



# **‘Quit India’ : Ban, Deportation and Rights of Nepali People**

**Peoples Union for Democratic Rights  
Delhi  
October 2002**

## **Preface: The Case of Bam Dev Chhetri**

Late at night on 5 September 2002, a posse of policemen dressed in civil clothes came to the house of Bam Dev Chhetri on JNU old campus in Delhi. After some twenty minutes or so, they took Bam Dev Chhetri away. His illiterate wife, and two teenage sons, had no idea of why the police took him away and what happened to him thereafter. The next evening (6 September 2002), two policemen, again in plain clothes, came to tell the Chhetri family that Bam Dev Chhetri had been deported to Nepal. All they know of the identity of the two policemen is that they were from Lodhi Road and Vasant Vihar Police Stations, respectively. Bam Dev Chhetri has been a caretaker at the Jawaharlal Nehru University Library since 1975. For the last year or two he was on lien from the university working for a private company. He was also one of the Secretaries of the Akhil Bharatiya Nepali Ekta Samaj (ABNES), a welfare organisation of Nepali migrants in India. According to the police, however, Bam Dev Chhetri is a dangerous terrorist, and one among the list of ‘wanted offenders’ given by the Nepali government to its Indian counterpart. Currently, ABNES has been banned under the Prevention of Terrorism Act (POTA). The Nepali government had apparently announced a reward of twenty-five lakhs Nepali rupees for Chhetri’s arrest in the context of his alleged support to the Maoist insurgency of Nepal. According to the police the arrest of Chhetri and his deportation will pave the way for stronger ties between the governments of Nepal and India.

Bam Dev Chhetri’s deportation is not an isolated incident and it comes in the wake of the deportation of 4 other Nepalis in July. The sudden spate of deportations and the hasty manner in which they were carried out with no time for legal redressal raise serious questions about the rights of large number of Nepali residents in India as well as the democratic nature of the Indian state.

PUDR conducted a fact finding into these incidents of deportation. Following is a brief report that highlights the selective manipulation of undemocratic laws in the context of the ban on ABNES and deportations.

### **The July incident: arrest and deportation**

Chhetri is not the first Nepali to be arbitrarily deported this year. Barely two months back, on 11 July 2002, four other Nepalis had been picked up from an open meeting in Triveni Kala Sangam in Central Delhi, and deported to Nepal the same night. They were also said to be members of ABNES. Triveni is a common meeting ground for artists, intellectuals, and human rights activists, and contrary to the claims made by ACP Rajbir Singh in Delhi High Court, it would be impossible to hold 'a secret meeting' there, especially at 4.30 p.m. on a summer evening. The subject of this 'secret' meeting was the spiralling violence in neighbouring Nepal, the need to bring about a resumption of talks between the Maoists and the Government of Nepal, and the need for outside countries not to intervene in Nepal's internal affairs. The most dangerous thing the group was 'plotting' was a conference to be held on 3 August 2002, under the auspices of the India Nepal People's Solidarity Forum to raise some of these issues and bring them to public awareness. Among those attending the meeting were a doctor, a businessman, a journalist, a Hindi writer of repute, and other democratically inclined Indian citizens as well as four people of Nepali origin. All of them were concerned about what was happening in Nepal and were hardly a group of dangerous criminals, as the police would have everyone believe. But evidently peace is now a dangerous word and the idea that it can be discussed in an open democratic forum strikes terror into the small dark minds of those who control our society.

Around 5.30 pm, as the group of 13 people was dispersing, they were arrested by approximately 25 men dressed in plain clothes, who claimed to be from the Special Cell of Delhi police. The group was dragged away without any explanation and forcibly put into the vehicles outside. The 13 people picked up were taken to Lodhi Road Special Cell where they were kept in three separate dark and airless rooms for about three hours. Their cell phones were taken away and they were not allowed to contact their families and friends, contrary to all the procedures on arrest specified by the Supreme Court. After ascertaining their names and addresses, the group was repeatedly interrogated on their political beliefs. Unexpectedly, the 9 Indians were then told that they could go. The 4 Nepalis—writer and journalist Partha Chhetri, a student Moti Prasad and journalists, Maheshwar Dahal and Aditi—picked up along with them, however, continued to be in detention. No explanation was given to the group for this.

