

PEOPLE'S UNION FOR CIVIL LIBERTIES :
A SOCIOLOGICAL CRITIQUE OF SELECTED ISSUES

Dissertation submitted to the Jawaharlal Nehru University
in partial fulfilment of the requirements for the
award of the Degree of
MASTER OF PHILOSOPHY

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1994



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July 19, 1994

CERTIFICATE

Certified that this dissertation entitled "PEOPLE'S UNION FOR CIVIL LIBERTIES : A SOCIOLOGICAL CRITIQUE OF SELECTED ISSUES" submitted by MR. UDAY SHANKAR JHA in partial fulfilment of the requirements for the award of the degree of MASTER OF PHILOSOPHY to this university has not been previously submitted for any degree of this or any other university. This is his original work.

We recommend this dissertation to be placed before the examiners for evaluation.


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**DEDICATED
TO
PUJNIYA MA AND BABUJI**

CONTENTS

Acknowledgements	i
Abbreviations	ii
I - Introduction	1
II - Rise of the Concept of Human Rights : The Context	4
III - The Human Rights in India : Changing Context	22
IV - The People's Union for Civil Liberties	46
V - The Conclusion - Human Rights and the Emerging context in India.	103
Appendix	110
Bibliography	113

ACKNOWLEDGEMENTS

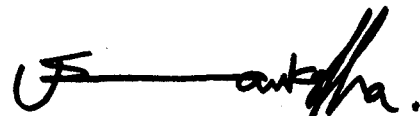
At the outset, I express my profound gratitude to Professor Yogendra Singh. His consistent encouragement and expert advice have gone long way in shaping my dissertation. In spite of his pre-occupations and in the midst of pressing engagements, he ungrudgingly spared his valuable time for me and provided proper guidance. It was, really, a matter of pleasure and a great experience to work with him.

Many people have helped me, by creating a conducive environment, to undertake this sort of work. I am specially indebted to my family members, my respected brothers - Sarva Shri Uma, Jata and Bijay and sisters - Nirmala and Jaimala and others who have consistently supported me mentally and morally.

I am also thankful to my friends Pushkar, Ravi Shekhar, Niraj, Dhananjay, Ajay, Kailash, D.P., Sanjeev, Mukesh, Sanjay, Laxmi, Girish, Yogi and others who have helped me in one way or the other. I am extremely grateful to the authorities and staff of the various libraries which I visited for my present work. Specially thanks are due to the various authors and the office bearers and the members of the People's Union for Civil Liberties, on whose work is my dissertation based. The research fellowship granted by the University Grants Commission is also gratefully acknowledged.

My acknowledgements would remain incomplete if I do not extend my thanks to Mrs. Shila Kakkar and staff of the Dean's office of School of Social Sciences for extending their cooperation in no uncertain terms.

I have benefitted from the suggestions made by many scholars, including my guide; the entire responsibility, however, of the form in which it has been presented and the ideas expressed are mine, and if there are shortcomings I alone am to be blamed.



Uday Shankar Jha

ABBREVIATIONS

BJP - Bhartiya Janata Party
BKS - Bhartiya Kisan Sangh
BSF - Border Security Force
CFD - Citizens for Democracy
CPI (M-L) - Communist Party of India (Marxist-Leninist)
CRHR - Country Report on Human Right Practices of U.S.A.
GOI - Government Of India
IPC - Indian Penal Code
IPF - Indian People's Front
MP - Madhya Pradesh, Member of Parliament
MISA - Maintenance of Internal Security Act
NHRC - National Human Rights Commission
NSA - National Security Act
PAC - Provincial Armed Constabulary
PUCL - People's Union for Civil Liberties
PUCLDR - People's Union for Civil Liberties and Democratic Rights
SC - Scheduled Castes
ST - Scheduled Tribes
TADA - Terrorists and Disruptive Activities (Prevention) Act
UDHR - Universal Declaration of Human Rights
UNO - United Nations Organisations
USA - United States of America
UP - Uttar Pradesh
VHP - Vishwa Hindu Parishad
VVIP - Very Very Important Person.

CHAPTER I

INTRODUCTION

title - 'People's Union for Civil Liberties : A Sociological Critique of Selected
sts this dissertation deals with human rights in general, and an organisation
e field of the human rights and civil liberties in particular. The term 'human
ay a widely used one. Particularly, when it comes to Western political
imposing its own terms to developing countries like India the talk of human
etc. is suddenly in the air. But the concept of human right is not that simple,
tradictory claims have been made in the name of human rights. So the whole
ably needs, some clear-cut delineation, at least for the purpose of our
o, these days, a number of organisations are functioning for the protection
uman rights. But most of them are having regional features in their
reach; also some of them are not working for the altruistic purpose which
cherish. Many of them do not function systematically. They do not have
tion, or organised office or membership. In fact, some of the human rights
ocket organisation of some influential individuals for certain political or
uls. This kind of tendency has created problems not only for human rights
it also for the achievement of human and civil rights for the common people.
re is one organisation - the 'People's Union for Civil Liberties', (PUCL) which
ree from these lacunae but is also well organised, having a clear-cut
and a panel of office bearers, a big list of members, a fixed office and well
ode of functioning with objectivity and impartiality. So, by analysing the
d organisation of the PUCL we can have an idea about not only the
its mode of arrangement, its constitution, mode of functioning etc. but also
of the human rights, its major forms and areas of violation, the factors or
ch violations and the remedy there of.
: purpose of our research, we would not formulate any hypothesis. Rather,
to answer the following questions -

- (1) What do we mean by 'the human rights'?
- (2) What is the place for relativity in the claim of universality of human rights?
- (3) How have human rights become so important an issue in international agenda?
- (4) Do we, in India, have any institutional base for the human rights?
- (5) what is our record in the achievement and maintenance of the human rights?

Coming back of the PUCL, we would try to answer the following questions-

- (1) Under what circumstances was an organisation like the PUCL established?
- (2) What are the organisational bases like constitution, membership, finance mode of functioning, branches etc. of the PUCL?
- (3) What are the major findings of the PUCL regarding the state of human rights and their violations in India?
- (4) What suggestions, through its resolutions, and otherwise, does the PUCL provide for improving our human rights record?

Basically, in our dissertation, we are going to answer these selected issues. Although there may be different approach and many other issues worth taking up, for heuristic purposes, we will stick to these issues only. A sociological perspective would be maintained throughout our discussion and any evaluation would be done keeping in mind our society.

For the purpose of material base of our study, we would solely depend on the secondary sources. For answering some of these early questions help has been taken from a number of books, journals, declarations etc. which are mentioned in the bibliography. The other questions have been answered on the basis of 'PUCL Bulletin', which is being published almost regularly since 1981.

The broad chapterisation scheme is as follows -

- Chap. I- Introduction, which we are going through,
- Chap. II- Rise of the Concept of Human Rights : The Context.

In this chapter, an attempt would be made to analyse a few definitions, declarations and controversy regarding universality of human rights and emergence of the human rights in international agenda.

Chap. III - The Human Rights in India : Changing Context.

In this chapter the institutional base of the human rights in India would be discussed, along with a panoramic view of major achievements and failures on the human rights front.

Chap IV. The People's Union for Civil Liberties.

In this chapter, we would provide a brief outline of the emergence of PUCL, its organisational base, its modus operandi, its resolutions for better human rights situation and its major finding about different incidents of the cases of human rights violation.

Chap V. The Conclusion - Human Rights and the Emerging Context in India

By way of passing some remarks we would try to evaluate in an overall perspective major shortcomings of the PUCL, state of human rights in India and its projected future according to the prevailing conditions.

Each chapter in this dissertation has a continuing theme with respect to other chapters as well as an independent existence of its own. Attempts have been made to make it comprehensive. Yet, the possibility of certain issues having been left out cannot be ruled out. However, because of a limited perspective we have tried to confine the discussion within the main frame of the topic.

CHAPTER II

RISE OF THE CONCEPT OF HUMAN RIGHTS : THE CONTEXT

Human rights represent one of the most important challenges confronting contemporary societies. Following the 1945 charter of the United Nations, various efforts have been made at national and international levels to identify and define human rights. Among them the Universal Declaration of Human Rights (1948) has rightly been singled out as the most important and influential twentieth - century document. However, it has been accused of being a repository of Western political thinking, which undermines its universal aspirations.

The Declaration certainly reasserts the conventional rights of individuals in the Western tradition : to life, liberty, security of person, equal dignity, the application of equal and fair legal procedures, freedom of opinion, of expression, of association and of representation. But, it also contains rights that twentieth century sensibilities have become particularly attuned to : protection against torture of cruel, inhuman or degrading treatment or punishment; freedom of movement in and out of a state; freedom of asylum from persecution. Such rights are based on a wider purview of the prerequisites for human welfare on physical and psychological as well as mental and moral requirements. In addition to these civil and political rights, the Declaration comprises what are known as second generation rights : economic, social and cultural rights such as those to food, clothing, housing and health, to social security, to work, to just and favourable remuneration, to rest and leisure, to membership of trade unions and to education. Mothers and children are accorded specific human rights.

HUMAN RIGHTS DEFINED

Before going on to analyze this, perhaps it would be more relevant to define first the notion of human rights. According to Michael Freedon (1991 : 6) the spectrum of definitions pertaining to a right is broad and illuminating in its different implications

and ideological positions. For example, one approach sees rights as normative attributes that belong to persons-the term philosophers use for self-conscious human being. Conceiving of themselves as initiators of purposive actions another approach regards rights as entitlements to choose from. A third explains rights positively as entitlements to do, have, enjoy or have done. A fourth contends that rights always and necessarily concern human goods, that is, what is at least, under normal circumstances, good for a person to have. Rights can be possessed, enjoyed, exercised and claimed, demanded asserted.

However, here, it should be clear that to maintain that human beings have rights is not identical to asserting that they have human rights. The latter complex term has developed in this century into a key phrase, denoting a pre-eminent notion of rights. For some theorists human rights are a subset of rights in general; but it is plausible to reverse this order, to say that human rights are the most basic, pertaining to what is essentially human, while other categories of rights are more specific, limited and normally derivative.

Michael Freedman (1991 : 7) says, a human right is a conceptual device expressed in linguistic form that assigns priority to certain human or social attributes regarded as essential to the adequate functioning of a human being; that is intended to serve as a protective capsule for those attributes; and that appeals for deliberate action to ensure such protection.

The above definition requires further elaboration. As rights are an act of public language they cannot be solely the product of an individual's mind; they involve some acceptance by others. Secondly, deliberate action includes deliberate non-action, i.e. self restraint or forbearance as a hidden form of managing action. The action needed to protect the essential human or social attributes will have implications both for the rights bearer and for those on whom the exercise of the right depends. Thirdly, although many philosophers insist on the rational/logical derivation of a right from human attributes or from a-priori moral principles, an alternative view would ground a right not on axiological or deontological foundations but on ideological or conventional ones. Fourthly, rights-adherents usually aim to formalize or institutionalise rights, primarily through law, though such social and political recognition and status are not an essential

precondition for claiming or identifying a right. The human rights do the task of protecting desirable values. Protection may be coercive and formal, or it may harness public opinion in the form of an ethical imperative, or it may be internalized through socialization processes. It may be graded according to the nature of the protected attribute and it is generally unlikely to offer watertight shielding. A right ascribes a particular status or worth to the rights-bearer.

SELBY ON HUMAN RIGHTS

David Selby (1987 : 6-8) has analysed human rights by comparing them with legal rights and moral rights. According to Selby, legal rights are rights laid down in law. On the otherhand, moral rights are rights based on general principles of fairness and justice. They may be particular or universal. Human rights are universal moral rights, they belong to everybody because they are human. In fact, Selby says, the higher category of moral rights which applies to all people at all times in all situations is called human rights. By definition, human rights are not earned, bought or inherited. Nor do they go with the job. 'Human rights should be possessed by everybody in the world because they are human. People are equally entitled to them regardless of their gender, race, colour, language, national origin, age, class or religious or political creed. Human rights are closely related to duties. Only when others fulfill their duties one is able to enjoy his or her rights.

David Selby feels that some human rights are more important or basic than others. The right to life is the most basic of all, for without it all other rights are in jeopardy. Freedom of speech or the right to rest and leisure, for instance, count for very little if our right to life is not guaranteed. Among other basic human rights are the rights to be recognised as a person before the law, the right to equal protection in law and freedom from arbitrary arrest and detention. Basic human rights provide the foundation upon which the enjoyment of other human rights depends. They are also rights which cannot be restricted or taken away without affront to human dignity and which any society has a fundamental duty to protect at all times. These are : the right to physical well being, to security, to some liberty and some property, for it would clearly be the case that our

human dignity would be undermined were we denied these things (ibid, p-9)

David Selby has further divided human rights into two groups - 'Liberty oriented rights' and 'security oriented rights.' Liberty oriented rights (also called civil and political rights) are rights concerned with giving individuals freedom of action and choice and freedom to participate in the political life of their community and society. Security - oriented rights (also referred to as economic, social and cultural rights) seek to protect people's physical, material, social and economic well being. Liberty oriented rights aim at giving individuals as much freedom and control over their own lives as possible. They, therefore, provide defences for the individual against excessive state power by limiting what governments and government bodies can do. Most security oriented rights, on the other hand, require significant levels of government involvement and intervention if they are to be achieved. for instance, financing the schools for free education (ibid, p-10).

HUMAN RIGHTS AS A 20TH CENTURY CONCEPT

In the history of humankind the concept of human rights is a very new one. Not long ago today's votaries of human rights were one of their biggest violators. Racism was widely practised, slavery was an important feature and voting rights were very limited and even half of humanity i.e. fair sex, had no right to vote. It was only during the Second World War (1939-1945) that the need for a human rights movement was realised. During the war, shocking crimes were committed against humanity and there was a total suppression of fundamental human rights. Nazi leaders of Germany had established a regime of complete lawlessness and tyranny. They had barbarously neglected human values and dignity within the territories under their occupation (Agarwal, H.O., 1983 : 3) Hitler's record of inhumanity towards the Jews and other minorities and his aggressive foreign policy were held to be closely linked together as people were beginning to perceive a close relationship between aggression towards other nations and a lack of respect for human rights at home. Hence, the international protection of human rights was seen as one essential pre-condition of world peace. It was at that time realised that the restoration of the freedoms and rights to the people was one of the essential conditions for the establishment of international peace and security. (Selby, 1987 : 16)

This conviction was reflected in the various declarations of the states made from time to time during the Second World War. Notable amongst them were the 'Four Freedoms' (freedom of speech and expression, freedom of worship, freedom from want and freedom from fear) proclaimed by President Franklin D. Roosevelt of the U.S.A. on January 6, 1941. The Atlantic Charter of August 14, 1941 had also cherished the hope for a peace which assured freedom to all individuals from fear and want. The Declaration of the United Nations, signed on January 1, 1942 at Washington confirmed the principles of the Atlantic charter when it proclaimed that the protection of human rights was to be one of the results which were desired to be obtained from the victory over the Axis powers.

CHARTER OF U.N.

Thus, the idea for the protection of human rights and fundamental freedom was conceived in these declarations and this greatly influenced the United Nations Organisation. Its Charter (Collected in Chandra, S ;1990: 3-4) contains a number of provisions for promotion and protection of human rights and fundamental freedom. The preamble of the Charter in its first substantive paragraph lays down the peoples of the United Nations' determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small ... One of the purposes, therefore, as laid down in Art. 1(3) was the achievement of international cooperation of promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

However, the Charter neither defined human right nor enumerated them there in. The guarantee for the protection of human rights and fundamental freedom was not provided for. Hence, for these, it was decided to prepare an International Bill of Rights and after serious deliberation ultimately on December 10, 1984, the Universal Declaration of Human Rights (Collected in Chandra, S ;1990: 4-23) was adopted. The

Declaration enumerated the basic postulates and principles of human rights in a most comprehensive manner. It included the right of life, liberty and security of person, freedom from Slavery and servitude, freedom from torture or cruel, inhuman, degrading treatment and punishment, freedom from arbitrary arrest and detention; the right to a fair trial by an independent and impartial tribunal; the right to be presumed innocent until proved guilty, inviolability of the home and secrecy of correspondence; freedom of movement and residence; the right to a nationality; the right to marry and to found a family; the right to own property; freedom of thought, conscience and religion; freedom of opinion and expression; freedom of peaceful assembly and association; the right to vote and to participate in government, the right to social security; the right to work; the right to an adequate standard of living, the right to education; and the right to participate in the cultural life of the community.

Although the Declaration was not legally binding, the main objective was to present the ideal of human rights and freedoms in order to inspire everybody to work for their progressive realization (Agarwal, H.O., 1983). The Universal Declaration has since acquired a greatly reinforced status not only as a common standard of achievement for all people and all nations but also as an agreed statement of the law which all states should observe (Robertson, A.H., 1972 : 27-28). The next important step was the adoption of the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights on Dec. 16, 1966.

THE COVENANT ON CIVIL AND POLITICAL RIGHTS

The Covenant on Civil and Political rights (Collected in Chandra, S.; 1990;24-35) consists of 53 Articles and is divided into six parts. While in Part I, II and III various rights and freedoms are enumerated, the other three parts are devoted to the implementational procedures for the effective realisation of these rights along with the final clauses. Article 1, which refers to the right of people to self-determination, states that all people have the right freely to determine their political status, freely pursue their economic, social and cultural development and may for their own ends and freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principles of mutual benefit and international

law. The Article further states that in no case may a people be deprived of their own means of subsistence and that the State parties shall promote the realisation of the right of self determination and shall respect that right.

Part II stipulates rights and obligations of the State parties to the Covenant. It includes the obligations of the State to take necessary steps to incorporate the provision of the Covenant in the domestic laws and to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the covenant. The State parties ensure the equal right of men and women to the enjoyment of all civil and political rights.

Part III includes the right to life, freedom from inhuman or degrading treatment, freedom from slavery, servitude and forced labour; the right to liberty and security of person and to be free from arbitrary arrest and detention, the humane treatment of persons deprived of their liberty; freedom of movement; the right to a fair trial; non-retroactive application of criminal law; protection against interference with privacy, family, home or correspondence and against attacks on honour and reputation; freedom of thought, conscience and religion; freedom of opinion and expression, the right of peaceful assembly and freedom of association, right relating to marriage and recognition of family as natural and fundamental groupings of society and its protection by society and state, rights of the child for protection, a name and nationality and the rights to take part in the conduct of public affairs, to vote and to be elected.

COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Similarly, the Covenant on Economic, Social and Cultural Rights (Collected in Chandra, S.; 1990) consists of 31 Articles which are divided into five parts. Part I deals with the rights of people to self-determination. Other rights of the individual are enumerated in Part III. It includes the right to work; the rights to just and favourable conditions of work, trade union rights, social security; rights relating to safe motherhood and childhood, proper recognition of marriage and the family; the right to adequate food, clothing housing and standards of living and to freedom from hunger; the right to health; the right to education including a plan for implementing compulsory primary education,

and right relating to science and culture. (Agarwal, H.O., 1983 : 15)

Thus, the covenant has set the standard which the state parties are required to achieve in future. Its provisions shall be, implemented progressively by the State depending on the resources available to them. It is to be noted that the rights set forth in the Covenants were not absolute and were subject to certain limitations, which were necessary to protect national security, public order, public health or morals or the rights and freedom of others (Agarwal, H.O., 1983 : 16-20)

In addition to these four texts which make up the International Bill of Human Rights there is a large number of other instruments which clarify and crystalize the substantive rights and duties, mostly in the form of minimum standards. Some of the instruments are of a general nature, covering a wide spectrum of rights, while other establish international rules on specific topics such as genocide, torture, slavery, apartheid, racial discrimination, enforced or involuntary disappearances, conditions of labour and the rights of workers, the status of women, the rights of children, refugees and disabled persons, right to development, peace, use of scientific and technological progress, religious and educational freedom, treatment of offenders and so on.

UNIVERSALITY OF HUMAN RIGHTS QUESTIONED

Some scholars, however, have raised serious challenges to the claim of universality of human rights. They contend that all moral values, including human right are relative to the cultural context in which they arise, and, hence they cannot applied to other cultures without related changes. They claim that the Western political philosophy upon which the charter and other declarations are based, provides only one particular interpretation of human rights, and then this Western notion may not be successfully applicable to non-Western areas for several reasons. Ideological differences whereby economic rights are given priority over individual, civil and political rights and cultural difference, whereby the philosophic underpinnings defining human nature and the relationships of individuals to others and to society are markedly at variance with Western individualism. Consequently, application in non-Western Countries of Western-originated doctrines of human rights has frequently meant that legal norms, whose

implementation is contingent upon the state, lack the substantive meaning such rights have in the West (Pollis and Schwab, 1979 : 1)

Definitely, the roots of different human rights declarations can be traced to the legal and political thought of the seventeenth to twentieth centuries in France, England and the United States of America. Here it may be noted that the philosophic and ideological revolution of the seventeenth and eighteenth centuries regarding the nature of Man and his inalienable rights was accompanied by radical socio-economic transformations and changing societal values. In Western Europe the communal bonds of feudalism had collapsed and extended family ties were disrupted by the Industrial Revolution - by urbanization and the factory. A capitalist system came into existence and a new industrial class rebelled against the constraints of government, demanding political participation and political freedom and articulating the ethics of social contract. In the United States a new land was being settled where individual initiative and competition frequently were requisites for survival. Hence the new philosophic doctrines of the autonomous individual and his inherent rights were assimilated both as an explanation of and a justification for the new social order. In time such doctrines became part of the prevailing shared values of Western Societies and ultimately they got institutionalised in different human right declarations.

Contrary to this, however, traditional cultures did not view the individual as autonomous and possessed of rights above and prior to society. Whatever the specific social relations, the individual was conceived of as an integral part of a greater whole, of a 'group' within which one had a defined role and status. The basic unit of traditional society has varied - the kinship group, the clan, the tribe, the local community - but not the individual. The pervasiveness of the notion of the 'group' rather than of the individual, in many cultures, is evident even in concepts of property ownership. The Universal Declaration maintains in Article 17 that everyone has the right to own property. Yet in many cultures, land is owned communally and there is no right to individual ownership of holding. Similarly, Article 16 states that the family is the fundamental unit of society. However, for many societies, the nuclear family, as implied in this article, clearly is not the fundamental unit; in hunting and gathering societies the kinship group, in India the joint family and in China the clan have been more natural (Pollis and Schwab, 1979 : 9)

Similarly Article 13 of the Covenant of Economic, Social and Cultural Rights grants everyone the right to education which is to be directed to the full development of the human personality and the sense of its dignity. Primary education shall be compulsory and available free to all, there is no freedom of choice whether or not to accept it. North Americans and Europeans will probably take this to mean that everybody must acquire elementary reading, writing and mathematical skills. Suppose, however, that in a particular nomadic society the essential skills for survival are shooting with a bow and riding a horse or recognising edible and poisonous plants. Does not the child have a right, as his primary education, to learn the arts without which he would perish before culturally foreign techniques are thrust upon him? (Glasner & Possnony, 1979 : 10).

Despite the pervasive influence of industrialization, powerful centralized governments and Western culture, there remains a vast array of cultural views and variations on the competing political and economic models. Anthropologists have long recognized that divergent cultural and political traditions result in equally divergent social values and diverse approaches toward morality and law. A comparison of Asian, African and Western industrialized societies demonstrates that sharply differing versions of the just society are simultaneously present within the global community (Donho, D.L., 1991 : 345-60).

For instance, there are many societies in which human dignity is culturally defined in terms of excelling in the fulfillment of one's obligations to the group and not merely the individual's personal achievement as in the West. Similarly, in many states, human rights are ideologically defined in terms of one's being a functionally useful member of society - through guaranteed employment and provision of the basic needs of life : food, shelter and clothing. From this perspective, clearly, western countries can be accused of gross violations of human rights (Pollis and Schwab, 1979 : 15).

