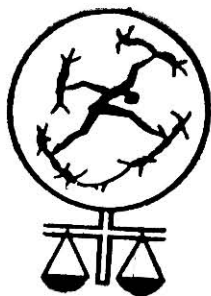


**REPORT OF
INDIAN PEOPLE'S
HUMAN RIGHTS TRIBUNAL
ON THE CHINTAPALLI
ARSON CASE**

An IPHRC Publication

THE INDIAN PEOPLE'S HUMAN RIGHTS TRIBUNAL

The following former judges have agreed to be on the Tribunal: V. R. Krishna Iyer, former judge of the Supreme Court of India, (Chair person), P. S. Poti, former chief Justice of the Gujarat High Court, T. U. Mehta, former Chief Justice of the Himachal Pradesh High Court, B. J. Dewan, former Chief Justice of the Andhra Pradesh High Court, Sharma Sarkar, former judge of Calcutta High Court, C. J. R. Paul, former judge of the Madras High Court, D. P. Desai, former judge of the Gujarat High Court, Jyotirmoyee Nag, former judge of the Calcutta High Court, Harihar Mohapatra, former judge of the Orissa High Court, Nirmal Chandra Mukherji, former judge of the Calcutta High Court, and Chandrasekhara Menon, former judge of the Kerala High Court.



**REPORT OF
THE INDIAN PEOPLE'S HUMAN RIGHTS TRIBUNAL
ON
THE CHINTAPALLI ARSON CASE**

T. CHANDRASEKHARA MENON
(former Judge of Kerala High Court)

and

JYOTIRMOYEE NAG
(former Judge of Calcutta High Court)

Released on October 18, 1988

VISAKHAPATNAM

FOREWORD

This is the second report to be published by the Indian Peoples Human Rights Commission (IPHRC) after its inception in January 1987.

The Chintapalli atrocity took place over a period between March and May 1987. It was brought to the attention of the public by the Press and by local civil liberties activists. Subsequently, a Committee for Relief to Girijan Victims of AP was formed, with the purpose of collecting material relief for the victims. The same committee sent a petition dated 7th October 1987, to IPHRC, setting out the facts known upto that time, and requesting that an inquiry be conducted by the Indian Peoples Human Rights Tribunal (IPHRT).

The Secretariat of IPHRC found the material significant and serious enough to take up an inquiry. In consultation with Justice V. R. Krishna Iyer, chairperson of the IPHRT, a Tribunal consisting of Justice T. Chandrasekhara Menon, former judge, Kerala High Court and Justice Jyotirmoyee Nag, former judge, Calcutta High Court, was requested to conduct the inquiry.

The brief but unambiguous report of the Tribunal is a telling indictment not only of the police personnel who perpetrated the crime, but also the forest and tribal policy of the AP government, and more generally the habit of treating social, political and economic problems as problems of law and order.

We thank the two judges for the pains they have taken, which are by no means slight. They braved not only an arduous journey to the cold heights of the Chintapalli agency area, but also a brutal physical assault in their very presence upon the tribals who were deposing before them. We thank the civil liberties activists and intellectuals who helped the inquiry; and more than any body else we owe thanks to the tribal people who cooperated with the inquiry in full knowledge of the retaliation that the cooperation would definitely entail.

20th Dec., 1988

Mrinal Sen
President,
IPHRC

1. Mr. K. V. Ramana Reddy, Convenor of a Committee for Relief to Girijan victims of A.P., a Committee constituted for relief to victims of alleged police atrocities on Tribals of the Agency Areas of Andhra Pradesh, had presented a petition in the form of a letter dated 7th October 1987 to the President of Indian People's Human Rights Commission requesting for an inquiry into the said alleged atrocities. It was alleged therein that the Andhra State police were burning down the hamlets of the tribals in the name of protecting the forests from shifting cultivation. The petition refers to reports appearing in various Telugu and English dailies published in Andhra Pradesh where it had been said that the police had been systematically and wilfully burning down tribal hamlets in the Chintapalli Agency Area of Visakhapatnam district. It had been pointed out in these reports that along with the dwellings, household goods—including large quantities of grain – and fowl and other animals were also destroyed by the fire. The hamlets, consisting of a handful of houses each, were entirely burnt down leaving the mud walls standing.

2. Accompanying the petition as Annexure-I was the translation of a detailed report published in the matter by the Andhra Pradesh Civil Liberties Committee (APCLC) in its Telugu language monthly "Swecha". That report refers to the burning down of 638 houses in 46 hamlets, with a list of the hamlets, as well as the number of houses each one of them contained.

3. The petitioner committee – the Committee for Relief to Girijan Victims of A.P. – was constituted to provide relief to the affected tribals. The petitioner committee thought it fit to approach the Indian People's Human Rights Commission so that an independent inquiry could be conducted into the matter, which may prove useful to secure justice for the harassed tribals.

4. On receipt of the letter, the Commission felt that there was gross and systematic violation of human rights of a very poor and oppressed section of the people. Therefore it

was decided to recommend the petition to the Indian People's Human Rights Tribunal (IPHRT) for inquiry into the matter. The Chairperson of the Tribunal Mr. Justice V.R. Krishna Iyer, retired judge of the Supreme Court of India, was duly contacted. A Tribunal consisting of Smt. Justice Jyotirmoyee Nag and Mr Justice T. Chandra sekshara Menon, retired judges of the Calcutta and Kerala High Courts respectively, was duly set up and they have enquired into the case of what is now well known as the Chintapalli Arson case.

