

**ALL INDIA  
CIVIL LIBERTY CONVENTION**

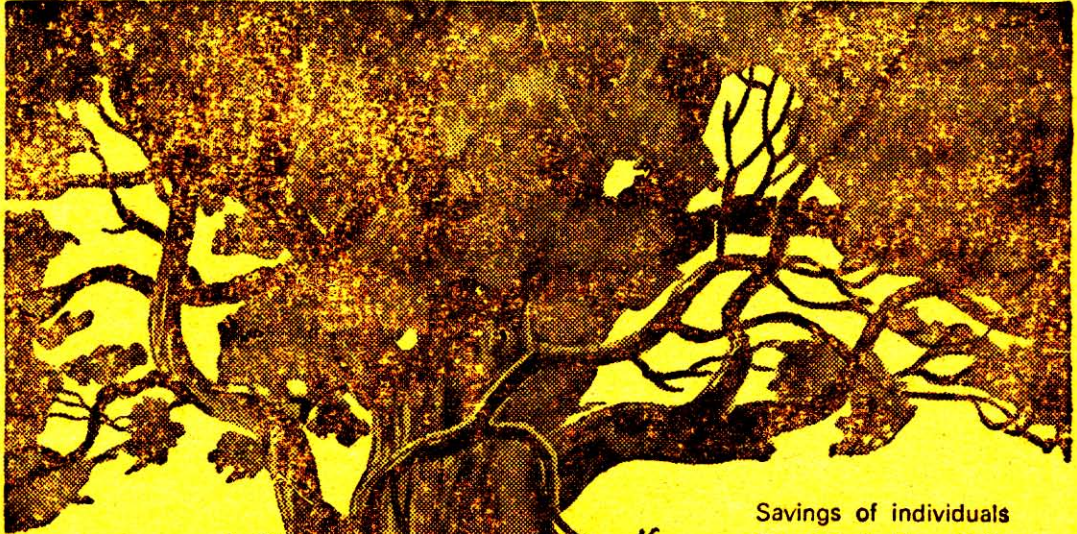


**9-10 April 1983  
Muslim Institute Hall  
Calcutta**

**Association For The Protection Of Democratic Rights**



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# **ALL INDIA CIVIL LIBERTY CONVENTION**

**9 & 10th April 1983**

**Muslim Institute Hall, Calcutta**

*Organised by :*

**ASSOCIATION FOR THE PROTECTION OF DEMOCRATIC RIGHTS**

**( গণতান্ত্রিক অধিকার রক্ষা সমিতি ) A. P. D. R.**



**In memory of judge**  
**Dhirendra Nath Banerjee**

প্রতিকৃতির পরবর্তী প্রযোজনা

‘বিদ্রোহী বীরসা’

নাটক ও নির্দেশনা : আলোক দেব

প্রতিকৃতি

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# **All India Civil Liberty Convention**

**MUSLIM INSTITUTE HALL, CALCUTTA**

**9—10 APRIL, 1983.**

## **PROGRAMME :**

### **9 April (Saturday)—**

**2/15 p.m — Wellcome Address By Dr. Pratap Chandra Chandra, the chairman of the Reception Committee.**

**2/45 p.m — Inauguration By Shri V. R. Krishna Iyer, (Former Judge, Supreme Court)**

**4 p.m — Panel Discussion on 'Police, Jail & Judiciary' By,**

**(1) Shri Gobinda Mukhoty ( President, PUDR, Delhi )**

**(2) Shri Radha Raman ( President, PUCL, Patna )**

**(3) Arun Prakash Chatterjee**

**(4) Tarapada Lahiri ( Chairman, Jail Reform Committee )**

**(5) Prof. Subodh Dasgupta ( Vice President, APDR, W.B )**

**6/30 p.m — Panel Discussion On 'Democratic Rights' By (1) Former Justice Sarma Sarkar. (2) George Fernandez, M.P. (3) A. K. Roy, M.P. (4) Gautam Chatterjee. (5) Debdas Chakraborty ( A.P.D.R )**

### **10 April (Sunday)—**

**8/30 a.m — Citizen's Rally in protest against the onslaught of Police & Private thugs on the anti-fare hike agitators in Calcutta and subburn.**

**10 a.m — Discussion on the Co-ordination of activities By PUCL (Delhi),**

PUDR (Delhi), CPDR (Bombay), CPDR (Nagpur), PUCL (Patna), Lokshahi Hakk Sanghatana (Maharashtra), OCDR (Tamilnadu), APDR (W.B.), & others.

2 p.m — Discussion on Women's Rights By (1) Justice Mrs. Jyotirmoyee Nag. (2) Malati Chaudhury (Orissa), (3) Kalyani Karlekar, (4) Jharna Bhowmik (APDR)

4 p.m — Torture in Police Custody & Medical Science By (1) Dr. Jotirmoy Mazumder (2) Dr. Nihar Munshi (3) Niranjana Haldar (APDR.)

6 p.m — Duties of the Journalists to promote Human Rights By (1) Sumanta Bandopadhyaya, (2) Prasanta Sarkar, (Editor, Basumati) (3) Dr. Partha Chatterjee.

7/30 p.m — Duties of the cultural workers to promote Human Rights By (1) Vijay Tendulkar (President, CPDR, Bombay). Narayan Chowdhury, Monoj Mitra, Birendra Chattopadhyaya, Prof. Goutam Bhadra (A.P.D.R.)

8/30 p.m — Film 'Sarkari Santrash' by Chitra Chetna

—:o:—



## The Outlook Behind the All India Convention

The A. P. D. R. is going to hold a convention in Calcutta to discuss in depth the various problems connected with the issue of civil and democratic liberties in India, how far these are denied to or enjoyed by the people, particularly, the non privileged sections in society.

It is true that our Constitution records in the preliminary sections some of the elemental human rights given such importance by the United Nations Organisation itself, that our people should be at liberty to possess and enjoy, like the rights to life, job, education and health. It also declares equal freedom and rights for women in our country. It also prohibits caste distinction and declares its enforcement to be a crime to be punishable by law.

But these are not directive principles to be strictly adhered to and enforced. These are only platitudes to serve particular ends. Rights of women, and of the backward sections of the people, like the Adivasis and Harijans, are, in real life, not being extended, but, to the contrary curtailed and taken away. In fact murder and different kinds of social tortures and discriminations inflicted and imposed upon them are daily and frighteningly on the increase. The poorer sections, even if they insist on getting just their legal dues from the propertied sections in society, are often openly and shamelessly punished, they are demonstratively given protection and assistance by those in charge of law and order.

Only a serious, painstaking and steadfast movement, neither to be swayed nor tempted to stray from the chosen path, can hope to reverse the process and achieve a modest minimum target. The movement must aim at abrogating various undemocratic and authoritarian laws and codes, some on the statutes since the imperialist days, being shamelessly carried forward as imperialist legacies, like the Police Code of 1862 and other criminal codes and others enacted and enforced in the post-independence days like the NASA, ESMA, MISA and such other laws with the sole purpose of curtailing the democratic, trade union

and civil rights of the people by a government, wadded more and more to authoritarian methods.

In such prevailing conditions, while fight for civil and democratic rights remains a major task for workers dedicated to such a noble aim in each and every state of India, the necessity of an all-pervasive movement on the national plane looms larger and larger each passing day.

Such a movement is doomed to remain more or less a paper scheme if isolated and splintered sections of society, even though with basic honesty of purpose, nevertheless, circumstanced to ply only a lonely furrow, face and try to tackle the problem solely on their own. It has so many contours and ramifications, it is of such a gigantic magnitude, it is so deeply entrenched in our body politic, and it is buttressed by such powerful interests, that only a deep-going long-drawn-out programme based movement, based on a national perspective and capable of drawing in large masses to remedy the fastering evil, can hope to make a much-needed dent and proceed victoriously on the next step.

It is for these reasons that the APDR thought it essential and-duty incumbent on itself to make an earnest attempt to draw all like-minded bodies together for projecting the problem from as many likely angles as need be.

If we pull ourselves together and through our joint efforts can find ourselves in a position where we can move together ahead on the basis of a minimum programme on the national plane, much will have been achieved, and we can then confidently look forward for further necessary moves ahead.

The convention has been convened with such a perspective before our eyes and such an end in view.



## **PUDR Convention on “Legal System, Judiciary & Democratic Rights”**

Thousands of undertrial prisoners languishing in the obscure jails of Bihar get released by a Supreme Court order. Four lakh pavement dwellers of Bombay city get temporary relief due to a court order. A democratic rights organisation's right to defend the rights of over 1.25 lakh migrant labour in the prestigious Asiad construction work is upheld by the Supreme Court. Andhra High Court prevents the police from prohibiting public meetings by a civil rights organisation. Delhi High Court acts as an arbitrator between the Government and striking teachers of Delhi University.