Many scholars from developing countries, particularly from African and Asian nations, view current human rights standards as culturally biased, since they fail to reflect the varied cultural, political and social heritages of the non-western world. They object to over-emphasis on individual's justiciable rights and political and civil liberties in contrast to social welfare, collective rights, consensual dispute resolution, economic development and state interests.

RELATIVISTS' POINT

Scholars who believe in the relativity of human rights have directed our attention toward four inter-related facts. Firstly, they argue that certain human values, as articulated in general and abstract rights, such as equal protection or political participation, are simply inappropriate in certain cultural or political contexts. Second, even if an abstract human right is appropriate to a culture its specific content and application depend primarily upon the cultural and political circumstances of that society. Fundamental values such as justice, liberty, equality and freedom from want mean markedly different things depending upon one's cultural and political assumptions. A third claim asserts that respect and toleration of diverse cultural traditions insulate certain specific culturally based social practices from external critique and action. Finally, relativists contend that each state should espouse its own conception of human rights as a social institution based upon its cultural preferences and political ideology (Donho, 1991 : 61-70).

Priority in different aspects of human rights is another controversial question, especially the issue of how much emphasis we need to place on each category or group of rights - civil and political, or social, economic and cultural. Some scholars have claimed that social and economic rights are pre-requisites for the enjoyment of civil and political rights. Others have tried to prove that the possession of civil and political rights, especially in terms of the rights of the people to a full share in the decision making processes (including the right - freely to choose government functionaries for formulating and implementing political or socio-economic policies) are preconditions for the realisation of social and economic rights. Recently, there has been talk of a trade off between civil and political rights and the right to development. It has been argued that the right to development should have priority over all other rights. Some human rights advocates have argued in terms of the first generation of rights (civil and political rights), the second generation of rights (social rights), and the third generation of rights (including the rights to solidarity, peace, development environment etc.).

K.P.Saksena (1992 : 3-7) rightly comments that all these approaches are narrowly local and dated. They amount to a callous disregard of the very meaning of human rights.

Like wise, the terms first, second and third - generation rights are infelicitous in - as - much - as they conjure up images of succession and of replacement of one set of rights by another. Definitely, all human rights are intertwined.

The whole discourse of human rights in its present form is state - centric and the State has been taken as the guaranter of compliance of human rights. Probably this is because, today the state is all pervasive and at sometimes it itself can become a violator of human rights. Hence most of the articles of the declaration have been addressed to the state. However, there could have been some other groups also, for instance, family, village community etc., which could have also been addressed. Moreover, presently we only talk about rights and completely undermine duties and, hence it creates many lacunae on different occasions.

Feminist writers like V.Spike Peterson (1990 : 303-344) have questioned the validity of human rights as they feel that human rights are gender specific. They believe that both in application and in theory human rights are based on the male as the norm. Although the principle of equality is enshrined in the drawing up of human rights instruments, in practice women's right, they claim are neglected. The discourse and practice of international human rights retains a male - as - norm of orientation that persists in treating women's rights as secondary. Systematic violence against women is treated as 'customary' or a private matter and thus immune to international condemnation. If a person is murdered because of his or her politics, the world justifiably responds with outrage. But if a person is beaten or allowed to die because she is female, the world dismisses it as cultural tradition. There is relatively milder outrage of female sexual slavery and sex tourism or at dowry deaths, bride burning and genital mutilation or even at the restriction of women's activities, the regulation of their reproduction and their deaths through female infanticide. Most extensive, yet least acknowledged, is the structural violence against females; poorer nutrition, health care and education, limited access to material and symbolic resources, systematic wife-beating, rape and other forms of emotional and physical assault. Thus, the feminist critique of the theoretical foundations of the concept of human rights reveals a masculinist ontology - an understanding of human nature imposed by taking the standpoint of men as generic.

RELATIVISM QUESTIONED

Although these criticisms are quite valid, and the plea of the anthropologists for understanding, respect and tolerance of other cultures seems appealing, these do not offer much real guidance for the human rights movement. Should the whole enterprise be abandoned as impossible? Is there a common core of values? Which values are those that are only prevalent in the countries of Western Europe and America and not in other countries? Are some values so well-founded that it is justifiable to prescribe them irrespective of culture? If we try to answer these questions than it is very difficult to reach a unanimous stand and in most cases we have to accept the culture of one society as more humane than other, and then we are also compelled to project that culture as universal, at least, as a future goal. For instance, we cannot condone slavery, torture, Sati (widow-burning) or child-labour simply because the members of the group practicing these things saw no affront to human dignity in them.

Definitely, 'human rights' should exist for the minimum standards of the things without which the very existence of the individual being would be in peril. As human rights stand for minimum essential elements which should be equally possessed by all people, a person's country of residence or culture should be irrelevant in defining his or her basic rights. We can accept the theories of diversity or relativity but they should be constructed over the universality of basic human rights. This means that when we have accepted the minimum standard of human rights perhaps to begin with, the right of life, for instance then in other spheres liberty, freedom or rights can be given but without compromising those minimum basic rights.

Today, when we are moving towards 'globalisation' or formation of a 'world village' and although there are some trends towards growing ethnicity, the socio-economic environment is more conducive for the universal acceptance of human rights. Undoubtedly, politics has always played a role in the propagation of human rights. Sometimes it has constructively contributed in human rights' acceptance among the greater mass of world population but at many other times, it has come in the way of its balanced projection. The vested interests among the Western politicians here selectively propagated those rights which suit to them (for instance the right of freedom of thought, etc.) whereas

they totally undermined those rights which are not favouring them (for instance, the right to livelihood). In contrast, the politicians of the Eastern countries were more in favour of those rights which were helping them to remain in power (for instance, the right to development) and not those which could have proved a challenge to their existence at the centre of the power-matrix (for instance, the right of self-determination and greater democratization).

INTERNATIONAL DYNAMICS

No doubt, credit goes to international politics to have brought the whole issue of human rights into the limelight. Although human rights have always been there since World War II it got more currency during the mid seventies. The 1975 conference on Security and Co-operation in Europe, held in Helsinki gave the world unexpected evidence of the place human rights have achieved in these years in international relations. For some years, Western and Eastern bloc countries had been slowly moving away from the Cold War they had been engaged in since the late 1940s. The Helsinki Conference was called to take the process towards 'detente' further. The then Soviet Union' was anxious to have the West recognise the territorial changes it had imposed in Eastern Europe at the close of Second World War. The West was prepared to go along with the USSR as long as the the latter agreed to certain demands. Those demands were of a humanitarian nature (Selby, 1987 : 19)

It was around this time that a remarkable change occurred in the most powerful state of the world. In July 1975, accepting his nomination as U.S. Presidential candidate, Jimmy Carter, stated that fight for peace and human rights would be his government course if he won the election, and when he was elected, in his first address to the American people (January 1977) he indicated that he was going to take the human rights record of governments into account in conducting US foreign policy. 'Because we are free,' he declared, 'we can never be indifferent to the fate of freedom elsewhere.' Later he was to describe human rights as 'the soul of American foreign policy.' (quoted in Selby 1987 : 19)

It is not, however, that human rights issues landed all of a sudden from some

where outside. Infact, the Cold War era was a paradox with respect to human rights. Although a time of pervasive anit-humanitarian interventions by both superpowers, it was also the period in which human rights first became an established subject of international relations. The United States criticized violations of civil and political rights in the Soviet bloc countries while condoning, or even encouraging, violations of the same rights in 'friendly' countries. Marcos in the Philippines, Davalier in Haiti, Park in South Korea, the Shah in Iran, Zia in Pakistan, Pinochet in Chile, Stroessner in Paraguay, and Mobutu in Zaire are only some of the more prominent dictatores who benefited from U.S. support. The Soviet record was comparably appalling. The Soviet Union emphasized the denial of economic, social and cultural rights in the West, but systematically denigrated the importance of civil and political rights at home. Not only that, in addition to forcibly imposing repressive communist regimes in Central and Eastern Europe, the Soviets were the principal backers of the Mengistu regime in Ethiopia, one of the most barbaric Third World regimes of the past two decades, as well as Afghanistan's vicious Karmal and Najibullah governments (Donnelly. Jack, 1992 : 249-277)

Anyway, Carter's pronouncements on human rights made headlines around the world in the late 1970s. But very soon the critics began to point out that the Carter administration was not, in every instance, practising what it preached. Whilst the Carter administration bewailed human rights violations in the Soviet Union and elsewhere, it gave financial aid to, permitted unrestricted trade with and sold arms to, states guilty of gross violation of human rights, such as Argentina, Indonesia and South Africa. Tackled by its critics, the US government defended its actions by arguing that national security and strategy sometimes had to override human rights considerations. (Selby. 1987 : 20)

An almost similar policy was followed by Ronald Reagan and George Bush and presently the Bill Clinton administration is zealously taking up the issue of human rights all over the world. Attempts are also being made to link different kinds of financial aid with the record of human rights. Now the end of Cold war has removed the principal U.S. rationale for supporting repressive regimes and the demise of the Soviet Union has eliminated the other major post-war pillar of support for such regimes. This is the period when the countries of the Third World are undergoing waves of democratization and

liberalization. Definitely these provide slightly better situations but we should not be over-optimistic. There are many potential danger ahead.

The revival of nationalism in the wake of the collapse of the Old Order poses serious threat to the establishment of rights-protective regimes. Internationally recognized human rights rest on the promise that all individuals have certain basic rights that they are entitled to enjoy equally. Aggressive, exclusive nationalism often challenges this central principle of political equality. Some previously dominant groups, such as Serbs in Yugoslavia, have become more aggressive and deny many human rights to other communities. In some other countries, such as, Sudan, Pakistan, Bangladesh etc. the institution of 'Sharia' (Islamic law) has been adopted in which non-Islamic groups are denied many human rights. In such countries women's rights have been either reduced or eliminated. Torture has been made as a part of maintenance of social order.

HUMAN RIGHTS AND THE 'NEW WORLD ORDER'

The global wave of market oriented economic reforms presents another significant challenge to human rights in the post - Cold War World. Markets are structured to respond not to human needs but to the interests and demands of those with 'market power' (income, wealth and information). Although markets may be more efficient and may produced more overall, they do not necessarily produce more for all. In fact, free markets typically produce gross inequality in income, wealth and living conditions. Economic and social human rights, by contrast, are concerned with distributing certain basic goods, services and opportunites to each and every person. They are not as much concerned with aggregate efficiency as with individual equity.

In the 'Third World', with country after country singing on to market oriented structural adjustment propprammes at the insistance of the International Monetary Fund and other foreign leaders, social services are being brought down from already inadequate levels with dire consequences for living standards. Even if the costs of the structural adjustment are primarily temporary, as their defenders usually assert, these costs are steep and weigh most heavily on women, the poor, the elderly and the disadvantaged. Furthermore, even if the transition to a market oriented economy proves

successful there is no guarantee that large numbers of people will not be left behind and that there will be any real social pay off for the massive sacrifices forced on the poor and disadvantaged in the name of aggregate efficiency.

In this situation, markets may become a new ideological justification for human rights abuses. It is because market reforms are also likely to foster social discontent and thus strengthen the appeal of demagogues, would-be dictators and supporters of the Old regime. And, when radical market reforms take place in an environment of economic crisis and failure, the threat to human rights is likely. Then, what is way out? One way may be that market reforms should be brought slowly and gradually and with proper check and balance. Even external assistance could have a significant positive impact. Although, foreign actors can usually play a supporting role in establishing rights protective regimes, at crucial turning points, the right kind of external support can indeed make a difference. For instance, foreign technical and financial assistance can have a direct impact on economic and social human rights, as well as help to strengthen new governments whose legitimacy is likely to be enhanced by demonstrated economic efficiency (Donnelly, 1992 : 268-71)

In this whole dynamics the role of ruling elites, particularly politicians, administrators, police officials big industrial magnates, etc. has got an important significance, specially in third world countries. It should be clear to them by now that they cannot continue a repressive regime for a long period of time nor they can violate human rights in the name of cultural difference or that of their own different standards. As K.P.Saksena (1991 : 50) correctly says, the arguments that, "The Asian concept of freedom differs from the Western and that it does not cover civil liberties and political freedom" is in fact fallacious, mischievous and false. There is no reason why, during administrative activities or even while pursuing the goal of national development any fundamental human right should be denied to an individual. A state should seek to implement its political, social and economic policies but without prejudice to the fundamental human rights. Probably the ruling elites also need a new socialization. They should now realize that they are living or ruling at the last decade of 20th century and now they will have to be sensitive towards the needs or aspirations of the masses and they cannot violate their basic human rights in the name of national interest. But, still if they continue to

do so they there is bound to be a hue and cry at national and international levels and the country will have to be defensive all the time. Also, they will have to face pressure black mailling or even humiliation at the international level. On the other hand, if the country keeps its human rights record clean and if there is no skeletons in its cupboard, there will be no discontent at the domestic and the international levels. The country can not only face the world boldly but also champion the cause of human rights in other countries as well.



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CHAPTER III

THE HUMAN RIGHTS IN INDIA : CHANGING CONTEXT

India was one of the parties to the Universal Declaration of Human Rights (UDHR) and it played a very crucial role in its unanimous acceptance. Naturally the founding fathers of the Indian constitution were conscious about the Declaration and they gave due recognition to its provisions during the formulation of the Indian Constitution. The rights granted by Part III and Part IV of the Indian Constitution are no less comprehensive than those enumerated in the UDHR. For instance, like Art 7 of UDHR, Art 14 of Indian Constitution talks of equality before law. Similarly, there are a number of articles in the Indian constitution which are similar to the UDHR which we can see from the following table (extracted from Khanna, 1990 : 31-33) -

UDHR	Indian Constitution
Art. 15(i). Right to a nationality.	Art. 5. Right to citizenship.
Art. 7. Equality before law.	Art. 14. Equality before law.
Art. 2. Rights and freedom to everyone without distinction of any kind such as race colour, sex, language, religion political and other opinion, national or social origin, property, birth or other status.	Art. 15. Prohibition of discrimination on grounds or religion, race, caste, sex or place of birth.
Art. 21(2). Right of equal access to public service in one's country.	Art. 16(1) Equality of opportunity in matters of public employment.
Art. 19. Freedom of opinion and expression. Art. 20(1). Right to freedom of peaceful assembly and association.	Art. 19(a) Freedom of speech and expression. (b) To assemble peacefully and without arms.
Art. 20(2). No one may be compelled to belong to an association. Art. 23(4). Everyone has the right to form and to join trade unions for the protection of his interest.	Art. 19(c) To form association and unions.

<p>Art. 13(1). Right to freedom of movement and residence within the borders of each state.</p>	<p>Art. 19(d) To move freely throughout the territory of India Art. 19(e) To reside and settle in any part of the territory of India.</p>
<p>Art. 5. No one shall be subject to torture or to cruel inhuman or degrading treatment or punishment.</p>	<p>Art. 20. Protection in respect of conviction for offences.</p>
<p>Art. 11(1) 2(2). Right to presume innocence and protection against Ex-post-facto-laws.</p>	<p>Art. 20(2) Prosecution and punishment only once for one offence.</p>
<p>Art. 3. Right to life, liberty and security of person.</p>	<p>Art. 21. Protection of life and personal liberty.</p>
<p>Art. 4. No one shall be held in slavery or servitude.</p>	<p>Art. 23(i) prohibition of traffic in human beings and forced labour.</p>
<p>Art. 18. Right to freedom of thought, conscience and religion ... freedom to change religion or belief... to manifest one's religion or belief in teaching practice, worship or observance.</p>	<p>Art. 25-28. Freedom of conscience and the freedom to profess, practice and propagate one's own religion.</p>
<p>Art. 27. Right to freely participate in the cultural life of the community.</p>	<p>Art. 29-30. Protection of culture, language, script of all section of people.</p>
<p>Art. 17(2). No one shall be arbitrarily deprived of his property.</p>	<p>Art. 300 A Persons not be deprived of property save by authority of law.</p>
<p>Art. 8. Right to an effective remedy by the competent National Tribunals for acts violating the fundamental rights granted to an individual.</p>	<p>Art. 32. Remedies for the enforcement of rights.</p>
<p>Art. 22. Right to social security for one's dignity and the free development of one's personality.</p>	<p>Art. 38. State to secure a social order for the promotion of welfare of the people.</p>
<p>Art. 23(2). Right to equal pay for equal work. Art. 23(3). Right to just and favourable remuneration. Art. 25(1). Right to standard of living adequate for the health and well-being of oneself and of ones family.. including right to security in the event of unemployment,</p>	<p>Art. 39. Principles of policy to be followed by the State e.g. adequate means of livelihood, equal pay for equal work, ownership and control of material resources of the community to subserve the common good, protection of health and strength of workers men and women protection against child labour and conducive atmosphere</p>

sickness, disability widowhood, old age or other lack of livelihood in circumstances beyond one's control.	for the development of childhood.
Art. 23(1). Right to work, to free choice of employment, to just and favourable conditions of work.	Art. 41. Right to work, to education and to assistance in certain cases.
Art. 24. Right to rest and leisure, including reasonable limitations of working hours and holidays.	Art. 42. Provision for just and humane conditions of work and maternity relief.
Art. 26(1) Elementary education free and compulsory.	Art. 45. Free and compulsory education for children.
Art. 28. Conducive social and international order for the realisation of different rights and freedom.	Art. 51. Promotion of international peace and security.
Art. 21(1) Everyone has the right to take part in the government of his country directly or through freely chosen representative.	Art. 325. No person to be ineligible for inclusion in or to claim to be included in a special electoral roll on grounds of religion, race, caste or sex.
Art. 21(3) The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine election which shall be held by secret ballot or by equivalent free voting process.	Art. 326. Election to the House of the people and to the Legislative Assemblies of State to be on the basis of adult suffrage.

In a similar way the articles of Covenant of Civil and Political Rights and Covenant on Economic, Social and Cultural Rights of which India became a party on March 27, 1979 can be related to the articles of the Indian Constitution, although these two covenants were formulated much later than the Indian Constitution. This shows that there is a similarity of goals for both the Indian Constitution and these two Covenants. Besides these Constitutional provisions, the Indian Constitution enshrines Parliamentary democracy and division of powers among the legislature, executive and judiciary with counter checks and balances along with a free press, civilian controlled military and active political parties and civic associations. Competitive elections produce regular changes of leadership at the national, state and municipal levels.

Beside these, certain substantive and procedural aspects of source of rights, particularly concerning criminal proceeding, are embodied in the Indian Penal Code, 1860 and Criminal Procedure Code, 1973. The matters relating to freedom to marry and protection of family are governed by the customary and codified laws applicable to different communities of the Indian society. Freedom of association and right to join trade unions are protected under the Constitution and are regulated by the relevant labour laws. The human rights are freedoms recognised by the Indian Constitution and the laws are being enforced by the forward looking legislative, dynamic executive and independent judiciary. The rule of law is the quintessence of the Constitution of India (GOI, 1988 : 1)

PRESENT REALITY : A SITUATION OF PARADOX

PROTECTION OF HUMAN RIGHTS

The Indian Parliament has the power to legislate on matter relating to human rights as embodied in the Constitution. The Supreme Court and the High Courts of various states have jurisdiction to give appropriate relief for violation of any fundamental rights. In addition, the criminal courts at different levels also protect certain human rights involving criminal charges. The administrative and labour tribunals deal with matters falling within their jurisdiction. The Indian legal system enables individuals to legally challenge the violation of his/her civil or political rights. For the enforcement of fundamental right, the individual can approach the highest court of law at the very first instance. The procedural right to get relief for the violation of fundamental rights guaranteed by Constitution is in itself a fundamental right. The question of cruelty to prisoners is dealt with specifically by the 'Prison Act'. If any excess are committed on prisoners, the prison administration is supposed to be held responsible. (GOI, 1988 : 2-5)

Despite these provisions, however, the judicial process has become very expensive, time taking and hypertechnical. It takes decades to get justice by the courts and it has become so expensive that the poor people rarely try to get justice through the

judicial process. In other field also, despite extensive constitutional and statutory safeguards, significant human rights abuses persist throughout India. The abuses are aggravated by severe social tensions and the authorities' attempts to contain violent secessionist movements.

Areas of abuse include extra-judicial executions and reprisal killings by security forces in disturbed areas, political killings, kidnapping and extortion by militants, torture, rape and death of suspects in police custody throughout India, incommunicado detention of prolonged periods without charges under special security legislation, inadequate prosecution of police and security forces' personnel implicated in abuse, widespread intercaste and communal violence, legal and societal discrimination as well as extensive violence, both societal and by police and other agents of government, against women; infrequent prosecution of dowry deaths; and widespread exploitation of indentured bonded and child labour [USA's State Department's Country Report on Human Rights Practices (in India) 1994 : 1, hereafter referred as CRHR, 1994]

Political killings, by both government forces and militants, is continuing at a disturbing rate, particularly in Jammu and Kashmir, Punjab and the North-East. Extra-judicial executions of suspected militants and their supporters by government security forces accounted for hundreds of deaths, as did terrorist attacks by militant groups. Extra-judicial executions in areas facing separatist insurgency were generally tolerated by state authorities, who claimed that the breakdown of judicial systems left security forces no alternative to deal with the accused terrorists. In the states of Andhra Pradesh and Bihar, Maoist revolutionary Naxalities targeted politicians, landlords and government officials in terrorist attacks.

Indian's Criminal Procedure Code requires a magisterial inquiry in every case of death in police custody. However, most custodial abuse is directed at the poor and uneducated lower castes who are unlikely to understand their right to redress. Inquiries are often not carried out and when an investigation does occur the results are generally not made public. Also, disappearances are believed to occur on a large scale. There are credible reports that police throughout India often do not file required arrest reports, with the result that there are hundreds of unsolved disappearances in which relatives claim that a person was taken into police custody and was never heard of again.

Police usually deny these claims countering that there are no records of arrest. In cases where officials acknowledged that an individual was in custody, police sometimes reported that the detainee was killed while trying to escape when taken to recover an alleged arms cache.

Although torture is prohibited by law, there is credible evidence that torture of detainees is common throughout India. Sometimes this abuse is part of the interrogation process, sometimes it is to extort money from the victim or his relative, and sometimes it is summary punishment doled out by individual police officials, which police think, is necessary in the prevailing lengthy judicial process. Forms of torture include beating, rape, burning with cigarettes and hot rods, suspension by the feet, crushing of limbs with heavy rollers and electric shocks. Many alleged torture victims die in custody and others fear to speak out due to the threat of police retaliation. Custodial abuse is common even in Indian states free from insurgency. People at the bottom of social and economic ladder are particularly vulnerable to police violence. There are persistent reports that police deliberately target members of these groups and religious minorities (CRHR, 1994 : 4-5)

Even prison conditions are not satisfactory. Charges of sexual abuse of prisoners, the use of prisoners by prison officials for domestic labour, the sale in the black market of food and milk meant for prisoners and the sale of women prisoners to brothels, inadequate food, medical care and clothing and over-crowding are common charges.

There were widespread arbitrary arrests, and detentions under the special security laws like National Security Act (NSA), Terrorist and Disruptive Activities (Prevention) Act (TADA), Armed forces (Special Powers) Act 1956 enacted over the past four decades to help law enforcement authorities fight separatist insurgencies. Under the NSA, a person may be detained without charge or trial for upto 1 year on loosely defined security grounds. The TADA punishes those found guilty of terrorist and disruptive acts i.e. those acts that challenge or disrupt the sovereignty or territorial integrity of India or membership in a terrorist gang with no less than 5 years imprisonment and up to death penalty for certain terrorist crimes. However, the vast majority of TADA detainees are eventually freed on bail or released without charge. There are widespread accusations that the special security laws have been misused in states

not experiencing civil unrest as a convenient way to hold people without trial. In 1992, for instance, TADA was used more frequently in Gujarat and Andhra Pradesh than in Punjab which was the Act's original target (CRHR, 94 : 7)

Both government forces and militants committed egregious violations of humanitarian Law in Jammu and Kashmir. The Muslim majority population in the Kashmir valley increasingly found itself trapped between the repressive tactics used by security forces to combat insurgency and the militants' acts of wanton violence. Under the Armed Forces (J & K) Special Power Act, security force personnel have sweeping powers, including authority to shoot to kill suspected law breakers or disturbers of peace and to destroy structures suspected of harbouring militants or arms.