5. Mr. Justice Krishna Iyer wrote to Mr. N. T. Rama Rao, the Chief Minister of Andhra Pradesh, on 1st December 1987, to render necessary assistance to the Fact Finding Committee of the two afore-mentioned judges. The Chief Minister replied to Mr. Krishna Iyer on 11th December 1987, the day on which the Tribunal sat in the first instance, by D.O. Lr. No. 479/8/87. He assured him that the Andhra Pradesh government would be extending full cooperation to the two-person Tribunal.

6. The District officers of the Visakhapatnam district were duly intimated by the Secretariat of the Indian People's Human Rights Commission that the inquiry by the Tribunal would be conducted from 11th December 1987. The Mandal Revenue Officer, Chintapalli Mandal, who had enquired into the incidents earlier on direction from the government, was requested to appear before the Tribunal and give information he had about the incidents. Similar requests were made to the Collector, Visakhapatnam district and the Superintendent of Police, Visakhapatnam (Rural). They were also told that in case they did not wish to appear in person they may send signed statements or failing that any official report or documents relating to the incidents.

7. The Secretariat of the Commission functioning at Visakhapatnam had at the same time (all these communications were dated 1-12-1987) requested the Project Officer, I.T.D.A., Paderu, Visakhapatnam district, to appear before the Tribunal and give information regarding the social and economic conditions of the Kondh or Samanta tribals who were the main victims of the alleged arson. He had also been told as in the

other cases, that if he did not wish to appear in person, he may send a statement or failing that, any pertinent official report.

8. The Tribunal began the hearing on 11th December at T.L.N. Sabha Hall, Andhra University campus as earlier notified. The date and time of the inquiry had been given wide publicity in the local dailies. An APCLC team consisting of the well known civil liberties activist Dr. K. Balagopal and some others had earlier toured the Agency Areas and recorded about 225 statements from the alleged victims of the arson and taken about 50 photographs of the remains of the burnt houses. On their efforts 46 tribals had come to depose before the Tribunal.

9. The inquiry started at about 10 a.m. Nine tribals were examined. The tribals examined gave evidence to the effect that they were Kondhs (one of them identified himself as a Bagata), that they had been living in the forest areas for the last 20 to 30 years, etc., that the police parties had come to their hamlets some time in 1987, beat some of them, accusing them of harbouring naxalites and giving them food. The police then burnt down their houses destroying their grain and what little material things they had.

10. Earlier the petitioner Mr. Ramana Reddy had been examined and he had said that the facts stated in the petition are true to the best of his knowledge. Dr. Balagopal was also examined. It was brought out in the evidence of the petitioner Mr. Ramana Reddy and Dr. Balagopal that the Samanta (also known as Kondh) tribe had been in Chintapalli for more than two decades. They had been in Orissa earlier, a forest tribe doing Podu cultivation seminal to the cultivation is to burn the forest bushes and then sow seeds. After a few harvests they go to another area and come back to the first place after it has regained fertility. They do not cut down big trees.

11. By about noon when the tenth person (a tribal) was deposing before the Tribunal, a mob of men and women led by some persons whom the petitioner Mr. Ramana Reddy, Dr. Balagopal and Sri. V. S. Krishna identified as policemen in

plain clothes, entered into the hall where the Tribunal was sitting, raising slogans against naxalite violence. The persons leading the mob picked up some chairs, smashed them on the ground and attempted to assault the tribals. The Tribunal thought that it would be in public interest to adjourn the inquiry. The members of the Tribunal issued the following Press release that evening.

12. "As members of the two-member Tribunal appointed by the Indian People's Human Rights Tribunal Chairman Mr. Justice V.R. Krishna Iyer, former judge of the Supreme Court of India, to enquire into the and report on the alleged burning down and pulling down of quite a large number of houses of tribal people in the Chintapalli taluka in the Agency area of Visakhapatnam district of A.P., we think it is our duty to place before the public the following facts which will explain why we are now adjourning the inquiry.

13. "Both of us arrived at Visakhapatnam on the 10th. Two volumes were given to us; one of them contained the petition filed before the IPHRC by Sri. K.V. Ramana Reddy, Convenor of the Committee for Relief to Girijan Victims of A.P., with a number of Annexures, including a letter allegedly written by the S.H.O., Chintapalli police station, at the direction of the D.S.P., Chintapalli, and addressed to the officer in charge of the combating party which is alleged to have been going around burning the hamlets of the tribals; the second volume contains 225 statements of tribals in respect of the burning down of their hamlets and other assets, collected by Andhra Pradesh Civil Liberties Committee (APCLC).

14. "The formal inquiry began on the 11th at 10 a.m. at the T. L. N. Sabha Hall, Andhra University. After getting some statements from the petitioner and from Dr. Balagopal, General Secretary of APCLC, 9 tribal people were examined, who spoke of burning down or pulling down of their huts by a police party who abused and assaulted them. It may be stated here that though the Chairman of the IPHRT, Mr. V.R. Krishna Iyer, had written to the Chief Minister that the inquiry was only a fact finding one and not directed against the government as such, and that the government officials should be directed to

cooperate with the proceedings of the Tribunal, we were informed that the officials were not in anyway cooperating with the inquiry. Dr. Balagopal informed us that some tribal people coming as witnesses to the inquiry were arrested. Some of them were sent back. The bus they were to travel in was not allowed to proceed.

15. "At about noon, a number of persons including some women and children came to the place shouting some slogans. They entered the hall where the inquiry was being conducted, lifted some chairs and forcibly threw them down on the floor. Apprehending assault the tribal people began to go out of the hall. We also apprehended some violence if the proceedings continued and therefore stepped down from the platform where we were seated and went out of the hall. Clearly, it was a case where some interested quarters wanted to scuttle the inquiry.