These are among the number of instances in the recent past where courts have dramatically intervened in a democratic rights movement. Whatever may be the merits and demerits of these judicial interventions and their eventual limitations, this particular **role of Courts has in itself generated a debate.**

Dr. Manoranjan Mohanty, Professor of Political Science and a member of PUDR's executive, who presided over the convention, underscored the significance of this debate for the democratic rights movement in general and PUDR in particular. PUDR is presently fighting twenty cases of Public importance, including the one challenging the constitutional validity of the Armed Forces (Assam and Manipur) special Powers Act,

Prof. Upendra Baxi, well-known professor of law, who himself took up the case of destitutes of Agra's 'Womens' home, raised the question of public interest litigation. He opined that presently the Supreme Court is only at the stage of experimentation in such cases, and its ultimate future will only be decided by the fate of this experiment. He identified three factors. First is the fluctuating bench structure and the possible and actual divergences between the Judges. Even the otherwise reticent mass media is openly discussing, in rather personal terms, about the pronouncements, attitudes and character of individual judges. And Judges themselves are contributing to this kind of debate. Secondly,

taking the example of Bihar undertrial prisoners, he illustrated how courts are beginning to undertake those very administrative decision which the executive should have taken in the first place. The third and the most important factor is the follow-up action in all these cases. The new trend by itself can't provide answers to 'the questions raised by the victims of repression and lawlessness past, present and future'. That will decide the future of such 'Social Action Litigations',

Gobinda Mukhoty, president of PUDR, on whose behalf he took up a number of cases, discussed the question of 'locus standi' in public interest litigations. The question, he pointed out, assumes a special significance in our country where in most cases the needy themselves are in no position to approach the Court, either due to lack of resources or due to fear of the establishment. In such cases public spirited citizens and organisations should have the right to approach the court on their behalf. Particularly upset by the recent decision to refer the question of locus standi to a constitutional Bench, he pointed out how in a series of judgements over the last four years, the Supreme Court has upheld this right. He argued that in a society like ours the poor and the oppressed will be benefitted by such a right. And it is for those several reasons, he emphasized, that this question should not be left to the whimsical ways of an individual Judge's interpretation of our legal system but should be fought as a collective right of the people.

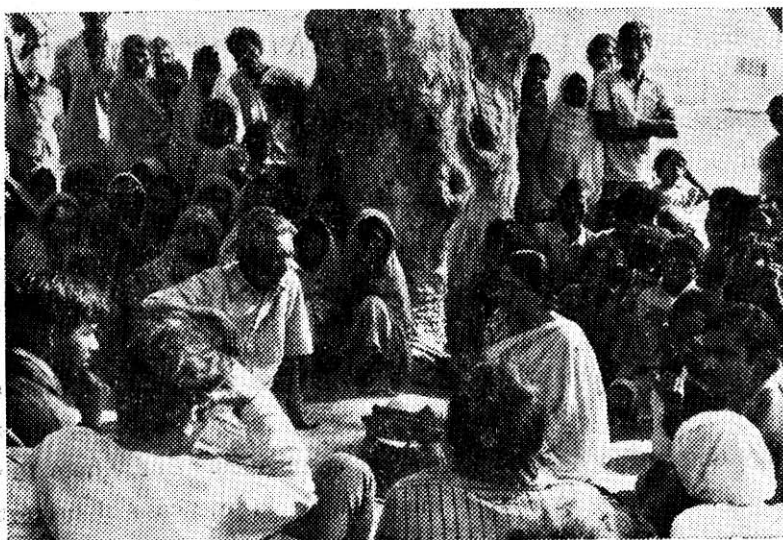
"While it is important to discuss the use of courts for people and their movement for democratic rights, it should not obscure the inherent biases in the legal system itself." Dr. Lotika Sarkar, Professor of Law at Delhi University, who took up the famous Mathura rape case, pointed out the two distinctive features of the Indian Criminal Procedure code: property offences viewed generally to be more serious than offences against persons and penalising any type of association which might prove difficult to handle - criminal conspiracy, unlawful assembly prohibition of association, dangerous to public peace etc.—and the liability placed on the members of such organisations.

Dr. K. Balagopal, well-known Telegu revolutionary writer and an activist of the Andhra Pradesh State Civil Liberties Committee, observed that the nature of this debate is altogether different in mofussil areas and at lower levels of Judiciary. Taking the case of the so-called encounter in Suryapet, Nalgonda district, where two young boys, aged 15 and 16, were killed he illustrated the utter contempt the police have for the law. According to the police version of the incident, the boys were throwing bombs over a wall into the Police Station at the outskirts of Suryapet town. The post mortem report clearly established that the boys could not have been behind a wall when they were shot. Yet the police continue to main-



tain their version of the story nor could they care less when their own doctor contradicted their story. For they know, nothing will happen to them. Similarly, there are a number of instances where young boys from Radical youth and student Organisations were picked up by the police and kept in illegal detention for weeks together. When the civil rights activists visit these youth in police custody, the local Sub-inspector treats their illegal detention as his right. This rather brazen defiance by the police has also a frightening effect on the Magistrates and even on Sessions Judges. Even when they can invoke law to check the police, they pass it off. Evident cases of police torture are often dismissed by the Judges with a light or sarcastic comment. In an encounter in Nalgonda district the APCLC investigations have revealed that two persons were killed in the presence of the local Executive Magistrate. But when the team approached, the Magistrate was evidently too terrified and shocked to admit this. He pointed out that even while we oppose the extra-ordinary laws, like NSA, often ignore the fact that for every one legal execution there are ten illegal murders called encounters, for every one arrest under NSA, there are tens of detentions without trial. So long as social structure is able to maintain itself peacefully, the law will be observed, But when a powerful social movement threatens the social structure, it set aside its own law including the extra-ordinary laws guardians of law themselves violate the law.

*[ Abridged from PUDR's report ]*



*P.U.D.R. (Delhi) & A.P.D.R. (W.B.) Joint Fact Finding Team at Jahanabad, Dist-Caya (Bihar) on 15 February 1983.*

# **NEED FOR CONSTANT VIGILANCE**

**J. M. KAUL**

Civil liberties or human rights as they are sometimes called are rather tender plants that need careful protection and constant nurturing. Wherever the plants wither the soil is right for the emergence of dictatorships. In many of the countries of the third world democratic regimes have proved shortlived and have succumbed to military rule. This has happened because the democratic movement was weak. In India we have been fortunate in that the democratic set up has survived, It even managed to emerge, not entirely unscathed perhaps but emerge nevertheless from the dark tunnel of the emergency. While deriving satisfaction from this fact it would not do to overlook the dangers, the many attempts that are being made to nibble at the roots of the democratic system and the many weaknesses from which it suffers.

One of the first requisites for a democracy are that every citizen should have the right to a fair trial. In India, however, the power to detain without trial has been a part of the armoury of the executive practically from the day power was transferred. In fact many of the acts that were introduced by the colonial rulers were retained and others were added on. The coming of the new Constitution in 1950 did not bring about any change in this respect. The several thousand political detenus who were behind the bars at that time were merely served with fresh orders of detention. In one form or another these provisions have been maintained till this day. And it is well known they have been grossly misused. Numerous judicial pronouncements exist testifying that these powers have often been used on the flimsiest of pretexts and sometimes even to settle personal scores.

Another threat to the democratic system arises from the practice of using excessive violence to deal with peaceful protests. True that protests sometimes tend to cross the limits and demonstrators indulge in stone throwing and other such activities. But where the demonstrators are unarmed, as is almost invariably the position in the case of protest demonstration, the degree of violence that is often resorted to is counterproductive. Very

often use of excessive force to deal with such demonstrations results in greater outbursts. In India firing is resorted to at the least sign of trouble and sometimes even without any provocation whatsoever. The attitude of trying to teach a lesson or terrorising the people with a show of force, a legacy of colonial rule, still persists. But violence begets violence and the practice of dealing with any demonstration with excessive force has only resulted in an atmosphere where peaceful protest is becoming difficult.

Then there is the use of third degree methods by the police during interrogation. This sometimes leads to the death of the person being 'interrogated'. In such cases it is usually declared that the person has committed suicide.

Another practice that is increasingly being resorted to is to deal with suspects, political or criminal, in a summary fashion or in other words to deliberately kill those considered to be dangerous. The normal procedures of law are bypassed and such people, even when they are under custody, are just shot. This is covered up by issuing a statement that the person concerned has been killed in an "encounter". The elimination of thousands of criminal or political suspects in this fashion is now a well known fact and the "fig leaf" of the "encounter story" hardly conceals this gross violation of human rights that is taking place.

Again one can not forget the bizarre episode of the blindings of criminals in Bhagalpur by the police possibly in connivance with people higher up in the Government hierarchy. This is an example of the extent of barbarism that can be and is being practiced in some parts of our country despite our claim to have an unbroken record of civilisation going back six thousand years.

A subject that has come up for discussion on a number of occasions in parliament is the tapping of telephones, the consorship of mail that is still carried on. Despite repeated protests there is no indication that this intrusion into the privacy of the citizen is going to be stopped.

Apart from the direct deprivation of rights and liberties cited above there are many other ways in which the ordinary citizen is harassed. The cost of litigation is so high that in most cases the government or the more powerful and affluent citizens or organisations get away with almost anything including murder. Corruption is also so rampant that odds are always weighed in favour the wealthy. Might is right says the proverb which should perhaps now be amended to "money decides who is right"

It follows that a continuous struggle must be waged to defend and to extend human



rights and civil liberties. Even to ensure the implementation of rights that are on the statute book there has to be a ceaseless battle or else the laws will be violated With impunity.