However, Kashmiri militant groups were also guilty of serious human rights abuses. In addition to political killings, militants committed extortion and carried out acts of random terror that left hundreds of Kashmiris dead. Kashmiri Hindus had fled from their homes to outside the state of Jammu due to selective killings, burning of houses and other property, looting, warning to leave and the reign of terror let loose on them. Kashmiri militants continued to use kidnappings of prominent businessmen and politicians to seek the release of detained militants, sow terror and extort funds. They carried out politically motivated killings, perhaps at the instance of Pakistan, on a wide scale, targeting government officials, alleged police informers, members of rival factions and Hindu civilians (CRHR, 94 : 2&9)

LAW AGAINST EXPLOITATION

Constitutionally, slavery servitude and forced labour are prohibited and are punishable. Art. 23 prohibits 'Begar' (forced labour) and Indian Penal Code (IPC) provides for punishment of a person engaging in unlawful compulsory labour of any person against his will and treats the offence as cognisable with strict punishment. Even giving remuneration below the minimum wages prescribed under Minimum Wage Act with the Bonded Labour System (Abolition) Act 1976. The right of women against exploitation, particularly the question of immoral trafficking had separately been given legislative effect through the Suppression of Immoral Traffic in Women and Girls Act

(SITA) of 1956. Several provisions of the IPC are addressed to the problem of crimes against women, including forcing minors into prostitution and are attended with strict punishment (GOI, 1988 : 5-6)

Despite these Laws, however, forced or bonded labour is widely prevalent and prosecutions are rare. Giving wages less than the minimum wage is widely practiced, particularly in rural areas and the unorganised sector of urban areas. In several cases records are just manipulated to show that the minimum wage is being paid whereas the reality is not so. Similarly the laws against prostitution are not much effective and in every major town and city there are red-light areas, where prostitution is being practised, sometimes, with the connivance of police. According to one report India has the maximum number of child prostitutes as well.

PERSONAL LAWS OF DIFFERENT COMMUNITIES

In Indian society, which is based on its historical traditions and cultures, the family system not only lends basic strength to continuity and change in the social process, but is also a fundamental cohesive unit of the secular and democratic set-up. The Indian legal system based on this social reality naturally reflects, and guarantees full sanctity to and protection of, the family. As several communities with their distinct religions, customs and cultures compose India, matters concerning marriage within these communities are governed by their respective personal laws and by pertinent legislations of the Indian Parliament. The right of men and women of marriageable age to marry and to establish a family is recognised and protected. Under the Child Marriage Restraint Act, the minimum marriageable age for men and women is prescribed as 21 and 18 years, respectively. Attempts have been made to bring about the features of equality in marriage and in this context 'Dowry Prohibition Act 1961' has been introduced which prohibits giving and taking dowry. Widow remarriage has been legalised. As the family is viewed as a strong bond in India the scope and mechanism for constitution of marriage are maintained in the Indian legal system, until eventual dissolution, according to law, takes place. These mechanism include judicial separation and restitution of conjugal rights. The Indian legal system recognizes divorce by mutual

consent of the spouses. (GOI, 1988 : 12-13)

However, the traditional caste system as well as the differences in ethnicity, religion and language deeply divide Indian society. Despite laws designed to prevent discrimination, these differences are frequently manifested in social and cultural practices that have a profoundly discriminatory impact. Deeply-rooted traditions, often tied to religious or social practices, lead to lax and sometimes no enforcement of laws related to women, Scheduled Castes, etc. (viz, the Equal Remuneration Act etc.), especially in rural areas. Female bondage and forced prostitution remain common in parts of Indian society (CRHR, 94 : 14). Laws related to dowry have totally failed in creating any impact. Demand of dowry is increasing day by day and even those communities which were not practicing earlier have started giving and taking it. Consequently domestic violence in the context of dowry dispute is a particularly serious problem. In a typical dowry dispute, a groom's family will harass a woman they believe has not brought sufficient dowry. Occasionally, this harassment ends in the woman's death, which the family members often try to pass off as a suicide or kitchen accident. Although most dowry deaths involve lower middle class families, the phenomenon crosses both caste and religious lines.

Laws related to equality, family and exploitation and personal laws have failed to provide any security, honour and equality. According to an Indian government study violence against women - including molestation, rape, kidnapping and dowry death has considerably increased over the past decade. Because of a strong cultural preference for male offspring, sex determination tests (amniocentesis and sonogram) are widely used, resulting in disproportionate number of abortions of female foetuses. Human rights groups estimate that at least 10,000 cases of female infanticide occur each year throughout India, primarily in poor rural areas. Female foeticide and infanticide have produced a steady decline in the ratio of females to males in the Indian population. This figure has gone down from 972 per 1000 at the turn of the century to 929 per 1000 in 1991. Parents often give priority in both health care and nutrition to male infants over females. The burden of providing an adequate dowry for girls is one factor in making female births less desirable.

Despite several provisions in the Constitution promising equality before the law

and prohibiting discrimination on the basis of gender, the personal laws of several Indian religious communities provide for legally sanctioned gender discrimination. Under Muslim personal law, a Muslim husband may divorce his wife unilaterally; there is no such provision for women. Muslim law also provides for a man to have up to four wives, while polyandry is prohibited. Existing laws relating to asset and land ownership give women little control over land use, retention or sale. The Hindu Succession Act provides equal inheritance rights to Hindu women, but in practice, married daughters are seldom given a share in parental property. Muslim personal law, while recognizing the right to inheritance of both sons and daughters, specifies that a daughter's share should be only one half of a son's. Under the tribal land system, notably in Bihar, tribal women do not have the right to own land; the traditional practice of putting women to death who are considered witches is closely related to the denial of property right (CRHR, 94 : 15).

CHILD'S RIGHTS

Constitutionally, every child in India is protected without any discrimination. On the part of government, a comprehensive scheme for the welfare of children, in need of care and protection, particularly unfortunate, neglected, destitute, handicapped, delinquent or victimised children is being implemented. (GOI, 1988 : 13-14) Still, India has a large population of street urchins with perhaps as many as 1,00,000 in major cities such as Delhi, Bombay and Calcutta. Child prostitution in these cities is rampant. The constitutional and legal provisions for banning child labour and free compulsory education had little impact on the practice of child labour. Besides working as home-servants, helpers in shops and hotels and rag-pickers, they also work in hazardous occupations, such as glass making, fireworks, match factories, carpet weaving etc. The International Labour Organisation put the total number of child workers of 44 million while some non-governmental organisations cite a still higher figure of 55 million. Different attempts to check this have not been very successful and the central government often faults divided jurisdiction with state government for its inability to

curb this practice. The continuing prevalence of child labour can be attributed to social acceptance, a widespread official belief that poverty causes child labour and the failure of the state governments to make primary education compulsory (CRHR, 94 : 15 & 18).

UNIVERSAL POLITICAL PARTICIPATION

Every adult Indian citizen has the right and opportunity to participate in public affairs, elections and public services on equal basis. At the same time, to ensure adequate representation to all sections of the society, some seats have been reserved for the Scheduled Castes (SCs), Scheduled Tribes (STs), and the Anglo-Indian communities (GOI, 1988 : 14-15). However, due to the lack of education and utter ignorance, political participation particularly from the lower communities has not been equal. There are several instances when lower caste people have been prevented from casting their votes.

WELFARE OF WEAKER SECTIONS

In pursuit of economic, social and cultural rights for all, the constitution enshrines special provisions in favour of disadvantaged groups. These include protection and safeguards for the SCs and STs and the Other Backward Castes (OBCs), either specially or by way of insisting on their general rights as citizens, with the object of promoting their educational and economic interests and of removing the social disabilities. The Protection of Civil Rights, 1955 prohibits untouchability with strict punishment. Under Art. 330 and 332 of the Constitution, seats are reserved for the SCs and STs in the lower house of Parliament and state legislatures, in proportion to their population. Following the introduction of Panchayati Raj, safeguards have been given for proper representation of the members for the SCs, STs, OBCs and women by reserving seats for them. They have also been given reservation in government jobs (GOI, 1988 : 15-17).

Despite these provisions, however, their situation have not improved substantially. There are several instances when untouchability has been practised but these laws have not been properly implemented. The benefit of reservation has not percolated, as, those in authority take different excuse for not passing down the benefits. Also, there

has been an emergence of small sections within that section which have cornered all the privileges being given.

PROTECTION OF WORKER'S RIGHTS

For protecting the rights of workers, different laws have been enacted which provide for a minimum wages, bonus, proper working conditions, limited hours of work, social security, health, safety and welfare of workers. Any kind of discrimination and employing children below the prescribed age is prohibited, and there are provisions for equal pay for similar work between men and women. The workers have been given the right to form trade unions, and in case of any dispute, there are mechanisms for dispute settlement. (GOI, 1988 : 17-19)

However, despite these legislations, the implementation is very lax. Particularly in unorganised sector, the situation is more hopeless. Even in organised sector, there have been instances, that attempts were made to manipulate these laws in such a way that the management or the owners got all benefit whereas the benefits of the labour were jeopardized.

FREEDOM FROM HUNGER

Although India has achieved self-sufficiency in food-grains production, there were some cases when its benefit has not reached to all sections of the society and all regions of the country. Therefore attempts are now being made in that direction. The Public Distribution System is being revitalized and consumer cooperative movements are being encouraged for quality products at reasonable prices. For protecting the interest of consumers, the Consumer Protection Act, 1986 is being implemented vigorously. However, still much remains to be done, and by and large the aforesaid attempts have remained limited to the urban or more developed regions.

PROVISIONS OF HOUSING

For improving the quality of life, the government has taken several steps to provide better housing facilities. Loans are being provided for house making and social housing schemes have been undertaken for the weaker sections of the society (GOI, 1988 : 21). However, the achievement on this front has been very limited and some initiative at mass scale is required to get any substantial benefit. The growing number of slums and pavement dwellers and unhygienic conditions in most of the towns prove this.

HEALTH AND MEDICAL CARE

Several steps have been taken to achieve the goal of health for all by 2000 AD. Checking the spread of communicable diseases, restricting population growth, establishing a network of 'Primary Health Centres' all over the country and many medical colleges and hospitals with modern equipments are a few such steps. (GOI, 1988 : 22) However, except in a few hospitals, health facilities in these are in a pathetic state.

EDUCATION

Providing universal education under 'National Literacy Mission', along with quality education through a chain of 'Navodaya Vidyalaya', is the latest endeavour of the government. The goal has been set for universal literacy by the year 2010 AD. Vocationalisation of education has also been attempted. However, the fact that still around half of the population is illiterate indicates that much more serious effort is required.

RIGHT OF INFORMATION

As far as respect for Civil Liberties, including freedom of speech and press, is concerned the Constitution protects these freedoms and they are exercised in practice. However national television (except satellite channels) and radio are government

monopolies and are frequently accused by opposition politicians and the print media of manipulating the news to the benefit of the government. Under the Official Secrets Act, the government, may restrict publication of sensitive stories, but this is sometimes interpreted broadly by the government to suppress criticism of its own policies. Sometimes, reporters are subject to harassment by security forces. A government censorship board reviews films before they are licensed for distribution. Producers of video news magazines are also required to clear their products with the board, which occasionally censors parts of stories that put the government in a bad light. (CRHR; 94 : 10-11)

EQUAL PARTICIPATION IN CULTURAL ACTIVITIES

The right to equal participation in cultural activities is an automatic and inherited right of every individual in India. Different races, cultures and religions have mingled in India through the vicissitudes of time to produce a rich diversity of cultural forms. The government actively encourages the full exercise of cultural activities by all groups of the Indian people. The protection of monuments, places and objects of historic interest and national importance is a directive principle of state policy. Also, the coordination and preservation of national libraries, antiques, museums, art galleries, memorials, cinematography and the like are the responsibility of central government.

The freedom of scientific research and creative activity, which is a part of the right to freedom, is guaranteed to all citizens. Popularisation of science and stimulation of a scientific temperament among people are the main objectives of the government and for it several steps have been taken. Also various measures to prevent the use of scientific and technological progress for purposes which are contrary to the enjoyment of human rights have been taken by laws like the Water Pollution Control Act, Air Pollution Control Act, Smoke Nuisance Act, Noise Pollution Act etc. (GOI, 88 : 25-28) However, lack of proper implementation of these is one major limitation.

HUMAN RIGHTS MONITORING

When we analyse governmental attitude regarding investigation of alleged violation of human rights we find that in independent Indian human rights organisation are active and vocal. They include the People's Union for Civil Liberties, the People's Union for Democratic Rights, Citizens for Democracy, Andhra Pradesh Civil Liberties Committee, Nagaland People's Movement for Human Rights, All India Federation of Organisation for Democratic Rights, Committee for Protection of Democratic Rights and numerous regional organisations. These groups investigate specific allegations of human rights abuses and publish reports on their findings, which are often highly critical of the government and militant groups. All of India, including Kashmir and Punjab, is open to Indian investigators. The central government is generally tolerant of dissent. Nonetheless, human rights monitors have been targeted by the police for arrest and harassment. In addition, a number of monitors were the victims of killings, some of which may have been politically motivated (CRHR; 94 : 13)

FEW REASONS FOR HUMAN RIGHTS VIOLATION

Thus, we can accept that although theoretically we accept human rights, in practice in some cases they are being violated through various agencies governmental and non-governmental. The reasons for this, are many. According to some human rights activists, in our Constitution itself there are certain elements which go against the ethics of human rights.

CONSTITUTIONAL INSUFFICIENCY

For instance, P.Padmanabhan (in Desai, ed. 1986 : 73-78) says that Indian Constitution is a queer document which negates what it positively asserts and gives enough room for compromises and manipulations. The fundamental rights enshrined in the Constitution of India are subjected to umpteen limitations. These rights can be curtailed to the extent of extinction by the legislature and by Presidential Ordinances

as per the provisions of the constitution itself. Rule of law can be subverted. Right to a judicial scrutiny of the action of the executive can be extinguished. Rule by ordinance can be perpetuated. Elected governments can be overthrown. Emergency can be imposed. Even the right to free elections can be neglected by provisions of the very Constitution by which we swear.

Padmanabhan further says that the Preventive Detention Act, which was enacted in 1951, barely within a year of the adoption of the Constitution illustrate this point. This Black law, which has been universally condemned, has been in existence in one name or other all these years. The notorious Maintenance of Internal Security Act (MISA) NSA, TADA are a few among these series. These laws, which give the right to detain an individual without trial, even without divulging the place of detention derive statutory recognition from the constitution. Through various articles, particularly 107 to 109 of the Criminal Procedure Code, the stringent conditions imposed on the grant of bail, the limitations imposed on the right of the state government to commute sentences for 'imprisonment for life' etc. are statutory changes permissible as per provisions of the constitution. The imposition of emergency and the dismissal of a duly elected government are constitutionally valid. The pleasure of the President and the Governors which account for the various undemocratic procedures practised by our rulers can be exercised in total disregard to all democratic norms. The powers of the legislature can be easily by-passed by an ordinance rule even without the imposition of President's rule. By clever manipulations, ordinance can be kept alive for years together, even without being subjected to the consideration of the Assembly.

Furthermore, Padmanabhan says that the fact that even the limited rights guaranteed by the constitution are being crippled cannot be lost sight of. It is not uncommon in the country to blatantly disregard even the existing laws. The laws of the land lays down that an arrested person can be kept in police custody only for 24 hours within which period he has to be produced before a magistrate. Instances where the arrested citizens is kept in police custody for days together without being produced before the Magistrate are many. While detention without trial on a proper order of the appropriate authority is legal and constitutional as per the prevailing law, the unauthorised detention in custody is clearly illegal. Third degree methods during the

course of investigation have not as yet been sanctified by law. Torture in the police lock-ups is not permitted by the Constitution. Encounter murders are not legally permitted. But all of these have become a cruel fact of life.

Gobinda Mukhoty (Desai ed. 1986 : 79-84) is even more critical of the prevailing situation. He says that the Indian constitution with its Preamble and chapter on Fundamental Rights, gives a false impression that democratic rights of the people and civil liberties will not and cannot be curtailed: but within it, it contains seeds of immense arbitrary power which an authoritarian person can use against citizens of the country with impunity. The provisions for preventive detention, emergency etc. are very much part of constitution itself.

REPRESSIVE NATURE OF STATE

Lalit Chari (Desai, ed. 1986 : 84-87) comments that our state remains a coercive state in spite of adult franchise and representative democracy. This is clear from the fact that the criminal laws are essentially the same as they were during the Raj when they played an important part in enforcing imperial rule over our people. Even the police and their attitude to the people is the same. The courts are the same. And all these were created by the British to serve the interest of an alien power which exercised aristocratic rule over the people of this country.

THE POLICE

The role played by the Police in the compliance of human rights is one of the most controversial issues and it has been adversely commented upon by several scholars (Lalit Chari in Desai ed. 1986 : 84-87, Soli J Sorabjee, V.M.Tarkunde, Hindustan Times 30 April 92, S.Subramaniam, Tribune 8 Feb 94 etc.) Our freedom to move freely and be secure in our homes depends largely upon our police force and their ability to keep the peace. The police has also to uphold the rule of law by protecting the law abiding and getting the guilty punished. A society where the offenders, especially the affluent and the well connected, are not brought to book is bound to breed a large number of malcontents

with anger and frustration. But unfortunately in India the situation is not that bright. More sinister than the sins of omission is the phenomenon that the protectors of human rights have become their major violators. Life and liberty, the most basic human rights, are the main casualties. There are numerous cases of death in police custody on account of physical torture. Police encounter is often a euphemism for murdering persons whom the police regard as dangerous criminals and whose prosecution and conviction according to the law of the land are very difficult because of serious handicaps in securing evidence against them. Our constitution guarantees protection against self-incrimination. Yet third-degree methods and inhuman treatment during interrogation and detention of a person in police custody are rampant and make a mockery of this guarantee. Other casualties are freedom of expression and of assembly whose significance usually escape the police. Political meetings where there is strong criticism of the government are often broken up and speakers are arrested. These kinds of situation are so alarming that Amnesty International had to publish a special report on India 'Torture, Rape and Death in Custody' in 1992 in which 415 specific cases have been described.

No law authorises the police to torture suspects, to kill them in fake encounters or to humiliate women by rape or by otherwise violating their modesty. No law authorises the police to open fire on peaceful processions or set whole village on fire. Such atrocities are committed because the police know that nothing will happen to them if they violate the law. The superior police officers normally side with them and so does the concerned government.

Equality of treatment is another human right which is frequently flouted by the police. Readiness displayed in dealing with the complaint of an industrialist or a politician is in marked contrast to the collous treatment of lower class people. Curbing the excesses and atrocities of the security forces is necessary not only for the protection of human rights but also for maintaining the territorial integrity of the country. The victims of police atrocities have, in theory the legal remedy of filing criminal complaints or civil suits against the erring policeman for appropriate relief. But such remedies are often found to be useless. This is not only because litigation is time consuming. The main reason is that the police are commonly in a position to terrorise witnesses and to prevent the true versions being established in criminal or civil cases.

Commenting on this state of affairs Desai (1986 : xxii) says that the rulers of India, the controllers and wielders of the powerful mass media machine have been systematically, extensively and in manifold overt and covert manner, striving to project the illusion that they are truly involved in evolving a democratic structure. They also strive to create an image of the exploited and oppressed masses as unruly anti-social, unreasonable and mainly responsible for the instability by taking recourse to violence which threatens existing democracy. They even justify their growing repressive action against the poor, as necessary measures to protect democracy and prevent people from threatening this democratic set up. Whereas the truth of the fact, Desai says, is not so and here culprit is not the lower or deprived classes of people.

Coming to the Constitution Desai (1986 : ix) says that there are some major flaws inherent in the Constitution itself with regard to different categories of rights. The most important flaw is the exclusion of guaranteeing certain basic rights which are essential for every citizen, viz. Right to work, Right to Shelter, Right to Education, Right to Medical and other Social Amenities. These are basic rights necessary for a citizens to function in and contribute to a society which claims to be democratic. The exclusion of these rights in the Consitution, prevents any basic security to millions of citizens, who have no other source of securing purchasing power in a socio-economic framework, which operats on the basis of production for profit and market basically by private owners of means of production.

Secondly the Constitution has clothed almost all the rights in the Part III embodying Fundamental Rights in such a phraseology that they are susceptible to diverse and contradictory interpretations. They are capable of being made non-functional in the larger context of arrangements provided in other parts of the Constitution itself. For instance, the inclusion of paralles 'Preventive Detention system' embodied in the constitution itself has created a situation where in it negates all rights provided in other parts of the Constitution. Moreover, assault on democratic rights also compromise deliberate denying or non implementing of the rights, legally granted to the citizens through legislative enactments by the government itself.

Desai (1986 : vii) believes that the Indian state has viewed the overwhelming majority of citizens who are poor, non-proprietary or petty proprietary, as a threat to its

smooth, pursuance of the chosen path of development and has elaborated a complex, sophisticated mechanism of dividing controlling and repressing them. The state, in fact, has developed the stern iron fist under the velvet glove of the Constitution and other devices of the government which it has forged to regulate, control and repress the vast mass of poor citizens. Desai says that the elementary aspirations, demands and assertions of the economically exploited classes and socially, politically and culturally oppressed sections of the Indian people, for satisfying basic needs, elementary human rights, such as right to live as dignified human beings, in fact even to survive, are viewed with alarm by the rulers and are being suppressed by adopting more and more brutal and sophisticated technique of repression.

In this way we find that although several steps have been taken for the achievement or implementation of human rights, there are vast arrays where human rights of the common people are violated. This has created not only an embarrassing situation at national and international levels but also internal instability and restlessness among the people. However the government was quite sensitive to this state of affairs and finally it decided to establish a human rights commission. In May 1993 the government introduced a bill authorizing legislation for a national human rights commission. The bill was criticised by Indian human rights groups which claimed that the commission would be dominated by government servants, barred from investigating allegations of abuse involving the army and paramilitary forces, and provided with inadequate investigatory staff. A Presidential Ordinance issued on September 29, 1993 and passed by the Parliament in December 1993 revised the commission to give greater representation to retired jurists. The commission will enquire into complaints of violation of human rights against public servants in any part of the country. The jurisdiction will also extend to the armed forces and paramilitary forces, though its powers to enquire into complaints againsts them and recommend action will be limited.

NATIONAL HUMAN RIGHTS COMMISSION

The National Human Rights Commission (NHRC) will have its headquarter in the capital (New Delhi) and, with the permission of the Central government can establish

offices in other places. The commission will have eight members and will be headed by a former Chief Justice of India. The other members will be sitting or a retired judge of the Supreme Court, a serving or a retired Chief Justice of a High Court, two prominent persons having knowledge or practical experience in the sphere of human rights and the chairpersons of the National Commissions for Minorities, for SC & ST and for Women. Its present chairman is former Chief Justice of India Rangnath Misra and its members include Justice Meera Sahib Fatima Bibi, Justice Thamarappalli Kochu Thommen (both former judges of the Supreme Court), Justice Sukhdir Singh Kang (former chief Justice of J & K High Court) and Mr. Virendra Dayal (who retired in 1992 as Chief-de Cabinet to the UN Secretary General.).