16. "In the circumstances we are doubtful of any security being provided by the police to conduct the inquiry. Though the Collector was duly informed of the inquiry, while he said that such things would not take place in future, he never showed the courtesy of ascertaining from us as to what really happened. If this is the attitude of persons responsible for law and order in respect of incidents happening before two former judges of High Courts, then the less said the better.

17. "In the circumstances we are adjourning the inquiry *sine die*. A detailed statement in the matter would be issued after discussion with the Chairman, Mr.V.R. Krishna Iyer.

18. "We would like to invite the attention of the Collector on the matter of giving sufficient police protection to the tribal people who had come to the town for giving evidence at the inquiry, to see that they are safely back in their hamlets; and further, that they are not again harassed for attempting to give evidence in an inquiry conducted by the IPHRT. It is both his legal and moral obligation to see to that."

19. In view of the assurance which the Chief Minister Mr. Rama Rao gave to the Chairman of the Human Rights Tribunal offering full cooperation with the inquiry and

necessary assistance, the members of the Tribunal thought it proper to resume the inquiry after a few weeks. The Tribunal therefore sat at Triveni Hall, Daspalla Hotel, Visakhapatnam, on 7th February. The Collector and Superintendent of Police, Visakhapatnam were duly informed about the date and time of the resumed inquiry. They were also told about the assurance given by the Chief Minister offering full co-operation of the government and all necessary assistance as contained in the letter of the Chief Minister to Mr. Krishna Iyer. The Collector was specifically requested to appear before the Tribunal and depose regarding the allegations. However, unfortunately, neither the Collector nor the Superintendent of Police appeared at the inquiry nor did they offer or give any assistance in the matter. This is surprising. The inquiry was only a fact finding one and it is in the interest of the State also to find out what really happened in the tribal area. And the Chief Minister had promised full cooperation to the inquiry. It was indeed a strange coincidence that on the first day of the inquiry, 11th December, 1987, the Chief Minister was unveiling a statue at Visakhapatnam of Sri Alluri Seetarama Raju, a person who sacrificed his life for the tribals of the Agency Area at a young age in the early twenties.

20. At the sitting of the Tribunal on 7th February, two distinguished social scientists, Prof. D. Narasimha Reddy, Professor of Economics, University of Hyderabad, and Prof. G. Haragopal, Professor of Political Science of the same University, gave very cogent evidence in respect of the socio-economic and political background to the problems of the tribals. Prof. Narasimha Reddy pointed out why it is necessary that in the interest of the nation, one should take note of the simple rights the tribals have in the forest areas. While the developmental activities of the State are part of an essential process such activities should not deprive the tribals of their traditional access to forests. Their traditional way of life should not be disintegrated without being integrated into a new process.

21. Prof. Haragopal pointed out that it had been stated that the thrust of the government's policies is the protection of the tribals from middlemen and for that purpose Girijan

Cooperative Corporations had been set up, but the structure of the corporations is essentially bureaucratic and their procedures have been such as to defeat the purpose of the idea. He is emphatic that the policies followed by the government have not succeeded in solving the tribals' problems or in easing in any manner the exploitation of the Girijans. The learned Professors have placed before us the findings they have noted in the course of a survey on tribal problems they had conducted as part of a research assignment undertaken on behalf of the Centre for Economic and Social Studies (CESS), Hyderabad.

22. Dr. Balagopal who again deposed before us on the 7th February put before the Tribunal the material collected by the team deputed by the Indian People's Human Rights Commission (IPHRC). The team had spent ten days in the Chintapalli Agency Area collecting statements from the tribals and photographing the burnt houses. A volume consisting of 225 statements and another volume consisting of more than 50 photographs had been placed before the Tribunal. This has been referred to earlier.

23. Dr. Balagopal also placed before the Tribunal relevant material collected from Government publications. The material is divided into five chapters. Chapter I gives basic statistics and is collected from the Visakhapatnam district Gazette published by the Government of India in 1981. Chapter II consists of three accounts regarding tribals and forest policy. The first is taken from a summary of the report of the U.N. Dhebar Committee on Scheduled Tribes, which had been published by the Government of India in 1962. The second is from a book written in 1949 by Sri Setumadhava Rao Pagdole, then Secretary of the Board of Revenue, Government of Hyderabad. This was published by the Government of Hyderabad. It deals with the problems of forest reservation as it affected the Gond tribals of Adilabad district. The third is an account from a book written by the noted Anthropologist Verrier Elwin, who was adviser for Tribal Welfare to Government of India. The book from which the account is taken was published by the Government of India. It deals with the problem of shifting cultivation. Chapter III is from a book