Fortunately, by this time several persons including a lawyer and several journalists had arrived at the Special Cell. The lawyer was allowed to meet the four Nepalis, and was told by the police that they were planning to arrest the Nepalis. Almost immediately afterwards, the police told the Press that they had arrested four Maoists and that they were going to be deported to Nepal. The next morning's papers duly reported that they

had been served with 'Quit India' notices under Section 3 (2) (c) of the Foreigner's Act which gives the Government the power to pass orders that a foreigner shall not remain in India.

The day after the arrest of the four Nepalis, on 12 July 2002, a habeas corpus petition (No. 746 of 2002) under Articles 226 and 227 of the Constitution was filed in Delhi High Court by Anand Swaroop Verma, a well known Hindi writer and one of the Indians picked up at Triveni. The petitioner stated that the four Nepalis faced near certain death on being sent back to Nepal, as they were political dissidents. There were no legal proceedings against them when they left Nepal three years ago and prior to being picked up, they had been served no notices for any of their activities. The Court gave the Counsel for the State two days to report on the whereabouts of the Nepalis and gave directions to stop deportations till the next hearing. On Monday, 15 July 2002, the ACP Special Cell reported to the Court that the Nepalis were served 'Leave India' notices under the Foreigners' Act at 11 pm on the night of 11 September, 2002, itself and deported immediately afterwards.

The Special Cell of the Delhi Police maintained that the activities of the four Nepalis were "detrimental to the interests of India" (brief submitted by the police in response to the Show Cause notice). These 'detrimental activities' include 'being a member of the Akhil Bharatiya Ekta Samaj (ABNES) (all four), and editing its newspaper (Maheshwar Dalal). The three men are accused of having contacts with Maoists in Nepal and giving shelter to Maoist leaders. A charge against Aditi Shah is that she is a member of the South Asian People's Journalist Association, while Partha Chhetri's crime is that he is "an intellectual with ultra left leanings". (*Status Report of ACP, Rajbir Singh to High Court*)

### *Mistaken Identity and Violation of Procedures*

But the four were neither given reasons for their deportation, nor the opportunity to appeal against it. In fact, in their haste to deport the Nepalis, the police apparently did not even confirm the identities of the deportees. According to Verma's petition, one of the deportees, Partha Chhetri, is an Indian citizen from Siliguri where he has a share in an ancestral house. His wife is an SDM serving in Sikkim. In their eagerness to complete the deportation, the police took an unprecedented and unimaginable act of declaring an Indian citizen an "undesirable alien" and deported him to a 'foreign' country. Did the police mistake Partha Chhetri for Bam Dev Chhetri and instead of admitting it proceeded to deport all four?

The fact that the police were highhanded and arbitrary is evident from the manner of the arrests. There were no policewomen present both when Aditi was picked up from Triveni Kala Sanagam, and at the Special Cell where she was detained for questioning. The large group (20 – 25) of policemen who descended on Bam Dev Chhetri's house on the night of 5 September 2002, refused to disclose their identities despite repeated requests by the family. They defied in the process, the norms and procedures laid down by the Supreme

Court in the matter of *Dilip K. Basu vs. State of West Bengal* (AIR 1997 SC 3017). The policemen were not in their uniforms and did not wear any identification tags. Moreover, they did not have a memo of arrest in the prescribed format at the time they picked up Bam Dev Chhetri, and refused to inform the family where they came from and where they were headed with Chhetri. They gave no reasons for their action, used intimidating language and disconnected the telephone in the house taking the receiver with them as they departed with Chhetri. The following day after informing Chhetri's family of his deportation, policeman took the signatures of Chhetri's mentally retarded older son on a paper. Similar signatures were taken on pieces of paper from a relative employed as a peon in an office, who happened to be visiting them, and of a woman who was Chhetri's neighbour.

