the date on which the Kesavananda Bharati case was decided by a small majority of 7:6 upholding the Basic Structure Doctrine till the date of declaration of Emergency. In fact it was in Golak Nath vs State of Punjab (AIR 1967 SC 1643) that the issue of the scope of the power of Parliament to amend the Constitution under Article 368 was raised. By slender majority the Court held that Parliament could not abridge or take away the Fundamental Rights. The Golak Nath judgment negated the sweep of Article 368 to amend provisions contained in Part III of the Constitution. This was the first major step taken by the Supreme Court to contain the erosion of the Constitutional scheme. After the judgment in Golak Nath, Indira Gandhi painted the Court as the principle adversary of her radical politics. Indira Gandhi launched a campaign, against the judicial system, calling it a major obstacle to progress towards socialism. She mobilized quite a few intellectuals, academics, lawyers and judges- who emphatically criticized the Supreme Court's decision in Golak Nath and generally regarded the court as the principle class enemy.

How Kesavanand case was decided by such a thin majority? A detailed and authentic account is given by Granville Austin in Chapter 11 of his celebrated book "Working a Democratic Constitution – *The Indian Experience*". It is an interesting reading that details how Indira Gandhi attempted the case to be decided by overruling the Golak Nath case. On the following day that is on the 25th April 1973 the President of India appointed A.N.Ray as the next Chief Justice of India superseding Shelat, Hegde and Grover, the three senior most judges, who, by the convention of seniority, were next in line for the position. And thereby Mrs. Indira Gandhi struck a grievous blow to democratic constitutionalism as well as to the independence of Judiciary.

On the 5th June 1974, more than a year after the Kesavanand Case, Jai Prakash Narayan started a massive movement of the "**Total Revolution**" (*Sampoorna Kranti*). While the J.P. movement was gaining ground amongst the masses, Mrs Indira Gandhi's election was set aside by the Allahabad High Court on 12th June 1975. J.P demanded her resignation in a huge public meeting on 25th June 1975.Instead of resigning Indira Gandhi declared an Emergency in the night intervening 25/26 June 1975 because of the turmoil and incipient rebelling in the country. Thousands were detained throughout the country. The detentions were challenged by filing petitions in the High Courts. 9 High Courts out of 13 decided in favour of the detainees. The appeal in the Supreme Court referred to as the `ADM Jabalpur' case (also known as Habeas Corpus case) was decided on 28.4.1976. 4 out of the 5 Judges, Chief Justice Ray, Justice Beg, Justices Chandrachud and Bhagwati upheld the Government of India's position. Only Justice Khanna dissented .In January 1977, Justice H.R.Khanna was superseded as he was not made Chief Justice of India on his turn and he resigned to give way to Justice Beg to become the CJI.

Mrs Gandhi remained out of power from 25th March 1977 to January 1980. The *People's Union for Civil Liberties* (PUCL) was formed in November 1980 with a written Constitution which was entirely a different entity from the PUCLDR (*People's Union for Civil Liberties and Democratic Rights*) formed four years previously on 17th October 1976 which functioned only for 3 months. On her re-emergence after the fall of the Janata Government Mrs Gandhi took up her unfinished task of having a "committed" judiciary which she wanted to accomplish during 1971-77. It was fully achieved with the help of the judgment of the 7 Judges Constitution Bench of the Supreme Court headed by Justice Bhagwati by a thin majority of 4:3 in the S.P.Gupta case. The question raised and decided in the case of S. P.Gupta was about the question of supremacy , whether of the Executive on the one hand and the CJI and Chief Justices of the High Court on the other hand in the matter of appointments of the Judges of the High Courts as well as the Supreme Court. The fallout of S.P.Gupta was that the opinion of the CJI and Chief Justices of High Courts were totally ignored in the matter of appointment and transfer of judges and power had concentrated completely in the hands of the corrupt Executive to the exclusion of the Judiciary, for a period of about 12 years the judges in the High Courts and the Supreme Court were appointed by the corrupt Executive. The judgment in S.P.Gupta came on 30.12.81 which was overruled in the Second Judges case decided on 6.10.93. The S.P.Gupta case went to the extent of holding that consultation by the President of India with the CJI in the case of Supreme Court, and CJI and Chief Justices of the High Courts in the case of appointment of High Court was only formal.

In the Second Judges case the Supreme Court held that the opinion of the Chief Justice of India for the purposes of Articles 124(2) and 217 (1), so given has primacy in the matter of all appointments; and no appointment can be made by the President under the provisions to the Supreme Courts

and the High Courts unless it is in conformity with the final opinion of the CJI formed in the manner indicated.

The Third Judges case came on a reference made by the President of India under Article 143 of the Constitution of India. It was decided on 28th October 1998. Through this judgment the manner of appointment of judges through the Collegium system was introduced. It may be seen here that in the Second Judges case there was nothing at all to introduce a Collegium system. Although a bare reading of the relevant provisions of the Constitution goes to show that the collegium system was not in accordance with the Constitutional scheme but it was generally welcomed. To begin with, the system seemed to work well. In early 1999, a large number of Judges were appointed in various High Courts and it appeared that all those appointments were made on the basis of objectively viewing the merit by the collegiums of the Supreme Court and various High Courts. These appointments were made to the satisfaction of all concerned. However, not long after its introduction it started appearing and an impression was gaining ground that the collegium system has derailed from its basic objective of choosing judges on the basis of merit. There were complaints that the merit had taken the backseat while considering or choosing a lawyer for judgeship and this caused anger as well as frustration amongst those who were deprived of the judgeship despite being eligible on the ground of merit. The majority of the Bar members had become more vocal than they were in the past about the inadequacies in the appointment of judges. The collegium of the Supreme Court and the High courts started recommending the names of the kith and kin of their fellow judges and Collegiums of the High Courts also started recommending the names for appointment of judges on the suggestion of the Supreme Court Judges without judging their merits independently. This created a conflicting vested interest in the Bar which prevented a united agitation against the arbitrary manner in which the judges were being appointed.

Why the collegium system got derailed from its basic objective of choosing judges on the basis of merit so soon after its introduction? The reason appears to be that the judges appointed in various High Courts during the period the executive had the supremacy to appoint them (i.e. between 30.12.1981 and 6.10.1993) became senior judges in the Supreme Court and started becoming members of the collegium of the Supreme Court and the collegium of the various High Courts, so much so that when Justice V.N. Khare was the CJI the whole of the Supreme Court was packed with the judges who were appointed in post SP Gupta and pre Second Judges case, who had a different mindset being chosen during the period of the supremacy of the executive.

There was a lot of hue and cry with this method of the appointment of judges by the judges themselves. Both the UPA as well as the NDA governments taking advantage of such an adverse public opinion against the method of appointment by the Collegium system tried to bring a Constitution amendment and a legislation to establish a National Judicial Commission for the appointment of the Judges in the High Courts and the Supreme Court. Finally the NDA government brought Constitution (Ninety –Ninth) Amendment Act 2014 and along with it National Judicial Appointment Commission Act 2014 by which a Commission for selection and appointment and also transfer of Judges of the Higher Judiciary should be constituted replacing the prevailing procedure for appointment of Judges and Chief Justices of the High Courts and the Supreme Court of India, contemplated under Article 124 (2) and 217(1). It was felt, that the proposed Commission should be broad based. In that, the Commisssion would comprise of the members of the Judiciary, the Executive and eminent and important persons in public life. In this manner it was proposed to introduce transparency in the selection process. Fortunately a Constitution Bench by majority of 4:1, set aside the Constitution (Ninety–Ninth) Amendment Act 2014 as well as the National Judicial Appointment Commission Act 2014 on Oct 16, 2015. Thus, repelling the gravest possible threat to the independence of judiciary. Chief Justice Kehar and his companion Justices thus secured for the time being at least the continued independence of the judiciary. Para 935 of the judgment of the Constitution Bench reflects the majority view. It reads as follows:

> *"The sum and substance of this discussion is that mandatory consultation between the President and the Chief Justice of India postulated in the Constitution is by passed- bringing about a huge alteration in the process of appointment of judges; the Ninety- Ninth Constitution Amendment Act and the NJAC Act have reduced the consultation process to a farce- a meaningful participatory consultative process no longer exists; the shared responsibility between the President and the Chief Justice of India in the appointment of Judges is passed on to a body well beyond the contemplation of the Constituent Assembly; the possibility of having committed judges and the consequences of having a committed judiciary , a judiciary that might not be independent is unimaginable."*

Setting aside the Constitution (Ninety-Ninth) Amendment Act 2014 and NJAC Act 2014 was extremely a great set back to Modi Government. These two enactments were made with a motive to appoint judges to the liking of the executive so that in near future Kesavanand Bharati case can be overruled and then make drastic amendments in the constitution to make India a Hindu Rashtra.

Tension between the judiciary and the Executive, or within the judiciary itself are nothing new. It has existed over the years since early 1970s, over matters like judge's appointments or operational procedure etc.

The chain of events from the date of supersession of judges (25.4.73) till the date of retirement of Chief Justice of India Deepak Mishra on 2.10.18 show how there crept in a permanent and sharp division in the judiciary as well as the Bar and a race amongst a section of senior judges to demonstrate who is more "Committed" (to the Executive), began and it is still going on.

This commitment to the Executive mindedness by the judges is best demonstrated while dealing with the Constitutional validity of draconian laws.

Article 13(1) declares:- "All laws in force in the Territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part , shall, to the extent of this inconsistency be void.

Article 13 (2) mandates State shall not make any law which takes away or abridges the rights conferred by this part in any law made in contravention of this clause , to the extent of this contravention be void."