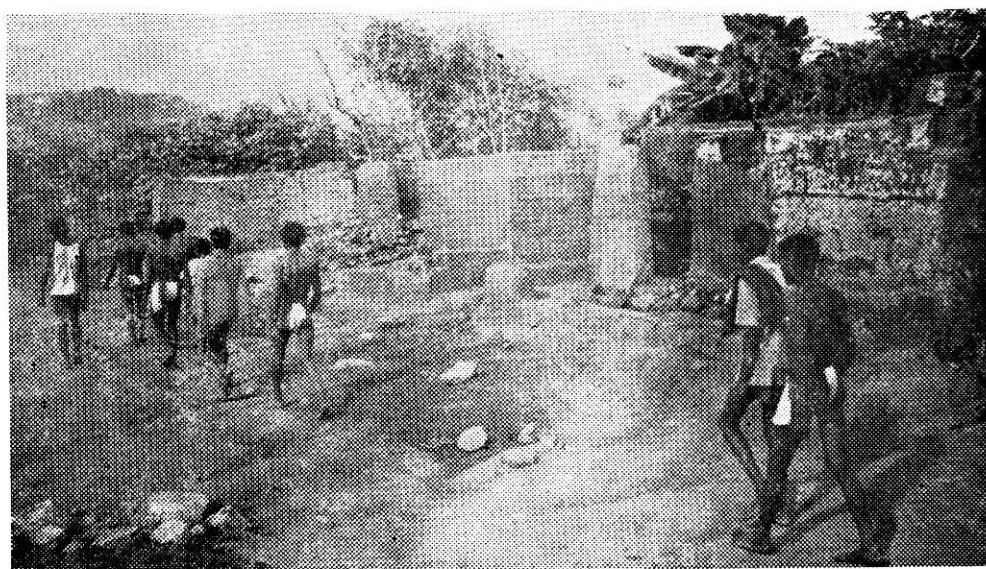
entitled the 'Samantas of Andhra Pradesh', written by Prof. Ranga Rao at the request of the Tribal Cultural Research and Training Institute and published by the Government of A.P. in 1961. There the origin and social and economic conditions of the said tribal People are explained. It positively states, that the Samantas and the Kondhs are the same tribe. Chapter IV is an account of shifting cultivation in Andhra Pradesh, published by the Social Welfare department in 1980. Chapter V deals with shifting cultivation in the Agency Area of Visakhapatnam district. It was published by the Integrated Tribal Development Agency (ITDA) in 1983.

24. On the same day, a Research Scholar of Andhra University, Sri V.S. Krishna, also appeared before the Tribunal and deposed that he had accompanied Dr. Balagopal in collecting the statements of the tribals. He had also taken photographs of the burnt houses, which were submitted to the Tribunal. The Tribunal was also informed that the negatives of those photographs are duly kept. On the 8th of February, members of the Tribunal went to the Chintapalli Agency Area where the homes of the tribals were burnt down and inspected the remnants of three such houses.

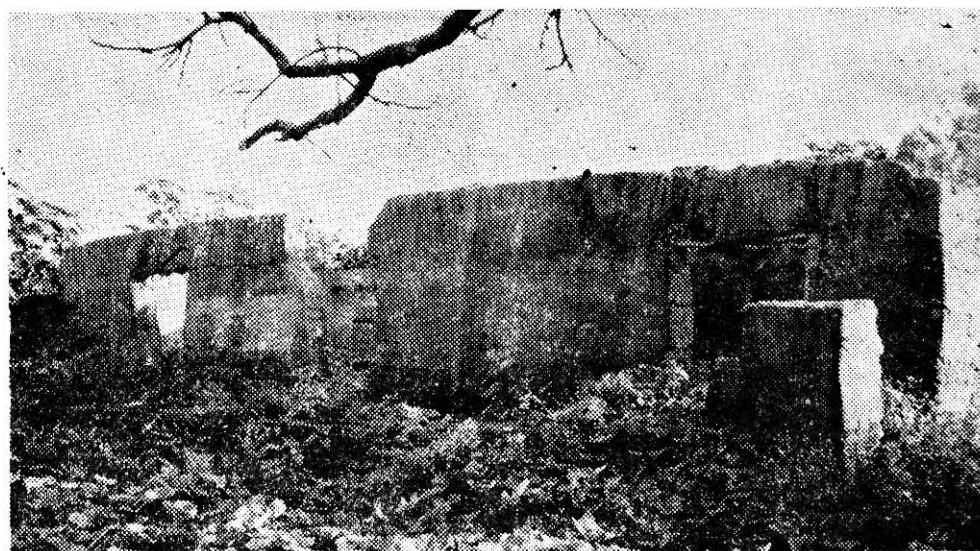
Finding :

1. In the light of the evidence before it, the Tribunal finds no difficulty in coming to the conclusion that the police had wilfully burned down a good number of houses in some of the hamlets in the Chintapalli Agency Area of the Visakhapatnam district. There is no reason why the evidence of those simple people - Korra Bhima Raju and Korra Appa Rao of Bhimavaram, Sagina Rajulu and Gemmela Sanyasi Rao of Parikalu, Pangi Ram Rao of Lingavaram Mettaveedhi, and Surla Sanyasi Rao and Ulli Venkateswarlu of Kattupalli Mettaveedhi*, should not be accepted. In fact they were taking great risk and inviting police violence in giving evidence before the Tribunal.

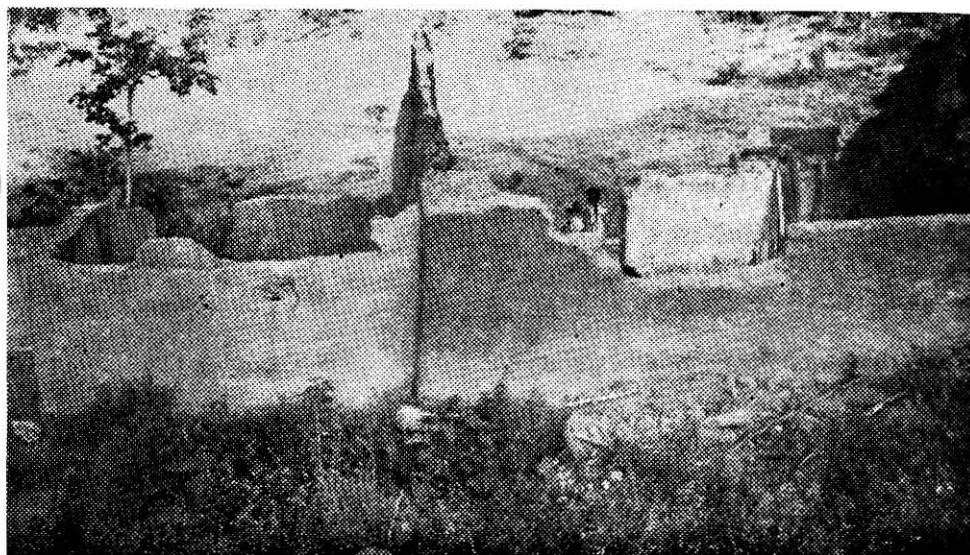
* These persons are 7 of the 9 tribals who deposed before the Tribunal on the 11th December, before the proceedings were disrupted. The depositions of the other two were lost in the disruption.