The members of NHRC will be appointed by the President upon recommendation by a 6 members committee comprising of the Prime Minister as its chairman and other members are the Lok Sabha Speaker, the Home Minister, the Leaders of Opposition in the Lok Sabha and Rajya Sabha and the Deputy Chairman of the Rajya Sabha.

The main functions of the NHRC will be to inquire into the violations of human rights or negligence in preventing such violations; intervention in any proceeding involving an allegation of violation of human rights; visiting jail to study the living conditions of inmates and make recommendations there of, reviewing of Constitutional safeguards related to human rights, study of international treaties on human rights : reviewing of factors such as terrorism and recommending remedial measures; promotion of research in the field of human rights, spreading of human rights literacy, encouraging efforts of non-governmental organisations; and related matters.

The commission will have all the powers of a civil courts. This ranges from seizing documents to calling witnesses. The commission will have powers which enables state Government to set up Human Rights Commission (having analogous powers and membership to their national counter part) and a special prosecutor with the purpose of providing speedy trial.

To facilitate its functioning the NHRC will have its own nucleus of investigation staff besides the powers to seek the assistance of central agencies and those in the states while enquiring into specific complaints of human rights violations relating of life, liberty, equality and dignity of an individual as guaranteed by the Constitution or

embodied in international covenants particularly International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR) and enforceable by the courts in this country. It will act like a civil court with powers to summon witnesses and requisition any document or evidence which it thinks may have a bearing on the complaints under investigation. No body can refuse summons or requisition from the Commission on grounds of 'privilege' which he or she may otherwise enjoy under the law. After conducting its enquiry, the NHRC can approach the Supreme court or High Court for grant of immediate interim relief to the victim or members of his or her family.

The NHRC shall enquire suo-motto or on a petition submitted to it by a victim or any person on his behalf into complaints or violation of human rights or abetment thereof or negligence in the prevention of such violation by a public servants. It has the powers to intervene in any proceeding involving allegations of human rights abuses pending before a court with the approval of the court concerned. In respect of the armed as well as para-military forces, the NHRC either on its own or on receipt of a petition shall seek the report from the central government. The NHRC shall submit its special or annual report to the centre and the state government concerned. These, in turn, will be tabled in both houses of Parliament or the state legislature, as the case may be.

The state governments can constitute their own Human Rights Commissions whose chairpersons will be the Chief Justice of the High Court. The composition of the other members will be similar to that of the NHRC. It will have a four member Committee headed by the Chief Minister for recommending the names of the Chairperson and other members of the State Human Rights Commission to be appointed by the Governor. The state government will also be empowered to set up district level special courts to ensure speedy trial of offences relating to human rights violations. These courts may be set up with the concurrence of the Chief Justice of the High Court. For every such court, the state government shall appoint a special public prosecutor or advocate who has practised at least for seven years. (The Protection of Human Rights Act 1993, NHRC New Delhi)

The limitations, according to government, placed on the Commission's powers with regard to the armed forces would not in any way 'dilute' its effectiveness in dealing with

complaints against them. The distinction between other and the armed forces had been made because the latter already had no effective legal system. A different set of procedures had been suggested for them in view of the 'stringent' provisions which already existed in their case. In the case of the military, summary trial and court martial can take place and the same is the case with the border forces, including the Border Security Force (BSF), the Assam Rifles and the Indo - Tibetan Border Police (ITBP).

However the method of formation of NHRC and its given limited powers have been criticised by some human rights activists and scholars. Commenting on appointment committee of NHRC, Soli J. Sorabjee (Times of India, 2nd Oct 1993) said that exclusion of NGO representation and of the Bar was a serious omission. Their presence could have helped to minimise or at least remove the public perception of the influence of partisan politics in the appointing process. Consultation with, not concurrence of, the Chief Justice of India and that to in the case of appointment of a sitting judge of the Supreme Court or a sitting Chief Justice of the high court does not improve matters because retired judges can be appointed without any consultation with the Chief Justice of India.

Prema Viswanathan (Indian Express, 15 Oct 93) has pointed toward another fact. She says that considering that it is the law enforcing machinery of the government that is culpable in most cases of human rights violations in the country, it is self defeating to vest the powers of selection in the hands of ruling party politicians or aspirants to the status, the main opposition party.

The effectiveness of the Commission in protecting human rights, Sorabjee says, will be almost minimal. First, the commission has not been provided with its own independent investigative machinery under its exclusive control and accountable to it. Violations of human rights by the police and government officials are commonplace in our country. It is unrealistic to expect the police to provide impartial and effective assistance to the commission in investigating human rights violations by their brethren and superiors. Secondly, the period of limitation of one year from the date of the act of human rights violation of filing a complaint is woefully short. Thirdly, the functions of the Commission are merely recommendatory. It has no power to punish violators of human rights, nor to grant any compensation or even immediate interim relief to the victims or the members of their family. It can merely make recommendations to the

concerned government for prosecution and grant of interim relief. If these recommendations are not accepted, that is the end of the matter. Last, but not at least, the exclusion of the military and security forces even from the limited scrutiny of the Commission, Sorabjee believes, is the final act of its emasculation.

Responding to these criticisms government assured that it would honour the recommendation of the Commission by taking action in both letter and spirit. The government accepted that though the recommendation of the Commission were not binding on it, it would not be possible for any democratically elected government to ignore the recommendations of such a high body (Home Minister Mr. S.B.Chavan's statement on 22 Dec. 1993). In December 1993 the Commission instructed state governments to inform it within 24 hours of any custodial death. If an accident is not reported on time, the commission will assume that there was a cover-up attempt. By June 1994 the NHRC had made visits to Punjab and Kashmir, the states where most human rights violations are alleged to have occurred, and also enquired into several issues related with the human rights of common people (for instance, the tattooing incidence in Punjab, the lottery case etc.) It was also making arrangements for introducing human rights as a subject from the primary level education.

CHAPTER IV

PEOPLE'S UNION FOR CIVIL LIBERTIES

The People's Union for Civil Liberties (PUCL) was formed by Jayaprakash Narayan during the Emergency in October 1976. It was inaugurated by Acharya J.B. Kripalani in a conference held in New Delhi. Initially it was not a membership organisation. It was transformed into a membership organisation at an All India Civil Liberties conference held in New Delhi on November 22-23, 1980. Before going into the details about the PUCL a brief exploration of the need for and existence of a vigorous human rights movement and organisation in India can provide us a more holistic view.

A BRIEF HISTORICAL OUTLINE

The first human right group in the country - the Civil Liberties Union - was formed by Jawaharlal Nehru and some of his colleagues in the early 1930s with the very specific objective of providing legal aid to nationalists accused of sedition against the colonial authorities. However, this effort was short-lived. The excitement and hopes generated by national liberation subsumed the political spirit of an independent watchdog initiative (Kothari, s. 1990 2). However from the mid-sixties the exploited and oppressed sections of the people and their alert activist were becoming conscious of attack on their civil liberties and democratic rights. The failure of the Plans and plan holidays from mid-sixties generated considerable disillusionment among the under-privileged exploited and oppressed sections of the people.

The discontent manifested itself into widespread assertions, resulting into various forms of struggles launched by different section of the people like landless labour, marginal and small peasants, the unorganised working class, etc., who were being adversely affected by the plans adumbrated by the state. The government as well as privileged social classes resorted to more and more wide ranging and fierce forms of

actions to curb, repress and crush the stirrings of the people. The growing assault on the movements of the people and systematic concentration of attacks on the leaders and groups which were attempting to guide or direct these struggles of various section of the people generated an awareness of the importance of the issues of civil liberties and democratic rights among the unprivileged or under-privileged strata and their spokesman, particularly among the articulate and conscientious sections of the political middle classes. (Desai, 1990 : X)

Several organisations were formed during this period. Notable among these were the Association for the Protection of Democratic Right (APDR) in West Bengal, the Andhra Pradesh Civil Liberties Committee (APCLC) and somewhat later, the Association for Democratic Rights (AFDR) in Punjab (Kothari, S; 1990 : 2)

While these groups highlighted the growing repression and exploitation in the country-side and played a crucial role in confronting and exposing the violent role of the state, their reach and capacity to stir the imagination and to involve concerned liberal and progressive elements was limited. Also their impact was limited due to their fragmented and sectarian nature, their stand on violent means and also the indifference of the media and public opinion to the plight of the marginalised sections of the society. These organisations also failed in co-relating political with socio-economic issues. (Kothari, 1990 : 2)

After August 1972, Gandhian leader Jayaprakash Narayan, retired Bombay High Court Justice, V.M. Tarkunde, and others in or close to the Gandhian movement began to meet to discuss their concern over the centralization of power by Prime Minister Indira Gandhi. They formed groups in Delhi, Madras, Bombay and Calcutta and finally formed a national group called Citizens for Democracy (CFD) at a meeting in Delhi in April 1974 (Rubin, B.R. 1987 : 373-4)

In 1974, Jayaprakash launched a major agitation against the growing authoritarianism of Mrs. Gandhi. But, she imposed Emergency on June 26, 1975. In an effort to stifle thousands were imprisoned without trial; houses had been razed without court orders, newspapers were censored; holding at public meeting was impossible and even the right to life had been questioned. Searches of private premises were made without legal authority; telephones and post were tampered with. During this

period those members of CFD who were not detained tried to organised a non-party opposition to the suspension of civil liberties and succeeded in holding meetings in Gujrat and Tamilnadu where the state government were not controlled by the ruling party at centre.

After his release from prison Jayaprakash wanted a more extensive organisation. However, during this time government wanted to amend the constitution and enact new laws so that the suppression of civil liberties and democratic rights would become the normal law of the land. When the 43rd consitutional Amendment was sought to be introduced for this purpose, all those concerned with Civil Liberties took it as a grave challenge. A number of protest meetings were held to mobilise public opinion. It was then suggested that an organisation should be promoted with the name 'People's Union for Civil Liberties and Democratic Rights' (PUCLDR), Jayaprakash founded the new organisation. Tarkunde and Krishna Kant were elected as President and General Secretary respectively. The PUCLDR's Executive Committee consisted of representatives of political parties as well as non-party public figures (Know PUCL, 1992 : 3). Orginally its goal was simply to oppose the open repression of civil liberties under the Emergency.

After the victory of the Janata Party in the 1977 election and the restoration of civil liberties, the interest in the PUCLDR could not be sustained. Gradually, the organisation became defunct as some of the members of non-Congress parties became part of the power structure and abandoned PUCLDR activity. This loss of membership, as well as the death of Jayaprakash and the loss of its original focus with the lifting of the Emergency and the release of most detainees, left the PUCLDR without a well organized membership, an effective leadership or a clear vision of programmes. However, during this period it organised two very important investigations into the fake encounters in Andhra Pradesh and Punjab. It, also, actively opposed Prime Minister Charan Singh's attempt to have provision for preventive detention included in the Criminal Procedure Code.

The Janata government's downfall and the assumption of power by the Congress(I) under Indira Gandhi in 1980 created apprehensions that civil liberties would once again suffer erosion. The government amended the Preventive Detention Act within months of its coming into power. It was then felt once again that a permanent organisation to

defend civil liberties was necessary. However, the experience of 1977-79, when political parties had lost interest in PUCLDR as they had ascended power even though the fight for civil liberties was still necessary, was recalled. It was believed that the old basis could not be retained for setting up such an organisation (Know PUCL, 1992 : 4)

Effort was made in the preparatory stage to consult all the opposition parties and all the existing civil liberties groups in order to render the proposed organisation as broad based as possible. The result was the development of mutual understanding among various parties that the new organisation would remain non-partisan and that mutual cooperation among various civil liberties groups was necessary. An 'All India Civil Liberties Conference' was organised in New Delhi on November 22-23, 1980. The Conference attracted more than 400 members and in it the PUCLDR split into two organisations-Delhi based People's Union for Democratic Rights and a national People's Union for Civil Liberties. PUCL adopted a new Constitution (See appendix no. 1) and elected V.M.Tarkunde as President and Arun Shourie as General Secretary. Under the new constitution it was laid down that members of political parties would not be eligible for election to the offices of the new organisation, nor would their representation in its bodies be predominant.

According to its Constitution the aim of the PUCL is to bring together all those who are committed to the defence and promotion of civil liberties in India. It wants to uphold and promote, by peaceful means, civil liberties and the democratic way of life throughout India. It also aims to secure recognition to the principle of dignity of the individual [Art. 2 (a) & (b)].

To achieve the above aims, the PUCL has planned certain steps. First of all, it is in favour of constant review of penal law and the criminal procedure with a view to bringing them in harmony with humane and liberal principles. The PUCL also works for the withdrawal and repeal of all repressive laws including preventive detention. The PUCL is in opposition to police excesses and use of third degree method and it demands prison reform [Art. 2 (c), (d), (k) & (l)]

The PUCL has full faith in democratic principles and hence it encourages freedom of thought and defends the right of public dissent. As, in any mass society the mass media is like the eyes and ears of the people through which not only people come to know about

different things but also they shape their perception regarding different phenomena. So, the PUCL wants to ensure freedom of the Press and independence of mass media like radio and television [Art. 2(e) & (f)]

The PUCIL is also sensitive to the role of the judiciary in a democratic society. Hence, it favours the rule of law and independence of the judiciary. To make it more meaningful it works for the reform of the judicial system so as to remove inordinate delays, reduce heavy expenses and eliminate inequities. It also strives to make legal aid available to the poor and to make legal assistance available for the defence of civil liberties [Art. 2 (g), (h), (i) & (j)]

Human rights in a society can be achieved in real terms only when the society is based on equalitarian foundation. The PUCL, for the reason, opposes discrimination on the group of religion, race, caste, sex or place of birth. It also tries to combat social evils which encroach on civil liberties, such as untouchability, casteism and communalism. It takes special care in defending the civil liberties of the weaker sections of society and of women and children. It also does all acts and things that may be necessary, helpful or incidental to the above aims and objectives [Art. 2 (m), (n), (o) & (p)]

MEMBERSHIP

As far as membership of the PUCL is concerned every adult person shall be eligible to be a member of the organisation if he/she believes that civil liberties must be maintained in India, now and in the future, irrespective of any economic and political changes that may take place in the country [Art. 3(a)]. Member of political parties will be entitled to be members of the organisation in their individual capacity if they subscribe to its aims and object. They will have all the rights of membership except that the President, Vice-President, General Secretaries, other secretaries and Treasures of the organisation or any of its branch shall not be a member of any political party. Secondly at least one-half of the members of the National council and National Executive Committee and of corresponding bodies at the state and local levels, shall be persons who are not members of any political party. Thirdly not in any case, not more than 10% of the member of the National Council and the National Executive Committee, and of

coresponding bodies at the state and local levels shall be members of any political party [Art. 3(b)]. To maintain proper checks and balances the National Council will have the right, by a two-third majority, to refuse membership to any person or to remove any person from membership. The Council of a State branch will have similar right in the respective state [Art. 3 (e)]. With some restriction even institutional membership (not political parites or groups affiliated to them) is allowed [Art. 3(a)]. Thus we find that a proper balance and distance from all political parties is maintained, so that there is no possibility of any bias in its functioning.

NATIONAL CONVENTION

A national convention of the PUCL is being held once in two years in which it reviews the work of the organisation and lays down policies and programmes for the furture. It also elects the President, one or more Vice-Presidents one or more General secretaries, one or more Assistant Secretaries and Treasurers for the ensuing term. Till date its Presidents were : V.M.Takunde (1982); Rajni Kothari (1984); Rajinder Sachar (1986, 1988, 1990, 1992, 1994). Its General Secretaries were Arun Shourie (1982, 1984); Rajni Kothari (1982); Y.P.Chhibbar (1984, 1986, 1988, 1990, 1992,1994) Dalip S.Swami (1986, 1988). V.M.Tarkunde was named Advisor in 1986.

THE PUCL'S BRANCHES

The PUCL is able to maintain its national character by following the policy of federalism. With the sanction of the General Secretary, who in this matter acts in consultation with the President, member of any state may set up a state branch. A state council and State Executive Committee of the State branch are elected at a convention of the members of the organisation in the state. The convention also elects the President and other office bearers of the State Branch. A fine balance in financial relationship is maintained between state branch and National Office (Art. 7)

Whenever some important situation develops affecting the liberties of some individuals, or a group, or the common people, the branch of the PUCL tries to ascertain

the facts before taking any action or committing itself to an action taken by some other group or organisation. Here care is taken that the PUCL does not become involved in activities of the political parties or groups. If some incident takes place that is of wider importance then action is organised at a wider level-state and/or national level. Coordination of activities with State and/ or national office is always maintained. Care is also taken that one local or state branch does not take initiative on a problem lying in the domain of any other local or state branch unless advised by the national office at Delhi to do so. (Know PUCL, 92 : 11)

FINANCES

As the PUCL works at the grass-roots level, it always faces severe financial difficulties. However, it is a policy decision of the PUCL not to accept any funds from abroad. The decision, although creates some financial problem has great significance and clears any doubts about its motives. All its finances are raised through members and sympathisers by way of membership fees and donation. Members of investigation teams bear their own expenses. Besides, all active members and office bearers have to spend from their pocket on many other occasions also (Know PUCL, 1992 : 8)

MODUS OPERANDI

In an under-developed and poor country most often it is the poor and the disadvantaged and vulnerable sections of society including woman, children, minorities and prisoners etc. whose rights and liberties are taken away. On the other hand one cannot also neglect the more abstract liberties and issues like freedom of the press and other mass-media and the independence of the judiciary. It is often difficult, and also unnecessary, to differentiate between civil liberties and human and/or democratic rights (Know PUCL, 1992 : 9). Hence, for providing a holistic approach the PUCL engages itself in all these activities and issues, although it may not be strictly related to civil liberties.

The PUCL, at the national, state or local level is actively involved in organising

protests against excesses on individuals or against government actions or laws being enacted or already enacted. It also tries to protect the liberties of individuals or groups from some private groups or some political or religious authorities etc. Educating public opinion, demonstrations, Dharnas, issuing statements to the press, going to the courts or law are some of the common, methods, that are adopted. Consequently, innumerable investigation reports, reaction, protest marches, education meetings, press statements, memoranda, election observation, publication of literature etc. are its main assets. Categorically speaking, the principal functions of the PUCL are:-

(1) To increase consciousness about and commitment to human rights among all section of our people.

(2) To provide a platform for all groups, including political parties, to come together for furthering the cause of human rights, even though the groups may have differences among themselves on other aspects of social and political life;

(3) To energise and creatively use the existing institutions like the courts and press, so that they may be sensitive to the human rights situation in India, and

(4) To intervene directly in cases where gross violations of human rights take place (Know PUCL, 92 : 10)

To promote the ideas of human rights and create awareness about the civil liberties, the PUCL provides 'Journalism for Human Rights Award of Rs 20,000 and arranges J.P. Memorial lecture on 23 rd of March every year.

For the purpose of analysis of the PUCL's work we shall take up two kinds of issues. Firstly, we shall analyse its resolutions passed at different national conventions and at the national council. These resolutions would provide us an insight into the works or ideas the PUCL is pursuing, struggling or working for. Secondly, we shall analyse its reports. Whenever any major violation of human rights or civil liberties takes place, the PUCL constitutes a fact-finding team which goes into every aspect of the issue and then provides a comprehensive report. Here, for our research purpose, we would concentrate just on those reports which have been published in the 'PUCL Bulletin'. These reports would provide an idea regarding the spectrum of PUCL's work and also how PUCL feels these violations can be checked or what should be done if any violation has taken place.

RESOLUTIONS PASSED BY THE PUCL

Bombay, 1981

The first meeting of the national council of the PUCL was held in Bombay on July 4, 1981 which passed some resolutions directly related to freedom and liberty. It opposed any kind of restriction on the freedom of press on the part of government through pre-censorship, news management, newsprint and advertisement allotment, physical intimidation and pressure on owners and editors and requested Press to unite to face any such attempt. The interference of executive (through appointment, transfer and promotion of judges) in the judiciary was opposed. It demanded cultural freedom and opposed pre-censorship in the area of dramatic performances. The PUCL was totally against any kind of preventive detention in peace time (like N.S.A) as it felt that these are to suppress legitimate exercise of civil liberties. It condemned detention without trial of any person who has not been found guilty by a competent court of law. The Karnataka government's decision to intercept, mail of certain citizens was criticised and the government was urged to stop these unhealthy practice which are destructive to human rights. The ordinance bannings strikes in essential services was also criticised as the PUCL felt that it takes democratic rights of the workers and provides extra-ordinary power to ordinary police officers. The PUCL also clarified that it is against lawlessness and recourse to violence by any person or group (PUCL Bulletin, Vol-1, no-3, July 1981 : 3-5)

Madras, 1982.

At the Second Annual conference held on 6-7 March 1982 in Madras, the PUCL reaffirmed its faith in democratic and non-violent path, and opposed any kind of preventive detention in peace time. Some social issues were also raised. Repression of weaker sections of society through police and vested interests and the increasing criminal assault, sexual exploitation, discrimination on the basis of sex, discriminatory

social customs and practices against women were condemned and the government was urged to take the corrective measures. The Government of India was requested to ratify the UN Convention and Protocol on Refugees. Continuous proclamations of order under Section 144, which prohibits the holding of public meetings, taking out processions and making peaceful demonstrations, by some states was criticised. It also proclaimed that there is no law authorising any government or authority to pass 'Shoot at Sight' orders. A grave concern was expressed over the growing dehumanisation at the Police Forces which frequently resort to different sort of excesses and fake encounters. It believed that criminals should be punished through the due process of law and no body should take law into his/her hand. Grave concern was also expressed on the deteriorating condition in jails and police lock-ups. The PUCL expressed its deep concern on the growing erosion of academic freedom on university campuses and erosion of civil liberties and democratic rights in Tamilnadu by the state government. The government was urged to check this tendency [PUCL Bulletin -2 (3-4) March April 1982 : 2-7].

Bombay, 1983.

On Dec 30, 1983, a meeting of the National Council of PUCL was held at Bombay which decided that in cases of flagrant police excesses the local branch should organise demonstrations with the participation of the members of the bar, teacher, journalists, etc.. Preparing an investigative report in such cases was decided in this meeting and this became, as we would see later, the most important and powerful tool of the PUCL in future. Seeking relief in specific cases of illegal detention, tortures and death was also decided. Taking follow up actions on the fate of the strictures passed by the Supreme Court and enforcement of its orders was to be another activity of the PUCL [PUCL Bulletin 4 (2), Feb. 84 : 2-5].

Jabalpur, 1984

The Third National Convention of PUCL was held at Jabalpur on April 20-21, 1984 which decided to start a branch of PUCL in each district of India. The branches would

pay special attention to safeguard the liberties and democratic rights of the exploited section, women, SCs and the lower strata of peasants and agricultural labours and also the activists working among them. Creating awareness for their liberties and democratic rights among people would be another goal. Attempts would be made to involve women and youth in its activity (PUCL Bulletin, 4 (6), June. 1984 : 2-6). Thus, we find that the true mass character of the PUCL and its concern for the lowest rung of the people who are most helpless and whose rights are violated most emerged clearly after this meeting.

Delhi, 1987.