Even after the Constitution came into force on 26.1.50, the government did not think that the continued existence of laws in contravention of Article 13(1), were unconstitutional .On the contrary, many of the draconian laws passed by the British to contain and repulse the struggle for independence still continue today and unfortunately the judiciary too continued with the colonial traditions, which can be illustrated by what happened in the case of A.K.Gopalan. Justice O.Chinnappa Reddy in his book "*The Court and the Constitution of India*: *Summits and Shallow"* while dealing with the Gopalan case noted:

> *"The Majority Judges appeared to be still under the influence of the old colonial jurisprudence and oblivious to the fact that what they were expounding was the jurisprudence of a new Constitution for people who had just freed themselves from colonial rule. One wishes that they had kept in mind the admonition of Lord Atkinson J in Liversiege v Anderson.*
>
> *I view with apprehension the attitude of judges who on a mere question of construction when face to face claims involving the liberty of the subject show themselves more* ***Executive minded than the Executive."*** (*emphasise* mine)

Some of todays laws are more draconian than the draconian laws enacted during the British period. Constitutional validity of all such draconian laws have been upheld by the Supreme Court except the latest enacted law in 2008 making drastic amendments in Unlawful Activities Prevention Act 1967 (UAPA) incorporating all the draconian provisions of TADA and POTA. Constitutional validity of TADA was challenged in Supreme Court in *Kartar Singh vs State of Punjab [SCC (1994)(3) 569].* The judgment has been severely criticized by many distinguished lawyers and jurists. According to K.G.Kannabiran, the Supreme Court upheld the validity of TADA "Virtually proceeding on the assumption that the act is more fundamental than the Constitution". Thereafter the constitutional validity of POTA was challenged by the PUCL. Since POTA had similar provisions as TADA and since the grounds of attack in the Supreme Court in POTA were almost the same as were argued in the case of Kartar Singh, the Division Bench upheld the Constitutional validity of POTA on the ground that the law laid down by the Constitution Bench in Kartar Singh was binding on the Bench of two judges.

The present situation is an inevitable result of Modi's election campaign and his coming into power in 2014. Recent years have witnessed systematic attacks on the human right defenders and the fearless journalists. Writers and rationalists, countering the dominant view of religion and progressive in their writings have also been violently attacked. Today any dissenting expression stands stifled. Three rationalists and thinkers Narendra Dhabolkar, Govind Pansare and M.M. Kalburgi and the eminent and fearless journalist Gauri Lankesh were murdered by unidentified people in the last three years, apparently by pro-Hindutva groups. A number of incidents of lynching have occurred since 2014. According to a Reuters Report published in June 2017, a total of "28 Indians – 24 of them Muslims- have been killed and 124 injured since 2010 in cow related violence".

About the attacks on human rights defenders Mathew Jacob in his note 'Democratic space and the Regime', recently published in "Dismantling India –A 4 year Report", "Over the period 2015-2018, Human Rights Defenders Alert (India) (HRDA) has documented over 300 cases of attacks on HRDs across the country. HRDs and members of their families are facing threats to their personal and physical security. They are being profiled, harassed, intimidated, ill-treated and subjected to hateful abuse in the media. Their physical security and lives have been threatened in a systematic manner. They are arbitrarily arrested or detained and cases filed against them. Their offices raided and files stolen and confiscated. And in extreme cases, they are tortured, made to disappear or even killed. HRDs are the victims of State repression, often charged with fabricated cases with instances of state manipulating the judiciary".

The above mentioned 300 cases of attacks on HRDs are over and above ten activists and eminent citizens who were arrested under UAPA in connection with Bhima-Koregaon clashes by the Pune police, controlled by the Home Department of the BJP-led State governments in Maharashtra. Five of them were arrested in June 2018

they are Surendra Gadling, General Secretary of Indian Association of People's Lawyers from Nagpur; Professor Shoma Sen Head of Department of English, Nagpur University; Sudhir Dhawale Editor of Marathi Magazine, Vidrohi from Mumbai; Rona Wilson Public relation Secretary, Committee for the release of the political prisoners, (CRPP); and Mahesh Rout, Anti-Displacement activist from Bharat Jan Andolan. The other five were arrested on 28th August 2018 in simultaneous raids conducted in multiple cities across the country on the pretext of investigating Koregaon Case - Sudha Bharadwaj in Faridabad, Varavara Rao in Hyderabad , Gautam Naulakaha in New Delhi and Vernon Gonsalves and Arun Ferreira in Mumbai. The Pune police had claimed that all these 5 persons were "Urban Naxalites" who had links with the Left-Extremists Communists Party of India (Maoists) and were in the process of creating large scale violence, destruction of property resulting in chaos. Against the detention of five persons arrested on 28th August 2018, the PIL petition was filed by 5 eminent citizens of the country including the eminent historian Romila Thapar and 4 others, in which the 5 persons arrested also joined as petitioners has been disposed off by the Supreme Court on 28.10.18.

In a situation as it exists today it seems difficult to successfully challenge the Constitutional validity of UAPA. Be it as it may. The Constitutional validity of UAPA must be challenged by asking the Supreme Court that Kartar Singh case upholding the validity of TADA by the Constitution Bench has been wrongly decided and the matter of Constitutional validity of UAPA should be decided by constituting a Larger Bench. May be, that at this moment in the composition of the Supreme Court there may not be many Judges who are in the race of showing them as "Committed".

I conclude this note with the following quote:

> "*The Constitution does not work by itself: It provides that any law which abridges or abrogates fundamental rights shall be void. But laws don't carry on their forehead the mark that they are invalid. When a person is preventively detained under an illegal law, the fact that it has vitiated the Constitution does not help you, unless by an appropriate remedy, he can get out of jail. Nor are laws self executing. It is left to the Executive to administer law and that is where the most serious problem arises*." (H.M.Seervai at a public meeting held in the Bombay University Convocation Hall on August 20, 1982 under the auspices of the *People's Union for Civil Liberties*)

Published in* PUCL Bulletin*, October 1982 ❑

Press Release: October 22, 2018

IAPL condemns the threat to arrest Justice H Suresh[1]

IAPL condemns the threat issued by Shivaji Pawar, ACP, Maharashtra Police to arrest IAPL's President Justice Hosbet Suresh (Retd.) and the most alarming portrayal by him of IAPL as a frontal organization of CPI (Maoist). IAPL believes that such attacks on Judges and Human Right defenders which includes lawyers and organizations, require to be understood in the in the light of rising authoritarianism and fascist attacks in the country. It is the need of the hour for all organisations and individuals to come together and resist this onslaught collectively and to strongly condemn and resist this brazen attempt to intimidate Justice H. Suresh (Retd) and members of IAPL.

Justice H. Suresh, now in his late 80s, is a former judge of the Hon'ble Bombay High Court and is leading figure in Human Rights activism in India. After his brief but glorious judicial service, he led a number of Commissions of Inquiry that investigated violations of human rights. Justice Suresh investigated the Kaveri Riots (1991) in Bangalore, post-Babri Bombay riots (1992/1993) publishing their findings in a 1993 report titled 'The People's Verdict'. In August 1995, Justice Suresh issued "Forced Evictions – An Indian People's Tribunal Enquiry into the Brutal Demolitions of Pavement and Slum Dwellers' Homes", a report documenting the use of brutal and indiscriminate force against slum dwellers in Mumbai. In 2000, joined by former Supreme Court judge Justice V. R. Krishna Iyer, Justice Suresh held a two-day hearing into the slum clearances in which about 60,000 people had been evicted. The Inquiry covered both legal aspects of the clearances and the human impact.

Justice Suresh along with Justice P.B. Sawant, were members of Indian People's Tribunal (IPT) fact-finding team headed by Justice V. R. Krishna Iyer that went to in March/ April 2002 following the communal riots triggered by the Godhra train attack. The tribunal gathered 2,094 oral and written testimonies and met with many senior police officers and government officials. Findings were documented in their report "Crime Against Humanity". The fact finding team visited the former state Home Minister Haren Pandya who informed the fact finding team on recorded audio tape, with request of anonymity, that then Chief Minister Narendra Modi had told the police not to restrain the rioting Hindus. Pandya was thereafter murdered in 2003. In reaction to the mass killings in Gujarat, Justice Suresh was one of the drafters of a proposed law "The Prevention of Genocide and Crimes against Humanity Act 2004", in light of Convention on the Prevention and Punishment of the Crime of Genocide, 1948 to which India is signatory. This would make Ministers and officials criminally

responsible if they failed to exercise control in cases of mass violence against a group of citizens. In his 60 years of public life, Justice Suresh has always been vocal against draconian laws, state repression and judicial corruption.

IAPL strongly condemns this brazen attack on Justice H. Suresh which is not just an attack on an individual or an organisation but is a conspiracy to silence every Judicial officer who hold the Constitution and the obligations that fall on such obligations therein as paramount to their lives. Furthermore, this is a direct attack on the entire paradigm of the separation of the judiciary, a basic structure of the Constitution and our democracy. This attack on Justice H. Suresh is not an isolated incident of persecution and attack on judges who refuse to become executive puppets. The mysterious events leading to the death of Justice Loya gives us all sufficient cause to apprehend a further persecution of Justice H. Suresh. Furthermore, such statements are not only in a continuum of a conspiracy of vilification and intimidation but are deeply defamatory and serve to de-legitimize the invaluable legacy of Justice H. Suresh.