One of the important elements in the struggle for civil liberties must be to curb the powers of the police to resort to violence at the least excuse, This is perhaps expecting too much because the police is almost everywhere practically synonymous with unbridled violence, But in some of the democratic countries the police does act with restraint. It is rarely that one hears of police resorting to firing on unarmed people. Protesters and demonstrators, if they are unarmed and peaceful, are permitted to stage their demonstrations without disturbance and if force has to be used, it is generally water hoses that are turned against them.

The civil liberties movement should also do much more to create awareness amongst the people of what their rights are. Many people are subjected to harassment because they are not aware of what rights they enjoy even under the existing constitution and laws. There should also be panels of lawyers to take up cases of violations of civil liberties at nominal cost if not entirely free.

A large measure of responsibility rests on the media, particularly the press, because the other media are owned by the Government. Public opinion can however force even the government owned media help in creating awareness of the rights that the people enjoy and to criticise violations of these rights.

And finally of course there is the need for a strong civil liberties movement. It should be sufficiently well organised not only to carry on agitational activity but also to promote awareness, to give news and to defend people who have been wronged by rendering them legal and other forms of aid. The saying that eternal vigilance is the price of liberty was never more true than it is today.

# **SOCIALISM, CONSTITUTION AND THE COUNTRY TODAY**

## **LEGAL AND JUDICIAL REFORMS FOR SOCIALIST DEVELOPMENT**

**Gobinda Mukhoty**

*PRESIDENT*

**People's Union for Democratic Rights (Delhi)**

Socialism, to me, means, socio-economic equality. On July 22, 1947, while discussing the Resolution on Indian National Flag, Nehru said :

"There will be no full freedom in this country or in the world as long as a single human being is un-free. There will be no complete freedom as long as there is starvation ; hunger, lack of clothing, lack of necessities of life and lack of opportunity of growth for every single human being, man, woman and child in the country. We aim at that."

Brave words.

But when it came to inclusion of the idea of socialism in the Constitution, Nehru expressed strong reservations and said :

"But the main thing is that in such a Resolution ; if in accordance with my own desire, I had put in that, we want a socialist State, we would have put in something which may be agreeable to many, but may not be agreeable to some, and we wanted this Resolution not to be controversial in regard to such matters." (CAD IV p. 739 and CAD I p. 60).

Therefore, our founding fathers, though aware of the grinding poverty and untold suffering of the citizens, were not quite ready to make India a Socialist State and that is why, Directive Principles which might, perhaps, usher in socialism are not justiciable.

But now the after 42nd Amendment, the word 'socialist' has found its rightful place in the Preamble, which "relates to the basic structure or framework of the Constitution",

according to Justice Khanna. And to which "all importance has to be attached", According to Chief Justice Sikri, as he then was (1973) ( 4 SCC 225 at 226 and 231 ). Let us see how citizens are deriving benefit out of it ?

Let us consider the state of the Nation, say. for the last two years, that is after 33 and 34 years of political independence :

**GUARDIAN, U. K. : 1979 :** India having per capita income of Rs. 120/- per month was almost at the bottom. ( Kuwait had Rs. 12500/- per capita income per month. )

**INDIAN EXPRESS : 28.4.1981 :** Kamla, part of humanity's flotsam, rejected by her brothers and in-laws, forced to leave her children, bartered and sold from one person to another, was sold at last for Rs. 2300/- in the flesh market of Madhya Pradesh.

**Times of India : 29.9.1981 :**

Criminal shielded by politicians. Relations of Home Minister of Madhya Pradesh created terror in Sheom-Malwa Tehsil in Hoshangabad, the home District of the controversial Home Minister, Mr. Raghuvanshi,

**TIMES OF INDIA : 23.11.1981 :** Not even the side walks for them. Helpless labourers huddled around their meagre belongings on the road side after their jhuggis were demolished by D.D.A. on Saturday.

**TIMES OF INDIA : 28.11.1981 :** Nagpur Extravaganza beyond belief. The splendour and extravaganza in which a prominent steel magnate here recently celebrated wedding of his daughter could be the envy of a Maharajah of bygone days, estimated expense being Rs. 1 crore.

**INDIAN EXPRESS : 17.12.1981 :** Convicts turned into mental cases. 36 convicts and undertrials have been languishing in the Hazaribagh Central Jail hospital for years because they were of unsound mind either at the time they committed the crime or became so later. One of them has been in jail for 36 years.

**INDIAN EXPRESS : 18.12.1981 :**

How big is India's black economy ?

YEAR	Size of Black Economy ( Rs. crores )	% age of official G.N.P
1976	3034.37	9.5
1978/79	46866.858	48.78

**INDIAN EXPRESS : 3.11.1982 :**

India has 7 million bonded labourers, a report of the anti-slavery society, submitted to U.N. Working Group.

**INDIAN EXPRESS : 7. 3. 1982.**

There are some villages in India even today where 77.7 per cent of the population Harijans and Tribals, are disabled due to mal-nutrition and intake of poisonous foods. Most of them continue to work as bonded labourers subsisting at times on grain picked out of cow-dung :-

(Gandhi Peace Foundation Report).

**STATESMAN : 27. 8. 1982 :**

The prisoners of the Stone Hill. A Report on Bonded Labour.

**INDIAN EXPRESS 4. 1. 1983 :**

Sivakasi : Where Children Toil.

Before the day breaks, hundreds of children many of them under 10, are woken up in villages around Sivakasi, loaded in buses and taken to match and fire work factories, to work for more than 12 hours in hazardous conditions. More than 45,000 children, including thousands of little girls, work day after day in cramped Rooms filled with suffocating smoke.

**INDIA TODAY : JANUARY 1983 :**

Jagannath Mishra cleared by the court. On December 16, the Supreme Court held by a two-one majority that the withdrawal by Mishra's own government of vigilance Case No. 9(2)/78 against the Chief Minister was valid and lawful.

**INDIAN EXPRESS : 9.1.1983 :**

Government Emblem on Wedding Cards of Minister's Son.

The Madhya Pradesh Minister for Law and Tourism Mr. K. P. Sinha used the official emblem of the State Government on the invitation cards used for the reception of his son's wedding.

The above is the state of affairs in this country. We have extremely bad and pernicious legislations like N.S.A., E.S.M.A. etc. We have also good legislations like Bonded



Labour System Abolition Act, Inter-State Migrant Workmen's Act, Equal Remuneration Act, Contract Labour (Regulation and Abolition) Act, Workmen's Compensation Act, etc. In addition, India is a signatory to the Universal Declaration of Human Rights. India also has ratified International Covenant on Political and Civil Rights and international Covenant on Economic Social and Cultural Rights. The legislation are there, but beneficial provision of the welfare legislations are not being implemented. The politicians are around the corner with the promises, readily forgotten after the election is over. The Judiciary is there, but justice is denied to the poor, while the power that be is getting away with murder.

Therefore, without the total participation of populace in the Administration of the country the socialist society will not emerge, and, I am afraid, is not possible, under the present circumstances without a total and all-pervading revolution.

—:o:—

## **MATSYA NYAYA**

### **Then and Now**

**MANMATHA RAY**

Enjoyment of civil liberties distinguishes men from the animals around ruled by the lawlessness of the jungle.

Such lawlessness was termed 'Matsya-nyaya' on the basis of the practice as a matter of right of the big fish devouring small ones. That was what happened in Bengal in the eighth century A D, but the revolt of the people, however, resulted in the extraordinary election of Gopal as a king and establishment of human rights and civil liberties out of long standing chaos.

The denial in a society of the human rights and civil liberties crops up in the promotion of vested interests of a selfish group of people corrupting the society and the Government machinery, slowly but steadily.

Duties of cultural workers determined to promote human rights are to guard the society against this beastly selfish move, and to work for the establishment of a socialist society based on the principle of "Each to All and All to Each".

## **Democratic rights by Democratic methods**

**J. Sarma Sarkar**

There is some confusion about the existence and exercise of democratic rights and the means to secure them and how they impinge on one another. Democratic rights claimed are not abstract or absolute and may cease to be democratic by the manner of their exercise and the methods applied to enforce them.

Democratic rights are the civil and political rights enjoyed as a member of a civil society within the limits of law and constitution of our country which cover them. Life and liberty are democratic rights declared fundamental by our constitution. Many a life has been lost due to inter party or intra party clashes and other causes without any remedy because, it is alleged, of support to the criminals by ruling parties or the opposition. Liberty has been curtailed by false arrest, prosecution, misusing detention law, blinding of prisoners and tortures in lock up and inhuman conditions in jail. In spite of provisions for enforcing fundamental rights, the citizens get no redress either from Governments or courts as they cannot function under condition of lawlessness. Governments have failed to protect the citizens from the tyranny of the administration or from violence in society.

If the Governments have failed in their duty to protect democratic rights, citizens have also failed in manner of exercising those rights. Most abused rights are (1) to free speech and (2) to assemble peacefully without arms, Art 19(1) (a) and (b) ignoring the limitations contained in Art 19 itself including cls 2 and 3. There is no right to propagate violence, defame, or commit contempt of court or Parliament, or preach sedition. Rights of assembly, procession and meeting do not include defiance of law, disturbance of public order, destruction of public or private property and use of bombs, Violence or threat/nor do the rights claimed exclude the like rights of others.