JODIMAMIDIBANDA



TENTALA VEEDHI



PORLUBANDA



KARRIMAMIDI

The happenings of 11th December at the place where the Tribunal was holding its sitting clearly indicates that. The Tribunal also has before it about 225 statements given by tribals of 20 hamlets to the APCLC team which included Dr. Balagopal who has deposed before the Tribunal, which are to the effect that police parties went to the hamlets and burned down the huts of the people living there. The reluctance shown by the District Officials including the Superintendent of Police of the area concerned to appear before the Tribunal only probabilises the truth of the version given in the statements of the tribals.

2. The Tribunal has before it a letter in Telugu, with its English translation, addressed to the man in charge of the combing party by H.C.No. 163, Station House Officer, Chintapalli police station. This letter is alleged to be written at the direction of the D.S.P. Chintapalli. This letter had been given to Sri Veeranna Padal, Sarpanch, Sankada village. The letter states :

‘To the man in charge of the combing party. Upon the request of the president of Sankaa that hamlets other than those of Kondhs should not be burnt down, the D.S.P. Chintapalli had directed that orders maybe issued accordingly to the man incharge of the combing party. Hence, *as the honourable D.S.P. has said not to burn down the houses or hamlets of Bagatas and Gadabas*, I am informing the same to you in my capacity as Station House Officer, Chintapalli Police Station.”

3. The letter has been given wide publicity. The police authorities have not cared to deny the genuineness of this letter. The Indian Express (Hyderabad) dated 3-7-1987 quotes this letter extensively in its Vizag Newsletter. The paper further reports :

‘According to senior police officials, the action of Chintapalli police was in retaliation to the death of a head constable, and action was being taken against the officers concerned. The Sub-Inspector heading the combing party has also reportedly been shifted.

But there is no explanation as to what action is being taken against the D.S.P. if the message sent by the head constable is authentic.

'The APCLC has, however, alleged that rumours were making the rounds of the Samanta hamlets since January that the police would set fire to the villages, while action actually started in March.

'The police officials maintain that the action was spontaneous, as the officers in Chintapalli lost their head.

'The State's Director General of Police, after a tour of the Agency Areas of the district after the police action, when pinned down by newsmen on the point, was of the view that "it may have been done because they (the tribals) were sheltering naxalites".

'This has given the APCLC another stick to beat the police with. "The Sub-Inspector or Inspector of Chintapalli and Narsipatnam, who are immediately responsible for the arson, are secure in their positions, and the Director General of Police Mr. Rammohan Rao actually goes around justifying the arson; meanwhile the Principal Secretary, Social Welfare, and the Commissioner for Tribal Welfare visit the victims to offer them token consolation, as if all of them do not belong to the same government" argues Dr. K. Balagopal, general secretary of APCLC who also headed the fact finding team.

'If the Samantas were shielding Naxalites and the police burned down their hamlets for that reason, or to get lands illegally occupied by them vacated, why are efforts being made by the Government now to rehabilitate them, 'That question will probably remain unanswered like many others pertaining to the vagaries of the government and the police'.

4. The Tribunal has given ample opportunities to the police authorities concerned to deny the allegations made against them. However, they have not cared to give any evidence before the Tribunal. Nor did they even deny these allegations in any statement made available to the Tribunal.

5. In the circumstances the Tribunal can only come to the conclusion that the police authorities of the Visakhapatnam district, under cover of two charges, illegal shifting cultivation in the forest area and harbouring the so-called naxalites, have come down heavily on the Samanta tribals, burned down a large number of their huts in the various hamlets in the Agency Area and further destroyed their material goods.

6. The Andhra Pradesh Forest Act, 1967, an Act to consolidate and amend the law relating to protection of forests in the State of Andhra Pradesh, had come into force on 15-4-1967. The Tribunal's attention has not been drawn to any proceedings taken against any of the tribal people whose houses have been burnt down, under the said Act. The evidence is to the effect that these houses were in the Area concerned for more than 30 years in some cases, more than 20 years in some cases, and more than 10 in some cases. It is brought out in the evidence that along with the huts, grain, fowl and sheep have perished. In some cases cash in currency notes kept hidden in the grain bags also got burnt down in the arson.

7. Even in cases where public interest requires action by the police, can they act flouting the law of the land. This is a basic question.