### **The Context of Deportation**

The whole sequence of detentions and arrests is puzzling and raises several compelling questions. The police never clarified what the charges against the four Nepalis actually were. Was it their association with a banned organization and if so why were they deported without due process under Indian law? Or was it that regardless of their present activities in India, the fact that the Nepali government wanted them there that the police deported them? In any case, why should an organization (ABNES), which has no history of 'criminal', 'violent', and 'terrorist activities' on Indian soil, be banned under POTA? Why should a community which had hitherto enjoyed special status as citizens under a bi-lateral treaty arrangement, suddenly become unwanted in India, and be forced to give up a life world to become 'wanted offenders' in their country of origin?

The Indo-Nepali Friendship Treaty of 1950 was formed in recognition of the historic and cultural ties between the people of the two countries. Under this treaty, Nepalis in India are treated at par with Indian citizens. Clause VII of the Treaty lays down that 'The Government of India and Nepal agree to grant, on a reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature'. Thus, there is no requirement for Nepali citizens to have any VISA or passport to enter or reside in India. The Nepali citizens have the same rights and privileges to which every Indian is entitled in the matter of residence, occupation, and movement.

It is in this context that ABNES was formed in 1978 and its activities are primarily social and cultural, aiming towards the amelioration of the conditions of Nepalis as a community. The activities comply with the democratic norms of the constitution of India and by no stretch of imagination can any of them be construed as constituting 'terrorist activity'. A reading of the constitution of ABNES shows that the primary concerns of the organisation are socio-economic amelioration of the Nepalis in India, and providing a life of dignity and security by building bonds among Nepalis through cultural resources. Perhaps the most significant aspect of the constitution is that nowhere does it address either government

– the Nepali or Indian – for their redressal. The section of ABNES constitution titled ‘objectives’, explicitly lays down that ABNES is a ‘social organisation’ of Nepalis in India constituted to work for the welfare of the Nepalese people. One set of objectives is aimed at development of Nepali language, literature and culture. Another set of objectives intends to work towards the assurance of socio-economic rights for the Nepalis. Thus the constitution of the organisation expresses its intention to work towards providing Nepalis with education, skills and training and with livelihood and work under dignified conditions. A large section of the constitution is devoted to outlining the objective of the organisation to work towards to the improvement of the economic, social and political conditions of Nepali women. This improvement is sought to be achieved through the mobilisation and organisation of Nepali women.

All the above objectives laid out in the constitution of ABNES are important for safeguarding the well being of the Nepali migrant community in India, and of those migrant labourers who return periodically to their homes in Nepal. More often than not Nepalis in India are stereotyped, slotted and typified as ‘domestic servants’ or ‘Gurkha’ chowkidars, and forced to work under exploitative conditions. Nepali women have for long been victims of trafficking and sexual exploitation. The migrant Nepalis helplessness is augmented by the fact that when they return home periodically, they are confronted by the same conditions which compelled them to leave in the first place, viz., poverty, avaricious moneylenders and an unresponsive and oppressive political system.

None of the activities outlined in the constitution of ABNES, is contrary to the Indian Constitution. Moreover, a careful reading shows that it upholds the spirit of the Directive Principles of State Policy which have for long formed the basis of social and economic aspirations and struggles of the people of India and constituted the cornerstone of a democratic constitution.

So, why has ABNES been banned under POTA? ABNES is a big mass organization with a very large following. The timing of the ban coincided with the visit of King Gyanendra of Nepal in June 2002. The visit aimed at seeking New Delhi’s help in snuffing out the Maoist resistance from Nepal, who for the last six years have been struggling to establish a democratic republic in Nepal. It may be pointed out that a similar visit by King Gyanendra to China elicited no more than a friendly endorsement of the ‘efforts of the government and the king of Nepal to maintain domestic stability’. India on the other hand, ignoring the long symbiotic ties that have existed between the people of the two countries, has gone even further supplying arms to the Nepalese government. King Gyanendra’s visit to New Delhi was preceded by that of Prime Minister Sher Bahadur Deuba, who had asked for curbs on the activities of ABNES which has a strong following among some eight million people of Nepali origin living in India. Purportedly a list of persons that the Nepali government wanted back was also presented to the Indian government.