Some democratic rights are claimed by groups on the basis of religion, language, education, territory, and other sectional interests primarily against other groups and

interests and indirectly against the Governments, ignoring the interests of other groups. Democracy is neither a minority or majority right. Democracy means consideration of the interests of all the groups and decision by discussion in national interest. The agitators not only in the north west and the north east but throughout the country claiming to be infallible want to impose their will on the majority and against national interest by violence and anti-state and anti-nation activities directly violating Fundamental Duties in Art 51 A(c) and (i) : 'to promote harmony and the spirit of common brotherhood amongst the people of India' ; 'to safeguard public property and adjure violence'.

We may consider now the rights claimed and the methods employed to enforce them by unions and associations of 1) workers or labourers, 2) employees, public or private and 3) students or teachers. They have a democratic right to form association under Art 19c subject to limitations in cl 4 as to public order or morality, or other reasonable restrictions by the state. Rights of collective bargaining and representations for betterment of conditions for work or study are no doubt valuable rights to be protected.

A distinction has to be drawn between unions of workers under the Trades union Act and association of employees, students and teachers outside that Act. Industrial Dispute Act is applicable to Trade unions and not to associations. Right to strike has been conceded to Trade unions after the formalities of Industrial Dispute Act are observed. There is thus no legal provision for strikes for associations of employees, students or teachers.

Apart from procession and demonstrations already discussed, unions or associations resort to a) strike, b) gherao, c) 'sit-in' or 'work to rule', or d) 'bundh' for enforcing their rights or demands.

Strike is not a fundamental right but a vital democratic right for trades unions for settlement of industrial dispute after the formalities of the Industrial Dispute Act are complied with. But more often than not the formalities are not complied with. There is no legal validity for strikes by employees or associations.

Gherao or wrongful confinement or restraint can never be democratic as they amount to an offence whether against a chief minister, manager or vice chancellor.

'Sit-in' or 'work to rule' or 'bundh' for political purposes are undemocratic as these encroach on the rights of others who are often in the majority by threats or violence. These methods are not covered by 'strike' which can mean only cessation of work.

It is often argued, not without some force, that due to rigidity of political parties, social and economic groupings, no effective remedy is available within the limits of law without some form of direct action or agitation. For flexibilities, there may be all party committee in parliament and Citizen's council in the state, district, and panchayet level to thrash out national and local political, social, economic, religious and language difference. The dispute between labour unions and management may be resolved by 'works council' consisting of representatives of labour management and consumers. Dispute may be settled between students or teachers and the educational institution by including also guardians and public in education council Differences between employees and authority may be resolved by including members of the public in 'wage boards'. When all these fail, conciliation and arbitration boards may be set up and ultimately disputes may be referred to courts or tribunals. It is essential the Governments will take a detached view and should not favour a particular group or section but take decisions in national interest and implement them.

When the majority or the minority groups are convinced that their claims are also in the national interest but the demands are unresolved by the legal machinery, then only they can rouse the social, national and human conscience by direct action. Even then direct action in the form of cessation of work, non-cooperation, or satyagraha should be completely non-violent, without threat or intimidation or destruction of property or taking law in their own hands. Methods permitted for winning independence cannot be claimed for democratic rights for a group. Revolution or rebellion of a group, however numerous, cannot be democratic to be protected. Suppression of democratic rights is as condemnable as explosion of democratic rights.

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#### APDR Condemns—

- ★ The armed forces brutality and mass killings by chauvinist forces in Assam.
- ★ The police and party thugs joint suppression of Anti-fare hike demonstrators in Calcutta.



# Struggles for Civil Liberties in India

—A perspective

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The question of protection of democratic rights and liberties of the people in the country is a serious concern for all the freedom loving people. The Indian Constitution provides some fundamental rights of the people ; but the same Constitution also provides for taking away those rights under certain circumstances. Moreover, the limited rights provided by the Constitution or by certain laws in the country are constantly violated in practice. The victims of such violation are generally the underprivileged sections of the society. In a class society, this is bound to be so.

With the return of Indira Gandhi to power, the tendency towards authoritarian rule has been growing. Not only the ruling party has been gradually insensitive to the sufferings of the people at large. Many acts have been passed to curtail democratic rights of the people especially the working people, Mention may be made of the passing of National Security Act, Essential Services Maintenance Act, Amendment of the Industrial Disputes Act, Disturbed Areas Act and so on.

Besides, there is constant and consistent violation of civil and human rights of the people. Many examples can be given. Encounters were staged in different states by the police for killing political opponents. Prisoners are not released from jail after the expiry of their term. Persons arrested are not produced before the court within 24 hours as provided by the law. Persons arrested are neither given charge-sheet or released on bail within the stipulated time of 90 days as directed by the Supreme Court. There is no law for torturing prisoners in police lock-up, but third degree methods are widely used by the police not only against criminals but also against political elements. Such tortures inside police lock up have sometimes resulted in deaths or rendered their victims invalid for life. Prisoners are kept in jails in human conditions. The law bans bonded labour but the system of bonded labour has been continuing in different parts of the country. Atrocities on Harijans and tribals by the upper castes with the connivance of the police have been continuing unabated. Discrimi-

mination against women social and economic—are rampant in the country. On top of all this the freedom of press is often curtailed by various enactments or by executive orders.

The universal declaration of Human Rights was adopted by the United Nations in 1948. The declaration has set 30 points charter of demands and enumerates the rights a man should enjoy and prohibits any discrimination on the basis of religion, caste and social status. Though India is a signatory to the declaration, many examples of its violation can be cited. In a sense, the declaration is a dead letter. In El Salvador, Indonesia and many other countries which are signatories to the declaration, there are rampant violation of Human Rights adopted by the UNO. The Central Government led by Indira Gandhi is no doubt mainly responsible for suppressing civil liberties are Human Rights of the people. But it should be pointed out that not only Congress (I) ruled states, but also in other states especially in Tamil Nadu violation of civil liberty is very rampant. Even in West Bengal, where a Left Front Government led by the CPI (M) has been in power for more than six years, many examples of such violation can be cited.

So, the movement for civil liberty has become an urgent necessity. There is some confusion and controversy as to the nature and scope of civil liberties movement, and organisation. Some broad principles and outlines in this connection should be stressed.

A civil liberty organisation cannot and should not take up the task of the political parties and mass organisations. It cannot be used as an instrument for struggle for social change. Whereas democratic rights and demands have wider connection, civil liberties have some special connotation. When workers agitate for better wages or for better service conditions or when the peasants agitate for land, that is their democratic demand and right. But in exercising such rights the workers or the peasants face obstacles from the state which encroach upon the exercise of such rights by passing laws or using repressive machinery of the state. The civil liberties movement cannot take up the task of organising workers and peasants for their struggle—these tasks are to be taken up by the respective mass organisations and political parties. The civil liberty movement should confine itself to the task of protesting against the states' encroachment upon the exercise of democratic rights by the people, in so far as they affect the freedom of speech, organisation and similar fundamental rights only. The civil liberty movement should also engage itself in protecting whatever democratic rights are guaranteed by the Constitution and the law. In this way, it cannot only protect but also extend such rights. It also helps indirectly the struggle for social change. So, people from different classes and with different political views and ideology can join the civil liberties organisation and movement.

Experience in the past has shown that many individuals who may not be interested in organising workers and peasants for their demands are ready to protest against the state's encroachment upon their rights. Of course, the demands of such movement will depend to a great extent upon the concrete situation obtaining in the country.

A number of civil liberties organisations under different names has been functioning in different parts of the country. Some prominent individuals and jurists have been playing important parts in organising civil liberty movement. It is strange and unfortunate that the CPI (M) and CPI and other left parties who are very vocal against Indira Gandhi's authoritarianism have taken little interest in organising civil liberties movement. Some individuals and a section of the erstwhile Naxalities have formed the main base of the civil liberties organisations functioning in different parts of the country.

The Association for the Protection of Democratic Rights (APDR) founded in 1972 and banned during the emergency is a Civil Rights Organisation which has devoted itself to the task of organising civil liberties movement in West Bengal.

It is organising an all India Civil Liberty Convention in Calcutta on 9 and 10 April in order to develop some common outlook and some all India Co-ordination of the activities of the civil liberties organisations. The APDR's attempt to do so is a step in the right direction.

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#### **A P D R demands**

Scrap B. I. R act and derecognise R. M. M. S. immediately in Bombay Textile.

Scrap Armed force special power Acts. Stop repression in North-east.

Scrap Constitutional power of Govt. to declare emergency.

