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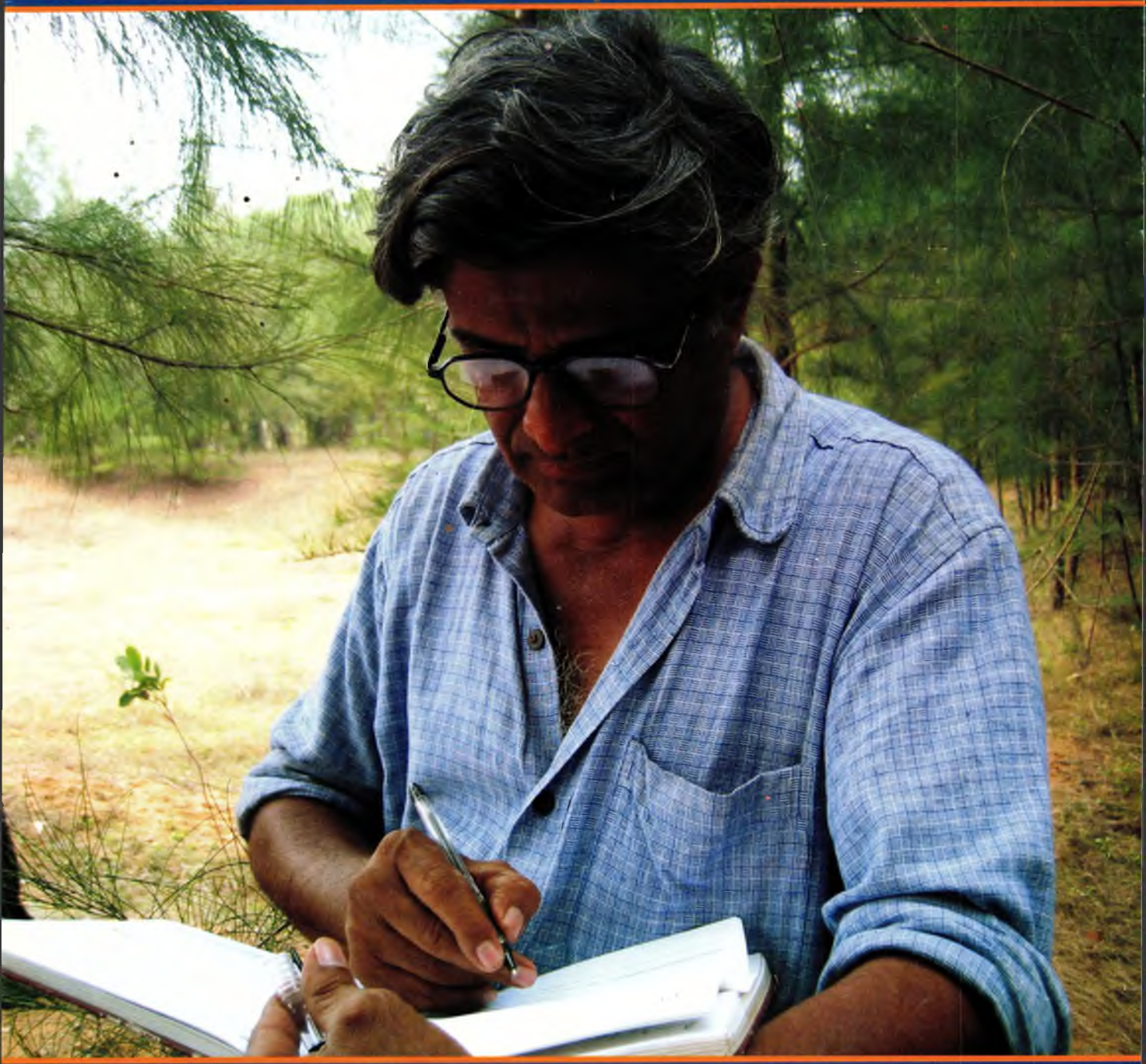
COMBAT LAW

THE HUMAN RIGHTS & LAW BIMONTHLY



A tribute to K Balagopal

Select writings of India's one of the finest human rights activists

Revolutionary violence | State repression | Maoist movement
Land acquisition | Tribals | Caste I Chhattisgarh | Gujarat | Kashmir | Judiciary

WE ALL BELIEVE
IN OUR RIGHTS

COMBAT LAW

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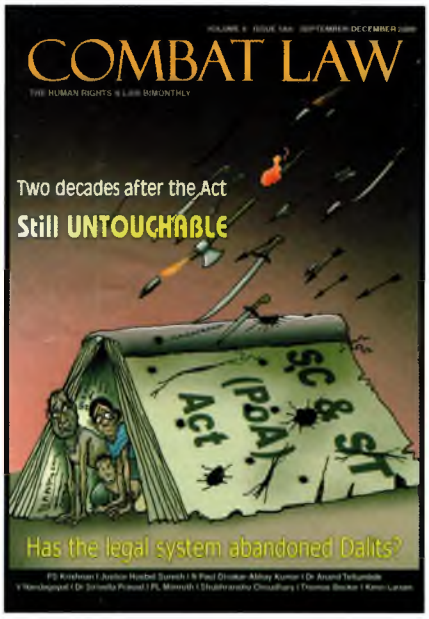

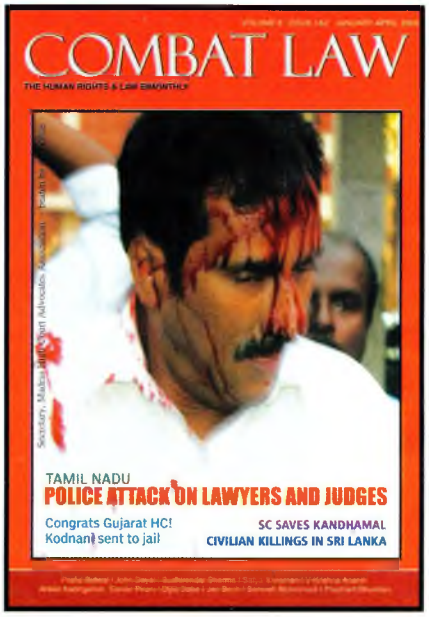

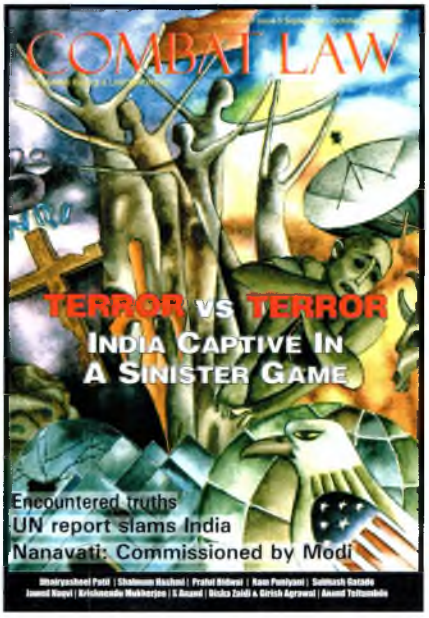

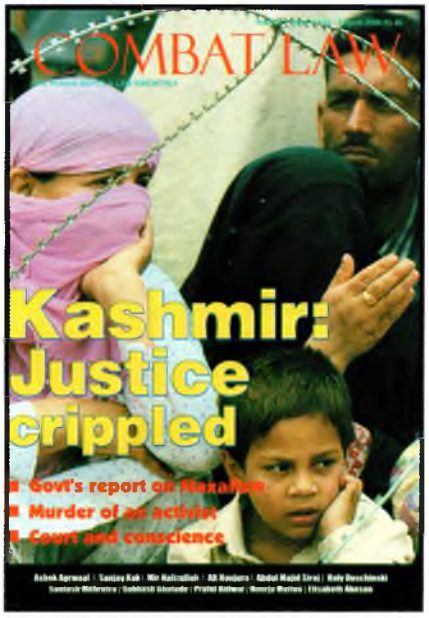

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Quintessential radical

He was uncompromisingly political. His politics was guided by an equally uncompromising living paradigm of philosophical humanism. This theory and praxis of humanism guided his radical politics.

His journey against the organised and one-dimensional violence unleashed by the State and radical, underground Naxalite politics, towards an imaginative and creative engagement with grassroots politics, human rights, women's empowerment, gender justice, communal fascism and globalisation, transformed into a higher form of direct, non-violent political and academic engagement. This was a man of qualities engaging with darkness at noon, still looking for collective enlightenment, the insatiable truth of justice. While he criticised social transformation through violence, his move was not a sell-out as branded by the myopic and sectarian, but a qualititative evolution, because it did not compromise with his fundamental concern that animated his values and ideology -- his radical and steadfast commitment to the poor and his struggle against the relentless spiral of injustice.

His evolution and 'paradigm shift' attracted vitriolic criticism from certain hardline and claustrophic tendencies of radical politics whose methods and strategies he renounced and criticised; but they failed to acknowledge that his evolution was not a departure from his politics, but a departure from their politics, that he did not see their politics can lead to the humanist objectives they espoused. That is why they had great difficulty in condemning him -- because, unlike others who left that violent strand of the movement, he did not join the establishment, instead sustained his critique on behalf of the very people whose cause they were advocating.

This set him apart from the other critics of armed radicalism because unlike them he retained his sympathy for their motivation while he repudiated their methods. So there were two levels of differences. He was radical in his commitments but differed from armed radicalism. This, in turn, distinguished him from the white collar critics of armed radicalism who simply denounced the violence without any understanding of the motivations behind radical rural politics. This made him perhaps the only bi-lingual intellectual in India who worked for and wrote on behalf of the rural poor within a complex web of sociological and political underpinnings. In this sense he was a genuinely organic intellectual because his politics was organic to the needs of rural India, not just in Andhra Pradhesh but elsewhere too, since he understood rural society and grassroots struggles the way few contemporary intellectuals do.

His unwavering humanism and personal political trajectory has implications for radical politics both in its aims and its methods, because it brings in the complex question of how radical politics must combat the State and its violence without falling prey to the same pathologies that the State exhibits in the course of wielding its violent power.

Balagopal, as he moved away from his earlier positions, was attempting to formulate an approach to find a way out of this paradox. His untimely demise has, it appears, put an end to that search, unless other radical intellectuals who have seen and participated in revolutionary violence take it up with the same rigour and commitment. Urban, white collar intellectuals, are unable to undertake this task because they have no direct understanding of the provocations that generate revolutionary violence, nor an intimate experience of the consequences of revolutionary violence, not least for those on behalf of whom it is undertaken. Their criticism of revolutionary violence is merely moralistic just as much as the distant support of most urban radicals is more often a form of comfortable romantic luxury.

This issue of Combat Law is a tribute to Dr Balagopal. We have tried to bring together a miniscule part of his vast body of vibrant, pluralislt, refreshingly original intellectual and political work published in EPW and other journals, which reflect the incredible journey of a quintessential revolutionary, from great struggle to greater struggles, from great humanism to greater humanism.

Harsh Dobhal

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SELECT WRITINGS OF BALAGOPAL

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SELECT WRITINGS OF BALAGOPAL

Mired in corruption

Dear Editor,

Tainted and controversial persons should not be allowed to preside over the temples of justice. With Justice PD Dinakaran's elevation to Supreme Court rightly on hold, the pertinent question now is whether he should even continue as the Chief Justice of Karnataka High Court. Dinakaran needs to be given the marching orders. So is Goa's north district judge Justice Nutan Sardesai who is accused of judicial impropriety and is now trying to get herself elevated to the Bombay High Court. The selection process for any judge should be open, transparent allowing only those having an impeccable character to make it to the helms of judiciary. It is very improper for persons involved in any controversy, scam and accused of lacking integrity to continue as a judge. There is a need to make the judiciary more accountable with more stringent selection procedures for judges.

–By e-mail
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Right to health: Does it exist for the poor?

Dear Editor,

I am jotting down an experience which I had during my internship with an NGO. It's about a seven-year-old girl, Yasmeen, who cannot walk. She has club feet. Yasmeen's father is unemployed and tells her mother to throw the girl out of the house. Her mother is a domestic servant and earns a meagre salary of Rs.800, to survive in a city like Delhi. Is not Yasmeen entitled to treatment which her fundamental right to health guarantees? Well, I thought she did. But soon I learned that it was far from being true.

In a time span of one month we went to three hospitals, stood in long queues, were refused medical treatment innumerable times, had to endure unacceptable behaviour and are still endeavouring to get Yasmeen treated.

Article 21 does not include right to health explicitly. Right to life and personal liberty has come about to include right to health through liberal interpretation and judicial activism. Article 47 of the Constitution i.e. maintenance and improvement of public health (Directive Principles) was ruled as a part of Article 21 by the Supreme Court. It is highly tragic that right to health is not explicitly mentioned as a part of Article 21. Instead, it remains a part of Directive Principles. Right to life is incomplete without right to health and the latter includes right to have access to proper healthcare facilities. There should also be a provision which makes it possible for the person concerned to know the circumstances under which he or she has been denied healthcare facilities.

In part IV of the Constitution, the Directive Principles of State Policy, namely Articles 39 (e) and (f), 41 and 47 collectively impose a duty upon the State to secure and improve health of the people. However, in practice the contrary is observed. Poor people are denied medical advice on trivial, insignificant grounds. For instance, in Yasmeen's case she was initially refused medical advice on the grounds that the handwriting in the prescription was not clear!

Articles 22 and 25 of the Universal Declaration of Human Rights (UDHR) guarantee right to health to the citizens of all the member states of the United Nations. Thus, when India became a member of the United Nations, citizens of India were automatically granted these rights. Moreover, Articles 1, 2 and 7 of the UDHR ensure equality before law to everyone. Hence, even before India gained independence, its citizens gained the aforementioned rights. Therefore, the Constitutional provisions are in consonance with UDHR. However, it is evident that while the rich have access to medical facilities, the poor are denied their right to the same. It is highly ironical that in one of the first member states of the UN (where the lex loci is also in line with the UDHR), basic human rights of poor people like Yasmeen are consistently violated.

The vast inequality between the 'haves' and 'have-nots' pertaining to such an important right to health is quite evident.

It is extremely tragic that Yasmeen cannot avail of the benefits of the Persons with Disabilities Act, 1995 as getting a disability certificate involves many intricacies for someone whose parents do not own even a ration card. This has ironically happened in the country which sets out the principle of equality in the Preamble of its Constitution. While the statutes and the Constitution present a rosy picture, in reality the situation is quite petrifying. It does not require legal expertise to know that being denied right to health is violation of one's basic human right. Hence, I conclude that in real sense, right to health does not exist for the poor.

–By e-mail
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Beyond violence and non-violence

The public arena is witness to dispirited discussion of the ineffectiveness of people's movements, which are at the most able to slow down things, and nothing more. The discussion often turns around violence and non-violence, not as moral alternatives but as strategic options. Those who are sick of sitting on dharna after dharna to no effect are looking with some envy at violent options, while many who have come out of armed groups find the Narmada Bachao Andolan (NBA) fascinating

It is good that there is some openness in the matter now, for dogmatic attitudes have done considerable harm. To say that one should not be dogmatic about violence may be morally a little unsettling but it is a defensible position even without adopting a relativistic attitude towards the preciousness of life or a casual attitude towards one's moral responsibility for injury caused in the course of a struggle. More of that in the right context. But the discussion will unavoidably be based on assessments of the effectiveness of the alternatives, and a distant view is likely to colour the reality with hopes and assumptions, even illusions. A realistic assessment of what each strategy has been able to achieve would better inform the debate.

The plain and stark fact is that while all strategies have been effective in curbing some injustice, none has succeeded in forcing the government to take back a single major

policy in any sphere. And none has been able to reverse the trends inherent in the structures of society and economy. Yet no serious political movement or social struggle we know of is only for softening oppression or improving relief. The general understanding is that governance of the country – and may be the systemic infrastructure of society – is fundamentally wrong and needs remedying, maybe overturning. Do we know of any effective strategy for that? I am not talking of political strategies, but strategies of struggle that will successfully put pressure upon the State and the polity to stop them in their tracks. The struggle may be built around class or caste or any other social combination. It may in the end seek reform or the upturning of the polity. It may operate mainly or in part within the polity or keep out of it altogether. Whichever it is, the common problem is this: the experience of this country is that governments do not stop doing some thing merely because it has been demonstrated to be bad. Or even contrary to constitutional directives and goals. They stop only if going along is made difficult to the point of near impossibility. No democratic dispensation should be thus, but Indian democracy is thus. Short of that, you demonstrate the truth of your critique till you are blue in the face or shout till you are hoarse in the throat, it is all the same.

This is the question that haunts all movements, and none has an answer. All strategies, whether violent or peaceful, have found that they are not without success, if by success is meant stemming of local forces of oppression or the local manifestation of global forces, and improving the situation of its victims at the margin or even more. One does not wish to belittle these achievements, and in any case its beneficiaries are grateful, and belittling makes no difference to them. But any attempt to go beyond that has been faced with an insuperable wall which defines the limits of Indian democracy.

The general understanding is that governance of the country – and may be the systemic infrastructure of society – is fundamentally wrong and needs remedying

The Naxalites – in particular the largest of them, the Maoists – are generally credited with having used strategies of violent struggle to great effect. That they have had substantial effect on the local social and political structures is beyond doubt. From Telangana to Bihar, local society would not be what it is but for their effect in turning much of it upside down. That they have often acted as a very effective deterrent to knavery and charlatanry of all kinds too is true. But looking back on nearly forty years of the naxalite movement, one is surprised how few are the important policy decisions of the State or tendencies inherent in the logic of unequal development that the Naxalites have been able to stall. In fact, one cannot off-hand think of even one. They themselves may answer that it is because they have not tried. It is true that their strategic thinking does not turn around defeating the State politically but mobilising against it militarily. Hence inflicting major political defeats or reversing trends of unequal or destructive development is not on their agenda. Yet it is also true that even if they tried they would not know how to go about stalling such decisions or forces. To put it simply, you can hold a gun to a landlord's head but special economic zones or the Indo-US nuclear deal have no head to put a gun to. This degree of simplification of the issue may be criticised as unfair, and one would readily agree that Maoist violence is not just the armed action of individual Robinhoods. Nevertheless, after dressing up this skeleton with sufficient flesh and blood to make it real, you still do not get away from the basic truth of the caricature.

It is not just the abstractness of these issues that makes violence ineffective as an option against them. After all they do have concrete manifestations that can be confronted by violent mobilisation or armed action. But the subtlety of forms of power other than the feudal makes focused confrontation of a violent kind difficult to operationalise. Violence may be good or bad, necessary or unnecessary, but it is always crude. Intelligent exercise of power, on the other hand, is subtle. So is capitalist rationality, in general. It is sometimes but not always crudely oppressive. It also comes with promises of a better life for the middle classes and employment for the poor. It spreads its operational incidents all over and each of them offers its own rationality. It gives a little and takes a lot but it gives at one place and takes at another. It speaks in a dozen tongues, each offering a limited rationality, while the totality is hidden behind layers or opacity and subterfuge. Its lies require intelligent nailing, and its logistics requires subtle handling to immobilise it. For in the better kind of agitational strategy the object of popular mobilisation is to immobilise the opponent, and that is where violent methods score over peaceful methods. But whom or what do you immobilise to make an SEZ inoperable?

And then there is the law and its machinery of enforcement.

The law of course does not turn the other way when violent mobilisation is used against a landlord or a local oppressor. But neither are the stakes as high nor is social disapproval so strong then as when alleged schemes of development or alleged policies of national security are obstructed by violent mobilisation. Agitations disrupt normal life, violent agitations more so. The insecurity and uncertainty this creates can be exploited by the State to either incite the people against the agitators even to the point of getting them lynched or to cover up for the violent methods of suppression it employs. It can even get righteously suppressive. And when the stakes are high social disapproval can be engineered beyond its normal levels. We are all aware of how much hatred the State can generate against agitations, especially violent ones, if it believes that its vital interests are affected. And that can be

the justification for lawless enforcement of law, the more lawless the more righteous the anger it can whip up in society.

One option then is to throw up one's hands and say that it is futile to fight an evil beyond a point while it remains in power. And that the real task is to gain political power and replace the fount of evil. This makes sense from one angle but misses the point from another and begs the question from a third. It misses the point because at one level the question we are posing to ourselves is not about this society or this polity, but about democracy as such and the amenability of governance to correction by popular disapproval. To say that we need not spend too much time over this because we wish to come to power and then we will not face this problem is no answer. It begs the question from another angle because if you do not know how to mobilise people in effective numbers against evil governance, how are you sure you know how to mobilise them for capture of State power?

Peaceful mobilisation has one advantage over violent mobilisation. A larger number of people can participate in it, and it can choose its targets and devise its methods of agitation more subtly. It gives space for dialogue even the while agitation goes on, dialogue not so much with the establishment as with society, and so the vital dimension of critique is alive without suspending the agitation to clear space for it, and this is essential in any struggle against an opponent who operates in a universe of intelligent rationality. This is one reason why peaceful methods of struggle are not only morally but also politically healthier. But in terms of its effectiveness in reversing policy decisions or structural trends, peaceful methods are even more ineffective than violent methods. Quite plainly, dharnas and street plays and hartals and half-an-hour-at-a-time road blocks and street corner speeches and jathas can go on for ever and ever and neither the State nor the Ambanis lose any thing. This is what often makes activists cynical and gives them that urge to seek an appointment with the Maoists. When they are so tempted they think the only problem they have had with violence is that it is morally problematic and physically unsafe. It is assumed that it is necessarily more effective. It isn't, and it has not been.

Can we turn to the law to make governance answerable to popular disapproval other than at election time? Constitutional democracy as we know it in India gives little scope for such a hope but PILs have held a lot of fascination for activists. Much of it is born out of ignorance of the law as much as the sociology of adjudication. The average intelligent Indian thinks of PIL as the modern equivalent of the bell which the better kind of king is reputed to have strung outside his palace for the desperate citizen to tug at and get an instant hearing and instant justice. The average intelligent Indian also thinks that all the limitations of judicial power that he or she is otherwise familiar with will vanish when the courts sit to hear PILs, namely that they become benign despots who can set every wrong right by passing a condign order. Desperation can be the only reason for these illusions. Less excusable is the ignorance of the sociology of adjudication. Judges, taken as a class, are at one with most of the political and economic tendencies since liberalisation for no more subtle reason than that they belong to the social class that has benefited and will benefit much more from these tendencies. Extremely derisive comments about PILs are made with juvenile exuberance by the Supreme Court these days to send out a signal that the activist or desperate citizen need not take the trouble to go all the way to New Delhi. Law journals report some divergence of opinion and even snide comments about judicial activism in the Supreme Court, but the divergence is between conservative judicial activism and conservative aversion to it.

There is no option but to devise ways of stopping the system in its depredations. Since Indian democracy has not learnt to respect reasoned criticism unless it is armed with the strength to physically prevent the execution of the policies criticised, ways of achieving such strength must be sought by agitational movements. In principle the best method is to mobilise the people likely to be affected in large numbers and physically sit in the path of the State and capital. But then the people in their concreteness are riven by diversity of interests and insularity of communities, crushed by poverty and misery, weakened by the disease of opportunism even at the lowest levels which has been the greatest contribution of the Congress party to Indian political culture, enfeebled by attachment to their political patrons, and disillusioned with empty rhetoric and moral corruption of agitations and movements. In particular, they see that activists who were in an earlier generation characterised by sacrifice of personal concerns are no longer the same. To my mind, this is the greatest disservice done by the NGOs, but this culture is now common to a large section of political activists, too. On the other hand, the very effect of politicisation has been that the people have lost their innocence and often weigh the costs and benefits of struggle with greater caution than in the past. One cannot blame them, especially when the caution is reinforced by the fact that activists themselves exhibit the same attitude these days. All this combines to make strong mobilisation difficult and tempts honest activists to look for short cuts, ranging from armed action to PILs. But there are no short cuts.

Constitutional democracy as we know it in India gives little scope for such a hope but PILs have held a lot of fascination for activists. Much of it is born out of ignorance of the law as much as the sociology of adjudication

–South Asia Citizens Web
June 26, 2009

Maoist movement in Andhra Pradesh

In a situation marked by severe state repression of the Maoist movement in Andhra Pradesh, violent retaliation by the Maoists, and the state's brutal counter-attack (led by the greyhounds) to gain the upper hand, the Maoists are finding it difficult to retain the support of the next generation of the most oppressed. State-encouraged gangs, calling themselves tigers and cobras have unleashed private vengeance, which has played a major role in immobilising the substantial over-ground support of the movement. But above all is the tragic loss of the lives of organic leaders from among the most oppressed

Birpur, near the Godavari river in the northern corner of Karimnagar district, is the native village of Muppalla Lakshmana Rao, better known as Ganapathi, the general secretary of the central committee of the Communist Party of India (Maoist). Before a road-building mania took over the state in the regime of Chandrababu Naidu, it was a village difficult to access. Today it is accessible by a black-top road from the temple town of Dharmapuri on the incompletely laid out National Highway 16 from Nizamabad in Telangana to Jagdalpur in Chhattisgarh. As you approach Birpur from Dharmapuri, you see at the entrance of the village a fresh white memorial with two pigeons atop, evidently intended to symbolise peace. The white colour of the memorial and the pigeons on top are in contrast to the hundreds of red memorials with the ham-

mer and sickle on top that are strewn all over Telangana. It was built recently by the police to signify what the police gleefully regard as their decisive achievement in gaining an upper hand over the Maoists in their major stronghold, the Godavari river basin of northern Telangana. That it was built in the village of the top Maoist leader and inaugurated by the most unlikely symbol of peace, the superintendent of police, Karimnagar, is a juvenile gesture that could have easily seemed merely tasteless in a different context, but in fact symbolises a disquieting fact: the politically juvenile attitude of successive governments in Andhra Pradesh towards the Naxalites.

Peace per se would be desired by many people in the area. But very few are gleeful that the Maoists have been pushed back as never before. May be they are unrealistic but the ordinary people in their majority would want that the Maoists should be around, guns and all, but there should be peace in the sense of a life free of fear from this side or that. At the height of the six-month farce of talks between the Maoists and the government of Andhra Pradesh in the second half of 2004, a common apprehension heard in most of the long-term strongholds of the Naxalites was that the talks was a good thing and it was hoped that some reduction of violence would result from it, but "they won't leave us and go away, will they"?

The fact is that in much of this area the first time the common people experienced anything resembling justice was when the Naxalite movement spread there and taught people not to take injustice lying down. Unlike the rest of the state where the Naxalites spread through the armed squads, in northern Telangana there was a clear period in the late 1970s and early 1980s of the last century when it was the mass organisations, mainly the agricultural labourers associations and the student and youth fronts, that were the instrument for the spread of Maoism as an ideology and a political practice. The phase was soon to pass and the people would start depending on the armed squads for justice but the sense of attainability of justice was a fundamental change. In very plain terms the oppressors of local society, whether upper caste landlords or insensitive public officials, started dreading the wrath, initially of the awakened masses, and later of the well-armed squads composed of cadre born and brought up in poor families of the very same villages. Today the old landlords are no longer there but new local elites have come up and there is this fear that if the Naxalites go away, "the poor cannot survive". It is a matter of choice whether one sees this as revolution in the mould of Robinhood, or merely as one instance in the saga of a Maoist long march, which is not to be freezed into a representative moment.

State repression

From the very beginning the attitude of the governments in Andhra Pradesh was one of extreme hostility. Police camps were set up in villages and the poor were tortured most inhumanly. It was always an explicitly political assault. The policemen in charge of the areas never made secret of the fact that they were not merely "maintaining law and order" as the expression goes. They had the political task of protecting the landlords and the medieval mould of society and they were executing the task. The underground Naxalite activists were no doubt armed, but their violence in those days was by and large selective and in any case not much in extent. On the other hand, it is said by everyone who knows – including police officers at retirement – that the fight of the Naxalites in those days was against what is generally referred to as feudal domination, and the economic oppression of the poor, and in this they were remarkably successful. Abolition of 'begar' and payment of some thing close to minimum wages, two, impeccably constitutional tasks, were performed by the Naxalites.

The fight for land was not so successful since the police would not allow the land left behind by runaway landlords to be cultivated by the poor. Such land by and large remains fallow to this day, but it is not a very significant matter either way because as a proportion of the total cultivable area of the districts, or the land needed by the landless, it is slight in extent. More would be added to such fallow land in the days to come when cultivation of land would be forcibly stopped by the Naxalites, not to take over the unconscionable acres of landlords, but as a measure of punishment imposed on any landed person for having harmed their cause, but even so the "land struggle" in the plains areas was not an achievement of any moment. The encouragement given to tribals in the forests to cut down the reserve forests and cultivate the land was far and away the most successful land struggle of the Naxalites, and not any struggle against landlords. Its extent in the five districts of Adilabad, Warangal, Khammam, East Godavari and Visakhapatnam has been plaintively estimated by the government as upwards of four lakh acres, counting together the achievement of all the Naxalite parties. However, after

about the first decade and a half the Naxalite parties came round to the view that beyond a point such a land struggle is harmful to the forest-dwellers themselves, and have since the mid-1990s imposed quite a successful ban on the cutting of forests.

It is tempting to speculate what would have been the result if the government had appreciated this phase of the Naxalite struggle for what it was, and responded by means other than repression. Forgetting class interests and all that, and accepting the arguments made at face value, one would perforce describe as one-sided the argument that it would have legitimised the use of violence for social/political ends, which is unacceptable in a democracy. A blanket condonation of the use of violence by a group that lives by its own norms, which are enforceable only by itself is no doubt unacceptable in any society, even when it is declared to be for the good of the oppressed, but the contrary argument that a positive response from the government would perhaps have delegitimised the argument for revolutionary violence was never considered. That was no doubt not an innocent lapse, and the rulers had their reasons for that.

The upshot was heavy repression on the Naxalite movement, in particular the rural poor who were part of the movement or its social base. Extremes of torture and incarceration in unlawful police custody, destruction of houses and despoliation of drinking water wells and fields, framing of severe criminal cases en masse were the norm. And "encounter" killings began from where they left off the day the internal emergency was lifted. It would again be interesting to speculate what would have been the result if the Maoists had decided not to hit back but concentrate on exposing the anti-poor bias of the government and extend their mass activity to a point that would have given their aspiration for state power a solid mass base. It would no doubt have been painful, but the alternative has not been any less painful.

Maoists hit back

As it happened, the Maoists hit back. The first killing of a policeman took place in June 1985 at Dharmapuri in Karimnagar district. And then a sub-inspector of police was killed at Kazipet in Warangal district on September 2 that year. That was followed the next day by plainclothes policemen going in a procession behind the sub-inspector's dead body killing Ramanadham, a senior civil rights activist, in his clinic. "Encounters" increased and decapitation of the limbs of police informers followed. The police acquired better weapons and the Maoists followed suit. Sizeable paramilitary forces were sent to the state in the mid-

The upshot was heavy repression on the Naxalite movement, in particular the rural poor who were part of the movement or its social base

1990s but the terror they created was such that they were soon sent back. Not, however, before they had a taste of the Naxalites' newly acquired proficiency in blowing up police vehicles at will. Almost from the mid-1980s brutal special police forces meant for eliminating Naxalites came into being and were allowed to operate totally incognito, the most successful being the greyhounds, which is a well trained anti-guerrilla force that lives and operates as the Naxalites' armed squads do and is bound by no known law, including the Constitution of India. The armed squads soon became the focal point of the activity of the Maoists, barring the two short periods when they were allowed freedom to conduct their political activity, both significantly in the immediate aftermath of the Congress Party coming to power after prolonged Telugu Desam rule, leading to credible speculation about some pre-election agreement between the Congress and the Maoists (known till two years ago as the Communist Party of India (Maoist-Leninist) (Peoples War)).

Soon the Maoists declared the whole of northern Telangana, and the eastern ghat hills to the north of the Godavari river, guerrilla zones, followed later by a similar proclamation for the Nallamala forests in the Krishna basin to the south. With this the changed context of the movement was formalised. The immediate economic and social problems of the masses took a back seat and the battle for supremacy with the state became the central instance of the struggle. This brought its own imperatives, which were no longer immediately congruent with the needs of the masses who continued to be the base of the Maoists. So much so that while the youth in the areas of their activity look upon them as militant heroes even when they do not approve of them, it is the elderly who talk of them with affection. It is the parents' generation that remembers the days when begar used to be demanded by the landlord and a pittance paid for wage labour. Many of the youth frankly say, they may be valiant fighters, but what have they done for us except to bring the police to our villages?

The state has its difficulties dealing with mass movements but it has tested strategies for dealing with armed struggles. It creates informers and agents for itself from the very masses the insurgency claims to represent. That is not difficult with the money and resources of power available with the state. This is a trap the militants fall into. They kill or otherwise injure those agents and informers and thereby antagonise more of their own mass base, in turn enabling the state to have more agents and informers. Without exception, all militant movements have killed more people of their own social base than their purported enemy classes. This may be taken as one of the invariant laws of the sociology of armed insurgencies. The very fact that this is true of the Naxalites, the most politically sensitive of all insurgents, is proof enough. And this is true even without the impatience that comes with being armed, which results in more violence against dissenters among your own people.

It is not as if they no longer addressed themselves to the social and economic problems of the poor. They did and they continue to do, but notwithstanding their claim that the village committees (often semi-secret) established by them deal with these problems, though not in the open as in the past, the overwhelming reality, except in totally isolated villages – and totally isolated areas such as the Abujmarh hills of Bastar – where such committees can actually function, is that it is the armed squads that deal with the problems. And they too often deal with them in a rough and ready manner made easy by the fact that there is no possibility of any opposition to them in society, so long as the police are taken care of. The people for their part have come to look up to the squads as a substitute for their own struggle for justice. This has, on the one hand, created more enemies – victims of revolutionary arbitrariness – than they need have made, and, on the other, corrupted the masses into receivers of justice rather than fighters for it. You only have to report to the militants and get them to put up posters with appropriate demands and threats, and you will get what you want, provided that in the meanwhile the police have not made it impossible for the militants to come to your area to hear your pleas and put up posters. Then, of course, you wait till the militants turn the tables on the police.

But even where such issues are addressed, the central place in the practice of the Maoists has been taken up by the guerrilla struggle against the state, aimed at weakening its hold to a point where the area can be considered a liberated zone. This requires a range of acts of violence, which have no direct relation to the immediate realisation of any rights for the masses, though the resulting repression invariably hits at the masses. The Maoists have developed considerable expertise of a military character, which is admired even by policemen in private, even as their political development has stagnated. The state has met this with even more brutal violence, which has bred further violence from the Maoists.

For at least about a decade now, each year has seen between 300 to 400 deaths in this gruesome game. The ability of the state to obtain information on an extensive scale, thanks partly to its resources, partly to the demise of values at all levels in society, including the lower-most, and partly to the large number of enemies created by the Maoists around themselves in the course of their battle with the state, the state's ability for the same reasons to inject covert operatives into the Maoist ranks, and the very successful forays of the greyhounds deep into the forests, has resulted in its establishing a clear upper hand in this killing game for the present.

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Retaining support of the Gen-X

But the difficulties faced by the Maoists do not end here. To discuss the rest of them requires attention to considerations that Marxism at its best would find difficult to deal with, given the lack of any attention to an understanding of the human subject of history other than the practically useless profundity that "it makes itself while making history". And Maoism is not Marxism at its best, at any rate for this purpose. The strategy of providing armed support to the aspirations of the masses succeeds at the first round without much difficulty, once willing cadre are found, in areas historically subjected to extremes of deprivation and oppression and neglected by governance. But the very success means that a new generation is created, which is freed from the severe disabilities its parents suffered from, and is able to see and seize opportunities in the existing polity and therefore may not be as hospitable to armed struggle as its parents. The state too learns, and makes some efforts to draw the area from out of neglect and into what is usually described as "the mainstream" even as it suppresses the struggle by brute force. The eagerness to join a life-and-death struggle is usually diluted to some extent as a consequence. If, at that stage, instead of toning down the armed component of struggle the radicals proceed to fight the state over the heads of the masses, the masses can withdraw further, and even become resentful. After the first immense success of the Maoists among the Gonds of Adilabad district in the late 1970s and early 1980s, from the next generation that came of age in the 1990s one often heard the honest query: are adivasis the guinea pigs of revolution? The temptation to which the Maoists have too often succumbed, namely, to condemn all such doubt as arising from the "petty-bourgeois tendencies" of a new elite only makes matters worse. In this sense the real challenge for the Maoists is not whether they can militarily get the better of the greyhounds, who have a clear upper hand at present, but whether they can retain active support from one generation to the next while retaining their Maoist strategy, or even by recasting it to suit the changes in the needs and aspirations of the new generation in the changed social context created by their very activity and the state's response to it.

Till now there is no sign of any thinking along these lines. Often the first thing that happens to people who find political awakening from a state of dormancy is to turn to a search for their own social identity, whether caste, tribe or gender. This has led to many ex-Naxalites becoming Ambedkarites, or at least sympathisers of Ambedkarism, since any way the overwhelming majority of them are from the outcastes or back-

ward castes of Hindu society. This does not necessarily mean that they have lost interest in revolution as the communists understand it. But the Maoists have too often reacted with a lack of sympathy to this phenomenon. So much so that while their cadre, and leaders too, except a handful at the very top, are from the dalit, adivasi or backward communities, unlike the parliamentary left which continues to be a bastion of upper castes, and while they have in the last few years inducted women into their armed squads on a scale that will soon probably put to shame the eternally unfilled promise of one-third reservation in the legislatures, they remain not only theoretically but practically too, hostile to any expression of identity politics, seen invariably as opportunistic deviance.

Whatever Maoist theory may say, the guerrilla phase of struggle involves establishing armed dominion over society, often described by the police with exaggeration as a parallel government

Instead the Maoist response to stagnation after the first round has been to transfer attention to a new area amenable to initiation of their kind of politics – and there are many such areas, thanks to the utter neglect of vast regions by governance in the last 50 years, and the current philosophy of governance which is a philosophy of non-governance – and do the same thing again. Other Marxist-Leninist groups have often criticised the Maoists for this hop, skip and jump mode of revolution but they have never taken the criticism seriously, probably regarding their conduct as part of the strategy of guerrilla struggle. Leaving aside the political rights and wrongs of it, the practical consequence has been a rapid spread to new areas such as the area surrounding the Nallamala and other contiguous forests in southern coastal Andhra and Rayalaseema. This spread has been mainly through the guerrilla activity of armed squads, not preceded by anything comparable with the mass activity that illuminated and remedied much of the social and economic oppression people suffered from in the Godavari basin districts of northern Telangana. But the spread has not been as smooth and successful as in northern Telangana.

Whatever Maoist theory may say, the guerrilla phase of struggle involves establishing armed dominion over society, often described by the police with exaggeration as a parallel government. Such dominion is easier to establish in areas whose social culture is characterised by a certain quiescence than in factious areas. The northern Telangana districts, of all the areas of the state, do exhibit that characteristic whereas the south, especially the region surrounding the Nallamala forests, is the most factious area. Armed activity of any kind, with even the best of intentions, can degenerate easily into factious violence. The fate of the Maoists in Anantapur in Rayalaseema is a classic instance of this. More vitally, armed dominion in factious areas calls up private vengeance which the state will not hesitate to encourage. The 'Nallamala cobras' who have committed three murders of democratic activists in the last nine months and silenced much of democratic activity in the southern districts constitute brutal proof of this.

We know that each mode of life is found attractive by persons of certain character traits and in turn encourages certain traits in those who partake of it. It is a species of conceit that refuses to see that this applies to political strategies too. To speak of negative traits alone, just as the Sarvodaya philosophy attracts a lot of hypocrisy and the parliamentary strategy of the Communist Party of India and the Communist Party of India (Marxist) a lot of opportunism, strategies of militancy attract unruly types who straddle the borderline between rebellion and mere rowdyism. These types can, and have, caused considerable harm to the Maoists and have constituted easy subjects for the state's tactics of shaping covert operatives inside their ranks. Once outside the party they have fit equally well the role of "renegades" as they are called in Kashmir. The conduct of the Maoists who leave little room for appeal for persons whom they brand enemies of the people has in turn created cadre for the vengeful renegades, and the resulting gangs that call themselves cobras and tigers of various kinds have played a major role in immobilising the very substantial overground support activity the Naxalite movement had.

Decimation of organic leaders

This is as far as the story of Maoist revolution has come in Andhra Pradesh. Since there is little sign of any rethinking on either side, one has no basis for expressing much hope about the future. What makes it a tragedy is that the lives of lakhs of people belonging to the lowest orders of society in terms of community as well as class are involved in it. Many dimensions of the tragedy are known or amenable to imagination but there is one which is not usually commented on. This is that many if not all of the lives that are being lost at the hands of the police in this process are lives that the oppressed can ill afford to lose. They are the organic leaders of the class, who have adopted a political path of their choice. It is not all among the powerless classes that can dare challenge the system and be ready to pay for it. It is not everyday that the oppressed produce such elements from amongst themselves. The rights or wrongs of their choice have no bearing on the tragedy of the decimation of this organic leadership. They chose to be Maoists, but they could have chosen to be something else, and whichever the choice, they would have added to the strength of the oppressed. The daily loss of such persons is a sacrifice the oppressed cannot be called upon to put up with indefinitely.

–July 22, 2006

Have We Heard the Last of the Peace Talks?

The Government of Andhra Pradesh says it continues to be open to talks with the Naxalites and that it is the latter who have broken off negotiations. What the government does not say is that the Naxalites broke off talks only after it became clear that the government had no intention of stopping the killing of their cadre. To this extent the Naxalites' decision to leave the table cannot be faulted and the principal responsibility for restarting the process would lie with the government. But the revolutionaries have an equal responsibility, namely, to ensure that the unreal tone and the drama of the first round is eschewed and the two sides conduct themselves with the degree of realism one supposes they are capable of

It began as a tenacious essay in political realism, entered a phase of sheer drama unbelievable in its unreality, and ended in the bitter rattle of gunfire.

The reference is to the 'talks' between YS Rajasekhara Reddy's government in Andhra Pradesh and the Naxalites. To be fair to the devil, Rajasekhara Reddy never really believed in the talks and never joined the effort, nor the theatre that was enacted in Hyderabad for about a week. That is about the only good thing one can say about his conduct in the matter: he was consistent in his indifferences to the process. He is by nature incapable of tolerating any situation in which he has to share the stage with others, and as a matter of political tradition irremediably deficient in the capacity to thrash out differences in a dialogue. He has always preferred more conclusive alternatives.

His home minister was, on the government's side, the author of much of the effort and much of the drama too. Jana Reddy embodies a certain earthiness that is the most charming quality of a backward peasantry. He is no peasant, and he has seen too much politics to be anybody's fool, but he has chosen to don the guise of a guileless peasant from just the kind of place he hails from: the barren lands of Nalgonda. He probably has his reason. His constituency, the only one he can ever win from, is overrun by the Krishnapatti dalam of the Maoists.[1] He knows them, their strength, their weaknesses and their staying power. He knows that whatever else may vanquish

them, bluster will not. Chandrababu Naidu tried it, and nearly got killed.

But if Rajasekhara Reddy (let us call him YSR hereafter) did not join the effort after becoming chief minister, he was complicit with it in its origins in the pre-election campaign. Having been out of power for about nine years, Congressmen were expected in any case to promise many things. But what added a certain seriousness to their promises this time round was that most of them were thrown up in the course of the *padayatra* YSR undertook before the polls. He walked around the state, meeting people in the streets and hamlets, listening to their grievances and making promises. In Telangana, he heard many complaints about police lawlessness. It is characteristic of the man that even in that most expansive pre-election mood the one thing he took care not to promise was relief from police harassment in case his party came to power. A former radical student turned Congressman who suggested such a promise in the course of YSR's meeting with the people in a Karimnagar village was told in so many words to mind his business.

But what YSR did promise was that his government would initiate talks with the Naxalites to 'solve the long-standing problem'. Since there is no particular 'problem' that the Naxalites are agitating about, he was probably referring to the Naxalites themselves as the problem of long standing. Or probably he was not very clear what he was saying. When even more intelligent persons than YSR have shown themselves capable of woolly thinking in the matter, one may not expect perfect clarity from a chief minister-probable on a pre-election *padayatra*.

Getting elected was a very pleasant shock for Congressmen. It is not given to human beings to be dishonest with their innermost selves, and so they must have known that nothing they had ever done had entitled them to this. It was what Chandrababu had done and not done that had given them the bonus. A certain humility is natural in such circumstances and so to begin with, steps were taken on various fronts to implement some of the promises. The talks with the Naxalites were the most high profile of them. The ban in force from 1992 against the CPI (M-L) (People's War) as the party was called until September 2004, was lifted, and cessation of police operations against the Naxalites was announced in June 2004. The principal Naxalite parties, especially the People's War, reciprocated by ceasing violence against instruments and partisans of the establishment. For a full six months there was practically no killing in police-Naxalite war, which is a record for the last decade and a half at least. The people living in the main areas of conflict had a taste of what they had long forgotten: life reasonably free of fear.

A more detailed code of conduct for the period of the talks needed to be agreed about before the dialogue could start. Would the police continue their search for underground cadre, and if so by what kind of means? Would they take lawful measures against armed cadre, such as, for instance, arresting them and seizing their weapons, or would the Naxalites have the run of the State? On their part, would the Naxalites indulge in violent forms of protest such as the burning of buses and blowing up of government buildings, and would they use force as an instrument of struggle, for instance, in land occupation? Or would they confine themselves to lawful means of agitation during the period of the talks? It would obviously be difficult to get the dialogue going without some agreement on these matters.

Need for agenda

An agenda for the talks too needed to be agreed on, if possible. The People's War and the CPI (M-L) (Jana Shakthi) announced a team of representatives to talk to the government about the code of conduct (which came to be called the ceasefire agreement, though many in government claimed to be uncomfortable with the notion of a ceasefire, which in their understanding could apply only to two sovereign armies and not between a legitimate force and an illegitimate rebel group). The People's War was the party that was mainly targeted for the talks for the obvious reason that it is far and away the strongest of the Naxalite groups. The CPI (M-L) (Jana

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Shakthi) got tagged along apparently because they were working together with the People's War on many issues. The other armed Communist revolutionary groups -- there are at least five more which can claim varying degrees of armed efficacy and popular support -- were not sure whether they were invited, though some of them expressed willingness to join the talks if invited. At least two, the CPI (M-L) (new democracy) and CPI (M-L) (unity initiative), whose activity tends to be predominantly peaceful, showed no interest since they – probably rightly – saw the talks as a matter between the state and the more violently inclined Naxalite groups.

Interestingly, while sympathisers of the Naxalite movement outside Andhra Pradesh have been heard to express doubts about the desirability of the talks, practically no one in the radical Left camp in the state saw the talks in themselves as undesirable. Left to themselves, the normal reaction of the average radical intellectual or activist in the state would have been to ridicule the notion of the talks, and indeed one prominent writer who is generally left to herself did ridicule the process, but the rest sensed that there was a strong current of public opinion cutting across class and region favouring some kind of dialogue between the revolutionaries and the state, and sensibly bowed to it.

It was realised by the two sides that talks require mediation, and so a committee of mediators was agreed upon. In this as in much of the first round of the talks the Naxalites practically had their way: the mediators were essentially their choice. In the heady months of June-October, 2004 there was an air of the return of the prodigal child in an official response to the Naxalites. The only thing missing was the fatted calf. This strange pampering, which the uncommonly benign air the home minister perfectly, sported, was merely one moment of the unreality of those days. The mediators and the representatives of the Naxalites discussed the matter of the code of conduct with the government and a draft of the terms of ceasefire took shape by the end of July. The ceasefire agreement had eight clauses in it. All of them amounted to only one thing: that the two sides would, for the duration of the talks, refrain from the acts of violence that had permeated revolution and counter-revolution during the last decade. Clause 1 committed the two sides to non-use of firearms and any and every means of destruction of life. Clauses 2, 3 and 6 set out the various acts of violence the People's War has habitually been indulging in, in the course of its fight against the State, and committed that party to abjure the lot for the duration of the talks. Clauses 4, 5 and 8 similarly listed the repressive acts the police have been habitually committing in the course of their counter-insurgency operations and committed them to abjuring the lot too.