It has also come to our attention through various media reports (Times of India, Pune Mirror, Business Standard among others) that the State of Maharashtra while opposing the bail applications of IAPL's Office Bearers Advocate Surendra Gadling (General Secretary), Advocate Sudha Bharadwaj (Vice -President) and Advocate Arun Ferreira (Treasurer), argued that IAPL is a frontal organization of the banned CPI (Maoist) Party. Senior Advocates Sudeep Pasbola and Yug Mohit Chaudhry representing Arun Ferreira and Sudha Bharadwaj respectively argued that IAPL's lawyer-members are carrying out the constitutional obligation of legally holding the State accountable for excesses amounting to violations of human rights of the citizens of this country. It is pertinent to note that such allegations on IAPL have not been made by the State prior to this hearing, either in the Romila Thapar's *et al* petition before the Supreme Court or anywhere else.

IAPL outrightly rejects and strongly objects to such allegations levelled by the State of Maharashtra and supports the Office Bearers of IAPL. Further, IAPL condemns the attack on people's lawyer organisation and such brazen efforts to portray it as a frontal organization of CPI (Maoist). At the outset, it is explicitly clarified that IAPL is an independent organization and is the Indian Chapter of the International Association of People's Lawyer and has no direct or indirect affiliation to any political party. If IAPL has been at the front of anything it is in representing all democratic struggles in and outside the courts, providing defence to the marginalised, and speaking up against persecution of lawyers in India or elsewhere. These claims made by the State of Maharashtra are an attempt to silence rights lawyers, activists and organisations involved in human rights work and to create a hostile working environment for all such lawyers directly infringing on their fundamental rights to practice their profession.

IAPL takes this opportunity to clarify that it is a member an international organisation called International Association of People's Lawyer founded in 2004 to bring together lawyers involved in the legal support of collective struggles for peoples' rights and in situations of gross rights violations on a collective platform. The international organisation has recently released a report which brings to light that globally we are living in a scenario where in many countries of the world, it is dangerous to be a lawyer. This is especially true if the lawyer is attempting to protect the rights of the people against corporate or government interests or is exposing corruption. In a similar vein, IAPL and its members are presently being targeted and arrested for working towards the protection and furtherance of the constitutional and human rights of the people. It is a lawyers organisation and all members are human rights workers and rights advocate working for the preserving of the rights of the marginalised. IAPL's work is within and in furtherance to the four corners of the Constitution of India and is built towards ensuring the protection of fundamental human rights of all citizens of this country. Given the current political ecology of the country which is structured on the fascist ideology of silencing dissent and perpetrating violence rather than protecting the most marginalised and vulnerable the rights advocacy work of IAPL and the human rights work of all its members has most unjustly resulted in IAPL being categorised as the frontal organisation of the CPI (Maoist). It is ironic that the lawyer-members of IAPL and the organisation in itself are both being wrongfully imprisoned and persecuted for the very same crimes that they have in the recent few years exposed and brought to light.

The issues and agendas taken up by IAPL are sure to rattle the higher ups, especially those state forces against whom IAPL is constantly speaking up against and demanding accountability from by exposing their actions. It is under these circumstances and the existing political scenario that IAPL is being labelled as the frontal organisation of the CPI (Maoist). Therefore, we appeal to all democratic rights organisations, lawyers' organisations and associations, bar associations, lawyers, activists, writers, and members of the public to come forward at this time and:

1. Condemn the persecution and victimisation of Justice H. Suresh and IAPL and stand in solidarity with Justice H. Suresh and IAPL and furthermore collectively resist and expose the fascist tendencies int he country.
2. Emphasise the work done by all the lawyer-members of Indian Association of People's Lawyers;
3. Stand against the systematic assault on rights advocacy and cause lawyering;
4. Demand an end to the persecution of members of Indian Association of People's Lawyers.

Justice H. Suresh, President, IAPL; **M. Venkanna**, Vice President, IAPL; **D. Suresh Kumar**, Joint Secretary, IAPL; **Ankit Grewal**, Joint Secretary, IAPL

Link: [1]https://countercurrents.org/2018/10/22/iapl-condemns-the-threat-to-arrest-justice-h-suresh/@ *22Oct2018* ❑

Aadhaar: The **Money Bill** Controversy[1]

Arvind P. Datar & Rahul Unnikrishnan

Bar & Bench October 15 2018

An important question that required consideration in the –Aadhaar judgment KS Puttaswamy v Union of India – was whether the *Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016* was rightly passed as a "Money Bill". By a majority, it was held that it was indeed a Money Bill while the dissenting judgment of Chandrachud J. held to the contrary.

It is submitted that the view taken by the majority requires early reconsideration as it virtually reduces the Rajya Sabha to a nullity and will enable any Government, which has a majority in the Lok Sabha, to simply by-pass the Rajya Sabha where it may be in a minority. All that is now required is for any bill to merely contain a provision involving expenditure to be paid out of the Consolidated Fund of India.

Types of Bills: The examination of Articles 107 to 117 of the Constitution indicates the following kinds of Bills:

(i) General Bills (Art 107)
(ii) Money Bills (Art 110)
(iii) Appropriation Bills (Art 114)
(iv) Financial Bills (Art 117)

As per the Rajya Sabha website, Financial Bills can be further sub-divided in two categories i.e. Category-I and Category II. As explained later, Aadhaar is an ordinary bill and, at best, it would be a Financial Bill-Category-II. This would have required the approval of the Rajya Sabha as well. (This Article does not deal with the Bills to amend the Constitution, which are covered by Article 368. These Bills are passed in exercise of the constituent power of Parliament and have to follow the special procedure prescribed therein).

Article 199 is the equivalent provision relating to Money Bills that is applicable to State Legislatures.

Introduction of the Aadhaar Bill: The Aadhaar Bill was first introduced as a Money Bill in 2016. This Bill contained 59 sections of which only section 7 referred to the Consolidated Fund of India and the relevant portion of that section reads as follows:-

> "7. *Proof of Aadhaar number necessary for receipt of certain subsidies, benefits and services, etc.– The Central Government or, as the case may be, the State Government may, for the purpose of establishing identity of an individual as a condition for receipt of a subsidy, benefit or service for which the expenditure is incurred from, or the receipt therefrom forms part of, the Consolidated Fund of India, require that such individual undergo authentication, or furnish proof of possession of Aadhaar number or in the case of an individual to whom no Aadhaar number has been assigned, such individual makes an application for enrolment.*"

Article 110(1) of the Constitution specifically states that a Money Bill must contain **only** provisions that deal with the matters enumerated therein. The article reads as follows:-

"***Article 110. Definition of 'Money Bills'.***-

(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:

(a) The imposition, abolition, remission, alteration or regulation of any tax;

(b) The regulation of the borrowing of money or the giving of any guarantee by the Government of India or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;

© The custody of the Consolidated Fund or the Contingency Fund of India, payments of moneys into or the withdrawal from any such Fund;

(d) The appropriation of money out of the Consolidated Fund of India;

(e) The declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;

(f) The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such monies or the audit of the accounts of the

Union or of a State; or

(g) Any matter incidental to any of the matters specified in (a) to (f) above."

Section 7 refers to expenditure which is "incurred" from the Consolidated Fund of India but Article 110(d) covers only expenditure "charged" to Consolidated Fund of India. Significantly, the expenditure on the Aadhaar scheme is not "charged" to the Consolidated Fund of India. Article 112(3) enumerates expenditure which is charged to the Consolidated Fund of India. It reads as follows:

"*(3) The following expenditure shall be expenditure charged on the Consolidated Fund of India-*

(a) the emoluments and allowances of the President and other expenditure relating to his office;

(b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;

(c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) (i) the salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court,

(ii) the pensions payable to or in respect of Judges of the Federal Court,

(iii) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercises jurisdiction in relation to any area included in a Governors Province of the Dominion of India;

(e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor General of India;

(f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(g) any other expenditure declared by this Constitution or by Parliament by law to be so charged."

The other provisions which create such charge are Articles 146(3), 148(6), 273(1), 275(1), 290, 291(1)(a), 293(2) and 322 of the Constitution.

The majority has upheld the Bill as a Money Bill on the following grounds:-

(a) The Aadhaar Bill was a Money Bill as it had a substantial nexus with the appropriation of funds from the Consolidated Fund of India and was directly connected with Article 110 of the Constitution ('Paragraph 411 of Justice Sikris opinion for himself, and Misra & Khanwilkar JJ). Thus, the majority view has introduced a new concept of "*substantial nexus with the appropriation of funds and direct connection*" ; and

(b) Bhushan J., in a concurring view, held that section 7 would be covered by clauses (c) and (e) of Article 110 (1). It is further submitted that the paragraph 411 of the decision of Justice Sikri wrongly states that expenditure for the Aadhaar scheme is "chargeable" to the Consolidated Fund of India.

It is submitted that the view of the majority requires reconsideration for the following reasons

(i) The majority introduces a test of "*substantial nexus with the appropriation of funds and direct connection*" . This will enable any future Parliament to introduce any Bill with just one provision that has a *substantial nexus with the "appropriation of funds and direct connection"* and it would pass muster as a "Money Bill".

(ii) The majority has wrongly presumed that expenditure under section 7 is "charged" to the Consolidated Fund of India. Article 112(3) of the Constitution specifically enumerates expenditure that will be charged to the Consolidated Fund of India. Expenditure on the Aadhaar scheme is "incurred" from the Consolidated Fund of India and will not be covered by Articles 110(c) or 110(e). Consequently, Article 110(g) will also have no application.