## West Bengal Govt. is also afraid of Police Officer

**( Yes, the Left Front Government headed by Shri Jyoti Basu did not dare to prosecute Police officer, as was recommended by the Emergency Excesses commission of W.B. )**

Considering everything I am of the opinion that there is strong prima facie case to the gross misuse of power during the Emergency as is evident from the complainant's illegal detention in the S. B. Office for about three weeks from 19th September 1976 to 9th October 1976 by three officers of the S. B., namely, Shri Ashoke Khasnabis, Shri Santosh Kumar Sen and Shri Mihir Kanti Mitra. Physical tortures inflicted by the S. I. Shri Mihir Kanti Mitra obviously to extort information regarding Amherst St. P. S. Case No. 315, dated 26th September 1975. The seizure list produced was but created on 9th October 1976 to substantiate the false story of arrest of the complainant that day and Shri Mihir Mitra who fabricated this document would be liable for prosecution u/s 193 of the I.P.C. as well Shri Ratan Lal Mukherjee would also be liable under that section for causing the the Crime Register prepared that day for falsely showing him arrested only on that day in connection with Amherst St. P. S. Case No. 315 of 1975. Shri Santosh Kumar Sen would also be liable for the offence, helping for the offence, helping to create the false circumstances of the complainant's arrest on 9th October 1976 by purchase of a ticket for palasi that very day and including it among his other possessions for seizure.

As regards the allegation of acceptance of bribe from Ajit Bairi and Priya Biswas by Shri Santosh Kumar Sen on an oblique assurance of freedom from harassment if the money was paid, the complainant, it appears, went to the length of writing a letter ( produced by the opposite parties ) to Shri Ashoke Khasnabis on 18th March 1977 immediately on his release and knowledge of the same from his friends. Shri Khasnabis of course stated that on receiving the letter, he called the complainant and asked him to produce witnesses to substantiate the allegation which however the complainant failed to do as his friends were not allegedly willing to pursue the matter. Ajit Bairi, while deposing before the



Commission. however, stated that Shri Santosh Kumar Sen did in fact demand money in subtle way on 20th January 1976 and that 3/4 days thereafter both he and Priya Biswas met Santosh Sen and paid him Rs. 520. A prima facie case u/s 161, I. P. C. has thus also been established against Shri Santosh Kumar Sen.

I would therefore recommend prosecution of Shri Santosh Kumar Sen u/s 161/193/344 I. P. C., of Shri Mihir Kanti Mitra u/ss 193/323/330/344, I. P. C., of Shri Ratan Lal Mukherjee u/s 193. I. P. C. and of Shri Ashoke Khasnabis u/s 344, I. P. C.

Send the entire record along with the documents submitted and called for to the Government, except the Court record. which be returned to the court concerned".

**H. CHAKRABARTY**

**Chairman**

**Emergency Excesses Inquiry Commission**

**West Bengal**

**30.4.79**



*A.P.D.R. organised 8 hours Mass Squatting and Poster Exhibition against torture in Police custody at Esplanade East on 5 Oct, 1982.*

# Do you duty, Wherever you go

Mr. Sanjay Mitra, former General Secretary of the APDR, has recently informed us of his activities abroad regarding the protection of civil liberty and human rights in India and the Sub-Continent.

Mr. Mitra has been working with Amnesty International and India work Group, based in Holland. At Amsterdam he was invited to speak on the political killing in South Asia and the meeting was attended by a large number of workers (about 1000), involved in civil liberty movement. This was convened by the A. I. as its annual general meeting.

Mr. Mitra has also been interviewed by the Dutch Radio and T. V. media regarding the cases of torture and the related investigations in India in particular and the Sub-Continent in general. On his return from Hungary, he would be interviewed by the British section of the A.I. and a team of the British M.P.s in London on the issues of the violation of human rights in the Indian Society in respect of the Harijans, Adivasis and the minorities. He had been in London from the 20th to the 25th of March for such interviews and talks which also include his programme with the B.B.C Television.

On 28th March he was in Denmark on the invitation of the Danish A.I.  
APDR is glad for Mr. Sanjay Mitra's activity,



*A.P.D.R.'s Second Conference at  
Krishnanagar, Nadia held on  
8-9 January 1983.*



# Kharkia Refractories (P) Ltd.

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## সৃজনী

একটি প্রগতিশীল প্রকাশন সংস্থা

প্রকাশের পথে কয়েকটি উল্লেখযোগ্য বই  
দেবাশিষ ভট্টাচার্য রচিত  
'বামপন্থীরা মহাকরণের মন্ত্রী হয়ে যা  
করছেন'  
মূল্যবান তথ্যসমৃদ্ধ একটি পর্যালোচনা

হিন্দী গল্পকার হরিপ্রসাদ শর্মার গল্পগ্রন্থ  
'মাটির শরত ও অন্যান্য গল্প গ্রন্থ'  
সম্পাদনা কমলেশ সেন

Left March a collection of Bengali  
poems of turbulent 70's.

সৃজনী

অচিন্ত্য গুপ্ত

৭৫, পটলডাঙ্গা স্ট্রিট, কলিকাতা

প্রাপ্তিস্থান :—নিউ বুক সেন্টার, কলিকাতা

## গণতান্ত্রিক অধিকার রক্ষা সমিতির

### লক্ষ্য, উদ্দেশ্য

(১) গণতান্ত্রিক অধিকার রক্ষা সমিতির নামেই প্রতীয়মান হয় যে, জনসাধারণের গণতান্ত্রিক অধিকার রক্ষাই সমিতির মূল লক্ষ্য ও উদ্দেশ্য। ব্যক্তি স্বাধীনতা, সভা সমিতি, মিছিল ইত্যাদি সংগঠন ও অনুষ্ঠানের স্বাধীনতা যেমন সুনিশ্চিত ভাবেই গণতান্ত্রিক অধিকারের অন্তর্ভুক্ত, তেমনি জাতিসংঘের মানবাধিকারের সার্বজনীন ঘোষণা অনুযায়ী ব্যক্তি মানুষ হিসাবে পূর্ণ মানবিক মর্যাদা এবং সেই হেতুই যে কোন প্রকারের দৈহিক নির্যাতন, নিপীড়ন, নিষ্ঠুর মানবিক ও নৈতিক অবনতির হাত হইতে অব্যাহতি জীবিকা, শিক্ষা, ট্রেড ইউনিয়ন সংগঠনের অধিকার, সাধারণ সরকারী কর্মচারীদের রাজ্য ও কেন্দ্রীয় আইনসভার নির্বাচনে প্রতিদ্বন্দ্বিতা করিবার অধিকার। এবং যে কোন রাজনৈতিক দল বা সংগঠনের সদস্য হইবার অধিকার, আইনানুযায়ী বিচারের অধিকার, বিনা বিচারে বন্দী না হইবার অধিকার, পক্ষপাতহীন বিচার, চিন্তা বিবেক ধর্ম ও মতের স্বাধীনতা এই সমস্তকেই সমিতি গণতান্ত্রিক অধিকারের অঙ্গ বলিয়া গণ্য করে ও তাহাদের প্রতি অকুণ্ঠ ও পূর্ণ নৈতিক সমর্থন জ্ঞাপন করে। ভারতে যত্নাদণ্ড রহিত করার দাবীও সমিতি মানবিক অধিকারের সহিত সঙ্গতিপূর্ণ বলিয়া মনে করে।

(২) এই সমস্ত মৌল ও অপরিহার্য মানবিক ও গণতান্ত্রিক অধিকার রক্ষার দায়িত্ব যেহেতু জনসাধারণের স্মরণে ইহার রক্ষা ও সম্প্রসারণের উদ্দেশ্যে জাতি ধর্ম বর্ণ ভাষা স্ত্রী পুরুষ নির্বিশেষে রহন্তম গণপ্রক্য গড়িয়া তোলার দিকে সমিতি সর্বদাই সজাগ দৃষ্টি রাখিবে।

(৩) সমিতি মনে করে যে আমাদের দেশের বাস্তব পরিস্থিতির ভিতরেই এমন কতকগুলি অশুভ অর্থ-নৈতিক, রাজনৈতিক, সামাজিক ও সাংস্কৃতিক উপাদান নিহিত রহিয়াছে। যাহার ফলে উপরি উল্লিখিত সমস্ত মানবিক ও গণতান্ত্রিক অধিকারই লজ্জিত হইবার অশুভ প্রবণতা ও প্রচেষ্টা দেশের বৃকে কম বেশী বারেবারেই শংকাজনক ও প্রবলভাবে প্রকট হইয়া উঠিতে পারে। সুতরাং এইসব রক্ষা ও সম্প্রসারণের কার্যকরী ও সাংগঠনিক স্থায়ী গ্যারান্টি সৃষ্টি করাও সমিতির অন্যতম লক্ষ্য।

(৪) গণতান্ত্রিক অধিকার রক্ষা সমিতি মনে করে যে বর্তমান পৃথিবীতে গণতন্ত্র ও ব্যক্তি স্বাধীনতার সমস্যা আদৌ কোন একটি দেশের একক ও বিচ্ছিন্ন সমস্যা নহে। পরন্তু ইহা একটি বিশ্বজনীন সমস্যা এবং পারস্পরিকভাবে অঙ্গাঙ্গী সম্পর্কিত। এই কারণে সমিতি পৃথিবীর যে কোন দেশের গণতান্ত্রিক ও ব্যক্তি স্বাধীনতার আন্দোলনের প্রতিই দ্বিধাহীন সমর্থন জানাবে।

(৫) প্রস্তাবনা : ভারতের সীমিত গণতান্ত্রিক অধিকারের উপর নগ্ন আক্রমণের পটভূমিতে জনসাধারণের গণতান্ত্রিক ও সাধারণ মানবিক অধিকার রক্ষা ও সম্প্রসারণের পবিত্র উদ্দেশ্যে পালনের জন্য এই সমিতির প্রতিষ্ঠা।