Clause 7

That leaves out Clause 7, which has become historic in a manner of speaking. The issue this clause addressed was whether the Naxalites would go around sporting weapons in public view during the period of talks. From the beginning it was clear to all (or so we thought) what unlike the previous dispensation of Chandrababu Naidu, this government would not insist, as a pre-condition to the talks, that the Naxalites put down their weapons, that is to say give up armed struggle altogether. The issue for the code of conduct was only this: during the period of talks, when the Naxalites were free to move around spreading their political message of revolution, and organising people on issues, would they keep their firearms in some hideout, or go around with the guns slinging from their shoulders? The government insisted that they do not move around with weapons. Clause 7 as proposed read: "During the period of talks the People's War as well as other political parties will be free to undertake propagation of their politics without carrying weapons, in a manner that will preserve the atmosphere of peace". The wording was somewhat elliptic but the intent was clear.

Hazy controversy

There has been some hazy controversy regarding the incorporation of and assent to this clause, with trading of charges of bad faith on both sides. The fact perhaps is that it was initially not seen by the revolutionaries as involving any major compromise, but they had second thoughts later. In fact, their first response was the right one, but soon rhetoric took over and there could be no going back thereafter. It is obvious that while a government working under a rule of law regime can in public interest very well open talks with armed groups that reject its law without making it a precondition that they give up armed struggle, it cannot assure them that they can freely move around with weapons and the police will look the other way. It is no answer to this to say that a lot of ruling party men have unlicensed weapons and the police do look the other way when they take them out. They do, but the point is that the State cannot and does not on paper commit itself to such licence. Perhaps, if the revolutionaries -- or rather, their intellectual sympathisers, who can never have enough of blood and gore -- had not taken off at a tangent and messed up the matter with uncalled for rhetoric, Clause 7 could have been approved as proposed by the government, with an unwritten understanding that in areas where the revolutionaries faced danger from renegades or other crim-

> Equally surprising is the belief entertained by many otherwise intelligent persons, including some known as competent social analysts, that the government and the revolutionaries would sit across the table and discuss how best to solve the problems of poverty, untouchability, dowry, drought and so on

inal counter-insurgents, they could carry unostentatious weapons of defence, and the police would not interfere.

But any such possibility was foreclosed by radical ideologues of various kinds who quickly got into the act. It was said that the people had a right to carry weapons so long as the State in the form of its police and armed forces did, and any view to the contrary was an ideological surrender to the hegemony of law as an instrument of the State. More earthily, it was said that the oppressed people could no more be asked to abjure weapons than cattle could be asked to give up their horns, or tigers their claws (if claws are what tigers have).

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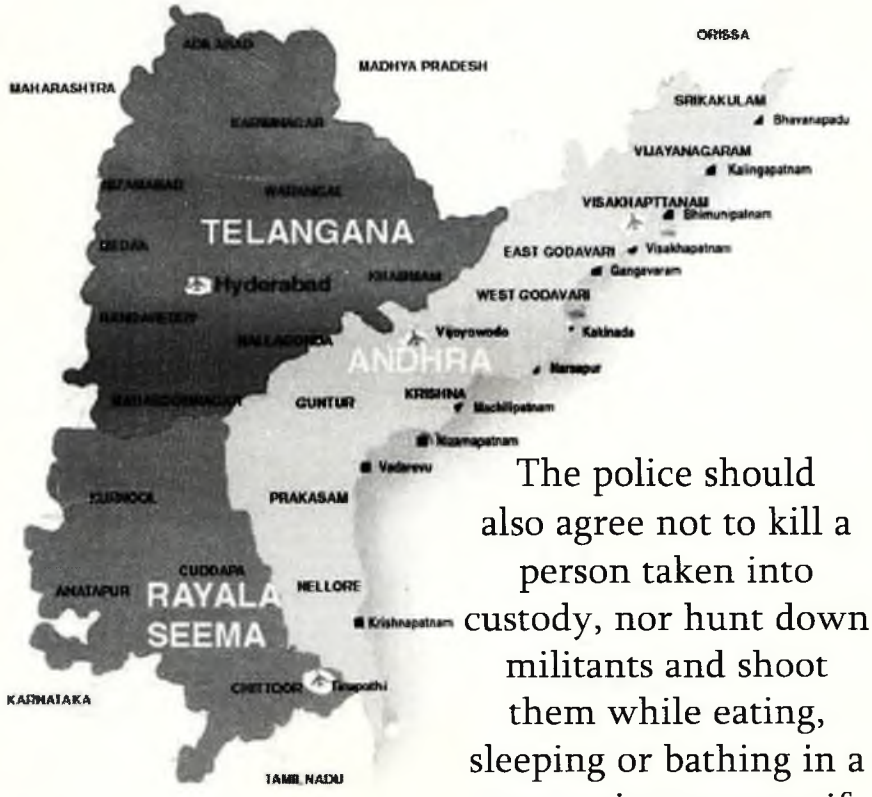
Along a different ideological trajectory, it was said that when the gods of brahminical Hinduism were all armed to the teeth, the dalit-bahujan masses had every right to arm themselves. Radical theories of political violence had a field day, as they would, since Andhra Pradesh is unfortunately full of pen-pushers whose capacity to withstand the reality of a violent conflict is untested but are fascinated by violence in ink.

Any one hearing the discussion would have thought that the very justification of armed struggle was in question, and that the government was going back to Chandrababu Naidu's position: that the government will talk to the revolutionaries only if they give up armed struggle. By and by YSR would start saying that, but that was not the issue when disagreement initially cropped up concerning Clause 7 of the ceasefire agreement. Indeed the way that innocuous term of the ceasefire agreement was made to look like total surrender of weapons for good and all not only physically, but ideologically as well, has resulted in an obfuscation of the issue that has enabled YSR now to talk of total disarming as a precondition for talks and yet give the impression that he is insisting only on having his way with Clause 7.

At that time, however, the strong public mood in favour of talks saved the situation. It was suggested by well-wishers of the talks, and accepted by both sides, that the disagreement over Clause 7 would not be allowed to become an obstacle to the talks. The rest of the ceasefire agreement would be finalised and talks initiated, with the controversial clause itself being an item on the agenda of the talks. This, of course, put the revolutionaries in a happy position, for until the time there was some agreement on Clause 7, they would go around the countryside with weapons, notwithstanding the ceasefire and the dialogue. That the government knowingly countenanced this is of a piece with the prodigal child syndrome referred to above. Or perhaps it was the long rope syndrome: it is a little difficult to be certain. For soon the press started publishing news – with telling photographs – of armed squads of the People's War and Janashakthi going around villages, holding meetings, occupying lands, issuing warnings and threats to persons accused of harassing or cheating the people or informing the police about the movements of the revolutionaries, ordering externment of some of them from villages, and so on. While this state of affairs caused understandable disquiet in more than one quarter, the police started expressing disquiet about collection of large amounts of money by the revolutionaries 'taking advantage of the freedom given to them'. There is no evidence that even the worst kind of repression had ever diminished the capacity of the revolutionaries to collect such money as they wanted, and at will, and the police know this better than anyone. That nevertheless they chose to make a big issue of it is probably because they thought they could use it to disturb the popular mood which had turned very friendly towards the revolutionaries. The most attractive thing about revolution is its deep moral tone. But there could be another reason: the police in general – and this has nothing to do with the presence or absence of militancy in the area – tolerate extortion the least among all offences; in fact, it enrages them, because they dislike competition. There are no greater organised extortionists than the police, and they do not like any body cutting into their business.

But popular mood remained friendly, in fact hugely so, and the talks did start. Nobody had any notion what the agenda could be. Many among the public seem to have thought that the ultimate agenda was the establishment of peace, which can only mean that armed struggle would be given up by the revolutionaries. In tune with this, the talks were frequently described as 'peace talks'. This expectation, which had no basis in any fact, is probably one reason for the enthusiastic reception the talks got from quarters normally quite unfriendly towards any suggestion of a civilised response to the Naxalites. Equally surprising is the belief entertained by many otherwise intelligent persons, including some known as competent social analysts, that the government and the revolutionaries would sit across the table and discuss how best to solve the problems of poverty, untouchability, dowry, drought and so on. They should have known that no government sanctified as lawfully elected will accord that degree of respect to an armed group that is a law unto itself, unless the group is either ready to lay down arms if some policy changes are agreed upon, or has reached a degree of strength that makes normal governance impossible. That the Naxalites are in no mood to disarm themselves is a well-known fact. And it can be nobody's case that they have the kind of strength that makes normal governance impossible in Andhra Pradesh.



That they are capable of causing substantial degree of inconvenience to the administration in its routine functioning in the areas of their strength and influence is true. But by no stretch of imagination can it be said that administration has been crippled to a degree that it makes it impossible for the government of the state to function without letting the revolutionaries into the privilege of policy-making, even as they are free in the interregnum between one round of the talks and the next, and permanently thereafter, to carry on armed revolution. This should have been obvious but was apparently thought irrelevant by many quite intelligent persons. The amount of wool that flew around Hyderabad in those heady weeks could have clothed a sizeable Arctic expedition.

Give and take

In the realm of practical politics, dialogue can only be on the basis of give and take, unless one side has made life truly impossible for the other. One area where give and take was possible was in the matter of the forms of violence and counter-violence that the two sides have developed over the years. The police could agree to stop torturing the kith and kin of a militant to reveal his/her whereabouts, or to put pressure upon the family to make the militant surrender. They could agree to see provision of food or shelter to militants as a matter of political sympathy or social empathy and not a crime. They could agree therefore not to harass people who do so. They could agree not to see the encouragement of the Naxalites behind every protest movement in the areas of their activity, nor to construe such encouragement, if true, as in itself criminal, so long as the grievance is just. They could agree not to obstruct any social or economic benefit obtained by the people with the help or assistance of Naxalite activity. In plain terms, to agree not to punish political and social activism in the name of preventing violence. This would be a difficult decision to take, but it would have to be taken. It would be objected to on the ground that the seemingly just activism created a popular base for revolutionary violence, and therefore, the police are entitled to take preventive steps. The apprehension is not without factual basis, but the conclusion inferred is of the same genus as George Bush's theory of the right of violent preemption, and no more acceptable. The State must agree not to suppress political aspirations and their peaceful expression in the name of the revolution that lurks behind it, even if we all know that it does. The police should also agree not to kill a person taken into custody, nor hunt down militants and shoot them while eating, sleeping or bathing in a mountain stream as if they are wild game. And not to corrupt militants and create covert operatives inside the revolutionary ranks.

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The Naxalites on their part could agree not to harm any and every leader of the ruling party, however small or inconsequential, in retaliation to the State's repressive policies. That any and every policeman would not be killed in retaliation to 'encounters'. That the routine political-administrative activity of the establishment would not be forcibly prevented. That elections and election campaigns would be allowed unhindered and the people's freedom to choose to be followers of the Congress, Telugu Desam Party or BJP would not be curtailed. It would be objected to on the ground that as we all know, these parties tell lies and cheat the people, and allowing people to freely follow them would tantamount to allowing the people in their innocence to offer themselves to the cheating. This objection too is not without basis, but nevertheless the revolutionaries must agree not to obstruct the freedom, for truth can be realised only in freedom, though they will, of course, be free to expose the lies and the cheating. The revolutionaries should also agree to be transparent in the allegations they make about persons being police informers, anti-people elements, etc, and fair in their modes of proof, before setting out to punish them. And mindful of the person's social-economic background in deciding the punishment to be given. Indeed, this is perhaps the single

most important demand that the people at large would place upon them.

Distribution of fallow land

The amount of violence the two sides have subjected to each other is such that the mutuality implied by such an agreement would be attractive to both. And the people living in the affected areas would be immeasurably happy with it. It could, therefore, be a fruitful agenda for the talks. Some other issues could also be added to it, without transgressing the limits of plain realism. There are some thousands of acres of land lying fallow, mostly in the districts of Warangal, Karimnagar and Adilabad, which were occupied forcibly by the revolutionaries. They intended that the poor should cultivate it but the police would not allow that. With the original landholder scared of the Naxalites and the poor scared of the police, the land remains fallow. There could be some agreement beneficial to the poor about the disposal of the land. Not all the original landholders were landlords. Some were merely political enemies of the Naxalites or their cadre, and otherwise ordinary farmers. In any case even in those instances where the original landholder was a landlord, it is doubtful that the land implanted with red flags would be legally acquirable surplus land. Yet, most of the landowners have long since expressed willingness to give up the land if they are allowed to retain enough for their needs, or paid some compensation. There was one instance in Nalgonda district where a large extent of semi-cultivable land overlain with intractable litigation was distributed to the deserving among the claimants at the instance of the People's War and the then home minister. The remaining litigants were successfully persuaded not to take the matter to court: such persuasion is essential since property in land is constitutionally protected from acquisition other than in accordance with the law. Some such arrangement could probably be worked out in the matter of all the fallow land. This too would be of advantage to both because there is much public resentment at the sight of arable land of substantial extent lying fallow.

There is another important matter that both sides could fruitfully come to an agreement on. This is the mutual obstruction of political freedom. Whether legally banned or not, the Naxalite parties and their mass organisations face tremendous obstruction from the police. They are not permitted to hold meetings, distribute pamphlets, stage cultural programmes, etc. For offences of violence committed by the underground, the activists of the mass organisations suffer terrible police retaliation. They have not infrequently been killed as surrogates for the underground. In turn, they – especially the CPI (Maoist) as the People's War is now called – have made life quite miserable for the local cadre and leaders of the TDP and Congress (indeed all the parliamentary parties) in the areas of their influence. Election time can be pretty bad, but even normal times are not altogether safe for them. The elected representatives in the local bodies are especially vulnerable. They can be killed, maimed, their property set on fire, the lands planted with red flags, etc, for no greater reason than that they represent the repressive regime at Hyderabad. The Maoists, at any rate, have never made a secret of the logic of retaliation: when these parties, in power or in opposition, deny us out political freedom, why should we respect theirs? It is precisely because of their logic that a fruitful agreement that will permit both sides to exercise their political freedom – from participation in polls to publication of pamphlets – would be of value to both. We have already seen the likely objection – especially from the police – that political freedom for the revolutionary point of view will tend to increase revolutionary violence. If revolutionary violence is found attractive by significant numbers of the people, and will grow at the first opportunity, then that says something about the existing state of affairs, and whatever any one may think about such a state of affairs, shutting it out forcibly from society's sight is no response.

For offences of violence committed by the underground, the activists of the mass organisations suffer terrible police retaliation. They have not infrequently been killed as surrogates for the underground

This far the dialogue could reasonably have gone. Since an extended ceasefire with armed rebels is unlikely to be acceptable to any government in the absence of the disarming of the rebels on the agenda of the talks, the proper thing would have been to fix a brief agenda as outlined above, get down to the nuts and bolts of it, and conclude it as fast as possible. Indeed, if the dialogue had been understood as a brief and pointed matter, the 'controversial Clause 7' could have been simply ignored.

Resemblance to theatre

But that is not what happened. The closer the situation came to the actual beginning of talks, the more unreal it became. The government never spelt out any agenda, and the revolutionaries, for their part, seem to have thought of it as some sort of a public debate between ruling class politics and revolutionary politics. Indeed, a large number of their followers too appear to have thought so, and were quite happy about it, for if it was to be a debate, it was a foregone conclusion which side would win. There was, for instance, a proposal that the talks should take place by turns at Hyderabad, and three towns in the three regions of Andhra, Telangana and Rayalaseema. The resemblance to theatre is unmistakable. The resemblance survived the prologue and extended to the first act too. When the time came for the revolutionary delegation to emerge from the underground for the talks, the delegation of five (at least two of whom are known mostly to live in Hyderabad) went from their normal places of activity to the Nallamalai forests, and then

emerged in the full glare of television cameras. They could well have left their weapons somewhere and come down to Hyderabad, if they were not already there. Instead they came out of the forests weapons in hand, followed by their comrades to whom they then handed over their weapons. Turning their backs on the jungle they walked weaponless into the 'mainstream' as their comrades disappeared into the forests, arms and all, camera bulbs flashing furiously.

At Hyderabad, the government put them up at one of its guest houses, arranged police security, and let them interact freely with the public. The media and public attention they received was stupendous. Any unsuspecting stranger walking into Hyderabad in those days could well have thought that they were leaders of a victorious rebel army, come to receive the sceptre and the crown at the defeated capital. The chief minister vanished from the TV screen, and it was the revolutionaries all the way. Delegation upon delegation from different walks of life, political persuasions and ideological inclinations called upon them. Problems of various sections of society were taken to them and they were asked to raise them with the government in the course of the talks. Even prominent Ambedkarites who had on more than one occasion accused the revolutionaries of not comprehending caste and not fighting for its annihilation for the reason that their leadership at the top is upper caste, attended the durbar of the revolutionary delegation, whose main spokesman Akkiraju Haragopal also known as Ramakrishna was a brahmin by birth, to suggest an agenda for the talks that would take in the components of social revolution.

Disquieting phenomenon

Forgetting the ideologues, in the minds of the literally hundreds of ordinary people and activists who thronged the Manjira Guest House, there was this assumption, perhaps, that the government had called the revolutionaries to Hyderabad to discuss intractable social issues and people's problems with them, and so it made sense to add their problems to the agenda. It did not occur to any one to ask themselves why the government would want the advice of the revolutionaries, for it is nobody's case that the government does not solve people's problems because it is not aware of them, nor that it has no in-house experts in its secretariat who can advice it as well. Nor did any one ask themselves why all problems of society should be discussed with the Maoists, whose programmatic concern and certainly their comprehension had always been confined to only a few. Perhaps the less innocent assumption was that the government would sense the threat of violence behind the issues raised for discussion by the revolutionaries, and resolve them in the manner suggested by them. Indeed, thus undercurrent of faith in the efficacy of the gun over persuasion or democratic pressure was the most disquieting thing about the otherwise quite charming adulation the revolutionaries received in those few days. Most of those who visited them – delegations of the physically disabled, adivasis, hutment dwellers, etc – certainly knew much more about the issues they had been fighting than the revolutionaries did, and they knew that the government had never deigned to send any delegation other than the police to answer their agitation. In normal circumstances, any suggestion that the government discusses their issues with some other party or organisation would have given rise to understandable resentment at the usurpation of their agenda, but now they themselves voluntarily invited the usurpation. It is not that overnight they had acquired faith in Maoism. They were merely expressing the cynical faith that lurks under the democratic skin, that the gun is a more effective political weapon than any devised by democracy.

The revolutionaries rose to the dramatic occasion and promised to talk of everything with the government - land, caste, gender, the World Bank, globalisation, minority rights, etc

The revolutionaries rose to the dramatic occasion and promised to talk of everything with the government - land, caste, gender, the World Bank, globalisation, minority rights, etc. To what effect, no one knew. And no one asked, for it was a grand show that no one wanted to spoil. And to give them their due the revolutionaries handled their role with poise and dignity. They avoided the usual radical habit of construing all dialogue as an exercise in putting the interlocutor in his/her place. They of course made it a point to tell people that the solution to all problems lay in their leadership. They meant their political leadership but those who had come to them had already accepted that at a more cynical level.

And on this note the talks started. Some one should have taken things in hand at this stage, made the two sides see sense, and pared down the agenda to the politically feasible. And saw to it that the talks would be a quiet face-to-face affair with no more than two or three on either side, give or take a mediator. That is how all serious dialogue between governments and rebels takes place anywhere in the world. But not in Hyderabad. In retrospect one wonders whether both the radicals and the government were not laughing up their sleeves. On the government's side, to declare an agenda would be to give legitimacy to the notion that there was something the government should discuss with the revolutionaries. To just sit across the table and listen to them hector the establishment without committing itself to anything in particular would belong to the genre of humouring the prodigals, and that the government had no objection to doing. The revolutionaries, for their part, even as they were talking to the government, were in fact addressing the public behind it. For about a decade if not more, they were known to the public outside their areas of activity through news of death –

death at their hands or their death. Intelligent persons would often pose the question whether there was nothing more to revolution than killing and getting killed. Now the revolutionaries had a good chance to tell the public that they cared for a wide range of issues of justice. Intentionally or otherwise the revolutionaries utilised the first round of talks to address the public and answer the questions often flung at them. In this they succeeded. They also held a series of well attended public meetings at various corners of the State, spreading the more usual kind of fire and brimstone message and giving heart to their followers who had grown tired over the years of talking of nothing but police repression.

The only concrete decision that came out of the first round of talks that were held from October 15–18, 2004 was that a commission of sorts would be constituted to go into the question of distributing land to the landless. The People's War which had in the meanwhile become the CPI (Maoist) after merging with the MCC of Bihar, insisted that the commission should not consist only of government officials but should also include persons with a history of involvement in agitation of land to the poor. The government agreed, but nothing was put on paper, and soon enough the government forgot about it. It was said that the second round of talks would take place by and by but neither a date nor any more concrete agenda than in the first round was agreed upon.

At that time, it was generally expected that there would be a second round, though any one with any political intelligence must have realised that the government could not go on playing the benign host for ever.

The ceasefire was effectively used by the Maoists and all the revolutionaries to reenter areas that they had practically vacated for quite a few years. With 'Clause 7' undecided, they were going about with weapons, planting red flags in lands, issuing orders to all and sundry, holding public meetings disseminating the idea of armed struggle. And they had from the beginning made it clear that there would be no surrender of arms and abandonment of armed struggle at the end of the talks. Any indefinite continuation of this state of affairs would evidently be unacceptable to the government. It would, quite likely, insist on more purposeful talks in the second round, namely, some bargain that would make life easier for its rural representatives and administrators while conceding something by way of freedom and relaxation of repression in return. This is what was generally expected.

But then YSR spoke out. He had maintained a strange silence all through, as had his director general of police (DGP), except for an angry outburst or two. The government had throughout been represented by the home minister and a director general (intelligence). Now YSR started speaking as if he had been asleep all these days and had suddenly woken up. Where is the question of talking about people's problems with the Naxalites, he asked. He would talk to them about the modalities of their surrender, if they wished. And of course there would be no toleration of armed men and women moving around. The police would have to act. The DGP, taking the cue, expressed the point of view of perhaps the majority of the policemen. Namely, any talks other than for the final surrender of the revolutionaries would only strengthen revolution. If governance had consisted of nothing but policing, this is of course a perfectly sensible view. And indeed it was the view that prevailed with Chandrababu Naidu's government. But the whole point in seeking a different approach from the government was that revolution being a socio-political process, looking at it exclusively from the point of its containment made no sense even to the rulers, let alone the ruled. If there is an armed revolution going on and if it has proved its staying power, it makes little sense even for the purpose of administration to think exclusively in terms of its containment and extermination. A time comes when in the interests of the people, those goals would have to be postponed and governance learns at least in the short run to live with the revolution on terms least injurious to the people involved in the matter. This would be all the more so when the nature of the revolution is such that the people involved in the whole process are the weakest, the poorest and the most vulnerable in society.

But of course there was little possibility of YSR seeing things this way. The only hope for the talks lay in his continued non-involvement in the process. And so the moment he opened his mouth about it, all possibility of a second round came to an end. At about the same time the then DGP, an officer who at least had some field experience in Telangana in an earlier stage of his career, retired and was replaced by an officer who is a stranger to Naxalism as a social process, and fancies himself a tough cop to boot. There was a fortuitous circumstance that, it was hoped, would ensure a less disastrous choice for the post. Namely, that this officer's wife is one of the principal accused in a major criminal prosecution for forgery and fabrication of documents in aid of trafficking in little children in the name of giving abandoned children in adoption to well-heeled foreigners. It was hoped that his appointment would for that reason be seen as improper. But it was not, and not many thought it should have been.

Tough talk

The tough cop started talking tough and the police started killing. The ceasefire, that is to say the mutual agreement not to kill, had stood quite firm for fully six months by the end of 2004. There were two or three incidents, in Mahbubnagar, Cuddapah and Karimnagar districts, where the Maoist cadre violated the agreement but those were clearly local aberrations and not wilful reneging on the agreement on that party's part. The police for their part had desisted from killing, though they continued to do the rest of the nasty things that have become part of policing. But on December 16, when the ceasefire was due to be extended, the state cabinet met but said nothing. It neither extended the ceasefire nor did it declare that there would be no further extension. Some ministers pretended that they were not aware of any ceasefire agreement, and some said that no statement was needed to extend it since it was an informal agreement. Hypocritical noises were however made about continuing the talks with the Naxalites, without getting down to anything specific, and without in plain terms extending the cessation of killing. Indeed, the chief minister, ever since he broke his silence in the matter, has consistently talked in a manner calculated to knock down the very basic of the talks by saying that the Naxalites would have to give up arms as a pre-condition. He has never made it clear whether he is only emphasising Clause 7 or going back to Chandrababu Naidu's stand. While this ambiguity was made possible by the revolutionaries themselves when they talked of Clause 7 as if it was a pre-condition of abandonment of armed struggle altogether, he is in all likelihood reverting to Chandrababu Naidu's point of view, and would have done so even if radical rhetoric had not created the needless confusion. Only, his reneging on the very basis of the talks would then have been clear to the public.

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Aggressive police

Once the signal was given from above, the police became quite aggressive. They have started going quite deep into the forests to hunt and kill the armed cadre of the Naxalites, in particular the CPI (Maoist) cadre. For many years now they have been regularly getting a lot of information about the movements of the armed squads, a fact that reflects the increasing organisational brittleness of the Naxalites from about the mid-1990s, and so if they decide to hunt and kill, it is a matter of time before they start hitting the target. When the first incident or two happened, there was possibility of giving the benefit of doubt to the government, namely, that the police had taken things in hand without the consent of the government. But YSR did not leave any doubt in any one's mind. He publicly defended the killings, saying that so long as the Naxalites were armed, there would be encounters, and there was no need of any enquiry because the police, he somehow knew, had acted out of lawful necessity. Once it became clear that the action of the police had the sanction of the government, the Naxalites declared that they were withdrawing from the talks, and they too have started killing. About 60 lives were lost in the first two months of this year, and things are therefore definitely back to normal.

On the possibility of resuming the talks, YSR and his cabinet colleagues have been indulging in the most reprehensible double-talk, which appears to have been taken at face value outside this state. The government continues to be open to talks, they say, and it is the Naxalites who have broken off. What they do not add is that the Naxalites broke off only after it became clear that the government had no intention of stopping the killing of their cadre. And after YSR reneged on the basic point which the government had accepted at the very beginning of the whole process, namely, that Naxalites giving up armed struggle would not be a pre-condition for the talks. To this extent their decision to leave the dialogue table cannot be faulted and the principal responsibility for restarting the process would lie with the government. But an equal responsibility lies on the revolutionaries too, namely, to ensure that the unreal tone and the drama of the first round is eschewed, and the two sides conduct themselves with the degree of realism one supposes they are capable of.

–March 26, 2005

Note

It is, in parenthesis, nice at last to be able to call the Maoists by their proper name. One remembers that there was some theological objection of Chinese origin to the use of the expression Maoism; it was said that one should only say Mao Zedong Thought. The objection seems to have demised on its own.

People's war and the government

Did the police have the last laugh?

Sustained efforts by civil society organisation finally brought the Andhra Pradesh government and the People's War to the negotiating table in 2002. But suspicions have lingered on both sides with encounter killings continuing and the state government refusing to respond favourably to offers of ceasefire by People's War. Moreover the process has been stymied by the government's insistence on unilateral surrender by the group prior to the start of any dialogue

Unreasonable tenacity usually has a way of proving itself, establishing perhaps that reasonableness lies in nothing other than perseverance. About five years ago, when a retired IAS officer of the Andhra Pradesh cadre by name SR Shankaran gave voice to the idea conceived by a small group of his associates, that responsible citizens of this state cannot be content watching the Naxalites and their foes killing each other, blaming the state off and on for violating the law, and perhaps the Naxalites too sotto voce for violating revolutionary norms, he was forgiven only because he was known to be a good man. Otherwise, the idea that middle class people can do anything in the midst of class struggle except dwell on the sidelines, encouraging the heroes of the people, gathering public opinion in their favour, and perhaps cautioning them against excesses once in a while, has been unknown in this state. How could the middle class, any way, judge how much bloodletting was too much, and on what authority could they intervene to put a quietus to it? Even out of the sight of probing revolutionary eyes, the deep self doubt that Marxism infects intellectuals with (among the more debilitating of the negative features of that highly intellectual world view) would have made the effort seem outrageous in its presumptuousness.

SR Shankaran and his associates however decided to get on with the work of reining in the guns on both sides without making any effort to pose to themselves the very unsettling question of their moral authority. Some of them are avowed Marxists, but one of the happy things about Marxists in this country is that most of them are not conscious of the philosophical complexities of their practice, and therefore do a lot of quite 'petty bourgeois' things without ceasing to be good Marxists. And the effort in question has been helped by a good liberal faith in the universal worth of all individuals – a faith that is foreign to all radicalisms that view universals in general with suspicion.

The group called themselves committee of concerned citizens (CCC), a name that does not render itself happily in Telugu. They set about asking both the Naxalites and the government what exactly they thought they

were doing, and why. Initially, both sides were slightly amused at being asked such questions, for they are accustomed to regarding their acts as self subsistent in meaning and justification (rather like the Upanishadic Brahma). Yet the group was humoured by both sides because it consists of persons whom the Naxalites have relied upon for mediating with state authority whenever such need has arisen, and so too the state in reverse. The CCC proceeded on the assumption that this killing match could not go on forever, and that both sides owed the public the responsibility of keeping their violence to the minimum, and perhaps working towards a long-term solution to the violence. Without explicitly rejecting the idea of class struggle, the group has taken it as self-evident that conditions of endemic violence cannot be regarded as normal, however abnormal the times.

Some among the group perhaps feel that a civilised society cannot accept perpetual armed conflict, whatever its immediate justification, and that if it is a civilised society at all it should be able to resolve peacefully the issues leading to the conflict. Some are perhaps humanists of the type who feel uncomfortable with violence, whatever its source. Some are certainly motivated by the concern that Naxalite violence, even as it has ensured the rights of the poor, is damaging the prospects of development (whichever way it is understood) of the region of conflict: Telangana. Some perhaps feel that societal pressure upon both sides to reduce the levels of violence may help modify for the better the present unequal balance between mass activity and weapons in the practice of the People's War. Some probably feel that the same pressure will force the government to implement welfare measures such as land reforms with the degree of honesty commensurate with the aim of reducing the violence of the revolutionaries. Some may be motivated by a hope of facilitating a historic compromise that would put an end to bloodletting in Telangana. It is doubtful that the group has clarified to itself the deeper reasons why each of its constituent members is part of it. But they have been persisting with their efforts with doggedness worthy of the cause.

The revolutionaries, perhaps rightly at a certain level of analysis, understood that the assumptions underlying the effort of the CCC negated the notion that violent class struggle is a necessary outcome of existing social reality, and is indeed nothing more than a political choice made by the revolutionaries, as arbitrary as – which also means as rational as – any other political choice. Many of their intellectual sympathisers therefore expressed considerable hostility at the political meaning of the effort, even as they pretended to be only amused at its naivete. Until, that is, they realised that there was considerable public sympathy in the very areas of functioning of the Naxalites for the effort being made by the CCC. Thereupon they of course reacted with a characteristic ability to denounce yesterday's truth in favour of today's realisation.

Violence: Spiralling descent

But one way of looking at the effort would perhaps have made it acceptable even to those who are politically with the People's War, without straining their belief that violent armed struggle is the ineluctable form of revolutionary class struggle today. About 20 years ago, the Naxalite parties, including the party that is now called People's War, conducted themselves with no more violence than would be a normal part of any conflict between the rich and the poor. At that time it was the state which behaved in a manner blatantly partial to the landlords, and thereby started the spiral that has led to the present state of affairs. If there is any one in the police establishment capable of reflecting self-critically, they must be ruing what they started two decades ago. As a matter of fact, many who were instrumental in adopting this policy as superintendents of police in the districts in those days – whether they did it on their own or upon instructions from above – are in quite senior positions now, and so the fact that there is no rethinking in the police establishment shows that they have no interest in learning.

It is true that the CPI-ML, as a matter of political belief, held that the Indian state cannot be overthrown by means other than armed conflict, and none of the parties/groups that it later broke up into has given up this fundamental belief, but that does not mean that from the beginning they were thinking in terms of remote controlled RDX and AK-47 rifles. They came to that after a while, in tandem with the state's response to their politics. It is also true that even when they were mobilising the masses by lawful means, they intentionally used methods that would challenge the very authority of the law and push the state, inch by inch, to repudiate law and legality, a repudiation that

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the Indian state of course is not at all reluctant to make, for reasons of its own. This is a conscious stratagem of precipitating crises – and 'The Crisis' as well – that all revolutionaries use even as they are championing popular causes. It is their 'hidden agenda', though it is a matter of choice whether one agrees to associate that expression with its usual pejorative connotations. The stratagem marks an essential difference between revolutionary militancy and non-revolutionary political activism which, even when it is militant, seeks not to stretch the rule of law till it breaks, since it

has no aim of causing break down of the state as such, but rather to attain political ascendancy by mass support which would set the stage for change of the substantive law concerning resources and opportunities. In such a strategy, violence would be only defensive, including the occasional offence that is part of defence.

More to the point is that the presence of this more or less conscious stratagem justifies in the eyes of the state its brutal overreaction. It will say that it is entitled to react to more than the immediate need, for to behave otherwise is to let the cunning of the military strategy disguised as a socio-economic struggle on behalf of gullible masses succeed in its aim of progressively weakening the legitimate state power. The response to this would depend on what degree of legitimacy one concedes to this state, and it is unlikely that there will be unanimity in this matter, but even if the absolute claim to legitimacy is taken at face value, when masses of people and their genuine grievances are involved in such revolutionary stratagems – for there is nothing fake about the espousal itself – society as well as the state would not be right – quite apart from legality, which is indifferent to alleged or real inner motives – in treating the masses as expendable because they are 'gullible', and are being 'misled' for opaque purposes, and deal with the phenomenon with the kind of brutal insensitivity that successive governments have exhibited in Andhra Pradesh over the last three decades. For that would injure the most vulnerable classes of the population.

In many ways the most objectionable part of the insensitivity is the succumbing to the insistence by the police that policymaking and execution in this matter be handed over to them because the revolutionaries have an ulterior motive in their well-rationalised use of violence in defence of popular causes. As for gullibility, while the masses for the most part may not be conscious that the way their concerns are espoused by the revolutionaries contains within itself a different agenda as well, whose congruence with the interests of the masses is contestable, not all of them are unaware, and if and when they are made aware they may not react with the kind of horror that the white-collar class is liable to. And why would they, so long as their concerns too are addressed by the violence along with its other objects? They certainly have no cause to love the Indian state as much as the white-collar class does.

The spiral had begun in real earnest. The state formed special anti-extremist wings of the police, and filled them with tough men armed heavily and given liberal amounts of unaudited funds. 'Encounter killing' gradually increased from the late 1980s

Armed with this doubtful justification but impelled by much less righteous considerations, the state in the early 1980s, came down very harshly on the agricultural labour unions (the 'Rythu Coolie Sanghams') of the Naxalite parties. Youth of poor families were arrested, beaten, tortured and jailed in their hundreds. Killing them would start later. For the Naxalites, or at least the ideologues among them, this perhaps merely proved the nature of the state, hastened the revelation of its true nature, as it were. It therefore justified the acquisition of revolutionary hardware, which they set about doing soon. They could not have been insensitive to the brutal impact that the way the 'truth' was being proved had on their poverty stricken followers, since their concern for the poor – to which class most of them belonged any way – need not be doubted. But the power of ideological faith is such that they proceeded nevertheless with the second rung of the spiral, with the satisfaction of having beheld historical truth unfold in front of their eyes.

They began by coming down very brutally on those who sided with the police. Chopping of arms and legs was the favourite way of treating them in the latter half of the 1980s. Some of them were landlords, but over time, there was a greater proportion of the poor among the victims. The frequent sight of 'enemies of the people' hobbling around on amputated legs was calculated to unsettle the most ardent supporters of the revolution. But parallel with this chopping spree the People's War also acquired progressively more lethal weapons. Its activity gradually went underground as its legal activists became targets of police brutality.

The spiral had begun in real earnest. The state formed special anti-extremist wings of the police, and filled them with tough men armed heavily and given liberal amounts of unaudited funds. 'Encounter killing' gradually increased from the late 1980s. Policemen moving in the villages in jeeps, catching hold of youth, torturing them and more often than not killing them at the end became a dreaded but common happening in Telangana. Police camps were set up in remote villages creating terrible fright among the people. The People's War reacted by direct attacks upon the police, killing them ruthlessly and grabbing their weapons and ammunition. It discovered the efficacy, in the kind of hillocks-and-bushes terrain that defines Telangana, of landmines controlled from a distance by electrical/electronic devices.

Police vehicles were blown up by powerful detonators at regular intervals. These methods drove the police away from the villages to the towns. Police camps were wound up, and patrolling on jeeps was given up. For a short while it looked as if the People's War had succeeded in 'liberating' its villages from the state. Local leaders of the Telugu Desam Party and the Congress in Telangana would be killed at will by the People's War, and there would be no police around to protect them.

State response

But soon the state found for itself

maniacally dedicated killers dressed up as policemen. They would spend long days and nights roaming around on foot without rest, almost on par with the most dedicated revolutionaries. Both sides, in the process, updated their weapons like nobody's business. Police stations in Telangana were relocated outside the township, at a height, in the model of an impregnable fort. Nobody thereafter would go to the police station to complain of a stolen goat or bicycle. The police stations ceased to be civilian institutions, but became fortified camps for the armed forces of the state to fight the Naxalites.

Inevitably, the common people have got caught between the two parties. To live in a Telangana village means to live in perpetual fear: you must be careful not to give the police the slightest cause for suspecting that you have anything to do with the Naxalites. That is bad enough, but you must also make sure you don't give the police the slightest opportunity to pretend that they suspect you of having such links. On the other hand, you must also make sure you don't give the Naxalites the impression that you are a partisan of the state, or that you believe you known better than they how to make a revolution, or even that you have your own views of how to make this a better world.

At the end of the 1980s, Marri Chenna Reddy came to power as the Congress chief minister of Andhra Pradesh. His reign inaugurated a brief but significant experiment in a 'liberal' approach towards the Naxalites, from whose ill effects, paradoxically, the Naxalites including the People's War are yet to recover. They were permitted to move around openly, hold meetings, conduct dispute resolution in villages, and in general have their way. The People's War conducted some big demonstrations and meetings in those days, much to the exhilaration of its followers, but its cadre in many places also went around openly displaying their weapons and having their diktat enforced at will. It recruited a large number of new cadre, little realising that they were attracted more by its weapons than its politics. An armed group that is able to easily have its way offers an attraction to the wrong kind of 'rebel', whose entry into the group can turn fatal for the group. Repression therefore is good for the moral integrity of such groups. The damage was already done by the time the 'liberal' period came to an end. It came to an end quite soon, but the new culture had by that time permeated the Naxalite organisations.

Soon – from the early 1990s onwards – one started hearing the kind of complaints about the Naxalites that one had never heard before. Acting peremptorily with the people, subjecting dissent or criticism to physical violence, knowingly attacking 'soft targets', misbehaving with women inside or outside the party, playing faction politics in the villages, allowing the village factions to use them as hitmen, salting away 'party funds' for private purposes, and so on. Cataloguing the complaints this way may well give the impression that the revolutionaries have totally degenerated, but any such impression would be misleading. But there has been a recognisable deterioration of quality as well as political depth in the Naxalite cadre.

On the other hand, for this among other reasons, the people of the Telangana districts and other districts having Naxalite presence were no longer as loyal to them as they used to be. The very awakening brought about by the Naxalites encouraged people to train their critical faculties at, if not necessarily against, the Naxalites. That is of course a positive outcome, if somewhat embarrassing for the revolutionaries. But there have been less positive reasons for the change, too. A hitherto unknown attitude of using the naxalite movement for personal benefit, whose concomitant is the willingness to help the police against the movement if that is more beneficial, has raised its head over the years. In other words, Telangana society has become cynical to a degree unknown hitherto. The cynicism has been reinforced by unsavoury developments in the revolutionary movement. An impression has gained ground that being a revolutionary is a fling one has at a certain age, followed by abject surrender to the police, acceptance of a handsome rehabilitation package accompanied by the mouthing of a scripted denunciation of the movement of which one was a part till the other day, and feeding the police with information about not only the movement but every poor villager who has fed and sheltered one when one was a militant: so many have taken this route so cynically that even if they do not represent the majority of the Naxalite cadre – they certainly do not – the people are bound to get progressively cynical about the whole thing.

And a cynical people are easy for the police to prey on. They make more eager informers and agents. It is not impossible to find youth willing to enter the movement as police agents, or to buy agents within the movement. There was a time when the police would get no information about the presence or movement of Naxalite squads even if they were right in the backyard of the police patrols. And in particular, senior cadre would be sure that their whereabouts would never be leaked. Those days are now irrevocably gone. The police are able to find informers to lead them to armed squads as well as well regarded senior leaders. They are able to inject/buy agents who are willing to kill their supposed 'comrades' for a price. Such developments in turn make the movement more paranoid and therefore more arbitrary in dealing with supposed enemies within and outside.

Of course, this is one side of the picture. On the other side the normal activity of the revolutionary underground goes on, and the People's War in particular has been expanding territorially quite steadily, though how intensive the expansion is in terms of political depth as well as depth of activity, is a matter regarding which definitive information is difficult to come by. However, any unbiased observer could with justification entertain doubts in the matter. One evident indicator in support of the doubts is the recruitment of juveniles – one might as well shed politeness and call them children – into the armed movement, an objectionable practice indulged in on an extensive scale by the LTTE. Another is that while expansion into new areas – more particularly the central and east Indian region across the state's north-

ern border – is taking place steadily, they are not able to recover lost ground in Telangana and in their earlier tribal strongholds in the scheduled areas of the eastern ghats. Such recovery, if it takes place, could only be based on a more mature and knowledgeable cadre, and on a people devoid of illusions, and would therefore indicate real strength. First generation revolutionaries do not prove the strength of revolutions. They only prove that hope is a live human quality. It is the survival of the movement with its integrity intact into the second and third generations that proves its strength. Whether that can be achieved remains the real test for Naxalites, especially the People's War.

That the People's War is expanding and can further expand short of such recovery is however evident. Indeed, as economic restructuring in the mode of the World Bank's dictates goes on apace, there will be no dearth of new cadre, whatever the political maturity and ideological reliability of the expansion based on such cadre. That the People's War is bent on utilising the opportunity offered by economic restructuring/liberalisation/globalisation is clear enough, and only to be expected of any dedicated revolutionary party. What is strange is that those who glibly discuss globalisation as if it is only a matter of competing economic policy options do not appear to realise that the ill-effects of restructuring will not be confined to sudden discontinuities or sharp gradients in the graphs economists draw. They will have serious impact on the way the large mass of disadvantaged people of this country perceive the country and their future in it, which in turn will have serious impact on the kind of political choices they make, and therefore the kind of political framework the rulers of this country will tolerate in the days to come. That cannot only have a devastating impact on the lives of those masses, but in the narrowest possible sense, it should be everybody's concern even otherwise.

That is by way of an aside. What is relevant for the present purpose is that in such a situation created by an unhappy spiral not wanted by the revolutionaries, though certainly not unrelated to the strategies and tactics knowingly adopted by them, an external effort that may change the contours of the confrontation between them and the state for the better should not be unwelcomed to them. They could welcome it without giving up their politics one bit.

CCC interventions

Maybe they have realised it now. But in the initial stages of the effort of the CCC, the main response was a mixture of umbrage at the presumptuousness of intellectualssitting-at-their-desks presuming to tell revolutionaries what is good for the masses, and the realisation that this particular set of intellectuals could not be antagonised. So they answered them off and on, sometimes politely, sometimes impatiently, always in the offensive framework customary with all total ideologies, which not only have an answer to your questions, but also presume to know why you are asking the questions: that is, they not only answer you, they interpret you in the process. But since the CCC decided to play along with these attitudinal irritants, the exchange between them developed into quite a fruitful dialogue. The People's War responded in writing on more than one occasion to the CCC and there were quite candid face-to-face exchanges, too.

It is the survival of the movement with its integrity intact into the second and third generations that proves its strength

The dialogue that the CCC had with the state government has been less fruitful. It need not have been so, if this state had been ruled by a party or person more cultured even within the establishment framework than the Telugu Desam Party of Chandrababu Naidu. But the CCC could only deal with the establishment as it is – and has been – for about seven years now. An establishment that has the mind, not of an administration as envisaged when the Constitution was written, but of a scheming faction guided by the most narrow calculations. This may occasion surprise to people who are fed on the media image of Chandrababu Naidu as a very intelligent and sophisticated moderniser, but then that is what media images do to truth. But the CCC played along with his insensitive and foolish arrogance too. In the nearly six years effort made by the CCC the state government has never once put down its responses in writing, but the CCC continued to address the government through letters and statements published in the press. The two volumes of documents published by the CCC are indicative of the intensive efforts it has put in.

That has included visits to villages where Naxalites have killed or been killed; meetings with a cross-section of political parties, trade unions and other organised groups; public meetings held in the 'affected' districts – at Warangal, Karimnagar, Mancherial in Adilabad district and at Nizamabad – to address the local people; frequent appeals to the state government and the National Human Rights Commission to intervene in individual cases; and publication in both English and Telugu of documents reflecting the effort. The effort was not a purely civil rights effort of the kind this state is well acquainted with, that is to say a critique of state repression. It has included that too, and indeed the CCC has unequivocally taken the stand that the state shall not transgress the norms of rule of law in the name of tackling extremism, but it has taken upon itself the wider job of expressing a 'third voice', a voice that will give each of the sides in the conflict its due – for good and for bad – but will ask questions of wider import for the well-being and progress of the people in question. In due course it did, as it had to, lead to the proposition that the two sides sit across the table and talk to each other. It was in mind-2000 that the CCC first proposed that the two sides declare a ceasefire and start a dialogue.

Throughout the year 2001 and

more so in 2002, the issue of talks between the state government and the People's War became the talk of the state. A few diehard naxalite-haters sulked, and revolutionaries of the kind who thought that talking with the state meant compromising with the state also sulked, but the overwhelming response cutting across all possible divisions was that it is time the two sides sat across the table. Letters in the press – it must be added that the press was quite cooperative, in its attitude towards the CCC – reflected this response. Perhaps sensing this, *Vaartha*, the second largest circulated Telugu daily newspaper, opened up its centre page to letters on the issue of talks, and it was flooded with letters written from multiple viewpoints, but all wanting the two sides to stop killing and start talking. There were only a few letters, mostly from persons living outside Telangana, who expressed a theoretical inability to comprehend how revolutionaries who aimed to liberate the masses from the oppressors could talk to the state of the oppressors. Put that way, the answer could only be that they should not be talking to each other, but that only shows that the matter should not be put that way. But we will come to the agenda of the talks later.

For about a year and a half there was no concrete response to the CCC's suggestion of ceasefire and talks. Meanwhile the killings continued, and punctuated the CCC's efforts at peace with crises of confidence. Until Chandrababu Naidu's regime, the statistics of killing in Andhra Pradesh showed roughly equal numbers on either side, that is to say the Naxalite groups and the police in their anti-Naxalite operations killed more or less equal numbers (a marked difference with Kashmir, where killing by the state is approximately double that by the militants). This had been so for more than 30 years now, taking one year with another. It is since the regime change from NTR to Chandrababu that the balance of dead bodies has tilted sharply in favour of the state. From the year 1996 to 2001, more than 200 have been killed by the police each year in 'encounters', whereas the count on the other side was consistently less. In fact, it is the 'confidence' in the efficacy of policing that this imbalance has engendered that is at the root of the unwillingness of the government to lend its ear to the CCC; but more of that by and by.