(iii) It completely destroys the meaning of the word "*only*", which is a deliberate restriction on the powers of the Lok Sabha. A Bill need not be sent to the Rajya Sabha if it is a "Money Bill". All other Bills have to go to the Rajya Sabha for approval. Therefore, any Bill, which has various substantive provisions, in addition to Clause (a) to (g), cannot passed as a Money Bill.

(iv)The majority view does not consider the legislative history of Article 110 and how it was expressly based on the provisions of section 1(2) of the Parliament Act, 1911 passed by the United Kingdom.

(v) In the Constituent Assembly Debates, the proposal to delete the word "*only*" in Article 110 was made by Ghanshyam Singh Gupta. This was specifically rejected.

(vi) The scholarly book on 'Parliamentary Practice' by Erskine May specifically points out that if a Money Bill contains other matters, which are not **subordinate or incidental** to the enumerated matters, it would not be a Money Bill. Accordingly, the Speaker of the House of Commons has rejected 1/3rd of such Bills. The Aadhaar Bill contained several provisions which were neither

subordinate nor incidental to any of the enumerated matters in Article 110(1).

(vii) Indeed, the Aadhaar did not have the remotest claim to be a Money Bill as not a single clause of Article 110 applied to any of its provisions, including section 7.

The Minority View

Chandrachud J. held that the Aadhaar Bill was not a Money Bill. After tracing in detail the historical reasons of Article 110, the learned Judge emphasized the significance of bicameral legislation and the importance of the Rajya Sabha as a check against the abuse of power by Lok Sabha.

After discussing the provisions of the Aadhaar Act, the learned Judge also referred to the legislative history of the Aadhaar Act itself. The provision of a unique identity was first contemplated by the National Identification Authority of India Bill, 2010 which was introduced in the Rajya Sabha on December 3, 2010. Obviously, this Bill was not a Money Bill. It also faced several objections by the Standing Committee of the Finance and this Bill lapsed because of the change in government in 2014.

Although the earlier Bill did not contain a provision that was similar to section 7 of the present Aadhaar Act, it still would not make the present enactment as a Money Bill. It is submitted that the minority view of Justice Chandrachud is correct and is in consonance with the Constitutional scheme.

Pakistan Supreme Court: The Supreme Court of Pakistan dealt with a similar provision in their constitution and struck down three enactments on the ground that they were not a Money Bill:-

(i) In *Sindh High Court Bar Association* v. *Federation of Pakistan*, the amendment to the Supreme Court (Number of Judges) Act, 1997 through a Money Bill-the Finance Act, 2008 was held to be unconstitutional.

(ii) In *Mir Muhammad Idris* v. *Federation of Pakistan*, the amendment to the Bank Nationalisation Act, 1974, (which related to the appointment of Chairman, President and members of the Board of the National Bank of Pakistan) by the Finance Act, 2007 was also struck down even though introduced in the Finance Act, 2007.

(iii) In *Federation of Pakistan* v. *Durrani Ceramics & Others*, the Supreme Court held that the imposition of cess under the Gas Infrastructure Development Cess Act, 2011 was not a tax but a fee and, accordingly, it could not have been imposed as a Money Bill. Consequently, the statute was struck down.

Judicial Review of Speaker's Certificate: Article 110(3) states that if any question arises as to whether the Bill is a Money Bill or not, the decision of the Speaker of the Lok Sabha shall be final. The question that arose was whether Article 110(3) excludes judicial review? In the cases of *Mohd. Saeed Siddiqui* v. *State of Uttar Pradesh*, and *Yogendra Kumar Jaiswal* v. *State of Bihar*, the Supreme Court had held that the certificate issued by the Speaker was final and not subject to judicial review.

These two decisions were plainly incorrect and have been rightly overruled in the *Puttaswamy* decision. However, there is an additional reason as to why the earlier decisions were wrong.

A Bill can be introduced either in the Rajya Sabha or in the Lok Sabha. If a Bill is first introduced in the Rajya Sabha, and a question arises as to whether it is a Money Bill, Article 110(3) makes it clear that this doubt of question cannot be resolved by the Chairman or Deputy Chairman of the Rajya Sabha but will have to be referred to the Speaker of the Lok Sabha and his/her decision on this issue will be final. This is the main reason for "finality"; there was never any intention to place the Speaker's certificate beyond judicial review.

The Finance Act, 2016 and Tribunal Legislation:

(i)In the Finance Act, 2017, Part XIV contains several provisions that have made large-scale amendments to numerous statutes that have constituted Tribunals.

(ii) These provisions have also been challenged on the ground that they could not have been introduced in the Finance Bill. Once a Finance Bill contains provisions for other matters, which are not subordinate or incidental to the enumerated matters, it would cease to be a Money Bill. This has been the ground on which two of the three cases of the Supreme Court of Pakistan have struck down Finance Acts. These provisions of the Finance Act, 2017 will also be open to challenge because they do not satisfy the "substantial nexus with the appropriation of funds and direct connection test" laid down in *Puttaswamy*.

Conclusion: It is indeed strange that the Bills which were patently unconnected with Article 110(1)/199(1) were earlier not struck down as Money Bills; *Mohd. Saeed Siddiqui* and *Yogendra Kumar Jaiswal* cases are examples of such cases. The Supreme Court did not examine these Bills from the perspective of Article 110 or the corresponding Article 199 that applies to Money Bills in the State Legislature. The *Puttaswamy* case was virtually a test case of a Bill that could not be categorized as a Money Bill.

It is humbly submitted that the view taken by the majority requires reconsideration as it now provides a gateway to Parliament and State Legislatures to circumvent the need for approval by the Rajya Sabha or the respective legislative Councils by clever drafting.

Courtesy: **The Authors; and Bar and Bench.**

Link: https://barandbench.com/aadhaar-money-bill-controversy/ @ *22Oct2018* ❑

PADS Press Release: 12.10.2018

Punjab Blasphemy Law Violates Constitution and is an Attack on Democratic Rights of Citizens

Punjab assembly recently passed a bill for an addition to IPC clause 295 to give life imprisonment for any 'injury, damage or sacrilege' of four religious books, (Guru Granth Sahib, Koran, Bible and Geeta) 'with the intention to hurt the religious feelings of the people'. This is the first time in independent India that a punishment usually given for willfully murdering another human being has been recommended for defilement of religious books. In an article in Times of India (6/9/2018), Punjab chief minister CaptAmrinder Singh of Congress has justified the bill and tried to explain its context. From 2015 to 2017 before the last assembly elections, the state had witnessed more than one hundred cases of sacrilege of Guru Granth Sahib, the holy book of Sikhs who form the majority in the state, and its torn pages were found at many places. Two people were killed in police firing on people protesting against this sacrilege. According to him, these acts of sacrilege were a conspiracy to spread communal unrest and amounted to 'national security threat that needs to be dealt with an iron hand'. A similar bill was passed by the earlier Shiromani Akali Dal (SAD) government, asking for life imprisonment only for the defilement of Guru Granth Sahib. The bill was returned by the NDA central government with the argument that in singling out the holy book of Sikhs it went against the principle of secularism enshrined in the Indian constitution. Amarinder Singh government has now added the other three religious books, to make the bill 'secular'. Many commentators, civil rights organisations and a group of retired bureaucrats have decried the bill. They have highlighted its anti-secular character, threat to freedom of expression, and potential for gross misuse by state authorities and fundamentalist forces. It needs to be noted that no major political party or organization of the state has come out against the bill. Only Dr Dharamveer Gandhi, the MP from Patiala, and non-parliamentary left groups in the state have given public statements against the bill. Some sections within Congress like Mr. Chidambaram have expressed their disagreement with the bill, but they are a small minority.

The bill and the political support it has received are a sign of longstanding misunderstandings of secularism and political and administrative malpractices in India. Given the scale and number of incidents of sacrilege of Guru Granth Sahib in 2015-16, it is reasonable to assume that these were result of a conspiracy to agitate Sikhs for definite political ends. Further, it is also likely that this conspiracy enjoyed political patronage from certain sections of the political class of Punjab. The Chief Minister uses the image of 'iron hand' a number of times in his article to emphasise the necessity of a tough response. Yet the fact remains that for nearly three years Punjab police and the two successive governments have completely failed to bring perpetrators of this communal conspiracy to book. This is not an uncommon occurrence. The most abominable communal conspiracy of the post independent India was for the destruction of Babri mosque in 1991. However, no one has been punished for that heinous crime till date. Needless to say, failures of state authority to apprehend and punish perpetrators of communal conspiracies have only emboldened communal forces. No 'tough' law can cover up this dereliction of a primary duty by Indian state.

Punjab government believe that their law is secular since it prescribes equal punishment for sacrilege of books of all major religions. It is further argued that the motivation for the bill is not to protect any religious sentiment, which would be the case with religion based laws like Sharia laws in Pakistan, but to defeat plans of spreading communal strife. The latter it is claimed is a purely secular motivation without any sectarian interests. Both arguments are based upon a gross misunderstanding of secularism. Democratic states are expected to be secular so that every citizen enjoys equal right of religious freedom without any hindrance from the state or other citizens. Hence, by definition a secular state cannot encourage deliberate and mischievous sacrilege against any religion. However, itdoes not mean that it has to show 'equal respect' to all religious practices.If any religious practice is found to violate requirements of democracy, then a secular state can declare it illegal. This is what the Constitution of India did with untouchability.This means that religious sentiments do not a priori enjoy greater privilege or value than other public sentiments. There is no reason why the hurt to religious feelings should attract greater punishment than the hurt caused by misogynist orcasteist abuses. In fact since the latter are invariably meant to humiliate and assert power over women and Dalits, these should attract greater punishment. Any just legal system determines the severity of the crime on the basis of its fundamental values, and gives punishment in accordance with the degree of crime. By declaring sacrilege to be in the class of most serious crimes, the bill demands that religious sentiments enjoy greater importance than

constitutional values like freedom from oppression, and fundamental rights.