(৬) এই মহান উদ্দেশ্যে সমিতি সমমনোভাবাপন্ন যে কোন জাতীয় ও আন্তর্জাতিক প্রতিষ্ঠানের সহিত সহযোগিতা করিয়া চলিবে ও অন্যান্য গণতান্ত্রিক সংগঠন, গোষ্ঠী ও ব্যক্তি মানুষের সহযোগিতায় এই উদ্দেশ্য সাধনে সমিতি নিরবিচ্ছিন্ন প্রচেষ্টা চালাইয়া যাইবে।

### —গঠনতন্ত্রের ধারা—

(১) সমিতির নাম—গণতান্ত্রিক অধিকার রক্ষা সমিতি।

(২) গণতান্ত্রিক ও মানবিক অধিকার রক্ষায় আগ্রহী যে কোন ভারতীয় নাগরিক এই সমিতির সদস্য হইতে পারিবেন।

(৩) সমিতির বার্ষিক সভ্য চাঁদা পাঁচ টাকা। তবে কর্মহীন বেকার ও ছাত্রছাত্রীদের বার্ষিক চাঁদার হার ২ (দুই) টাকা। বেকার বা ছাত্রছাত্রীদের ক্ষেত্রে এককালীন বা সর্বাধিক চার কিস্তিতে ঐ চাঁদা গ্রহণযোগ্য হবে। সদস্য চাঁদা পুরো কেন্দ্রীয় সংগঠনেই জমা হবে। কেন্দ্রীয় সংগঠন শাখার গৃহীত সদস্য চাঁদার ২৫% শাখাকেই ফেরত দেবে।

(৪) সমিতির কাজ নিয়মিত ও সুষ্ঠুভাবে পরিচালনার জন্য একটি সাধারণ কাউন্সিল ও একটি কার্যকরী কমিটি ও (প্রয়োজনবোধে) একটি সম্পাদকমণ্ডলী গঠিত হবে। সমিতির সর্বোচ্চ সংস্থা হল সাধারণ সম্মেলন। তারপর ক্রমানুসারে সাধারণ কাউন্সিল, কার্যকরী কমিটি ও সম্পাদকমণ্ডলী গঠিত হবে। অপরাপর কমিটিগুলি সাধারণ কাউন্সিলের নির্দেশ অনুসারে চলবে।

(৫) সাধারণতঃ বাৎসরিক সম্মেলন থেকে কাউন্সিলের সদস্যগণ, সমিতির সভাপতি, প্রয়োজনবোধে একজন কার্যকরী সভাপতি, একাধিক সহসভাপতি, একজন সাধারণ সম্পাদক, পাঁচজন সহসম্পাদক ও একজন কোষাধ্যক্ষ হবে।

(৬) সাধারণ কাউন্সিলের প্রথম সভায় সদস্যদের মধ্যে একটি কমিটি হবে। কার্যকরী কমিটি কার্য পরিচালনার প্রয়োজনে একটি সম্পাদকমণ্ডলী গঠন করতে পারবেন।

(৭) সাধারণ কাউন্সিলের সভা অন্ত্য চার মাসে একবার অনুষ্ঠিত হবে। কার্যকরী সভা অন্ত্য দেড় মাসে একবার অনুষ্ঠিত হবে। কার্যকরী কমিটি ও সম্পাদকমণ্ডলী গঠিত হলে তার সভা প্রয়োজনবোধেই অনুষ্ঠিত হতে পারবে।



(৮) সাধারণ কাউন্সিল ও কার্যকরী কমিটির সভায় সমিতির সভাপতি সভাপতিত্ব করবেন। তার অনুপস্থিতিতে সভাপতিত্ব করবেন কার্যকরী সভাপতি। উভয়েরই অনুপস্থিতিতে সহসভাপতি সভাপতিত্ব করবেন। ইহাদের কেহই উপস্থিত না থাকলে উপস্থিত সদস্যদের মধ্যে থেকে সভা পরিচালনার জন্য একজন সভাপতি নির্বাচিত হবেন।

(৯) সাধারণ কাউন্সিল, কার্যকরী কমিটি ও সম্পাদকমণ্ডলীর (যদি গঠিত হয়) সভা ডাকার আলোচনা সূচীর উপস্থাপনের দায়িত্ব সাধারণ সম্পাদককে পালন করতে হবে। সাধারণ সম্পাদক সভা ডাকতে অক্ষম বা অসম্মত হলে, সমিতির সভাপতি সভা ডাকতে পারবেন, সাধারণ কাউন্সিল ও কার্যকরী কমিটির স্ব স্ব সভা সংখ্যার এক তৃতীয়াংশের তলবী সভা ডাকার অধিকার থাকবে। সাধারণ কাউন্সিল ও কার্যকরী কমিটির সভায় কোরামের হার হবে যথাক্রমে এক পঞ্চমাংশ ও এক তৃতীয়াংশ। কোরামের অভাবে কোন আহূত সভা নির্দিষ্ট দিনে অনুষ্ঠিত হতে না পারলে পরবর্তী স্থগিত সভা নির্ধারিত কোরাম ছাড়াই অনুষ্ঠিত হতে পারবে।

(১০) প্রতি বৎসরের জানুয়ারী ও মার্চ মাসের মধ্যে বাৎসরিক সম্মেলন অনুষ্ঠিত হবে। যদি কোন অনিবার্য কারণে উক্ত সময়ের মধ্যে বাৎসরিক সম্মেলন ডাকা বা অনুষ্ঠিত হওয়া সম্ভব না হয় তাহলে উক্ত সময়ের মধ্যে যত শীঘ্র সম্ভব তা অনুষ্ঠিত হবে।

(১১) বাৎসরিক সম্মেলন, সাধারণ কাউন্সিল ও কার্যকরী কমিটির সভা ডাকতে হলে যথাক্রমে অনূন এক মাস, ১৫ দিন, এক সপ্তাহের নোটিশ দিতে হবে।

(১২) কোন বিশেষ কারণে বা উদ্দেশ্যে উপ-কমিটি বা অধীনস্থ কমিটি গঠনের অধিকার কার্যকরী কমিটির থাকবে।

(১৩) সাধারণ কাউন্সিলের অনুমোদন সাপেক্ষ, সমিতির কার্যাদি পরিচালনার জন্য জনসাধারণ, ব্যক্তিবিশেষ বা প্রতিষ্ঠানের কাছ হতে অর্থ সংগ্রহ বা গ্রহণ করার ক্ষমতা সমিতির থাকবে। সমিতির হিসাবরক্ষক সমিতির আয় ব্যয়ের সূচী ও উপযুক্ত হিসাব নিকাশ রাখবেন। বর্তমান বৎসর ব্যতিরেকে সমিতির আর্থিক বৎসর হবে জানুয়ারী, ডিসেম্বর।

(১৪) ন্যূনতম দশজন সদস্য কার্যকরী কমিটির সহযোগিতা ও পরিচালনায় আঞ্চলিক বা শাখা কমিটি গঠন করতে পারবেন।

(১৫) আঞ্চলিক বা শাখা কমিটিগুলি সংগৃহীত চাঁদার তিন-চতুর্থাংশ কার্যকরী কমিটির প্রাপ্য হবে। বিশেষ ক্ষেত্রে কেন্দ্রের অথবা শাখার দান আদায়ের ক্ষমতা থাকবে। দান গ্রহণের ক্ষেত্রে একমাত্র কেন্দ্রীয় সংগঠনের বিল ব্যবহার করতে হবে। প্রতিটি শাখা বার্ষিক আয় ব্যয়ের হিসাব কেন্দ্রীয় সংগঠনে জমা দেবে।

(১৬) সমিতির প্রতিটি সংস্থার সভায় সর্বসম্মত সিদ্ধান্ত গ্রহণের একনিষ্ঠ ও আন্তরিক প্রচেষ্টা চালাতে হবে।

(১৭) সমমনোভাবাপন্ন যে কোন জাতীয় বা আন্তর্জাতিক প্রতিষ্ঠানের সঙ্গে সহযোগিতা করার অধিকার সমিতির থাকবে।

(১৮) সমিতির কোন সদস্যের বিরুদ্ধে সমিতির লক্ষ্য ও উদ্দেশ্যবিরোধ কার্যকলাপের জন্য শাস্তিমূলক ব্যবস্থা (যাহা সদস্যপদ বাতিল পর্যন্ত বাইতে পারে) গ্রহণের অধিকার কার্যকরী কমিটির থাকবে। সংশ্লিষ্ট সদস্যের সাধারণ কাউন্সিলের কাছে এইরূপ ব্যবস্থা গ্রহণের বিরুদ্ধে আবেদন জানানোর অধিকার থাকবে। আবেদন পত্র শাস্তিমূলক ব্যবস্থা গ্রহণের দশ দিনের মধ্যে পেশ করতে হবে।

(১৯) গঠনতন্ত্রের কোন সংশোধন, সংযোজন বা কোন ধারার পরিবর্তন বা পরিবর্তনের অধিকার বাৎসরিক সম্মেলনে থাকবে। অথবা এই উদ্দেশ্যে কার্যকরী কমিটির নির্দেশে সাধারণ সম্পাদকের দ্বারা পনের দিনের নোটিশে সমিতিতে একটি বিশেষ সভাও ডাকা চলবে। দুই তৃতীয়াংশ সংখ্যাধিকার ভোটে নির্ধারিত হবে।

“সম্পাদক” (A.P.D.R.)