On January 31 and February 1, 1987 the National Executive Committee meeting of PUCL took place in Delhi in which it was decided that although the PUCL is to protect the civil liberties of the people, it would not align with any political party. It opposed all sorts of violence from any source and committed to fight for the due process of law for everyone. It expressed deep concern at deaths by police firing or in police custody and urged government to conduct judicial inquiry to publish immediately its report and to punish the guilty officers. [PUCL Bulletin 7 (3) March 87 : 8-17]

Jaipur, 1988

The biennial National Convention of PUCL was held at Jaipur on 3-4 September, 1988 which demanded (1) repeal of 59th amendment (giving power to impose emergency in Punjab), NSA, TADA, Terrorist Affected Areas (Special Courts) Act; Punjab Armed Forces (Special Power) Act, Indian Telegraph Act, the Hospital Bill and the Defamation Bill (2) release of all those detained without trial including the leaders and workers of Akali Party and others detained in Jodhpur and elsewhere (3) codification by Parliament of legislature's privileges and Press freedoms on the Karnataka pattern (4) autonomy of Doordarshan and All India Radio (5) filling up of all vacancies in the High Courts and the Supreme Court and adoption of a fool proof method that the same is not influenced

by the executive (6) repeal of all laws or ordinances which infringe upon the powers of the judiciary at any level (7) granting of statutory powers to the minorities commission, women's commission and SC/ST Commission at union and state levels-by constituting them wherever these bodies do not exist so that they have the quasi judicial power to enquire into all cases of atrocities and denial of civil liberties (8) creation of a judicial 'Civil Rights Commission' consisting of retired judges of High Courts, and adoption of a law that in case of police firing, torture or death in police custody, communal or caste riots, criminal assaults on women by police or other para-military forces or any other similar occurrence, the commission should suo - motto enquire into such happenings and (9) expansion of the list of Fundamental Rights to include the right to information [PUCL Bulletin,8 (11),Nov. 1989 : 14-24]

Thus, we find that the PUCL has opposed all those laws which restricted civil liberties. It favoured making different institution of democracy stronger. A demand of 'Civil Rights Commission' was made for the first time. The genesis of present 'National Human Rights Commission' can be seen in this demand. The PUCL also felt that the people's assertion and mobilisation would have to be accompanied by their sustained education about civil liberties. The poorer section of society, in particular, who are vulnerable and remain exposed to exploitation and injustice can fight for their economic, social and human rights only when their civil liberties are secured. So, the PUCL decided that this would be its primary concern in future.

Delhi. 1989.

The next meeting of the National Council of PUCL was held on May 27, 1989 at Delhi. In this meeting it was decided that out of the twelve points, that were finally formulated by CFD, 'Sampoorna Kranti Morcha' and the PUCL for the political parties, only seven were within the scope of the work of the PUCL. The main purpose behind the whole exercise was to create public pressure on the political structure and to try to commit the political parties to them. These were-(1) the constitution should be amended to make the right to work a fundamental right. There should be a Central Law embodying

an employment guarantee scheme (2) repeal the 59th constitutional amendment (3) repeal of the Terrorist Areas (Special Courts) Act, the TADA, the NSA and other black laws (4) placing Radio and T.V. under autonomous bodies (5) amendment of Article 19 (1) (a) of the constitution for specifically safeguarding the freedom of the Press, (6) codification of the privileges of the legislature and the Parliament, and (7) to end interference of the Executive in the appointment of High Court and Supreme Court judges and Chief Justices so as to maintain the independence and dignity of the judiciary [PUCL Bulletin, 9 (7), July 1989 : 9-12.

Out of these seven demands, some of them are quite old which the PUCL has been consistently demanding since its inception. However the government has not responded to it positively. So, it was decided to send this list to all political parties. These demands remain the demand of PUCL of quite a long period of time. In fact, till today, except one demand i.e. abrogation of 59th amendment, no other demand has been accepted in the real sense.

The meeting, however, also passed the resolution that the government's attempts to abridge the power of parliament by not presenting the Comptroller and Auditor - Generals' report (on Bofors) is condemnable. Discontinuation of the practice of appointing opposition MPs as chairman of all finance committee was criticised and detention of any person (including Prakash Singh Badal) without trial was opposed.

Pune, 1990.

The biennial National Convention of PUCL was held on May 26-27, 1990 at Pune. It adopted in total thirteen resolutions. Demand for free and fair election by providing deterrent for those who indulge in booth capturing, intimidation of voters and appeal in the name of religion, caste or race and use of money and muscle power was made. Discrimination against women and the increasing atrocities on them in form of dowry-death, rape and molestation was condemned. It demanded that the Muslim Women's Protection of Rights on Divorce should be repealed so that, like earlier, Muslim divorce women may ask for maintenance from their husbands. Religious orthodoxy and obscurantism which have been hampering freedom of expression and personal liberty

besides unnecessary restraint put on women and weaker sections' was opposed. The Central government was urged to enact laws to end Bohra Muslims' indignities and sufferings perpetrated in the name of religion. The PUCL expressed concern on the legal process which has become expensive hyper-technical, dilatory and prone to corruption and demanded immediate steps so as to give to citizens a prompt, economical and efficient system of delivery of justice. The government was urged to take the responsibility of rehabilitation and compensation to those who have been affected by dams, irrigation projects and any such developmental schemes. Concern was expressed on winding up of different committees and commissions by Janata Dal government and extension of President's rule in Punjab. The repressive policy adopted by Governor Jagmohan in Kashmir was criticised as the PUCL felt that it is converting the alienation of the Kashmiri Muslims into bitterness and hatred against India and increasing the military. It demanded for a democratic approach and prevention of Indo-Pak war. Regarding North-East, it requested for repeal of Armed Forces (Special Powers) Act 1956. The PUCL urged that there should be some mechanism to respond to the greivances of people, the absence of which leads to the growth of violence, terrorism and insurrection [PUCL Bulletin, 10 (7), July 1990: 16-25)

Lucknow. 1991

The next PUCL National Council meeting was held at Lucknow on July 27-28, 1991. In it the demands on electoral reforms, judicial reform, weaker sections and solution of problems of Punjab, Kashmir and North-East were repeated. It demanded for right to work, right to education, right to information and transparency. It objected to the loop holes of anti-defection law which were/are being exploited by opportunists and unprincipled politicians. It requested that a basic law of political parties be framed and the term defection should be properly defined. Also members should be given the right to dissent [PUCL Bulletin, 11 (9), Sep. 1991 : 18-24)

Bombay, 1992.

The biennial National Convention of PUCL was held at Bombay on Oct. 31 & Nov. 1992. It condemned - (1) humiliation and assault on Dr. B.D.Sharma for leading the agitation on behalf of the tribals for shifting a proposed steel plant from Jagadapur, M.P. (2) Bombay police brow beating the General Secretary of the Bombay PUCL, Yogesh Kamdar, for organising the National Convention (3) Tamilnadu government in using the police machinery in attempting to destroy the community's resources, private and personal belongings, residential houses etc. of the people including Dalits and Tribals (4) removal of a principal (Ms Nafisa Diwan) of Bohra's Girls' High School as she allowed a depiction of Hindu family on Independence day Cultural Programme by Bohra trust. The PUCL demanded for her reinstatement and reforms in Bohra community. The convention demanded that the government should take expeditious action to initiate proceedings to punish the guilty for 1984 massacre in Delhi (PUCL Bulletin, 13 (4), April 1993 : 12-13)

In this way we find that the resolutions passed at the National Convention or National Council are indicative of the state of affairs of civil liberties and human rights and their violation. Its resolutions are like a 'Sensitive Index of Human Rights'. Through the analysis of these resolutions we can have a broad idea about the prevailing human rights situation in India. Its demands are also indicative of the direction in which further steps are required to improve the human rights situation.

The resolutions passed by the PUCL can be divided into two categories - One, those having short-term effects, and two, those having long-term effects. The earlier are related to the particular incidents which took place in that or preceding year, whereas the impact of latter persists over a period of time and they are mostly related to the structural and cultural features of the society. Hence, this latter variety is more important and the response of the government to this creates differences in overall human rights affairs.

When we analyse the response of the government over a period of time, we find that some steps have been taken to positively implement some resolutions viz - repeal of 59th amendments, restoration of democracy in Punjab etc. whereas in case of

most of the resolutions the government has adopted an attitude of indifference. On the other hand, in some cases viz - right to work - the situation has moved in quite opposite direction. So, for the PUCL, it has been a mixed bag of success and failures.

INVESTIGATIVE REPORTS OF THE PUCL

(1) THE POLICE

While monitoring the human rights situation and violations the maximum attention of the PUCL has gone to the Police. In the post - independence India, the police, which is supposed to be safeguarding human rights, has become the biggest violator of human rights. The major forms of violation include police firing which is mostly unrequired, torture which is not permitted as per the law, deaths in custody, encounters, repression of democratic movements, collusion with vested interests, role in communal conflict and misuse of criminal penal code for their own benefit etc.

The Police is taking the law into their own hands and physically exterminating individuals, increasingly, all over the country. Political and social dissent, enmity, a misunderstanding and at times even suspicion has activated the police to kill. Paradoxically, this is the response of the state to the growing assertion for democratic rights by the under-privileged and exploited. This assertion has emerged from a basic contradiction between democratic aspiration created by the rhetoric of the state and the socio-economic reality where in the process of development has benefitted a few and has led to growing inequity and exploitation. It is a fact that not all policemen are brutal and lawless, and also that not all who are killed are innocent. But this gruesome torture and extermination has no parallel in independent India.

Fake Encounters

Throughout the country, from the liquidation of extremists in Andhra Pradesh and Tamil Nadu to the killings of dacoits in Uttar Pradesh and extermination of political

dissenters in West Bengal, the encounter has become the modus operandi of murder in cold blood by the police. Encounter initially implied an armed confrontation where fire was exchanged and in the ensuing shooting, people were killed. Since the seventies, it represented, in most cases, the taking into custody of an individual or a group, torture and subsequent murder. The death generally occurs as a result of brutal torture or a stage-managed extermination in an appropriate area. An official press release then elaborately outlines a confrontation, an encounter where the police claim to have fired in 'self-defence'. There have been, the PUCL pointed out, over six thousand such deaths between 1979 to 1981. The police and its agents have not spared using the most brutal method to liquidate inconvenient individuals [PUCL Bulletin, 2 (3-4), March April 1982 : 9]

The PUCL feels that encounter killings are blot on the civilized consciousness of our country which must stop. Every citizen has a right to live and to be tried before a court of law. The police have no right to take a life. The bias of the authorities lies in the fact that they consider protests emanating from socio-economic disparities as a law and order problem. But the executive cannot take law into their hands. If the encroachment of the executive into the judicial realm continues, it is bound to result in graver injustice, and seriously undermine the foundations of our democracy.

From 1979 to 1982, the police encountered 145 citizens in the name of dacoits in Banda district of Uttar Pradesh alone. The PUCL's investigation revealed that mostly poor persons involved in militant politics and activists of voluntary organisations have become victims of these encounters. A remarkable feature about these encounters was that they were one-sided neat and clean operations. In 297 encounters 145 dacoits were killed, but there were just four encounters in which the police suffered any casualties. Hardly any dacoit surrendered under seige or was captured alive. It seems that the police deliberately avoided to show any arrest or capture in the same encounter along with the dead for fear of bringing the whole encounter incident under judicial scrutiny. Second, most of the encounters took place at one or two specific spots in each police station boundary. Thirdly, many victims remain unidentified even according to police records. Fourth, the names of many victims did not figure among listed members of any gang. The case materials and background description forced the team to believe that most

encounters were not only fake but also foul. The victims' death were not an unintended consequence, rather many of them appear to be cold-blooded murders of innocent men by the police. Most of the victims belonged to the traditionally oppressed peasant communities [PUCL Bulletin,6 (1), January 1986 : 3-8].

Torture And Custodial Deaths

Death in police custody is another major way of violation of human rights. Deaths in police custody are usually the result of third degree torture to extort information or to teach the person concerned a lesson. Custody deaths are not limited to the killing of dacoits or hardened criminals as certain police officials would like to make out. Even if they were hardened criminals, the police force does not have the right to take it upon itself to personally mete out brutal punishment, ignoring with impunity every criminal law in the country. There are different reasons why some suspects are liquidated. Were they to remain alive and be produced before a magistrate, they might divulge the complicity in crime of persons considered respectable by society. These include politicians, business man and even policemen. In fact, the former two often employ the police to get rid to persons interfering in their corrupt activities.

In most lock-up deaths, the victims are the socio-economically disadvantaged, their defencelessness being a factor that goes against them. As noted in the 'Indian Express' survey of 45 deaths in seven states in 1980, not one victim was reported to have been a hardened criminal. Most were charged with puny offences like theft; sometime they were even picked up for talking to a policeman in a tone he did not like or for refusing to give him the right to way. Whenever any death occurs in police custody or lock-up the stereotype explanation is given - 'Fired at while trying to escape'. 'Other criminals fired at him', 'A mob attacked the police-station', 'We had to fire in self-defence', 'He committed suicide'. One oft-employed ploy is to 'rough up' the suspect before arresting him. This can take the form of a beating with a lathi or a nailed boot in a secluded place. It is a then convenient for them to put out the story that the suspect was injured because he resisted arrest. In many cases they arm the victim with an instrument they claim he used against them.

Most of the custodial deaths never come to light. Even if some do, they can be hushed up. If they are not hushed up, only a departmental enquiry is likely to be ordered. And senior police officials are only too conscious of the image of their department. If a judicial enquiry is ordered, the completion of the enquiry anyway takes a long time. And even if the enquiry is completed, in most cases, action is not taken against most policemen responsible for these deaths. Only a few are transferred or suspended. In the absence of any accountability, it is hardly surprising that the police inspector, also drunk with power, even goes to the extent of beating a person or shooting him to death merely because his ego has been hurt [PUCL Bulletin, 1 (6), October 1981 : 3-9].

Delhi, 1981.

For instance, the Delhi PUCL in 1981 found that Madan Lal, 18 year old son of a sweeper, was arrested on a theft charge. He was thoroughly tortured in Rajinder Nagar Police station by different means including by putting an electric heater under his feet for three and half hours which led to several burns and injuries [PUCL Bulletin, 2 (1), January 1982 : 2-3].

Punjab, 1982.

The Punjab PUCL in the beginning of 1982 found that persons belonging to different Marxist groups and their families were being detained and gravely harassed under the cover of dealing with Khalistan agitation, although these leaders have clarified that they have nothing to do with the Khalistan movement. The team also found that for the last few years the involvement of policemen in rapes, murders, kidnappings and petty crimes has increased. The murder of or suicide by any person or disappearance of a woman or child provides a golden opportunity to unscrupulous police officer to mint money. For instance, when Balbir Kaur was kidnapped and murdered to usurp her property, the police did nothing. On the other hand, when Darshan Singh was murdered allegedly by his wife and two other relatives, five other innocent persons, not connected in anyway

in this case, were arrested [PUCL Bulletin, 2 (2), February 1982 : 2-3]. In September 1989, two ladies namely, Gurmit Kaur and Gurdev Kaur were illegally arrested from their office to inquire the whereabouts of their husbands who were absconding from their home for 5 and one and half years respectively. To extract the information they were tortured in different ways by beating, roller moving etc. including by SSP Gobind Ram [PUCL Bulletin, 9 (11&12) Nov Dec -89 : 4-6, 9 & 8-9-17].

Police - Firings

Police - firing is another insensitive and inhuman method adopted by police. A look at the post - independence record of police firings on crowds - whether they were demanding one extra rupee in their wage basket as in the case of workers, or remunerative price for their produce as in the case of farmers, or protesting peacefully against a certain policy of the government or occasionally in defence of their democratic rights - adds up to an average of 100 firings every year with about as many officials reported deaths. As per law, the police should open fire only as a last resort to deal with public agitations, only after other methods such as lathi-charge, tears-gas, water cannon, rubber bullets and public warnings of imminent firing have been exhausted and its aim should be to save life, property and in self defence. Finally, its objective is to disperse the crowd, not to maim and certainly not to kill people. The police are supposed to aim their guns in such a manner as to avoid the loss of life and under unavoidable circumstances people must be shot in the leg only. But in most of the cases, it seems, the police do not adhere to these instructions and more often than not, they resort to firing, without adopting any other means, or even warning and it ultimately leads to several hapless deaths. In an analysis of 291 cases of police firing in the year 1980-81, the PUCL found that about 40 percent were linked with disturbances such as clash between two or more groups, communal clashes and threat to life and property. In contrast, nearly 60 percent were associated with popular protests or agitation. The unavoidable conclusion was that the vast majority of firings were aimed to curb agitations and silence popular protests. The PUCL feels that there should be a permanent

machinery for immediate inquiry into any police firing. In cases of unjustified firings, exemplary punishment must be meted out to the guilty officials [PUCL Bulletin, 1 (2), June 1981 : 7-15].

Jama Masjid, Delhi, 1986.

The PUCL (Delhi) investigated into the killing of two youngmen in a police firing on Friday, 14th Feb. 1986 in the Jama Masjid area. Here there were reports of harassment, repression and humiliation of residents and the administration as well as the police had sought to give a communal colour to a demonstration on the part of people against administration and their manipulation. The PUCL found that there was no riot in the walled city; but the police had cooked it up to justify its firing. Even the press did not play a balanced role. There was a nexus between police and politicians and to perpetuate their atrocities they can create any such situation [PUCL Bulletin, 6 (4 & 5) April & May 1986 : 4-8 & 18-21].

Bhojpur, 1988.

The PUCL (Bihar) team investigated police firing at Narainpur, Dist. Bhojpur on 11th May 1988 in which two persons were killed and several injured. Here, in context of a looting complaint, police had arrested one accused. But the villagers, particularly from the lower communities, gheraoed the police and demanded for his release. This made police furious and fired several rounds which resulted in deaths and injuries. The PUCL team was of the view that the police firing was absolutely unwarranted and unjustified and the inspector needlessly panicked and made a grave error of judgement in ordering the fire [PUCL Bulletin, 8, (10), Oct. 1988 : 13-19]. In another case at Bihar Sharif, another PUCL team found that an old man was wrongly arrested and beaten to death when he was passing through a road where a school was located in which the matriculation examination was going on in March 1988. In this case, the police did not take care to properly inquire and just started beating by picking up a passer-by who did not flee away seeing the police. The gravity of the situation was that although the whole

range of officials, including the special Magistrate came across during the whole episode at one point of time or another but none of them intervened in the beating process (ibid : 20-24).

Barkakana, 1988.

A PUCL (Bihar) team inquired into police firing at Barkakana on 30.10.88 in which three people died and many injured. The team found that during an excise raid at illegal liquor factory on 29.10.88 the raiding party misbehaved with many people and arrested one lady. The next day when a large number of people, some of them armed with bows and arrows, assembled near police station for getting the lady released, the procession was attacked without sufficient warning by the police. The team felt that there was no imminent danger and firing was not required at all [PUCL Bulletin, 9 (2), Feb. 1989 : 5-8].

Singauli, M.P., 1989.

Investigating into the atrocities committed on July 11-12, 1989 on the people of Singauli, Neemuch a PUCL (MP) team found that when people stoned a thanedar and constable who had injured a 12 year old boy by their motorcycle, the police resorted with lathis and then home-search began in which the police entered in many houses by breaking the door open and thrashed many people including women and children [PUCL Bulletin, 9 (10), Oct 89 : 4]

Srinagar, 1992

A PUCL (Srinagar) team inquiring into two firing deaths at Batmallo on May 3, 92 found that when a youth jumped from a three-wheeler and started running away the patrolling BSF personnels chased him and started firing indiscriminately in which a lady with her 9 month old child died. Later when BSF personnel captured the boy he was tortured to accept that he had killed the two [PUCL Bulletin, 12 (6), June 1992 : 18].

Begam village, 14 Km from Srinagar, on 6th June 1992 was cordoned off by the army and was put under crackdown. All male members were asked to assemble at an open space where some men were picked up and were tortured through different techniques to tell the name and address of militants and arm caches. During this period in several houses girls were raped by the army. However the girls did not tell any other body in order to avoid the stigma. When two army men were killed from the firing coming from a building the entire building was put under fire. This was an investigation report of Srinagar PUCL [PUCL Bulletin, 12 (8), Aug. 92 : 12-13]

Saran, Bihar, 1992.

The Bihar PUCL investigated the police firing on a demonstration on 12th Sep. 92 at Janata Bazar, Saran. The team found that the genesis of trouble was in arrest and subsequent disappearance of Manoj Kumar on 16.8.92 who was picked up on the charge of stealing. The police claimed that Manoj fled from the lock-up by making hole with a big needle. But as this was unbelievable, the Indian Peoples Front organised a demonstration on 12 Sep. 92. On this day, around 1000 persons assembled, and there was some case of brick batting at the thana. At this the police fired 18 rounds without issuing any warning [PUCL Bulletin, 12 (12), Dec. 92 : 20-24].

Mahind, Srinagar, 1994.

Srinagar PUCL in an investigation found that on 18/19th of March 1994 the army personnel after the blast retaliated by blasting three houses in Mahind village. As a result seven men and some animals were burnt alive. The villagers were collectively punished by being prevented from going to their orchards and fields to carry on with their day to day work [PUCL Bulletin -14 (15), May 1994].

Dharampuri, Tamilnadu, 1994.

A fact finding committee of Tamilnadu PUCL that visited Dharampuri district on

Jan. 10-12, 94 to investigate into alleged police excesses and human rights violations found that the local police and the Q Branch police have been indulging in extensive terrorising of villagers in this area. There were regular nightly raids, vulgar abuses on women, beating of people and destruction of house hold utensils and other belongings, widespread arrests of both men and women, prolonged illegal detention which in some cases extended to three weeks, severe torture in police custody and implication in false cases. [PUCL Bulletin, 14 (3), March 94 : 15-20]

In this way we find that paradoxically today the police has become one of the biggest violators of the human rights. As there reports suggest, ^{more police and} more and other functionaries are trampling on law and legalities under their feet with impunity. There may be some compulsive reasons, like they are not well paid and their standard of living is very low, they do not have any better prospects in terms of promotion, increase in salary, they are not well equipped, they work under constant pressure, sometimes they have to achieve results within a stipulated time and they have violent tendencies like any other member of society, but these reasons cannot be used as excuses, other wise, there would not be any difference between police and criminals. Also they have to act as trend setters and if they themselves are not following laws then they cannot expect from others to follow the laws. Unfortunately, however the reality is not like this. What is more sad is that if the smallest of the functionary flouts a legality or commits a criminal action and there are protests, the total might of the state comes behind him to protect him. Fabrication of incidents, false cases, construction of spurious evidence, and what not is done shamelessly. Such act are justified on the ground that maintaining the morale of the functionaries is necessary. That maintaining the morale of the people is also necessary does not seem to occur to anyone. The suggestions of the PUCL in these cases, in most of the cases, were to conduct judicial inquiry, to penalise the responsible guilty officer and to pay Higher compensation to the victims of violations.

(2) JAIL CONDITIONS

Inquiring the role of Jail in preserving or violating the civil and human rights the PUCL conducted a study in Tihar Jail, Delhi, Sakchi Jail, Jamshedpur and Arrah Jail, Bihar. The study found that the condemned section of our society has also been the most neglected one. The prisoners in Indian jails continue to live in conditions with which his counterparts elsewhere were put up at the turn of 20th century. In India most of the jails were built in the nineteenth century or, at the turn of this century. They are in a state of disrepair and are over crowded. In most of the jails the actual population of the prisoners far exceeded the authorised accomodation. Some of the major problems of jail were - imprisonment of an overwhelming number of under trials, many of them being held in custody for long periods, lack of accommodation - over crowding, bad food and an almost complete absence of medical facilities. While hardened criminals were very few, severe restrictions were placed on almost all prisoners. The whole approach was retributive, rather than reformative, prisoners demanding better treatment for themselves had received lathis and bullets. Rampant corruption in jail administration and low wage scale of the jail staff, lack of resources for jail administration were the other problems.

The Poor As a Victim

The PUCL felt that not all violaters of law are penalised; it is the poor and quite often the innocent who are victimised. The prisoners are denied natural habitat which we try to provide even to the animals we cage in our zoos. This, coupled with the hopeless conditions in jail, affects them irreversibly. In Tihar Jail children are simply kidnapped from the streets and made to do all the menial work; the police who act in liason with the jail staff do not pick up the rich people's children. Those nabbed are the poor without a home, who sleep on the pavements or in a public park. The criminal charge against them is vagrancy.