8. The attention of the Tribunal has been drawn to the judgement of a bench of five judges of the Andhra Pradesh High Court (reported in 1983 Andhra Law Times, 178) wherein reference is made to the burning of the tribal hamlets in the Chintapalli forest area, and to the wireless message sent by the Station House Officer of Chintapalli to the effect that only the houses of Samanta Tribals alone should be burnt but not the houses of the other tribals. It was referred to therein (as an allegation made by the petitioner in that case) that the Director General of Police Sri Rammohan Rao, when confronted by the Press correspondents about this matter, had said: "It may have been done because, they the tribals, were sheltering naxalites". The judgement in the case also refers to the explanation sought to be given in the government's counter, that the houses of some of the Samanta tribals are located away from the main village and it was suspected that those houses are providing

shelter for the extremists, and "unless the dwellers of these hutments are persuaded to join the main village, it would be difficult to curtail the extremist menace". In that direction, steps were taken by the police to make them join the main villages.

9. The Tribunal has absolutely no difficulty in broadly agreeing with the submission made in the written notes placed before the Tribunal by the President of the Andhra Pradesh Civil Liberties Committee (Sri K. G. Kannabiran, Advocate) that the action of the police complained of is a gross violation of Human Rights.

10. Under the garb of putting down extremist violence the police cannot take law into their own hands and systematically violate the basic rights of an individual or group of people leading their own lives. Use of excessive force and alleged punitive steps which result in the destruction or death of poor and innocent people are all violative of human rights. These violations could be clearly seen in an inequitous system attempting to contain protest and struggle for bringing about social change. This is because in time of crisis the interest of citizens gets subordinated to the interests of the dominant group in the political and social setup.

11. The Indian Constitution really enables the Indian courts to accord due recognition to Human Rights. Fostering respect for International Law is an obligation of the State under Article 51 of the Constitution. Therefore it has become the duty of the Courts of the land to take due notice wherever there is grave violation of human rights by the State, or by any authority under the State or an individual. In fact in the year 1984 the Attorney General of India had appeared before the Human Rights Committee and asserted that "both the Supreme Court and the High Courts accorded priority to the cases of Human Rights violations and took speedy action to pronounce on them. They were normally settled in matter of weeks rather than months and the Committee need have no fear that the remedies against the violation of human rights in India were anything less than very effective".

12. However we find Courts - even the Supreme Court - sometimes rejecting petitions on gross violation of human rights, directing the persons concerned to file individual complaints for alleged offences in the ordinary forums situated in different jurisdictions. One can easily find in almost all the States in the Indian Union and in the Union itself use of excessive force and preventive steps resulting in the death and destruction of ordinary people. Protests and struggles for bringing about social changes which are only natural in an inequitable system are invariably met by the authorities violently, resulting in violation of the dignity and rights of individuals. It is not therefore surprising that the Director General of Police is trying to justify and cover up the burning down of hamlets of the tribals on the ground of such people giving shelter and food to the naxalites.

13. As the APCLC has pointed out in their written brief, India being a party to the Human Rights Covenant, the Indian State should accord recognition to Human Rights through its justice system. This has been well recognised by the Supreme Court in *Gramophone Company of India Ltd. Vs. Birendra* (AIR 1984, SC 667) when it said: "There can be no question that nations must march with the International Community and the Municipal Law must respect rules of International Law as nations respect International opinion. The Comity of Nations requires that Rules of International Law maybe accommodated in the Municipal Law without express legislative sanction if they do not run counter to enacted Law".

14. It is time that Governmental authorities recognised that all power has legal limits. To catch hold of a criminal a police officer cannot direct destruction of all the houses where the criminal might have gone. Even with regard to vital governmental powers the Courts have to draw the limits in a way which strikes the most suitable balance between executive efficiency and legal protection of the citizen.

15. No public servant can flout Constitutional guarantees and still continue to be a public servant. No officer, whether he is a police officer or not, can commit a crime under

the guise of performance of his duty. As has been rightly pointed out in the written submission before the Tribunal, when an officer commits a crime under the guise of performance of duties, he seems to occupy a privileged position, and he is generally rewarded when he aids the political government in the physical liquidation of political dissent. As has been pointed out by Ralf Dahrendorf in "Law and Order" (Hamelyn Lectures - 37 series): "Impunity or systematic waiver of sanctions links crime and exercise of authority. It tells us some thing about the legitimacy of an order. It is an indicator of decomposition as well as change and innovation. The growing incidence of impunity leads us to the core of modern social problem".

16. The Indian Union government as well as State Governments and the government officers have always to bear in mind what has been succinctly stated by D. N. McCormick in his essay, "On Legal Obligations and the Imperative Fallacy" (Oxford Essays in Jurisprudence, Page - 128) :

"It seems clear that the working of a legal order depends upon a general acceptance by the great majority of the officials of the system that they are under duress to respect the valid rules of law and to direct their actions towards securing the regular and uniform application of those rules, whether the rules in question be themselves substantive or procedural vis-a-vis the citizens. These obligations are obligations upon officials only, but they are recognised by citizens too, and form the basis of citizens' expectations as to the conduct of officials. The law, because it is the accepted law of the community, must be applied by the officials. That is the duty of their station. So long as that duty is generally honoured by them, the legal system will remain a working order. If they cease to honour that duty the system will break down into a wilderness of arbitrary power

Likewise the Law as a whole is binding in that it will be applied and may not be changed ad hoc to suit individual conveniences. As long as the law survives, with the willing or unwilling acquiescence of the majority of

the citizens, so long is it prudent for each citizen to guide his conduct in accordance with the law. For it is brute fact that the law will be applied against him. But even that brute fact depends upon the interlocking obligations of the officials of the system, upon their honouring them as such. Even the crudest notions of the binding force of law cannot wholly divorce themselves from the concept of obligation. Yet it is not the existence of obligations under the law, but rather the obligations of officials towards the law as such that enables us to grasp the binding nature of the law”.