The second argument in favour of the bill confuses 'hurt to religious feelings' with communal strife. Believers of a religion can claim to be hurt by any number of statements or actions by others. In India the most commonly claimed causes of hurt to religious sentiments have been books, films, and scholarly research. The bill further adds to the quiver of hurt to religious sentiments by very mischievouslyadding 'sacrilege' to the list. The latter is a theological concept. Its practical implications are determined by religious doctrines, whose interpretations are the privilege of a religious establishment. Hence, the bill pushes Indian legal system very dangerously towards theocracy. All of the above do not have any connection with communal strife. The latter occurs when public peace is affected due to a clash, physical attack on citizens, or destruction of property. If a group of believers claiming to be hurt by a statement or action by someone else go on a rampage, then they are responsible for communal strife, and need to be punished. Passing on the guilt of communal strife to the supposed cause of the hurt cannot be sustained legally.

The bill shifts the constitutional balance between fundamental rights of freedom of expression and religion on the one side and the powers of the sate machinery and organized social bodies to restrain these rights on the other. In the current social context when rationalists like Dr. Dabholkar, Dr. Pansare, Prof Kalburgi and Gauri Lankesh have been murdered for hurting Hindutva religious sentiments, M. Farook of Coimbatore was hacked to death by Islamic fundamentalists for declaring himself to be an atheist, and lynch mobs are targeting minority citizens in the name of cow protection, it is necessary to reaffirm the primacy of rights to life, freedom of expression, and conscience. The bill goes in the opposite direction and willy-nilly strengthens the hand of fundamentalists. It needs to be noted that article 19(1) of the constitution does not permit any restraint on the freedom of speech on the basis of sacrilege. The right to freedom of religion includes the right to critically assess existing religious beliefs to fashion different beliefs. That is how any religious reform takes place. Many Sikhs in Punjab keep Guru Granth Sahib at home and pray to it. Anyone seeking personal vendetta may claim 'injury (or) damage' to the book kept at someone's home. The bill appears to be designed for misuse. Internal reform, rationalist critique, scholarly investigations, and everyday religious practices, any of these can be declared crimes under the bill.

While the two successive governments of Punjab failed to nab conspirators of the desecration of Guru Granth Sahib in 2015-16, the people of Punjab gave a fitting reply to the conspiracy by not falling for it. Public peace was largely maintained and the state had a peaceful transition of government in subsequent elections. Instead of learning from the people, both the Congress and the SAD are taking Punjab along a dangerous path that will gladden only communal fundamentalists. Both parties are kowtowing to communal fundamentalist demands that are against constitutional secularism and freedoms of expression and religion.

People's Alliance for Secularism and Democracy demands that the bill passed by the Punjab assembly be scrapped. If the Amrinder Singh Government persists with it, then the central government should prevent it from becoming the law of the land.

Released by People's Alliance for Democracy and Secularism (PADS)

Battini Rao, Convenor, PADS (95339 75195, battini.rao@gmail.com)

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Press Statement of Five Petitioners In

ROMILA THAPAR & ORS. VS. UNION OF INDIA & ORS.
IN THE SUPREME COURT OF INDIA

(Decided 28th September 2018)

We approached the Supreme Court when five well-known lawyers, journalists and civil rights activists were arrested across the country on 28th August and charged with abetting acts of terror under the Unlawful Activities (Prevention) Act (UAPA).

Our intention was to draw the attention of the judiciary to what we believe is a case of gross misuse of the state's powers under draconian laws like the UAPA. Our history as a republic shows that, if left unchecked, such misuse causes grave injustices and endangers the civil liberties of all Indians.

Those arrested on 28th August have been accused of being implicated in acts of terrorism. However, we believe that there are two kinds of terrorism both of which create fear and undermine the foundations of our democracy:

The violent acts of those described as terrorists, who plant bombs, instigate people to be violent, engineer riots and deliberately spread fear through their acts; and

The illegal or unjustified acts of state functionaries who, instead of pursuing the actual perpetrators of violence, misuse their powers to harass those who do not conform to the politics of their current masters.

When the state uses anti-terror

laws without adequate proof against persons known to be working for the rights of the weaker sections of society, it is also spreading a kind of terror. Arbitrary arrests on implausible charges, like those of 28th August, are a source of anxiety for us all. They mean that the police can walk into our homes and arrest us – either without a warrant, or a warrant written in a language we don't understand – and then accuse us of activities about which we know nothing.

It has always been assumed that a genuine democracy will respect the constitutional and legal rights of every citizen, including the right to hold opinions different from – or even in opposition to – those of the government of the day. Since these arrests follow similar arrests made in June, the arrests of 28th August point to a continuing attempt to erode these rights.

Our petition was essentially an appeal to the Supreme Court to check this erosion of rights and protect the liberty and dignity of human rights activists.

Today's judgment has provided protection to the activists for a further period of 4 weeks and has given them the liberty to seek remedy from the appropriate courts. Our stand in this case finds vindication in the dissenting opinion of J. Dr. DY Chandrachud who has categorically held that liberty cannot be sacrificed at the altar of conjecture, and that the police had been taking liberties with the truth and besmirching the reputation of the activists by doing a media trial. Under such circumstances, the police's ability to conduct a free, fair and impartial investigation is in serious doubt, as has been held by J. Dr. DY Chandrachud.

We, the Petitioners, are pleased to note that at least the liberty and dignity of the human rights activists has for the time being not been jeopardized and the Supreme Court has protected the same.

Signed, Delhi, 28th September 2018:

1. Romila Thapar; 2. Devaki Jain; 3. Prabhat Patnaik; 4. Satish Deshpande; 5. Maja Daruwala ❑

The Caravan, 29 September 2018:

Was Chandrachud's Dissent in the Bhima Koregaon case initially a Unanimous Verdict?

Arshu John

On 28th September, a three-judge bench of the Supreme Court pronounced its verdict on a writ petition challenging the arrest of five activists, writers and lawyers purportedly in relation to the violence at Bhima Koregaon earlier this year. The petition sought their release from custody and asked for the case to be handed over to a court-monitored Special Investigation Team. A majority judgment written by AM Khanwilkar, on behalf of himself and the chief justice, Dipak Misra, dismissed the petition. But until the evening of 27 September, the Supreme Court's website indicated that there would be only one judgment in the case—by the dissenting judge, DY Chandrachud.

Every day, the Supreme Court registry uploads cause lists—the cases each bench will hear—of the following day on its website. The lists mention the judges who will hear each case, the scheduled time of the hearing and the judges who will be pronouncing verdicts.

In the case of the Bhima Koregaon petition, however, the cause list as of the evening of 27 September—a screenshot has been reproduced below—mentioned only one judgment, to be pronounced by Chandrachud. On the morning of the hearing, the registry uploaded a notice on its website clarifying that the "pronouncement of judgment by Hon'ble Dr. D.Y. Chandrachud may be read as to be pronounced by 'Hon'ble A.M. Khanwilkar and Hon'ble D.Y. Chandrachud, JJ.'"

Going by convention, the Supreme Court registry ought to have mentioned Khanwilkar's name along with Chandrachud's in the cause list for the Bhima Koregaon case. For instance, the listing for the petition challenging the prohibition of women's entry to the Sabarimala temple, also heard in the chief justice's court on 28 September, noted, "Judgment by: Hon. The Chief Justice, Hon. Mr. Justice Rohinton Fali Nariman, Hon. Dr. Justice D.Y. Chandrachud and Hon. Ms. Justice Indu Malhotra." The case was heard by a bench of five judges, four of whom pronounced judgments. (Khanwilkar was the fifth judge.) Although the list did not clarify which judges would be concurring or dissenting—Malhotra's judgement was a dissent—all four judges were mentioned.

The Supreme Court registry's notice stating that Khanwilkar would be pronouncing a judgment provided no explanation for why the error occurred. Rajkumar Choubey, the listing registrar in the Supreme Court, declined to speak on the record about the case.

According to the senior advocate Prashant Bhushan, who represented one of the petitioners, the omission of Khanwilkar's name was likely not by accident. "This is an important case for the government," he told me. Bhushan said that it is possible that the government learnt that Chandrachud was writing the judgment and had "gotten alarmed."

The senior advocate Abhishek Manu Singhvi, who also represented one of the petitioners, refused to comment because he was a counsel in the case. The additional solicitor general, Tushar Mehta, also declined comment, noting that "as [a matter] of principle, I do not discuss about any matter in which I have appeared."

Bhushan emphasised one aspect of Chandrachud's judgment, which he said was a "giveaway" that it was originally a unanimous verdict on behalf of all three judges. In the final

paragraph of his dissent, Chandrachud writes: "I would direct that the petition be listed after three days for orders on the constitution of Special Investigation Team." It is odd for a dissenting judgment to order that the case be listed again, especially when the majority judgment dismisses the petition in question. "He would not have written this if it was a dissent," Bhushan said.

Chandrachud's opinion also contains other observations peculiar for a dissenting judgment. Earlier in the final paragraph, he writes, "The Special Investigation Team shall submit periodical status reports to this Court, initially on a monthly basis." But again, the majority judgment specifically rejects the plea to transfer the case to a court-monitored SIT, and permits the Pune police to continue its investigation. Pertinently, Chandrachud adds a footnote at the end of that sentence, which acknowledges that his is a dissenting opinion, but provides little clarity on the directions issued in the last paragraph: "Speaking as I do for the minority, I have not indicated the names of the personnel who would constitute the SIT. Should that occasion rise, liberty is granted to seek an appropriate direction from this Court."