If one is poor and has once landed in jail for whatever reason or no reason, the probability of his/her being back in jail off and on is fairly high. When one is an undertrial

and goes to the court every fortnight the people, the policemen everyday watches him. He is a criminal. He would be nabbed again, as a suspect whenever anything goes wrong in his locality. At the police lock up he would be beaten to extort a confession. It may be noted that most of those who are nabbed by the police and are unable to have themselves bailed out are the poor. Those with resources, the big criminals, the smugglers, corrupt politicians, tax evaders etc. are people who are rarely caught. Thus our institutions penalise not the violators of law, but the poor-crimes or no crime [PUCL Bulletin, 1 (7), Nov-1981 : 9-18].

After thoroughly analysing the conditions in jails the PUCL reached the following conclusion. (1) Most of the undertrials who have been in jail for long periods should be released (2) prison environments are unnatural and inhuman which leads to serious psychological disorders and even insanity. These conditions, in fact, mature petty thieves into hardened criminals. So, the habitat of the prison must be changed. (3) Presently, there is no internal mechanism to check the functioning of the jails, which remain oppressive and cruel. Suggestions like employing jail staff of high character, or the strict implementation of the jail manual do not work. Prisoners must have the right to assemble and organise into panchayats. Their representatives must be involved in decision regarding food and maintenance. (4) The supervision of the administration by prisoners can be effective only when the rights of prisoners are spelt out. There is a need for a jail manual incorporating reformatory and rehabilitative approach clearly defining the rights of prisoners. These rights must be enforceable in courts [PUCL Bulletin, 1 (7), Nov. 1981 : 13]. However, any reform in criminal justice cannot be successful until there is related reform in the legislature, the police and the judiciary.

(3) COMMUNAL CONFLICTS

Communal conflict is another item which has got more attention from the PUCL. Several investigative teams have been arranged to inquire into the incidents of communal conflict. These studies have invariably found that (1) Communal riots commonly take place in middle-sized towns (2) The proportion of Muslims in such town happens to be high, usually more than 30% (3) A section of Muslims in such town is generally well to

do and tends to be in trade, in competition with the Hindus (4) The riots now tend to be well planned and last for several days or weeks, they are no longer spontaneous outbreaks they used to be earlier. (5) The core issues are often economic or political in nature, whereas the riots are sparked off by trivial incidents.

Meerut Riots

A PUCL team investigating into Meerut riot in 1982 found that the riot started on a petty issue - probably a road accident which ultimately took the form of riot. And once the riots started the PAC (Provincial Armed Constabulary) did not play an objective role and so, too, the political parties and the Press. All of them sided with the majority community. It resulted into death of around 90 Muslims and 10 Hindus and property worth Rs 100 crore burnt down. Similarly another PUCL team found that in Baroda Riots bootleggers (Kalal, a liquor, brewing Community) and the police colluded against the Muslims, once the riot started on a trivial issue [PUCL Bulletin, 3 (11), January 1983 : 9-15]

Similarly, when riots erupted again in May June 1987 in Meerut, the PUCL team found that both Hindu and Muslim mobs had indulged in looting, arson and killing. But the response of the PAC in picking out Muslim areas and committing wanton act was very partisan. Rather, it helped the Hindu mobs in looting and burning the Muslim areas. The administration remained in a paralytic stage and did not come out in strength in meeting the challenge of the communal madness. The team felt that more sober and serious effort on the part of administration at the early stage would have checked entire happenings [PUCL Bulletin, 8.(7&8) July & August 1988 : 4-5 & 12-17].

Bidar, Karnataka, 1988.

The riots that broke out in middle September 1988 in Bidar, Karnataka, were slightly different from other riots in India. Here many houses belonging to the Hindus and Muslims where the Sikh students were residing were set ablaze and damaged. In retaliation, some Sikh business establishment were also looted and set on fire. The PUCL

team found that the real reason for this riot was accumulated anger of the non-Sikh over alleged immoral behaviour of the Sikh students who were indulging in anti-social activities like goondaism, hooliganism, eve-teasing and the like. Most of the students studying in a private Engineering college belonged to the Sikh Community hailing from Punjab, Haryana and Delhi. Coming from affluent families with large sums to squander and being physically and emotionally uprooted from their family background, a section of the students resorted to all kinds of licentious behaviour. The lives of the common people in the pockets where these Sikh students were residing were reported to have been unbearable as they were terrorized and intimidated. Specially, the womenfolk felt very insecure and apprehensive of the Sikh students. So when people heard of the sanction of a new medical college, they became more apprehensive and in this situation a slight provocation proved to be the beginning of a big holocaust. The administration did not act immediately and hence the situation went out of control in which there was mass violence and the city was ruled by the law of jungle. Arson, looting and bloodshed became rampant [PUCL Bulletin, 9 (1), January 1989 : 4-5]

Bhagalpur Riot, 1989.

The Bhagalpur riots, that broke out in November 1989 were investigated into by a PUCL (Bihar) team which found that the primary cause of riot was tension created by 'Shila-Pujan' as a part of Ram Janma Bhumi controversy. The Muslim community was assertive, particularly under two gang leaders - Sultan Mian and Ansari. The rumour that 500 Hindu students had been slaughtered, proved the immediate cause. The local press and police did not play a balanced role and it resulted in the death of around 100 persons. The team found that the rumour of 500 Hindu students being killed was not correct and not more than 10 students were killed [PUCL Bulletin, X (12), December 1990 : 5].

Aligarh Riots

The PUCL team investigated into Aligarh Communal riots which took place between 7 to 15 December 1990 in which 125 to 150 persons were killed. The team found

that communalised atmosphere created by Ramjanabhumi - Babri Masjid controversy prepared the background and in this situation near breakdown of the law and order machinery resulted in unchecked killing during the period 7 to 10 December 1990. There were claims and counter claims regarding the starting of riot. One version said that Muslims after Friday prayer on 7-12-90 listening to provocative speeches attacked PAC and Hindus. Another version said that a bomb was hurled at a mosque and as a result fighting started. Once the riot started, the PAC played very partisan role and although some Hindus were killed more number of Muslim were killed and their property destroyed. In this surcharged situation 'Gomti Express Killing' took place on 10 Dec. 1990 at 12 noon by stopping it near east cabin. In it Muslims were selectively killed by Hindu mobs. The situation deteriorated further when on 10.12.90 a Hindu paper 'Aaj' published a news item that 74 persons including 26 patients were massacred in Medical College Hospital, Aligarh Muslim University on 8-12-90. This news was followed by 'Amar Ujala' and 'Dainik Jagran'. Although administration and hospital sources denied any such incident, the papers continued to publish such news. The team in its investigation, found that this news was totally false. But the news had already created enough harm [PUCL Bulletin, 11 (3), Jan 91 : 13-27].

Vadanappilly, Kerala, 1992.

The Kerala PUCL investigated into the communal violence in Vadanappilly in the beginning of 1992. The team found that although communal virus is not taken very deep root and there is no much difference between Hindu and Muslim but if necessary action to check it immediately is not taken than very soon it would be under permanent divide. However, the authorities have taken very casual approach and it is seeing riot just as law and order problem in which no follow up action is being taken. The real culprits, due to political interference, are not being arrested. Whenever riots break out it is the poor people who are affected most and in riot there is chain like effect which carry over the different riots occurring at different periods of time. [PUCL Bulletin, 12 (8), Aug 92 : 18]

Seelampur, Delhi, 1992.

Reporting on violent incidents that took place in Welcome Colony and Janata Mazdoor Colony of Seelampur, East Delhi on 11 Dec. 1992, the Delhi PUCL was of the view that these violent incidents did not constitute a situation of riot. It was a vicious police operation carried out with a communal bias, with so-called Hindutva activists and local goondas with a view to unleash terror on members of the minority community. It was planned and perpetrated with the help of a mob brought from outside, organised by some B.J.P., and Congress activists and the local goondas, and aided by the police which took at least 19 lives [PUCL Bulletin, 13 (2), Feb 1993 : 14-18].

Sitamarhi, Bihar, 1992.

Sitamarhi had to face riots in October 1992. The investigative team of Bihar PUCL found that this riot was not preplanned. Its immediate cause was the anger of the member of the majority community at the sight of the idols of Goddess Durga, broken and deformed the previous night (i.e. 6 Oct. 92) during the clash between the members of the Durga puja procession and some Muslim youths who had opposed the passage of procession through Rajopatti and had attacked it. At Riga (a colony of Sitamarhi) the riots broke out due to one Md. Azim's irrational conduct in persisting in hurling filthy abuses at the Hindu community for two to three hours because the frame of his sewing machine had been damaged by someone the previous night. The riot claimed about 50 lives and both the rioters and the saviours, contrary to Chief Minister Laloo Yadav's claim, came from forward as well as backward classes. There was one unique thing in this riot. The conduct of the members of the majority community in the riot affected villages had been example for the nation to follow. Had they not taken determined stand to protect their Muslim brethren, there would have been hundreds of deaths. The practice of avoiding granting of licence to certain Hindu religious processions to pass through predominantly Muslim populated area has now become one of the major points of conflict between the majority and minority communities. The majority community perceives it as a discrimination against it and views it as a partisan act of the government

to preserve their vote bank. So, some steps are required in this direction [PUCL Bulletin, 13 (2 to 7), Feb to July 93]

In this way, we find that the PUCL has continuously monitored the violations of human rights since its inception in an objective manner and has provided thorough investigative reports which can be relied upon for any future analysis. The suggestions of the PUCL to check these communal riots have been like - a more imaginative and vigilant administration, a special riot force with proportionate representation of minorities in such force, special courts for real, speedy trials prosecution and heavy pecuniary penalty of the guilty and development of positive relationship between different communities. Probably, these measures, if adopted can help us in improving our records of violations of human rights during communal conflicts.

(4) TRIBALS, SCHEDULED CASTES AND AGRICULTURAL POORS

These are the sections of the people whose rights are violated maximum due to structural and cultural reasons. Structurally, they constitute the lowest rung of the society. So, they have to be dependent on all other sections to get their rights achieved. Culturally, also, they constitute the lowest strata in caste stratification and although the agricultural poor are not from any particular caste, the bulk of them are from tribals and 'SCs', and they have to face all sorts of deprivations as per the caste-rules. Although, the Indian constitution guarantees equality of status for all, the real achievement has been very low and slow. The tribals, in most cases, have to bear the brunt of developmental policies and industrialization which leads to land alienation and displacement. Their rights to use the forest resources have been restricted whereas other rights as citizens of India have not percolated down to them. Similarly, the 'dalits' and agricultural poor have to face the exploitation by landlords, traders, government officials, etc. Their tenancy rights have not been properly implemented and any struggle for minimum legal rights are met with repression. Sometimes, they have to face exploitation and repression just because they belong to 'dalit' community.

Because of their dominance over the government and bureaucracy, the landlords have wielded enormous power which they utilized not only to continue the oppression

of the poor but also to protect their interest in land by exploiting the loopholes deliberately left in the legislations on the land reforms. The landlords not only continued the occasional killing of the defiant poor, rape of their women, assault of their man, but also preserved their strangehold on the gairmazarua land (public land) jalkar (ponds etc. for fishing) and the land in excess of ceiling limit. They also continued to force the labourers to work on nominal wages, resort to begari (service without payment) and giving a very raw deal to their share-croppers. Laws were passed on all these issues but without the intention of implementing them. As a result, despite independence and the progressive land reforms laws, the plight of the poor has remained more or less unchanged. The tall promises made were never kept. However the tall promise made aroused their hopes and expectations but these were belied and thwarted with fraud and force.

In this prevailing situation those who are working for the uplift of the poor and exploited have everywhere to contend with an unholy alliance between the propertied sections of society, the local burecaurcy and the local police. Whenever a social worker champions any cause of the poor such as the demand of minimum wage to agricultural labour or the distribution of agricultural land according to the local Ceiling Act his efforts are thwarted by a combination of landlords, money lenders, government officials and the local police. He and his active supporters from the deprived sections of society are harrassed in various ways. A large number of false cases are filled against them in different courts, they are frequently arrested and ill-treated by the police and they are physically attacked and beaten up at the smallest excuse. These points are proved in several case studies conducted by the PUCL.

Banjhi Massacre

For instance, in May 1985 tribals of Banjhi village near Sahibganj, Bihar were attacked when they were protesting against the killing of a tribal youth on the question of fishing rights, in the village water-tank. The police openly connived with the

moneylenders and traders and attacked the tribals without any provocation in which around 60 tribals, including ex-M.P. Anthony Murmu, was killed (The Banjhi Massacre, PUCL, 1985)

Uruda, Orissa, 1987

The PUCL (Orissa) in its investigation found that on 23 Dec, 1987, the peaceful innocent and helpless tribal women living in village Uruda, Ganjam district fell an easy victim to the inhuman and brutal atrocities illegally committed by the policeman attached to the Garbandha police station. The policemen illegally entered into many houses during midnight and raped young girls and looted their valuables [PUCL Bulletin, 8 (3), March 1988 : 13-14].

Maddimada Firing

A fact finding committee of PUCL (Andhra Pradesh) went to Maddimada to inquire into the firing incident on 24th April 1988 in which one tribal was killed and four received bullet injuries. The team found that when the tribals stopped offering bribes to corrupt forest guard the local forest officials, the forest chowkidar, thana Subedar etc. did not like this. Hence, they were in a mood to teach tribals a lesson on one pretext or the other. During this time, Integrated Tribal Development Agency set about a plan for getting 10,000 houses constructed for the tribals. In this context when tribals began falling trees and bringing in timber for construction of houses, the forest officials looked at it as an opportunity to teach the tribals to behave themselves. The forest officers along with the police, went to the village fully prepared to teach the tribals a lesson. They took the first opportunity to lathi charge the women and when angry youth resorted to slight stone-throwing they brutally and inhumanly fired upon them [PUCL Bulletin, 7 (6), June 1988 : 5-7].

Ghantali, Rajasthan

A PUCL team visited Ghantali, Banswara Rajasthan where members of some voluntary organisations, viz, Sacketak, Prayas and Rajasthan Kisan Sansthan, who are working for the uplift of the tribal, rehabilitation of bonded-labours and proper implementation of government programmes besides education and health facilities, were attacked. The team found that the attackers were sympathetic to the Vishwa Hindu Parishad (VHP) and the Bharatiya Janata Party (BJP) and they were not liking the work being done by these voluntary organisations as it was going to hamper their economic interest. So, these people in the garb of religion and in the so-called fear psychosis of conversion to Christianity mobilised the tribal peoples and attacked them and looted their belongings. The police, too, acted in partisan manner and did not take proper action against any person [PUCL Bulletin, vol-8 (12), & 9(1), December 1988 & Jan. 89 : 14-15 & 19-21].

Dharmapuri, Tamilnadu

The Tamilnadu PUCL investigated into atrocities perpetrated by police and forest officials in a tribal village Vichati, district Dharmapuri, Tamilnadu on 20-21 June 1992. The villagers were, here, accused of sandalwood smuggling and forest officials claimed that when they raided the village two people were cutting a sandalwood tree and seeing them they fled away toward the village. The forest officials tried to follow them but lost their track. They inquired from some villagers but as the villagers could not reply, the forest officials started beating them. On hearing this some other villagers rushed to the spot and a scuffle followed in which the forester fainted. However, the forester was safely brought to the hospital. But then in second half, 400 policemen and forest officials suddenly burst into the village. Without any warning, they suddenly assaulted the villagers. Men and women were mercilessly beaten by the Police. 18 girls were taken in a lorry. Apart from being subjected to obscene verbal abuses, their blouses were ripped. The officials used their stick and hands to prod their breasts. Sticks were shoved up their vagina. The forest officials were systematic in destruction of property of villagers. Roof

tiles, door box, music instruments, utensils, cycle, pumpsets etc. were broken, grains were scattered and mark sheets, ration card, photographs etc. were ripped apart. The PUCL team was of the view that that amount of the sandalwood smuggling alleged was so big that it cannot be carried out without the connivance of forest officials and police and, in fact, it was being done by them only. But just to show the others that the forest and police officials are active they tormented the villagers. [PUCL Bulletin, 12 (10), October 1992 : 14-15, 18.]

SCHEDULED CASTES

Jehanabad Massacre

The PUCL conducted a comprehensive study of violence in Jehanabad, Bihar, rise of Communist Party of India (Marxist - Leninist), its causes and its effects after the massacre of 'SCs' of Nonhi - Nagwan in June 1988. The PUCL team found that land reforms have been totally unsuccessful and most of the lands were in the hands of a few landlords who were mostly from the higher castes viz. Rajput, Bhumi-har and middle castes such as Kurmi and Yadav. Particularly that latter two castes were more violent in their approach as they have recently acquired vast amount of property and they were willing to maintain it at any cost. They were more in forefront to punish the lower castes, particularly the 'SCs', if they demanded minimum wages of bigger share in share-cropping. Kurmis have formed 'Bhumi-Sena' and Yadavs- 'Lorik Sena' whereas 'Kunwar Sena' and 'Brahmarishi Sena' were the private armies of Rajputs and Bhumi-hars respectively.

In this situation, the arrival of CPI (M-L) groups which took a genuine interest in securing for the 'SCs' minimum wages, the gairmazarua land, fishing rights and a fair share in the produce of the share-cropping land was a new experience in sharp contrast with the experience 'SCs' had with others representing the privileged. The CPI (M-L) groups had a great appeal also for a different reason. They not only fought for their material interest but also for their honour. For a section of society which had been trampled under the feet of the Zamindars and landlords for centuries in utter

helplessness, it was novel and heady to find an organisation standing by them and fighting a tooth for - a - tooth and an-eye-for-an-eye battle with their mighty oppressors. The Naxals met the violence of the landlords with violence, struck terror in their hearts and won the admiration and following of the rural poor. The 'SCs' and the other downtrodden developed instant sympathy for these groups for they not only fought for them but also produced instant result.

Thus the appeal that the CPI (M-L) groups have for the poor masses is rooted in the gains that they have made by follow them. Their social exploitation had almost ended, their women can no more be molested by the landlords. They can no longer be forced for 'Begar' neither can be forced to work against their wishes. This gives them a sense of pride and confidence as an individual which they had not known in the past. Additionally, their wages have gone up since now they are organised. They are not only in a better bargaining position but are in a position to act with freedom for the fear of reprisal from the landlords. Besides these they have a places occupied gairmazarua land, acquired fishing rights in Canals and ponds and are receiving a better deal as 'share-croppers.

However, as there were several groups of CIP (M-L) viz, Indian People's Front (IPF), Mazdur Kisan Sangram Samiti (MKSS), Party Unity, Liberation etc. there were inter-group fights and killing in which around 30 peoples were killed in two years and also there were instances of fire -arms - snatching from police, gun-looting from public, and killing of land lords, sometimes even innocent ones, and those people who do not agree with their view. Hence, the government of Bihar has seen emergence of CIP (M-L) as a law and order problem and had tried to crush the movement by providing more police and other infrastructural facilities to the police. In the year 1988 'Operation Siddhartha' and 'Operation Rakshak' have been started. The 'Operation Siddhartha' was meant to implement land reform and enforce minimum wage. However the officials were not optimistic about it as they felt that the lands are already divided into tiny parts. 'Operation Rakshak' was started to provide protection to people but virtually it was meant to protect higher caste - class and landlords as in both police and administration they were dominated. So, many demand on the part of lower castes was considered to be a Naxal uprising which need to be crushed whereas atrocities by higher caste were

not taken not of. The 'SCs' and other poor people coming from the lower structure of society were treated by the Police and other officials with contempt. Also because of the social background of the majority of the bureacuracy and their liason with the landlords, the victims of exploitation in the rural areas received no chance to get their oppressors punished. The choice before them was between weakly accepting murder, rape, assault and economic exploitation as their ulimate lot or taking the law into their own hands to punish their tormentors.

The PUCL team felt that the government of Bihar is fully responsible not only for the violence let loose by its police force on the people of the area (Gaya, Jehanabad, Patna, Nalanda, Nawada, Bhojpur, Aurangabad and Rohtas), but also for the violence by others by creating conditions for it. It is the primary responsibility of the state to protect the life and liberty of the citizens without discrimination, but when the state abdicates this responsibility it creates a situation in which the citizens who are threatned are compelled to fend for themselves. It is an undeniable fact that the government and bureaucracy which are dominated by the upper castes and influenced by the rural landlords have been absolutely partisan in favour of the landlords. In such sitatuation, Naxalities are treated as enemies to be killed whereas criminals as a rule do not receive the same treatment. In fact, the criminal enjoy the patronage of the ruling class in return for the service they render them during the elections. This relationship is possible as criminals do not threaten their privileged position and vital interest. So pampered is the class of criminals in Bihar that they even kill people with full impunity [PUCL Bulletin, 10 (7), July 90]

After a gap of about three years, in 1991 another PUCL team was constituted to study the killing of 14 persons, mostly activists and supporters of IPF who were from the `SCs' by the activists of the Bharatiya Kisan Sangh (BKS) who were mostly from the higher caste and class on 19-2-91. The team found that the Tiskhora massacre was not a pre-planned affair, it was an unfortunate coincidence that the group of IPF activists came across Ranjit Singh of B.K.S. who had criminal incidents and was alleged to be involved int he killings of the IPF men. Had that chance encounter not taken place there would have been no massacre at Tiskhora on that day. But once the encounter started, the killing by the mob was not at random. The mob was in search of the IPF members and supporter from Tiskhora and outside. A few innocent relatives of the villagers were

killed as they might have been mistaken for IPF men from outside the village. The police showed a monumental inaction and it allowed the BKS led mob to continue its search and kill operation for 4-5 hours together. The fearlessness with which the police allowed the atrocities to go on on 19.2.91 and the subsequent casual way in its approach to the whole episode, according to the PUCL team, may be attributed to the close relationship between Ram lakhan Singh Yadav, a leader of B.K.S. and politician and Laloo Prasad Yadav (Chief Minister, Bihar) in addition to the general hostility to the 'Naxalities' [PUCL Bulletin, 11 (5), May 1991 : 14-21].

Tsundur, Andhra Pradesh

A PUCL team visited Tsundur, Andhra Pradesh on 10.8.91 to inquiry about massacre of SCs on 6.8.91 in which nearly 20 people were killed and 10 injured. The team found that the whole episode started on a petty issue a 'SCs' boys' leg touched a Reddy boy in a cinema hall. The basic reason, the PUCL felt was that the upper caste landlords did not like the SCs asserting themselves as equals. On the day of incident, the non-SCs went out on a tractor took along with them spear, knives, axes, gunny bags, ropes etc. A police party which was posted there to enforce Section 144 informed SCs that non-SCs were likely to attack them, so it is better to run away. But as soon as the SCs fled to the field they were butchered there by non-SCs. The process of butchering, packing them into gunny bags and dumping into canal took nearly 5 hours but during this period the police, which was there, did nothing [PUCL Bulletin, 11 (10), Oct 91 : 4-5].