The year 2002 being the year of the talks that-never-really-took-place, both sides killed less, and (it appears) at the end of it the police killed less than the revolutionaries. Some of the killings in these six years when the CCC's efforts have been going on were politically traumatic. Nalla Adi Reddy, Erramreddy Santosh Reddy and Sheelam Naresh, three top rung leaders of the People's War, were arrested by the AP police at Bangalore and brought and shown as dead in an 'encounter' near Koyyur in the interior of Karimnagar district, on December 2, 1999. On the government's side, the killing of ex-home minister Madhava Reddy by the People's War on March 8, 2000 was the biggest blow. The killing of a scheduled tribe MLA of the Congress Party, Ragya Naik, by the People's War on December 30, 2001 upset the climate in favour of talks to a considerable extent, and the killing by the police of Padmakka, a senior and respected People's War leader of Karimnagar, on July 2, 2002 was the final straw that sabotaged the talks.

Throughout the year 2001 and more so in 2002, the issue of talks between the state government and the People's War became the talk of the state. A few diehard naxalite-haters sulked, and revolutionaries of the kind who thought that talking with the state meant compromising with the state also sulked

Inconclusive peace

As a matter of fact, it is evident in retrospect that in the six-month period February-July 2002, when the air was heavy with expectation of talks, never once did the government of AP unequivocally express its willingness to talk to the Naxalites on reasonable and mutually acceptable terms. It was not clear at that time, since the habitual shiftness of the chief minister and the disarming openness of his home minister served the same purpose: of obfuscating the fact that the government had no desire to talk to the Naxalites at all: it had been able for the first time in 30 odd years to beat the Naxalites in the number count of dead bodies, so why talk? On January 15, 2002 the CCC issued a press release asking both sides to abide by certain suggested conditions conducive to the holding of talks and sit down for talks. The People's War responded inconclusively at first and more clearly later by offering to observe ceasefire from the second week of February if the government was willing to reciprocate. (It appears that it was the CCC which introduced the expression ceasefire into the idiom of its effort. It was merely a properly impressive war-like expression indicating that the two parties should not kill anyone pending conclusion of the talks).

The government responded by saying that it would hold an all-party meeting and take a decision. The meeting took place inconclusively on February 12, and was adjourned. Then, on March 11, there was a major 'encounter' at Tupakulagudem in Warangal district in which 10 of the People's War cadre were killed. Since anybody who knows anything about 'encounters' knows that they do not happen by accident but by design, the killing was evidently a signal from the police establishment that there was no need of any talks with the Naxalites. As they hoped, the People's War withdrew its offer of a ceasefire on March 14.

In fact, the police officers in charge of anti-Naxalite operations, especial-

ly in the Telangana districts, had made it clear that they were not at all happy with the idea of talks. The rational part of their objection was that talks would mean at least temporary cessation of police operations which they believed had been successful in recent days in pushing the Naxalites to the wall; they had no desire to cooperate with a process that may help the Naxalites to regain lost ground. If there were nothing more involved in the matter than crime control, that would of course be a rational attitude.

Apart from that, there was a less honourable objection, namely that counter-insurgency operations give the police and other armed forces a range of privileges and moneymaking opportunities that they are always loath to give up. That is why they are never happy with political attempts at solving problems of militancy, whether in Telangana, Nagaland or Kashmir. And so the police officers of the state, and a section of the Telugu Desam Party leadership outside Telangana, kept harping on the theme that the People's War had no real interest in the talks, and wanted to use it as an opportunity to regain lost ground.

Most of the poor suffer the constant fear of being branded Naxalites or sympathisers and shelterers of Naxalites by the police, a suspicion that can be fatal; or of becoming victims of police wrath for the reason there is a member of the family or a friend or a relative in 'the Party'

It would of course be naive to believe that the People's War had no such intention in mind when it responded to the CCC's pressure to hold talks with the government. In fact, the police in the course of search operations got hold of a letter or two written by People's War leaders to their cadre assuring the cadre that the party's willingness to sit for talks with the government signified nothing more than a tactical move to strengthen their movement again. While this was explained away by them when questioned as a ruse aimed at reassuring their cadre who were perturbed at the possibility that their leaders were surrendering before the state, it is quite likely that it was intended to convey exactly what it did. After all, it is a fact that the People's War has been pushed back as never before in its areas of traditional influence, and that it could use the opportunity a ceasefire would offer to regain its original position.

It is understandable that the police and the establishment in general found this objectionable, and indeed made it the excuse for their own lack of enthusiasm, but why should it necessarily be objectionable to a democratic viewpoint? Here it becomes necessary to address the question as to the purpose and object of the talks. In doing so, one need go no farther than the common views expressed in the spate of letters the press carried on the issue. Some of the correspondents did express ideological positions, namely that communism has failed internationally, that violence is outdated, and therefore the Naxalites has better hand over their arms and join the non-violent non-communist mainstream. For such a view, talks were a means of honourable surrender, and so any suggestion of using the talks to regain lost strength would amount to duplicity. But the majority opinion as reflected in the letters to the press was quite pragmatic: it was taken for granted that the political practice of Naxalism was a legitimate thing, and in any case it would continue to be there, and also that the government did not and could not welcome it, but both the sides could and should modulate their conflict in such manner as would minimise the pressure on the masses involved. If that pressure was eased, and the people could breathe easier, it should be a matter of indifference to them if in the process the People's War manages to become stronger. Indeed, to the extent that they belong to the social classes that would benefit from a less trigger-happy and more responsible revolutionary party that may emerge from the talks, they may even rejoice in the possibility.

To understand this viewpoint, and indeed the positive response the CCC got from day one of its job, we need to go back to the spiral that was spoken of in the beginning. The consequence of this spiral has been that a pall of fear hangs over much of Telangana and the tribal belt of the eastern ghats. Most of the poor suffer the constant fear of being branded Naxalites or sympathisers and shelterers of Naxalites by the police, a suspicion that can be fatal; or of becoming victims of police wrath for the reason there is a member of the family or a friend or a relative in 'the Party'; or because they have tilled a landlord's or a farmer's land forcibly occupied and distributed to the poor by the Naxalites; or because they distributed some leaflets or pasted some posters published by the Naxalites; and so on.

No, the next sentence is not that the rich are afraid equally of Naxalite wrath. That would at least have made matters morally simpler. But the traditional rich left these villages more than two decades ago, in the very first days of the Naxalite movement. The new rich are too intelligent to put themselves in a position here they will be suspected of opposing the wishes of the Naxalites. It is again sections of the poor and the lower and middle classes who suffer the fear: that they will be suspected of being police informers; that they will be attacked for being in the TDP; that they will be harmed for having taken a tractor load of people to attend the minister's programme; that they will be attacked for having worked enthusiastically in any of the chief minister's pet schemes in villages; that they will be harmed because their opponents in the village politics have the blessings of the local militant, or because they sided with a person in some conflict wherein the Naxalites

took a contrary stand; and so on. The most visible symbol of this double pressure is the thousands of acres of cultivable land lying fallow in the Telangana districts. It is land of landlords/farmers which the Naxalites got forcibly vacated and distributed to the poor, but the poor cannot cultivate because the police will not let them.

It is this pressure that the people seek relief from. The two sides blame each other for the pressure they put upon the people. We cannot act too gently when desperadoes carrying AK-47s and landmines meant for blowing up our vehicles are going around, say the police. We too cannot be too gentle or considerate when the police not only torture and kill people at the slightest suspicion, but obstruct every avenue of expression available to us, say the revolutionaries. It follows that if the two can sit across the table and accept certain rules of behaviour that would ease the pressure on the masses involved. For instance the police could agree that they will not harass the kith and kin of militants merely for being their kith and kin; that they will not punish people for reading or distributing the literature of the Naxalites; that they will not force people to give up the economic benefits obtained with Naxalite assistance, even if it is in the strict sense an illegal benefit, that they will not brand every popular protest Naxalite inspired, etc. And the Naxalites could agree that they will let people work for TDP or Congress if they so please; that they will not physically obstruct elections; that they will not prevent government programmes from being held in the villages or attended by the people; that they will not seek revenge against the village sarpanch for the state government's repressive policies, etc.

If such an agreement is realised in the talks and if in the process the People's War manages to regain its lost ground, why should that worry the common masses? And if it is the real grouse of the police that the talks will force them to reduce their levels of violence and withal face an enemy who looks prettier to the masses, then why should that fear be accepted as legitimate? The answer to both the questions can only be in the negative unless one has a fixation with the idea that a civilised society cannot permit armed groups other than the state to exist at all. I am not for a moment suggesting that the idea of armed groups not answerable to the law (as the state, at least in theory, is) going around doing good or bad as they please is unproblematic. But there is no need to make a fetish of that.

To get back to the narrative, after the People's War called off its offer of ceasefire on March 14, the state government held the much postponed all party meeting on March 22, and declared that it would create an atmosphere conducive for talks and hold talks directly with the People's War. The pre-conditions for the talks – such as ceasefire – would also be discussed there, they said. It was not elaborated further nor was it followed up with any steps. Evidently, the categorical stand taken by all opposition parties excepting the 'friendly' BJP at the all-party meeting had impelled the government to make the announcement, and it had no desire to go beyond the declaration.

It is this pressure that the people seek relief from. The two sides blame each other for the pressure they put upon the people

Then, after some further exchange of views with the CCC, on May 7 the People's War again announced a unilateral ceasefire effective from May 10 and called upon the government to respond by reciprocating the ceasefire offer, and inviting that party for talks. No formal offer for a ceasefire was made at that time or thereafter by the government. This reluctance to reciprocate the offer of ceasefire is on the face of it a little inexplicable, since it appears that quite early in the process there was a hint from the government to the police to go slow in killing, and they did go slow throughout the period from February to July, though they struck at the psychologically apt time to disrupt the process of talks. Perhaps what deterred a formal acceptance was the oft-repeated unwillingness of the government to put itself on the same footing as the outlawed group. This is a self-righteous difficulty all governments experience in the matter of talks with outlawed armed groups, a difficulty that they are forced to get over sooner or later, but only after much blood has been needlessly split.

The CCC met the home minister immediately after the May 7 offer and tried to persuade him to extend an invitation accompanied by offer of ceasefire to the People's War. An invitation not accompanied by offer of ceasefire was made by the government on May 9. On May 29 the People's War, consciously ignoring the government's unwillingness to reciprocate the offer of ceasefire, reacted positively by nominating two persons to talk to the government about the modalities of the actual talks that were to take place between that party and the government. The two emissaries are Varavara Rao, the well-known writer and poet; and Gaddar the popular composer/singer of revolutionary songs. The state government again held an all-party meeting on June 3 and announced the names of two cabinet ministers as emissaries to talk to the People's War emissaries. One of them was formerly a senior police officer with a history of having handled the Naxalite movement as ruthlessly as any one else; and the other an inconsequential minister from Srikakulam, who knows next to nothing about the Naxalite movement. He was probably chosen for the symbolic reason that he belongs to Srikakulam, where the whole thing started three and a half decades ago.

The emissaries met and talked three or four times, but each sitting was preceded by an 'encounter' killing in one district or the other. From June 4 to 13 a total of 11 persons were killed, some of them described as Naxalites and some as ordinary criminals. Two women members of a People's War armed squad were

killed on June 24. It is difficult to imagine anything better calculated to upset the atmosphere of parleys, for it is one thing to accept with equanimity the objection, however specious, that a lawfully-constituted government cannot offer ceasefire in so many words to an outlawed group, and quite another thing to countenance the unwillingness to even informally restrain the police for the duration of the process of talks. The police officers who were instrumental in the killings obviously knew this, and so did the government which did nothing to restrain them. It was as if they were throwing a challenge to the revolutionaries to see how far they would demean themselves and press ahead with the readiness to talk in the midst of almost daily killing of their cadre. It is to the credit of the People's War that it did not react the way they were evidently hoping it would. If the People's War's emissaries had pushed ahead quickly to fix at least a tentative agenda and a place and a time for the main talks, the irritant could perhaps have been neutralised. But the emissaries, who are persons with a known penchant for adversarial stances, converted the preliminary talks into a polemical duel. They seemed to have no idea what the talks could be about, or else they understood it as a debating competition between Chandrababu Naidu and the People's War about who represents the people better: one of their suggestions was that the talks should take place in front of the masses at the Lal Bahadur Stadium, with loudspeakers and all. Political immaturity has always been the hallmark of writers and poets close to the revolutionaries in Andhra Pradesh.

Since the government's emissaries had no more idea what the talks could be about, the preliminary talks dragged on interminably into July. To the objections of the People's War's emissaries as well as other concerned organisations that 'encounters' were taking place even as efforts at structuring a dialogue was on, the chief minister replied that if the Naxalites wanted that 'encounters' should not take place, they should not move around with arms. This was to be followed soon by its logical corollary, expressed for the first time since the efforts a dialouge started six months before, that no talks would be possible unless the Naxalites put down their weapons. In other words, the government was not interested in a dialogue but only in a unilateral surrender. If this had been stated six months before, a lot of people would have been saved a lot of sweat. But then it merely signifies the utterly irresponsible and cavalier attitude of Chandrababu Naidu towards an issue as serious as that. It is clear now that he never had any serious intention to pursue the path of dialogue, but was merely testing the waters all the while. Perhaps he was undecided in the midst of conflicting pressures from within his administration, particularly the political component and the police component, and finally plumped for the police side. Or perhaps he was play-acting throughout. Given the inherent unreliability of his character as a politician, there would be nothing surprising if indeed that were so.

On the face of it, it appears that the issue has come full circle. Indeed, soon after the formal breakdown of the effort at talks, the two sides have been on a killing spree

In the meanwhile, the police upped the ante in July. They killed eight People's War cadre in Warangal, Karimnagar and Guntur districts between July 2 and 10. In the first incident, which took place at Nerella in Karimnagar district on July 2, the police killed Padmakka, a senior and respected leader from that district. Her killing signified the end of any possibility of dialogue, for the People's War could not be reasonably expected to demean itself further by persevering with its almost one-sided efforts thereafter. It was a matter of time before the emissaries Varavara Rao and Gaddar declared that they were withdrawing from their role as emissaries in protest, followed by the People's War itself withdrawing the offer of ceasefire. It was then that the chief minister started saying for the first time that there could be no talks with the Naxalites unless they lay down their arms.

On the face of it, it appears that the issue has come full circle. Indeed, soon after the formal breakdown of the effort at talks, the two sides have been on a killing, spree. The People's War took the government by surprise by suddenly stepping up violence in the slight area of influence it has in Guntur district of the developed Andhra region. The police too are now officially in the game of killing. Their perception of matters has won the day, though it is not clear whether that was because they were successful in creating a fait accompli, or because the chief minister in any case shared their viewpoint from the beginning.

But not all share it even within the ruling Telugu Desam Party, and that dissonance is likely to show up one day or the other, especially as the elections approach. For the local political leadership of Telangana, whether of the Congress or Telugu Desam Party, the talks between the Naxalites and the state government signified something very practical. It is this local leadership that is the most immediately available 'enemy' for the revolutionaries, and their lives, property and political freedom have been in perpetual danger from the violent acts of the Naxalites. For them, giving the People's War greater freedom meant getting greater freedom for themselves, and that could make all the difference between being in or out of the political business. So they waited quite eagerly for the talks to take place, and now they are among the more disappointed. It cannot be that Chandrababu Naidu is not aware of this, but for the present he has chosen to ignore them. Even his brand of politics cannot for ever continue to ignore the felt political realities as perceived by his own men, and as that pressure is likely to increase as the elections due in 2004 approach, better sense may yet prevail for reasons of political expediency if nothing higher.

–February 8, 2003

The story of illegal land acquisition from scheduled areas in Andhra Pradesh inhabited by tribals points to judicial apathy, bureaucrat connivance and governmental inaction. Cases such as the Polavaram project in Khammam district and the bauxite mining projects show that laws and rules are merrily flouted. It is no wonder that protests are on the rise

Illegal acquisition in tribal areas

The tribal areas of Andhra Pradesh present a disheartening picture: events are fast overtaking the adivasis, and there is no concerted effort to oppose them. Land and the produce of the forest remain their main source of livelihood, but availability of land is restricted by forest reservation on the one hand and non-tribal encroachment on the other. They cannot move out of the forests and seek livelihood in the strange and – it often seems to them – hostile society of the plains. Where they do, they are exploited ruthlessly by the plains people. In the forests, their struggle to increase their livelihood opportunities calls up clashes with the forest department and the non-tribals.

Over the years a precarious balance has been struck in the matter, thanks to the assistance the adivasis have received from a variety of political forces, the Naxalites in particular, and social activists, but the balance is ruptured harshly when the government steps in with proposals of forest-based projects. The Polavaram dam on the Godavari river, which will submerge upwards of 270 villages, all of them located in the scheduled area of Khammam, East and West Godavari districts, and the bauxite mining project in the tribal area of Visakhapatnam district, which will displace many more tribal hamlets than the government's plan would admit, are the focus of considerable tribal unrest. Before that, a mention needs to be made about unrest related to non-tribal encroachment on to tribal land, an unrest that has taken severe form from the early 1990s.

Andhra Pradesh has a scheduled area in nine districts, and perhaps the most stringent law prohibiting alienation of tribal land to non-tribals. Not only are non-tribals prohibited from purchasing tribal land, they cannot (ever since the regulation One of 1970 was promulgated on February 3, 1970) purchase land even from a non-tribal. The law presumes that all land in the scheduled areas originally belonged to the scheduled tribes. If a non-tribal has got possession of it before there was any prohibition, or with the consent of the agent to the government when purchase with such consent was permitted prior to 1970, he cannot be disturbed. But when he wants to sell the land and leave the forests, the land must not get into the hands of another non-tribal but must be available to tribals. He must sell it to tribals or to the government, which in turn is expected to distribute it to tribals.

The law further presumes that every non-tribal who has land in the scheduled areas has purchased it from a tribal, and puts on such non-tribal the burden of proving that neither he nor his predecessor in title purchased it from a tribal. The law moreover directs the government not to wait for a tribal to complain. An enquiry is permitted to be taken up by the government on its own (suo motu is the legal expression) into all occupation of land in the scheduled areas by the non-tribals, and the burden of proving the legality of their occupation is put upon the non-tribals. This is the substance of the land

transfer regulation or LTR as it is briefly called (its full name in all its glory is: Andhra Pradesh scheduled areas land transfer regulation, 1959 as amended by regulation 1 of 1970).

Ineffective enquiries

Yet the reality is that out of the 72,000 decided under the LTR till September 30, 2005, 33,319 were decided in favour of the non-tribals and 33,078 against them. Of the 3,21,683 acres of land involved in these cases, 1,62,989 acres were confirmed in favour of non-tribals and 1,33,636 against them. If this had been reflective of the ground reality – there has been some kind of prohibition of transfer of tribal land only after 1917 in the Andhra area and 1963 in the Telangana area, and until 1959 tribal land could be purchased by a non-tribal with the consent of the agent or district collector even in the Andhra area – there is nothing much one could have said about it except to ask for a more stringent law. But that is not so. Most of these enquiries took place well before there was any class of even minimally educated persons among the scheduled tribes. The enquiries therefore took place over their heads. They had no idea what was going in the LTR cases, and perforce had to depend upon the honesty of any lawyer they may have engaged (which was not often), the government officials who prepare and keep the records, and the higher government officials who hear and decide LTR cases. And it need not be added that honesty is not a very common attribute of 'vakils' and the 'babus'.

The enquiries also took place behind their backs, in many cases. The suo motu power given to the government to proceed against non-tribals without waiting for a complaint from a tribal sounds like a good thing, but in the given administrative culture, it has perhaps been more of a boon to the non-tribals than to the tribals. In proceedings taken up suo motu by the government, the non-tribal faces only the government. The government does not take the trouble of finding out who among the local tribals may have a claim to the land. It does not publicise the enquiry in the village. The officer hearing the cases (designated a special deputy collector) merely looks into the documents provided by the non-tribal, and if they appear reliable, okays the right of the non-tribal. In the worst case, where the officer is approachable, the non-tribal actually "persuades" him to take up a case against him, gets an order declaring that his occupation is within the law, and uses the order against all subsequent bona fide efforts to enquire into his right.

The early 1990s saw the rise of the first generation of school-educated tribals all over the state. In Jeelugumilli mandal of West Godavari district they found an NGO called Shakthi which had just the kind of activism that the legal situation needed. It taught them the rudiments of the law and the meaning of land records. Joined to the natural militancy of forest-dwellers, it became a potent force. They occupied the land held by non-tribals which they had reason to believe to be adivasi land, unmindful whether in the days of their illiterate forebears some special deputy collector had put his seal of approval on the non-tribal's right to it. And they fought cases before the officers and the courts. Their demand in the matter of the concluded enquiries and the settled rights of the non-tribals was simple: all that happened when we knew nothing about the law or administration. Let all the enquiries be reopened and done afresh, with opportunity to us to contest the cases.

> Andhra Pradesh has a scheduled area in nine districts, and perhaps the most stringent law prohibiting alienation of tribal land to non-tribals

This was a far-reaching but just demand which would require legislative initiative. Needless to say, nothing was done except for an executive order confined to West Godavari district which asked the local revenue officers to sit in the villages and read the land records in the presence of the tribal and non-tribal villagers, take their views, and identify illegality in land occupation of nontribals for taking further action. That executive order was implemented in just a couple of villages and literally hundreds of acres were found to be under illegal occupation. Thereafter however its implementation was frustrated by the intransigence of the non-tribals.

Role of high court exposed

One of the institutions exposed by the struggle of the newly awakened adivasi youth was the high court of Andhra Pradesh. When it was questioned why non-tribals were in possession of so many doubtful acres in West Godavari district, it came to light that one of the reasons was a series of dubious orders passed by the high court. In the 1970s and 1980s, non-tribals of one village after another in the district had made applications to the President of India saying that their village wrongly included in the scheduled area and should be excluded. They then filed writ petitions in the high court and got all LTR proceedings in their villages stayed until the President of India takes some decision on their application! That a constitutional court could treat a regulation passed under the fifth schedule to the Constitution so cavalierly is a telling comment on the constitutional world view that prevails with our judiciary. The tribal uprising of West Godavari district shamed the high court into hastily vacating the stay orders.

But this is just the role played by the courts, especially the high court with its extraordinary powers under the Constitution, in matters of land rights of the tribals or other poor under redistributive statutes. Most of these rights are adjudicated by administrative officers exercising some kind of judicial powers (the law calls it a quasi-judicial power). The idea behind putting them outside the purview of the courts and in the

hands of the administrative officers appears to have been avoidance of the delay for which civil courts are famous. But the remedy has not been able to avoid the ills of civil litigation. Firstly, most of these statutes provide for a primary forum (the tahsildar or the revenue sub-divisional officer) and one or two appeals within the administration, with a power of review placed in the hands of the government. Nobody knows why such an elaborate adjudicatory regime was devised for laws meant to provide a quick remedy for landlessness. And at any stage in this process the high court can interfere to correct procedural or jurisdictional errors, which will be plenty because the administrative officers know little law and careless. So these cases often travel up and down the hierarchical ladder of primary and appellate authorities, with the possession of the landlord or non-tribal landholders kept intact meanwhile by interlocutory orders of the high court. Which brings us to the second point, namely, that courts in our country have not developed a public law perspective on land disputes under redistributive laws that is distinct from the judicial view of property disputes in private law. In the private law view, the one who is in possession of the property usually has his possession protected until the entire litigation comes to an end. In a proper public law view, once the primary forum passes an order holding the landlord/non-tribal landholder ineligible for enjoying the land, he should be evicted and the land put in the hands of the poor for whom the proceedings are intended, leaving it to the landlord/non-tribal landholder to litigate at leisure up and down the adjudicative ladder. Lack of such a perspective in judicial thinking has meant that a non-tribal who has not an iota of right to the land in his possession in the scheduled areas can enjoy it for decades on the strength of stay orders obtained from the high court while pursuing his rights in the unending adjudication by the babus of the revenue department.

Reforms – A mirage

The demand for reopening all the thousands of cases decided in favour of non-tribals in the past remains, and its articulate and inarticulate expression is reflected in the frequently reported incidents of clashes between tribals and non-tribals in the scheduled areas. Unless the tribal land struggle takes a much more strong from it is most unlikely that the government will take any steps to make this possible. For the motto of all land reform measures in India has been to do what little can be done for the poor without hurting the rich too much. Speaking of the scheduled areas of Andhra Pradesh, this is reflected for instance in the grant of ryotwari title to non-tribals in continuous occupation of unsettled land under the ryotwari settlement regulations (regulation 2 of 1970) for scheduled areas. A good opportunity to get hold of a lot of land for distribution to landless adivasis was lost by deciding not to evict such non-tribals. But it was not an innocent mistake, for lobbies of the privileged constantly work to weaken all reform.

> One of the institutions exposed by the struggle of the newly awakened adivasi youth was the high court of Andhra Pradesh

Forest land therefore becomes so important for the adivasis. If they are unable to withstand the onslaught of the non-tribals, and if the government will do only so much damage to the privileges of the influential in the interests of the wretched, the only thing the adivasis can do is to fall back on the forests. The law calls this encroachment but the law itself is the encroacher in tribal habitat. It is more properly called customary occupation, a view that at long last the law too has taken, with the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, (Act 2 of 2007). For India as a whole, tribal occupation described post-factum as encroachment, plus actual encroachment by non-tribal interests in the forests, is estimated to be 38.58 lakh acres, of which Andhra Pradesh contributes about 7.5 lakhs, which is close to 20 percent. This state is next only to Assam in the extent of this "encroachment". (These are figures valid up to March 2004.) Andhra Pradesh also has the distinction that not one acre of the tribal occupation called encroachment has been regularised. One does not have a complete break-up of the 7.5 lakh acres, but in an affidavit filed in the high court by the state government some years ago, it was claimed that tribals supported by the Naxalites had occupied upwards of four lakh acres in the forests. Whatever the merits of the argument against deforestation, it is a stark fact that this has made all the difference between destitution and bare existence for the adivasis.

Polavaram project

And then the projects started coming. Polavaram project on the Godavari river is located in the scheduled area and will displace (according to a 15-year old estimate) a minimum of 276 villages, all of them located in the scheduled area. The population likely to be affected would be about a lakh and a half, of which slightly more than half are adivasis. This project should in fact have been a test case for the constitutional law of self-governance in the scheduled areas: The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 or PESA as it is popularly called. That law provides for self-governance by the gram sabha in the specific sense of the power to safeguard and preserve traditions and customs, cultural identity, community resources, the power to prevent land alienation, mandatory consultation with the gram sabha or panchayat at the appropriate level in the matter of land acquisition and rehabilitation, etc. It should not have been easy to undertake the project in the face of these formidable-looking pro-

visions, but the government is happily going ahead. While nine mandals will be affected, all of them in the scheduled areas, and the mandal praja parishad (the middle tier of the panchayat system) is the "panchayat at the appropriate level" that has to be consulted for land acquisition and rehabilitation, not a single one of the nine has been consulted. But the work on the project is proceeding apace, notwithstanding serious opposition from the adivasis.

When fears were expressed that even if comprehensive rehabilitation is undertaken, rehabilitation of the adivasis outside the scheduled area would affect them seriously in more than one way, for they would not only be deprived of land, habitations and the natural bounty of the forests, but also the special rights recognised by the special laws applicable to the scheduled areas, the government came forward with the assurance that all the displaced adivasis will be rehabilitated in the scheduled area itself. This sounded so ridiculous that no one took it seriously, for there is no land left unoccupied in the scheduled area, much of it being forests and the rest of it inhabited. It is indeed unlikely that the government will be able to rehabilitate all of them as promised, but it has found a crooked way to accommodate some at least and demonstrate its alleged will. There is a considerable amount of land in the scheduled areas which is under the occupation of tribals but to which some non-tribal has title on paper. The most common instances are lands for which the tribals have fought the non-tribals, and successfully taken into their possession. Another is land for which some non-tribal has acquired ryotwari title in settlement proceedings but tribal occupants of the lands who know nothing of the proceedings continue to be in possession, resisting the efforts of the non-tribal to enter the lands. The non-tribals concerned are only too glad to "sell" that land to the government, take compensation for something which had long ceased to be theirs, or had indeed never been theirs, and leave the forests.

The northern part of Khammam district along the Chhattisgarh border is the scene of a more violent suppression of adivasi land rights

Duplicitous moves

The government is not acquiring these lands under the Land Acquisition Act. It is aware that if it does, the rights of the adivasis in possession would come in question, for that much-maligned law permits all claimants to the land under acquisition to object to the process. Instead it is straightaway purchasing the land from the willing non-tribals for whom the purchase price is an unsolicited gift. The LTR in fact does not permit this, for it says that a non-tribal wishing to sell land in the scheduled area should try to sell it to tribals and only if he fails to find such buyers the government may buy it. Flouting this regulation, the government is straightaway purchasing such land from nontribals, evicting the tribals in occupation, and building colonies for rehabilitation of tribals to be displaced by the reservoir in the days to come.

Neat, is it not? Successful adivasi land struggles are defeated, the defeated non-tribal is compensated, the uppity tribals are shown their place, and the government's promise of rehabilitation for the displaced adivasis in the scheduled areas is kept. A revenue divisional officer of Rampachodavaram in East Godavari district, who purchased 572 acres of such disputed land, paying two crores to non-tribals, in the two-month period between March and May 2006, is said to have received much appreciation from his superiors. The babus are certainly efficient when and where they want to be. Alert adivasis moved the high court against this fraud but the high court first insisted that all the non-tribals whose lands have thus been purchased must be impleaded as parties, and then refused to stay the eviction of the tribals in possession of the purchased land, saying that no such blanket injunction can be given. But as all the adivasis to be displaced by the Polavaram dam can hardly be accommodated by such means, there is considerable unrest and agitation in store, especially in Khammam district where much of the displacement lies, and in whose thickly forested and undulating terrain there is little scope for replicating the trick tried successfully in East Godavari district.

Tragic tale of internal refugees

The northern part of Khammam district along the Chhattisgarh border is the scene of a more violent suppression of adivasi land rights. There are about 35 forest habitations, home to between nine and 190 families each adding up to 1,380 families in total, put up in the last two years and more by Gothi Koya or Muria immigrants from Dantewada district of Chhattisgarh. These are refugees of the salwa judum-Maoist conflict, mostly victims of Salwa Judum attacks on villages suspected of harbouring the Maoists. Unable to live in Dantewada any longer, these refugees have put up huts in the forests of Khammam district. They have been careful not to cultivate land but have merely put up huts and are labouring in neighbouring adivasi villages for livelihood. Since the conflict in Dantewada started in June 2005, many of these immigrants have entered and put up huts in the Khammam forests prior to December 13, 2005, the magic cut off date for Act 2 of 2007: rights of habitation and usufruct enjoyed by adivasis in the forests prior to that date are protected by that law. And so the forest department personnel of Khammam should not be troubling these people, but they are regularly burning down the miserable huts and trying to drive the immigrants back to Dantewada, which means death or starvation. Sarivela-Kothuru and Sunnam Matka are two habitations that have been set

on fire not less than five times, the last time being on September 1 this year. This is a brutal continuation of the Chhattisgarh tragedy beyond that state's borders, and it leaves the adivasis shelterless in the sun and the rain. Parenthetically, it must be said that while India is signatory to international instruments concerning refugees, and has been kind to some such as the Tibetans and Myanmarese, it has no law or policy concerning internal refugees, of whom the most numerous are adivasis, whether driven by hunger or projects or social conflict.

The bauxite mining project

We will end with bauxite mining, which is a more comprehensive saga of riding roughshod over the legal regime applicable to the scheduled areas and the rights of the scheduled tribes. Bauxite ore is available on an extensive scale in a belt stretching from southern Orissa to northern Andhra Pradesh. The whole of it is in the scheduled areas. It is being mined vigorously by Orissa in the districts of Rayagada, Kalahandi and Koraput. Excepting the NALCO's project at Damanjodi, all the others are in the private sector. This is contrary not just to the law but the Constitution as well, for grant of mining lease in the scheduled areas to non-tribals amounts to transfer of land from the government to a non-tribal, which the fifth schedule to the Constitution prohibits, as held by the Supreme Court in Samatha vs State of AP (1997). Not that displacement by a public sector unit is less painful, but what is in issue is the casualness of the whole thing. The government of Orissa has been indulging in bluff, claiming that the Samatha judgement applies only to Andhra Pradesh and not to other states. That is rubbish, but nobody in Orissa has been willing to call the bluff. Since not only mining of ore but its processing to produce alumina for export is also being undertaken in the scheduled area, considerable extent of land is being handed over to the companies. The mine site, the site for the refinery and the captive power plant, and the sites for the ash pond and effluent (red mud) pond, are the actual extents of land taken over, but a lot of land nearby will become uninhabitable and uncultivable once the industry starts. Any unilateral decision of the government in these matters without reference to the gram sabhas of the affected villages is contrary to PESA, but Orissa is going ahead unmindful. Where the administration felt it necessary to have the consent of the gram sabha, it has commandeered the consent by police force. And where it found it had no answer to the resistance of the people, it has put it down by brute force. Three adivasis were killed at Maikanch in Kashipur block of Rayagada district on December 16, 2000, and hundreds have been jailed before and thereafter. The resistance of the adivasis has however been remarkable, especially against the Utkal Aluminium's project at Kucheipadar in Kashipur block.

The bauxite ore extends into the scheduled area of Visakhapatnam district of Andhra Pradesh. Proposals to lease land to a private company for mining and processing the ore were initiated during Chandrababu Naidu's days, but since Andhra Pradesh at any rate cannot say that the Samatha judgement does not apply, the efforts were abandoned. It is typical of Chandrababu's mindset that he tried to get the fifth schedule to the Constitution itself amended to save his aluminium project. And it is typical of the influence he wielded at Delhi in those days that his proposal was taken as an order and a note prepared by the union ministry of mines for amending the Constitution! Nothing happened, fortunately, and after YS Rajasekhara Reddy became chief minister, the government decided to cheat the law rather than amend it. Two mining sites have been chosen, and the mining leases have been given to the public sector AP Mineral Development Corporation (APMDC), which will mine the ore and sell it to private concerns that will process it outside the scheduled area. The APMDC is thus a benami for the private concerns. Whatever the legality of this device (the LTR specifically bars benami transactions in favour of non-tribals), it does not answer the main concern of the adivasis.

Bauxite is found on flat-topped hills, and while the government typically points to the small extent of the mine site, which is usually uninhabited, the concern is with the displacing effect the mining will have in the valley around, and the effect on the drainage of water that runs off the bauxite hill. Quite extensive displacement and severe pollution of water sources are certain, and the adivasis are almost unanimously against the project. Since the land losers at the processing sites outside the scheduled area are equally vigorously opposing the land acquisition, the bauxite project of the government is facing serious opposition.

The issue is not to be answered by rhetorically counterposing development of the country to the myopic self-centredness of the few. Either development will be defined to include the needs and aspirations of all, or every project will be a scene of conflict as India heads hungrily towards two-digit growth. Unlike in the trustful days of the past, the notion of development is looked at sceptically by the smallest people today, which is a welcome change. The tendency to pretend that nothing has changed, with its concomitant insensitivity to opposition, inevitably leaves the matter to the police, resulting in broken heads and worse. That is entirely unacceptable, whatever differences there may be about the meaning and need of development.

–October 6, 2007

Parenthetically, it must be said that while India is signatory to international instruments concerning refugees, it has no law or policy concerning internal refugees, of whom the most numerous are adivasis

Justice Jeevan Reddy Report on AFSPA:

The Evil is intact

The power to open fire and arrest a person on mere suspicion that he/she is likely to commit an offence is the extraordinary power that has led to extensive human rights violations in the northeast, reeling under the draconian provisions of Armed Forces Special Power Act (1958). The Justice Jeevan Reddy Committee, formed to review AFSPA, in its report leaves these powers intact on the premise that national security is of paramount importance and all else must be subject to it

There has always been a school of thought which has held that what is primarily wrong with special repressive laws is that they are special, and only secondarily that they are repressive. This school has among its ranks a number of retired judges. At various points of time, the National Human Rights Commission (NHRC) and the Law Commission have said about anti-terrorist laws that whatever is necessary in such legislation should be made part of the general law of the land, rather than having TADAs and POTAs. It shows good sense from the State's point of view. A special law engenders a sense of being discriminated against among the people who are targeted by it. Make the law in general bad, and nobody is specially aggrieved, and hence nobody gets really emotional about it.

The Jeevan Reddy Committee on the Armed Forces Special Powers Act – 1958 (AFSPA) gives a slight twist to this. Suppose that, while incorporating what is 'necessary' of the repressive provisions of a special law into the general law, you make it slight more repressive, then too nobody will notice it. So, while suggesting that AFSPA as modified by the committee be brought into the Unlawful Activities (Prevention) Act (ULPA) as amendments to section 40 of the latter Act, the nature of the satisfaction required for doing so is changed from the objective to the subjective. In its original version, AFSPA contemplated deployment of the army only on the request of the state government. Later, the union government too was permitted to deploy the armed forces without any request from the state government.

In either case, the requirement was conditional on the opinion being formed that 'the use of armed forces in aid of civil power in necessary' in view of 'the disturbed or dangerous conditions'. This requirement, at least in principle, could be some kind of a limit, since the parameters of judicial review as accepted at present would then require the presence of some material with the state or central government which would show that 'civil power' on its own is unable to handle the situation.

Any abuse of powers by the armed forces is a criminal offence. It should promptly be investigated by an agency independent of the armed forces, followed by impartial prosecution. If that is not provided, safeguards have little meaning

The amendment suggested by the Jeevan

Reddy Committee removes this criterion, namely the incapability of civil power to handle the situation on its own. The state government may make a request for sending the armed forces to 'restore public order' if that is necessary 'in its opinion'; or the central government may, if it is of the opinion that 'deployment of a force under its control' is necessary to quell internal disturbance in a state, deploy the army notwithstanding that the state has made no request. The objective satisfaction that the State's civil power which ought to maintain order is unable to do so is replaced by subjective satisfaction, that it is necessary to deploy the armed forces. This is done by a sleight of hand without at any place arguing why it is necessary.

It is being said that the Jeevan Reddy Committee suggested incorporation of provisions of AFSPA into the ULPA comes with safeguards. None of these is new. They are deemed to already be there in AFSPA by virtue of the judgement of the Supreme Court in NPMHR vs Union of India, where it read these safeguards into AFSPA to make it constitutionally valid; and the judgment of the Supreme Court in DK Basu vs. State of West Bengal, where procedures for making arrest and interrogation have been laid down. It no doubt makes sense to make explicit what is implicit, so long as the law has to be there, but it did not require the labour of two years to say this little. In fact, so far as the DK Basu guidelines are concerned, only one of them, namely preparation of arrest memo has been incorporated in the proposed law.

The real issue is not whether the armed forces can be deployed against civil disturbances. The ordinary law too permits it, in section 130 of the CrPC. The real question is under what circumstances, and with what powers. The ordinary law permits the armed forces to be used only against an unlawful assembly, which cannot otherwise be dispersed, only in individual instances, and normally at the order of an executive magistrate. What is contemplated by AFSPA is the continuous use of the armed forces over an area of land, with the power to open fire on suspicion on individuals and not just riotous mobs, and under its own authority.

The power to open fire at persons on suspicion, the power to arrest a person on suspicion that he/she is likely to commit an offence, and the power to destroy buildings on suspicion, is the extraordinary power that has led to extensive human rights violations in the areas under the AFSPA. The Jeevan Reddy Committee leaves these powers intact.

They are limited by the requirement of the use of minimum force and maim rather than kill. But that, firstly, is what the Supreme Court had any way read into AFSPA in the NPMHR case, and secondly, it would have made real difference if punitive steps against transgressors had been mandated. Instead, the Jeevan Reddy Committee sets up a strange creature called grievances cell to enquire into allegations of abuse of powers against the armed forces and communicate its result to the complainant!

Any abuse of powers by the armed forces is a criminal offence, it should promptly be investigated by an agency that is independent of the armed forces, followed by impartial prosecution. So long as that is not provided for, safeguards have little meaning.

Certainly, the Jeevan Reddy Committee is conscious of what it is saying. Its major premise is that national security is of paramount importance and all else must be read subject to it. May be that is where the problem with the report lies, but all fuller discussion of that will have to await another occasion.

–Nov-Dec 2006

Physiognomy of Violence

A cycle of violence and counter-violence is devastating the lives of adivasis in Dantewada district of Chhattisgarh, a Maoist "liberated area". There is no official record of the number of persons killed as a result of the brutal violence of the Salwa Judum. While the Maoists had put an end to the severe harassment of the adivasis by forest and police officials, successfully resisted domination and oppression of the adivasis by the patel-patwari, and raised the rate for picking the tendu leaf, there are certain conflicts of interest in the present context of a counter-insurgency that have created a divide within the tribal community, which makes the present atmosphere tense

A number of strategies of counterinsurgency have been used by the establishment in India, each of them more obnoxious than the next. One would perhaps be reading too much of a method into these acts if one were to contend that a certain unified entity called "the state" is with experimental intent trying out one strategy after another. Certainly, what is happening in Chhattisgarh is in all probability a local stratagem spun out of the immediate situation, which has at its focus a very angry and uncontrollable man called Madavi Masa, better known as Mahendra Karma, MLA of Dantewada. But all the strategies add up to a matrix of brutality, the victims of whose viciousness are the most marginal people of the country.

The direct brute force of the armed forces was tried out in the border areas – Nagaland, Mizoram, Kashmir – since the desire to secede from India evokes such hatred in the mainland that few would care to speak out against the employment of inhuman force against it. The same cannot be said of every insurgency in the country. Naxalism, certainly, meets with perhaps the least unsympathetic reaction of all insurgencies from society because of its contribution to protecting the poor, especially the adivasis and dalits, from exploitation and oppression. Quite strange people profess respect for the Naxalites on this score. Hence direct force, while it has certainly been used extensively in states such as Andhra Pradesh, would not be acceptable beyond a point if used against the Naxalites. A brutally rational alternative is the encouragement of private vengeance against it. The Senas of Bihar have come in handy in that state. Support to bands of vengeful ex-Naxalites is being tried out in Andhra Pradesh. And the Salwa Judum, a cruel joke of a peace movement, in Chhattisgarh. A point that the

Naxalites may (or may not) like to note is that each such strategy succeeds only because of some fault or faults of theirs. If they had taken conscious steps to break the caste mould of politics in Bihar, mobilisation of opposition to them in the form of caste Senas would have certainly been less easy. If they had learnt to distinguish mere rowdyism from radical militancy in the recruitment of cadre, and been more open, transparent and merciful in imposing punishment upon "informers" and "renegades", the vengeful gangs that are targeting their friends in Andhra Pradesh would have been less populous. As for Salwa Judum, it is arguable that the Maoists' non-chalant exercise of power in their "liberated areas", unmindful of whose interests and whose rights they are trampling on and how unthinkingly, has opened a chink in their otherwise unbreachable armour that their enemies are using with a callous want of hesitation.

Dantewada: A Maoist liberated area

That the violence and counter-violence that is fast devastating the lives of adivasis on a large scale in Dantewada district of Chhattisgarh is taking place in a Maoist "liberated area" is a fact that needs to be kept in mind in understanding what is happening there. That fact justifies nothing of what the Chhattisgarh administration is doing there, but then nothing justifies the tendency in democratic circles to talk as if all that is rele-

vant for understanding the role of the Maoists in the area is the poverty and general backwardness of the tribes living there. It is good and necessary to insist that Maoism shall not be treated as a mere problem of crime and disorder but should be seen as a socio-economic issue. It is fine that one hears more and more persons say this these days, even if that means little in practice. But nothing is gained by ignoring the fact that Maoism is not some social reform movement that uses guns for greater effect, but a political movement aimed at smashing the existing state and building an alternative state, not at one go but by proceeding from remote and neglected rural areas to the more developed rural areas, and the urban areas finally. A liberated zone is an area where an incipient state of the future has been or is declared to have been established, forcing out the existing state. One is free to like this or dislike this, wholly or conditionally, but one cannot ignore this is analysing the Maoist movement and the reactions to it such as the Salwa Judum phenomenon.

It would be idle to pretend that any state would with equanimity tolerate the proclamation of "liberated areas" within its territory from where its authority is pushed out by force. It is very doubtful that the Maoists themselves would behave more tolerantly in a similar situation. This is not because sovereignty is some unbreachable quality but because it has guns in its defence. But there are many points that the establishment in Chhattisgarh would need to ponder before it draws from the very notion of its territorial sovereignty the conclusion that the support that it is illegitimately extending to the brutal gang called Salwa Judum is legitimate. One, these areas were outside the ken of its administrative, let alone developmental, lens for decades before the Maoists declared them liberated areas. The district collector of Dantewada, a mild and pleasant-mannered officer of tribal origin, concedes that much. If sovereignty, like property, provided for a prescriptive right, the Maoists can certainly claim the right to sovereignty in Dantewada by prescription since they took over an area practically unoccupied by the Indian state. More seriously, given this fact, the Chhattisgarh government should in all humility be less righteous in its response to the Maoists. Two, and this is the more difficult point to drive into the heads of sovereigns, however inviolate territorial sovereignty may appear, if you gave guns in your hands to defend it, when a political challenge to it arises from a political force having substantial base among the people, especially the poor or otherwise disadvantaged sections of the people, it calls for a political handling of the issue and not suppression by brute force.

But brute force is what the government of Chhattisgarh is deploying. The idea is plainly that the jungles will be cleared of all habitations, and the inhabitants driven to camps located in patrollable areas, which will later be replaced by colonies. By this means the Maoists will be cut off from their popular support and deprived of food and shelter. Thus isolated they will be forced to surrender, leave the area, or else engage with the paramilitary in suicidal battles. The chief minister has openly declared that "those in the camps are with the government and those in the forests are with the Maoists". Officially, there are 54,768 people now in 17 camps located on accessible black-top roads spread over Konta, Geedam, Bairamgarh, Bijapur and Usoor blocks, and residential colonies are being built apace to replace these camps. A visitor cannot avoid the suspicion that this figure is exaggerated, whether for the purpose of propaganda or the more mundane purpose of pocketing the money sanctioned for feeding the refugees, but there is little doubt that the highways of south Bastar are teeming with refugees from the interior of the jungles.

Brutal violence of Salwa Judum

The odd thing about these refugees is that the majority of them did not come to the camps because they were driven away from their habitations, but rather they left their habitations because they were driven into these camps. The means by which this has been achieved is the brutal violence of the Salwa Judum. Mobs of the Salwa Judum have gone on rampage with the paramilitary in tow forcing villagers to come out and join the camps. Recalcitrant villages are attacked by mobilising pliant villages. Any one who does not join these attacks is beaten/fined. In the area surrounding Mahendra Karma's native village of Pharsapal in

Dantewada block, the prevailing rule is that any one who does not join the rampaging mobs of Salwa Judum has to pay a fine of Rs 700 and receive seven lashes (It was not possible to find out the significance of the digit 7). In these mobilised attacks on reluctant villages, large-scale arson is perpetrated. Upwards of a hundred houses each have been burnt in many such villages. Not only the house but all the grain, clothes, and all the household goods are also consigned to fire. The cattle, goats and poultry are taken away. And identified supporters of the Maoists, if they have not already escaped, are killed.

These killings are not even recorded. In law, every suspicious death, and that includes every death by bullets, is to be followed by inquest and post-mortem examination. But in Dantewada it is officially acknowledged that after opening fire upon the Maoists and/or the people with them, the armed forces and the Salwa Judum gang accompanying them turn back and come away. They neither wait to confirm the death or survival of the persons hit, nor do they bring them for treatment if alive, or inquest if dead. Hence, strangely, there is no record of the dead on the other side in this war the Chhattisgarh government is fighting against the Maoists. One only needs to add that this does not happen so routinely even in Kashmir where the argument that the militancy is Pakistan's proxy war is readily available as an excuse for not giving the dead bodies a civil treatment.