Chandrachud makes other specific references to his opinion being the dissenting judgment. Some of these mentions underscore another reason Bhushan offered for why he thought the dissent was originally a unanimous opinion—Khanwilkar's majority judgment appeared to be "a rushed overnight job."

The majority judgment primarily rests on its finding that "the accused cannot ask for changing the Investigating Agency or to do investigation in a particular manner including for Court monitored investigation." However, Chandrachud challenges the applicability of the case law relied upon to make this assertion, raising fundamental concerns over four of the cases mentioned by Khanwilkar.

He shows that in two of the precedents cited—one of them written by Khanwilkar himself—the Supreme Court had permitted the transfer of investigations to the Central Bureau of Investigation in the interest of fair and impartial justice. In two other cases that are used to deny the relief to transfer the investigation, Chandrachud notes crucial facts that distinguish the matter at hand—one judgment refused a request for transfer of investigation by an anonymous petitioner, while the other featured a petitioner who approached the court with "unclean hands." In the Bhima Koregaon case, he writes, the petitioners are neither anonymous nor is there any argument "that the petitioners have been motivated by personal gain or political considerations."

Even without specifically referring to the majority judgment, Chandrachud's dissent demonstrates other significant failings of the verdict. After citing these four cases, Khanwilkar writes that "no specific material facts and particulars are found in the petition about *mala fide* exercise of power by the investigating officer." However, in his dissent, Chandrachud refers to and relies on several such arguments made by the petitioners. For instance, the petitioners pointed out that the police had released 13 unverified letters, which it claimed to be proof of a Maoist connection, to the media. "The letters are unsigned and do not bear any identifiable particulars including e-mail addresses or headers," Chandrachud writes.

He also notes the petitioners' argument that seven of these 13 letters were authored by or addressed to one "Comrade Prakash" and that the judgment convicting the Delhi University professor GN Saibaba had noted that he used the pseudonym "Prakash." Given that Saibaba has been lodged in Nagpur Central Jail since March 2017, the petitioners argued that "the alleged letters attributed to him after that date are *ex-facie* fabricated."

Chandrachud also notes Singhvi's submissions about the police bringing witnesses from Pune for the arrests, which the senior advocate said amounted to a "gross violation of law rendering the arrest, search and seizure unlawful." Accepting this argument, the dissenting judge writes: "The two panch witnesses are employees of the Pune Municipal Corporation. It is not disputed before this Court that they travelled as part of the police team which made the arrest." He writes in his conclusion:

I am of the view that while the investigation should not be thwarted, this is a proper case for the appointment of a Special Investigating Team. Circumstances have been drawn to our notice to cast a cloud on whether the Maharashtra police has in the present case acted as fair and impartial investigating agency. Sufficient material has been placed before the Court bearing on the need to have an independent investigation.

Another indication that Khanwilkar's judgment was written at the eleventh hour is his reluctance to consider in detail the petitioners' submissions concerning the Pune police's conduct of the investigation, even though such consideration would be essential to determine whether the investigation is fair and unbiased. "This is not the stage," Khanwilkar writes, "where the efficacy of the material or sufficiency thereof can be evaluated nor it is [sic] possible to enquire into whether the same is genuine or fabricated. We do not wish to dilate on this matter lest it would cause prejudice to the named accused and including the co-accused who are not before the Court."

He repeats the phrase later in the judgment as a justification for refraining from "dealing with the factual issues raised by the parties" because it may cause "serious prejudice" to the accused. Again, towards the end of the majority judgment, before declaring that the five activists will remain under house arrest for four more weeks, Khanwilkar uses the same phrase. He writes: "We may hasten to mention that we have perused the Registers containing relevant documents and the Case Diary produced by the State of Maharashtra. But we have avoided to dilate on the factual position emerging therefrom, lest any prejudice is caused to any accused or the prosecution, in any manner." ❑

PUDR Press Release: October 1, 2018

On the Supreme Court's Verdict on the Arrest of 5 Activists under the UAPA

People's Union for Civil Liberties and Democratic Rights (PUDR) welcomes the Supreme Court's order on the petition filed by Prof. Romila Thapar and others for extending protection from custody to the five activists- Gautam Navlakha, Varavara Rao, Vernon Gonsalves, Sudha Bhardwaj and Arun Ferreira- arrested a month ago by the Maharashtra Police. A three-judge bench in its 2:1 majority judgment, even in refusing the demand of the petitioners for constituting a Special Investigating Team, recognised the damage to individuals that can be caused by such arbitrary arrests and has enabled every possible challenge to this power before the appropriate courts to secure personal liberty of the five activists. An inspiring and detailed assertion of the rights to personal liberty and to political opinion in the judgment delivered by Justice Chandrachud, in his dissent, is heartening.

The two differing opinions in the judgment, have given occasion to PUDR to reiterate the obvious flaws and possibilities of misuse within the UAPA, especially the notion of 'association' which forms an important source of arbitrariness under the law. The UAPA blurs all distinctions for the causes for association and overlooks the fact that association may arise from multiple needs involving the family or the community, religious, cultural or economic. Equally, associations may arise from institutions of democracy, elected representatives, political parties, bureaucracies of all kinds—from revenue and land to forest and water, courts and tribunals at various levels—as well as civil society organisations concerned with civil, political and economic rights or those promoting people's welfare through provision of access to basic necessities through community efforts or charity. The UAPA condemns all such association as criminal based on political prejudices of governments in power. Instances abound of threats to and criminal prosecution of family members, community representatives, lawyers and other advocates, civil rights activists and those providing welfare.

For those charged in this manner, the UAPA gives virtually unlimited power to the police to arrest and keep people in jail for long periods. Provision for bail is restricted to the extent of either being non-existent or is extremely difficult to avail, which has ensured that all those accused rot in jails endlessly, sometimes for many years, even to be finally acquitted and declared innocent by the courts. Furthermore, the application of UAPA works as a character-assassination, condemning the accused even before investigation has begun. Selective statements by the police, even more selective anonymous releases to media houses, high-pitched accusations masquerading as facts, leading to custody remand orders by magistrates without even reading the charges or the basis to permit arrest has all become commonplace in the world of UAPA. The circumstances of the present case have sharply brought out the abuse that the vesting of such extreme power permits and the same is on record with the Supreme Court and the High Courts at Delhi and Chandigarh.

Besides lawyers, researchers and political activists, those working in the field of safeguarding human rights are particularly prone to be victims of the abuse of law. They have to necessarily engage with people, organisations and groups that hold opinions, which are at odds with the state or with the governments in power. In such a context, the personal whim of a police officer or the desire for vendetta for a politician or removing an irritant for a government can easily lead to registration of cases where association is criminalised and the innocent are framed. Therefore, an immediate stop is required to the use of this expansive view of association given in the UAPA, to the provisions to keep accused endlessly in prisons and to halt the arbitrary sway of the powerful.

PUDR shall continue to strive for the repeal of laws such as the UAPA and campaign against it through the courts, the legislatures and society at large.

Shahana Bhattacharya, Sharmila Purkayastha, Secretaries, PUDR ❑

Note: Gautam Navalakha of PUDR was one amongst the five human rights activists arrested by the Maharashtra police on 28th August, 2018 in different parts of India, along with Sudha Bharadwaj of PUCL, Vara Vara Rao, Vernon Gonsalves and Arun Ferreira. They were alleged to be involved with the Bhima Koregaon case in Pune, Maharashtra. There was a country wide uproar over the arrests which led to the filing of a PIL before the Supreme Court by a group of 5 eminent citizens led by Romila Thapar. Even before the intervention in the SC, Gautam Navalakha's lawyers had filed a Habeas Corpus petition before the Delhi High Court. After the SC pronounced a split verdict on 28th September, 2018, the Delhi High Court Bench held the arrest and remand of Gautam Navalakha to be invalid and illegal. The following statement was issued by Gautam after his release from house arrest. He has since filed a petition before the Bombay High Court to quash the prosecution launched against him. We shall carry updates on that as the case progresses.

Gautam Navalakha's Statement on His Release

"Statement of an Urban Naxal!"

I wish to thank the majority and dissenting Justicesof the Supreme Court for their judgment, which allowed us four weeks to seek relief in this matter, and the public-spirited citizens & lawyers of India for putting up a spirited fight on our behalf, whose memory I will cherish. I am humbled by the solidarity, which crossed borders, rallying in our support.

From Delhi High Court I have won my freedom. It thrills me no end.

My dearest friends and lawyers led by Nitya Ramakrishnan, Warisha Farasat, Ashwath, along with others in the legal & logistics team, literally, 'moved heaven and earth'

to win me my freedom. I don't know if I can ever repay this debt. Nor to the senior lawyers who argued in our favour in the apex court. The period of house arrest, despite the restrictions imposed was put to good use, so I hold no grudge.

However, I cannot forget my co-accused and tens of thousands of other political prisoners in India who remain incarcerated for their ideological convictions, or on account of false charges filed against them, and/or wrongful conviction under Unlawful Activities (Prevention) Act - UAPA. Fellow accused in the same matter have gone on hunger strike against the maltreatment inside the jails and demanded that they be recognised as political prisoners/prisoners of conscience. Other political prisoners too have time and again sat on hunger strike and demanded the same. Their freedom and their rights are precious to Civil Liberties & Democratic Rights movement.

But, there is reason to celebrate.