17. Some reports of detailed studies made on the problems of the tribals have been placed before us. It is time that the Andhra Government makes a study of these reports and takes steps in accordance with the same to alleviate the hardships of the tribals. Mere tinkering with the problem or harassing the tribals for their alleged mistakes is not only no answer to the problem but will really aggravate it.

18. In a paper placed before the Tribunal on the social, cultural and economic factors involved in shifting cultivation practised by tribals in Andhra Pradesh, prepared and submitted by researches of the Agro-Economic Research Centre (AERC), Andhra University, Visakhapatnam, it is stated :

“.....in A.P., about 7.55% of the tribals are estimated to be engaged in Podu cultivation involving an area of about 42,000 acres, whereas shifting cultivation is the main economic pursuit of the primitive tribes of Orissa involving an estimated area of about 64 lakh acres. The tribal belt of A.P. especially the hill slopes and forest clearings of West Godavari, East Godavari, Visakhapatnam and Srikakulam districts, can be divided into innumerable small ecological areas in each of which tribals like Kolams, Hill Reddis, Kondhs or Samantas and Saoras eke out a meagre livelihood through shifting or slash and burn cultivation. Similarly, tribes like Kotia, Khonds, Dangari Khonds, Bondas, Didayis, Hill Juangs, Pauri Bhuiyas, Hill Khariyas dwelling on inaccessible hills and forests of Orissa have been practising shifting cultivation from times immemorial as there is no scope on the hills for settled cultivation.

"As the evil effects of shifting cultivation outweigh their benefits, the government has been trying to wean the tribals away from shifting cultivation by making alternate arrangements like land colonisation programmes to rehabilitate them on settled cultivation. But it is highly questionable whether these schemes can be undertaken on a large scale so as to provide alternate lands for settled cultivation to all the families engaged in podu cultivation as the land available for settled cultivation in tribal areas is very limited and it is already overburdened with the ever-increasing concentration of tribal population. Nor is it advisable to throw them out of podu lands without showing alternate substitute occupations. This tangle led some experts like Chaturvedi, Elwin and Sivaraman to advocate a more liberal outlook towards the continuation of podu cultivation on scientific lines so as to minimise the evil effects of 'podu' cultivation, instead of condemning it as an evil practise. In the course of our studies of Tribal Development Agencies it was observed that even when the tribals are provided with lands, animals, implements, houses, extension services and even credit, they have not given up podu cultivation and in some cases have even abandoned the land given to them. This apathy to settled cultivation can only be understood if their social and economic reasons for preferring podu are known.

"The information so far recorded regarding the economic conditions of shifting cultivation in A.P. is very scanty. No detailed study has been conducted probing into the cultural background of the tribals who are practising shifting cultivation, the necessitating conditions which have been prompting them to practise this type of cultivation which does not provide them substantial means of livelihood. So it is felt very essential to conduct a detailed study covering all aspects including the cost-benefit ratio of shifting cultivation and settled cultivation in the tribal areas to find out which of the two is more economic and profitable to the tribal cultivator".

19. It is not necessary to go into these questions in detail in this inquiry. Whatever be the evil effects of shifting or Podu cultivation, the police cannot and should not drive out people engaged in such cultivation for decades by burning down their huts to drive them out of the place. It is necessary in the interest of Justice that the State government should not only compensate the affected people restoring their house sites and giving them the amount they require for building their new residences, apart from giving them equivalent value of the materials the police have destroyed. If the State is not prepared to do that it is incumbent on the socially conscious groups like APCLC to take up before the Supreme Court or the High Court in their extraordinary jurisdiction the case of the tribals and see that justice is done to them. There is no reason to apprehend that the Courts will ignore their constitutional obligation to uphold the rule of law. As Justice Krishna Iyer once pointed out in B. Banerjea's case, law is a social science and constitutionality (of even Executive actions, we would add) turns not on abstract principles of rigid legal canons but on concrete realities and given conditions, for the rule of law stems from the rule of life.

20. As Professor H.W.A. Wade has put it, while rule of law has a number of different meanings and corollaries, its primary meaning is that every thing must be done according to law. Applied to the powers of government, this requires that every government authority which does some act which would otherwise be a wrong (such as taking a man's land or burning a citizen's house as in this case) or which infringes upon a man's liberty must be able to justify its action as authorised by law. Every act of governmental power, that is any person, must be shown to have a strictly legal pedigree. The affected person may always resort to the Courts of Law, and if the legal pedigree is not found to be perfectly in order, the Court will invalidate the act. If such action of the authorities has given rise to damages to the citizen the citizen has to be duly compensated.

21. The members of the Tribunal want to place on record their deep gratitude to Dr. Balagopal, Mr. Krishna, Dr. Vindhya, Prof. D.Narasimha Reddy, Prof. G. Haragopal and to Mr. K.G. Kannabiran for the invaluable help and assistance they rendered in the course of the inquiry.

22. The Tribunal would like to emphasise once again that it is the duty of the State to compensate in full for the damages sustained by the tribal people on account of the unlawful action of the police. It may not be understood that the Tribunal is condoning the action of any group which advocates violence for redressal of people's grievances. However, violence by a group cannot be contained by the State itself projecting unlawful, illegal and violent methods to meet such an action. That will be counter-productive. Really it will be the duty of the State to see to it that the police remain sensitive to Constitutional requirements. It is also necessary to note that there is no material placed before the Tribunal that any one of the tribal people has himself taken to violent activities against the State. Even the Director General of Police has no such case.