The consequence is that while there is a precise count of the number killed by the Maoists from June 2005 (when the Salwa Judum started) till mid-May 2006, namely, 12 special police officers (SPOs) 25 paramilitary personnel and 191 civilians (almost all of them adivasis), there is no count of how many of the Maoists and their supporters have been killed. (There is a suspicion that some persons killed by Salwa Judum have been shown as victims of Maoist violence, but that number is unlikely to be very large.) Until June 2005, there is little doubt that it was the Maoists who killed more, for the police in Bastar had never developed the habit of encounter killing to anything near the same extent as their southern brothers of Andhra Pradesh. But after the creation of Salwa Judum the situation is not the same. There have been innumerable instances reported in Maoist publications of gruesome murders committed by the Salwa Judum-paramilitary combine, and there is little reason to dismiss it as propaganda. But it is difficult to arrive at a precise estimate.

What is relevant is that except the handful of paramilitary personnel and perhaps a few Maoists of Andhra Pradesh origin killed in the conflict, all the dead in the last one year's violence are local adivasis. The number is in all probability close to 400. It is they who have been killed, it is their houses that have been burnt down, it is they who have gathered in the camps, whether dragged there by the Salwa Judum or driven by fear of the Maoists. Of course, most of the participants in the Salwa Judum are local adivasis too, and it is they who burnt down the houses of fellow adivasis and have participated in killing them. If the adivasis had themselves voluntarily created the Salwa Judum, then one would have perhaps merely rued the demise of adivasi innocence and bracketed out the very notion of a unitary entity called "adivasi" insofar as Chhattisgarh is concerned. But it was not they who created it to fight the Maoists.

The dissatisfaction, unhappiness, dislike of the Maoists among a section of the adivasis at various levels (not necessarily all exploiters or wicked men as the Maoists would want us to believe) was taken advantage of by political interests who drove them into a frenzy and created a criminal gang for their own purposes. Excepting Mahendra Karma himself, all the rest of the vocal leaders of Salwa Judum are non-tribals. And Mahendra Karma is always surrounded by non-tribals who are plainly from the Hindi heartland of north India. Moreover, all those who have visited Chhattisgarh in recent months and interacted with the Salwa Judum at the camps must have observed that it is where the leaders are non-tribals – of Andhra origin in Konta, and from UP and Bihar in Bairamgarh, Jangla and Bijapur – that their conduct is uncouth and offensive. The reason probably has something to do with the generally expansive nature of people who live in and among the plenitude of nature, but there is a more concrete reason too. The adivasis who are angry with the Maoists are those who have suffered personal injury caused to them, whether with or without justification. It is different with the Andhra or Bihari settlers who are the vocal spokesmen of the Salwa Judum. Some of them may have suffered some personal injury but in the main their enmity is more political-ideo-

logical. The very marked tone of Sangh parivar ideology cannot be missed in their anti-Maoist rhetoric.

Conflicts of interest

It is this altogether unhappy plight of the adivasis that is most worrisome. The tragedy is that this is happening in a state created in the name of adivasis, and in a "liberated aera" constituted by the Maoists primarily with the support of adivasis. If the state of Chhattisgarh has continued to be as indifferent to the adivasis as the previous state of Madhya Pradesh, the Maoists appear to have taken their social base too much for granted. In the initial days of their entry into the region, as in the contiguous parts of Andhra Pradesh, they had put an end to the severe harassment the adivasis suffered at the hands of forest and police officials for cultivating land in the reserve forests, and to the oppressive patel-patwari dominance. The rate for picking tendu leaf was substantially increased. Indeed, the main reasons for the wide popularity of the Naxalites in the entire forest region abutting the Godavari river in Telangana, Vidarbha and Chhattisgarh, is the protection they gave to the forest-dwellers for cultivation in reserve forests, the substantial increase they achieved in the payment for picking tendu leaf, and the end they put to the oppressive domination of the headmen and patwaris. The income from tendu leaf picking has in particular played a significant role in tribal life ever since. They would have been at a terrible disadvantage in negotiating the monetised economy they are surrounded by if they did not have this income. Which also explains why a strike of tendu leaf picking dictated by the Maoists with the best of intentions could make the adivasis unhappy, a point relevant for the present crisis.

But it will not do to stop the story here and depict all the people opposing the Maoists as vested interests hurt by this widely appreciated activity of the Maoists. The Maoists have gone ahead from there towards their goal of state power by declaring the areas of their influence as guerrilla zones, and in the case of Dantewada forests, a liberated zone as well. Thereafter the need to establish and

secure their authority, protect their armed squads from the police and the paramilitary, secure the obedience of the people living in the area to the sanghams set up by them, etc, become matters of predominant concern. This can alienate people who cannot all be characterised as exploiters. An elected sarpanch who is told that he cannot run the gram panchayat because the affairs of the village will be run by the sangham of the Maoists may well be unhappy, and if he is beaten up for being unhappy he may well become an enemy of the Maoists. Yet for merely this reason he cannot be called an exploiter or oppressor. If in bringing social life in the area under the decision-making institutions devised by the Maoists, the traditional community structure of the adivasis is ruptured, then notwithstanding some regressive elements of the tradition that are better rid of, the people may in fact lose rather than gain because there is no guarantee that the strength the community has traditionally given the tribe to face external incursions will be replicated by the Maoist institutions. And all people who are unhappy with this cannot be condemned as traditional elders who have lost their authority, or their henchmen.

If in forcing the state out of the liberated area, employment creating works such as the laying of roads taken up by the state is banned, people hoping for some remunerative employment are bound to be upset. Indeed this is a frequent complaint heard in Dantewada, and the Maoists' answer that roads only bring exploiters into the tribal area, or that the state which was never interested in laying roads in the area for 50 years is suddenly interested now not for the sake of the people but only to make the forests accessible to the paramilitary to hunt down the Naxalites, can only sound specious to the ears of the people who have lost the employment opportunity. What is really happening is that the interests of the people and the Maoists' political agendas start diverging from the day they declare an area a guerrilla zone, and more so, a liberated zone, a fact that should be obvious if one has not imported into reality the Maoist theory that the revolutionary movement as conducted by them is in the highest interest of the people.

Their conduct in blasting school buildings is a stark case in point. In their literature they have sought to explain this saying that the government had closed down the schools to house the paramilitary forces in the buildings and that is why they blew them up. But in fact no school was closed for the purpose. School buildings are occupied fully by the forces now because the schools are closed

for vacation. Otherwise the forces would stop at school buildings to take rest. Bringing armed personnel into school premises can certainly be objected to but blowing up schools for that reason is an inexcusable conduct, more particularly in an area with poor educational levels. The tehsildar of Konta, who frankly describes the Salwa Judum activists milling around his office as criminals, says the Maoists have blown up 31 out of the 400 school buildings in his tehsil. There appears to be no reason to disbelieve him. There are no other insurgents in the country who have done this excepting the pan-Islamists of Kashmir who have no respect for the education imparted by a non-theocratic state. Coupled with the tendency to hunt for informers and kill them, these and similar conflicts of interest have always contained the possibility of popular disaffection with the Maoists. As far back as 1991-92 the Communist Party of India (CPI) led a Jan Jagaran Abhiyan against the Maoists but that was put down by the Maoists by killing about a dozen CPI leaders. The CPI is said to have later criticised itself for having kept the company of men like Mahendra Karma in running the *Abhiyan*. Or maybe it was the ritual self-criticism required to placate the Maoists and stop them from killing more of their leaders. But last year, following a poor harvest the previous year, there were gatherings of people in areas of Maoist influence in Bijapur police district of Dantewada to discuss the problems arising from the Maoists' ban on employment generating public works undertaken by the government, and the strike of tendu leaf picking dictated by the Maoists to force increase in the payment. Mahendra Karma an ex-CPI man who subsequently joined the Congress and made a lot of money, came to know of this and jumped into the fray and took over the dissatisfaction to fashion the Salwa Judum.

Tense atmosphere

About a year on, he is a very tense man. He is aware that he cannot call back the "movement", he cannot get off the tiger he has created. The moment that happens, the lives of the Salwa Judum leaders, including his own, will be at terminal risk, for forgiveness is not a virtue highly prized by the Maoists, and the death penalty is perhaps the most frequent punishment in their penal code. The lesser Salwa Judum leaders in the camps say that the fight will go on till the Maoists are wiped out and they can safely go back to their villages, but Karma knows this is a pipe dream. In the meanwhile life of the voluntary as well as reluctant denizens of the camps ruled by the Salwa Judum is miserable, for the camps are little better than cattle sheds. Those villagers who have not joined the camps but run deep into the forests to live under Maoist protection are by all accounts leading even worse lives for the camp dwellers at least have food provided by the government. There is a third class who decided to go neither with the Salwa Judum nor the Maoists. They have crossed Chhattisgarh's notional border with Andhra Pradesh and are scattered all over the forests of Khammam district, living on the generosity of their fellow-tribes people over there. Fortunately, the forests on either side are populated by the same tribe, the Koyas.

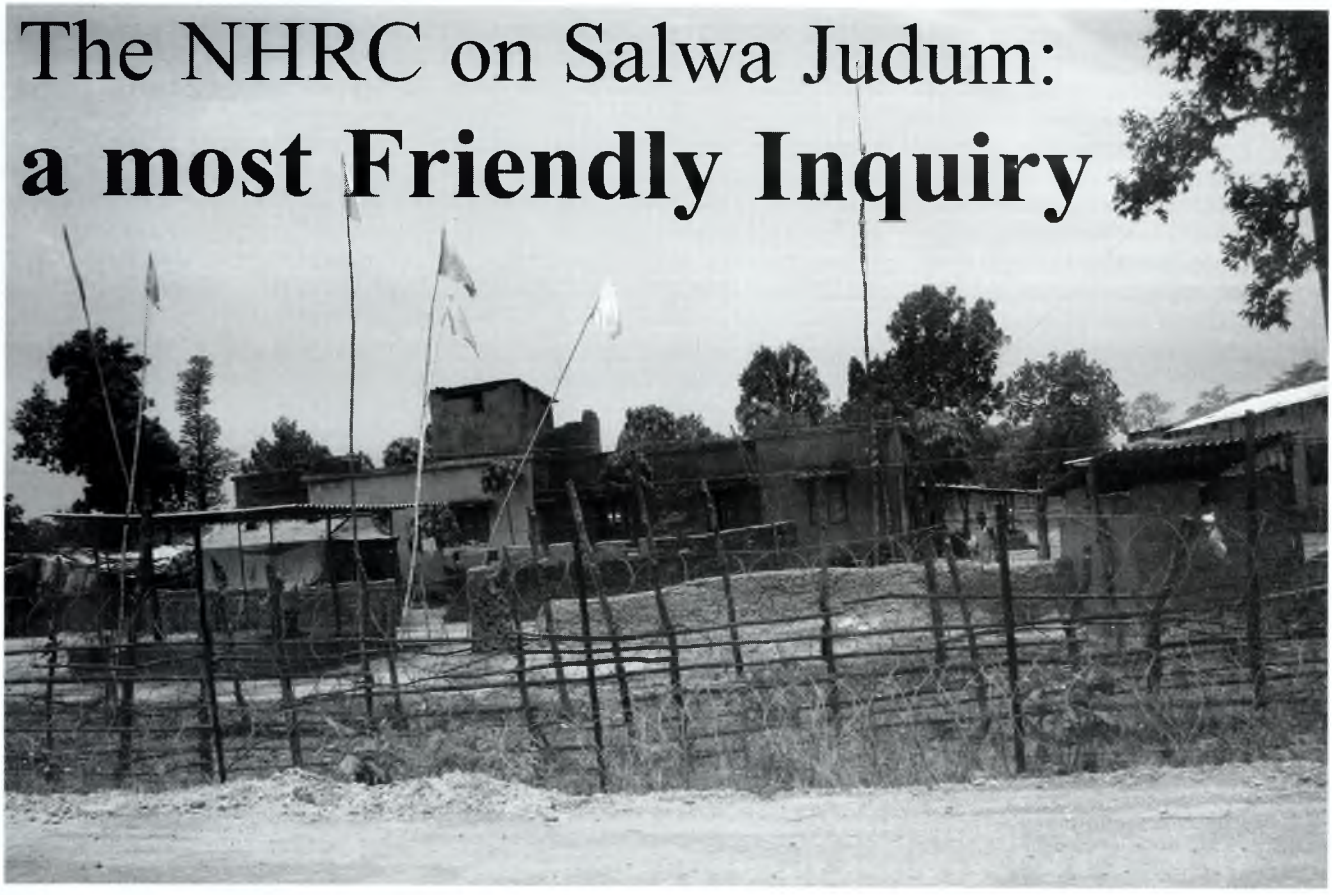
Life of the voluntary as well as reluctant denizens of the camps ruled by the Salwa Judum is miserable. Those villagers who have not joined the camps but run deep into the forests to live under Maoist protection are by all accounts leading even worse lives

This misery is compounded by fear of death. The paramilitary force described as the "Naga battalion" is known for the brutal treatment of the Maoists or their sympathisers it is in search of, and the residents of the 17 roadside camps are sitting ducks for the Maoists. Three recent incidents, all from Konta taluka, attest to the insecurity of the opponents of the Maoists living in the camps. The first happened on February 28 when the Maoists detonated a landmine at Darbhaguda and killed 26 persons returning from a Salwa Judum meeting at Dornapal. It is generally believed that those who did not die in the blast had their throats slit. Again, on April 29, 15 men staying at the Dornapal camp were killed by the Maoists. About 36 residents of the camp, all of them originally from the village of Manikonta had gone to their village to fetch their belongings. They were abducted by the Maoists, the old and the children among them let off, and the able-bodied massacred. The most recent incident happened in the early hours of May 13 when a big group led by the Maoists – their number variously given in the Hindi press as 150 and 300, and in the Telugu press as 1,000 – attacked the roadside refugee camp at Injaram on the NH 221 and killed three SPOs and one Salwa Judum member. Such attacks can happen any time. On the other side, the government of Chhattisgarh has appointed 5,000 Salwa Judum members as SPOs and is training them in the use of rifles. They are a potent life threat to the Maoist sympathisers if any of them ever venture near their deserted habitations. Their very appointment is in fact a gross abuse of authority since the provisions of the police act that permit the appointment of SPOs was never intended to arm one social group to exterminate another.

Small wonder then that a very tense atmosphere prevails in south Bastar today, especially Konta taluka. With the rains, things are likely to become worse. For one thing, the camps will be even more unlivable. Secondly, the inmates of the camps as well as those sheltering in the forests are likely to be tempted to sneak back and till their lands. This can endanger their lives. Thirdly, as time progresses the bitterness of the divide among the tribes is likely to become worse, to the detriment of all. But who in Chhattisgarh cares?

–June 3, 2006

The NHRC on Salwa Judum: a most Friendly Inquiry



The Supreme Court, which is hearing writ petitions on the Salwa Judum in Chhattisgarh asked the National Human Rights Commission to constitute a fact finding committee that would prepare a report on allegations "relating to violation of human rights by the Naxalites and Salwa Judum". The report, prepared by a group set up by the police wing of the NHRC makes no pretence of neutrality or objectivity. It reads like a partisan statement, whose tone and tenor is to protect the Salwa Judum and its image from being tarnished by allegations of crime

The Salwa Judum phenomenon has occasioned a number of reports, most of them strongly critical and the patronage it gets from the state in Chhattisgarh. Not many who know the situation in Dantewada (now Dantewada and Bijapur) districts of the state and who are fair-minded would quarrel with the criticism, though there can be and there are differences in the assessment of what exactly the Salwa Judum signifies. But the fair-minded observer would be disturbed by the almost total absence of any critical comment on the Maoists in most of the reports.

While the fair-minded would only be disturbed, any partisan of counter-insurgency as practised in the jungles and villages of south Bastar could be expected to find it intolerable, and it was always a matter of time before someone would come out with a vengeful parody of the discomfiting silence. Such a parody has now come out, but its author is not some crony of Mahendra Karma but the National Human Rights Commission (NHRC). The report produced by the NHRC after conducting an inquiry as directed by the Supreme Court easily signifies the lowest point in that institution's decade and a half of existence.

The Supreme Court has been hearing two writ petitions questioning the collusive impunity given to the private militia known as Salwa Judum by the government of Chhattisgarh. Some of the petitioners are concerned outsiders who have personally visited the affected areas and seen the situation for themselves. And some are local people, tribal residents of the affected area. They set out in detail the vicious violence

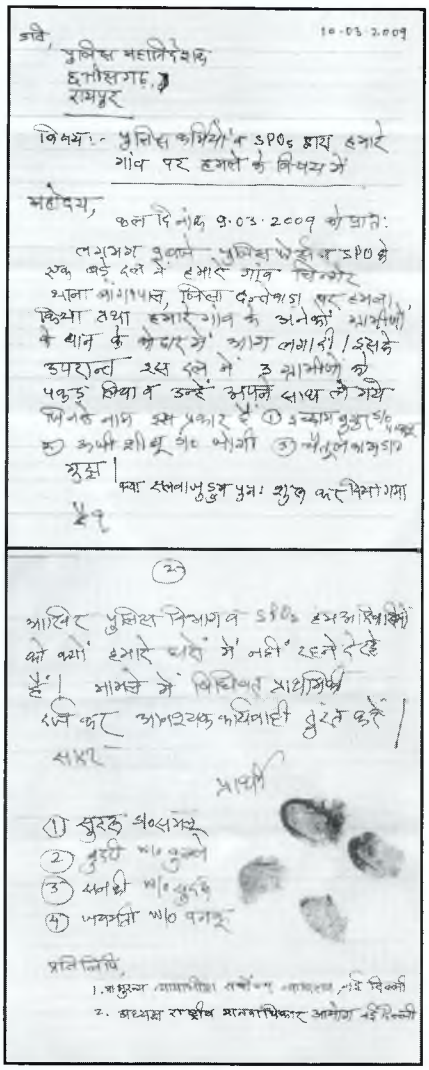
of the Salwa Judum and the State's complicity with it. Anyone who knows anything about Dantewada post-June 2005 knows that whole villages have been set on fire and hundreds of people have been massacred by the Salwa Judum in villages lying along a wide swathe running along the south and south-west of the undivided Dantewada district, abutting Khammam district of Andhra Pradesh.

Fact finding committee

The Supreme Court felt it necessary to have a report on the allegations ("relating to violation of human rights by the Naxalites and the Salwa Judum and living conditions in the refugee colonies"), and chose the NHRC to do the job. The Court did not ask for conclusive investigation of the complaint, offence by offence. It asked the NHRC to examine/verify the allegations by appointing "an appropriate fact finding committee with such members as it deems fit". The NHRC need not have appointed a committee out of its own members. It could have chosen persons of some experience in such matters, and fairness of mind. Or it could have formed a committee of insiders consisting of its members with a judicial/administrative background. For reasons best known to it, however, the NHRC directed its police wing to constitute a fact finding committee. The director general (investigation) of the NHRC, perhaps inevitably, constituted a team consisting of three officers of the Indian police service (IPS) and other lesser police functionaries under his supervision.

It was an unfortunate choice on all counts, and the report shows that in ample measure. Police officers, retired or in service, corrupt or upright, have generally expressed great appreciation of Salwa Judum. Forever looking at armed insurgencies from the point of view of armed counter-insurgency, they have seen in them an ideal tool: a vigilante group of tribal communities that can be passed off as a people's uprising and conveniently endowed with the impunity required to do the State's dirty work. The report shows that mere employment in the NHRC does nothing to change a policeman's (or woman's) spots. A human rights perspective on insurgency or armed militancy, whether it has a slight or a substantial popular base, is not easy for even the most steadfast democrat. Policemen and women with their occupational distaste for usurpation of their excusive monopoly of weapons will be the last to arrive at it. To constitute a team consisting wholly of police officers to enquire into the Dantewada (we will employ this as short for Dantewada and Bijapur) situation was a most unhappy decision, and tells poorly of the NHRC's understanding of its task.

The report makes no pretence of neutrality or objectivity. It has a 13-page introduction which is mostly a harsh comment on the Naxalites, described at the very outset as a "menace", followed by a five-page chapter titled "human rights violations by the Naxalites". The third chapter of just one and a half pages is on "human rights violations by Salwa Judum" and another one and a half pages on the "role of the local police, security forces and SPOs". It concludes almost regretfully that the Salwa Judum is no longer able to function outside the relief camps. And then there is a lengthy chapter



running into 67 pages titled "findings" which gives the report of the team's investigation into the allegations listed in the writ petitions.

Maoist actions

It may be added that the Maoists did nothing to lessen the prejudice. While the enquiry was going on, they blew up high tension electricity transmission lines plunging the entire region (four districts, to be precise) in darkness for about 10 days. It was a senseless thing to have done at any time, but a foolish act to boot when an enquiry by the NHRC into the very allegations the Maoists have been making for about three years was on. Those who are not familiar with their ways may find it strange that they chose just this time to do indulge in such destruction, but such want of appositeness is not strange or new with them. Whether they admit to it or not, such expression of contempt of institutions and processes of public justice under the State is quite common with the Maoists, though it has never prevented them from demanding enquiries and lawful action by such institutions against perpetrators of what they believe to be injustice.

The NHRC team's strong prejudice against the Naxalites comes through in every sentence of the sections dealing with them. In fact, reading the report, one would be at a loss to know why the Naxalites are at all there: it appears that their only activity has been to oppress the people. The minimum of credit normally given to them even by the unsympathetic middle class, namely that they put an end to extortion by unscrupulous traders and corrupt civil servants, finds no place in the report. An allegation which those who have spent many more days in the area than the NHRC team have never heard finds place in the report, namely that "as per the diktat of the Naxalites, none of the tribal children was allowed to continue his/her education beyond the fifth standard". It is almost certainly an invention of the roadside relief camps. Interestingly, the statements against the Naxalites are listed out without necessarily prefixing them with a suitably cautious "alleged" or "supposed" (of the 16 allegations listed out in the first three pages of the report, only one is graced with the prefix "alleged" and another with "reported"), but about the large mass of tribals from Chhattisgarh who have run away to Andhra Pradesh it is said that they were "allegedly" displaced by the Salwa Judum. Could they have gone on a picnic?

The prejudice comes out most starkly in the reference to tendu patta in paragraph 1.29. It is stated about the adivasis that "Tendu leaves are the most important source of their income", which is substantially true. It is then added that "the control exercised by the Naxalites over the collection and fixation of tendu patta rates also caused indignation amongst the tribals". Between these two statements there should, in all fairness, be two more. One, the terrible exploitation of tribals by the tendu patta contractors who got the strenuous job of collecting the jungle leaf done for a pittance before the Naxalites entered the picture. Two, the fact that Naxalite intervention increased the payment manifold (about 50 times, in fact) over the period of 20 to 25 years that they have been active in the area. This is not an exorbitant increase wrought by putting the gun to the head, but a just increase commensurate with the labour involved in the task of collecting the leaf, even if, as often as not, it was achieved by putting a gun to the contractor's head rather than any agitation by the leaf-pickers. In any case this has boosted the disposable income in the hands of tribals substantially and has been the single-most important economic benefit the adivasis have got from the presence and the organisation of the Naxalites. If nobody in the relief camps or the villages of Dantewada told the NHRC's fact finding team of this, then it must be concluded that nobody was willing or in a position to tell the truth.

It is true that in addition to higher wage rate for picking the leaf the Naxalites also demanded and took "party fund" from the contractors, and that in the last couple of years before the rise of the Salwa Judum the tendu patta contractors withdrew from the business over considerable areas to counter the pressure put upon them by the Naxalites. It is also true that in the year 2005 the government of Chhattisgarh decided to dispense with the contractor in the tendu patta business and replace him by cooperative societies of the tribals themselves, against which the Naxalites gave a call for strike, asking the adivasis to stop picking the leaf. This could well have led to some "indignation" such as that referred to by the NHRC's report. But this way of putting it would give a very different picture than that conveyed by the report.

The origin of the Salwa Judum is explained in terms that the Chhattisgarh government has been propagating most vigorously. It is located in the gathering of adivasi people in the village of Karkeli (wrongly spelled as Kankeli) in Bijapur district in the summer of 2005 pursuant to the arrest of the village youth in the aftermath of the blowing up of the Central Reserve Police Force

vehicle by the Maoists on May 5. It is said that the people expressed resentment at such armed actions which bring repression upon their heads and constitute a grave threat to the life and liberty of able-bodied youth. This incident should be regarded as beyond controversy since a Maoist-inspired publication also speaks of the resentment. Though the said publication does not say so, this seems to have been followed by meetings of tribal people at some villages nearby, such as Tadmendri, Usikapatnam, Ambeli, etc. The issue of harassment faced by the adivasi people at the hands of the police, who claimed to be pursuing Maoists, was discussed by these gatherings and it appears that many blamed the Maoists for giving an opportunity to the police by their unilateral acts of violence.

The Salwa Judum did not grow by itself. It grew only after Mahendra Karma, a corrupt and over-bearing tribal leader of the Congress Party, entered the picture to create a "movement" out of the instances of resentment

Growth of Salwa Judum

But the Salwa Judum did not grow by itself by a multiplication of such meetings. It grew only after Mahendra Karma, a corrupt and over-bearing tribal leader of the Congress party, who has an ancient grouse against the Maoists and is a veteran of two Jan Jagran Abhiyans, entered the picture to create a "movement" out of these instances of resentment. And from his entry onwards, it is better described as a lynch-mob than as a movement. The mob raided villages, forced the people to join it on pain of death or burning of their dwellings, and forced the most new recruits to compromise themselves by committing murder or arson in the next village against adivasi people just such as themselves.

There is no doubt that at all times the Salwa Judum has consisted of some people who have a real grouse against the Maoists, for which the Maoists have certainly given cause, but it has swelled its numbers by such methods. And its main task has been to clear the villages, first of Maoist sympathisers and then of all the people, so that the terrain would be free for the security forces to hunt and flush out the Maoists. This is a very conscious decision taken by Mahendra Karma and aided by the administration which set up or allowed the setting up of the camps which came up as a rash all over the south and south-west of the then undivided district of Dantewada. The members of the NHRC team, all of them experienced police officers, surely cannot pretend ignorance of this tried and tested method of counter-insurgency, which has been followed by many a state, including our own in Mizoram? They do know, and therefore strenuously avoid any interpretation of the Salwa Judum that would even remotely suggest such parallels. It is depicted instead as an adivasi people's protest movement against Naxalite oppression, "an outburst of the pent-up feelings of the tribals who suffered for long at the hands of the Naxalites", "the peaceful movement by the villagers against the Naxalites" which was "bloodied by Naxalite attacks".

The lengthy chapter titled "findings" sets out the results of the investigation done by the NHRC team into individual allegations contained in the writ petitions, and those received from the people during the team's visit. A first reading gives the impression that many of the allegations made by the petitioners before the Supreme Court are unfounded. But a more careful reading tells a more complex story. In some cases the local people of the concerned village are reported to have said to the NHRC team that the facts underlying the allegation are not true, and therefore a conclusion is recorded that it is false. In other cases the report says that the village concerned is deserted or burnt down or that the local people have expressed ignorance of the matter, or that they have said that the whereabouts of the persons alleged to have been killed are not known. In such cases the conclusion drawn is that the allegation is "not substantiated".

To take just one instance, paragraphs 6.46, 6.46.1 and 6.46.2 deal with the allegation of the petitioners that one Dallu Raut of Markapal was killed by the Salwa Judum or security forces. The NHRC team interacts with the villagers from Markapal at the Bairamgarh camp, and it is confirmed that Dallu Raut indeed died. But while they say it was the Naxalites who killed him, in "cross-questioning some of them stated that he had been killed by the Naga battalion". The report adds that there is no police record at all of his killing, and concludes that in the result "the allegation that Dallu Raut was killed by the Salwa Judum or security forces could not be substantiated".

Responsibilities of a probe

But who is to substantiate it? Investigation – since investigation is what the NHRC team has set out to do – is not an adversarial game played by the complainant and the investigator, where the investigator challenges the complainant to prove to allegation and triumphantly records his/her failure in case evidence is not forthcoming. In the trial of a criminal case in a court, the law as we follow in our country does say that the complainant caries the burden of proving the allegation, and the case will fail if the complainant fails to do so, but no law or legal principle says that this applies to the investigation of an offence. It is for the investigator to find out what happened to the person whose whereabouts are not known, how the deserted village got to be deserted, and how the burnt village got to be burnt down, etc.

The report of the NHRC reveals no such effort. They have not even enquired with the local police as to

what investigation has been done about the burnt remains of a village. Or whether they know anything at all about the whereabouts of the missing persons. Or who in their opinion as investigators caused the killing of a dead body found in the villages or the jungle. Without so much as talking to the salaried investigators of offences appointed by the state of Chhattisgarh how did they record that a complaint could not be verified or substantiated? If the team found no time to pursue their investigation beyond talking to the people found in the village concerned, if such village is still habitable and habited, it should have recorded that it is in no position to draw any conclusion. It cannot conclude that the complaint is "unsubstantiated" or not verifiable. The fact that having dismissed most of the allegations in such manner, the report at the end adds that cases of missing persons must be investigated, does not set right the totally misleading impression that the "findings" give.

In some cases, where the allegation is that a person has been killed by the Salwa Judum, the report finds that the person has died in an "encounter" and declares that the allegation is false. Indeed, in the conclusion it is specifically stated that many of the persons listed by the petitioners as victims of the Salwa Judum are "Naxalites killed in encounters with the security forces". It is found "significant" that many of the names listed by the petitioners as victims of the State/Salwa Judum violence are found in a list of martyrs published by the Maoists which was recovered in a police raid. It is not clear what is significant about that. Why should not a victim of Salwa Judum violence be regarded as a martyr by the Naxalites? What difference does it make to the complaint if such a victim turns out to have been an activist of some Maoist forum such as the Dandakaranya Adivasi Kisan Mazdoor Sanghatana?

Salwa Judum and armed forces

Equally importantly, the opinion that someone officially declared to have been killed in action by the security forces should not be described as a victim of Salwa Judum violence begs the question central to the whole case: has any distinction ever been maintained in Dantewada between the Salwa Judum and the police/armed forces? The NHRC team does not answer the question with evidence, but pleads very strenuously in favour of such a distinction. It is said at more than one point that the Salwa Judum should not be confused with the police or armed forces operating in the area, even with the special police officers (SPOs) who have in fact been picked from out of the most active participants of the Salwa Judum "movement". This is where the report reads like a partisan statement of the case and not an impartial fact finding. In fact, the dominant tone and tenor of the report is to protect the Salwa Judum and its image from being tarnished by allegations of crime. Even where it becomes necessary to admit that the Salwa Judum has committed some offences, it is hedged by a hurried caveat that the Naxalites did worse. Where it becomes necessary to recognise that the police have not registered any offence against the Salwa Judum it is again quickly added that even before the Salwa Judum entered the scene, many crimes committed by the Naxalites would go unreported because the people were afraid to complain. This certainly does not answer the complaint, because the police never desisted from registering a crime in the context of Naxalite offences of which they had information for the reason that no one gave a complaint. In the case of Salwa Judum even murder and arson in public within the sight of the police have gone unrecorded.

The dominant tone and tenor of the report is to protect the Salwa Judum.Even where it becomes necessary to admit that the Salwa Judum has committed some offences, it is hedged by a hurried caveat that the Naxalites did worse

Tactic of counter-insurgency

But to be fair to the NHRC team, they are not partial to this particular creation of Mahendra Karma but to the principle underlying it: a valuable tactic of counter-insurgency in the eyes of the police, which should not be delegitimised even if it means overlooking evident instances of violation of the canons of the rule of law. Even such a routine experience which every visitor has had, namely, the stopping and checking of vehicles and collection of a toll by the Salwa Judum, is not acknowledged. That is also said to be "not substantiated". Well, one can only say that if the NHRC team had gone around without police escort, they themselves would have been stopped and checked, which is the best type of substantiation. And if they had gone around in a vehicle with an Andhra Pradesh registration, as many were constrained to, they would have experienced a trepidation that would have ruled out the conclusion that this is no different from the joyous collection of money at festival times, said to have been "traditionally done by tribals in Bastar since many years". (Do not even non-tribal villagers indulge in such innocent if irritating pastimes in other states? And have the police not distinguished this from extortion?)

One fact must have struck the NHRC team, who are trained investigators, one presumes. Where the allegation of an atrocity is refuted categorically by the people in the Dantewada villages they visited, it is on the basis of clear statements, right or wrong. Where its truth is a possibility, the information given by the

villagers is vague and uncertain. And the specific information given by displaced people whom the team met across the border in Andhra Pradesh turns out to be more solid than the petitioners' allegations.

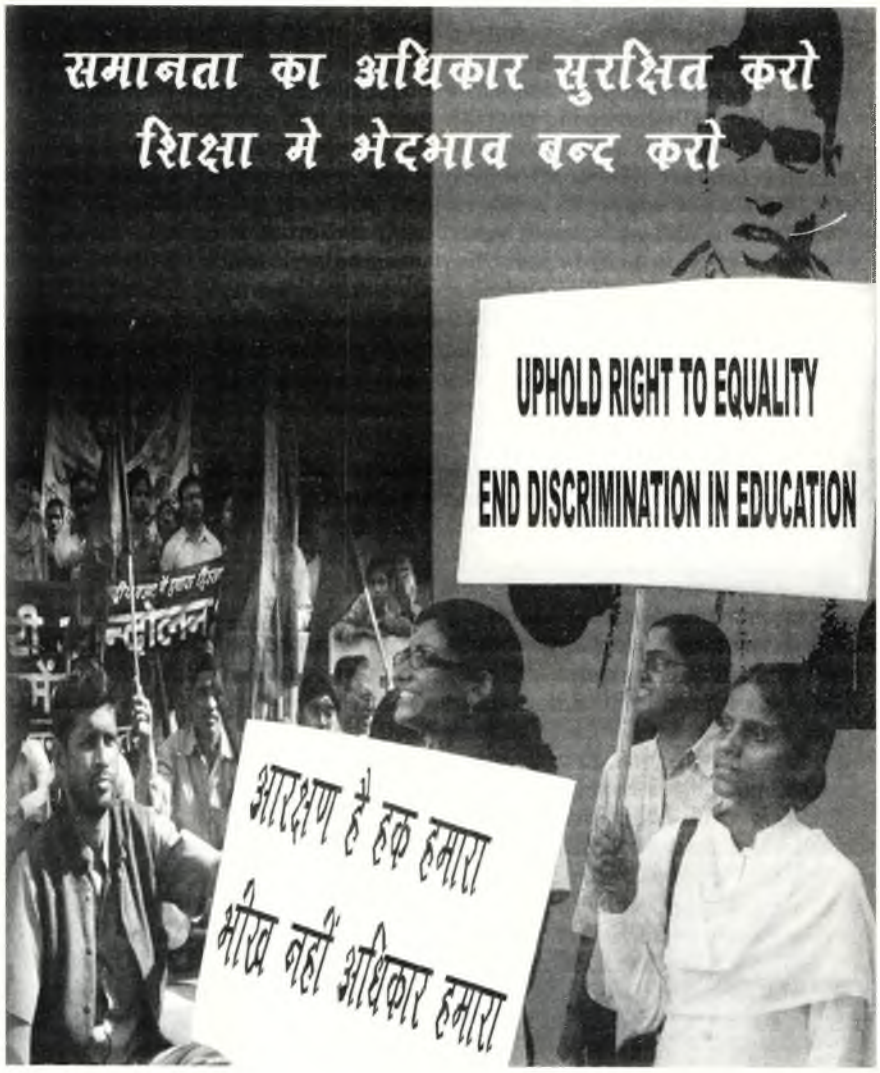
A very clear request was made to the NHRC before its team set out to do the enquiry, that public hearings be held in Eturnagaram and Bhadrachalam, the scheduled area headquarters of Warangal and Khammam districts of Andhra Pradesh, respectively, after giving public notice. The reason is that the severest victims of Salwa Judum have run away to these two districts and there is greater likelihood of the team getting frank views and candid information here than within the sight and hearing of the Salwa Judum across the border. For, those who are left behind in the villages of Dantewada are those who are with the Salwa Judum or those who have decided to live with the Salwa Judum. This, by the way, may well account for a part though not all of the negative views heard by the NHRC team in the villages of Dantewada. There was no response to this request from the NHRC.

The real motive is suspected to be that the Naxalites do not want them to go back and be won over by the State and the Salwa Judum

However, while a sub-team of the NHRC team visited a few villages in Andhra Pradesh without public intimation, a public hearing was held in Cherla in Khammam district, which is away from the area of the largest concentration of displaced people's settlements in the district, and is inaccessible to those in Warangal. In that hearing the statements of a few of the displaced persons were recorded. The NHRC team may not have realised it, but the people who came before them at Cherla are Telugu-speaking tribes from across the border who are not among the worst victims of the Salwa Judum. The worst victims are the tribal community described as Muria in Chhattisgarh and Gotti Koya or Gutti Koya in Andhra Pradesh. A systematic gathering of their stories would have counter-balanced the views heard in the camps and the villages of Dantewada.

The team had the opportunity of hearing only one batch of them, in the sitting held at Dantewada on June 10, 2008. People from Nendra who were driven into Andhra Pradesh by the Salwa Judum gave their testimonies, but the report treats their statements with scepticism. This need not surprise any one because even the reluctance of the displaced persons living in wretched conditions in Andhra Pradesh to return to Chhattisgarh is found "intriguing" because the NHRC team believes that the Salwa Judum "is no longer its original self" (which seems to contradict the view expressed elsewhere in the report that the Salwa Judum was always a benign people's movement). Though continued "apprehensions" regarding Salwa Judum are not ruled out as a reason, that obviously does not account for the intriguing character of the reluctance. The real motive is suspected to be that the Naxalites do not want them to go back and be won over by the State and the Salwa Judum. Predetermined conclusions could go no farther.

–December 20, 2008



A sad fact about the Indian judiciary is that where the judges have felt urgent ideological compulsion they have not let mere canons of discipline stop them. Judgements by smaller benches have prised open what even a nine-judge bench has declared to be the law to such an extent that most of the issues are again open for rewriting. The judgement in Ashoka Kumar Thakur vs Union of India is a case in point

Ideology and adjudication: SC and OBC reservations

Adjudication of public issues is an ideological act. Courts say they do their job within the four corners of the law, but the four corners are only corners. The space enclosed may be quite wide, and can permit divergent tendencies, all of them passing for interpretations of the law or the Constitution. It is idle to pretend that this divergence is the result of a pure difference of a juridical character. There is considerable politics in these divergent tendencies, when social issues of significance are involved.

The vicissitudes of the law of reservations after the supposedly authoritative pronouncement in the Mandal Commission case (lawyers know it as Indira Sawhney vs Union of India) in 1992 make-up is a classic instance. That judgement of nine judges, six of them concurring in upholding the provision of reservations to the Other Backward Classes (OBCs) to the extent of 27 percent in central government services, took a realistic view of caste as an institution of Indian society, its discriminatory character, the need to overcome it, and the role special provisions such as reservations can play in that task.

The Court formulated and answered all the legal issues that have arisen over the

years in connection with reservations under the Constitution. The judgement is one of common sense, and succeeds in summing up and trimming the rough edges of the positive content of judicial views in the matter over the previous 40 years, while going along with some of the retrogressive attitudes.

Though in retrospect it is evident that the judgement did open up space for mischief by insisting on identifying some thing called "a creamy layer" in every OBC community, and by expanding the space for judicial meddling by mandating a fact-finding enquiry of a public character by a statutory body into putative backwardness, it was on the whole as good a judicial pronouncement as one could expect within the tradition that views reservations as an instrument for equalising educational and employment opportunities at the threshold, while being mindful of the supposed injury that it causes to efficiency of the administration.

> It is in general remarkable that about the only time courts in our country have recognised the division of the country into poor and rich and deplored it, is when people have asked for caste-based reservations or rights

Reservations can be seen differently, as one instrument for equalising the status and position of castes considered as the basic communities of Hindu society, but courts have never seen it that way. Since judicial discipline demands that only a larger bench of judges can undo the result of any judgement, and since no bench larger than nine in size has gone into the question of reservations or any aspect of it after the Mandal Commission case, you would think that things are at least where the Mandal Commission case left them. You would be terribly mistaken, however. A sad fact about the Indian judiciary is that where the judges have felt an urgent ideological compulsion they have not let mere canons of discipline stop them. Judgements by much smaller benches than nine have prised open what the nine-judge bench declared to be the law to such an extent – while paying lip service to their duty of obedience to it – that most of the issues are again open for rewriting.

Ashoka Kumar Thakur vs Union of India, a judgement that is now at the centre of controversy because its effect has been that seats in central educational institutions supposedly increased to meet the newly created reservation of 27 percent for OBCs have turned into a bonanza of extra seats for the upper castes, is a case in point. First, the reference to a bench of five judges was unnecessary.

Judicial indiscipline

The order of reference by the two-judge bench of Arijit Pasayat and Lokeshwar Singh Panta is a textbook case of judicial indiscipline. A whole list of questions (31, if you want the number) were raised, almost all of which were answered in the Mandal Commission case and indeed even much before that, and asked to be answered by a Constitution bench. The only question that may have justified such reference (that too only because of unthinking judicial pronouncements in the recent past) was whether Parliament can by law direct private educational institutions to give reservations to the OBCs, which question was finally not answered (except by one of the five judges) on the ground that there was no challenge from private educational institutions.

When the majority of the five-judge bench came to that conclusion, they should have returned the reference instead of answering it, because there was never any doubt that the government can provide for reservations under the Constitution to OBCs in educational institutions owned or financially aided by it. Intead, the blanket order of reference was used by three of the five judges (Arijit Pasayat himself, CK Thakker and Dalveer Bhandari) to read the Mandal Commission judgement tendentiously, genuflecting with due respect, but glossing it in a manner that leaves the door open for a reversal in good time. It is easy to see in it conduct most objectionable in juridical terms, but what is more significant is the ideological underpinning of the indiscipline and its effect.

The significance of the "creamy layer" is an instance of what they have achieved. In the Mandal Commission judgement, the court performed the strange feat of deducing a fact from an abstract principle, and declared that there exists a creamy layer in each OBC community, and it must be removed from the benefit of reservation given to that community so that the really backward among the backward may not be deprived of the benefits of special provisions. The reasoning proceeds thus: unequals must not be treated as equals; hence the well-endowed among an OBC community cannot be counted with the less-endowed ones; hence they must be disentitled to the reservation provision made for that community in the interests of justice; hence it is necessary to identify the creamy layer in each community and declare it ineligible for the reservation given to that community. The question, whether there, in fact, exists a creamy layer as a sub-class within OBC communities, if so in which of them, and what is its effect on the availment of reservations by members of the community, whether, for instance, it has given confidence to the others to aspire for higher positions in life rather than come in the way of their advancement, were matters of no relevance to this process of deductive reasoning.

Nevertheless by the time of the Mandal Commission case, caste as a social category had come to be accepted by the courts as a class of a kind, eligible for reservations if it is backward. Ashoka Kumar Thakur vs Union of India (the judgement was pronounced on April 10, 2008), through the said three judges, introduces a revision: caste becomes a class only after the creamy layer is removed. Thus, the removal of

creamy layer is no longer a matter of purported justice within the community as between the more backward and the less backward amongst it, as it was in the Mandal Commission case, but a necessary prerequisite for the caste to at all be a class, and a fortiori a backward class. This is a very significant conceptual revision, effected silently by a majority of this five-judge bench in a reference that was unnecessary in the first place.

Another instance is the way the same three judges have smuggled in the "economic criterion" for identifying backward classes. They were not called upon to decide whether caste can be the basis for determining backwardness because after a lot of dilly-dallying, the courts, which began with the view that caste can be only one of the criteria taken into account to identify backwardness, have come round to the view that if a caste is on the whole backward, it can be identified as a backward class, though there can be other ways of identifying backward classes too. This opinion has been approved in the Mandal Commission case. But the three judges proceed gamely to pose and answer the same question notwithstanding its finality (at least until more than nine judges sit and reconsider it) and give different answers, while declaring themselves bound by the Mandal Commission judgement. They express pain at the fact that poverty deprives people of opportunity to pursue studies and come up in life. It is in general remarkable that about the only time courts in our country have recognised the division of the country into poor and rich and deplored it, is when people have asked for caste-based reservations or rights. They are otherwise normally indifferent to economic cleavages in society. And they will not even learn from documented experience.

As far back as the 1960s, the government of the then state of Mysore, the "native" part of which had had a systematic programme of encouragement of the nonbrahmin communities in education and employment in the pre-Constitution era, strangely found itself stumbling upon the Constitution (as understood by the Supreme Court) in its effort to continue/extend the measures after India dedicated itself to social justice in the post-Constitution era. It therefore introduced poverty-and-occupation-based reservations pending the success of its efforts to continue its programme, while satisfying the finicky stipulations of the court. Reviewing this attempt, the Backward Classes Commission headed by O Chinnappa Reddy, which was later appointed by the successor state of Karnataka, found that it was the brahmins, the lingayats and the vokkaligas that took most of the benefits. That this would happen would be obvious to anyone who knows anything about

> It is evident that the judgement did open up space for mischief by insisting on identifying some thing called "a creamy layer" in every OBC community, and by expanding the space for judicial meddling

Indian society, but judges remain determined admirers of the economic criterion. In Ashoka Kumar Thakur vs Union of India, Arijit Pasayat and CK Thakker have given the astonishing direction that "to strike the constitutional balance, it is necessary and desirable to earmark certain percentage of seats out of permissible limit of 27 percent for socially and economically backward classes". And Dalveer Bhandari directs that after 10 years the criterion for reservation must shift to the economically backward. Wanting in discipline or not, the effect is that a majority of three out of the five judges in the bench are found pushing for the economic criterion in determining backwardness, which will find its utility with the kind of smooth lawyer that populates the Supreme Court in the days to come.

Second, and this brings us to the present controversy, the judgement answers questions that nobody asked, which courts are not supposed to do but find themselves doing when they find governments doing what they do not like, not as judges but as political creatures. They were only supposed to be adjudging the constitutional validity of the 93rd Amendment which has introduced Article 15(5) in the Constitution enabling the government to make a special provision by law for the advancement of backward classes insofar as it relates to admissions to educational institutions including private institutions, and the validity of the consequential law made by the Parliament, namely, the Central Educational Institutions (Reservations in Admissions) Act, 2006. In parenthesis, it will be recalled that when the reservations were mooted, the upper castes who have a monopoly of higher education in the better type of institutions, kicked up a big fuss and blackmailed the government into compulsorily increasing the number of seats in every such institution so that the opportunities available to them remain untouched. In other words, they would not share the opportunities that they regard as theirs with the OBCs and the government had better not force them to do so in its quest for real equality of opportunity. That they succeeded in this blackmail, but still went ahead and challenged the law is an index of the kind of elite this country has. Now, this increase of seats and consequent infrastructure is estimated to cost about Rs 17,000 crore. The blame for the expenditure must squarely be placed on the blackmailing tactics of the upper castes and the union government's weakness in succumbing to it. But the upper castes generated an argument in their favour out of this expenditure: should Rs 17,000 crore be spent on implementing reservations in higher education when primary schooling is in very bad shape for want of funds? At least one of the judges, Dalveer Bhandari, found this crass hypocrisy impressive as an argument against the law.

Relaxing criteria

What the court was not called upon to answer is whether and to what

extent the government or the educational institutions may relax the qualifying marks to enable the OBC students to access the reservations, and what is to be done if they fail to access the seats in sufficient number. It has been the general experience that the first time that reservations are given to any social class, not many are able to access it and a sufficient relaxation of the criterion of selection is needed to make the reservation a reality. It is also a matter of experience that the relaxation will not be needed after a certain time. What is to be done in this regard is a matter of government policy, and while the courts may be called upon to adjudicate the validity of a policy once it is formulated, it is not for them to say what it should be. But three judges thought otherwise. Arijit Pasayat and CK Thakker begin by properly asking the central government to "examine the desirability of fixing cut-off marks in respect of candidates belonging to OBCs" but add the uninvited illustration that "five grace marks may be added to OBC students". And then go on to positively mandate that if any seats in the OBC quota remain vacant, they shall be filled up by "candidates from the general categories". Dalveer Bhandari is more forthright. He orders that the qualifying cut-off marks may be reduced by not more than 10 (out of 100) for the OBCs, but again if the qualifying OBC students fail to avail the 27 percent reservation, "the remaining seats would revert to the general category". These orders that overstep the powers of the court have now come home to roost, and in the process proved the vacuity of the loud lament about the creamy layer that is the most jarring note in the judgement: this academic year the 27 percent OBC quota has remained largely unfilled in most of the central educational institutions.