I salute the LGBTQ comrades for their monumental victory recently after a relentless and stubborn struggle, which has opened the door for as significant a social reform movement as the one fired by Babasaheb Ambedkar for the annihilation of caste, exhorting us all to 'educate, organise and agitate'. Our solidarity was slow in coming, but your perseverance forced us to change. You brought a smile back on our faces and rainbow colours in our lives.

Also, freedom won by Bhim Army's Chandrashekhar Ravan and his comrades Sonu and Shivkumar from preventive detention is particularly reassuring because it shows the power of indomitable resistance against a socially entrenched casteist tyranny, from ground below.

My Salaam to friends in JNUSU for the historic victory of the United Left panel which proves yet again that united resistance is the need of the hour - only thus can we face persecution and struggle so that it gathers critical mass support.

Friends, *sacchai aur imandari se lade shabdgoli aur gaali se zyadatakatvarhote hain, aajyehsaabithoraha hai. Hamaregeet aur kavitayon mein josh hai,aur hamarekaam aur lekhnikaaadhar reason aur facts hain*.

To all my nearest and dearest, let us continue to speak up for the enforcement of our constitutional freedoms and against oppression & exploitation in all forms.

Let's recall Pash ke yeh anmol bol:

'Hum LadengeSaathi
Ki ladne ke baghair kuch bhi nahimilta
Hum ladenge
Ki abhitak lade kyonnahi
Hum ladenge
Apni sazakabulne ke liye
Ladtehuey mar jaane walon ki
yaadzindarakhne ke liye

HUM LADENGE SAATHI

Lal Salaam!

Gautam, Monday, October 1, 2018 ❑

Bhima Koregaon case: Delhi HC orders release of activist Gautam Navlakha from house Arrest[1]

The Scroll, 01st October, 2018

The High Court also rejected the Maharashtra Police's petition to extend his house arrest by at least two days.

The Delhi High Court on Monday ordered the release of activist Gautam Navlakha, who was arrested in the Bhima Koregaon case on August 28, ANI reported. The court said his detention was untenable by law and ended his house arrest immediately. The judge also set aside the transit remand ordered by a court in the city's Saket locality against Navlakha.

The High Court also rejected the Maharashtra Police's petition to extend Navlakha's house arrest by at least two days.

The activist said he was thrilled by the court's order and thanked his legal team. “I wish to thank the majority and dissenting Justices of the Supreme Court for their judgement, which allowed us four weeks to seek relief in this matter, and the public-spirited citizens and lawyers of India for putting up a spirited fight on our behalf, whose memory I will cherish,” Navlakha said in his statement. “I am humbled by the solidarity, which crossed borders, rallying in our support.”

He also mentioned the other activists arrested along with him and said he cannot forget them “and tens of thousands of other political prisoners in India who remain incarcerated for their ideological convictions or on account of false charges filed against them and/or wrongful conviction under Unlawful Activities (Prevention) Act”.

The Pune Police arrested Navlakha, Vernon Gonsalves, Arun Ferreira, Sudha Bharadwaj and Varavara Rao on August 28 as part of their investigation into violence during an event in Bhima Koregaon near Pune on January 1.

The police claimed the activists were “urban Naxalites” who used an anti-caste commemoration event in Pune to whip up sentiments that resulted in the violence in Bhima Koregaon. This was part of a larger plot, the police claimed, to assassinate Prime Minister Narendra Modi and overthrow the government. The activists are currently under house arrest.

On September 28, the Supreme Court allowed investigation officers to continue with their inquiry into the violence. The court, in a 2:1 judgment, rejected the plea for an inquiry by a Special Investigation Team into the arrests of activists in the case. It also extended the house arrest of five activists by four weeks. While Chief Justice of India Dipak Misra and Justice AM Khanwilkar delivered the majority judgment, Justice DY Chandrachud was the sole dissenter.

Courtesy: *The Scroll.in*

[1]https://scroll.in/latest/896584/bhima-koregaon-case-delhi-hc-orders-release-of-activist-gautam-navlakha-from-house-arrest @ *15Oct2018* ❑

Why I am with the minority opinion in the split verdicts on Aadhaar, Sabarimala, Activists' Arrests[1]

Girish Shahane

The Supreme Court pronounced a series of important verdicts in late September. Refreshingly, all dealt with matters that are properly the court's domain, namely fundamental freedoms and rights, rather than policy issues which are best left to legislators but which the court routinely takes on, like the question of how dark your car's windows can be. I'm not joking, back in 2012, the Supreme Court entertained a public interest litigation on window tinting, and ruled on how dark glass could get without promoting heinous acts in travelling vehicles. The verdicts and dissenting opinions revealed a tug of war between the Constitution's stress on individual liberty on the one hand, and its handing of wide-ranging, potentially intrusive powers to the state on the other.

The court's verdicts on adultery and gay rights were unanimous, and welcomed by liberals. On the issue of the Bhima Koregaon arrests, women's entry into the Sabarimala temple and Aadhaar, the court produced divided verdicts, and I found myself siding with the dissenting minority. In each instance, the majority opinion favoured the rights of the state over those of individuals, corporations and belief systems.

Bhima Koregaon arrests: In the first case, Romila Thapar and other prominent intellectuals petitioned the court against the arrest of the activists Gautam Navalakha, Sudha Bharadwaj, Varavara Rao, Arun Ferreira and Vernon Gonsalves by the Maharashtra Police. The petitioners asked for a Special Investigation Team to be established to probe the issue and accused the police of making dissent a crime. The majority opinion, written by Justice AM Khanwilkar on behalf of himself and Dipak Misra, who was the chief justice then, rejected the petitioners' demands, although an intriguing thesis outlined by Arshu John in *Caravan* magazine suggests there may have been a late U-turn in their opinion, after they had initially concurred with what is now a dissenting minority opinion by Justice Dhananjaya Chandrachud.

The petition seemed like a long shot. The petitioners invoked Article 32 of the Constitution, which allows the Supreme Court great latitude in injecting itself into matters where fundamental rights are at stake. However, the highest court was unlikely to accept a plea by unrelated people to interfere in an investigation that was still in progress and being conducted by a competent authority. That the matter ended in a split verdict shows what a sham the Pune Police investigation was. Chandrachud pointed to several lapses, such as a quote from a Bertolt Brecht play being read as a sign of terrorist intent; a letter purportedly written by Sudha Bharadwaj, one of the accused, which contained 17 words spelled the Marathi way, although she speaks no Marathi; the memorandum of arrest being signed by Pune Municipal Corporation employees who travelled to the site with the police, although protocol demands at least one witness be a local known to the accused; and leaks by police officers to the media of letters that found no mention in the transit applications filed by the police.

The majority did not rule on the factuality of any of these matters, having decided the rights of the accused had not been so blatantly disregarded as to warrant the court's intervention. I hope there will be a more robust pushback at some point against the foisting of cases by the police and their treatment of process as punishment. Consider that one of the accused, Varavara Rao, who is now 77 years old, has been implicated in 25 cases over the years, starting in the 1970s. He was acquitted in 13, discharged in three, while in nine instances the prosecution withdrew its case. Although imprisoned by a succession of regimes, he is yet to be convicted a single time. And now we are asked to believe he has been plotting the murder of Narendra Modi.

Entry of women at Sabarimala: In the case of the entry of women into the Ayyappan temple at Sabarimala, the majority held the view that the infringement on women's right to practise their religion under Article 25 (1) of the Constitution was serious enough to warrant an intrusion into religious practice. In this case, I side with Justice Indu Malhotra, who wrote a dissenting opinion. There are hundreds of thousands of temples in India where women are welcomed; in fact, there are Ayyappan temples in every city with a significant Malayali presence, and almost none of them bar the entry of women. Nor is there a blanket ban against female worshippers in Sabarimala, only those between the ages of 10 and 50. This restriction derives from a mythology of celibacy and asceticism associated with the particular deity. The shrine's power, for believers, is intimately attached to that mythology, and the elaborate rituals and pilgrimage they undertake draws from the same ideas. Given the plethora of female-friendly temples in every town and city in India, I do not see how denying women of child-bearing age entry into this particular shrine curtails their freedom of worship significantly enough to justify the pain the change in rule will cause to the faithful.

The denial of access to women of child-bearing age leaves many outraged, but that outrage has little to do with a perceived curtailment of freedom of religion, and everything to do with a sense that it is a discriminatory provision. Discriminatory practices are everywhere in every faith, but the Supreme Court isn't about to

mandate, for example, that women be given a position on par with men in the Catholic clergy, nor should it do so. It is critical for a secular state to have the power to override religious faith, particularly in a nation like India with its ghastly history of caste-based discrimination, the denial of access to places of worship to people deemed untouchable. However, there is also a danger in not giving customs and traditions their due, as I mentioned in criticising a previous Supreme Court verdict banning the sale of firecrackers during Diwali.

The Aadhaar verdict: The final split verdict is the most far-reaching of the lot, the long-awaited judgement on Aadhaar. I have made my position on the issue clear, and was gladdened by Justice Chandrachud's full-throated support of civil liberties and individual privacy against the threat of a surveillance state. The majority judgement was spun in the press as being "pro-Aadhaar", as if it was an up-down vote in favour or against. In truth, there were a number of different issues considered, and what the majority did was to affirm the right of the state to mandate Aadhaar not just for benefits and social programmes, but also for tax returns. On the other hand, it struck down a number of clauses of the Aadhaar Act, notably Section 57, which allowed private organisations to use Aadhaar-related biometric data as authenticators of identity.