Marathwada Killings

The PUCL constituted a team to study two incidents in which SCs were killed in Marath^wada in mid-1991. The team found that in both cases the SCs were killed just because they were Scs and different excuses were given for the killing. In this region, the team found that, there was very strong anti-SCs feeling among the higher castes. The first episode occurred in a village Pimpri Deshmkh, East of Parbhani town in which a young

kotwal (village guard), Ambadas Saherao Savane (30) was brutally stoned to death on 16th Aug. 1991 at about 10.30 PM near the Hanumana temple. Some caste Hindu attributed his death to his bad moral character. But the team found that Ambadas was killed as he was responsible for creating a new consciousness among the SCs about their socio-economic and cultural rights which directly brought about them in confrontation with the caste Hindu who were waiting for the proper opportunity to eliminate him. Stormy night of 16th August compelled Ambadas, who was on his usual patrolling, to take shelter in the temple, a thing which is still prohibited in Marathwada region. This provided the caste Hindu an opportunity to brutally stone Ambadas to death. The another episode occurred at Gothala village on 7th September 1991 in which three persons from the SCs family was stoned to death - Satwa Kamble (father), Mohan Kamble (elder son), Rao Sahab Kamble (younger son) and the leg of Damodar was cut whereas Nagnath received serious head injury while escaping the attack. Three women from the Satva family were also injured. The Caste Hindus of the village said that the entire Kamble family had created terror for both SCs and non-SCs and that Mohan Kamble was a dangerous village goonda who was arrogant towards Caste Hindu women and harrasing them. But the PUCL team found that they were killed due to political rivalry and general disliking of caste Hindus to the emerging standard of life of SCs [PUCL Bulletin, 11(11) Nov. 91 : 10-19]

Kurunjakulam Killing

A PUCL team investigated into a case of violence on SCs in Kurunjakulam in Nellai Kallobomman district of Tamilnadu in which four young men of the Pariah sect (a 'SCs') were done to death in March 1992. The team found that in this area of Tamilnadu, untouchability is still being practised in one form or the other. However, here Pariah has made some progress in education and economy. But this is being disliked by the higher caste and they were in search of opportunity to showdown. On the issue of installation of stone statue of Gandhari Amman, a deity being worshipped by SCs, on a public land, the relationship between the two turned sour and it started deteriorating further. After this, the caste Hindus imposed the ban that Pariahs cannot cross the caste Hindu land

in order to reach their own land. The location of Pariah's land were such that it consequently became inaccessible for them and it remained fallow for the two consecutive seasons. On the issue of school and watching community T.V. set their relationship deteriorated further. Then on the March 14, 92 one old man and three youngmen who were returning after watching the film were done to death. Although police acted immediately and saved the situation from deteriorating further, it did not make any such speedy attempt to arrest the culprits [PUCL Bulletin, 12 (7), July 1992 : 9-13].

Kumher

The Maharashtra PUCL investigated Kumher Rajasthan incident on 6th June 1992 where ex-untouchable Jatavas were slaughtered like lambs before the sacrificial alter by the upper caste Jats. The whole incidence started on the question of two seats in a cinema hall for two Jatavas which the Jat gate keeper had refused to provide because of their being ex-untouchables. A heated exchange of words took place. But the rumour was spread that the Jatavas had attacked Jats and molested their women folk. On 4th June '92, a complaint was lodged to police that Jatavas had secretly collected bombs and other lethal weapons. On this complaint police rounded up 300 Jatavas on 6th June 92 and beat them mercilessly up to 12 noon - later in afternoon around 10, 000 men from 46 villages gathered and offered a 'sacrifice' of one Jatav to Goddess Chamundi and after that they attacked the untouchable with whatever weapon they had and burnt the entire village. A few police tried to stop them but their attempts were too feeble and far too short [PUCL Bulletin, 12 (10), October 1992 : 4-5, 18].

Ponnur, Tamilnadu

A PUCL (TN) fact finding team enquired into clashes between Sengunthar Mudaliars and SCs (Adi-Dravidas) at Ponnur village, Thiruvannamalai district on 7th and 8th November 1992. The team found that the genesis of dispute was use of a common public land near a temple which was denied to SCs for conducting a public meeting by

Sengunthar Mudaliars as the practice of untouchability was on a wide scale in Ponnur. And on this issue, when the SCs retaliated there was incidence of large scale police assault in which their personal property and common resources were destroyed and their women folk were subjected to verbal abuse, physical violence and sexual attack [PUCL Bulletin, 13 (4 & 5), April and May 1993 " 20-23 & 20-22].

Jagdishpur, Buxar

The PUCL (Bihar) investigated into the killing of the three SCs in Jagdishpur village near Buxar on 12 September 92. The charge against these persons was that they were removing electrical fittings from the water-pump and there they were caught red-handed and killed up a mob. But the PUCL team found that the real reason was something else. As the SCs have become aware of their rights so they were demanding higher wages and they have started walking with their head held high. Consequently the landowners were facing stoppage of their agricultural operation due to non co-operation and protest by the labourers. Hence the landowners unitedly took this extreme step of teaching them a lesson. The district administration did not take the matter seriously and no substantial step was taken. [PUCL Bulletin, 13 (6) April 1993 : 18-19]

Kundu, Madurai

There are instances where even a demand for justified legal rights can attract the wrath of the police. A three member PUCL fact finding team was sent to Kusavan - Kundu village situated near Madurai airport. The team found that there has been a deliberate foisting of false case of memmbers of the 'Small Farmers's Association' because they asserted their tenancy rights on lands which were in their possession for the past 10 years and more [PUCL Bulletin, 2 (6) : June 82: 4].

Mettur, Salem

A Tamilnadu PUCL team visited some villages of Mettur taluk in Salem district

in the month of April - May 1993 where there were reports of police harassment of poor villagers. The team found that in the course of their operation against sandalwood smuggler, Verrappan, police had been harassing and beating villagers. Since Veerappan was a Vanniyar and since most of the villagers in these parts are Vanniyars (a poor community), it was assumed by police that the entire community was in league with Veerappan. The police were raiding the villages in groups at 10-20 past midnight or early in the morning. They usually smashed open doors, destroyed or carried away whatever they could lay their hands on and beat up the inhabitants including women and children. Women would invariably be addressed as prostitutes. There have been instances when police have prodded and pulled women's breasts, lifted their skirts and have attempted to disrobe them. Several villagers have been taken away or arrested by police and their families have not yet heard of them [PUCL Bulletin, 13 (8), Aug 93 : 8-10].

In this way, we find that the PUCL has provided several investigative first hand reports which provides an actual account of how the civil rights and human right of the tribes, SCs and agricultural poors are being violated by both members of the society as well as administration, particularly the police. It may be noted that these violations could have been discussed under the heading of the Police, but we have made a separate heading because these violations are being committed, particularly because the people at the receiving end are from a particular community. The recommendations of PUCL in such cases have been-removal of untouchability in all forms, an impartial administration, civil and police officers with competence, integrity and sympathy for the poor, judicial inquiry in case of any violence, punishment to the guilty officer and proper compensation to the victims.

(5) WORKERS - UNORGANISED AND ORGANISED

The PUCL has also given its attention towards workers-both unorganised and organised, their rights and violations thereof. The issues raised by PUCL commonly deal with the rights of slum and pavement dwellers, child labourers, miners, contract labourers at industrial sites, pollution at work place, repression of strikes etc. In India, a majority of the working people today are labouring in the unorganised sector. They are,

without exception, made to work in hazardous conditions and are paid exploitative wage. Their crucial role in the country's economy remains invisible. The state is not only dragging its feet in recognising their existence and implementing welfare measures for them, it has in fact been party to processes which have perpetuated their misery. Whether it is large scale deforestation, displacement caused by large dams, thermal power projects and other development schemes, the poor peasant and/or the tribal have been brutally thrown into the labour market which has, by and large, failed to absorb them. Women and children have been affected even more seriously as their traditional sources of sustenance and support have been eroded.

Almost no protective legislation exists for them. While the Equal Remuneration Act or the Payment of Wages Act do exist, these labourers, because of the nature of their employment (bonded, contract, casual, migrant), hardly have access to them. The few efforts that they have made to organise themselves have met with a backlash of repression, either from vested interests or from the state or from both. With the established trade unions, being equally apathetic to their existence and their exploitation they seem to be destined to struggle alone and anonymously. However, even in the organised sector the situation is not much better. Many public sector units are on the verge of closure. Others are running at huge losses which has forced them to adopt the policy of voluntary retirement scheme. In the name of market reforms many facilities are being withdrawn and new labour law is under preparation. Many more industries have been brought into the ambit of 'Essential Services Maintenance Act' which suppresses several democratic rights of the workers.

Bhati Mines, Delhi

The Bhati mines on the outskirts of Delhi represent a microcosm of these trends. In spite of the proximity of the mines to the capital, there has been almost no effort towards ensuring the safety and welfare of the workers. Even after the mines were taken over by the government, private contractors were allowed to continue their activities with a primary need to maximise production and profits, the rights of the workers were severely curtailed. Frequent deaths occurred and in spite of a plethora of legislations, both

to protect the workers from exploitation and to conduct mining systematically, illegal activity flourished.

The PUCL (Delhi) set up a committee on February 19, 1983 to enquire into the cause of successive deaths in January 1983 and even before that and working conditions of labourers at the Bhati mines. The team found that inspite of the dangerous nature of work, the miners are not paid the statutory minimum wage prescribed by the Mines Act and the Minimum Wages Act. They are bonded to the contractors from the start through loans for the construction of their jhuggis at the mine sites and for the purchase of their mules (used to carry loads up and down the pits). Interest on loans and expenditure on the mules are deducted from their wages. Women and children are also employed in direct violation of the Mines Act and employment for over 15 hours a day, throughout the week.

The method of production was extremely primitive and outdated and the unsafe conditions of working are inherent in such primitive technology. Within the existing technology, the basic precautions and safety measures were not being taken, such as provision of safety benches or staircases on the mine walls, railings around the mines and provisions of various facilities to the workers such as helmets, boots, clothes, gloves and lighting arrangements as Petromax or safety torches. The workers were in a unstable and irregular employment conditions and therefore, were always craving for any employment opportunity, however risky or unsafe it may be. The conditions of work were highly exploitative, with the workers getting remuneration which was usually below a subsistence level whereas the contractors and truck operators enjoyed huge profits while corrupt Delhi State Industrial Development Corporation officials were also illegally pocketing sizeable revenue [PUCL Bulletin ,3 (4), April 1983 : 2-10]

Workers of Sahibabad

Earlier, in middle of 1981, the PUCL (Delhi) had also sent a team to make an on-the-spot study of living and working conditions of industrial workers of Sahibabad, a sprawling industrial township in U.P. situated on the border of Delhi. The team had found that there was almost total violation of various industrial and labour laws such

as the Factory Act, covering health services, Workmen's Compensation Act, Minimum Wage Act etc. in the area. For instance, in Leatherite Industries Ltd; which was a PVC - Sheet making unit and has been classified as a plastic unit, the workers were not provided with hand gloves to protect themselves from dyes and chemicals causing skin trouble and eruptions. Wages of workers varied between Rs 240 to 350 per month (in 1981). There was no gradation of work either. The workers were designated as helpers and were made to perform the duties of skilled labour. In this way, they were denied both recognition and proper wage. Another manipulation commonly resorted to was 'break-in-service' After the workers had completed two months of service the recorded attendance of the third month of their service was shown only for fifteen days. Actually they were made to put in work for the full month. They were paid a full months wages as well. This fraudulent 'break-in-service' does not enable the workers to get confirm or become permanent. Almost similar situation was present in another industrial units.

A charter of demands presented to the employers by the workers of different factories had included, inter alia, pay rise, bonus, house allowance, conveyance allowance, canteen facility, minimum health services, sick leave, over time wages dearness allowance of U.P government rate and proper gradation of their jobs. But the demands were turned down by all industrialists. In such a situation the workers expressed their resentment by holding gate meetings and taking out processions. But the management, on its part, accused the workers of negligence and even of "go slow" in the factories. The administration obliged the management by declaring Section 144 and banning processions and protest demonstration. The police came into the picture and workers were threatened that in case of strikes, lockout would be declared and they would not get even 50% of their wages which they do by remaining under lay-off. the police also played the role in breaking the gate meetings and threatened the workers with registration of certain types of cases against them [PUCL Bulletin, 1 (7), November 1981 : 6-7].

Worker of Raipur, M.P.

A PUCL fact finding team studied police firing on a procession of about 300-400

industrial worker which resulted in death of a worker and injuries to others on May 31, 1990 at Ambhanpur, Raipur, M.P. The team found that the workers of 'Navbharat Explosive Co. Pvt. Ltd.' and 'Navabharat Fuse Co. Pvt. Ltd' were agitated over arrest of their union leader - M.K. Philip - and they had taken out a procession and were planning to sit on dharana in the compound of police station. The procession was not violent nor was it motivated to attack the police station. But with the connivance of some local people the police created a riot like situation and then fired several rounds. The firing was, according to the team, not at all required and was violative of all norms and procedures. However, even the state government failed to take any action against guilty officers. [PUCL Bulletin, 10 (8), August 1990 : 22-29]

Slum-Dwellers of Bombay

The PUCL's fight for the protection of the rights of slum and pavement dwellers has monumental significance. This can be taken as a trend - setter in human rights movement in which not only a study was done on the violation of their rights, but also cases were filled on local courts, high court and Supreme Court. Also sufficient follow-up action was done which help in protecting their rights not only at one place and one time rather several places and several times. The first case of this nature was of Bombay. On the morning of July 23, 1981, police officer accompanied by demolition squads of the Municipal Corporation of Greater Bombay descended on the pavement dwellings of Bombay's Tulsi Pipe Road. With utter ruthlessness, on this rainy day, they set about evicting the residents and destroying their huts. People were forcefully loaded to different buses to different towns like Bhusaval, Solapur, Miraj, Goa etc. in which several family got separated. The PUCL moved a petition in the Supreme Court along with 11 pavement dwellers who had suffered. The Chief Justice of India passed an order that those residing on pavements before 1976 would be given alternate land. Even the post - 1976 dwellers could not be removed unless they were shown to be obstructing vehicular traffic on the

roads. These activities brought into sharp focus the conditions and rights of pavement and slum dwellers all over the country. In many places attempts were made to organise them, to give them a voice so that they could assert their rights. Similar eviction processes at Delhi, Madurai, Patna, etc. were stopped [PUCL Bulletin, 2 (1), January 1982 : 7-12].

Child - Labourers of Sivakasi

A thorough and investigative study of the incidence and phenomenon of child labour was done by the PUCL in the year 1982 in Sivakasi. It was the largest single concentration of child labour in the world. The ages of children ranged from three and half years to fifteen years and they work as twelve hours a day in degrading and hazardous working condition. The PUCL found that the entire production of matches in Sivakasi was non-mechanised. Out of a population of one lakh workers in the match and firework industries, the combined child worker population below 15 years of age was around 45 thousand. The children, mostly belonging to the neighbouring villages, either work in small cottage units in their own villages or are brought about by organised transport to the small scale factories scattered in the neighbouring village or in Sivakasi town. Between 3 and 5 A.M. every morning, children in these villages are woken up and loaded on to buses. The transport drops them back to their respective villages between 6 and 9 P.M. The children, who put in a nearly 12 hour working day are therefore away from their home for over fifteen hours. This is against the legally stipulated four and half hours of work. In many factories some activities are fully undertaken by children below 7 years of age. The girls out-number boys three to one. In the match industries, they work in fitting frames, making boxes, counting, pasting labels etc., while in the firework industries children are employed to dye outer paper, make small crackers, roll gun-powder and pack the final product.

The working conditions in the industries are unsafe and detrimental to the mental and physical health of the child. Staying a total of fifteen hours away from home, they work in cramped environments with hazardous chemicals and inadequate ventilation. Most working children have not been to school at all. Despite these, the younger children (4-10 years) were earning an average of rupees two a day. The older children were earning

a maximum of Rs 6 to 7 per day.

A combination of historical, economic and political factors have made for the extent and perpetuation of child labours in Sivakasi. The under-developed drought prone condition of the district has made possible the recruitment of children in a growing cottage and small scale match sector competing with a multinational match industry. Inter related with the growth is the social and political rise of a once untouchable caste 'Nadar' which has now become a dominant exploitative class. The government of India in the post-1947 period, in its effort to encourage the small scale and cottage sector has given all help through an excise policy as well other infrastructures. However, in the process it has turned a blind eye to the continued utilisation of children at exploitative wage in hazardous conditions, a fact that its own jurisprudence has considered illegal. And now, with its excise policy encouraging the multinational dominated mechanised industry, the continuation of child labour is necessitated to make the small scale and particularly the cottage sector competitive [PUCL Bulletin ,3 (2), Feb. 1983 : 7-18].

Security Guards At Hamdard Nagar

Suspension of security guards at Hamdard Nagar Complex, Delhi by its management and police excesses on them on 31st March 1989 was studied by a PUCL team. The team found that a few month ago, 34 guards through their union approached the Hamdard management for confirming them as their permanent and regular employee. The management, instead of confirming them, suspended their contract and employed some other guards through some other security agency. Although, during this period, the security people have approached Labour Commissioner, Delhi Administration, nothing substantial happened. On 31st March the Delhi Police was approached both by the management and the security people but the Police acted for the management and forcefully removed the security guards from the duty at midnight. Later, they were also removed from the two rooms which were in their possession [PUCL Bulletin, 9 (7), July 1989 : 4-8].

In this we find that the PUCL has been consistently raising voice against the

violations of the rights of workers - unorganised or organised. It has been the view of PUCL that the workers have rights not only as citizens of India but also as workers and in fact there are a number of laws legislated by the government of India itself. So what we need is that these laws should be properly implemented. Unfortunately, very limited attempts have been made in that direction and probably, the instances of violations, as we have seen right now, are more than that of compliance with them. This is both due to structural conditions of the society as well as the vested interest of those people who are not at the receiving end, rather at the giving end. The recommendations of the PUCL have been - proper implementation of different laws, more sensitive and pro-poor administration and police and in case of any direct violations, a judicial enquiry, punishing the guilty officers and proper compensation to the victims.

(6) OTHERS - STUDENTS, ENVIRONMENTALISTS, PRESSMEN, ETC.

. The PUCL has also conducted several studies of those incidents in which the authority has tried to suppress or curtail the right of several other groups, viz - students, environmentalists, pressmen etc.. These members of society have got rights both as citizens of India and also as members of their own groups. Normally, they are allowed to function freely and less hinderance are put in their way, as they are relatively more aware as well as assertive. But when the authority or any other section of society feels that their influence is being challenged or their vested interests are likely to be hampered, they resort to violation of these groups' rights and in this process they also use the machinery of the state, as frequently it is directly or indirectly, in their control. Thus, we find that even the rights of more aware and assertive groups are not guaranteed in real life and attempts are, off and on, made to curtail them frequently by some vested interest groups.

Students of Sambalpur

A PUCL team invetsigated into allegations of continued police harassment and

intimidation against students who had initiated an anti-trader movement in Western Orissa in September 1980. The team found that the movement was sparked off by a skirmish that a group of students had with the trading community in Sambalpur during the collection of fund for flood relief in September 1980. It grew rapidly in Western Orissa and then drew in the coastal districts. The resentment against the increasing social and political domination of the traders-largely Marwaris - transformed itself into anger at the state repression unleashed against the students. The students were pitched against a trader-police-politician combine that initially labelled them as communalists and then resorted to violence to cripple their movement. The team found that the movement was not communal as was made out but was directed against the exploitative practices of the traders community. It called for an action against black marketeers and hoarders and demanded that essential commodities should reach to those reeling under the floods of September 1980. The police, instead of supporting the proper cause, connived openly with the traders. Even after 18 months of the anti-trader movement, when the PUCL team was visiting, the student leaders who spear-headed it continued to be subjected to police harassment and intimidation. Though the police repression has waned, students have been implicated in hundreds of cases ranging from dacoity, arson to murder : many have to spent most of their time running to courts. Administration was also determined to ruin their academic career. Rustication orders were issued against seven student leaders for their involvement in the movement. They were not allowed to appear for their examination. The criteria for admission was no longer to be merit of the student but his political affiliation and beliefs. Many students were arrested under the NSA and on several occasions they were mercilessly beaten by the police [PUCL Bulletin, 2 (1), January 1982 : 13-19].

Poly technique Students of Ramanathapuram

Perpetration of reign of terror by the manager of a polytechnique institution on his own students at Keelakkarai, near Ramanathapuram, Tamilnadu was investigated by a PUCL fact finding team. The team found that there were mysterious case of fire in the laboratory and hostels in which properties of many students were burnt. After the

fire, instead of being provided any kind of compensation, the students, were asked to come in prescribed dress only. When there were protests and dharna against such callous behaviour, the institution was declared close for Onam vacation. Later students were selectively called on a prescribed date to come along with their guardian. And in such meeting the parents were kept waiting for hours, asked to sign an undertaking promising that their boys would behave properly. And at this time, the students were dealt with brutally and were badly tortured. Several blows were rained on them and then questions about participation in procession were put. If there was more suspicion the boys were locked up, beaten up black and blue and live electric wire were inserted inside the finger nails. The fear of its management, due to its reach in Madras and Delhi, was so sweeping that no body dared to complain to any civil authority, police or court. Many students were given transfer certificates where as some students left themselves [PUCL Bulletin, 5 (5), May 1985: 19-21]

Criminals in Aligarh Muslim University

Increasing criminal activities and deadly gang war-fare resulting in loss of life and creation of an atmosphere of terror in Aligarh Muslim University was investigated by a PUCL team along with some other groups on July 16-17, 1989. The team found that the law and order situation in Aligarh, particularly on the AMU campus was deteriorating and criminal activities were escalating day by day. There was inaction and apathy of police vis-a-vis crimes. Their approach was against the spirit of 'rule of law'. Since the appointment of the then Vice-Chancellor, Pro-Vice-Chancellor and Proctor, the incidence of murder, attempt to murder, rape, sodomy, mob-violence and hooliganism were occurring on the Campus so frequently that there was no parallel to such activities in the past. The hostels of the university were being misused by mafia and other petty criminals [PUCL Bulletin ,9 (12) & 10(1), December 1989 & Jan 90 : 6-7 & 7-8].

Environmentalists of Raipur

Even the environmentalists - those who are fighting for the restoration of ecological

balance have to face the violence of their rights. Implicating Sitaram Sonvani and Sumitra Bai in some false cases by forest officials at Raipur, M.P. was such an instance. A PUCL team found that Sitaram was leading the 'Jangal Bachao - Manav Bachao' Movement ('Save Forest - Save mankind') in which the tribals were requested to take care of land and forests to plant more trees and to check all illegal activities being carried out by non-authorized persons, including contractors and forest official. But due to this the forest and police official were very angry with him as he was very successful in exposing the misdeeds of these two notorious departments. As an environmentalist Sitaram was against the commercialisation of forests at the cost of the neglect of tribal life. Earlier when Seakaser Dam was being constructed, it was through the untiring efforts of Sitaram that tribal families who were uprooted from their homes were rehabilitated. But here Sitaram came in conflict with the most influential contractor of the area who was in league with the forest officials. Earlier, Sitaram was also instrumental in construction of a grain bank which reduced the dependency of poor people on traders and money lenders. During this period when Chief Minister of M.P. made an announcement that farmer cultivating government vacant land and forest land would be given land rights, some tribals under Sitaram's leadership tried to reclaim the land by planting teak. The forest officials used this opportunity to teach him a lesson and cases for trespassing/encroachment and for beating and killing a person were lodged against him [PUCL Bulletin, 10 (11), Nov. 90 : 5-7].

Bahuguna At Tehri

Sunderlal Bahuguna and his associates, who were protesting against some policy of Tehri Dam Project, were arrested on 28-2-92 and were misbehaved by police. A PUCL team found that Bahuguna and his associates sat on dharna at the main Tehri Dam site on 14th December 1991 against the policy of improper rehabilitation and ecological imbalances being created by proposed Tehri Dam. In the beginning the project authorities and the local administration thought to ignore him. But when people's support continued to swell with every passing day, the authorities, with the help of some contractor, arranged a group of supporters of the dam from Chamba who came to threat

Bahuguna and his associates on 18-2-92. Taking excuse of this the administration imposed section 144 and arrested all people including ladies, at 2 A.M. without giving anytime to change even clothes. At the time of arrest and in custody the police misbehaved all through. Mr. Bahuguna had to resort to fasting. It was only after the PUCL filed a petition in Supreme Court and media gave wide coverage they were released from the Meerut jail. [PUCL Bulletin, 12 (4), April 1992 : 21-24].