It has been the general experience that the first time that reservations are given to any social class, not many are able to access it and a sufficient relaxation of the criterion of selection is needed to make the reservation a reality

To begin with, the union government took the initiative in leaving the policy to the institutions. The ministry for human resources development issued an office memorandum (OM) dated April 20, 2008 authorising the central educational institutions to "fix cut-off marks for admission/ selection through admission test, etc, for the OBC candidates with such differential from the cut-off marks for the unreserved category as each institution may deem appropriate for maintaining the standards of education and at the same time ensuring that sufficient number of eligible OBC candidates are available". Maybe the decision to leave it to the institutions was not very wise for educational institutions of the elite variety are the most steeped in brahminical attitudes in our country. But good or bad, the OM still left it open for means to be devised so that sufficient number of OBC students do enter the institutions. But the Supreme Court again came in the way without so much as acknowledging let alone adjudicating the policy decision taken by the union government. Someone moved the Supreme Court for a "clarification" in the matter and the court, after hearing the government too, which must have informed it of the OM dated April 20, 2008, passed an order on October 14, approving the policy pronouncement of Dalveer Bhandari, namely, relaxation of not more than 10 in the qualifying cut-off marks and filling of unfilled seats by the general category, "having regard to the observations made in the judgements pronounced by this court". What observations? Only Dalveer Bhandari made such an observation. Arijit Pasayat and CK Thakker said something else. Chief Justice KG Balakrishnan whose contribution to the Ashoka Kumar Thakur case is scrupulous in following the sympathetic spirit of the Mandal Commission judgement, rightly avoided making any policy pronouncement. The last judge, RV Raveendran, who expressed an impossible agreement with all the other four, wrote a brief judgement which too avoids the issue.

Yet, the same five judges sitting again endorse what is a policy made by judicial fiat by one of them, implicitly overruling the government's policy decision without even referring to it. The result is that the upper castes who earlier had much of the 100 percent to themselves now have more than 100 percent. The urge the courts – which remain a bastion of the upper castes – feel in the matter of preempting what they believe to be undesirable policy decisions in connection with reservations is nowhere more evident.

It is not possible to conclude this without commenting on the extraordinary interpretation put by the Jawaharlal Nehru University (JNU) on the order of October 14, 2008 passed by the Supreme Court. It should be obvious to even a child that what the court said was that if a student in general has to get, say, 40 marks in the qualifying test or interview or whichever combination of two the institution prescribes, to be eligible for selection to a course, then in the case of OBCs it will be sufficient if the candidate gets 30 marks. It takes exceptional intelligence to read it as anything else. But they evidently possess that in that university. A committee of five teachers concluded that what the Supreme Court meant when it spoke of relaxation of not more than 10 in the cut-off marks was that the marks obtained by an OBC candidate must be within 10 marks of the least marks obtained by those who have qualified in the general category for the OBC candidate to be eligible for selection! Social scientists for some time now have been speaking much of the legitimacy of diverse "readings" of "texts" but one does hope that in the JNU they have not carried it to misreading of plain English.

–October 24, 2009

GLIMPSES OF BALAGOPAL'S PUBLIC LIFE


TV5

Justice for Dalits among Dalits

In a recent judgement, which is replete with arguments against reservations as such, the Supreme Court has argued that apportionment of the reservations made to SCs or STs to subgroups within cannot be done by the state legislatures. Indeed, even Parliament does not have the competence to do so since the Constitution has intended that the SCs and STs are an indivisible, homogeneous entity

Living apart as they do from social realities, judges sometimes come up with wrong judgements at disastrously wrong moments.

A notable feature of Indian society in recent years is that from out of disadvantaged people who are dealt with by the law as well as in the idiom of social justice as homogeneous classes (dalits, minorities, women, etc), categories asserting their further discrimination have emerged, seeking society's attention to their particular plight. The situation calls for a sensitive response that will neither deny them further discrimination nor use it as a stick to beat the parent category with.

The Madiga campaign for subdivision of the scheduled caste reservation in Andhra Pradesh is a very prominent such instance. Asserting that within the scheduled castes there is a local hierarchy of social status, worth, value (and even touchability), and also that the scheduled caste reservation is being taken disproportionately by two of them, namely, the Adi Andhras and Malas, the Madigas ran a successful campaign to persuade the state government to make a four-fold subdivision of the scheduled castes in the state, and apportion the reservation to the four subgroups in such a manner that all may in fact get a more equitable share. Almost nobody other than a section of the relatively better placed scheduled castes has denied the fact of further discrimination within the dalit communities, and all political parties have supported the campaign.

But it has foundered on the law as understood by the courts. The conclusive (for the present) view of a Constitution bench of five judges of the Supreme Court is that it is constitutionally impermissible to do what the Madigas wanted. Why and how the court said so we shall see below. But as a general caveat it must be said that whatever may be the defects of our Constitution, and there are many, any one who knows that document would view with scepticism any assertion of a disjoint between its prescriptions and any aspiration for social or political justice and the social or political impediments in

giving effect to constitutional possibilities. The only exception to this would be the aspiration for self-determination of unwilling components of what would be the Indian Nation, which is irrefutably unconstitutional, as the Constitution now stands.

Andhra Pradesh order

Persuaded by the vigorous campaign launched by the Madigas, the government of Andhra Pradesh initially issued an order which was struck down by a full bench of the high court, principally on the ground that the government had not consulted the National Commission for Scheduled Castes and Scheduled Tribes, but also on more doubtful grounds. Later, after completing that consultation, the government passed an Act (Act 20 of 2000) to the same communities, but a five-judge bench of the high court, by a majority of four to one, upheld the Act, overruling the other objections the previous bench had expressed. Against that the petitioners appealed to the Supreme Court, for which leave was granted by the high court, and in the apex court they have succeeded. A five-judge bench of the Supreme Court, in EV Chinnaiah vs State of AP, has unanimously held the Act to be unconstitutional, in a judgement that is poor in logic and poorer in judicial wisdom.

The Supreme Court says two things:

(1) Apportionment of the reservations made to SCs or STs to subgroups within cannot be done by the state legislatures. Only Parliament has the competence to do so. (2) But even Parliament does not have the competence to do so since the Constitution has intended that the SCs and STs are an indivisible, homogeneous entity. Maybe in fact they are not, but for all constitutional purposes they are.

Both the contentions are demonstrably ill-founded. But until at least a bench of seven judges of the Supreme Court says so, or the Constitution is amended to clarify that it has been saddled with what the makers of the document never intended, all aspirations for inter se justice within the dalit and adivasi groups – aspirations which are only now finding voice – will have to stay mute, constitutionally speaking. In fact, the Supreme Court has gone to the extent of saying that it is not permissible to even appoint a commission of enquiry to identify the more backward among the scheduled castes.

Three separate but concurring judgements have been written by the five-judge bench, none of them more edifying than the others: N Santosh Hegde for himself, SN Variava and BP Singh; HK Sema for himself; and SB Sinha for himself. It is something of a strain to unravel the thread of the reasoning adopted by them, not because it is profound, but because lack of logical clarity and connectedness has become a very common characteristic of judicial pronouncements even at the highest level these days and this judgement is a classic instance.

The courts have repeatedly held that it requires no Act of any legislature to give reservations or special provisions. Every instrumentality of the state and every local body is free to do so within the usual limits of fairness and reasonableness that apply to all governmental action

The constitutional position concerning the scheduled caste and scheduled tribe lists (there is a separate list for each state) is clear. Article 341 says: (1) The President may with respect to any state or union territory, and where it is a State, in consultation with the governor thereof, by public notification, specify the castes, races, or tribes, or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be scheduled castes in relation to that state or union territory, as the case may be. (2) Parliament may by law include or exclude from the list of scheduled castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Article 342 is a similar provision for scheduled tribes. Thus, the President initially declares the list of scheduled castes in consultation with the governors of the respective states, and any inclusion or exclusion thereafter is done by an Act of Parliament. Except by an Act of Parliament the SC or ST list cannot be modified to include or exclude a caste. Every other authority including the state and central governments is bound by these lists so declared and amended.

Discretion of authorities

But subject to acceptance of these lists as they stand, the giving of reservations or the making of any other special provisions is a wide discretion available to the authorities at all levels. This discretion contrasts sharply with the very clear reservation of the power to declare a community to be SC or ST, to the President initially and Parliament thereafter. The courts have repeatedly held that it requires no Act of any legislature to give reservations or special provisions. Every instrumentality of the state and every local body is free to do so in the course of the exercise of its administrative authority, within the usual limits of fairness and reasonableness that apply to all governmental action.

Why should not this discretion include also the power to divide the special provisions it makes among the beneficiaries in such a way that it is more equitably accessed by them? No caste is added to or deleted from the SC/ST list thereby. The lists remain intact. If not every authority, the state executive and legislature certainly have this power since they have the power to administer and legislate in connection with education, employment and social welfare.

The Supreme Court says no, because the constitutional provision

that only Parliament can add to or delete from the SC/ST lists means much more than what it says. It means (in the words of Santosh Hegde) that any action that "interferes, disturbs, rearranges, regroups or reclassifies the various castes in the list" unless it is an Act of Parliament is barred by the Constitution. How does the court read so much into the plain language of Article 341? The Supreme Court is no Humpty-Dumpty to make words mean what it wants them to mean. It must obey and follow the meaning of the expressions themselves. Where the expressions are plain it has no discretion to add or subtract anything. It is only where the expressions are obscure or otherwise of doubtful meanings that the court steps in, not to give them the meaning it wishes but to elicit what the lawmakers may have meant. There is nothing whatsoever obscure or doubtful about Article 341.

It is true that legal theory holds that interpretation of the Constitution is different from interpretation of ordinary law, and that the Constitution must be interpreted liberally, broadly, and in a manner suitable for the changing times and social needs. This is not the place to go into a discussion of that seemingly attractive proposition, though one is entitled to be suspicious of the sudden eruption of respect for changing times in usually conservative circles ever since the rise of neoliberalism. But whatever that proposition means it cannot mean that the Supreme Court will rewrite the Constitution. Briefly it may be said that words used in the Constitution which are in the nature of concepts or generalities can be and must be given meaning keeping changed circumstances, hopes and aspirations in view.

The wide meaning sought to be given by the courts to the abstract noun 'life' in Article 21 is an instance. But, plain words which lay down who can do what and how, cannot be given any other than literal interpretation, since we do not want that judges rewrite the Constitution to suit their views and values. One major criticism of the only Constituent Assembly we ever had is that it was not elected on universal adult suffrage. We do not want to have an unelected second one now. In any case, if changing times is the touchstone for reading constitutional provisions differently than what they seem to plainly say, then the most relevant change in this context is the rising aspirations of the disadvantaged within the disadvantaged, and not the opposition of the more advantageously placed among them to the nascent grievance of those below.

Ambedkar's observations

In support of the wide meaning that Santosh Hegde has chosen to give Article 341, he quotes an observation of Ambedkar's in the constituent assembly debates. When a question was raised as to why the President, who declares the list of SCs and STs, should not be given the power to add or delete communities from the list, and why that power should be given to Parliament, Ambedkar is supposed to have said that it was to "eliminate any kind of political factors having a play in the matter of the disturbance in the schedule so published by the President". That Ambedkar used the expression 'disturbance' in this context is relied upon to draw the far-fetched inference that any disturbance, and not merely addition or deletion of a community, is included in the meaning of "include or exclude" in Article 341(2). Ambedkar was talking of some thing else. He evidently apprehended that the President may act as an instrument of the party in power in adding or deleting communities from the SC/ST list, whereas even if the party in power has a majority in the Parliament, the very process of lawmaking with its debate and discussion would act as a check on mala fide politics. It is this problem that he was addressing and not the issue whether adding or deleting communities from the lists includes any and every 'disturbance'. A word used by a speaker can be given meaning in relation to an issue only if that issue was present in the mind of the speaker when the word was used. The Supreme Court has in recent times laid down the proposition that it is permissible to look into the constituent assembly debates to understand the meaning of provisions of the Constitution. That certainly does not mean that the sense of a word in relation to one context can be deducted from the use of the word in a different context in the debates.

Briefly it may be said that words used in the Constitution which are in the nature of concepts or generalities can be and must be given meaning keeping changed circumstances, hopes and aspirations in view

The other and more portentous view of the Supreme Court is that scheduled caste is a single class, a homogeneous expression, and therefore no further sub grouping within the scheduled castes is permissible. The way the reasoning in support of this view is elaborated, the view would apply also to the scheduled tribes. And it would also negate the power conceded to Parliament in the first limb of the court's decision to make a classification of the scheduled castes. It would make the regrouping unconstitutional, whether done by the state legislature or by Parliament.

SB Sinha's concurring and lengthy judgement is entirely devoted to making this point, but one may read it backward and forward a dozen times and still not find any reason in it. He cites provisions of the Constitution where the scheduled tribes of what we would today call the north-east are treated separately from the scheduled tribes of the rest of the country, and adds that this shows that where the Constitution wanted to make a sub-classification of the SCs or STs it has itself done so, and therefore where it has chosen not to do so, such classification is impermissible. All that it in fact proves is that inequality within the SCs or STs in general was not a given for the Constitution-makers the way the peculiar history of the tribal areas of what was in those days known as

Assam. Nothing more can reasonably be concluded from this, unless one intends to stultify the Constitution, which is exactly what is sought to be provided against when legal theory says that the interpretation of constitutional law proceeds on a somewhat different footing than the interpretation of ordinary law.

It is important that neither SB Sinha nor any of the other judges has expressed doubt about the state government's stand that there is inequality within the scheduled castes and that the reservations provided for the scheduled castes are being preponderantly taken by a few of the 59 scheduled castes. It is better to hear this in SB Sinha's own language:

> *It may not be necessary for us to delve deep into the question as to whether the factual foundation for enacting the said legislation being based on a report of a Court of Enquiry constituted under Section 3 of the Commissions of Enquiry Act, 1952 known as Justice Raju Report is otherwise laudable or not.*

The approach to construe the impugned legislation should not be based on the subjective intention of legislation but should be given an objective meaning

Question of law

The question then is reduced to a pure question of law: whether it is permissible to identify subgroups of the SCs which have benefited little from reservations and allot their quota separately to them, leaving the residue as the quota of those who have benefited disproportionately. No, says the Supreme Court. Before seeing the reasons, here is a statement of the job undertaken by the Supreme Court, in the words of the same judge:

> *The approach to construe the impugned legislation should not be based on the subjective intention of legislation but should be given an objective meaning. The meaning is declared by the courts after application of the relevant principles so as to construe the constitutionality of a statute having regard to the object the Constitution-makers sought to achieve.*

"Subjective intention of legislation"? It can only mean, if it means any thing at all, the object of the legislation. Or is it the subjective intention of the legislature that the judge is referring to? But how can intention be anything other than subjective? One hears of subjective assessment of a fact, subjective taking of a decision, subjective exercise of discretionary powers. In these matters the antinomy of subjective and objective makes sense. But there can be no objective intention. And what could be the "objective meaning" of legislation? What the judge wants to say perhaps is that whatever the legislature may have intended in enacting the law, his job is to look at its power to do so under the Constitution, in the light of the object the Constitution-makers sought to achieve by defining scheduled castes and making special provisions for them.

Alleged impermissibility

Here are some of the reasons offered by SB Sinha for holding that such power does not exist:

> *Our Constitution permits application of equality clause by grant of additional protection to the disadvantaged class so as to bring them on equal platform with other advantaged class of people. Such a class which requires the benefit of additional protection, thus, cannot be discriminated inter se, i e, between one member of the said class and another only on a certain presupposition of some advancement by one group over other although both satisfy the test of abysmal backwardness as also inadequate representation in public service.*

"Presupposition" is unfair. It is based on what the same judge has earlier described as the Justice Raju report. Having declared that it is not necessary to spend time on the factual foundation of that report, he cannot now use the expression "presupposition" for the opinion based on that report. Moving then to the logic of the alleged impermissibility, firstly the inter se classification is not between individuals but between clearly demarcated subgroups. These are separate castes, have separate names, sometimes separate traditional occupations and separate cultural practices. They do not intermarry, and the higher among them do not normally inter-dine with the lower. Thus they are clearly demarcated groups. As for provision of reservation in employment, it is after all the whole purpose of Article 16(4) to provide reservations for backward classes who are inadequately represented in the civil services:

Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Having identified 59 castes as scheduled castes and having found that they are inadequately represented in the civil services, reservation has been given to them in government jobs. But after a while it is found that some of the 59 castes continue to be under-represented in the services under the state because the reservation given in the name of all of them has been taken to a disproportionate extent by some of them. Cannot Article 16(4) be pressed into service? If it is said that it cannot, then the power given under Article 16(4) is declared to be curtailed by the supposed bar read by the court into Article 341. Is it permissible to read a plainly worded power in the Constitution that too one in the fundamental rights chapter, in such a manner that it is limited by a judicial interpretation – and a somewhat strained one at that – of another provision of the Constitution?

As the Constitution itself treats the members of the scheduled castes as a single integrated class of most backward citizens, it is not competent for the legislature of a State to subdivide them into separate compartments with a separate percentage of reservation for each resulting in discouraging merit as well as the endeavour of individual members to excel – vide fundamental duty under Article 51-A(j).

The latter part of this is a position that tends against reservation itself. Indeed, as I will argue at the end, this judgement is in truth a view against reservations as such, though apparently only about the impermissibility of subdividing scheduled caste reservations. That the victorious sections of the dalits are unable to see this point is a tragedy by itself. It has always been the argument of the upper castes in opposing reservations that it discourages merit and the endeavour to excel. The courts have for decades resisted this argument with cogent reasons. Is it permissible to use this argument now in to oppose subdivision of reservations?

As for the Constitution treating the members of the scheduled castes as "a single integrated class of most backward citizens", that is what needs to be demonstrated, not proclaimed. Where does the Constitution say so? In the judgement written by Santosh Hegde too, one finds this syllogistic conundrum: Scheduled castes are the backward-most in society. If you say that some of them are more backward than the others, then that means that the less backward among them can no longer be among the most backward in society, because there are some who are more backward than them. Ergo, the scheduled castes cannot be divided into the more and the less backward, since by definition they are all the backward most.

Syllogistic conundrum

No where does the Constitution say that the scheduled castes are the backward-most in society, which is the proposition with which this syllogism starts. The Constitution does not define scheduled castes in social terms at all. Scheduled castes are those who find themselves in the scheduled caste list, as declared by the President and amended from time to time by Parliament. If a social indicator of what would constitute scheduled caste is needed, one can look into the debates in the constituent assembly, as the courts have frequently been doing to ascertain the meaning assigned to terms used in the Constitution. Or one can look at administrative practice in identifying the scheduled castes. It will be found that scheduled castes are none but the 'panchamas', untouchables, of Hindu society. Everybody knows this but in the reams and reams of judicial exposition on the matter, the courts have for some reason found it impossible to say so, though VR Krishna Iyer in his significant judgement in State of Kerala vs NM Thomas, 1976 consistently refers to scheduled castes as 'harijans' (the word dalit had not come into vogue then).

That the scheduled castes are the backward most is an evaluation of their social status, but in fact what defines them is untouchability. Indeed, in many states there are some communities listed in the OBC list who may well be socially more backward than the scheduled castes, such as for instance the 'Dommaras' of Andhra Pradesh, but are not in the SC list because they are not untouchable.

As the Constitution itself treats SCs as a single integrated class of most backward citizens, it is not competent for the legislature of a State to subdivide them into separate compartments

1976 judgement

The description of scheduled castes as backward-most (the most backward, the abysmally backward, etc) is owed to the Supreme Court itself, and in a very different context. State of Kerala vs NM Thomas, 1976 is also a constitution bench judgement scriped by seven judges, each of whom wrote his own judgement. A conscious attempt was made by them, especially VR Krishna Iyer, to clear much of the confusion that had gathered around reservations, thanks to the inhibitions that clogged the conservative minds that have always ruled the courts. In the course of the attempt, VR Krishna Iyer used many expressions – inclined as he was to literary largesse – indicating the position and situation of the scheduled castes: 'lowliest and the lost', 'utterly depressed', 'stark backwardness', 'bottom layer', 'most backward classes', 'sunken sections', are among those expressions. He carried on the exposition in Akhil Bharatiya Soshit Karamchari Sangh (Rly) vs Union of India, 1981, where he said even more plainly that the scheduled castes are 'not merely backward but the backward-most'. This rhetorical device used as an expository technique to emphasise the justification for special provisions, seems later to have become definitive of scheduled castes, and has now been used to beat the more disadvantaged of them with. But the same judge, in State of Kerala vs NM Thomas, regularly used the word 'harijan' to describe the scheduled castes, which could equally have been taken as definitive of that category, which would have been closer to the intention of the makers of the Constitution and administrative practice. And then the syllogism that prohibits sub-grouping and apportionment of the SC quota would no longer operate. It is found that some untouchables are untouchable for other untouchables, then why should they not be classified separately within the list of untouchables, what would be unreasonable about it?

The alternative contention that the scheduled castes constitute a 'homogeneous class', a 'single integrated class', a 'single class by themselves', and therefore cannot be grouped is even less tenable. Here are some of the elements of juridical wisdom found in the judgement:

It is a well-settled principle in law that reservation to a backward class is not a constitutional mandate. It is the prerogative of the state concerned if it so desires, with an object of providing opportunity of advancement in the society to certain backward classes which includes the scheduled castes, to reserve certain seats in educational institutions under Article 15(4) and in public services under the State under Article 16(4). That part of its constitutional obligation, as stated above, has already been fulfilled by the State. Having done so, it is not open to the State to sub-classify a class already recognised by the Constitution and allot a portion of the already reserved quota among the State-created subclasses within the list of scheduled castes (Santosh Hegde).

The giving of reservation is said to be not a constitutional mandate but a discretionary prerogative of the State. But once it is exercised in relation to a class recognised by the Constitution, the prerogative is lost, the discretion is gone, insofar as it concerns subdividing the allotted reservation among groups within the class. But why? The Constitution recognises the class, viz, the scheduled castes, in the sense that it is conscious that there are certain very specially placed peoples in our society who need to be endowed with special rights, shown special concern by the administration, etc. The list of those peoples is left to be declared by the President and amended from time to time by Parliament. The measures to be taken for their advancement or protection is the prerogative of the State. It is the discretion of the State to adopt such special measures as it would like, to realise the intention of the Constitution-makers in the matter. Where does the Constitution warrant putting a full stop to this prerogative after the State has made provision for the class as a whole, so long as the State does not add or delete castes from the list? Where is the State barred from looking at who is taking what is given for the class as a whole, and doing something reasonable to set that right?

The whole basis of reservation is to provide additional protection to the members of the scheduled castes and scheduled tribes as a class of persons who have been suffering since a considerable length of time due to social and educational backwardness. The protection and reservation is afforded to a homogeneous group... By the impugned legislation, the State has sought to regroup the homogeneous group specified in the presidential notification for the purpose of reservation and appointments. It would amount to discrimination in reverse and would attract the wrath of Article 14 of the Constitution. It is a trite law that justice must be equitable. Justice to one group at the cost of injustice to other group is another way of perpetuating injustice (HK Sema).

The whole basis of reservation is to provide additional protection to the members of the SCs & STs as a class of persons who have been suffering since a considerable length of time due to social and educational backwardness

Argument against equity

It is trite indeed that justice must be equitable. But the rider that 'justice to one group at the cost of injustice to another group is another way of perpetrating injustice', without any reference to the unequal position of the two groups, which fact is nowhere disbelieved by the judge, is not an argument for but against equity. And it is an argument against reservations as such, and not just their categorisation, for 'justice to some at the cost of injustice to the others' has ever been the rallying cry of anti-reservationists. And if one is to talk of discrimination in reverse, it is the court's injunction against classifying the lesser among the dalits separately for the purpose of allotting their quota to them that deserves the appellation. For have the same courts not held again and again that not making a classification when it cries out to be made amounts to treating unequals as equals, which would truly 'earn the wrath of Article 14'? It is strange that the judge thinks it is the making of such a classification – whose factual basis, I must reiterate yet once more, is not in dispute – attracts such wrath.

The power of the state legislature to decide as regards grant of benefit of reservation in jobs or in educational institutions to the backward classes is not in dispute. It is furthermore not in dispute that if such a decision is made the State can also lay down a legislative policy as regards extent of reservation to be made for different members of the backward classes including scheduled castes. But it cannot take away the said benefit on the premise that one or the other group amongst the members of the scheduled castes has advanced and, thus, is not entitled to the entire benefit of reservation (SB Sinha).

The first two sentences are unexceptionable. Indeed that would suffice to uphold the law passed by the AP legislature. What is difficult to even make sense of is the last sentence. That should occasion no surprise since we have already seen more than one example of the judge's free flowing use of the language of the court. To answer it as best as one can, it must be pointed out that the benefit of reservation is not taken away from any one by the subgrouping effected by the law. The law does not identify a creamy layer among the SCs to be divested of the right of reservation. But if one group amongst the scheduled castes has advanced so much that it is taking 'the entire benefit of the reservation' (or much of it), then that situation can certainly be

remedied? How can any one group be 'entitled to the entire benefit of reservation' given to a whole class? That too as a matter of right? Why cannot that opportunity be taken away?

But SB Sinha has another objection. He says that the provision of reservations is subject to Article 335 of the Constitution, which says that the claims of scheduled castes and scheduled tribes to posts in the services must be taken into consideration consistently with the maintenance of efficiency of the administration. He adds that "(this would) lead to the conclusion that the same cannot be done to favour less (it should be more) weak sections, i e, some castes out of the homogeneous class of scheduled castes". Once again, this is a view – the third one that I have listed – that hits at reservations as such, and not just their subdivision. The courts have never accepted Article 335 as a complete bar to reservations, but SB Sinha finds it sufficient reason to bar the giving of a separate quota to the more backward among the scheduled castes.

'Homogeneous' class?

We may finally look at what the Constitution itself says in definition of the scheduled castes, and how 'homogeneous' the class is in the view of the Constitution. Article 341 has been cited above. It speaks of 'castes, races, tribes or parts of or groups within castes, races and tribes' which the President in consultation with each state governor notifies, and which shall thereupon for the purpose of the Constitution be deemed to be scheduled castes. Castes, races, tribes or parts of or groups within castes, races and tribes is certainly not a very homogeneous thing? The only thing that makes it homogeneous is that all of them are untouchables. What would be surprising if some of the castes, races, tribes or parts or groups thereof are in a position to take the full benefit of what is given collectively to all of them? And if that happens, why should it be assumed that the Constitution, which has revealed the awareness that untouchability has diverse social origins, prohibits subdivision of the reservation so that all may get some benefit.

In answer, apart from the pronouncements of homogeneity that abound in the three separate and concurring judgements, a precedent is offered by Santosh Hegde, by misreading Murtaza Fazal Ali and misquoting VR Krishna Iyer, both from State of Kerala vs NM Thomas, 1976. That judgement was the first time a broad view befitting the better aspect of the Constitution was taken by the majority of a constitution bench in the matter of reservations. The judges found themselves answering the objection that since Article 16(2) prohibits discrimination on ground only of religion, race, caste, sex, descent, place of birth or residence, the 'backward class' of persons to whom reservations in government services can be given by virtue of Article 16(4) cannot be a caste or castes, it can only be a class.

Today it is commonplace that if a caste, say the caste of toddy tappers, is identified as a backward class for the purpose of Article 16(4), then it does not amount to giving reservations to a caste

Today it is commonplace that if a caste, say the caste of toddy tappers, is identified as a backward class for the purpose of Article 16(4), then it does not amount to giving reservations to a caste. It only means that toddy tappers have been found to be a backward class by virtue of some rational criteria of backwardness, and are given reservations as such. A caste after all is a class in the common sense meaning that it is a clearly defined group that is for all practical purposes well demarcated from the rest of society. If it is found to be backward according to some objective and rational criteria, then it can be the recipient of reservations or other special provisions, without facing the objection that there is discrimination in favour of a caste. It took time for the courts to arrive at this formulation, which accounts for the tortured language employed by the courts in the process.

VR Krishna Iyer says in State of Kerala vs N M Thomas:

> *A bare reading (of Articles 341 and 342 of the Constitution) brings out the quintessential concept that they (scheduled castes and scheduled tribes) are no castes in the Hindu fold but an amalgam of castes, races, groups, tribes, communities thereof found on investigation to be the lowliest and in need of massive State aid and notified as such by the President. To confuse this backward-most social composition with castes is to commit a constitutional error, misled by a compendious appellation. So that, to protect harijans is not to prejudice any caste but to promote citizen solidarity. Article 16(2) is out of the way and to extend protective discrimination to this mixed bag of tribes, castes, races, groups, communities and non-castes outside the four-fold Hindu division is not to compromise with the acceleration of castelessness enshrined in the sub-Article. The discerning sense of the Indian Corpus Juries has generally regarded scheduled castes and scheduled tribes, not as caste but as a large backward group deserving of societal compassion.*

Santosh Hegde quotes these lines, correcting the word 'they' in line 2 above as 'there' for no reason at all except that it suits his view, and says:

> *According to Justice Krishna Iyer, though there are no castes, races, groups, tribes, communities, or parts thereof in Hinduism, the President on investigation having found some of the communities within the amalgam as being lowliest and in need of massive state aid included them in one class called the scheduled castes. The sequitor thereof is that scheduled castes are one class for the purposes of the Constitution.*

It is absurd to claim that VR Krishna Iyer or anybody for that mat-

ter could have held that there are no castes, tribes, groups, etc, within Hinduism. It merely serves the purpose of drawing the conclusion that from out of the 'amalgam' (of what?) called Hinduism the President has picked out the lowliest who are in need of massive state assistance and made out of them the class called scheduled castes, which is therefore an undifferentiated, indivisible class. Judicial reasoning could have sunk no lower.

The communities included in the presidential list form a class by themselves and any 'division of these persons for any consideration' would amount to tinkering with the presidential list

Murtaza Fazal Ali from the same judgement is quoted by Santosh Hegde as having said:

> *Thus in view of these provisions the members of the scheduled castes and the scheduled tribes have been given a special status in the Constitution and they constitute a class by themselves.*

From this it is again concluded that the communities included in the presidential list form a class by themselves and any 'division of these persons for any consideration' would amount to tinkering with the presidential list. It is intriguing the way the judge draws the conclusion of indivisibility from the mere fact that a group of persons constitute class in themselves. No such conclusion automatically follows. Logical pathologies apart, to be a class a group merely needs to be well defined and clearly demarcated from others. Whether it is thereafter legitimately further classifiable into subgroups does not follow one way or the other from this circumstance. A reading of Murtaza Fazal Ali's judgement cited shows that he was in fact only answering the objection stemming from Article 16(2), that making special provisions for the scheduled castes amounts to giving preferential treatment in the name of caste. No conclusion follows from this regarding further classifiability.

But at the end SB Sinha thinks it is the Rellis and Adi Andhras who are the disadvantaged scheduled castes as against the Malas and Madigas. The government's case in fact is that the Rellis and Madigas have been inadequately served by reservation whereas the Malas and Adi Andhras have benefited disproportionately. Anyway, acknowledging that this problem is real, SB Sinha says that a quota within reservation is not the solution. Instead, give them "scholarships, hostel facilities, special coaching, etc" he says. This is the fourth time we find a line of reasoning in the judgement that is against reservations as such and not merely a quota within reservations. It has always been the argument of upper caste anti-reservationists that the government may provide the backward classes with scholarships, hostel facilities, free books, etc, but please do not cut into our monopoly in colleges and offices.

Against reservations

At the end what we have is a judgement purportedly against subdivision of the scheduled caste reservation quota, but which is in fact replete with arguments against reservations as such. A little more than a decade ago, in the Mandal Commission case (Indira Sawhney vs Union of India, 1992) nine judges of the Supreme Court went into the whole gamut of the reservations question and answered all the issues, affirming some earlier judgements, overruling some, and laying down the law in quite a satisfactory manner. It was hoped that most of the ghosts that have haunted the provision of reservations/special provisions for the oppressed castes of Hindu society had been laid to rest.

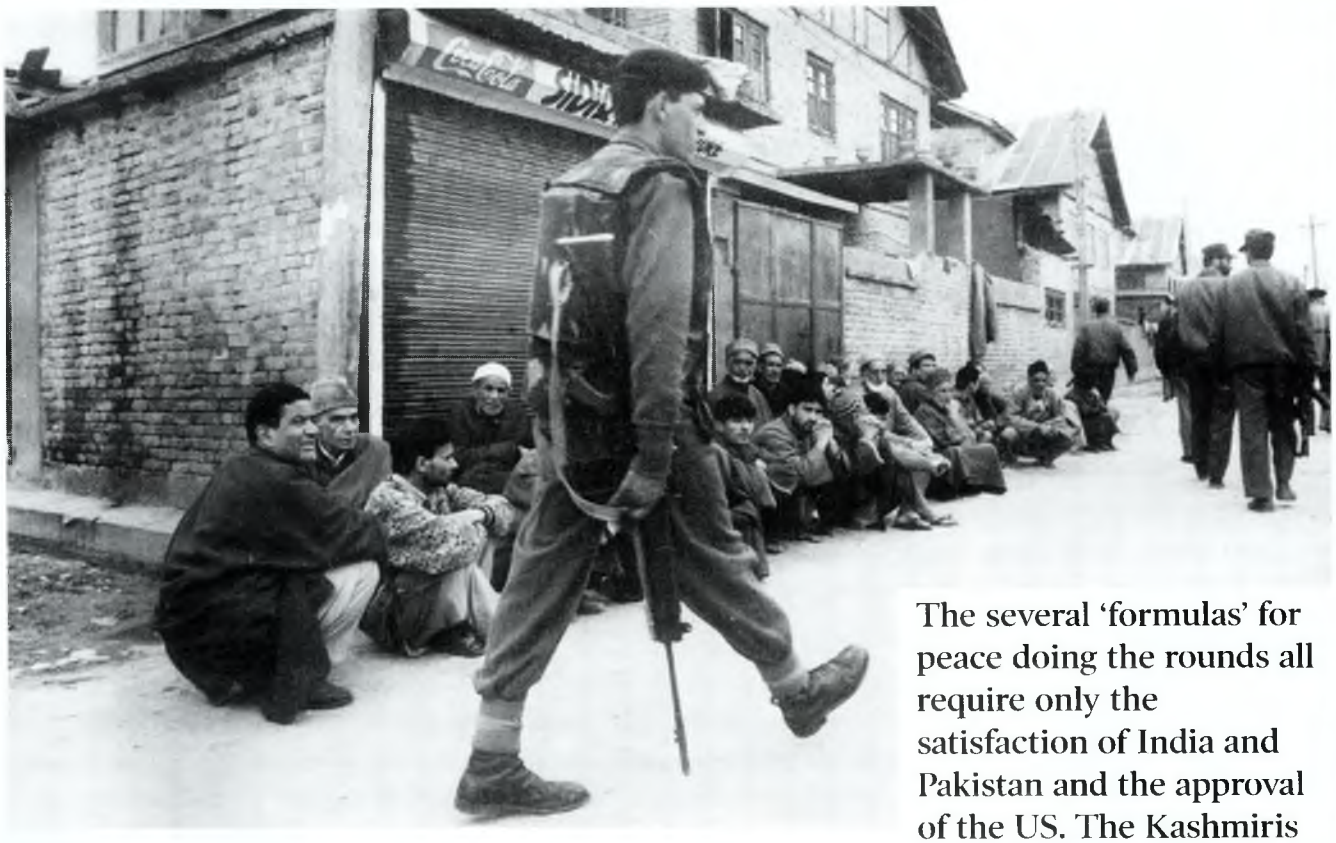
Apparently not. But then, what more do you expect when a section of the dalits themselves go to court against those below them, and employ all the arguments the brahmins invented against reservations and special provisions for the deprived castes as such? Did they not ask for it? Did they not lay it open to the court to once again happily walk over what in law would be called 'covered ground'? Every one in Andhra Pradesh recalls the glee with which casteist society welcomed the arguments used by the Malas against the demand raised by the Madigas. There is in general in human affairs nothing more calculated to please than the appropriation of your arguments by your own opponent in the innocent assumption that he is protecting the right obtained against you from an encroacher. And like society, like judges, for the tortuous reluctance with which the courts came to accept that India is a caste society and something should be done about it if we are ever to be a real democracy is evident from the history of judicial pronouncements on reservations.

To the judges, one is tempted to read what a predecessor of theirs said two decades ago. In KC Vasanth Kumar vs State of Mysore, 1985, O Chinnappa Reddy said something about how the Constitution of India, at least in its more positive aspect, may be read:

> *...We must also remember that we are expounding a Constitution born...of an anti-imperialist struggle, influenced by constitutional instruments, events and revolutions elsewhere, in search of a better world, and wedded to the idea of justice, economic, social and political to all. Such a Constitution must be given a generous interpretation so as to give all its citizens the full measure of the justice promised by it.*

This probably sounds terribly like 20th century discourse, but it was 20th century aspirations that shaped the Republic of India, and there is no cogent reason for declaring that Republic dead.

–July16, 2005



What will they do to **Kashmir** now?

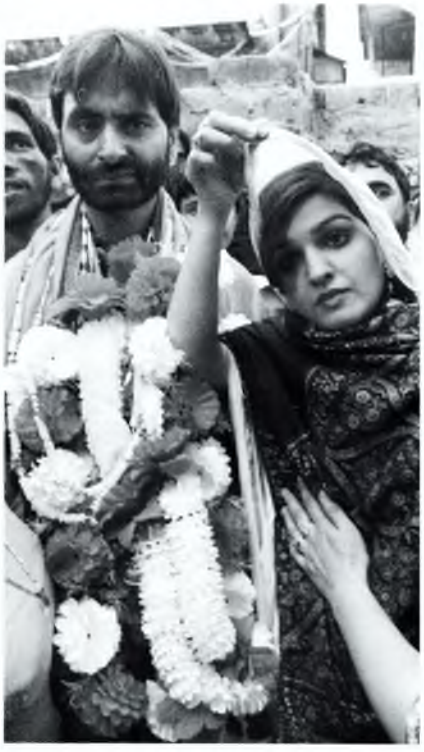
The several 'formulas' for peace doing the rounds all require only the satisfaction of India and Pakistan and the approval of the US. The Kashmiris themselves have no formula to offer. It may be because of political fatigue, or perhaps there is a deeper reason, for, to Kashmiris self-determination is in terms of the whole of the old state of Jammu and Kashmir. But this old idea of collective self-determination has not been kept alive by the social and political leaderships of the ethnic/linguistic sub-regions. The voice of 'azaadi' inevitably sounds like Kashmiri particularism easily conflated by interested parties with Muslim communalism

What will the US, India and Pakistan do to Kashmir? That is the proper order, the US first, India next and Pakistan last. What do they aim to do to Kashmir? For this time round, there is a certain apprehension (one can hardly call it hope) in the Valley and elsewhere in the state of Jammu and Kashmir that American interest in snuffing out the germinating grounds of Islamic militancy – rather than any Indo-Pak desire for peace – may well ensure some form of resolution of the 'Kashmir dispute'. Indeed the newspapers a few days ago reported an American official as having said that the Kashmir dispute would be resolved by December 2004. Whether that will be before or after finishing off Syria, the report does not clarify.

However, even granting the sense of urgency that affects the US, ruled by a coterie described as Christian fundamentalists by even matter-of-fact analysts, whose faith teaches them to beware of the visits the sins they have committed are liable to pay them in time, and who therefore have reason to hurry and disinfect the breeding grounds of

Islamic militancy before a few more fidayeen are sent westward, it may nevertheless appear that the apprehension that some thing is going to happen by way of resolution of the 'dispute' in the near future is misplaced. After all, India's offer of talks with Pakistan is hardly serious. Has not the union cabinet headed by Atal Behari Vajpayee set a record of sorts by way of double talk in the last few months in the matter of India's attitude towards Pakistan?

Consider: its foreign minister begins by declaring quite out of the blue one day that Pakistan is a good candidate for preemptive strikes and India should do an Iraq on Pakistan. Its defence minister defends him, while cautioning that it is not yet official to say so. The prime minister keeps mum, but suddenly goes to Srinagar and makes a speech offering a mouthful of what the Kashmir press has described as boons, including offer of a hand of friendship and talks with Pakistan without any preconditions. And for good measure he adds that if this effort fails there will be no further efforts. That could either be taken as an index of his determination to make the talks a success, or else as a threat that there will be just one effort and then the Sinha-Fernandes formula will take over.



The ambiguity just adds variety to the confusion.

But as soon as the prime minister leaves the Valley for Hindustan, he adds the usual precondition to the offer of talks: that Pakistan should put an end to cross-border terrorism. That really takes it back to zero. But soon thereafter he gives an interview to *Der Spiegel* in which he dedicates himself to the success of the talks with such passion that he says he will quit if he fails. Just as one thought he was at last serious, he clarifies that quit does not mean quit and he will not say what it really means. A few days later, back in India again, he reduces the offer to an absurdity: we have talked of Kashmir in the past, so why not talk of Azad Kashmir this time? Musharraf can respond by suggesting that we discuss the future of the Vaishno Devi shrine thereafter. Seriously, does Vajpayee want the people of this country to believe that he expects Azad Kashmir to join India? It is believed in the 'shakhas' of the RSS, we know, but nobody outside those benighted places thinks so.

So why should anybody hope/apprehend that anything at all is going to come of this offer of talks that vacillates between a nullity and a farce?

Other things being the same, nobody would. In the past, Kashmiris have expressed scepticism with their intellect and hope with their hearts every time talks have been proposed between the two countries. They greeted Agra with scepticism, but when Musharraf finally came over, 'glued to the TV' is how they describe themselves. In the end, the scepticism was justified, but the hope will probably never die.

But after September 11, 2001, things are no more the same. The US, for a variety of reasons, wants peace between India and Pakistan. Some of the reasons have to do with both the real and imaginary fears of the hatred it has wantonly fostered in the hearts of Muslim peoples all over the world and the monsters that have arisen therefrom, and the others stem from plain old-fashioned economic rationality. In fact, from the time of the rise of militancy in Kashmir, a section of its political representatives, more particularly those in the Hurriyat

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Conference inclined to Pakistan, have believed that economic rationality will impel the US to solve the Kashmir dispute. The logic (in my language, not that of any Hurriyat leader) goes as follows: the US wants free access to Central Asian mineral wealth which, in the face of an unfriendly Iran and a backward Afghanistan, requires the sea ports that Pakistan offers. Effective utilisation of this facility requires that Pakistan be a stable and peaceful society and economy. And that can never be guaranteed until Kashmir becomes quiet and India becomes irrelevant so that the clerics and the mujahideen who have used Kashmir to impose their rule on the minds and the streets (respectively) of Pakistan are rendered dispensable. The logic is persuasive, but it is remarkable that this rationality had to be supplemented by the dread of the *al-Qaeda* to realise itself.

All this adds up to the apprehension that the Americans may force some solution this time round. With some, to be frank, the apprehension is in fact a hope because a sizeable section of Kashmiris have reached the stage where they feel it does not matter how the dispute is resolved so long as the guns fall silent and they can stop dreading each dawn for the dead bodies it may bring home. But only some. If India has hoped that it has by now reduced all Kashmiris to

this state, it is mistaken. For many, the apprehension is not a hope, it is the negation of hope. They do not want any solution that will cheat the memory of the thousands who have died these 13 years. In particular they do not want any resolution that has not heard them and has not sought their approval.

But it is evident that the fixers who are active devising solutions are working with rulers and pencils drawing lines straight or crooked on the map partitioning the land one way or other to the mutual satisfaction of India and Pakistan, their proverbial rigidity rendered malleable under the weighty glare of America's eyes. 'Formulas' are already doing the rounds, and there are rumours that India and Pakistan have already come to an understanding on making the LoC the border. Nobody knows how true this is, but this is indeed the favourite solution of what these days is being described as the 'civil society' of both the countries. Whether one sees it as a just idea or not depends on what one is looking for. The well-meaning individuals who compose what is being called civil society are looking for peace and friendship between India and Pakistan. They are doing so for the sake of India and Pakistan. They are not looking for anything in particular for the Kashmiris, and are therefore unwittingly perhaps joining with the two governments in treating the region as a piece of mere territory. Nobody has as yet suggested putting this formula to vote in the affected region. On the contrary, Brijesh Mishra has been quoted as saying that 'when India and Pakistan sit down to talk there will be no third chair'. He is lying, of course, there will be an invisible third chair for George Bush or his appointee, but what that arrogant representative of India's Sangh parivar rulers means is that Kashmiris will have no place at the talks nor will their approval be sought for any proposed resolution of the territorial dispute that their lives have been reduced to by the two countries.

Making the LoC the permanent border would have the consequence of forcing the Kashmiris of the Valley to reconcile themselves to India, in spite of the repeated expression of their unwillingness to accept that status

Making the LoC the permanent border would have the consequence of forcing the Kashmiris of the Valley to reconcile themselves to India, in spite of the repeated expression of their unwillingness to accept that status quo in Kashmir. It would also mean permanently dividing the Pahari-speaking people between the Muzaffarabad region of Azad Kashmir and the Rajouri-Poonch region of India. That, surely, cannot be done behind their backs?

Another formula under discussion is that proposed by Sardar Sikander Hayat Khan, the prime minister of Azad Kashmir. Until recently a support of the official Pakistani position that the whole of the (old) J and K belongs to Pakistan, he has now come up with the idea of making the river Chenab rather than the LoC the dividing line. The right bank of the Chenab will go to Pakistan and the left bank to India. It is evident that he is mainly concerned with ensuring that all people of his own community – Paharis of Muzaffarabad as well as Rajouri-Poonch – get into Pakistan, and his plan assures that. But in the process it forces the Valley into Pakistan, whereas it is doubtful that more than a minority would prefer joining Pakistan unless the third option of independence is closed to them. And moreover, the right bank of the Chenab includes also the almost totally Hindu Akhnoor tehsil of Jammu, whereas the left bank houses the Muslim-majority Kishtwar and Bhaderwah tehsils of Doda. These people cannot be thrown into Pakistan and India respectively without taking their view in the matter, merely because the Chenab happens to be a ready-made line that nature has already drawn on the map.

Then there is another 'formula' credited to Bill Clinton, among whose unsuspected assets was, apparently, this ability to solve problems at a distance. This formula hands over to each country the pound of flesh it demands, excepting the Valley which is made self-governing under the joint supervision of the friends-to-be: Pakistan and India, with Uncle Sam looking over the shoulders, of course. Poor Kashmiris! is all one can say.

Everybody has a 'formula', the common point of all the formulas being that they require only the satisfaction of India and Pakistan and the approval of the US. The Kashmiris alone have none. In a 10 days' tour of the state one was unable to elicit anything more specific from the Kashmiris than a determined reiteration that their right to self-determination shall be assured.

One can put it down to fatigue, but it is also a fact that the Kashmiris have come to look to the Hurriyat Conference for all political responses on the supposition that it represents all shades of opinion that dispute their accession to India; the Hurriyat in turn, being in fact dominated by a few shades of opinion, has lent its political support to Pakistan's manoeuvres and is perforce tongue-tied when Pakistan is in a fix; and Pakistan is truly in a fix not knowing how to simultaneously please George Bush and the armed and unarmed clerics who have established a hold on its society by dint of their disruptive capacity if not actual mass following.