The Indian state responded by adding ABNES to the list of terrorist organizations banned

under POTA shortly after the King's visit. No reason was given for the ban. Chapter III of POTA dealing with 'terrorist organisations' lays down in Section 18 (3) that the Central Government may exercise its power under clause (a) of sub-section (2) in respect of an organisation only if it believes that it is involved in terrorism. Clause (a) of sub-section (2) in turn provides that the Central Government may by order in the Official Gazette add an organisation to the Schedule (of terrorist organisations). POTA does not require that an organization be proved guilty of "terrorist activity". Mere existence of the organization is proof enough. This provision has allowed the banning of organizations like the Nepali Migrants Welfare Organisation and the Akhil Bharatiya Nepali Ekta Samaj (ABNES) with ease and confidence. Besides being placed under a harsh and undemocratic regime, ban under POTA means the denial of appealing to a review committee which is available under the Unlawful Activities Prevention Act (1967). Coupled with the denial of the basic principle that a person is presumed innocent until proven guilty, ordinary legal redressal and safeguards are denied to members of a banned organization. In the present context, the ban and deportation gives the accused no scope for justice.

The selective picking up and deportation of some ABNES members on the ground that they have contacts with Maoists in Nepal and have provided shelter to Maoists leaders, brands the entire organization as a Maoist one and leaves room for further detentions and deportations. It is possible that some members of ABNES may have Maoist sympathies, but the ban makes each and every ordinary member of the organization into a possible "terrorist" and therefore vulnerable to police excesses.

The Friendship Treaty had allowed not only for a free movement between the people across the borders but also a freedom of political thought which was not interfered with by the respective governments. For instance, in the late 1950s and early 60s as well as in 1990, members of the Nepali Congress opposed to the monarchical regime and fighting for multi-party democracy actively operated from Indian soil. Likewise during the Emergency, many Indian leaders sought shelter in Nepal. Even before the Treaty was signed the struggle for self-government in India saw various moments when the Nepali people came out against the wishes of their own rulers, to give refuge and protection to the 'nationalists' escaping repression in colonial India. However, in the present context, the banning of ABNES under POTA and the subsequent deportations are undoubtedly conceived as a demonstration of India's support to the Nepalese government to end the Maoist resistance in Nepal. India's own reasons are not hard to seek, as it fears a connection between the Maoists in Nepal and the Peoples' War and MCC in India.

In the July deportation, besides the freedom of association, the right to expression and political beliefs are also under attack. While Partha Chhetri, Maheshwar Dahal and Moti Prasad are charged for their political sympathies, Aditi along with Chhetri and Dahal are also charged for their journalistic and literary activities. Evidently, what is on trial here is an ideology, rather than any specific activities the four have undertaken.

## **Violation of democratic rights and current violence in Nepal**

It is important to interpret the current development in the context of political developments in Nepal in recent years. Nepal is currently entangled in a civil war between the government and the Maoists. The peace talks aimed at ending the Communist Party of Nepal (Maoist)'s five year 'people's war' and an accompanying cease-fire broke down on 23 November 2001, as CPN (Maoist) unilaterally withdrew from peace talks with Government of Nepal and formed a 37 member 'People's Council' as the transitional under-ground government. In response, on 26 November 2001, the King of Nepal, on the recommendation of the Council of Ministers, declared a nationwide emergency and authorised the deployment of the army. The emergency suspended fundamental rights under the Nepali constitution including the right to freedom of expression and opinion (Article 12.2a), press and publication rights (Article 13), and the right to information (Article 16). In October 2002, King Gyanendra dismissed Prime Minister, Sher Bahadur Deuba, precipitating another political crisis in Nepal.

### *Security Laws in breach of Peoples Security*

Although the Emergency has been lifted, the Nepal government has in its repertoire a range of security laws which continue to apply viz., Public Security Act, Anti-State Crimes and Penalties Act 1989, Terrorist and Disruptive Activities (Control and Punishment) Ordinance, 2001. The Public Safety Act (PSA) allows for people to be held in preventive detention for a period up to 90 days 'to prevent them from taking any action which could have an adverse effect, among others, on the security or order and tranquility of the country'. The Home Ministry can extend this period for another 90 days and a further extension up to 12 months from the original date of issue can be obtained, subject to the approval of an advisory board established under the act. The authorities also increasingly used provisions of the Anti-State Crimes and Penalties Act, 1989, which includes crimes such as insurrection and treason carrying punishments of up to life imprisonment. Nepal Government has been increasingly using these laws to prevent political activists's release on bail pending trial. The most draconian of the laws, - Terrorist and Disruptive Activities (Control and Punishment) Ordinance, 2001 - was promulgated on 26 November 2001. TADO allows for detention for up to 90 days, with possible extension to 180 days. Cases instituted under the Ordinance are not subject to any statute limitations.