23. The Andhra government has also to seriously take note of the grievances of the tribal people. And here it will be most unfortunate to make discrimination amongst the tribal people on the ground that originally some of them had their habitation in Orissa's forest lands. These people have been in Andhra Pradesh for the last two or three decades. And there is no legal bar on a citizen of one State in India taking up residence in another State. And that too for reasons for which that individual is in no way responsible.

24. It is time that the Andhra Government woke up to the real grievances of the poor tribal people instead of complaining that political groups advocating violence are trying to influence and mobilise them.

25. The Governments in Indian Union as well as the State Governments may well take note of the warning given by Thomas I. Emerson, Linus Professor of Law at Yale University some time back. He said: "groups which advance anti-democratic ideas do not operate in a vacuum. They are often motivated by fears, grievances, or other conditions which societies should understand and confront". The Andhra government would do well if they also take appropriate action against the erring police officers in the matter - if it was really a case of the police acting without the knowledge of the government.

Dated this the 8th day of July, 1988.

Sd. x x x

(T. CHANDRASEKHARA MENON)

1. After having perused the depositions of the tribal witnesses and having considered the facts and circumstances of the case, I have no hesitation in agreeing with the findings of Mr. Justice Menon, that on a false plea the police authorities of Visakhapatnam set on fire the huts and belongings of the Samanta tribals. Nobody deposed that the Samantas were harbouring the Naxa'ites or that they were encroaching upon forest reserves. Even if they did, the penal laws as well as the forest laws provide adequate penal provisions and remedies. Though the police authorities were invited to cooperate in the inquiry, nobody from their side came to depose or challenge the assertions made by the tribals before us. No one from the government's side also came forward to contradict these assertions. The tribals who eke out a precarious living on the basis of shifting cultivation, which they have been doing for the last 20 to 30 years, have been rendered homeless and shelterless by the atrocities of the police and deprived of all their slender belongings. I cannot find adequate words to condemn the action of the police. I reasonably expect the government authorities to bring to book the erring policemen.

2. "Shelter is one of our fundamental rights" said Justice Sabyasachi Mukerjee sitting with Justice Natarajan while disposing of petitions under the Tamil Nadu Building Lease and Rent Control Act, 1960.

3. An excerpt from a report published by the 'Statesman' dated Friday, 15th April, 1988, is worth quoting :

"Housing and shelter should be considered as fundamental rights by the governments of all countries and there should be no eviction without providing alternative accommodation. This was the demand raised at a meeting of non-governmental organisations having consultative status with the United Nations Centre for Human Settlements, held in Delhi in early April. More than 40 organisations from developing and developed countries attended this meeting".

4. The tribals have suffered double deprivation by the police atrocities – shelter and ordinary avocation of their life.

5. Hence I conclude with Mr. Justice Menon that there has been gross violation of Human Rights in the case of the Samanta tribals and the State government should compensate the tribals by adequate cash payment for loss of shelter and their belongings, and further, justice demands that alternative accommodation should be provided to them forthwith.

Dated this, the 8th day of July, 1988.

Sd × × × ×,

(JYOTIRMOYEE NAG)

ANNEXURE - I

Letter addressed to the man in charge of the combing party, at the direction of the D.S P., Chintapalli, and given to Veeranna Padal, Sarpanch, Sankada village

To,

The man in charge of the combing party. Upon the request of the president of Sankada that hamlets other than those of 'Kondhs' should not be burnt down, the D.S.P. Chintapalli has directed that orders may be issued accordingly to the man in charge of the combing party. Hence, *as the honourable D.S.P. has said not to burn down the houses or villages of Bagatas and Gadabas*, I am informing the same to you in my capacity as Station House Officer, Chintapalli police station.

Sd/-

H. C. No. 163

Dated 3/5/1987

Station House Officer
Chintapalli Police Station

(English translation of the Telugu original)

ANNEXURE - II

Of the 46 hamlets burnt down by the police, the following were visited, photographed or the people met by civil liberties activists who helped the Tribunal in its inquiry

<i>Name of hamlet</i>	<i>No. of houses</i>
Ganjigedda	24
Godugumamidi	23
Porlubanda	12
Karrimamidi	9
Rachapanuku	9
Thiyyamamidi	23
Tentalaveedhi	22
Bhimavaram	17
Jidimamidibanda	12
Kattupalli	6
Kattupalli Mettaveedhi	5
Modikalabanda	21
Dibbamamidi	3
Annavaram	9
Siginapalli	14
Pulusumamidi	14
Lingavaram Mettaveedhi	14
Parikulu	22
Nallabelli	37
Gomuvada	14
Chittamamidi	41
Borramamidi	12
Degalapalem	6
Panuku Kothuru	6
Divvelammaveedhi	10
Madem	10
Kothaveedhi	8

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The Indian People's Human Rights Commission was formed on January 10, 1987 — an event which will go down in the history of human rights. It is the first of its kind in Asia

The Commission consists of human rights activists from all over India. Among these are such well-known people as Justice V. M. Tarkunde, Dr. A. R. Desai and Prof. Romila Thapar. The president of Commission is Mr. Mrinal Sen, the famous film maker.

The Commission has set up the Indian People's Human Rights Tribunal. The Tribunal consists of only ex-Judges of the Supreme Court and the High Courts. At present there are eleven ex-judges on the panel. The Chairman of the Tribunal is Mr. V. R. Krishna Iyer, retired judge of the Supreme Court.

The Commission takes up cases in which there is gross, systematic or significant violation of human rights by the state. The Tribunal tries the cases and passes judgments on them after evaluating the evidence gathered and produced.

The first case taken up by the commission is the firing at Arwal in which 21 people were killed. Subsequently, the Meerut killings and the Chintapalli Arson case have been taken up.