There is another and a deeper reason too. The Kashmiris, when they talk of self-determination are inclined to think in terms of the whole of the old state of Jammu and Kashmir ruled by the heirs of Gulab Singh. So long as the discussion is centred on the UN resolutions, it is bound to be so. But after 55 years, that region has not remained what it was on October 26, 1947. And it cannot be said that the social and political leadership of any of the ethnic/linguistic sub-regions of that very diverse state (including the Kashmiri leadership) has striven to reach out to the others and keep alive the old idea of the right of collective self-determination for all of them. As a consequence, there is a certain ambiguity today regarding the meaning and indeed the very referent of that right. When Kashmiris talk of 'azaadi', the referent easily and unconsciously slides from the whole of the old J and K to the Valley and then to the Valley plus Muzaffarabad and back again to the whole of the old J and K. And the other regions are either indifferent or suspicious of the Kashmiris. Among those who still regard the old state of J and K as a meaningful political entity, Balraj Puri has been almost alone in pointing out to the intellectual and political leadership of the regions their failure to reach out to the other linguistic and ethnic groups in a spirit of mutuality and equity leading to the structuring of a federal and secular order that can help keep alive the historical sense of oneness of the state. This failure has meant that the voice of azaadi inevitably sounds like Kashmiri particularism, easily conflated by interested parties with Muslim communalism and separatism.

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Not that the Kashmiris carry upon themselves the moral burden of cajoling everybody else to join the movement for self-determination and thereby disprove the abuse of communalism thrown at them. They are under no such obligation, and their demand for self-determination, even if reduced to the Valley, makes perfect sense, but without such an effort from all sides the old state of J and K can no longer be a single collective referent for the demand of self-determination. As things stand today, why should anyone expect the people of Baltistan and Kathua to see themselves as co-citizens of a single state?

A proposal suggested by the JKLF leader Amanullah Khan of Islamabad is significant in this background. Writing in the *Kashmir Times*, May 6, 2003, he has suggested letting the whole of the old J and K area be a self-governing entity of a democratic, secular and federal character for 15 years, at the end of which a plebiscite may be held to decide whether they would like to join India or Pakistan or be independent. Perhaps the period of 15 years is meant for recreating the lost links between the regions and ethnic groups and recover the almost lost identity. As well as try out the experiment of coexistence within a single state of diverse ethnic/linguistic groups on the bais of a secular, democratic and federal polity. It is an attractive idea, especially coming at a time when such inclusivist idealism has become old fashioned and the narrowest exclusivism is the most rebellious attitude. Even so, it is doubtful that the Kathua-Jammu area will ever want to leave India, or the Mirpur area Pakistan. A one-point plebiscite to be determined by an overall majority may not be able to do justice to all. Too much has changed in the last 55 years for that. Amanullah Khan's proposal would however carry genuine meaning for Rajouri-Poonch, Muzaffarabad, the Valley and probably Doda as well.

However, who is listening to Amanullah Khan? Or to anyone from the 'disputed area'? It is this and not the correctness of any formula for resolving the 'dispute' that is primarily at issue today. Those who would resolve it do not even accept that the real 'dispute' is not between India and Pakistan. It began as a dispute between the people of Jammu and Kashmir and the contending states of India and Pakistan. Time may have reconciled some of the people to the disputed situation – the accession and its aftermath – but not all are reconciled to it, and the dispute today remains between those who disagree with it and the two beneficiary states. By pretending that the dispute is between them, the two states are able to ignore the people and talk of settling it between themselves. And now they have the assistance of the world's primary rogue state which believes in no democratic principles beyond its shores. This is today's problem in Kashmir: and we have no solution in sight.

–June 21, 2003

The economic relation between the adivasis and the Muslims in rural north Gujarat is of the kind that most radical analysts have deemed to be sufficient to justify a violent class struggle. And that is just how the VHP is likely to project it as in the coming days – an explanation for adivasi participation in the violence that could be quite embarrassing for radical analysts. It is time for radical analysts to give up simplistic assumptions and modes of analysis, not for the sake of the VHP, but for possible progress in human affairs

Reflections on **Gujarat Pradesh** of **Hindu Rashtra**

The predominant emotion as one leaves Gujarat is that of fear. Not the fear that the Vishwa Hindu Parishad has been watching what you have been doing there and will catch up with you and cut you up or burn you alive. It may, but if you have been a human rights activist long enough, you have come to terms with the idea that you could be killed some day.

Nor that the next time half an opportunity offers itself, the Vishwa Hindu Parishad will kill more Muslims in Gujarat. It will, but they could be killed by an earthquake, any way.

It is the fear of how much hatred human hearts can be filled with, and how easily. Forget about burning human beings alive and prancing gleefully around as the tortured flesh thrashes about. Forget also about cutting open a pregnant woman's womb to burn the foetus. Such people are at least killing something alive. Can you imagine the state of mind that digs up an old grave, pours petrol on to the presumed remains of a long dead Muslim and sets it aflame? The common Hindu's hatred for anything to do with Muslims, an intense and inflamed hatred, is the only thing alive in Gujarat today. Don't talk to the Sangh parivar cadre. They are barely human anyway. Talk to the clerk in an office, to the housewife, to the taxi driver, to the college-going student. Most of them spew venom. One feels sorry for saying this of a whole people. One has, of course, met a handful of Gujarati Hindus who are different. Not only English-speaking liberals of Ahmedabad and Vadodara, but also farmers and labourers. But they are just that, a bare fistful. Cutting across divisions of caste, class, gender, town and country, Gujarat is one mass of hatred for Muslims. The history of the state, dominated over the last few years by the Sangh parivar, has come to this.

Can one teach?

Radical-minded people feel insecure about such questions, for they could be fatal to our utopian dreams. But while dreams are all right, and probably also necessary, we should have the honesty to pare them down to realistic dimensions. If hatred is so easy to build and love so difficult, and an uneasy tolerance the most we achieve when we work for love, how utopian can our dreams afford to be? This is, of course, a very big question. So big that leftist analysis of Nazism in Europe, of which there have been tomes upon tomes, never faced it honestly. Not even Erich Fromm, who came closest to looking it in the face but backed out in the last moment.

But there are smaller and equally uncomfortable questions. The participation of adivasis and dalits in the rioting, looting and killing is one such. Some initial reports said that where adivasis participated in the

violence, they neither raped nor killed but only looted the property. To be fair to such views, there was perhaps not much information available at that time. The view appears to have based itself upon the events of the Chotaudepur area of Vadodara district. But in Chotaudepur, even the non-adivasis did not rape or kill. They too only looted the property of the Muslims.

In all the areas along the north-eastern border of the state (Sabarkantha, Panchmahals, Dahod and Chotaudepur) there was sizeable participation of adivasis along with non-adivasis in the violence. The two were part of the same mob in most cases, with the non-adivasis leading. In some places, the mobs only looted and burnt. In some places there was rape and murder too. A break up of the violence into that which the adivasis did and that which the others did may not be easy. The most gory incidents of mass rape in the entire Gujarat carnage (at least so far as we know now) took place at Fatehpura in Dahod district, where the mob consisted of a large number of adivasis of neighbouring villages, along with the nonadivasis of Fatehpura. It was said by some NGOs of Ahmedabad that only the nonadivasis raped women and the adivasis only looted the property. That may be true, for the non-adivasis being locals to the village may well have reserved that 'privilege' to themselves, but one would like to know if the opinion is based on something more reliable than political faith. In Fatehpura itself, the Muslims in the refugee camp do not make such a clear distinction, though there is a general feeling among the Muslims that the adivasis are not bad by themselves, but are misguided by the Hindus of the Sangh parivar.

At Sanjeli in the same district the Muslims fleeing from the mob (of nonadivasis and adivasis) which attacked their houses in the town were obstructed all along the way, and many were stoned, pulled out from their vehicles, hacked with swords and burnt and killed by the rampaging mob many of whom had their faces half-masked. The taluka of Kallol in the Panchmahals saw a large amount of violence including about a hundred killings by mobs that included both nonadivasis and adivasis. Again, in both the cases, a break up of who did what may not be easy.

Sabarkantha is a district where there were a number of incidents of adivasis helping and sheltering Muslims attacked by Hindu mobs. There were also a number of cases where dalits saved Muslims in this district. However kshatriyas too played a role in protecting Muslims in some of these villages. What was at work there was not the presumed democratic character of dalits and adivasis, but in all probability, what has been called the KHAM strategy of the Congress Party, which still has sizeable influence in Sabarkantha.

> If hatred is so easy to build and love so difficult, and an uneasy tolerance the most we achieve when we work for love, how utopian can our dreams afford to be

What is more striking than the observations of progressive-minded people based on their assumptions about what ought to have been the response of adivasis and dalits, is the hesitation voiced by many Muslims in the refugee camps in condemning the adivasis who attacked them. Since the hesitation, which is near-universal, could not be motivated by considerations of 'political correctness' (to use an obnoxious expression that has become current in recent times) it must be attributed to some thing real. Most of the victims insist that the adivasis were misled by the Sangh parivar leaders. But 'misled' can have more than one meaning, and not all of them carry the same political significance.

Both in Panchmahals and Sabarkantha it is said that in some of the villages the Sangh parivar leaders told the adivasis that there was a government order to loot. (But of course, there was!) This was buttressed by TV images of people looting freely in Ahmedabad with the police looking on. The adivasis took the permission to heart – the northern districts of Gujarat have seen three successive drought years – and in some villages, after looting Muslims shops, they fell upon Hindu shops as well. At Piplod in Dahod district, the police had to step in and put an end to the unauthorised looting of Hindu shops. Even where there was no mention of a government order, the widespread news and TV images of Muslims' property being looted without obstruction from the police was incentive enough to the poor to try their luck. Though it did not always end up with the looters turning their attention to Hindu property after finishing with the Muslims, the Hindus appear to be scared that the adivasis who have tasted loot will not stop there.

But not all the participation of adivasis was as innocent as that. Which takes us to the other meaning of the expression 'misled'. The Vanavasi Kalyan Samiti of the Vishwa Hindu Parishad has made considerable inroads into the adivasi areas. When asked what activity they offer to the adivasis, an old Sangh parivar man at Chotaudepur says: "We tell them to campaign against drink in their villages and undertake bhajans of Hindu deities". 'Murtis' of Ganesh are distributed free of cost to the adivasis. It is said that every adivasi village has at least one VHP activist. The search for an identity that has accompanied the growth of education among the adivasis has been filled by the Sangh parivar, says an adivasi MLA, himself a Congressman. The poisonous parivar has done an able job of it. The adivasis are in the process made to feel that they are Hindus, in the specific hate-filled sense in which that term is understood by the Sangh parivar. As a (Muslim) principal of a predominantly adivasi college near Chotaudepur puts it: "The new convert to Islam is always more ferocious in defending the religion than the traditional Muslim, and the same could be happening to the adi-

vasis". If he is right, there could be a very serious problem here that 'political correctness' had better comprehend.

Of course, the newly educated adivasis' search for an identity could have reached a different shore. We should, then, ask ourselves why no democratic movement has ever achieved even a toe-hold in the vast adivasi area of Gujarat and much of neighbouring Rajasthan. Standing there and looking at Delhi, Somnath Chatterjee's otherwise impressive speech in parliament could not but sound hollow. What is the point in thundering at Delhi, having left the field free in the adivasi hamlets for the Vishwa Hindu Parishad? This is not a comment on only Somnath Chatterjee's party, but on the entire democratic movement of the country.

Dalit participation in the violence at Ahmedabad (in particular) is even less ambiguous. A large number of dalit youth took direct part in the gruesome violence of that city. And it is the dalits who have suffered most in the little retaliation the Muslims have indulged in. The only non-Muslim relief camps (there are about five of them in Ahmedabad) are populated predominantly by dalits. As with the adivasis, the dalits too have been left by all of us for the VHP to prey upon. There is almost no dalit movement in Gujarat, nor has the left movement any base worth speaking of. The Bahujan Samaj Party's role in coming to the aid of the BJP when even a character like Chandrababu Naidu in the fullness of his crooked mind thought it prudent to declare his dissatisfaction, is of a piece with the strategy of the biggest Ambedkarite party in the country: to keep Mayawati in power at Lucknow is the substance of their Ambedkarism as of now. Poor Babasaheb must be turning over and over again in his grave.

But the Vishwa Hindu Parishad is slowly beginning to articulate an explanation for adivasi participation in the violence that could be quite embarrassing for radical analysts. The VHP's office secretary at Godhra in the Panchmahals, who sits cross-legged on the floor with an ugly chopper hanging on the wall behind him, says it was (in effect, for he has not yet learnt to use the expression) class struggle. The economic relation between adivasis and Muslims in rural north Gujarat is of the kind that most of us have often deemed to be sufficient to justify a violent class struggle. Where the Muslims are farmers, as in Dahod district, the adivasis are labourers or sharecroppers working for them. Where the Muslims are rural traders and transporters, as in Sabarkantha district, the adivasis buy, sell and borrow money from them. It is beyond doubt that if the VHP had not been the instigator, and/or the victims had not been a community perceived as an injured minority at the national level, many of us would have interpreted the adivasi violence against Muslims in rural Gujarat as class struggle, and then the question would not have been why adivasis participated in the violence (we would have then called it struggle and not rioting) but why it died out without achieving much, etc. The Sangh parivar has some former leftists with it who will no doubt make an issue of this in the coming days. Have not instances of adivasi or Muslim tenants revolting against caste Hindu landowners been interpreted by radical analysts as ('objectively speaking') class struggles, even if they took a communal form? Will the analysis change merely because the upper caste Hindus are now egging on the adivasis, and the exploiter is a Muslim? Soon we will have some Swapan Dasgupta asking this question, and it is doubtful that any amount of dialectics will help us wriggle out. What is needed is not some novel sophistry, but a resolve to give up simplistic assumptions and simplistic modes of analysis, not for the sake of the VHP, but for the sake of a possible progress in human affairs.

Let us come back to the hatred. The most sickening thing about the Sangh parivar is its absolute unreasonableness. Gujarat as a whole is infected with this characteristic now. It is the Muslims who suffered immeasurably in the carnage, but it is the Muslims who are now held to be the obstacle to the return of peace. And where there is Muslim, terrorist and Pakistan cannot be far behind. The triad Muslim terrorist-Pakistan, with all its six permutations, quickly enters any discussion of when people of Gujarat expect normalcy to return. "Pakistan is sending men and money, and therefore there will be no peace" is the commonest view in the matter. The exact amount Pakistan is believed to have sent is mentioned: Rs two crore. Advani puts the official stamp of approval on this by talking in parliament almost from day one about Pakistan-sponsored terrorists entering the relief camps. (The home minister of India never had anything to say about what put the Muslims in the relief camps in the first place.) The Delhi police, who obligingly make arrests of Lashkar-e-Toiba militants at Lal Qila/Chandni Chowk whenever the government needs it, forthwith make a few arrests, and of course the dreaded 'jehadi' militants confess in no time that they indeed had planned to go to Gujarat to create mayhem. The novelty this time is that

they are said to have got printed for themselves cards showing them as human rights activists! If this evident nonsense is an indication that the government wants put an end to human rights activism vis-a-vis Gujarat, that is a compliment it is paying to the only good thing that has happened after February 28: not only human rights groups as such, but every one concerned about human rights has been to Gujarat, and a considerable protest has been generated across the country.

The mood of the unrepentant rulers of Gujarat and India – and Gujarati society in general – is that they are all set to fight Muslim terrorism ready to burst out from the refugee camps. The refugees themselves are more worried about when they will be able to get back and rebuild their lives. They have lost their dwellings, they have lost their household property, the traders among them have lost their tempos, trucks, and other articles of trade, and the farmers among them are worried about their land that is ready for being grabbed in the villages. In many places the assailants are openly saying that the victims will not be allowed to come back unless they shave their beards, discontinue the 'azaan', and promise that they will not insist on observing religious customs that the Hindus find annoying. In some places it was made clear that the refugees, if they wish to come back, will hereafter have to forswear any trade that will hurt the interests of the Hindu competitors. (This is what the RSS said at Bangalore some time ago, is it not? That the best guarantee for Muslims is the good will of the Hindus, purchased at whatever cost. Well, it is being implemented in Gujarat now.) Obscene slogans have been scribbled on the walls of idgahs, dargahs and masjids – where they have not been demolished, that is. At Khetbrahma, a taluka headquarters town in Sabarkantha district, the assailants who cleared the town of all Muslims, put up a notice with the ungrammatical threat: 'Muslim no allowed'. And in village after village one finds a welcome sign painted in ochre colour and signed Vishwa Hindu Parishad, reading: 'You are welcome to village such and-such of district such-and-such of Gujarat Pradesh in Hindu Rashtra'. The Muslims have to walk back from the camps into such villages. But not only the rulers of the country and Gujarat but Gujarati society as a whole is prepared to see only terrorists and Pakistan agents in them. Blinded by hate, driven to self-validating propaganda by their sense of guilt, building an alibi in advance for the further and complete ghettoisation of the Muslims that is to come: it could be any and all of these reasons.

But why talk only of Gujarat and Gujaratis? One startling revelation that Narendra Modi achieved with his criminal brazenness is that a very larger number of Hindus all over the country harbour an extraordinary hatred for Muslims. Gujarat is different only in degree. Until Narendra Modi called this hatred the revolt of the long-suffering Hindus, it was not thought fit to express it. Now that a lawfully elected head of government has said so and continues to head the government, it is no longer felt necessary to hide the hatred, and they are all speaking out. It is said by the post-structuralists that giving a thing a name is essential for making it an object of knowledge. It is also true that giving a wretched feeling a respectable name is essential for making it a subject of acceptable discourse and practice. That is Narendra Modi's great contribution to the demise of Indian civilisation.

The mood of the unrepentant rulers of Gujarat and India – and Gujarati society in general – is that they are all set to fight Muslim terrorism ready to burst out from the refugee camps

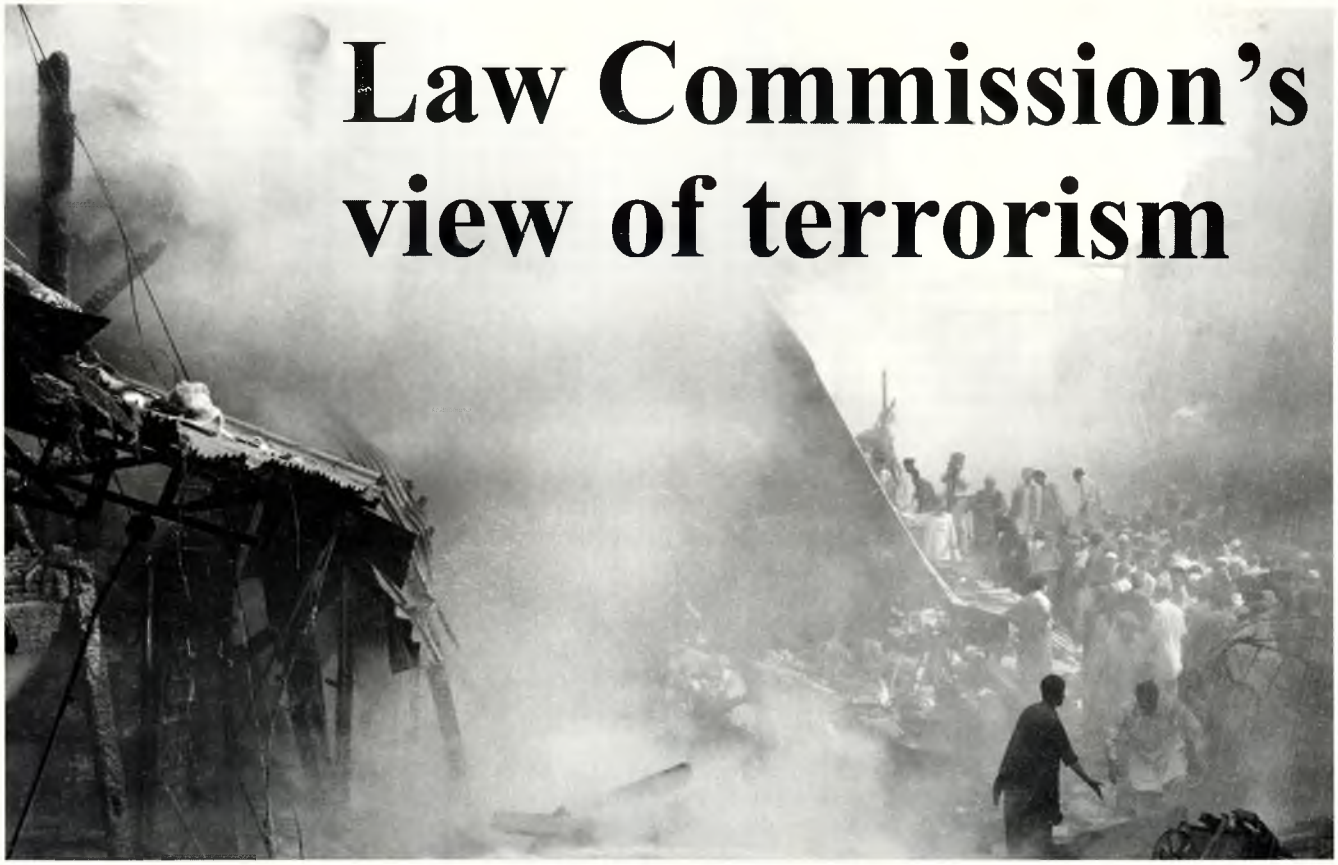
It was said after September 11 last year that the world will never be the same again. One of the many irreversible changes wrought by September 11 is that it has become civilised thereafter to hate Muslims, and to talk of Islam vs civilisation. February 28 this year borrows from that American achievement. If, after all, current history is the saga of civilisation pitted against Islam, slaughtering Muslims can only be a contribution to the cause of civilisation. It was left to Narendra Modi to realise this, and to signal to Hindus that they need no longer feel ashamed of their secret hatred for Muslims. That is why the Sangh parivar gang admires him next only to George Bush.

We are asked to believe that Hindus have so become bitter only because secular-minded people have never understood the deep historical hurt Hindus are suffering from. One must confess to some scepticism. Hatred of one's neighbour does not require such deep historical causes. It is enough if the neighbour insists on being different and thereby offers himself as the cause of all one's frustrations and failures. The real sin of Muslims is just that: they insist on being different. I am talking here of the ordinary Muslim, and not the handful of maniacs who believe that all Muslims shall live only in Islamic regimes, and that divine state of affairs will be achieved with Kalashnikovs. And the real sin of the secular-minded people is that we say they have the right to be different.

What other meaning can there be for the insistence that if the refugees wish to come back to the village, they must remove the beard, shut off the hateful azaan and not wear the skull cap? Sadly, it is these hate-filled minds that speak incessantly of the great tolerance of the Hindus. What is this great tolerance that cannot bear the only people who are really different? This country is being overtaken by small-minded and hate-filled men who are bluffing and blackmailing the country into accepting their perverse logic. It is true that those who stand for secularism and democracy have some soul-searching to do; not for their alleged indifference to the great Hindu sense of historical injury, but for having allowed these goons to occupy so much space in our society.

–June 1, 2002

Law Commission's view of terrorism



Indians have increasingly put their faith in courts of law and judges as politicians and bureaucrats repeatedly disappointed them. But the Law Commission's recommendations on the anti-terrorism bill give one pause. The commission has brought back some of the more objectionable provisions and added a couple of irrelevancies of its own

An anti-terrorist law will soon be back, whether we like it or not, and one might as well open up a public discussion that may help soften it a bit. One wishes one could say we might even persuade the government to give it up, but that is without doubt a pipe dream. A 'human face' is all the humanity that is promised us these days and we are not allowed to expect more. The promise accompanies threats of globalisation, and it accompanies the Law Commission's approval of the proposed anti-terrorist law. Ours, it appears, is a determinedly inhuman society that promises a human visage on all fronts. All hopes and aspirations are expected to be pegged on it.

To recall some history, the Terrorist and Disruptive Activities (Prevention) Act (TADA) came into being in 1985. It had a built-in provision of lapse at the end of two years unless extended by Parliament. It was extended with amendments in 1987, and again once every two years (with some further amendments to take care of observations made by the Supreme Court on various occasions) until 1995 in which year Parliament, in response to strong public criticism, let it lapse, even though a constitution bench of the Supreme Court, in Kartar Singh vs State (1994), had upheld the constitutionality of the Act as it stood by the time it was extended last in 1993.

At that time a fresh anti-terrorist law (innocuously named Criminal Law Amendment Bill, 1995) was drafted by the central government, but never enacted. The reason could be that the country has had consistently unstable governments since that time, and even if they had had the time to think about re-enacting TADA, the ruling parties probably had no inclination to bring back the law that had got branded as anti-Muslim. Such police officers have the inclination to take to the pen abused in newspaper columns the populism of unstable governments that permits such pusillanimity. If that be so, then long live populism, and long live instability.

It appears that in 1999 the central government suggested some more amendments to the proposed bill through OM

No II, 13014/21/98, legal cell, ministry of home affairs. The Criminal Law Amendment Bill, thus amended, was then sent to the Law Commission of India with a request to study the need for an anti-terrorist law and make suitable recommendations to the government. The Law Commission, evidently having no wish to merely make general recommendations which would mean, in its view, further waste of time in bringing an anti-terrorist law back onto the statute book, has worked its suggestions and recommendations into the draft and sent it back in a ready-to-enact form. Rumour has it that the central government sent it back once again to the Law Commission for further clarifications or changes, but the Law Commission has returned it unamended. It is likely to be placed before Parliament for enactment any day. If one recalls recent history correctly, barring only the BJP and fellow-parivar parties, all others had voted in 1995 for discontinuing TADA, and that includes many of the present allies of the BJP, whether or not they went by their present name at that time. The name of George Fernandes, India's first war minister in 50 years, comes immediately to the mind as a vociferous opponent of the act. But that is no reason for hoping, let alone assuming, that those parties and individuals will take a stand against the bill now. The virtue of constancy is not highly prized in Indian politics.

> Terrorism, the Law Commission says in its working paper, is but another name for organised crime. There can be no more mistaken opinion. The problems that what is called terrorism gives rise to are so difficult to handle precisely because it is something other than mere crime, even organised crime

Understanding terrorism

The Law Commission has submitted a very elaborate working paper in defence of the bill and the amendments recommended by it. Some of the amendments recommended are meant to ease things a bit for the accused, and some actually make things worse, notwithstanding the Law Commission's avowed concern for giving the law a human face that will accommodate the human rights critique of the late lamented TADA. We shall go into the details below, but it must be said straightaway that when a bill vetted by the Law Commission reads no different than if a body of policemen had done the job, then there is some thing prima facie – an expression that the Law Commission should have no difficulty in comprehending in its precise sense – wrong with it. Policing is about order, but the law is not merely about order. If it were, there would be no reason for any one to respect it, and no justification for the moral authority its punitive power assumes. If you imagine with your mind's eye the same bill being submitted to a body of police officers, the less illiterate among the breed, that is, and if you conclude upon fair perusal that they would not have said any thing substantially different, then you are entitled to complain. Even the foreign parallels quoted by the Law Commission are from the antiterrorist statutes of US and UK, which any police officer could, with diligence, have familiarised himself with, and not any jurisprudential discussion about terrorism and the law. It is a sad day when the Law Commission of India understands the 'law' in its title as just another word for policing.

There is not one iota of social analysis of this phenomenon called terrorism, but only an inventory of its crimes, in the elaborate working paper presented by the Law Commission explaining its comments on the bill. Such a lack cannot be brushed aside as being of no importance since the justification offered for the harsh measures of the proposed anti-terrorist law proceeds from the nature of one's understanding of the phenomenon called terrorism. When the understanding does not proceed from a rational analysis, the gap is bound to be occupied by popular prejudices, that is to say the prejudices of such opinion as manages to achieve the status of public opinion. An instance is the Law Commission's chronology which dates the rise of religious terrorism in the country to the Mumbai blasts of 1993. Only a couple of months before the blasts, the Shiv Sena and the police had struck real terror in the hearts of the Muslims of that city, a fact substantiated by the report of the Sri Krishna Commission. And prior to that the Babri masjid was pulled down at Ayodhya by the organised force of Hindu fundamentalist outfits. In fact it is that destruction that initiated the cycle of communal violence that terrorised Mumbai. But for mainstream public opinion in this country, those killings and the destruction of the masjid, however reprehensible, do not amount to terrorism, but only the subsequent blasts do. And so too thinks the Law Commission of India. On par with this is the reference to the al-Umma as the principal fundamentalist militant outfit of southern India, and the depiction of the February 1998 blasts in the Coimbatore region attributed to it as signifying the rise of religious terror in south India, whereas, in fact, the al-Umma came into the picture as a response to the terror unleashed by way of murder, arson and pillage upon the Muslims of Coimbatore by the police-Hindu Munnani combine.

This too is a widely reported fact. In popular perception, and so too in the Law Commission's uncritical adoption of the same, the violence of the Hindu Munnani maniacs in league with the police, however reprehensible at least to sensible minds, is not terrorism. The al-Umma alone symbolises terror in Coimbatore. And it is the principal fundamentalist militant outfit of south India because

Hindu fundamentalist outfits, though objectionable to sane minds, are not in the same category.

It is not the case – lest the line of the argument above be mistaken – that the crime of terrorism as defined in the old TADA or the proposed bill would not comprehend Hindu fundamentalist terror. The law does not suffer from that kind of bias, nor could it within the scheme of the Indian Constitution. But it makes a lot of difference for the justification sought to be offered for the law, that the terror emanating from minorities alone is depicted as terror. It enables a harsh law to find easier support. Nor is the fact that such a viewpoint is expressed as the mere common sense not requiring substantiation, devoid of disturbing implications for the operational effect of the law. Other things being the same, a law is in fact as biased or unbiased as those who enforce it, and when a general mindset that views Hindu terror as somehow not of the same character as Muslim terror dominates the view of such a high body as the Law Commission of India and therefore, a fortiori, that of most of the enforcers of the law, the law cannot really operate as even-handedly as its text indicates. It is not unknown that Hindu militant outfits were never booked under TADA to the same extent as their Muslim rivals.

But perhaps, with due respect to BP Jeevan Reddy who heads the Law Commission of India, that august body's depiction of terrorism borrows, not from unreflecting public opinion, but from the reports of the union home ministry, which are quite conscious of what they tell and what they do not. The greater is the pity. Jeevan Reddy, as a judge, was known for his sensitive interpretation of questions of secularism, caste, ecology and workers' rights. That the working paper authored by the Commission under his stewardship does not exhibit one bit of sensitivity in understanding the complex question of terrorism, nor one bit of hesitation in allowing the home ministry's perception to set the tone of its discussion, is therefore all the more a pity.

> There is not one iota of social analysis of this phenomenon called terrorism, but only an inventory of its crimes, in the elaborate working paper presented by the Law Commission explaining its comments on the bill

Terrorism, the Law Commission says in its working paper, is but another name for organised crime. There can be no more mistaken opinion. The problems that what is called terrorism gives rise to are so difficult to handle precisely because it is something other than mere crime, even organised crime. Political and social militancy does contain an element – not necessarily slight – of terror, but that is neither the beginning nor the end of the matter. What really distinguishes it does not lie in crime. On the other hand, there is plenty of organised crime – such as printing fake currency notes or adulterating foodgrains – that does not terrorise any one, though it certainly injures many. What is called terrorism for the purpose of the bill – as for the purpose of TADA – is but political militancy. One may or may not like that particular politics, and one may or may not like any militancy. But what is called terrorism is nevertheless political militancy. Plain terror of goonda gangs, mafias and gun-toting landlords, which long predates the Khalistan Commando Force, the Hizb-ul-Mujahideen, the ULFA and the People's War, was never called terrorism, nor were specially harsh laws ever contemplated for tackling it. If political militancy is treated differently, that is not so much because it is militancy as because it is politics, and that too politics of an inconvenient kind. It appeals to certain ideas unpalatable to an extreme degree to the rulers of the country as well as the country's social mainstream, but nevertheless creates a social base for itself from out of the citizenry of the country, and arms itself with their support. That is why it is difficult to deal with, and seems to require stringent statutory provisions. Paradoxically, political militancy calls for harsh laws not because it is terror, but precisely because it is not just terror, but is a politics. It is a politics, right or wrong, with a social base of people – well guided or misguided – supporting it and its armed activity, which makes it difficult in the extreme to deal with it, if dealing with it means policing it. Terrorism in Kashmir and Nagaland is the politics of ethnic self-determination; terrorism in Tripura, Bodoland and Assam is the politics of ethnic self-assertion or self-preservation; and terrorism in Bihar and Telangana is the politics of socialism; even the extra-territorial terror of the Harkat-ul-Ansar (alias Mujahideen) is a politics: it is the politics of pan-Islamism. Its idea that Muslims everywhere must live under Islam and that this divine state of affairs will be achieved by force, used if necessary against dissenting Muslims too, would be regarded by most right thinking people as plain but harmful foolishness, but it is a politics nevertheless. As a politics it attracts the ideas of people, creates certain aspirations and moulds or remoulds others, and in the process

creates a social base – a base of human beings, let us stress – for itself. That is why it is so difficult to 'root out', if rooting out is what is required.

And it is precisely for this reason – more than the quantity or quality of the weapons it carries – that policing finds political militancy a difficult nut to crack. To transfer the difficulty from its political character to the weapons it carries and the allegedly demoniac mind behind the weapons, and to seek harsh laws to tackle it is a dubious mode of reasoning, to put it mildly. It is all the more dubious when it comes from a high body such as the Law Commission of India.

It is easy to get angry at this point and say: what shall we do, then? Kargil and Kandahar have given rise to plenty of such rhetorical anger. Without denying that there is reason behind the anger – violence used systematically creates a feeling of helplessness among the victims as well as the onlookers that easily and understandably turns into rage – it is still necessary to meet the question head on: yes, what shall we do? Jail more and more people persuaded rightly or wrongly to think the way of the militants, under the proposed anti-terrorist law, deny them bail and a fair trial, and thereby create a whole prison world of recalcitrant citizens? Or perhaps shoot them dead in custody as happens day in and day out in militancy-influenced parts of the country from Kashmir to Telangana? Difficult problems do not have easy

Violence – systematic violence in league with the protectors of the law – by the Hindu fanatics terrorises the Muslims, but it does not destabilise what is usually called the 'system'

solutions. Especially when the 'problem' comprises human beings whom the humanity in us should cherish, and citizens whom the law should protect.

This is the reason why human rights activists have always objected to the use of the words terrorism, extremism, etc. They have the effect of denying the politics of the alleged terrorists and extremists, as well as their humanity. This does not mean that there is no terror at all in the acts described as terrorist. There is terror, and it can be quite substantial some times. If I were a Kashmiri villager living somewhere in Kupwara and a conscientious believer in Kashmir's accession to India, I would certainly lead a fear-stricken life. If I were a Telangana villager living somewhere in Karimnagar and an elected representative in the gram panchayat from the Telugu Desam Party I would certainly live in trepidation if not in a state of fear to the same degree as the Kupwara villager. The fact that I am a good person and intend no harm to anyone, whatever my political preferences, or that I belong to the very same social/economic class or community which the militants claim to represent, or that I am merely a minor cog of the state machinery and therefore cannot do the militants or their supporters much harm, need make little difference, and I would be well aware of that. Armed politics suffers from a common temptation of substituting terror for politics, and even otherwise exhibits a degree of arbitrariness and intolerance, and the effect is to strike terror in those who are – by their own doing or otherwise – objects of the intolerance. Even when the politics is not intolerant by its very nature, the wisdom that advises you to be as tolerant when you have an automatic rifle in your hand as when you have only a flag is not common among human beings.

But how do we tackle this element of terror in political militancy? As far as criminal investigation and adjudication are concerned, each such instance of terror falls within the definition of some crime or other in existing penal legislation. The terrorists are yet to invent a new crime not thought of by Macaulay. So what is the need for a new legislative exercise? The answer given is that the same old crimes committed in new ways (and, more importantly, for new purposes, though this is not made explicit in the discussion by the Law Commission) call for a new and harsh procedure. It is said that the existing criminal justice system was not fashioned keeping in mind the organised crime of our times, in particular the organised crime of terrorism. It is an important theme of the Law Commission's working paper that terrorism which is said to be just another name for organised crime is a new phenomenon that defeats the capabilities of the criminal justice system we have. Its capability to apprehend and punish the guilty, that is. From this complaint it certainly does not follow that it is enough if the

criminal justice system is able to apprehend and punish somebody, whether guilty or not, and therefore the issue of procedural fairness and justice remains as relevant as ever. But it is a characteristic feature of the entire discussion supporting anti-terrorist legislation that this obvious consideration is pushed into a remote corner.

But as a matter of fact, the capability of our criminal justice system to apprehend and punish the guilty is uniformly slight, whether the crime falls within the category described as 'organised' or not. Rape, for instance, is hardly an 'organised' crime, but the rate of success in prosecuting that offence is acknowledged to be barely four percent. There are a number of reasons for this, which this is not the occasion to go into. In general, offences by the socially and politically powerful are a category of crimes which are rarely prosecuted successfully. Prosecution of white-collar offences, which are perhaps more harmful than all terrorist offences put together, is even less efficacious. Offences of tax evasion are no more successfully prosecuted than that of rape or terrorist crimes. Yet it has never been argued by anyone, including policemen who are uniformly contemptuous of procedural fairness in criminal trials, that trial procedure can or ought therefore to be rendered unjust and unfair to enable 'successful' prosecution of tax evasion. It has always been assumed that procedural fairness and justice are non-negotiable elements of criminal trial procedure, not out of love of perpetrators of crime but out of the consideration that justice must actually be done and not merely declared to have been done, and that if efficacy of prosecution is lacking, then that should be addressed by measures such as improving the investigative capabilities of the police, and more generally the content of policing so that people are encouraged to trust them. Perhaps it has also been understood at some level that prosecution of crime is not the whole answer to crime, an understanding that much of the discussion supportive of anti-terrorist legislation implicitly rejects. Indeed, whenever penal provisions aimed at preventing and punishing socially oppressive practices such as dowry or untouchability come up for discussion, it is commonly said by all and sundry that such practices are best tackled by social reform and education and not by penal provisions that cannot go to the root of the matter. The same is rarely said about theft, though there is no reason at all why the same logic should not be applied to it, and yet at some level there is an understanding that the police station and the criminal court are not the whole answer to the crime of theft, and that reduction of unemployment and poverty should be at least part of the answer.

The crime of terrorism is the first category of offence with respect to which this common sense understanding is forsaken by even very learned people, and the full – or let us say the preponderant – burden of tackling it is put upon the criminal justice system, which must therefore be made more harsh and illiberal to suit the task. Of course, at the end it is ritually added that the state must evolve political steps to tackle the problem in its totality, but that is only after ensuring that enough provisions are incorporated in the powers of policing and in criminal trial procedure – the various Disturbed Areas Acts, Armed Forces (Special Powers) Act, TADA, National Security Act, Unlawful Activities (Prevention) Act, etc, so that they are in themselves adequate in their harshness, or at least can be believed to be so, to tackle militancy. Whatever the rhetoric, the actual attitude is not merely that normal laws are inadequate for solving terrorist crime. It is that political militants do not deserve such niceties as fair trial or democratic handling of the issue in its political and social totality.

As a matter of fact, the capability of our criminal justice system to apprehend and punish the guilty is uniformly slight, whether the crime falls within the category described as 'organised' or not

The possible answer that terrorism does so much damage to life and liberty that such niceties must be ignored in the interests of the very existence of organised society – something like the doctrine of necessity much beloved of the Supreme Court of Pakistan – is likely to impress lay persons who are accustomed to thinking that a crime is only as serious as the newspapers make it out to be. Without wishing to deny or minimise the methods of terror often adopted by militant political groups and their ill effects, it is nevertheless necessary to say that it is just not true that such terror is qualitatively much more damaging to civilised social existence than organised corruption or the hundred other white-collar crimes, or the crimes of physical and psychic violence emanating from systematic social and economic oppression based on caste, gender, community and property.

Why, then, is political militancy held to be undeserving of the niceties that are allowed to what is believed to be normal crime? This may be linked to a question we noticed earlier. Why does the common person's response to and the Law Commission's analysis of religious terrorism in Mumbai and Coimbatore regard only Muslim militancy as terrorism and not Hindu militancy? Why is the systematic violence of the Shiv Sena and the Hindu Munnani in league with the police not regarded as terrorism while the blasts engineered by Dawood Ibrahim or whoever it was that blew up buildings in Mumbai and the al-Umma are treated unhesitatingly as such? Not everybody among this country's common people approves of the hooliganism of the Hindu communal forces, and the Law Commission of India, at least under the stewardship of Jeevan Reddy, cannot be called a communal or anti-Muslim body. What then could be the reason?

Violence – systematic violence in

league with the protectors of the law – by the Hindu fanatics terrorises the Muslims, but it does not destabilise what is usually called the 'system'. The same is true of the plentiful white-collar crime and the crime of social oppression that admittedly does a lot of unacceptable injury to civilised life in the eyes of even common people. Of course there are those who would argue in the interests of the 'system' itself that such crimes are in fact even more destructive than the violence of rebels, but that is an 'in the long run' argument and not something spontaneously felt. It must be added that this thing called the 'system' is difficult to define or clearly delineate, much less to discover the reason that governs it, but that is no reason for taking refuge in the sociological agnosticism that is currently rather fashionable. There is a complex of real relations of domination and subordination, primacy and marginality, power and powerlessness, the centre and the periphery, the inside and the outside, that together constitute a real system, whatever one's view of its structure and its rationale. Violence that does not upset this system, even if it creates terror among a sizeable section of the people, does not agitate public opinion – one is talking of the right thinking kind of public opinion and not the brutal kind – to the same degree that systematic violence that upsets the system does. It is such organised violence that upsets the complex entity called the system along one dimension or the other that is being called terrorism, and is being subjected to extraordinary – and extraordinarily illiberal – criminal law, as well as a refusal to give adequate importance to the otherwise easily accepted notion that the total answer to crime lies not in the criminal justice system alone, but in combining adequate political and social responses with it. The two attitudes evidently reinforce each other. To the extent that political and social responses are pushed into the background, the criminal justice system carries a greater burden. And to the extent that it carries a greater burden its perversion through the enactment of unfair laws and the legalisation of brutal practices is rendered more necessary and rational.

This is not to imply that all such anti-systemic violence is good because the system is bad. There is no such easy answer to the dilemmas posed by this thing called terrorism. For a given purpose, the system may or may not be all bad, and for any purpose, violent attacks on the system may or may not be all good. That is not the point at all. The point is threefold. One, there is no obvious sense in which what is categorised as terrorist crime or organised crime as distinct from all normal crimes that the existing criminal investigation and trial procedure has been designed to handle, is qualitatively so novel in the harm it does to civilised life as to justify its being put outside the pale of civilised procedure of criminal investigation and adjudication. Two, even if it is, persons accused of such crimes cannot be denied the protection of fair and just procedure, since the reason for such procedural fairness is not the protection of the criminal but the protection of the innocent, and the protection of the norms of civilised social organisation. And three, that such crimes, that is to say the category of crimes that are said to require an abnormal treatment from the criminal justice system, originate at the margin, the periphery, or with the powerless and the dominated, in other words from outside the social, political or economic mainstream of Indian society, means that the persons who are subjected to the abnormal law are precisely those whom society should in fact care more for and be concerned more about rather than less. This is what even the Indian Constitution says.

> Anti-terrorist legislation thrives on the horrible images of mangled bodies strewn around a blown up railway track or a land-mined road

It is reported that about 76,000 persons were arrested under TADA while that law was in force. A taxonomy of the accused would show that the overwhelming majority of these 'terrorists' belong to the social, political or economic periphery: Muslims suspected to be involved in bombings in Mumbai or Tamil Nadu, Sikh militants or sympathisers supportive of the Khalistan demand, persons – whether militants or their supporters – belonging to the tribal communities of the north-east desiring secession from India, Kashmiris of like nature, the rural poor in Andhra Pradesh, Bihar and other regions affected by naxalite activity, the poor and socially backward masses of Veerappan country at the border of Karnataka and Tamil Nadu, etc. Religious minorities, the ethnic periphery and the socially and economically oppressed, would between them exhaust the list of the accused in TADA cases barring in all likelihood no more than two to five percent. At the risk of repetition it must be added that it is not my case that such militant activity is necessarily for the benefit of the periphery or that the periphery as a whole is supportive of it. Whether that is so in a given case would require detailed and concrete analysis. But it must nevertheless be said that such being the social nature of the thing called terrorism, it calls if anything for a more sympathetic rather than a more harsh treatment at the hands of policy-makers. One does not expect policemen to see this point, but one certainly expects the Law Commission of India to be able to see it, and assess the proposed replacement for TADA accordingly. One legitimately expects that eminent institution to be able to see that the arguments it offers in support of special and harsh anti-terrorist legislation amount to treating crime – including very harmful and highly organised crime – that originates within the mainstream in accordance with natural justice and fairness, while denying that treatment to organised crime or even merely seditious opinion that originates outside the mainstream. There is no way that a 'human face' can be put upon this

inacceptable discrimination. If any such discriminatory treatment is at all permissible in such matters, it should be in the reverse direction. Failing that, there should at least be equal treatment of all criminal offences.

This is not an argument – lest the argument be misunderstood – for extending TADA or TADA-like legislation to mainstream crime too. Policemen for one would be only too happy to read it that way. Procedural fairness and justice in action are non-negotiable elements of criminal investigation and trial procedure. There is no other way that the law can ensure that the innocent will never bear the cross. If this reduces the efficacy of the criminal justice system, then so be it. It only means that criminal justice can reach thus far and no farther. The rest of the distance in crime prevention is to be traversed by social, political and moral efforts. If they too cannot do the full job, then the residue is to be borne by all of us as the disorder inherent in human social existence, human nature as expressed in organised social existence.

Provisions of new law

Let us now get down to the bill itself as modified and handed back to the government by the Law Commission of India. There are in the main two offences in this bill as in TADA. They are: terrorist acts and disruptive activities. A terrorist act is any offence of violence committed with arms or explosives, but with a particular type of intent. What truly distinguishes it is the intent and not the act of violence as such. As said above, TADA was preeminently a statute that penalised militancy on the basis of political and social intent, though the rhetoric of official explanation served to give the impression that it was penalising militancy for its inhuman crimes. Anti-terrorist legislation thrives on the horrible images of mangled bodies strewn around a blown up railway track or a land-mined road. The definition of terrorist activity is however very widely worded to catch very much more than perpetrators of such horrors. It takes in all political and social militancy.

There were two categories of intent that made an act of violence using arms or explosives a terrorist act in the former TADA. One is the intent to strike terror in the people or a section of the people or to alienate a section of the people or create disharmony between different sections of the people (all of which can either be very heinous offences, or may merely reflect social struggles of the marginalised or alienated communities; as a matter of fact, militant struggles undertaken in the name of minority or marginalised communities were subsumed lock stock and barrel, and not just to the extent of heinous crimes committed by them, under this head). The other is the intent of overawing by force the government as by law established. What is immediately striking about the present bill is that the last mentioned intent which was advisedly deleted by the union government from the definition of terrorist offence in the bill as drafted by it has been brought back by the Law Commission. The deletion suggested by the government was no doubt motivated by the strong criticism TADA faced, namely, that the intent of overawing the government as by law established is too vague an expression that permits much oppositional politics to be dragged into the ambit of TADA if even the mildest country-made bomb is used. It was condemned strongly by most political parties, which criticism among others was instrumental in Parliament allowing the act to lapse. It was replaced in the proposed bill with the 'intent to threaten the unity, integrity, security or sovereignty of India'. This is at least a less vague expression and in any case it does not bring anything new into the act because the other offence of disruptive activity independently penalises acts undertaken with such intent. However, the Law Commission, with no more comment or argument than that 'there is no good reason for deleting it' (though in fact there was plenty of good reason in the form of reasoned criticism of the provision by various political forces as well as human rights groups), has insisted on bringing back the expression: 'overawing the lawfully established government', into the definition of terrorist offence. The new bill now carries all the three and not just two categories of intent as definitive of terrorism. The next time that people are harassed by being charged with terrorist offences merely because their agitation against government policies has turned momentarily violent, they will have the Law Commission of India to thank and not the union home ministry.