# **'Encounter' Killings in India**

*( An Amnesty International Report )*

The killing of political suspects follows an earlier established practice of killing suspected dacoits ( robbers ). ( Dacoity is robbery in which five or more people are involved ). Meherchand Mahajan, a former chief Justice and Head of the Punjab Police Commission, established by the Indian Government in 1961 to inquire into allegations that criminal suspects were being killed in staged "encounters" with the police, stated that :

"Considerable evidence has been led to the effect that police make out false encounters with criminals and shoot them because they cannot obtain sufficient evidence against them to bring them to justice before the courts of law.....A number of witnesses.....suggested that when the police catch hold of dacoits and can obtain no evidence against them, they tie them to trees and just liquidate them".

The Central Government's response to expressions of concern about "encounter" killings has invariably been to deny responsibility on the ground that under the Indian constitution law and order was a subject for state authorities. In rare cases where the Indian Government has prompted State Governments to establish judicial inquiries into "encounter" killings, it has failed to take action when state authorities subsequently frustrated and curtailed the inquiries. The Central Government's lack of determination to establish inquiries into "encounter" killings, or to pursue the completion of inquiries when they have been set up, demonstrates a degree of acquiescence in such killings. This is particularly so where reports of "encounter" killings have been persistently put forward for many years, and have been investigated and described in detail by authorities civil liberties organizations within India.

## **'ENCOUNTER' KILLINGS OF NAXALITES**

During a 1978 mission to India Amnesty International interviewed Shamby Nath Shaha, an alleged Naxalite, who had survived an "encounter" attack and still showed the marks of fire bullet wounds. His account is typical of such incidents. Shamby-

nath Shaha was arrested on 16th November, 1970 by the Calcutta Police, taken to Lal Bazar Police Station, asked the names and hiding places of Naxalites and tortured. He was then taken handcuffed, by police to Salt Lake outside Calcutta. He was ordered to walk away from the car and was shot three times at close range. Still alive, he was taken to the bank of the Ganges, where another three shots were fired, two of which hit him. Unconscious, he was taken to a third place and shot at once more. He was taken to Marwari Relief Society Hospital, where the next morning the police came to collect his body and the death certificate. But he had been operated upon and survived. The police alleged that he received the wounds in an "encounter" on the morning of 17th November, 1970, one day after his arrest.

Since 1968 killings of left-wing "extremists" in "encounters" with the police or "while trying to escape" have been reported from eight of the 22 Indian states : Andhra Pradesh, West Bengal, Orissa, Punjab, Bihar, Kerala, Tamil Nadu and Maharashtra. On 17th December, 1980 India's Minister of State for Home Affairs, Yogendra Makwana, stated in a written reply in the Lok Sabha ( the lower house of the Indian Parliament ) that 216 Naxalites had been killed in Andhra Pradesh in "police firings" since 1968, adding that the firings were "a sequel to armed attacks launched by Naxalites on police". The Minister acknowledged that similar "encounters" had taken place in Maharashtra, Tripura and Tamil Nadu.

## **LEGISLATION FACILITATING 'ENCOUNTER' KILLINGS**

The most detailed informations about 'encounter' killings has come from the State of Andhra Pradesh, where the Naxalite movement gained support among tribal people in the Shrikakulam dist, living in poor conditions and often land less. During 1968 and 69 the Naxalites singled out landlords and police officers for 'selective Assassination'. The govt. responded by reviving the 1948 Madras suppression of disturbances Act, and the state of Andhra Pradesh declared certain areas 'disturbed areas' by simple notification in the govt. gazette.

The act provides that in 'disturbed areas' certain offences under Indian penal code, which are normally punishable with imprisonment, can be punished with death. Aiding or abetting such offences may also incur the death penalty. Furthermore, a sub-inspector of police had powers to shoot if in his opinion an assembly of more

then five people is unlawful, or if people are found carry weapons or things capable of being used as weapons.

Andhra Pradesh lawyers have told Amnesty International that people caught in urban areas had been taken to 'disturbed areas' so that the shootings could 'be put beyond the pale of the land'. They say that many of the tribals population normally carry bows and arrows but that police reports ( in India called first information Reports) have depicted these weapons as being used against the police. Section 6 of the act gives the police immunity from prosecution or any other form of legal proceedings, 'except with the previous sanction of the Provincial Government'. The act has been in force in certain areas of the state for more than 10 years and is widely believed to have facilitated the shooting of suspected political activists by the police after arrest.

## **OFFICIAL AND UNOFFICIAL INQUIRIES**

After the 75-77 state of emergency interest in the protection of human rights in India increased ; civil liberties organisations were established in many states to investigate human rights abuses which has occurred during and before the emergency. Several of them investigated reports of 'encounter' killings.

In Andhra Pradesh an unofficial inquiry committee headed by the president of the supreme court Bar Association, Mr. Tarkunde, investigated the cases of 19 people officially stated to have died in 'encounters' in 1975 and 1976. It concluded that the encounters in three cases did not take place at all. That there were serious doubts about the fourth 'encounter' and that all 19 people had in fact been shot in cold blood by the police, some of them after severe torture. The names of police officials involved were submitted to the Union Home Minister.

In June 1977 members of the Indian Parliament demanded an inquiry established to investigate, on a statewide basis, allegations that political activists apprehended by the police were killed in staged 'encounters'. Its terms of references included, 'The facts and circumstances in regard to each one of the encounters between police and so called Naxalites during the period 1968 to 1977.

- The allegations of murder, torture and brutal treatment of Naxalite prisoners.
- The administrative measures required to deal with that problem in the future.



There was much criticism in the Andhra Pradesh State Assembly that the terms of reference of the commission did not include an investigation of responsibility for the killings. The opposition asked for the police personnel responsible to be named.

The Bhargava Commission, which started in September 1977, was not successful. Lawyers appearing before the commission told Amnesty International that witnesses who had earlier testified before the Unofficial Tarkunde Committee were intimidated by the police and had even been arrested when on their way to testify before the commission. They stated that of the 24 witnesses scheduled to appear, 12 were 'taken away' by the police or otherwise prevented from appearing. Police records were allegedly interfered with and records of arrest were not kept in 'encounters'.

In June 1978 the Andhra Pradesh Govt. ordered the commission to hold proceedings in camera 'in the Public Interest', to ensure that the administration and the police were not 'discredited'. The Andhra Pradesh Govt. refused to extend the time limit for the commission to submit report 30th June 1978, and in the face of these decisions, the commission terminated its work without submitting a report.

Commenting on the failure of the Bhargava Commission to complete its inquiries Mr. Tarkunde, who had headed the earlier unofficial inquiry said :

'The conduct of the Andhra Pradesh Govt. in relation to the Bhargava Commission has shown that commissions appointed by the state govt.—when conduct of the state govt is being inquired into—will be gravely hampered by the state govt. itself.'

In the Punjab, the Punjab civil rights committee investigated the deaths of eight Naxalites between 1970 and 1976. In all eight cases the official explanation had been that the victims were Naxalites killed in 'encounters' by the police, but the committee received evidence from people who said that they had seen the victims being arrested, or had seen them in custody or being taken to the spot where they were killed. The committee concluded that each of the eight men had been 'murdered by the police'. Two men had been tortured before being shot, two others died of torture, and other four were shot shortly after being apprehended.

The Punjab Govt. pointed in its 1978 interim report to the lack of govt. investigation of the eight cases.

'In each of the instances, relatives and associates of the victims as well as other residents of the village petitioned to various levels of the state and Central Govt. ( including the Prime Minister ) urging them to institute Judicial inquiries in each case the requests were turned down'.

## **CONCLUSIONS**

Given the failure of state govts. to pursue inquiries and take measures to prevent staged 'encounter' killings, the Central Govt. should itself establish an independent Judicial mechanism for the entire country, to which complaints of this nature can be brought, and should not leave it to state govts. to establish enquiries. Central Govt. body could follow up investigations and see to it that appropriate measures are taken against individual police officers against whom prima facie evidence of involvement has emerged, in line with articles 9 and 10 of the UN Declaration against Torture.

The success of such measures will continue to depend on the extent to which local civil liberties groups, lawyers and Journalists are willing to investigate and report on illegal killings by the police' and the degree to which politicians and others are willing to press consistently for police reform.

There are detailed provision against torture in the Indian Constitution itself. These and the code of conduct for law enforcement officials could be made part of routine police training methods, which should emphasise the obligation of each police officer to comply with formalities for arrest and detention—Including the obligation produce a detainee before magistrate within 24 hours—in each case.

Legislation facilitating 'encounter' killings such as Andhra Pradesh suppression of disturbances act and the Armed forces ( special powers ) act 1958 should be abolished.