Aside from a few small additions, like the linking of PAN cards to Aadhaar, the majority judgement essentially returned the programme to its original intent as an efficient enabler of government benefit programmes. The scrapping of Section 57 is a major boost for privacy advocates and a massive blow for the Modi government's Aadhaar mission-creep. The greatest danger of Aadhaar was that it would allow data harvested by private enterprises to be meshed easily with data collected by the government. As far as I can tell, that threat has now receded. While I cheered Justice Chandrachud's stand, I can happily live with the majority verdict.

[1]https://scroll.in/article/896920/why-i-am-with-the-minority-opinion-in-the-split-verdicts-on-aadhaar-sabarimala-activists-arrests @ *12Oct2018*

***Courtesy*: The Scroll,** Oct 04, 2018 ❑

PUCL TN & Puducherry
Press Statement, 21st October, 2018:

PUCL Condemns Death Threat issued to D. Ravikumar, Former MLA and also a Former President of PUCL TN & Puducherry

PUCL is greatly concerned by increasing news about the growth of activities of Sanatan Sanstha, a Hindu extremist organization in Tamil Nadu. This organization, which started functioning in 1999, has openly declared its objective of establishing a Hindu Rashtra by the year 2025. The extremists activities carried out by this organisation towards this goal is causing threat to India's sovereignty. A case field by Maharashtra Government before the High Court describing this organisation as a religious extremist organisation is still pending. Many criminal cases are pending in courts in different states against Sanatan Sanstha members of allegedly being involved in religious terrorist activities. Some members of the organisation have been convicted for having committed offence of placing bombs in a hall in Thane, (near Mumbai). 6 members of the organisation have been implicated in a 2011 bombblast case in Goa. In 2011 bombs and dangerous weapons were seized from the offices of this organisation. With a history of extremist activities, Sanatan Santha is also allegedly involved in the assassination of secular intellectuals and thinkers like Narendra Dabholkar, Goving Pansare, Kalburgi and Gauri Lankesh as has been stated by police officials.

The organization is working to develop a sense of hatred amongst Hindus towards members of other religions. There is news that the organisation is also providing training in use of weapons. A report of the Intelligence Agencies has reported that with such a history of criminal, extremist activities the Sanatan Sanstha has started openly functioning in Tamil Nadu also and and that it has prepared a list of persons to be assassinate / killed. The police has reported that amongst the persons in this list is also the name of Mr. D. Ravikumar, General Secretary of VCK Party (Viduthalai Siruthaikal Katchi).PUCL is extremely concerned over this news. PUCL condemns the targeting of Mr. Ravi Kumar by a Hindu fundamentalist / extremist group. PUCL also condemns the creation of a list to target those who have given a call against communalism and divisive politics.

PUCL demands that the Tamil Nadu government and the police should keep constant watch over the activities of Sanatan Sanstha and take action against the organisation for its unlawful activities. PUCL warns that unless the activities of such communal extremist organisations like the Sanatan Sanstha are nipped in the bud, (in the beginning stages), the history of communal harmony in Tamil Nadu will be seriously affected.

Gana Kurinji, President, **R. Murali**, General Secretary, PUCL Tamil Nadu & Puducherry

ATTENTION! PLEASE NOTE:

PUCL National Office has now shifted to 332 (Ground Floor), Patpar Ganj, (Opposite Anand Lok Apartments., Gate No. 2), Mayur Vihar Phase-I, New Delhi-110091. (Landline: 011-22750014)

In solidarity with Greenpeace India, The Quint and The News Minute

Released at Press Club of Bangalore, 15th October 2018

Over the past week, we have been witness to raids by Income Tax Department and Enforcement Directorate of the Indian Finance Ministry on the offices of The Quint and Greenpeace India, two key civil society organisations of India, in Delhi and Bangalore respectively. We were to learn later that The News Minute office also had IT officials dropping in, key journalists were questioned and copies of documents taken.

In the case of Greenpeace, the ED officials had no warrant to search the office. Yet, almost 8 to 10 of them entered Greenpeace office in Bangalore, questioned key officials, searched documents and took away copies of several documents, all without any official communication or authority vested by the due process of law.

Although Greenpeace India stated clearly that they had nothing to hide and can share documents related to financial transactions openly, their accounts were frozen by the end of the day by the ED officials.

We consider this as not merely an attack on these organisations alone, but on civil society in general, media included. We note that those who are critical of the Government, as also those who are exposing and challenging human rights and environmental violations of certain Corporations, are being targeted. We also note that those who work with and for advancing the rights of vulnerable communities, especially Dalits, Adivasis, LGBT communities and women, are being systemically targeted as well, in such raids across India. Often, this has resulted in arrests of key activists and journalists.

We wholesomely agree with Supreme Court Judge D. Y. Chandruchud who has held: *"Dissent is a symbol of a vibrant democracy. Voices in opposition cannot be muzzled by persecuting those who take up unpopular causes."*

The act of Enquiry and Dissent are fundamental aspects of citizenship, and helps shape a vibrant and productive democracy. Any individual or organisation exercising this Fundamental Right of Citizenship, which is also a Fundamental Duty of Citizenship, must not be harassed or terrorised by any form of abuse of power; be this in the Government, Corporation, Public Sector, Civil Society, Academia and Media. We believe such encroachments of fundamental rights constitute an attack on the Constitutional promise of delivering a secure and fearless Citizenship for all, especially those who dissent.

The Constitution of India has vested with the citizens of the country an inviolable set of democratic rights, empowering them to live life in the true spirit of a mature, sovereign republic. Though baby steps, these constitutional rights have formed the traditional moorings of governance and withstood many challenges in the form of an imposed emergency in the 70s and the political vacuousness in later decades. Every time, democratic voices have emerged stronger. It is this culture of democratic rejuvenation that is in peril in current times.

Today's State appears determined to uproot the foundational principles of a democratic India by criminalising all and every opinion that doesn't commit to its exclusive and mono-culturist views. The belligerent and often feudal manner in which the State is using democratic institutions predatoriously against it's own citizens and civil society organisations, is a matter of grave concern. When every thinking mind is under threat, democracy suffers the most.

Solidarity Forum for Dissent is a platform of those who have decided to stand up and assert democratic rights of people and civil society organisations and stand in solidarity with those who are being arbitrarily targeted and subjected to abuse and harassment by the State. In the last ten days, three organisations of India who celebrate dissent, The Quint, The News Minute and Greenpeace India, were raided by the agencies of the Central Government, which from all angles appear to be an attempt to muzzle creative alternatives to the vision of the country, and threaten those who dare to dissent. The raid on Greenpeace happened even without even a warrant or a notice served on them.

The bank accounts of Greenpeace India has been frozen, threatening the livelihood of hundreds of employees there. Greenpeace is also accused of illegally channelising foreign funds into India, when independently audited statements of the organisation of the past three years very clearly show that the entire funds in the Greenpeace accounts were raised through individual donations from the people in India. Despite cooperating with the authorities, their bank accounts remain frozen.

This is a direct assault on a *bonafide*, independently functioning, environmental organisation. Now, they have been verbally communicated to provide the list of all individual donors so the agencies can make 'random calls' to verify the veracity of Greenpeace's claims. This when each and every transaction is legitimate and involving bank to bank transfers. This potentially atomises state surveillance to the level of each individual who support organisations like Greenpeace, the Quint and The News Minute. The State, it seems as institutionalised

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the *'If you are not with us, you are our targeted enemy'* idiom into its governing framework.

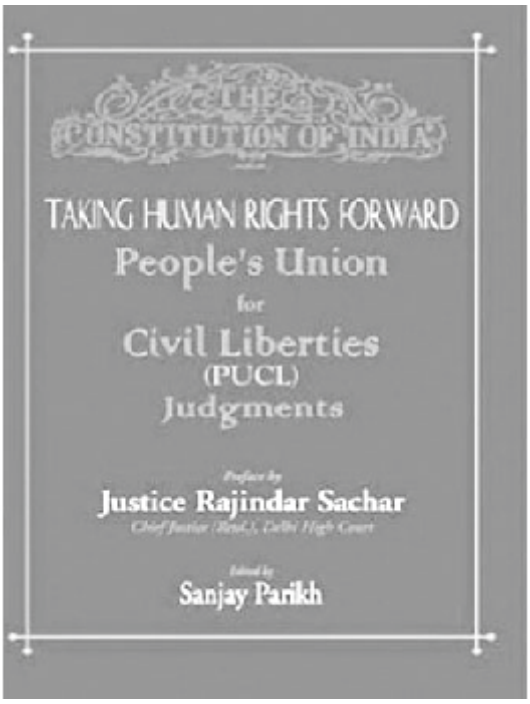
Solidarity Forum for Dissent is a platform of civil society organisations, individuals and concerned citizens that has been established to protect the space of dissent in democracy. We are together in solidarity with those most vulnerable due to their dissenting views and to assert the foundational principles of democracy in India.

Signatories: Leo F. Saldanha (Environment Support Group), R: Manohar (Human Rights Defenders Alert), Aakar Patel (Amnesty India), Mathew Phillips (SICHREM); Nandini (Greenpeace Supporter), Vijay Kumar (Karnataka Janaarogya Chaluvali), Aruna Chandrashekar (Independent Journalist), Lekha Advavi (Alternative Law Forum), Vijay Kumar Seetappa, Karnataka Janarogya Chaluvali, K. P. Singh, Swaraj Abhiyan and others.

Video Recording of the Press Conference is accessible at: https://youtu.be/_d1BUYfrD6U ❑

PUCL Announces the Publication of the Compilation of Judgements of the Supreme Court in PILs filed by the PUCL

Taking Human Rights Forward
People's Union For Civil Liberties (PUCL) Judgments



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