> The Naxalite movement may be taken as an instance. Not all its acts would fall within the meaning of terrorising the people, or a section of the people, etc, though some might

The Law Commission will probably say that protection against such harassment is provided for by the provision it has introduced, namely that an FIR registered under the proposed act survives only if it is approved within ten days by the director general of police (DGP), or within 30 days by the review committee (consisting of the DGP, the home secretary, the law secretary, etc). This is not an altogether novel safeguard. In TADA as it stood by 1995, the local station house officer could not register an FIR under TADA without the prior permission of the inspector general of police or the commissioner of police as the case may be. Now one more level of approval is introduced by making it obligatory to have the approval further approved by the DGP or the review committee. Two layers of consideration may not mean much in a force as notoriously single-minded as the police. Moreover, whether it is the earlier safeguard or the addition now suggested, they

might conceivably be of use against individual cases of harassment that originate with the local station house officer. They will not be of avail against a decision by the rulers of a state to treat a certain category of opposition as being worthy of anti-terrorist legislation, for no police officer will take an independent decision contrary to the policy of the ruling party.

The Naxalite movement may be taken as an instance. Not all its acts would fall within the meaning of terrorising the people, or a section of the people, etc, though some might. Nor, certainly, can they be said to be questioning the unity or territorial integrity of India. They want to rule India, not to dismember it or hand it over to Pakistan. Thus, almost all of Naxalite activity would have fallen outside the scope of terrorism as defined by the union government in the draft bill it proposed. But the Law Commission's reintroduction of 'overawing the government' as a criterion that would make an act of violence a terrorist act brings back the whole of Naxalite activity within the meaning of terrorism in the proposed act. And the proposed safeguard of approval by the DGP within ten days or the review committee within 30 days will be of no avail since the Naxalites will be targeted as a matter of government policy.

Coming to the procedure of investigation and trial of offences, all the unfair and unjust provisions of TADA are intact in the proposed bill. Confessions in police custody (to an officer of rank of superintendent of police or higher) will be admissible in evidence against the one who has confessed as well as his or her co-accused. The trial of the offence need not take place in a court of law but can be held anywhere (including a high security prison). The identity and address of the witnesses can be kept secret from the accused. Bail is almost impossible to get since the judge has to be convinced of the innocence of the accused before bail can be granted. Remand, whether to jail or to police custody, can be for a period of 30 days at a stretch; and the remand can be extended up to a period of six months. The burden of proving innocence shifts on to the accused in certain situations. There is no appeal to the high court but only the Supreme Court and that too not on any interlocutory matter.

The secrecy of the identity of witnesses has been taken one step farther by the Law Commission in the amendments suggested by it. In TADA as well as in the new bill as drafted by the government, the secrecy stopped at the witness box. In the witness box the accused would know the identity and other particulars of the witness, so that some – if not very effective – cross examination may yet be possible. Giving of evidence in the presence of the accused, and the witness being confronted in cross examination is a central element of the adversarial legal system that we have. It is indeed the hub around which adversarial trial procedure turns, and is an absolutely essential ingredient of fair procedure within the adversarial system. Its efficacy is reduced drastically by keeping the identity of witnesses secret until the last moment and thereby forcing an impromptu cross examination. But nevertheless at least this much of fair procedure survived in TADA and in the new bill as proposed by the union government. The Law Commission now proposes that even in the witness stand the identity of the witness need not be revealed. A screen can be placed and the witness can sit behind it and give evidence, heard without being seen, and cross examined without being identified. The right of cross examination remains, of course, but what purpose would such cross examination serve? If an unknown and unseen witness speaks from behind the screen and says that he saw the accused throwing a bomb, how is the accused to challenge the veracity of the statement? The amendment effectively means that the right of cross examination is taken away. Indeed, the burden of proving anything at all is taken away from the prosecution. If there is a charge sheet, and if there are some persons (for instance, plain clothes policemen or political opponents of the militants facing the charge) who are willing to depose incognito in support of the charge sheet (and who would not, when telling falsehood would entail no risk), and if for good measure police remand of the accused is obtained for 30 days and he is made to confess before a superintendent of police at gun point (the Supreme Court through Justice KT Thomas has recently said that even a confession given in chains is valid, presumably because confession being the product of a spiritual state of repentance cannot be sullied by such material dross as mere chains), then the job of prosecution is done. The question is not whether terrorists have not been guilty of heinous killings. The question is whether such trial procedure is not equally heinous as an instrument of deprivation of life and liberty.

> It is an interesting fact that in the list of crimes of violence that constitute ingredients of a terrorist act the Law Commission has added the act of disrupting 'interstate or foreign commerce'

The Law Commission, however, has one 'safeguard' against forcible confessions which it has written into the bill. This is that after the accused has confessed to the police officer and the confession has been reduced to writing, the accused as well as the confession recorded should be immediately taken before the local chief judicial (or metropolitan, as the case may be) magistrate, who will record every thing the accused has to say. This is evidently meant as an opportunity to the accused to take back the confession recorded, in case it has been extracted from him by threats or force. But what happens thereafter? There is no provision in the 'safeguard' that the chief judicial magistrate must then remand the accused to jail, and he should never again be given to police custody during the pendency of that trial. In the absence of that, the safeguard is empty since the police always get the confession recorded while there is still a day or

wo of police remand left. This is a precautionary measure they adopt, ust in case the accused develops his own notions of what to say and what ıot to say at the last moment. Indeed, he safeguard inserted by the Law Commission may well turn out to be o the disadvantage of the accused. If, because he knows that there is more of police custody left in store, he does ıot retract his confession before the chief judicial magistrate immediately, and does not tell the judicial officer that he has been forced to confess, then any such retraction he may later make in court when taken there from the safety of the prison may be rejected as an undependable afterthought on the ground that he did not complain at the first opportunity specifically provided for that purpose by the law.

It is an interesting fact that in the list of crimes of violence that constitute ingredients of a terrorist act (if committed with arms or explosives, and with the above mentioned categories of intent) the Law Commission has added the act of disrupting 'interstate or foreign commerce'. This was neither there in TADA nor in the bill drafted by the union government. What could be the purpose of this innovation? None of the militant political groups in our country has used violence to disrupt foreign commerce. Is the Law Commission, aware that globalisation has given rise to much dissatisfaction, making advance preparation to protect it from militant movements? Is not the totally political character of this whole business of anti-terrorist legislation fully evident here, notwithstanding that the Law Commission seeks sanction for the bill on the ground of the inadequacy of existing law to handle organised crime, and on the mental pictures of the inhuman violence that militant groups have indulged in? As of today, the only movement that has been physically obstructing 'foreign commerce' is the Karnataka Rajya Rytha Sangha of Nanjundaswamy. It is true that they have not used explosives or arms, but one countrymade bomb or two are not at all difficult to plant upon them, nor can even Nanjundaswamy guarantee that some one or other of his followers from the more violence-prone among the districts of his state will not procure and use one or two explosives against the buildings of this multinational company or that, and then the entire movement will become 'terrorist activity'.

But then, while it is in general politics that is targeted by anti-terrorist legislation under the cover of fighting inhuman violence, this innovation pertaining to foreign commerce introduced by the Law Commission is not the first instance where that is made explicit. The crime of 'disruptive activity', which is the other major offence defined by TADA, is a political crime pure and unvarnished. That is not only retained in the proposed bill, but a slight face-saving modification suggested by the union government has been overruled by the Law Commission. In the definition of terrorist act there is first of all an act of violence, and therefore it is legitimately a subject of penal law, though the nature of the law may be open to objection. But 'disruptive activity' as defined in TADA as well as the proposed bill is not a penal act by any yardstick. The mere expression of a political opinion that questions the boundaries of India is 'disruptive activity'. The late TADA had defined this offence as an activity that 'questions, disrupts, or attempts

to disrupt, whether directly or indirectly, the sovereignty or territorial integrity of India', or 'is intended to bring about or support any claim', again directly or indirectly, the cession or secession of any part of India, 'by any action taken, whether by act or by speech or through any other media or in any manner whatsoever'. The last part in quotes was evidently included more for effect than anything else, since it is implicitly contained in the earlier part whereby 'questioning the sovereignty and territorial integrity of India' and 'supporting any claim of cession or secession' is included in the substantive offence. And moreover, being too explicit, it invited harsh criticism. The present bill, as drafted in 1995, contained the same provision, but in the amendment made in 1999 before sending it to the Law Commission, the government had deleted the phrase 'by any action taken, whether by act or speech or through any other media or in any manner whatsoever'. The deletion probably makes no substantive difference to the provision, but it certainly gives it a markedly less offensive look. The Law Commission, however, is more cautious than the union home ministry. It has put the whole of the deleted phrase back saying that the omission 'will create unnecessary controversy in the courts', meaning perhaps that an idiosyncratic interpretation of the provision by some liberal minded judge may very well help some Kashmiri cartoonist or Naga poet to escape the net of the provision on the supposition that the law-makers could not have intended it to cover such innocuous acts as the drawing of a caricature or the penning of a ditty.

There is another very questionable provision that was not there in the old TADA nor in the bill as drafted by the union government, but has been introduced into it by the Law Commission. This is the provision that all people in militancy-affected areas must become police informers on pain of a one-year prison sentence. It is of course part of ordinary law that if one has knowledge that an offence has taken place one is bound to inform the police. But the provision included in the bill by the Law Commission goes much farther. It makes it obligatory to inform the police about the whereabouts of an offender, or even one who is 'preparing' to commit or instigate the commission an offence under the act, or indeed any information one may have that may help prevent an offence under the act. Given the essentially political nature of the activity sought to be countered by this law, this provision is unacceptable for two reasons. As regards the supporters of militancy, it puts upon them the obligation of handing over to the police and giving information about the activities of the militants whom they regard as their saviours, comrades, liberators, etc. Every such militant is in any case always preparing for or instigating offences under this law, and every activity of the militants is an offence, given the way offences are defined under this law. This amounts to an assault on the political faith of those people, which contradicts the very preamble of the Indian Constitution. As regards the other residents of such areas, this provision forces them to face the wrath of the militants, which is no small matter since it is a universal characteristic of militant movements that they are absolutely ruthless in dealing with suspected police informers. It is doubtful that even a judge who finds a militant hiding in his bathroom will forthwith inform the police.

There is another very questionable provision introduced by the Law Commission that all people in militancy-affected areas must become police informers on pain of a one-year prison sentence

Exceptions often tell us a lot about the rule, including a lot that is not intended to be revealed by the rule-makers. A safeguard provided by the bill is a good instance of this general principle. It says that 'trade union activity and mass movements' that do not indulge in violence and do not support claims of cession or secession or question India's sovereignty and territorial integrity are protected from the charge of disruptive activity. Why trade union activity should be specifically named along with mass movements in general is not very clear. They are certainly not particularly vulnerable in this regard: they rarely concern themselves with India's territorial integrity or secession therefrom. It is probably a ruse to win for the bill the support of the CPI and CPI(M), based perhaps on the assumption that they will be satisfied with even such an irrelevant guarantee. If so, it reflects poorly on the impression the two communist parties carry with the union home ministry. But perhaps the impression is not undeserved, since they have rarely taken a stand very different from the parties they castigate as 'bourgeois' in the matter of India's territorial unity and integrity, or the question of terrorism in general.

But the safeguard is in any case superfluous on the face of it, since any activity – whether it is trade union activity or not, and whether it can be called a mass movement or not – that does not employ violence and does not support secession would not in any case fall within the definition of disruptive activity. The fact that such a superfluous safeguard is nevertheless included is testimony to the extensive misuse of TADA against movements that do not strictly fall within the four corners of the offences defined in the act. But interestingly, trade union or mass activity is provided with this protection only in the matter of disruptive activity and not terrorist activity, the other major offence defined by the bill. That is sufficient in itself to describe the safeguard as ornamental, since the intention of overawing the government as by law established – unlike the intention of supporting secession – is very easily attributable to much of trade union activity, as well as most mass movements. And when the law specifically provides a safeguard against such activity being construed as the offence of disruptive activity but equally intentionally does not pro-

vide such a safeguard against imputation of the offence of terrorist activity, then the usual interpretation lawyers and courts are accustomed to would at the least make it prima facie lawful to book trade union or mass activity with a political character under the offence of terrorism the moment they indulge in militancy, even sporadic or momentary militancy, leaving it to the movement in question to rebut the charge.

That apart, the provision in effect amounts to delineating 'legitimate politics', and therefore, by implication, relegating all other politics to the realm of the illegitimate. After all, if provision of a safeguard against harassment and misuse is all that was intended, it could well have been said that any activity that does not indulge in violence and does not encourage secession shall not be construed as an offence under the act. Why bracket 'trade union activity and mass activity'? Clearly, there is a political statement there. Namely, that trade union activity and mass activity (whatever that expression means – it is neither defined in the bill, nor is an expression found in the General Clauses Act, nor does it carry a meaning customarily accepted in law) are alone of tolerable legitimacy and worthy of safeguards, and others, by implication, are not. This is yet one more instance where a close look reveals the essentially political character of this legislation which is sought to be smuggled in under the cover of the inadequacy of ordinary criminal law to handle organised crime. Such a safeguard must undoubtedly be galling to people whose equally legitimate feelings are penalised as 'disruptive activity'. If one can look beyond weapons for a minute, one should be able to see that at least in Kashmir and Nagaland a very large number of people, in all probability a majority, honestly believe that they are not Indians, and should not be forced to think of themselves as Indians. It is certainly unbecoming of the law that it penalises this widely held popular feeling in whatever form it may express itself, but claims respect for itself by incorporating protection for a selectively defined category of political activity.

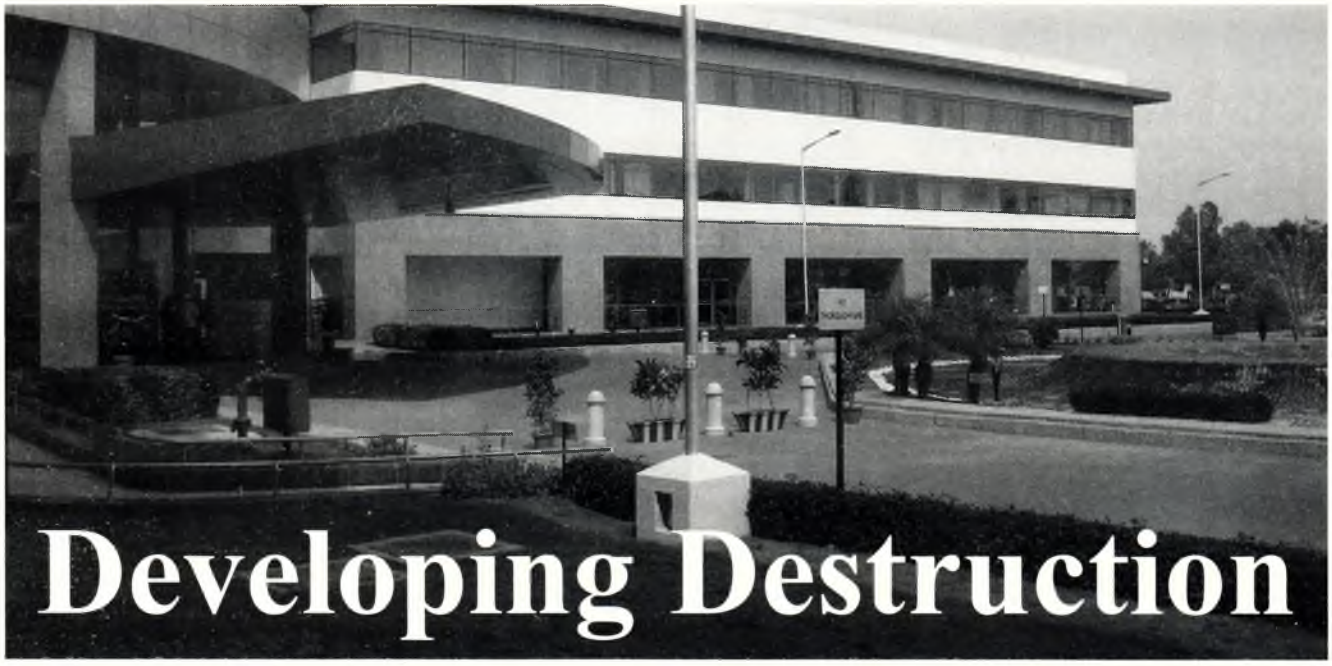
We may end with the moral of the story. There are many in this country who believe that politicians and bureaucrats cannot be trusted to protect democracy, but judges can. There are no doubt instances in recent history that go to support this view. But the history of TADA and its proposed successor indicates something to the contrary. TADA was upheld as constitutionally valid by a constitution bench of the Supreme Court in 1994. Each and every argument aimed at showing that it is draconian and unconstitutional was considered in detail and rejected by the undoubtedly learned judges of the Supreme Court. But hardly a year later, Parliament consisting of politicians whom we routinely condemn – and

There are many in this country who believe that politicians and bureaucrats cannot be trusted to protect democracy, but judges can

with considerable justification – as corrupt, self-serving and illiterate in the fundamentals of democracy decided almost unanimously that the act was exactly what the Supreme Court said it was not: oppressive, draconian and unbecoming of a democratic polity. They let it lapse. The union home ministry – guided by bureaucrats whom we routinely, and again with considerable justification, condemn as insensitive file-pushers who have no understanding of the people and their varied aspirations, drafted a replacement for TADA in which they sought to dilute the act's harshness a bit. Four years later the same bureaucrats amended it a little bit to dilute its harshness a little more, hoping that thereby they may win the approval of the Law Commission of India, which would take a dim view of oppressive legislation. It was left to the Law Commission, headed not – as yet – by a Sangh parivar fellow-traveller, but by a former judge of the Supreme Court of India with a – no doubt deserved – reputation as a progressive jurist, to pull up the home ministry for being needlessly squeamish about the matter, and put back into the law the little that was deleted, and add a little more besides to give the act 'teeth', a canine attribute that the law is for some reason generally expected to possess. It appears, therefore, that if we love democracy, we must be on our guard not only against corrupt politicians and heartless bureaucrats but learned judges too.

Indeed, while the home ministry proposed that the life of the new act would be five years at a time subject to extension by Parliament, unlike TADA which had a two-year span, the Law Commission of India would, left to itself, prefer a permanent law against terrorism. The argument is that it is an illusion to believe that terrorism is a temporary phenomenon. What should follow from that realisation is not that we need a permanent law against terrorism, but rather that the country – and perhaps the world at large – is faced with a set of political-social problems which appear to find democracy as currently practised the world over inadequate. It is not the case that militancy is always very reasonable in the grievances it espouses and the rationale it offers for itself. Yet, the search should be for a deeper democracy that can handle real dissatisfaction within its terms, and reduce wilfully intractable dissent to such a numerically small scale – assuming that most of the people are willing to be reasonable most of the time, without which assumption democracy itself would be a fool's ideal – that the real difficulties that beset the handling of 'terrorism' are substantially reduced. Nor is it the case that there is available ready-made an ideal form of democracy that will answer this need. But that is what we should be searching for, and not the incorporation of more and more harsh provisions in the law, which will only add some 'lawful' violence to the lawless, if not always mindless, violence of militancy.

–June 17, 2000



Developing Destruction

Without asking oneself such a question, if one embarks on implementing development, one would have left the most important task of its definition to dominant political and economic forces. And also would have begun to adopt the same in practice.

What are these forces? They are corporate companies, backed by the World Bank, International Monitory Fund and other such international policy makers. Their most important agenda is to enable big capital and international trade to have unrestricted freedom; to hand over all human and natural resources to this big capital; and to eliminate any obstructions to its spread and growth posed by the imperatives of social welfare and responsibility. Their guiding philosophy and rationale is: that this is the only way of increasing wealth in the quickest way. It is suggested in this process direct and indirect employment also grows. The overall growth in income would then percolate to the bottom rung of the society at some point, thereby improving the lives of all the people.

Development has become the universal mantra of contemporary Indian politics. When asked about what they would do if they come into power, every party's stock answer is "development". When analysts are asked as to what the people in power/ government should concentrate on, pat comes the answer i.e., "development". Surprisingly, nobody seems to ask or find an answer to the fundamental question as to, 'what is development?'

The actual picture looks very different though. Most people whose lives are dependent on natural resources lose their livelihood heavily in this process. The extent of loss of employment is much more than the extent of creation of employment. The society begins to turn inhuman and ugly, with increasing inequalities. Leave alone percolation of wealth to lowest strata of society, they get much more alienated. The impact of this process is much more on those peoples who are dependent on nature (such as adivasis, fishermen) and socially weak sections (dalits and women). As a result historical inequalities increase many fold, thereby making the society much more violent.

Along with social destruction, natural destruction also ensues. Key to the growth of civilisation has been ability of human beings to continuously mould nature to their changing needs. However it also led to growth in human needs which in turn meant increased human intervention in nature. Despite such increased intervention, till the advent of capital, there existed certain balance between human beings and Nature. But this balance got destroyed when human needs got transformed into needs of the capital, and once such capital got transformed into multi-million corporate capital. Today, the question is simply that of pollution of one canal or one river. The entire ecosystem, the very basis for human survival is itself under grave threat.

That is why we call this development destructive. Development has always been a part of modernity, but its rampage has been controlled to some extent by the values and norms emerging from its critiques as well as resistances and movements against it. Over the last two decades, with corporate capital emerging as the singular decisive force, such critiques have lost their influence. It has become the ruling ideology of our times. In

Andhra Pradesh, the person who started institutionalising this regression was Chandrababu Naidu but his successor Rajasekhara Reddy proved himself to be a worthy successor. The details of destruction wrought by this development are presented in the special issue of human rights bulletin in the form of essays, reports and pamphlets. One could undertake a theoretical critique of this destruction and there is an urgent need for such a critique. However, this bulletin confines itself to giving information about the nature and form of this destructive development.

There have been struggles against this destructive development as a whole in Goa, Raigarh in Maharastra, Nandigram and Singur in West Bengal. And they are still continuing. Struggles in other locations have focused more on the issues of compensation and rehabilitation. As a way of responding to such struggles, the central government has been threatening to bring new laws to offer better compensation and rehabilitation. From 2006, two bills have been pending before Parliament regarding amendment to the Land Acquisition Act and offering the right to rehabilitation. They are yet to become laws, may be due to the paucity of time. The first bill offers improved compensation to the land owners, without reducing the extensive powers of the State regarding acquisition of land in any manner. This does not offer anything to people who have been enjoying traditional rights over natural resources without requisite legal rights. The second bill aims to extend the status of 'the displaced' to even those who don't lose houses but whose lives are adversely affected. It recognises limited compensation and a limited rehabilitation as rights that accrue to all the victims of displacement. To a limited extent, it recognises the demand of the anti-displacement movements that in cases where displacement becomes indispensable, all the displaced people should be rehabilitated wholly and fully as a community in one place and that they should be given opportunities to better their lives through secure employment or land.

In order to understand the significance of a legal right to rehabilitation, we need to look at the brutality of displacement in its absence, as of now. The bulletin begins with an essay that describes the official response to the plight of displaced people during the construction of Nagarjuna Sagar dam, one of the biggest development projects in the country. Along with this, we include an essay that discusses the specific proposals emerging from movements against displacement. Narendranath, the author of this essay has fought battles alongside the displaced people from the time of Srisailam project, where they suffered their fate silently till the Narmada movement, where they managed to turn the gaze of the country towards their fate through their struggle. Discussing the victims' demand that the displaced people in the project should be provided a better life under the same project, he asks why they should not be granted a pension when such provision becomes impossible. When government employees who take involuntary retirement are given pension, why shouldn't farmers and wage labour who are forced to stop cultivation be given a pension, he asks.

In 2005 Andhra Pradesh state government issued GO no.68 which is very similar to the bill on rehabilitation pending before Parliament. All of you would have witnessed the self-praise that our chief minister had showered on himself on designing such a wonderful rehabilitation policy. We hope that the displaced people and those working for them would make use of it. The fate of land acquisition Act is similar. The implementation of this essentially repressive Act defies any logic. The government has taught its officials that they should first acquire the land forcefully, and then implement this law, if the people agitate for it. The courts seemed to have followed suit. If anyone files a case contending that his/her land was acquired by the government illegally, the high court responds by saying, "what you actually need is compensation and we will see to it that you get compensated." In a context where the high court is reluctant to protect the rights of the displaced, it becomes essential to know the provisions of this Act in order to enjoy the limited rights available under this Act.

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At various points, we had published pamphlets describing the contours of destructive development which we are reprinting in this bulletin. Apart from these, five reports are included here. First is the translation of a report on bauxite mines and its related refineries in Visakhapatnam district by Patrick, a researcher. Next, there are two separate reports on coastal corridor and open cast mining, two projects that propose large-scale acquisition of land by the government. For coastal corridor, 1,575 square kilometers of land i.e., approximately 4 lakh acres of land will be acquired. By the time Singareni open cast mining project is completed, nearly 2 to 2.5 lakh acres of land would have been gobbled up. While these two are reports of macro projects, two reports of micro projects are also present here. One is a report on large-scale land acquisition being done for field firing range in Anantpur district; the second is the report on local experiences of Apache industry in Nellore district.

While these reports describe the experiences that people are already facing or going to face, this bulletin also contains a report that describes peoples' resistance to such development. Nearly 57 special economic zones have been approved in the state but a significant resistance has developed towards only two SEZs till now. One is against the 10,000 acre multiproduct SEZ being created in U.Kottapalli and Tondangi mandals near east Godavari district; the second is against the 1,000 acre pharmaceutical SEZ getting established in Polepally in Zadcherla Mandal and Mudireddipalli village of Balanagar in Mahboobnagar district. This report

describes the modalities of agitations against these SEZs.

In support of SEZs, some would argue that even if agricultural land is lost, people would get jobs in the factories. But we need to remember that 39 of the 57 SEZs approved in our state are in IT sector. Their employment generation capacity is low and even these jobs would be out of reach of the rural youth who have lost their livelihood. The jobs would go to the urban educated people belonging to upper caste middle classes. After IT, pharmaceutical industry got the largest number of SEZs. As these industries also use most modern technological processes, the number of jobs available here itself would be less, more so for the rural youth. There are only two SEZs that seem to provide jobs to some extent – one, Apache footwear factory in Nellore; two, Brandex Apparel factory in Visakhapatnam. On the whole, there are more jobs lost than gained due to SEZs in AP. There are some who argue that employment need not mean a job in the factory but indirect employment through provision shops, laundry service or vegetable shops. This argument may work for ordinary factories but not for SEZs. SEZs not only are production centres but contain attached townships. These townships have world-class facilities, which means malls or supermarkets. A Yellaiah or a Mallamma from a neighbouring village cannot establish a saloon or start a laundry in such townships.

It is true that any industrial corridor including a SEZ would initially provide livelihood through construction activity. Such road, building or bridge construction activity takes six or nine months. People who have lost their lands can become contract wage labourers during these months. This would provide temporary relief to them, perhaps useful in placating their frustration in the short run but not in the long run. Once the construction activity is completed and production starts, the local people will not get any work. Then there would be no use in protesting also. At a few places, local people are beginning to realise the depth of this fraud. Take the instance of natural gas industry by Reliance at Gaadimoga in

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Tallarevu Mandalam in east Godavari district. In the process of establishing an onshore centre, they filled up five canals. Hundreds of fishing families dependent on these canals lost their livelihood. People did not protest because the Reliance promised jobs to everyone and revenue authorities acquiesced through their silence. What the community got was jobs as contract wage labour for 800 people in the construction activity. After that they were told that a few will be given jobs in the horticulture sector but the locals refused it by saying that such a policy would lead to conflict in the community so they should all be given work. As a result, all of them were dismissed. Now the Reliance officials themselves say that by the time production starts here, there will not be more than 300-400 jobs on the whole and the locals would not get more than a handful. Now the fishermen of Gaadimoga have understood the deception and are getting ready to protest. But perhaps precious time has already been lost!

Even if people get employment in SEZs, the working conditions there would make one wonder whether it is desirable at all. State governments have the authority to give SEZs exemptions from various laws. There is a strong suspicion that such power would be used to dilute the labour laws there. Andhra Pradesh government has already done that too. Neither Maharastra, which has more approved SEZs than us nor Tamilnadu which is a close competitor has dared to take such a step till now. In 2002 itself, even before a law on SEZs got enacted, the AP government under Telugu Desam declared a SEZ policy through G.O.M.S.No.151, in which several exemptions to labour laws was given. Company owner need not keep any wage registers or records. Even when there is no immediate necessity companies in the SEZs can be given exemptions from all the labour laws. They can be given exemption from the factory Act that protects the health of the workers and provides protection in the workplace. Hotels, malls and supermarkets can work 24 hours a day and for 365 days a year. If additional wage is paid for overtime, the workers can be forced to work overtime. No outsider can lead a labour union of SEZ workers. Chapter 5-B of Industrial Disputes Act that requires the industries to take the permission of the government to lay off or retrench workers in factories with more than 100 workers or instructs the government to consult the workers before taking any decision does not apply to SEZs. These rights have been won by workers after decades of struggle. And they have been denied to the workers in the SEZs through a single GO.

Should one seek a job in a SEZ?

It is very clear that this displacement inducing development, aimed at attracting big capital, is going to be in sway for some time to come. Opposition parities may make a ruckus when not in power, but they are not against it in principle. Even left parties, potential government makers in two or three states in the country have announced 'better' packages but have not come up with any alternatives to these ugly development policies. It means that a political practice challenging this destruction has not come to the mainstream. Perhaps it will not come. It is only the protests by the victims or protests by people's organisations, non-governmental organisations or political movements outside the mainstream which will stop this. We hope that this publication will help, to some extent, in supporting movements that would lead to the containment of this destructive development.

–Editorial, Special issue of Human Rights Bulletin, 2009

Caste and civil rights

Balagopal's reading of the entangled web of casteism in India was that caste is not only an instrument of power, prestige and arrogance in society, but it is also an important indicator of social backwardness, an identity for assertion and self respect, writes
Dr. K Satyanarayana

It was during the Mandal controversy in the 1990s, I happened to read Balagopal's article 'Anti-Mandal Mania' in *EPW*. I was a student at the university of Hyderabad at that time. When all the upper caste students were on strike opposing Mandal reservations, we did not know what to do and how to respond. Balagopal gave expression to our anguish and anger against the public display of caste arrogance. He strongly criticised a large section of the upper caste intelligentsia of Gandhian, liberal and left leanings that were united to oppose reservations for OBCs. This was how we felt as a small group of dalit students in an elite campus. I later came to know Balagopal both as a civil rights activist as well as a Marxist intellectual and closely followed his political, social and cultural analysis both in Telugu and English.

Balagopal is primarily known for his practice as a rights activist. Caste and dalit rights are some of the key issues that Balagopal spearheaded in his activism. He investigated a large number of cases of human rights violations of dalits and OBC castes in Andhra Pradesh and raised his voice against the dalit massacres, criticised anti-reservation agitations, campaigned against capital punishment awarded to two dalit youth and documented innumerable number of issues of upper caste violence and discrimination in his fact-finding reports.

Caste always remains a priority both in his human rights activism as well as in his legal practice. Even Balagopal's last article (published in *EPW*) is on caste-based reservations and it is an indictment of the Supreme Court's judgements on OBC reservations. He also spoke and wrote exten-

sively on Hindutva politics, arguing that the Hindutva agenda is anti-dalit and anti-minority and would result in the violation of democratic rights and the destruction of democratic values in society. While it is important to recognise Balagopal's dedicated efforts to investigate and publicise issues of caste and dalit/OBC rights, it is equally significant to assess his contribution to shape a new perspective on caste in the civil rights movement. Perhaps, Balagopal was the first person in India to conceptualise caste as a civil rights issue in the late 1980s and worked hard to incorporate a provision relating to this in the manifesto of Andhra Pradesh Civil Liberties Committee (APCLC) in 1992. He extended the scope of the civil rights movement by taking up violations of dalit and OBC rights and also reservations as a democratic right.

Balagopal was the first person in India to conceptualise caste as a civil rights issue in the late 1980s and worked hard to incorporate a provision relating to this in the manifesto of APCLC

As many of us pay their tributes to this crusader of human rights, we must record and analyse his theoretical contribution to the question of caste and dalit rights. I find this a big gap in the discussions that followed after the demise of Balagopal. I will cite the rethinking of the categories of a certain Marxist understanding in (hereafter APCLC) an organisation that has spearheaded the civil rights movement in the last four decades in Andhra Pradesh. K Balagopal, the then general secretary of APCLC, reflecting on his experience of human rights activism in 1996, admitted that APCLC, which was established in 1973, did not take up caste as a basic civil rights issue until 1991 (these arguments are a summary of Balagopal's lecture on "Caste and Civil Rights' Movement in Andhra Pradesh delivered on May 9, 1996, People's Democratic Front, at National College, Bangalore).

When Karamchedu massacre took place, the team of APCLC went to the village and conducted a fact-finding inquiry. The team held a press conference and demanded the arrest of the perpetrators of the killings. Later when a student asked Balagopal to visit his village to conduct a fact-finding inquiry into the killing of a Reddy person by a dalit, Balagopal responded in the negative. The explanation offered to the student was that the Reddys would have police connections while the dalits not since they are poor. So APCLC would intervene in the cases of dalit killings to force the state to act and deliver justice to the marginalised. The state-centric perspective reduced dalit killings to an issue of atrocity. Balagopal suggested that this inadequate understanding had to do with the Marxist origins of the civil liberties movement in Andhra Pradesh. In his understanding, dalit killings were seen as state violations of dalit rights. The APCLC's initial agenda was to take up issues of the suppression of workers and peasants by the landlords and the capitalists. According to Balagopal, the Karamchedu incident forced APCLC to rethink the categories of class and other economic categories and to accept caste as a basic civil rights issue. The APCLC had to rethink the presumed status of dalits as citizens in a liberal democracy. He drew on Ambedkar to suggest that dalits are not considered citizens. The denial of civic status to them, Balagopal pointed out, cannot be addressed within the liberal or Marxist conceptions of democracy. This is where the dalit movement provided the category of caste to analyse and understand the denial of civic status to dalits. Similarly, Balagopal cited the issue of anti-reservation offensive of the upper caste students against the decision of the AP government in 1986. In the old Marxist understanding, the protest is simply an issue of the public protesting against the government. According to Balagopal, it is the dalit movement that offered a new understanding that the anti-reservation offensive is an anti-dalit protest and that it is a display of upper caste arrogance and power. This rethinking on the question of caste really helped APCLC to include a specific provision in its manifesto in 1992.

Balagopal often argued that the civil liberties movement failed to recognise caste as an issue of human rights' violation until the Karamchedu massacre and the birth of dalit movement in Andhra Pradesh. He commented "the real learning for the rights movement however came with Karamchedu massacre of July 17, 1985, in which five dalit youth were hunted and killed and three dalit women raped by an upper caste mob. The assault cried out for recognition of a major dimension of suppression of rights, which the largely upper caste leftist activists of the civil rights movement had up to that time been happily indifferent to."

Theorising caste as a civil rights issue has several implications. The civil rights perspective of the rights' movement was state centric in the sense that it was the state and its institutions that were responsible for the violation of rights in society. Balagopal began rethinking of this perspective when Karamchedu dalit massacre happened. The debate on Karamchedu highlighted the centrality of caste as a system and its ideology of brahminism as the root cause of dalit massacres. Karamchedu brought the reality of untouchability and caste-based oppression to the fore. The role of caste in Indian society was debated and the dominant Marxist view that Indian society is class-based structure and the state is its centre was highly contested. There are large sections of our population who are living outside the villages as untouchables. These untouchables have no status as citizens or even as human beings. How does one conceptualise the rights of people who have 'no civic status', Balagopal had always asked. The concept of civil rights is inadequate to address the question of human dignity and self respect of certain social groups in our society. It is in this context Balagopal proposed that there are other institutions such as the caste system and its

ideology that cause violation of rights of the dalits in this society.

When the question of caste resurfaced in the public domain in post-independent India with the massacres of dalits in the 1980s, the issue of caste based reservations for the backward classes in education and employment came up for discussion. In 1986, the then Telugu Desam government (NT Ramarao was the chief minister) increased reservations for the backward classes from 25 to 44 percent based on the recommendations of Muralidhar Rao commission in 1986. The upper caste students protested against this decision of the government and organised a big anti-reservation agitation all over the state. Balagopal recounted that APCLC was asked to intervene to get permission to one such anti-reservation rally by the upper caste students. The argument was simple. A section of the students wanted to take out a rally against the government decision, the APCLC as a rights' organisation was expected to intervene to ask the government to allow the rally as it is a matter of constitutional right to freedom of association. In response to this request, APCLC replied stating that the upper caste students' protest rally was no doubt anti-government but these protests against reservations were anti-dalit in character and therefore undemocratic. These agitations were organised to display upper caste arrogance and power in order to retain their social and political dominance in society and that "there is little difference between anti-reservation agitations and 'atrocities on harijans'", Balagopal observed.

In a situation where a large section of intellectuals and many political parties opposed reservations based on caste to the backward classes, APCLC, under the leadership of Balagopal, resolved to declare reservations based on caste as a democratic right in a caste society. When VP Singh's government announced the implementation of Mandal Commission recommendations in August 1990, there was a huge opposition to this decision from the upper caste students and intelligentsia. While there was a lot of confusion and disagreement on this issue and particularly on caste basis of the policy among the liberal and Left intellectuals in the country, the consensus and the support to the 27 percent OBC reservations in central government jobs was quick in Andhra Pradesh because of the debate in 1986. Balagopal not only described the anti-reservation protest all over the country as 'Anti-Mandal Mania' but theorised freshly the role of caste in Indian society. Caste is seen as a social evil and a sin to be eradicated. This view advocated by Gandhi is widely shared by many even today. The liberal and Left progressive sections view caste as a traditional institution that needs to be destroyed in order to make our society modern. In both these views, there is no recognition of the role of 'modern' forms of caste in our elections and everyday life. When caste is viewed as a cultural form of an old society, one fails to see its contemporary social, political and economic role in our society. The contemporary dalit movement brought the new face and forms of caste into the public domain for interrogation. Commenting on this new role of caste, Balagopal argued that caste is not only an instrument of power, prestige and arrogance in society, but it is also an important indicator of social backwardness, an identity for assertion and self respect. He rejected the dominant perception of the liberal and Left political groups that caste is a pre-mordial identity of a backward society and that caste based identity movements of the oppressed spread casteism.

He rejected the dominant perception of the liberal and Left political groups that caste is a pre-mordial identity of a backward society and that caste based identity movements of the oppressed spread casteism

In his 'Anti-Mandal Mania' Balagopal asserted that "it is the political duty of the oppressed to use their caste identity" in their struggle for rights in this society. This comment is very significant as Balagopal recognised caste based identity movements as democratic movements articulating new visions of Indian

society. Given his understanding of contemporary forms of caste in modern India, Balagopal had been consistently opposed to any attempt to dilute the caste basis for reservations in India. He viewed the concept of economic criteria as well as the concept of 'creamy layer' advocated by CPI (M) and some other intellectuals as attempts to dilute the anti-caste thrust of reservations in India. In fact, he argued time and again that reservations were proposed in the context of the caste system and therefore, these provisions must be seen as enabling the oppressed caste groups to overcome caste disabilities in order to enter the public domains. He opposed and vehemently criticised viewing the reservation policy in the context of employment and merit.

As Balagopal rightly noted, identity is one of the key issues in the dalit movement. Dalit movement organised and consolidated diverse sections of the untouchable caste groups and posited a new 'dalit identity' based on untouchable caste solidarities. It raised the issue of representation of dalits in the people's movements and criticised the predominant representation of the upper castes and particularly Brahmins in most of the Left organisations and parties. Dalit intellectuals severely criticised the failure of the Left and other progressive organisations such as civil rights organisations and movements to develop leadership from diverse sections of the society including dalits. He described this view as a genuine one and argued that the disproportionate representation of the upper castes in the leadership of the people's movements is a serious hurdle to address and solve the caste question. He supported attempts to restructure APCLC's leadership to make it more representative of all caste and other social groups. The standard liberal and Marxist understanding is that it is wrong to talk about caste identities of the leaders in the people's movements. It was believed that the leaders of the people's movements are 'casteless' and therefore 'secular" and that they are individuals who gave up their caste, class and other parochial identities. The very attempt to think in terms of caste identities and caste based representation is viewed as perpetuating casteism and divisive tendencies among people.

Drawing on dalit thinking, Balagopal argued that caste identity is an important concept to understand Indian society and all its institutions including the people's organisations. When dalit intelligentsia proposed that the upper caste intellectuals should dalitise their life and they should 'disown' their caste privileges and critique their caste status , Balagopal often acknowledged publicly his caste identity as a Brahmin and genuinely disowned his caste privileges. He gave his job and all privileges of his education. He rejected wealth and power. He lived a simple life outside the brahminical framework. He is someone who recognised that even the secular and democratic intellectuals will carry their caste identities as long as this society remains a caste society. In this sense, Balagopal would always accept his caste identity and actively try to undermine his caste status and privileges bestowed on him because of this identity. It is the character of our caste society that attempts to claim Balagopal as a Brahmin even after he completely disowned his caste and disassociated himself from his community. He genuinely tried to live as one among the ordinary people such as dalits, minorities and adivasis. As someone commented, he experimented with his life and seriously tried to change his identity and live as a secular democratic individual. He may have failed to completely live outside the society of caste, class, gender and other inequalities and hierarchies. That does not mean that Balagopal will forever remain only as a Brahmin because of his birth. One cannot claim Balagopal as a dalit or an adivasi but he cannot be reduced to his Brahmin identity based on his birth. If some dalit intellectuals are making this argument, they are undermining the very possibility of change and therefore, of building a democratic society. The attempt to describe Balagopal as a Brahmin and pushing him to the upper caste camp will strengthen the brahminical caste society.

Balagopal often acknowledged publicly his caste identity as a Brahmin and genuinely disowned his caste privileges. He gave his job and all privileges of his education. He rejected wealth and power

The oppressed groups including dalits must recognise and respect Balagopal's contribution as a democrat and a sincere activist who worked for the expansion of democratic rights and values in our society. This is a very important task to advance the cause of equality in our society.

Balagopal's critique of law and judiciary is a rare attempt. He has extensively wrote and commented on courts and law. I will only refer to Balagopal's critique of law in relation to caste and dalit rights. When two young dalits, Chalapati Rao and Vijayavardhanam, were sentenced to death in Chilakaluripeta bus burning case in 1996, Balagopal campaigned against this punishment along with the dalit and other democratic forces. He argued that the judiciary should examine the social position of the individuals and the unequal socio-economic system while awarding punishments. Both Chalapati Rao and Vijayavardhanam belonged to the scheduled caste and were in the unorganised urban sector. They were forced to commit crimes due to their poverty and hunger. The award of death punishment to the two dalits, Balagopal pointed out, was a clear case of failure of the judiciary to address the responsibility of the society and its caste system. The committee against capital punishment was successful in converting the punishment from death sentence to life imprisonment.

In the Chundur dalit massacre(1991) case, Balagopal (along with K. Kannabiran) argued in the high court to start the trial in the special SC/ST court set up in the village. The upper caste accused used all their

political and economic power to stop the trial at various stages. The legal intervention of Balagopal was crucial to complete the trial after 13 years of the massacre. Chundur case is one of the first cases where the upper caste accused were awarded life imprisonment under the SC/ST (Prevention of Atrocities) Act, 1989.

Balagopal publicly and boldly criticised the Supreme Court on several occasions. The case of subdivision of scheduled caste reservations is one example. Balagopal supported the Madiga demand for the subdivision of SC reservations (15 percent) into four groups as A, B, C and D based on social backwardness and the percentage of population of each dalit caste group. The equal sharing of reservations in education and employment among the 59 dalit castes, Balagopal said, is a democratic right. The demand for subdivision of SC reservations was widely debated, all political parties accepted, the state assembly passed an act and the act was implemented. When a section of the scheduled castes (Malas) approached the Supreme Court, the act was declared unconstitutional stating that "the Constitution has intended that the SCs and STs are an indivisible, homogeneous entity". Balagopal pointed out that there is no evidence in the Constitution to argue that the Scheduled castes are a homogeneous group. He criticised the court for its failure to see social inequalities in the society and its refusal to examine the claims of discrimination and representation of the Madigas. He was very clear that the Supreme Court could have upheld the subdivision of reservations very much within the legal framework and offered a solution to resolve the inequalities among the oppressed caste groups. It was his view that when it declared the subdivision of reservations discourage merit, the Supreme court reiterated its age old view against reservations that reservations destroy merit.

In his last article to *EPW* on OBC reservations in central educational institutions in 2009, Balagopal attacked the Supreme Court arguing that "A sad fact about the Indian judiciary is that where the judges have felt urgent ideological compulsion they have not let mere canons of discipline stop them. Judgements by smaller benches have prised open what even a nine judge bench has declared to be the law to such an extent that most of the issues are again open for rewriting. The judgement in Ashoka Kumar Thakur vs Union of India is a case in point. Not only the court violated the legal principles but also reserved more than 100 percent seats to the upper caste students. In other words, the court subverted the very principle of social justice by preserving the upper caste monopoly in the higher educational institutions. Similarly, his arguments in the Muslim reservations case, Adivasi land rights and the case relating to the right to life in the context of police 'encounters' illustrate how law may be used in favour of the people and how law can be exposed for its limitations.

Balagopal stated that it is the dalit, feminist and environmental movements that gave a new and expanded understanding of rights by invoking the universal principles and social practice of the modern state to fight oppression and oppose inequalities

Balagopal read Ambedkar very closely and analysed his ideas in the context of Karamchedu incident and the dalit movement. According to Balagopal, Ambedkar observed that in this country wealth, knowledge and power are distributed on the basis of caste and therefore, they should be shared on the basis of caste. Highlighting the undemocratic character of Hinduism, Ambedkar opined Hinduism declares that social inequalities are created by God and therefore, it endorses inequalities theoretically. Islam and Christianity, in principle, propagate the view that all human beings are equal. Balagopal introduced to many of us Ambedkar in a simple language in his many lecture sessions. The influence of Ambedkar and dalit movement was so strong on Balagopal that it caused the shift in his conception of rights. Balagopal's use of 'human rights' is generally traced to his criticisms of Marxism and his disillusionment with the Naxalite movement. But it is equally important to note that Balagopal stated that it is the dalit, feminist and environmental movements that gave a new and expanded understanding of rights by invoking the universal principles and social practice of the modern state to fight oppression and oppose inequalities. In fact, one could argue that the conception of human rights of the newly established Human Rights Forum could be traced to the dalit and other identity movement than to the international debate. To put it in Balagopal's words:

"... the fact that the rights movement in Andhra Pradesh took birth in the agitations against police brutality upon the communist revolutionary movement has its own consequences... It is needless to say that if the human rights movement-as- such had originated somewhere else –say, in the campaign against untouchability- its organisational and ideological contours would have been entirely different."

Balagopal is one of the creative commentators of the questions raised by the dalit movement in Andhra Pradesh. He represented a democratic tradition that began in the aftermath of Emergency. He expanded that democratic tradition by incorporating the aspirations of dalits, women, minorities and adivasis. Andhra Pradesh is perhaps the first state to conceptualise "caste as a live instance of institutionalised denial of rights: the right to equal worth, opportunity and dignity." We live in a state where there was no Gujarat massacre and no Green Hunt. The contribution of democratic intellectuals like Balagopal is enormous for this situation.

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Balagopal
Support pillar for tribals

Securing the land rights of tribals in the agency areas of Andhra Pradesh formed a substantial part of Balagopal's activism. His long-standing friend Palla Trinadha Rao recounts how Balagopal secured thousands of acres of land for the tribals with his strong contention that there was no alternative but to reexamine the founding principles to protect the rights of tribals

The news of K Balagopal's demise had been a big blow to the adivasi movement and the struggle of the tribals. He had been a tremendous support to the tribals who silently cope with exploitation, oppression and violence in their daily lives. Balagopal drew attention to an issue that most people failed to understand about the ecological balance: it is the trees and not the forests that are important. The lone solution of resumption of forestland from the possession of tribals to rejuvenate forests does not address the questions like if forests have to be rejuvenated, why should only tribals sacrifice their land? Why can't the same forests be raised in revenue lands of the government, instead of crops? Why is that only tribals are asked to sacrifice for environment? Why can't every one of us do it? Who does the forest belong to after all?