Acid Tragedy At Thrissur

Total apathy and carelessness on the part of administration was manifested when a tragic accident took place at Kampazha in Thrissur, Kerala on 24th June 1993 in which a tanker carrying phenol overturned contaminating and disrupting drinking water supply from Peechi reservoir to Thrissur town and neighbouring panchayats. The PUCL team found that many villagers of Kompazha were hospitalized, drinking water wells became polluted, crops were damaged and environment became unfriendly due to severe Phenol poisoning. Police personnel and other government officers did not arrive at the accident site on time for monitoring the rescue operations. The lack of awareness of the district officials in facing any such dangerous situation was very clear. Hands and legs of the labourers, who removed poisonous soil, were burnt. The accident pinpointed the violation of the rules and regulations regarding carrying toxic substances by road. There were also some manipulation on the part of engineers in giving the fitness certificates. Although water was polluted the authorities had not made any alternative arrangement to provide drinking water. Due to the accident around four hundred fishermen had to abandon their fishing operations. There occurred a devastation of planktons, fishes and birds in and around the reservoir. [PUCL Bulletin -13, (11), November 1993 : 9-10].

Dramatists of Delhi

Attacks on cultural groups and use of censorship in the name of curbing sex and violence was opposed by the PUCL. The PUCL felt that the censorship rules are clearly manipulated to create grounds for rejecting films and plays which were socially relevant.

The PUCL opposed an order of the Delhi Police requiring all performing groups, including those of music, dance and drama, to submit their scripts for prior scrutiny and approval by a committee. [PUCL Bulletin -1 (7), November 1981 :4]

Stampede At Kumbakonam

How a decision of participation in a religious cultural activity by a VVIP person can create a problem and suppress their cultural rights is proved by the death of about 48 people and injury of many others on 18th February 1992 in Mahamahan festival at Kumbakonam in Tamilnadu. A PUCL team found that in the name of arrangement and security for Tamilnadu Chief Minister Jayalalitha, the people were deprived from the holy dip in the tank even 3 days before the incident and on the day of incident, the police resorted to lathi charge both in the way and in the water tank which resulted such high number of deaths due to stampede and drowning [PUCL Bulletin, -12 (4 to 6) April to June 1992 : 7-8, 8-14, 13-17].

Journalists of Dhanbad

Attacks on journalists, intimidation of editors and use of censorship are common methods through which the rights of press are suppressed. A PUCL team found that at Dhanbad on 28th August 1989, two reporters, a photographer and an editor of the local press were beaten black and blue in front of District Collector's office by an additional district magistrate and DDC, hand cuffed and put in the lock-up as these reporters were exposing the failure of administration and their connivance with the mafia. Presumably, taking a cue from the role of their district chief, the smaller police officials, too, frequently acted with high handedness [PUCL Bulletin, 9 & 10 (11-12) November & December 1989 & Jan. 90 : 10-12, 13-17 & 03-13]. Similarly, another PUCL team found that when a journalist went to Dechepulli police station of Guntur, Andhra Pradesh to get detailed information about a death, the corpse of which was in police custody, he was severely beaten and hand cuffed for writing news about the radical movements in that area [PUCL Bulletin -11 (1), January 1991 : 11].

Bride - Burning at Jhansi

The PUCL has given some attention toward the issue that effect the rights of women. In our earlier analysis we have seen how the PUCL has consistently pointed out the suffering of the women in any sort of violation, be it police, communal riots, tribals, 'SCs', agricultural poor or worker. But at the sametime there are some violations which are perpetrated on the women because they are women and it cuts across caste, class or any such other division. These are like dowry deaths, rape, molestation, etc.. Prevailing inequality between men and women, total dependence of womenfolk on menfolk, lack of individual initiative and courage to face the situation single handedly etc. are some of the reasons for such violations. A PUCL (MP) team investigated a case of dowry death in Jhansi. The team found that the bride had continuously pestered about the smaller amount of dowry and was being forced to ask for more dowry from her parents by her husband. With the help of his family members, the husband created such a situation that the bride was forced to die. Thus we find that the family provided the moral support for committing such a ghastly act whereas the society remained a silent spectator. No institution, association or government agency came to rescue the girl. [PUCL Bulletin, 4 (6), June 1984 : 10-12]

REPORTS ON KASHMIR

Probably, our discussion on the PUCL would be incomplete if we do not discuss the report on Kashmir, where from the reports of mass human rights violation have been coming continuously for the last five years or atleast since 1990. The earliest study of Kashmir situaion by the PUCL along with some other human rights groups was done in mid-March and early April of 1990 when Srinagar was continuously reeling under curfew. The team found that the militants were staging stray incidents and the security forces were retaliating. In this process large number of innocent people were getting manhandled, beaten up, molested and killed. In some cases the victims were caught in cross fire and in many more cases they were totally uninvolved and there was no cross-fire, still they were killed. This tended to alienate people further. The Muslims alleged

that they were being killed and destroyed because they were Muslims. They also resented setting up of camps for the Hindus outside the valley and allowing them to withdraw their salary for the curfew period whereas the Muslims were denied such facilities. They also alleged that security forces were selectively manhandling, looting, raping their women-folk or killing Muslims during their raids or any other operations. The continuous curfew was creating more bitterness as it deprived them their normal occupations and results in disruption of essential supplies. The team, however, also found that camps at different places were in very bad shape, there were no facilities for proper health and sanitation, cleanliness, lighting, education facilities etc.. The team recommended for lifting of continuous curfew, checking excesses committed by para-military forces and polite behaviour on their part, regular supply of commodity and true news circulation, better condition in camp, persuasion of people to return to valley, replacement of repressive policy to a reconciliatory one and, ultimately, a free and fair poll. [PUCL Bulletin, 10 (6), June 1990 : 4-11]

The next PUCL team along with the members of Citizens for Democracy', (CFD) visited valley on 22-27 May 1992. The team found that although the situation had slightly improved much remained to be done. The situation was always tense. The security forces were all the time undertaking crackdown searches and interrogations. These in turn led to torture, use of third degree methods and disappearances. Corruption and atrocities on the part of army and BSF were also alleged. In some places, such as Sopore and Lal Chowk, Srinagar, things went out of hand and the security forces acted in a manner which was vindictive rather than controlled. Excesses on innocent people and a large number of custodial deaths were leading to a feeling of bitterness and despair. As bulk of the non-Muslims have left the valley, so every thing was looked upon in terms of being pro-Muslims and anti-Muslim. The help of Pakistan to militants in providing arms and ammunition and training was also a big hurdle and although some checks have been imposed the help from the cross-border has not been totally stopped. The team recommended that single window system in Srinagar should be established where it should be possible for an aggrieved family to find out what is happening to a particular person who has been picked up. The number of custodial deaths should be stopped and use of third degree method should be checked. There should be restoration of judicial

system and administrative performances. Grievance Redressal Forum at the State and district level should be established [PUCL Bulletin, 13 (9 & 10) Sept. & Oct. 1993 : 20-26 & 11-20].

CHAPTER - V

THE CONCLUSION - HUMAN RIGHTS AND THE EMERGING CONTEXT IN INDIA.

In the latter part of the last chapter (chap. IV) we have seen that whenever any major violation of human rights took place in any part of India, a fact finding team was sent from the PUCL to conduct an objective study by taking into account the immediate and the basic causes and meeting all sections of people in the concerned dispute. Such teams, after proper and balanced investigation provided reports which are closer to reality. These reports are like the reports of magisterial or judicial inquiry commissions, but whereas the other reports take quite long period of time to get ready and are rarely available to the common public the reports of the PUCL are prepared immediately after the incidents and are published to be easily available to the public. Contrary to the governmental approach which relies on the official version, the PUCL's reports lay equal emphasis on all version including the common people's version. Thus, these reports give considerable weightage to the common people's version and hence we can call it as 'Common People's Reports'.

The members of the PUCL's fact finding committees are guided by philanthropic and altruistic principles. The nature of their work often involves a considerable risk to life and money. Still, they have never shown any dereliction of duty in compiling the first hand reports of the case of human rights violations. These reports are unbiased and the frame of reference is always modern, humanitarian laws which have been accepted nationally and internationally. Thus, these reports create a kind of awareness about the reality and it also exerts some sort of pressure on the authority to act in favour of the deprived sections in any incident.

How successful is the PUCL in achieving its objectives? For the answer to this question, we will have to explain at three levels - impact of its resolutions, impact of its reports on the incidence of civil and human rights violations and its overall objectives. As far as the impact of its resolutions is concerned, as we have seen earlier, we are

compelled to say that it has had very limited success. It has been passing different resolutions for better human rights record, but except in a few cases, these have not been accepted by the government or society at large. Probably, the government has its own course and its own compulsions, at least in India, and it follows its own embarked or unembarked path and in this the resolutions of an organisation like PUCL hardly matter much. Probably, impact of its report on human rights violations as a local case is more. However to evaluate its impact needs more systematic study which is, at present, not our goal nor do we have enough sources for that, but by way of passing remark we can say that after such report the concerned authority becomes more conscious and then they tries to sort out the issue as soon as possible, and in the best possible manner. But then attributing any and all such activities as an achievement for the PUCL would be an over-estimation, because besides PUCL a number of other human rights organisations and local people become active after any such incident. Also, the different laws have their own course. So the action might have been taken under such laws. So it is very difficult to say whom the credit goes to. Despite very limited success in these two, the PUCL is slightly more successful in its overall goal i.e. creating awareness about the human rights and helping in preserving the democratic nature of polity and thereby society. Of course, it is not a case of sweeping success and, also the PUCL cannot claim the sole responsibility for such success as a number of other modern processes, viz; modernization, democratization, urbanization etc. are working simultaneously. But then, the PUCL can claim a share in such success.

What are the reasons for such limited success of the PUCL? The first reason is the general nature of human rights movement. The whole concept of human rights in India has come via the West. However, even for the West, as we have seen in second chapter, the concept was a new one which came only during mid-twentieth century but their adoption was more swift as it was more suitable to their social structure, whereas, in a society like India which has a long historical tradition of caste - based social structure, the adoption was not that swift and although constitutionally we accepted it in 1950 only, the real institutionalization could not take place that speedily. However, the process has started and we can hope for a better future.

Secondly, in most of the traditional societies including India, the emphasis has /

had been on duties and not on rights. It was believed that if every person and community performs his or its duties properly then the needs of the others can be fulfilled smoothly and there would not be any hinderance from any side. For instance, under jajmani system each caste was supposed to perform a set of duties for the other castes, and it was an interlinkage of duties and not rights which was making a society self-sufficient. A phrase 'Karmanyevadhikarestu' ('My duties in my right') illustrates this viewpoint. However, at that time the State was not that powerful and all pervasive and the interference of the State in a human being's life was very limited. Rather, it was local communities which were more powerful and these communities had their own set of rules and regulations providing some sorts of duties and guarantees for the individual and the community. Moreover, treating all individuals equal was also not a feature of such societies. It used to be a kind of stratified society in which individuals were, by and large, accepting a hierarchy - a high or low position. However, today the situation has changed dramatically. The state has become most powerful and pervasive in most or all sphere of life. But the state is more impersonal than the local communities and it can become more insensitive toward the feelings of the individual. Hence today we need human rights ever than before so that there should be clear-cut demarcation of the zones of the state and the individual. An individual has now an idea of how much liberty and freedom one can enjoy and where ends one's zone. But in India, it seems this transition has not taken place properly and the state interferes in the activities of the individual without feeling any kind of restriction or limitation. In such situation violations of the civil rights and the human rights are bound to occur.

Thirdly, the general enlightenment of the people has not reached to the stage where they could feel the need for the rights of criminals or the rights of prisoners. These people are considered to be enemy of the society. So the feeling of common people is that these people need exemplary punishment and talking about their rights is a big hypocrisy as these criminals themselves have not taken care of the rights of the other people. In this prevailing mood, any organisation which talks of the rights of the criminals, prisoners or terrorists is supposed to be supporter of such activities. This is the problem which even the PUCL is facing. Although the PUCL has clarified that it is against any sorts of violence including the terrorist and state violence, there were several allegations that it

is supporting violence. So it will definitely take time in changing the mood of common people in favour of these marginal people who are really in need of the sympathy for their rehabilitation.

When we are evaluating the performance of a human rights organisation (here the PUCL) vis-a-vis society we may point out certain limitations in the society. But at the same time, we also need some self-introspection. The stands taken by the PUCL are such which make it distant away from the two major political parties of India - the Congress (I) and the BJP. As the reign of most of the states or of centre is under the control of either of the two parties the recommendations and the resolutions of the PUCL fail to make any significant difference. One reason for this distance may be in the genesis, but then the PUCL claims that it is an a-political organisation working for the protection of civil and human rights irrespective of which political party is ruling. How this stalemate can be broken is not clear. Probably here the PUCL needs some introspection. PUCL has also not been much successful in closely associating itself with the masses and making human rights a mass - movement. Moreover, although, it has raised voices for different deprived sections, as we have already seen, there are some more deprived sections, sometimes even among the higher caste groups of Indian society which have not been given that much attention. This has created, how-so-ever wrong it may be, a partisan image of the PUCL among the higher caste people. The PUCL has not been much successful in removing the fear of the alien nature of the concept of human rights. One approach could have been to link the concept of human rights with our traditions and 'Shastras' but no serious effort has been made in that direction.

Multiplicity of various human rights groups can be assessed both as an asset as well as a liability. As there are numerous human rights groups functioning in India, these are functioning in a decentralized manner. It helps in taking the issues immediately as well as speedy initiation of relief and rehabilitation work. Also diversity of views and issues is maintained. But this also creates problems. There is no unified stand on human rights or their violation and there are instances when these have functioned at cross purposes or repetition of the work was done. In such situation it becomes very difficult to take any step on the part of the authorities.

Issues raised by the PUCL, or for that matter most of the other human rights

organisations, are state - centric. In its most of the resolutions state is supposed to do something whereas in the most of the reports it is some agencies of the state which is declared as guilty or not performing their duty properly. Of course, in most of the cases it is the State which is the source of violation or perpetrator of violence. But then, some responsibilities also lie with the people and their community. Until unless people become well aware of their rights as well as their duties and they perform their duty properly it is very difficult to expect everything from the state. Population rise and illiteracy is two such related problems. Given a very limited resources, no government or State can provide all facilities to its very big population base which is growing at an explosive rate. Some initiative on the part of people is also required and expecting everything from the state is futile.

A multi-ethnic, multi-racial, multi-lingual and multi-religious society by its very nature also creates some problems in the achievement of human rights. The whole concept of human rights need some kind of unified standard but when diversities on these grounds come into conflict with each other then it becomes very difficult for the state to maintain neutrality or equal distance with all communities. This case is more clearly seen in the case of communal riots. There are also instances when one community demands certain rights at the cost of the other or one community feels that it is incompatible with the other communities and then either the state has to accept its demands or suppress its demands, by what so ever means it is possible (Otherwise very existence of the state is under question) and in both cases some violation of human rights are bound to occur. So, the demand for cultural diversity is possible only within a limited extent and it cannot go on unendingly.

As a corollary to the last paragraph, we can say that the concept of human rights, is not self-dynamic or self-propagating in the society as one group tends to violate the rights of other group. So it needs constant support of a powerful authority, preferably a State which can objectively implement different rules and laws. But then, there is a problem. In this process, the state itself should not become too powerful to violate the rights of citizens. So, a fine balance is required among these elements.

Is human rights a subject of sociology? In fact, it is a matter of sociology more than any other subject. As we have seen, the concept of human rights has got a universal as

well as a contextual meaning. So, in it, the society plays very important role. We have also seen how mere constitutional acceptance does not guarantee the acceptance of human rights in real life. Its real acceptance depends upon the nature of society. However the nature of society can be gradually changed if a deliberate attempt is made in that direction. Hence the concept of human right provides a frame of reference for social change and it can help in establishing a humane society. Thus we find that, a holistic understanding is required for the implementation and functioning of the human rights concept. This we can do more with the help of sociology than with any other subject.

Is there any hope? In the last chapter we have seen how our society is replete with instances of human rights' violation which are occurring from the one end of the country to the other and from one sphere of life to other sphere. In this situation, no part of the country or no sphere of life has been left where violation has not occurred. Then can we hope a better future? Although violations are occurring at every place and in every sphere, it is not the case of total violation. Along with violation, there are a number of cases, in fact, much more than violations, where compliance is occurring and violations are more or less a marginal case when laws have been properly followed. Moreover, even against these marginal cases an awareness is increasing and people are becoming conscious so that even these stray incidences do not occur. Increasing the base of different human rights groups, including the PUCL, is one such proof. Any violation now attracts more attention of the people and different groups including mass media raise their voice against such incidents. Even the government is aware with these facts and it is interested in keeping its record clean. Establishment of the National Human Rights Commission (NHRC) can be seen as a step in that direction. Of course, NHRC is not going to create any miracle overnight but it will definitely help in improving our human rights records.

Coming to the PUCL, we can conclude that it is a well organised group totally devoted to the cause of civil liberties and human rights, with members who are altruistic in nature who work for others at considerable risk to their own lives spending their time and money, and they have vision of society which is more humane and welfare - oriented than in the past. In future if we are able to move in that direction, and possibilities are that we will, then their vision can be taken as a precursor/harbinger to a society which is going to be there in 21st century. As an organisation, the PUCL has been more able

to maintain a balanced approach, has got support from all section - cutting across caste, class, region, religion, language political affiliation etc. of society. This has helped them in maintaining their pan-Indian nature and greater realisation of the PUCL's value for the masses.

APPENDIX

CONSTITUTION OF PUCL

(Incorporating amendments upto Nov. 1, 1992)

1. Name

The name of the organisation shall be the People's Union for Civil Liberties (PUCL).

2. Aims & Objects

The People's Union for Civil Liberties will try to bring together all those who are committed to the defence and promotion of civil liberties in India, irrespective of any differences which they may have in regard to political and economic institutions suitable for the country.

The aims and objects of the organisation will be :

- (a) To uphold and promote by peaceful means civil liberties and the democratic way of life throughout India;
- (b) To secure recognition to the principle of dignity of the individual;
- (c) To undertake a constant review of penal laws and the criminal procedure with a view to bringing them in harmony with humane and liberal principles;
- (d) To work for the withdrawal and repeal of all repressive laws including preventive detention;
- (e) To encourage freedom of thought and defend the right of public dissent;
- (f) To ensure freedom of the press and independence of mass media like radio and television;
- (g) To secure the rule of law and independence of the judiciary;
- (h) To make legal aid available to the poor;
- (i) To make legal assistance available for the defence of civil liberties;
- (j) To work for the reform of the judicial system so as to remove inordinate delays, reduce heavy expenses, and eliminate inequities.
- (k) To bring about prison reform;
- (l) To oppose police excesses and use of third degree method;
- (m) To oppose discrimination on the ground of religion, race, caste, sex, or place of birth;
- (n) To combat social evils which encroach on civil liberties, such as untouchability, casteism, and communalism;
- (o) To defend in particular the civil liberties of the weaker sections of society and of women and children;
- (p) To do all acts and things that may be necessary, helpful or incidental to the above aims and objects.

3. Criteria of Membership

(a) Every adult person shall be eligible to be a member of the organisation if he/she believes that civil liberties must be maintained in India, now and in the future, irrespective of any economic and political changes that may take place in the country.

(b) Members of the political parties will be entitled to be members of the organisation in their individual capacity if they subscribe to its aims and objects. They will have all the rights of membership except that :

(i) the President, Vice-President, General Secretaries, other Secretaries, and Treasurers of the organisation or any of its branches shall not be a member of any political party.

(ii) at least one-half of the members of the National Council and National Executive Committee and of corresponding bodies at the State and local levels, shall be persons who are not members of any political party,

(iii) not more than 10% of the members of the National Council and the National Executive Committee, and of corresponding bodies at the State and local levels, shall be members of one political party.

(c) The membership fee will be Rs. 20/- per year, to be collected once a year. Student members and non-earning members who are below the age of 25 may pay Rs. 10/- per year as member's fee. The Executive Committees at every level will be entitled to admit persons from economically weaker sections of society like workers and peasants at a membership fees of Rs. 10/- per year.

(d) Those who pay Rs. 500/- in a lump sum will be Life members. Those who pay Rs. 1000/- will be patrons of the organisation.

(e) The National Council will have the right, by a two-third majority, to refuse membership to any person or to remove any person from membership. The Council of a State branch will have a similar right in the respective State.

3. (A) In addition to individual members there may be institutional members also. All voluntary groups and institutions (but not political parties or groups affiliated to them) which agree with the objectives of the PUCL and desire to join it will be entitled to become Institutional Members in accordance with the Supplementary Rules laid down by the National Executive Committee (see at the end).

4. National Convention

(a) A National Convention of the organisation will be held once in two year.

(b) The National Convention will review the work of the organisation and lay down policies and programmes for the future.

(c) The National Convention will elect the President, one or more vice-Presidents, one or more General Secretaries, one or more Assistant Secretaries, and Treasurers for the ensuing term.

(d) The National Convention will elect members to compose the National Council and the National Executive Committee. The number of members of the National Council and the National Executive Committee will be determined by each National Convention.

5. National Council

(a) The National Council will meet twice a year.

(b) The National Council will determine the policy and programme of the organisation during the period between two National Conventions.

6. The National Executive Committee

(a) The National Executive Committee will look after the growth and work of the organisation, in conformity with the policies and programmes adopted by the national Convention and the National Council.

(b) The National Executive Committee will promote the formation of branches of the organisation in every State in India.

(c) The National Executive Committee will promote the policies and programmes

of the organisation during the interval between two National Conventions and meetings of the National Council.

7. State and Local branches

(a) With the sanction of the General Secretary, who in this matter will act in consultation with the President, members of any State may set up a state branch.

(b) A State Council and State Executive Committee of the State branch will be elected at a Convention of the members of the organisation in the State. The Convention will also elect the President and other office-bearers of the State Branch.

(c) The State Convention, The State Council, the State Executive Committee and the office-bearers of the State Branch shall be governed by the provisions analogous to clauses 4,5, and 6 above.

(d) Out of the membership fee collected in any State, one third shall be sent to the National office and two-third shall remain with the State Branch.

(e) In case of life member and patrons 40% of the amount will be sent to the National office. The entire amount of such members enrolled directly with the Central office will be kept there.

8. Supplementary Rules

Supplementary Rules for the organisation shall be made by the National Executive Committee as and when necessary.

9. Amendments:

The National Council will be entitled by the vote of a majority of its total membership to alter any part of this constitution except the aims and object of the organisation and the criteria of membership as specified in clause 3(a) above.

Supplementary Rules for Institutional Membership (with reference to clause 3 (A) of the Constitution)

1. Those groups desirous of admission as Institutional Members will have to (a) announce support to the objectives of the P.U.C.L. and (b) apply for the same, after taking a decision to do so as per their respective by-laws.

2. The P.U.C.L. National Executive Committee will have the power to accept or to reject the applications for admission after careful consideration.

3. Each group would be required to pay an annual fee of Rs. 50/- irrespective of its size, or nature of its activity. The Executive will, however, have the power to reduce the amount of the fee in exceptional circumstances.

4. Each group active in a state will have the right to nominate one representative as a member of the State Council.

5. Each group active in more than two states will have the right to nominate one representative as a member of the National council.

6. All Institutional Members in a state will together be given one seat on the State Executive Committee in case their number is less than five, and two if it is five or more.

7. All institutional members represented on the National Council together will, in case their number is less than ten, nominate one person to the National Executive Committee or two in case their number is ten or more.

8. The mode of such representation as provided in 6 and 7 above can either be by rotation or by agreement amongst the Institutional Members or will be left to be decided by them in consultation with the president.

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