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## THE RIGHTS OF THE CITIZEN

—*Annada Sankar Ray*

1. It is a well established principle of good government that a State should have three independent branches: the Executive, the Judicial and the Legislative. In India we have had the first for thousands of years without anything like District Courts, High Courts or a Supreme Court. The first two were introduced by the British and the last is based on the Federal Court established system. Nor did we have anything like Legislative Councils and Assemblies. These also owed their inception to the British. It was therefore natural that our leaders, wise as they were, should retain these gains after Independence. They did not throw away the baby with the bath water, when they framed a Constitution for free India they were free to adopt the British Parliamentary model and adapt it to the basic structure of India which was that of a two-storeyed building. The lower storey consisted of the states and union territories. The upper storey comprised the Centre. Britain has only one storey. She has only one government. We have a Government at the Centre and several subsidiary Governments in the States as well. All these governments are democratic. They are formed by the elected representatives of the people from time to time. The people have the power to make and unmake them according to a process laid down in the Constitution.

2. It is quite possible that all the elected representatives in a province or at the Centre may belong to a single political party. In that case there will be no parliamentary opposition. In England there have always been two outstanding parties, one of them forming the government and the other the opposition. This has been the case for nearly three centuries. The people of England cannot think of an extra-parliamentary opposition. During the British Period in India our leaders were obliged to pursue extra-parliamentary methods to get rid of an alien government. This habit persisted even when India had acquired a Government of her own, a national government removable by law. While the Congress party obtained a majority everywhere for

a time, numerous other parties took the field against it both inside and outside the legislature. India failed to evolve a two-party system until 1977. In that year the Janata party came into power, replacing the Congress. But it failed to hold itself together. In 1980 Mrs. Indira Gandhi returned at the head of a section of the Congress that dominated most parts of India. Room was found in three or four states for the Communists and others who formed State governments. In some places they were the opposition. This is something unknown in British history. India's Constitution is more accommodating than that of Britain. But the habit of extra-parliamentary opposition persists. The Governments of West Bengal and Tamil Nadu recently promoted bandhs and the Centre was forced to look on helplessly, what is permissible for an Opposition party is not permissible for a government party. It makes nonsense of parliamentary democracy and invites anarchy and chaos.

3. Though we have had thirty-six years of parliamentary democratic experience we have failed to evolve the necessary conventions and there are no checks and balances within the Parliamentary system itself. Gandhiji imposed a moral check by undertaking fasts against his erring comrades and a political check by creating an extra parliamentary body called the Congress High Command. While it kept the provincial ministers and legislators in check successfully, it failed to check Nehru and Patel as members of the Viceroy's Executive Council. They took the decision in favour of Partition without consulting Gandhiji and presented him with a fait accompli. Subsequently, as ministers of the new government of India, they compelled Kripalani, the Congress President, to resign. As long as Gandhiji was alive he balanced Patel with Nehru and Nehru with Patel. After his death the balance became precarious for they held diametrically opposed views on several crucial points. When Patel died Nehru had a free hand but his Government still lacked balance. Rajendra Prasad tried to maintain it from his Presidential height in vain. A further attempt was made by the so-called Syndicate in securing the election of Sanjeeva Reddy as President. This way it was hoped to keep a balance with the Prime Minister, Indira Gandhi. The attempt failed and the Congress was split. Later, when the Janata Party came into power, the new Prime Minister, Morarji Desai, was just as sensitive about an extra-parliamentary check as Mrs Gandhi. He refused to be guided by Jayaprakash Narayan or Chandrasekhar. Attempts within his cabinet to balance with Charan Singh or Jagjivan Ram led to a split and the Janata Party collapsed like a house of cards. Mrs Gandhi returned with a more formidable majority than before. No one now

talks of any parliamentary checks and balances, much less of an extra-parliamentary devices on the contrary, there is a general fear that the Executive branch of the state will not only reduce the Legislative branch to subservience but curb the independence of the Judiciary as well. Once this is done it will create a precedent for all time. Who can say which personality and which party will come into power ten years hence? A Left Front Government under the leadership of Namboodiripad may take over and act on the precedents set by Mrs Gandhi and her Congress.

4. The people of India have a thousand years' tradition of Autocracy, Hindu and Muslim and British. They do not care whether the ruler is an autocrat if he is benevolent and efficient. They have a panchayati tradition too, but it does not extend beyond the village or caste or tribe. There is no historical record of the autocratic rulers being checked by the panchayats or submitting to any systematic balance. India had no Constitution, written or unwritten. There was no demand from the masses for a Constitution. The demand came from the politically-minded educated classes. Of their own motion they framed a democratic Constitution enfranchising every adult irrespective of caste or creed or class or race. There is nothing in our Constitution which stands in the way of a peasant or a worker coming into power and being at the head of an Indian variant of the British Labour Party. For this no Revolution is necessary. By voting out Mrs Gandhi and her party in 1977 and voting them back to power in 1980 the Indian voters have proved their political maturity. One can be pretty sure that they will not tolerate inefficient and tyrannical autocracy, no matter which party or personality is in power. Nevertheless, they will have to evolve checks and balances. And practise family-planning in the matter of party proliferation. They should not encourage more than three parties.

5. Even a highly educated people like the Germans with no illiterate class voted Hitler into power and allowed him to suspend the Legislature for twelve years, that is, until his defeat and death. India the same can happen without any check from above or below. The masses may not be given a chance to vote as no elections may be held. India is not England. Parliamentary democracy is not a way of life with our people. Its roots do not go deep. Those who talk of presidential democracy should know that it will end democracy even if it retains its presidential character. A British Prime Minister is much easier to remove before his term is over than an American president. If a British Prime Minister loses the con-



fidence of his party or if his government loses the confidence of the House of Commons or if his party loses a number of by-elections or if there be a general hue and cry against his War policy as in the case of Anthony Eden, he resigns before his term is over. An American president never resigns even when he is bed-ridden like Woodrow Wilson. Nixon was the only exception and he was forced to quit in exceptional circumstances. This was possible only because the journalists there were fearless and vigilant and the newspapers a power to reckon with. In India the British system has some chance of survival because our leaders have been in its favour ever since the Congress was founded in 1885, if not earlier. If this system fails and the American system is introduced our ambitious politicians will in all probability pack the Judiciary, suspend the Legislature, muzzle the press and cease to hold any elections until there is a revolt or mutiny or defeat in war, India will need a much stronger Opposition than she has now and a single party opposition as in the United States. The constitutional role of the Opposition is to provide the country with an alternative government when its turn comes. Here the opposition is hopelessly divided and all that it can do is to form a heterogeneous coalition without collective responsibility. It is bound to fall like the Janata.

6. Without effective checks and balances, both political and moral, and without well-established conventions shared by all parties parliamentary democracy may become unworkable in India in the absence of a charismatic leader like Nehru. Shastri or Indira Gandhi. This is one of its weaknesses. Another is the utter disregard of the Gandhian constructive programme of selfless service of the rural masses on the part of all political parties, whether they are in power or in opposition. It is not for us, intellectuals to redeem these weaknesses all by ourselves. I am not one of those who prescribe a Revolution for all our ills or those who advise a change of climate in the shape of presidential democracy as in either America or France. I stand by the present Constitution. If our rulers seek to circumvent the limits provided in it or amend it without a fresh mandate men like me may record their protest. But we should not identify ourselves with any political party or play its game. And we should not take to the streets and participate in direct action. He who has a vote has also a voice. He may observe voluntary silence but he should not be silenced. It is one of our fundamental rights to form an association for protection of civil liberties just as the workers have theirs to form trade

unions. But we should not go on strike as they sometimes do. We shall hold meetings and have open discussions. We shall write and publish openly, Truth and nonviolence should be our motto.



It is most distressing that our parliamentary leaders of the Opposition take part or encourage extra-parliamentary movements, ranging from non-violent to genocidal, to attain their ends, partly just and partly unjust. What might be excusable when a foreign bureaucracy was ruling India without the people's participation is inexcusable when a duly elected Parliament is in session. In the same breath they appeal to the masses as well as to the Judges. This is not the Gandhian way nor the democratic way. The intellectuals have a hard task before them.



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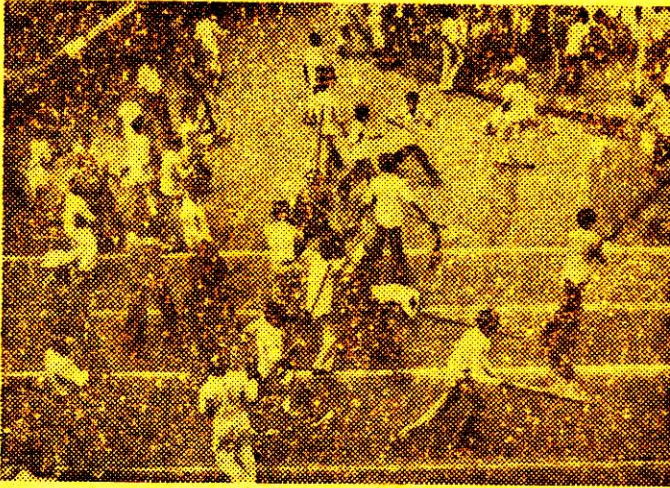
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**APDR is not necessarily hold uniformity with all these published views.**



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