The Communist Party of Nepal (Maoist) was declared a 'terrorist organization' under this Ordinance and on the very day of its promulgation, nine editors, journalists, and computer operators working for three publications - Janadisha Daily, Janadesh Weekly and Dishabodh Monthly - were arrested from their offices in Kathmandu on suspicion of being members or sympathizers of the CPN (Maoist). Thus Govind Acharya, Khel Bahadur Bhandari, Dipak Sapkota, Dipendra Sapkota and Rambhakta Maharjan, editor-in-chief, managing editor, journalist, editorial assistant, and typesetter respectively, with Janadesh Weekly; Ishwar Chandra Gyawali, Manarishi Dhital and Nim Bahadur Budhatoki, managing editor, employee and typesetter respectively, with the magazine Disabodh; Om Sharma and Dipak Mainali, editor-in-chief and typesetter with the daily Janadesh were put behind bars. A report by 'Reporters Without Borders' dated 24 April 2002 gives the details of fifty-three journalists who have been detained under the various security laws, on charges of 'sedition' and 'treason against the monarchy' etc., over the period March 2001 - March 2002.

## A Question of Justice

The deportation of the 5 Nepalis under the provision of the **Foreigners Act** raises the question of the legal status of Nepalis residing in India. While the framework of the citizenship in India is determined by the Constitution (Articles 5-11) and *The Indian Citizenship Act* (1955), India has several laws related to the regulation of foreigners especially *The Foreigners Act, 1946* [see box on next page] under which the Central Government is empowered to regulate the entry of foreigners into India. *The Registration Act, 1939* deals with the registration of foreigners entering and leaving India; and *The Passport (Entry into India) Act, 1920* and *The Passport Act, 1967*, deal with the powers of the government to impose conditions of passport for entry into India, and the issue of travel documents and permission to enter India etc. Apart from these laws there are bilateral treaty arrangements between India and other nations which introduce the category of “preferred foreigners”.

Section 3. of *The Foreigners Act* empowers the Central Government to pass an order with respect to all foreigners or particular foreigners for “prohibiting, regulating or restricting the entry of foreigners into India or their departure there from or their presence or continued presence therein.” A further subsection (c) states that orders made under this section may provide that the foreigner “shall not remain in India or any prescribed area therein”.

Even foreigners who are to be deported under the Act of 1946 must according to a 1951 judgement be given ‘reasonable opportunity’ ‘to leave the country’ (*B.A. Shervastze v. Government of West Bengal*, AIR 1951 Cal 474). The Indian Supreme Court has also taken the view that even a foreigner possesses rights, confining these rights, however, to the right to life and liberty contained in Article 21 of the Constitution. (*Louis De Raedt vs. Union of India* (1991 [3] SCC 554) and *State of Arunachal Pradesh vs. Khudiram Chakma* (JT 1993 [3] S.C. 546). The deported Nepalis students and journalists being openly critical of the present regime in Nepal are political dissidents, and face near certain death on being deported to Nepal from a government which is stubbornly pursuing a policy which threatens to pull down the newly emergent democratic polity in Nepal. The deportation of the Nepalis by the Indian government can be seen as nothing but discriminatory. Considering that their special status in India has long been acknowledged, it is quite disconcerting that such an extreme step should have been taken. Further, the police seemed to have been in such a hurry to wash their hands off the Nepalis that it gave no time to the deportees to prove their identities to the policemen of the Special Cell of Delhi police. The denial of this ‘reasonable opportunity’ resulted not only in one case of mistaken identity (P Chhetri) it also squeezed out any chance of judicial redressal for the four deportees. It may be remembered that the four Nepalis had been deported on 11th night./12th morning itself thus pre-empting the stay on deportation given by the High Court. Thus the serving of ‘Quit India’ notices and the subsequent deportations,

constitute an infringement of the rights of the accused and a violation of democratic norms and principles of justice.

## **The Foreigners Act, 1946**

*The Foreigners Act 1946* is basically a reproduction of the provisions of *The Foreigners Act* of 1940. The latter had replaced the *Foreigners Ordinance* of 1939, which was brought in the context of the war emergency and the *Foreigners Order and Enemy Order* were promulgated under the Ordinance. *The Registration of Foreigners Act* of 1939 and *The Foreigners Act 1864* were the other two legal measures in place at the time to regulate the entry and movement of foreigners in India. While the former dealt with the formalities pertaining to the registration, movement and departure of foreigners, the latter provided for the expulsion of foreigners and their apprehension and detention pending removal and for a ban on their entry into India after removal.

A careful reading of the provisions of the *Foreigners Act 1946*, and the *Registration of Foreigners Act 1939*, keeping in mind the immediate contexts of their enactment, shows the Indian (colonial) State's preoccupation with collecting information on, and regulating the entry and movement of foreigners into India. The introduction to *The Registration of Foreigners Act 1939*, notes that the Census Report of 1931 had shown the presence of large numbers of foreigners in India. It asserted the need to collect information on foreigners both for purposes of 'national defence', and for the purposes of replying to enquiries in Legislature on the whereabouts of foreigners. The need for keeping track of incoming foreigners and their movements in India was also emphasised earlier in the context of the First World War. *The Ingress into India Ordinance, 1914*, authorised the Indian Government to seclude 'foreigners' from the local population and to restrict returning Indians to certain areas. The Ordinance was addressing the fears of the colonial government that the war conditions might provoke the 'enemies within' to plot armed insurrections with those outside. It was primarily directed towards restraining the influx of Indian revolutionaries from abroad, particularly those supporting the Ghadr movement, which began in San Francisco in 1913 and acquired a mass base among large numbers of Sikhs in British Columbia and the Pacific coast states of USA. Thousands of Sikhs returning to Punjab from abroad were brought under surveillance under the provisions of the Ordinance. The Acts of 1939 and 1946 show a continuing concern with information collection and surveillance.

Many of these laws continue to regulate the entry of foreigners even today. Several Rules, Orders, amending Acts and judgments have augmented the legal framework defining a foreigner, and the scope of the Indian Government powers to regulate their entry, movement, departure and expulsion. With regard to other groups like refugees, India has not passed a specific legislation, and deals with them at an administrative and political level. It has, however, regulated their entry and status largely under the law applicable to aliens. The word 'alien' is nowhere specifically defined and appears in the Constitution of India (Article 22, para 3 and Entry 17, List I, Schedule 7), in Section 83 of the Indian Civil Procedure Code, and in Section 3 (2)(b) of the Indian Citizenship Act, 1955.

For more than sixty years Nepali citizens have been part of the Indian society and as in the case of Bam Dev Chhetri have built a life in India based on the trust and faith the people of both countries have placed in each other. The large number of Nepalis in India are also conscious of their cultural identity and the need to enhance their capabilities through collective effort. ABNES, which has a large following among Nepalis in India, is one manifestation of this aspiration. The serving of 'Quit India' notices to these persons is a gross breach of the trust and faith the Nepalis living in India reposed in the Indian government. Even if the human aspect of deportation is disregarded for a moment, there is no valid legal basis for deportation. First of all, under the terms of Indo-Nepal Treaty of Peace and Friendship of 1950, the Nepalis are entitled to the 'same privileges' as an Indian citizen. The Treaty thus puts the Indian state under an obligation to give the Nepalis in India the same protection as it would give an Indian citizen, rather than send them off to a hostile country at the first instance. In fact, the more one goes into the legal aspects of the deportation the more confusing the picture gets. As has already been mentioned the Nepalis are 'at par' with Indian citizens and therefore, the question of their deportation is a legal misnomer. The clause of 'quit India' under section 3 (2) (c) of *The Foreigners Act* will have to be read and interpreted in the in the perspective and spirit of the Treaty of 1950. Deportation will then be found legally and morally unjustifiable since all rights, privileges and protections to which an Indian citizen is entitled, are also available to a Nepali citizen. In such a situation the recourse to deportation for Nepalis in India may not be logically available to the Indian government.

### *Deportation and International Human Rights Norms*

The act of deportation has also flouted some well-established international human rights norms regarding 'refoulement' or return. The 1948 *Universal Declaration of Human Rights*, which forms the foundation of the international human rights framework lays out 'equal and inalienable rights of all members of the human family', including the right to seek and get asylum from persecution in other countries. Article 3 of the *Convention Against Torture (CAT)* prevents the return of a person "where there are substantial grounds for believing that he would be in danger of being subjected to torture". As India became a signatory to this Convention in 1997, it has the obligation to uphold its norms. India is however, yet to sign the 1951 *Convention on Refugees* which lays down that "no contracting state shall expel or return as refugee in any manner whatsoever to the frontiers or territories where the person's life or freedom would be threatened on account of race, religion, nationality or membership of a social group or political opinion". Moreover,

since the Conventions have not been enacted into Indian law, they do not have the force of law in India and are therefore not enforceable in Indian courts. But this does not relieve India of its international obligations under the Covenants and the courts should take them into account in appropriate cases while interpreting statute law. In the past, Indian courts were rarely approached to determine the obligations of the state with respect to refugees or to pronounce on their rights and duties. More recently, however, they have been helpful when dealing with the problem of individual refugees or refugee groups such as in the *Louis De Raedt vs. Union of India, 1991* in which the Court had held that the government of India does not have the absolute right to deport aliens under the Foreigners Act. This however does not occlude the need for establishing a firm legal framework for the protection, rehabilitation and repatriation of refugees and other groups of non-Indian origin residing in India.

## Conclusion

The Indian government's act of deporting Bam Dev Chhetri and the four others students and journalists belonging to ABNES was upheld by the High Court of Delhi in a decision delivered on 8 August 2002 as the exercise of the sovereign will of a government. Citing a 1955 judgement (*Hans Muller of Nuremburg v. Superintendent, Presidency Jail, Calcutta, AIR 1955 SC 367*), the Court emphasised that the power of the Government to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this discretion. This in fact illustrates a disturbing instance of the judiciary's upholding of the power of the executive in the name of "national interest", over and above due procedures guaranteeing life and liberty. The assertion that deportation of the Nepalis was an exercise of the State's sovereign will – the 'absolute', 'unlimited' and 'unfettered' power of the Government to expel foreigners – seems to give the modern democratic state the attributes of an absolutist one. Contrary to the High Court order, no modern government can ignore the fact that the sovereignty of the state is not unlimited, and functions within the frameworks of democracy. Democracy necessarily places limits on the exercise of state sovereignty, without which it may degenerate into authoritarianism. It is these norms of democracy which the Indian government has overlooked by not questioning the democratic credentials of the Nepali government and in complete disregard of the obligations placed on it under the Friendship Treaty, giving in to the Nepal government's demands without considering the manner in which it affected the democratic rights of a group of Nepalis who were doing no more than articulating their concerns for

a democratic future for the Nepali people. Only if these democratic norms are observed and enacted, cases of deportation and the tragedy of errors played out by mistaken identity, the inhumanity of the act of deportation itself, and the court's unfortunate upholding of state action, can be avoided.

### **PUDR demands:**

- The Indian Government should exercise restraint, and stop demonstrating support for the Nepalese government whose respect for principles of constitutional democracy are suspect.
- The ban on ABNES under POTA should be revoked.
- The Special Cell of Delhi police should be asked to explain why Partha Chhetri was picked up and deported, and why it flouted the established norms of arrest and detention.
- The officers present at the time of arrest should be held responsible for the actions of their men, and appropriate action should be taken against them.

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**Published by:** Secretary, Peoples Union for Democratic Rights, Delhi

**Printed by:** Anu Enterprises, Munirka, New Delhi

**For Copies:** Sharmila Purkayastha, Flat No. 5, Miranda House  
Staff Quarters, Chhatra Marg, Delhi University, Delhi-110007.

**E-mail:** pudrdelhi@yahoo.com

**Suggested Contribution:** Rs. 3