Balagopal stood as a strong crusader for the adivasi movement for forest rights. More importantly, he also articulated how adivasi opposition to the Polavaram project that is destroying their lives and identity needs to be seen as a democratic demand. Adivasis would find it impossible to find a replacement for him.

Legal aid for Adivasis

Balagopal provided legal aid to several helpless tribals in the higher courts enabling them for retrieval of thousands of acres of alienated cultivable land from

he possession of non-tribals. Some of he judgements that were pronounced :ame with his intervention in such :ases. He particularly supported the ıdivasi movements struggling to get egitimacy for their land occupations n the areas of east and west Godavari listricts. One such incident was the ıgitation by tribals of Nelakota of Devipatnam Mandalam for 130 acres of disputed land. The non-tribals had fraudulently obtained settlement pattas for this land. The tribals resumed their rights over the alienated land during their land occupation movement.

The non-tribals filed a writ petition in the Andhra Pradesh High Court and managed to obtain orders in their favour with misrepresentation of facts. They then approached the district collector for implementation of these orders to evict the tribals from their lands. Balagopal filed a counter writ petition in the court on behalf of the tribals seeking a stay on non-tribal interference in the matters related to tribal land cultivation and obtained an interim order to that effect. The high court disposed off the case without affirming the rights of non-tribals and instructed both the parties to settle their disputes in local civil courts. In this way the tribals managed to preserve their land rights.

Bailing out tribals in false cases

As a lawyer, Balagopal showed himself as the only lawyer of the poor of his generation with a reputation for competence. His arguments in several cases evolved certain principles of jurisprudence/rules of law that are favourable to the tribals. Non-tribals in the agency areas of west Godavari district have been raising land conflicts arguing that the lands which are being cultivated by the tribals belonged to them as they are the settlement Pattadaars. It has been a common practice for the revenue authorities in the mandals to issue land protection orders in favour of non-tribals and further instructing the police to complement their action unlawfully. The police deliberately implicated the tribals in false cases as a way of evicting them from their lands.

After Balagopal's intervention, the Andhra Pradesh High Court gave a landmark judgement preventing the interference of the police and the Mandal revenue officials (MROs) in tribal land disputes. This enabled adivasis to protect thousands of acres of land under their cultivation in the agency areas of the state.

Land rights protection

In order to consolidate its vote bank, the government issued orders permitting permanent settlement of non-tribals in the agency areas in direct contravention of the provisions of land transfer regulations. Seeing the looming serious threat that a huge non-tribal population would pose to the very existence of the tribals, Balagopal filed a public interest litigation questioning the legality of the GO.

The government has been the greatest violator of the land transfer regulations in the agency areas. Instead of being a protector of the rights of the vulnerable poor tribals, it often allows by direct and indirect means, several avenues for non-tribals to lay claim to land. In one such case the government permitted commercial activities by the non-tribals in the RTC complex of Paderu. Every time such a violation was brought to his notice, Balagopal obtained the much needed stay order from the high court. Similar stay orders were obtained by him against the decision of the government to permit non-tribals to set up HPCL petrol pumps in Rampachodavaram. He argued that the principle of 'res judicata' (a case that is closed should not be opened again) couldn't be applied in cases related to tribals. The high court observed that the principle of 'res judicata' should be applied with caution and circumspection in adjudicating tribals' rights to land and other opportunities in agency areas. In the course of his defence of these rights, he also brought to discussion another important legal question impacting the right of the indigenous. Foregrounding the vulnerability in which the tribal community lived, Balagopal argued that the tribals were competent to prefer appeals against the orders issued by the special deputy collector under land transfer regulations, even if they were not parties in the original proceedings. He repeatedly informed the courts about the tactics of collusion in which one non-tribal filed suits against another non-tribal, keeping the actual tribal who cultivated the land out of the litigation. It was only at the appellate stage that the tribals made their appearance.

Balagopal always said that the land transfer regulations were framed with the intention of protecting the lands held by the tribals against the takeover by non-tribals. He emphasised the legislative intent of the regulations and repeatedly brought to the attention of the high court that these regulations allowed for special remedies and flexibility and departure from the regular procedure and principles of the rule of law. Balagopal succeeded in convincing the judiciary to re-examine the founding principles of law in the case of tribals and was instrumental in developing a new precedent in law. In such cases he argued that there was no alternative but to reexamine the founding principles to protect the rights of tribals.

> He particularly supported the adivasi movements struggling to get legitimacy for their land occupations in the areas of east and west Godavari districts

Yet another recurring issue was the jurisdiction of the civil courts in plain areas to adjudicate civil disputes arising in the agency areas. Balagopal argued in the high court that the AP Civil Courts Act was

barred from entertaining civil matters in agency areas and that the Act had no jurisdiction in such areas. Following this, in 2006, the high court passed a judgement that civil courts are barred on grounds of territorial jurisdiction to adjudicate disputes arising out of the scheduled areas and that agency courts alone have the jurisdiction. Using this judgement, Balagopal questioned the legality of the implementation of the decree granted to a non-tribal by the civil court in Rajahmundry. Here the civil court, despite having no jurisdiction to adjudicate this case, had directed the handing over of land in six tribal villages, including the forest land in Mantur estate to the non-tribal. The interim orders passed by the high court in these cases enabled the tribals to protect nearly 4,000 acres of land.

Balagopal consistently questioned and challenged inside and outside the court the state's violence on tribals. He conducted fact finding inquiries into the atrocities committed by the forest officials

Balagopal consistently questioned and challenged inside and outside the court the state's violence on tribals. He conducted fact finding inquiries into the atrocities committed by the forest officials when they burned down entire hamlets of the tribals. The gutti koya tribals who had migrated from Chhattisgarh to Khammam to live in the agency areas were being harassed and evicted by the forest officials. Balagopal questioned the legality of the actions of the forest officials in evicting these displaced tribals. The tribals got a breather with the high court order in their favour.

This eminent human rights lawyer questioned the anti-adivasi activities of the police in the name of anti-Naxal operations in Dandakaaranya and Nallamala forests. Through his fact findings into many cases where the tribals were charged with the 'crime' of being Naxalite sympathisers, he exposed many police atrocities.

Standard bearer

Balagopal strongly opposed the move of the government to form a tribals battalion in 2006 similar to the adivasi private army under the leadership of Mahendra Karma in Chhattisgarh. His argument was that it would create disturbance, lead to suppression of people's rights and enable the government to inflict violence in the name of development. Similarly, he participated in the campaigns against the rape of tribal women in Vakapally area.

On the issue of large-scale deaths of tribals due to unavailability of public healthcare, Balagopal led fact-finding teams to enquire into these deaths which brought out the gross negligence and indifference of the government towards the marginalised. Based on such findings, he filed public interest litigation raising these issues. The PILs were successful as the high court issued directives to the AP government to provide healthcare to the tribals in the agency areas of Adilabad district.

Balagopal filed many petitions on behalf of the tribals related to the implementation of the Panchayat Extension to Schedule Area (PESA) Act which enabled tribal autonomy over the local governance in the scheduled areas. He challenged the move of the Andhra Pradesh state government to turn Bhadrachalam into a township for 'development' on the ground that it would impede the self-governance of the tribals and obtained a stay order from the high court. Similarly, he also challenged the acquisition of land and rehabilitation process that the government undertook without consent of gram sabhas and Mandal Praja Parishads in the scheduled areas. He also managed to prevent the acquisition of tribal land under the Polavaram project in a few cases.

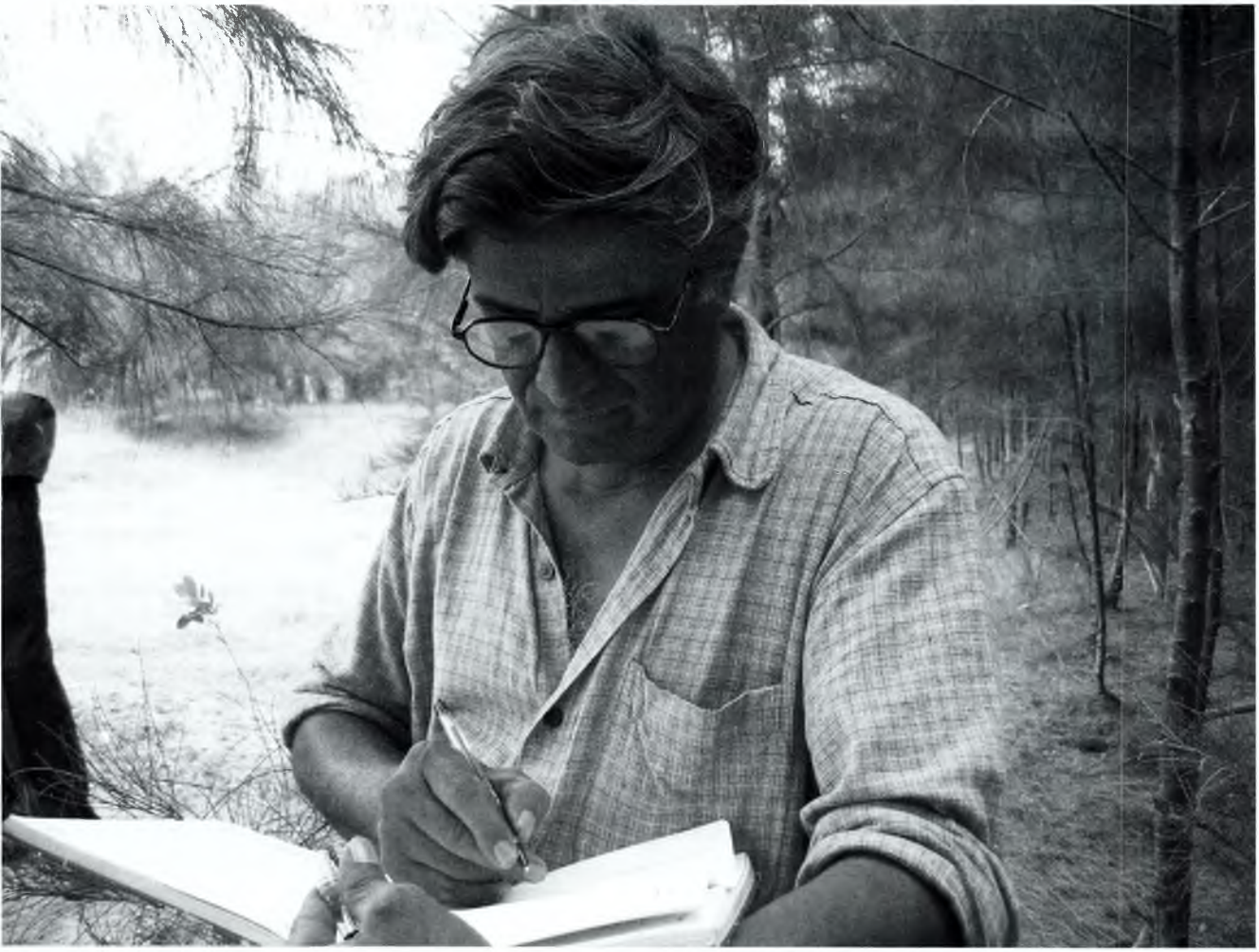
Priority to campaigns

Even while arguing the cases of tribal rights violations, Balagopal never assumed that the courts would offer comprehensive solutions to the problems faced by the people. He saw courts as one of the instruments available to the movements, that too in a few suitable cases. That is the reason why he preferred campaigns for tribal rights and issues and expended much of his energy in such campaigns. He participated in many meetings in tribal areas from Adilabad to Srikakulam to educate the tribals in the language of rights.

He participated in many rallies and dharnas organised by the tribals against the anti-adivasi policies of the state and expressed his solidarity. His support was invaluable in several campaigns of the tribals against the government move to repeal the 1/70 Land Transfer Regulations, displacement of adivasis under the Polavaram project, bauxite mining project, and forestry projects with the financial assistance of the World Bank. He not only wrote several articles on the anti-tribal policies of the state but also participated in campaigns and motivated the tribals.

Balagopal's aims, practice and thinking are admired by many. But in this era of globalisation it is difficult to emulate his life of integrity and ethics. Having known him for the past 15 years I am unable to accept the fact of his demise. The only real tribute that a tribal rights activist can pay, I think, is by shaping one's practice in accordance with his vision and endeavour.

–The author is a tribal rights activist and lawyer supporting the cause of tribals in Andhra Pradesh



Balagopal
A one in a century rights activist

K Balagopal metamorphosed from a committed believer in the Naxalbari movement to a human rights activist, defining the terms of his transition. In doing so, he rejected the choice of social transformation by violence, opting instead for such change through a struggle for rights. But the problem is that rights campaigns by themselves will not lead to social transformation. As a lawyer, Balagopal showed himself as the only lawyer of the poor of his generation with a reputation for competence. The poor knew that he was about the one lawyer who believed in their right to life. In his competence that equalled the lawyers of the affluent he was visible. Balagopal made the court conscious that he was appearing for a citizen or a collective of citizens for whose benefit the Constitution was created.

Writing about Balagopal is like scripting the history of the human rights movement. For him the Universal Declaration of Human Rights was the announcement of the rights that inhered in the people and the societies

in which they lived. The third preamble to the Declaration "if man is not to be compelled to have recourse as a last resort to rebellion against tyranny and oppression, that human rights be protected by the rule of law" became the focus of all his human rights activities. Writing about him involves penning his metamorphosis from a committed believer in the Naxalbari movement to a human rights activist and he defined the terms of his transition. The movement came at a period of crisis in the late 1960s and the only method governments knew to tackle unrest was to unleash repression. Pre-constitutional laws intended to suppress anti-colonial struggles were all adapted by the President of India by way of abundant caution. By the time the Naxalite movement arrived at Srikakulam, the Constitution was around 18 years of existence; Nehru, "the fixed asset" we inherited, was dead in 1964 and, after some delays, the dynastic succession was found to be the proper thing for the country. Post-independence, the Marxist-Leninist (ML) movement threw a comprehensive challenge to the Constitution and its value system.

The Madras Suppression of Disturbances Act of 1948 adapted belatedly and of doubtful validity provided the fig leaf of legality for the government of integrated Andhra Pradesh (AP) to be used against the nascent Naxalite movement. Of interest is the fact that the same law that was introduced to contain the Telangana armed struggle was adapted by the President and used to prevent the spread of the Naxalite movement. The forest areas from Srikakulam to Adilabad were declared disturbed areas; the phenomenon of "encounters" was brought on to the agenda. The brutal methods employed remained unnoticed and a few hundreds were arrested in the Srikakulam tribal areas. More than a thousand activists were shot before the proclamation of Emergency in 1975. Warangal produced many fine intellectuals at this time who confronted the repression, making that town the storm centre of revolutionary activity. Varavara Rao, who belongs to Warangal, played a pivotal role in the movement. It was the pedagogues in AP who led this movement which spread like forest fire.

In radical politics

After the Emergency, in 1977 this gross impunity was targeted, first by the Jayaprakash Narayan (JP) appointed Tarkunde Committee, followed by the Justice Bhargava Commission of Enquiry, which was later aborted by the Chenna Reddy ministry. It was during this period that Balagopal entering the regional engineering college, Warangal, witnessed the brutality employed by the police against Naxalites. This set the course of his future. He became an ardent adherent of the politics of the Communist Party of India (Marxist-Leninist) (People's War Group) [CPI(ML) (PWG)] and later he joined the Andhra Pradesh Civil Liberties Committee (APCLC). In 1983, he became the general secretary of the APCLC. At around this time he was implicated in the police inspector Yadagiri Reddy murder case and was arrested under the National Security Act (NSA). This was later withdrawn.

Balagopal's early writings, incisive and exquisite, show that he was of People's War persuasion. Even after he came into the civil liberties movement, his style was polemical, and he was always unsparing in his criticism. He extrapolated the Marxist polemical style into the civil liberties movement. I told him so, though then I was perhaps alone in feeling this way since most of the members in the APCLC were from the outer fringes of various factions of Naxalites. This zero tolerance style can be perceived in his reviews of AR Desai's compilation of peasant struggles or of feminist writings on the Telangana armed struggle and encounters. Had he continued in the ML party, he would have been the leading Marxist-Leninist ideologue of the Maoist movement. Or perhaps he would have been apprehended and shot, to be included in the roll call of dead/martyrs with which Gaddar's performances always begin (yerrarani jenda eniyaloo). The ML party needed in the civil liberties front a powerful mind to confront the establishment and broadcast the atrocities perpetrated on them. Writing about these would also help spread the movement.

Although Balagopal never lost faith in the politics of social transformation, he found the ML party's arbitrary political practice objectionable. After the break with the politics of the People's War Group, he could no longer reconcile the vision with arbitrary practices. The vision demands acceptance of all the distortions. He rejected Marx because the system based on his thought produced distortions even after the Soviet and east European experience as in China. He appears to have had in mind an inchoate idea of social transformation which would be catalysed by people trained in rights advocacy who would discipline the Right, the Left and governance. To my mind, he was moving closer to the ideas of Tom Paine that the government, like a dress, is the badge of lost innocence. He began to believe in the total empowerment of the people where leaders would only exercise the delegated authority of the people. The existing representative system, in this view, strengthened perhaps by the 73rd and 74th amendments, could be the instrumentalities through which peoples' empowerment would manifest it.

An unsettling of faith

In an interview published in *Prajatantra* in March 2001 on the Telugu novel *Rago,* Balagopal expressed the view that the Marxist worldview is deficient in certain respects and that his philosophical investigations had reached a certain satisfactory stage. However, having said that, he never completed the task of elaborating upon his philosophical position. He was not the first either to make such a statement. Before him, MN Roy, expelled from the Comintern (the Third International), talked about transcending Marxism and formulated his thesis paving the way for the emergence of the radical humanists. Although this group did not make any headway in politics, it was prominent in the civil liberties movement. VM Tarkunde, advocate CT Dharu from Gujarat, and MV Ramamurthi from Andhra come to mind.

Communist parties, whether they are parliamentary or "extremist",

ave a tradition of intolerance of iticism and of difference of opinion ithin the party. Balagopal therefore ad to part company with the PI(ML) (PWG) for his unsparing iticism of the party. In a collection f writings published in Telugu in 998 on The Three Decades of axalbari (a collection of essays here Manoranjan Mohanty, G aragopal, Venugopal, and Varavara ao, among others, were contribu-ors), Balagopal also wrote a piece ntitled "The Darker Side of the Jaxalite Movement" *(Cheekati onalu)* in which his first sentence as: "There are many who would ke to write about the Naxalbari ovement, but I am going to write bout the darker side of the move-ent". His essay alone, among the rticles published in the collection, vas forthrightly critical of the arbi-rary political practices of the move-ent. This called for a very high rder of intellectual courage and the utspokenness of his style unfailingly evealed to the reader the seamy side f their political practice. It is remi-iscent of the collection of essays by eople who were drawn into the ommunist movement edited by Richard Crossman (1949) entitled The God that Failed'. Just as 'The God that Failed' did in the 1950s, Balagopal's essay created a stir, an nsettling of faith in some of the sym-athisers and others who had hopes in the movement. But unlike 'The God that Failed', Balagopal's essay did not have any lasting impact nor did his departure from the movement leave a lasting impression on the movement or bring about any visible change towards the Maoists among the people with whom he worked.

Sceptical about the Marxist world-view, Balagopal moved away from the idea of a revolutionary restructur-ing of the society in Marxist terms where violence plays the midwife. He also moved away from Mao's thought summed up in a very catchy apho-rism "Power flows from the barrel of a gun". From a creative figure of speech used by Marx to an emphasis on power from the barrel of the gun was a quantum leap.

Balagopal did not opt for social transformation by violence. He opted for social transformation through a struggle for rights. The problem is that rights campaigns will not lead to social transformation by themselves. When we talk about rights we are using the concept of right in the con-text of state power, and in the context of social domination in hierarchical societies by the higher castes in the social order. Though Balagopal's criti-cal essay led policemen to purchase quite a number of copies of the book, it did not lessen the attack on human rights activists.

A great rights activist

The characteristic response of the PWG was polemical badgering – not introspection and correction. The attack from the party made it impos-sible for him to continue in the APCLC without friction and with dignity. But Balagopal's career as a human rights person did not come to an end. He founded the Human Rights Forum in 1998 and by the time of his death he became known as one of the finest defenders of human rights in the country. This break made him a great rights activist. I am not aware, however, of any writing of his comprehensively setting forth his views on rights.

One thing I know is that rights by themselves do not have a "transfor-matory" character. The Declaration of Human Rights 1948, in the third Preamble to the Declaration states that if these rights are ignored, gover-nance will become tyrannical and the response is rebellion and that obser-vance of these rights will ensure a stable government. Such an enuncia-tion has an overtly political content. These are in the nature of prescrip-tions for the political stability of states. The stress, since the second world war, has been for a gradual and slow qualitative transformation in the state and its governance. Rights advocacy alone may not help bring-ing about social change, although it would create the awareness of rights and justice that will strengthen move-ments for social transformation. In fact, human rights activity is vibrant when it is linked to the politics of a party with a vision or in the fight against authoritarianism and for a return to liberal democracy.

Balagopal was very close to me. Our association started in 1983 when he was elected to the APCLC as its general secretary and we were toget-her until 1993 when after around 15 years I stepped down from the presi-dent's position. We met almost every day during the 10-year period. From 1994 when I was elected president of the People's Union for Civil Liberties (PUCL), we were operating in the same sphere and we used to meet often and exchange notes. After his entry into APCLC we continued to fight human rights violations with more determination. He was pos-sessed of a fine mind that command-ed his pen. He first assisted me in the Warangal Enquiry Commission against police excesses where they beat up some elected representatives. It was, I think, in 1997. By the time he had acquired a law degree from Bangalore. It was in Warangal that I got him his first black coat that would enable him to sit beside me and assist me. I later moved for his enrolment as an advocate and he helped me in the Bangalore conspiracy case (1992-99) against Naxalites which ended in a total acquittal.

When the Deendar Anjuman was banned in 2000 (and the ban extend-ed in 2002) under the Unlawful Activities Prevention Act 1967, we appeared together before the tribunal constituted under the Act. We had sittings at Hyderabad, Bangalore and Delhi. That matter is pending in the high court.

Mauled by police

Balagopal was mauled and brutally attacked by the police quite a few times but this never demoralised him. I distinctly remember when the first chairman of the National Human Rights Commission (NHRC), Ranganath Misra along with Justice Fathima Beevi held their sitting in Hyderabad in 1995, they visited Warangal for a day. When the Commission was holding the sittings in one room, in another Balagopal was pummelled in the presence of people present there. The press reported the fact and the chairman was hesitant of taking cognisance of the fact. In the evening I called the chairman about the incident and he was not willing to proceed against the police. He was going to Nalgonda the next day. I told him I would be at

Nalgonda too. When I was asked to sit next to the members, there was a protest and I went down from the elevated platform. I was also surrounded and fisted in the presence of the chairperson and the other member. The chairman of the NHRC saw this but, helpless, left in a huff. Anyway, in the full dressed enquiry in the guesthouse at Hyderabad on four encounters they held that three encounters were homicides, required investigation and prosecution, and in one incident they held we could not prove a case. The state government never complied with the report.

A people's lawyer

We have been challenging encounter killings at various levels. In 1997 we secured a judgement, which recognised that these killings were homicides and needed examination. Later a full bench reversed this decision with some wishy-washy reasoning and so it was referred to a larger bench of five judges. We argued and placed our views before the larger bench along with other colleagues in 2008. The full bench returned a unanimous verdict that killings need to be investigated after the crime is reported. This case is pending in the Supreme Court. Balagopal and I appeared together in all these matters.

Balagopal was the only poor people's lawyer of his generation with a reputation for competence. People knew that he was about the one lawyer who believed in their right to life. He wrested the right to audience from the court. In his competence that equalled the lawyers of the affluent, he was visible. He made the court conscious that he was appearing for a citizen or a collective of citizens for whose benefit the Constitution was created. His was a radical approach to the Constitution but he was bound by institutional norms. He accepted the law as defined by precedents but did not stretch the limits of the principle or break new ground to innovate a principle to advance the jurisprudence of the poor. My view, on the contrary, has always been that appearing for the poor and as lawyers for social change one should always attempt to break new ground or innovate and strive for its acceptance. We must make the contentions and the conceptions we innovate familiar in courts if they are to be accepted later. The legitimacy of the status quo and against social transformation is so strong in courts that it becomes necessary for lawyers of the poor to acquire the competence to contend with the opponents of social change. What is important is that poor people should be able to engage competent lawyers, more competent and much more committed than the lawyers for the affluent. He built up a credibility, which assured respect from judges. Balagopal was a person of tremendous physical and moral courage. He remained untouched by fake encounters only because of his moral stature and fearlessness.

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Balagopal's sudden death is a setbac to this tradition.

We had initiated the trend of look ing at law and the Constitution quit radically and Balagopal carried thi trend forward and argued in a wa that would embarrass socially sensi tive judges. This jurisprudence o insurgence that we brought on to th agenda received a setback with hi untimely death. When CV Subba Rac of the People's Union for Democrati Rights (PUDR) was alive, he gave me the book *Law and the Rise of Capitalism* by Michael E Tigar and Madelein Levy during one of my visits to Delhi It was here I read about the concep of jurisprudence of insurgence. They illustrated this by Fidel Castro's attempt at stalling Batista's coup by filing a proceeding before the Cuban court for the arrest and prosecution of Batista for attempting to engineer a coup and which was dismissed. Batista successfully engineered a coup and a few days thereafter Fidel Castro was produced before the court for trial of a conspiracy. Today Castro is with us as the leader of the only socialist country after surviving innumerable attempts of assassination.

A long time back, when I was busy with the commission of enquiry chaired by Vashishta Bhargava in 1978-79, I used to discuss the politics of the communist movement with comrade P Sundarayya. One day I told him that it was time for him to draw a balance sheet of his life and I asked how he proposed to do that. He was old and after talking about the split in the movement he told me that several brilliant young people were shot and, tears welling in his eyes, continued "and for the people to produce even one such leader it might even take a hundred years. That would be the scale of setbacks".

That statement of Sundarayya now comes back to me. To find another like Balagopal might take another 10 decades. A brilliant candle extinguished before its time. I weep for Balagopal – he is dead.

–K G Kannabiran is an eminent human rights lawyer and the national president of the People's Union for Civil Liberties

November 14, 2009

IN MEMORIAM

Quintessential intellectual-activist

■ PA Sebastian & Bernard D'mello

K Balagopal's role as a civil liberties and democratic rights activist had two phases – the first, when the opening sentence of the Communist Manifesto and Marx's last thesis on Feuerbach guided his life's activity, and the second, when, even as he gave up on these precepts, he continued in the tradition of practical humanism.

K Balagopal passed into the annals of history on October 8, 2009 at the age of 57. He was a doyen of the civil liberties and democratic rights movement in India. As a student, Balagopal was not involved in public activities. He did his post-doctoral research at the Indian Statistical Institute, New Delhi. While at the institute, he wrote a paper on a subject in mathematical statistics which was widely acclaimed in specialist circles. At the time when he had huge prospects anywhere in the world in his specialised field of study, he made a conscious decision not to tread the careerist path to personal-professional success, and came back to Andhra Pradesh to join the Kakatiya University in Warangal, among the most backward districts in the state. Simultaneously, he joined the CL&DR movement with fervour and devotion.

The radical

In 1983, the Andhra Pradesh Civil Liberties Committee (APCLC) elected him as its general secretary, a post he consecutively held until he resigned in 1998. Balagopal underwent several ordeals during this phase, for instance, the Andhra Pradesh police abducted and blindfolded him and took him to an unknown destination. In his presence the policemen discussed how and when to kill him and the details of the press release which they would issue claiming that he was killed in an encounter. He was imprisoned more than once in the course of which he lost his job at the Kakatiya University. He braved all and continued to document the character of state power, the brutality, the lawlessness, and the ruthlessness with which it dealt with the Naxalite/Maoist movement in Andhra Pradesh.

Balagopal travelled throughout the length and breadth of India, not as a tourist but as a member of joint fact-finding teams. The teams documented the violations of civil liberties and democratic rights and presented them before the general public in original. All the fact-findings focused on what is popularly known as human rights. "Human rights" effectively mean facilities which will enable human beings to live with dignity and self-respect. And nobody can live with dignity and self-respect unless one has food to eat, clothes to wear, a house to stay, resources at one's disposal to educate one's children and wherewithal to get access to medicines and medical treatment when one and one's family fall ill. The vast majority of people in India do not have these facilities. Devoid of such provisions, ordinary people ultimately rise in rebellion and the government unleash power and the armed forces on them. This is what the fact-finding teams reported on. They reflected the reality of India.

Another aspect which the fact-finding teams dealt with was secularism. The last joint fact-finding team, of which Balagopal was a member, went to Karnataka and Orissa to study, bring to light and expose the attacks on Christians. They published a report in March 2009 titled "From Kandhmal to Karavali: The Ugly Face of Sangh Parivar".

The CL&DR movement in India has two distinct stages. The first one started in 1936. National leaders like Jawaharlal Nehru, Rabindranath Tagore and Sarojini Naidu came for-

ward and formed the Indian Union of Civil Liberties (IUCL). The objective of the IUCL was, in the words of Nehru, to document and present before the general public the violations of CL&DR which took place in the course of the freedom struggle. This stage came to a halt in 1946 when Nehru formed the interim government. The second stage had its beginning in the early 70s when organisations like the APCLC and the Association for the Protection of Democratic Rights (APDR) were formed. It also brought to the fore the Naxalite/Maoist movement which attracted a lot of youth in India. Thousands of them were, legally or illegally, put behind bars, were tortured and their bodies were mutilated. Some of them were made to stand against walls and shot dead point blank. This was hardly known to the Indian people. The mainstream media first covered it when Khushwant Singh wrote about it in the *Illustrated Weekly of India* during the Emergency. The history of this second stage will never be complete without Balagopal.

Whether it was the violations of the democratic rights of the poor peasants, agricultural labourers or the tribals by the rural gentry or by the police in encounters and deaths in custody, Balagopal and his comrades were among the first to document and bring to the notice of the public the reality

Whether it was the violations of the democratic rights, including the right to life, of the poor peasants, agricultural labourers or the tribals by the rural gentry in Adilabad, Anantapur, Karimnagar, Warangal or Srikakulum or by the police in encounters and deaths in custody, Balagopal and his APCLC comrades were among the first to document and bring to the notice of the public the reality.

But more than that, in Balagopal the movement for CL&DR had found the quintessential intellectual-activist. Unlike the usual run-of-the-mill Marxist academics -- with either their empirical paraphernalia, or high theory in search of doubly free wage labour, re-investment of the surplus value, and the development of the productive forces – Balagopal's writings depicted social relations in the course of people's struggles (in the process of transformation) in Andhra Pradesh, seen through the lens of the exploited, the dominated and the oppressed.

Indeed, the mode of production debate that appeared in the "special articles" section of the *EPW* magazine had – as the very perceptive RS Rao of the Sambalpur University puts it more than two decades ago – not a footnote to the agrarian class struggles then under way. The latter were covered in the "commentary" section of the weekly, written by Balagopal – from Punjab, Haryana, Bihar, Andhra Pradesh and West Bengal, among other provinces, precisely the areas of "capitalist" or "semi-feudal" relations of production in Indian agriculture. Indeed, some in the left establishment were upset at the *EPW*'s then editor, Krishna Raj's decision to treat Balagopal as a regular correspondent.

But Balagopal continued on the radical trail nonetheless. Following in the tradition of the Communist Party of India (Marxist-Leninist) (People's War Group), he did not split hairs on whether the very poor in rural India were "agrarian proletariat" or "landless peasants" or whether the rural upper-upper crust were "capitalist' or "semi-feudal" landlords, or whether the moneyed section of the actual cultivators, those who actually worked the plough so to say, were capitalist farmers or rich peasants. The concrete had to be changed, not debated.

As RS Rao once put it, the first sentence of the Communist Manifesto and the eleventh thesis on Feuerbach were always uppermost in Balagopal's writings of those days. He captured police brutality unleashed on the oppressed in a way few writers had ever done – through the eyes of ordinary people who had witnessed such savagery.

Through the eyes of the oppressed

Being the multicultural, multilingual and, indeed, multinational country that India is, we seldom get a feel of the best of what appears in the various regional languages. The renowned Telegu poet Varavara Rao's poetry has often been proscribed by the powers-that-be in Andhra Pradesh; indeed, unbelievable as it may seem, the famous Secunderabad conspiracy case in 1974 was against poets and their poetry. Balagopal wrote a hard-hitting piece (*EPW*, March 28, 1987) when a collection of the poems that Rao wrote when he was in jail in the mid-1980s was banned by the NT Rama Rao-led government; surely it touched a raw nerve somewhere in the corridors of power. In this piece Balagopal translates a poem entitled "butcher". The background to the poem is the tale told by a Muslim butcher who was witness to the killing of a radical youth in Kamareddy town on May 15, 1985. The youth was apprehended by the police when he was going around asking shopkeepers to pull down their shutters in protest against "encounter" killings. The police took the boy to a busy crossroads, and there, in the public view, beat him to pulp with their rifle butts the way people who are afraid of a poisonous snake crush it to death with weapons readily at their command. Varavara Rao's poem – the thoughts are the butcher's, who deposed before the sub-divisional magistrate at Kamareddy – as translated by Balagopal, reads:

I am a vendor of flesh
If you want to call me a butcher
Then that is as you wish
I kill animals every day
I cut their flesh and sell it.
Blood to me is a familiar sight
But
It was on that day I saw with

my own eyes
The real meaning of being a butcher
I too take lives
But never with hatred
I do sell flesh
But I have never sold myself
To me who kills goats every day
The meaning of the cruelty that
Combines and conspires to take a life
Was revealed that day.

Balagopal also wrote about the ruling classes, their conflicts and crises. The piece he wrote at the passing away of Indira Gandhi (*EPW*, March 23, 1985) might be an apt one to mention, now that it is 25 years since she left the scene, and the stenographers of power are bringing out their paeans of "India's Iron Lady". There a paragraph in the concluding section of Balagopal's article that goes like this:

By the time of her death she had completed the destruction of the ideological overgrowth of the system. There is no more talk of socialism, which is declared to be alternatively un-Indian and outdated; as for land reforms, there is no more land to be distributed, as everybody knows; secularism she laid bare by making it a point to visit every temple, every dargah, every church and every gurudwara she found on her way, and even more blatantly by inciting Hindu communalism in Jammu and Muslim communalism in Assam; liberal democracy was buried by the forced charade of elections in Assam, and the incredibly undemocratic Terrorist Affected Areas Act, following upon the massacre in Amritsar (parenthetically, it is the final sign of the demise of the liberal intelligentsia of this land that such an Act is allowed to govern 15 million Punjabis without more than a murmur of protest elsewhere); anti-imperialism is a virtue that she herself regarded with a certain amount of contempt in her last days, though Moscow and its fellow-travellers continued to credit her with it.

The reformist

Balagopal's role as a CL&DR activist had two phases as this movement in India itself had two stages. In the first phase, he passionately and incessantly wrote and spoke about incidents which were directly or indirectly linked to the Naxalite/Maoist movement in Andhra Pradesh. At a later stage he developed differences with the movement which led to his resignation from the APCLC in 1998 and his forming a different organisation called the Human Rights Forum.

This marked a basic shift not only in Balagopal's priorities and world view but also in the way the authorities treated him. He was no more an enemy of the state. The intellectuals of the establishment sang paeans in his favour. Balagopal himself began to treat the violence of the state and the counter-violence of the Communist Party of India (Maoist) on an equal footing. His basic analysis tended to show that the violence of the state was preceded and provoked by the violence of the CPI(Maoist). This is a topic which has been raised and debated on several occasions in history. For example, during the Vietnam war there were some who morally equated the guerrilla actions of the Vietcong with the war crimes committed by the US armed forces. Responding to this, Bertrand Russell said that it was untenable to find moral equivalence between the violent actions of the aggressor and the aggressed. Those who claimed that they were equidistant from the aggressor and the aggressed were on the side of the aggressor – it was their class bias that made them assess the two with the same yardstick. The violence of the state forces in Chhattisgarh, Jharkhand and Orissa and the violent resistance of the tribals (under the leadership of the CPI(Maoist)) whose land had been forcibly taken, livelihood destroyed and who had been thrown into the wilderness of destitution, despair and hunger cannot be morally equated.

In the second phase of his activism, Balagopal had given up on the Communist Manifesto and the last thesis on Feuerbach as guides to his work. However, this does not negate his historic contribution to civil liberties and democratic rights

With the change in his world view, Balagopal's writings too lost their forcefulness; the poignancy however remained. For instance, writing on the "Maoist Movement in Andhra Pradesh" in the *EPW* special issue on the "Maoist Movement in India" (July 22, 2006) he lamented the loss of the lives of the "organic leaders" of the "most oppressed" as a result, in his view, of the violence by the Maoists and the state's brutal counter-attack. "The daily loss of such persons is a sacrifice the oppressed cannot be called upon to put up with indefinitely", he wrote. Other than the implicit advice to the Maoists to renounce violence, Balagopal does not suggest an alternative. The alternative of the Maoists extending their mass base through non-violent means to the point where the ruling classes are forced to concede state power to them simply does not exist, as Balagopal, more than any other intellectual, knew better. (He, more than anyone else, knew the whole truth about state violence against the legal mass movement in the districts of Karimnagar and Adilabad in the early years of his first phase of CL&DR activism.)

In the second phase of his activism, Balagopal had given up on the Communist Manifesto and the last thesis on Feuerbach as guides to his work. However, this does not negate his historic contribution to civil liberties and democratic rights. Indeed, as we stated earlier, the history of the second phase of the CL&DR movement would be incomplete without an account of Balagopal's role in it.

–The authors are with the Committee for the Protection of Democratic Rights, Mumbai

Voluminous praise for the volumes

The book illustrates the lackadaisical Indian judicial system, preceded by extensive research on the functioning of our laws, substantive and procedural, with the sole objective of helping reduce delays in court trials, writes
Suresh Nautiyal

Court delays are common the world over for various reasons, but in India these delays are bound to happen -- the foremost reasons being the sluggish, indifferent and lazy system and an ill-equipped judiciary to handle a large number of cases. The insensitivity of the State and procedural wrangles only add to the woes. It would be appropriate here to note that nearly 30 million cases remain pending in the Indian courts as the justice delivery system in the country remains painfully slow just because we do not have adequate number of judges and adequate logistic support system to deliver justice in time. In fact, a large number of the accused languishing in the jails never find a way to freedom as they pass away before their trials actually take off. Isn't it a shame on a democracy with one of the best Constitutions?

The two-volume book *Justice, Courts and Delays,* researched over several years, not only includes facts and their analyses, but also illustrates how in the judicial system delays are caused, procedures misused and distorted. The research included not only a study of the material in print, but also included a number of field surveys, and extensive discussions with the legal fraternity. It is a writing preceded by extensive research on the functioning of our laws, substantive and procedural, and justice system, with the sole objective of helping reduce delays.

Justice, Courts and Delays -- authored and published by Senior Advocate Arun Mohan and distributed by the Universal Law Publishing Company -- throws light on the causes of delays to a great extent with examples drawn from the real life. The volumes cover almost entire ambit of law and attempt to analyse the causes behind court delays, and come forward with practical and possible solutions. Arun Mohan, a senior advocate of long standing, has been a trial lawyer with a busy practice till 1996, when he shifted his focus to this work -- <Justice, Courts and Delays> and 1998 onwards, devoted a major portion of his time to it. Mohan is a veteran lawyer who has practised in a wide field of litigation. With practical experience of what goes on in courts and how parties suffer by delay, he took upon himself the task of compiling this work which, unlike other works on law, does not stop at expressing concern but goes further to put forward solutions that are affordable, and which will be of help to anyone and everyone concerned with a court case.

Title:	Justice, Courts and Delays Vol.1 & 2
Author:	Arun Mohan, Senior Advocate
Publisher:	Arun Mohan
Distributor:	Universal Law Publishing Company Pvt. Ltd., Delhi
Price:	250 (for both volumes)
Pp:	over 2000

BOOK REVIEW

Dedicated to the cause of justice in the country, the lowly priced (just rupees 250 for more than 2000 printed pages) two volumes are written in a language which a non-legal person involved in a court case can well understand. The book is so important that Dr Justice AS Anand, former CJI, released the first two volumes of the four volume series book. Justice KG Balakrishnan, CJI; law & justice minister Dr Veerappa Moily and attorney-general GE Vahanvati were also present at the occasion.

Primarily, the book seeks to present solutions on how the delay in justice delivery could be avoided. Its two volumes explain the issue of delay for a range of readers and put forth practical ways to address the concerns associated with and arising out of delay. Though academic in outlook and content, these the volumes are a detailed scrutiny of judicial processes, stages of adjudication and functioning of judicial institutions and attempt to identify and cover all possible areas, theoretical and practical both, from where the phenomena of delay emanates and can be addressed.

What is of interest is that unlike the typical law book, and despite its ostensible size, the book is targeted at the *Aam Adami* or common people. It delves into the intricacies of legal procedures that have troubled the common people for long and offers suggestive remedial framework to speed up justice delivery to them. The volumes not only include facts and their analyses, but also based on field surveys, extensive discussions and interviews with judges, lawyers, litigants (parties), police officers, prosecutors, accused, and the like.

The book also attempts to analyse the causes behind court delays, and help generate and develop thoughts that can work towards removing them. According to the author, it is also an endeavour to familiarise the one involved in litigation or affected by it with certain principles and fac-

ts as could possibly help him understand the situation, and make known liverse thoughts as could help timely lecision of litigation.

Spread over 14 chapters, the book loes not follow the conventional pattern of legal writing in the sense that t does not seek to describe the law. The approach here has been one of problem identifying and solution searching. The general principles, primarily for civil law with emphasis on that which motivates litigation, and some thoughts towards reform in the law of evidence have been placed in chapters one to six.

Chapter seven addresses reform in civil procedures and practice with a view to provide better filtration and narrowing down the controversy so as to enable quicker, lower cost and hopefully more accurate, final adjudication. Chapter eight addresses how adaptation of and innovation in procedural law can bring greater efficiencies to the civil adjudicatory systems instead of following the CPC mindset. Chapter nine addresses the role of substantive law, and the various topics take the examples of different fields.

In chapter 10, criminal law and procedures are addressed. The chapter seeks to grapple with the ingrained notions and argues for a wider variety of reforms with emphasis on general reforms and offence specific tailoring of procedures. The past few decades have seen an unprecedented rise in abuse of court process. Being a major cause for delay, a solution to this is presented in chapter 11. Case and litigation management, addressed in chapter 12, can help us to remove many of the inefficiencies.

Chapter 13 addresses computers and technology, and BPR so that the courts and lawyers are able to harness the wonders of electronics. Allocation of funds for the judicial system, and for law-making and updating the system, have been analysed in chapter 14 along with the judge to population ratio and other factors/ issues which will help us achieve greater efficiency for every rupee spent on justice delivery system in the country.

Despite its length, the work does not purport to be a mere statement of the existing law, but seeks to analyse the existing law, particularly procedural with a view to make the best of the existing procedures and practices and second to put forward thoughts so as to enable the lawyers, the courts and even the public involved in litigation, to further develop these thoughts for improvement in our laws and systems.

In a nutshell, it is a 'must read' book. The researchers and lawyers will find this book of immense use and insight. Unlike many other such books, these volumes carry extensive cross-references so that a reader looking for a particular topic or subject has the needed links. Also, a pattern of writing has been used so as to help reduce the length, and try and pack more. Besides, explanatory material has been shifted to the footnotes in order to prevent a break in the reader's chain of developing thoughts

However, for an ordinary reader and litigant who is a victim of delay, the book offers no adequate solace. The voluminousness of it looks scary for an exhausted and frustrated litigant. It would have added to the value of this book, if there were detailed material on delay from the point of view of litigant. Usage of legal jargon while dealing with the issue of delay and courts is inevitable but this makes this otherwise brilliant publication mostly for the lawyers and researchers.

Now, it is good that the author has promised to come up with a concise version quite soon. ■

In a nutshell, it is a 'must read' book. The researchers and lawyers will find this book of immense use and insight. Unlike many other such books, these volumes carry extensive cross-references so that a reader looking for a particular topic or subject has the needed links

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Mainstreaming the Margin

Amit Sengupta's writings do not regurgitate with whiffs of sensationalism, but expose the paradoxes of life and its contemporary juxtapositions – some uncomfortable truths which rankle the reader's conscience, feels Shivani Chaudhry as she reviews the book

Colour of Gratitude is Green presents a vivid, fascinating, multi-hued trajectory of the history, politics, and contradictory reality of the Indian subcontinent and beyond, from the lens of a scribe who has seen the ebb and flow of the business of journalism very closely.

Gifted with a deep political insight and passionate flare, Amit Sengupta's writings serve to reveal, alarm, and touch the reader. Most of the selections in this book lay before you this pluralist, anti-pluralist, unified, fragmented, united, torn, breathing, choking mass that is India. But the author's experiences are not limited just to 'India'. To blur the boundaries, he speaks as easily of the Tiananmen Square massacre as Nandigram, talks about Latin American revolutions with as much élan as the Maoist revolution in Nepal, describes Lhasa with as much passion as an up market in the heart of Delhi, celebrates Brecht and Gramsci with as much fervour as Ritwick Ghatak and Maitreyi Pushpa. Who else can better capture the emotions of the death of an anonymous homeless person, the grief of tsunami survivors, the horror of farmer suicides, and the vacuity of fashion shows in a country of hunger as he writes in one of his essays, "There are stories within stories. Eyes within lies. Wisdom outside knowledge."

These are not the writings of a typical journalist who swallows the news -- breaking or other -- and spits it out in columns of reportage, regurgitated with whiffs of sensationalism, but someone writing who absorbs the paradoxes of life and its contemporary juxtapositions, internalises them with feeling, views them through a historical lens, and presents them to the reader with an intellectual analysis and poetic passion that's hard to come across. In the end, the reader may not agree with what he says, may not like how he says it. It may hurt, anger, offend, and move. But the book forces the readers to think, to question, to reflect. That's the point of Amit Sengupta's writing where he makes this transition from the page to the heart.

As the trajectory of the book unfolds, the reader witnesses essays, columns, reports, articles, conversations, and book reviews, all carefully selected and well laid.

On the one hand the author strips the glossy coating of the India Shining brigade but only to further reveal India Smiling. Beneath the tears, pain, oppression, marginalisation and suffering, he paints poetic images, of ordinary and extraordinary heroes, and celebrates love, poetry, passion and dreams.

The writings expose uncomfortable truths -- the contradictions of the pseudo Left in India, the fundamentalist frenzy of the Hindu Right, the unbearable weight of the political silence over Nandigram, the pain of excluded dalits in Rajasthan, the failures of the State and its orchestrated violence, its systemic machinery of oppression and its tools of silencing.

Amit Sengupta takes up causes of dalits, the working class, women, but the people he celebrates are not just anonymous faces, but living heroes with real names and powerful stories. For instance, Bant Singh, the rebel dalit singer of Mansa, who brutally lost his arms and leg for organising landless farmers and speaking out against injustice; Phoolan Devi, the real feeling, breathing, abused woman behind the media that created sensation; poet Uday Prakash, who recreates the margins, and poignantly captures the reality of the poor as he says, "When they bulldoze the homes of the poor, the bulldozers can be Left or Right, it seems the same to me." And Medha Patkar who the author calls St. Stamina, the relentless campaigner for justice, an icon of hope for the displaced and marginalised across the country.

Title:	Colour of Gratitude is Green
Author:	Amit Sengupta
Publisher:	Shreya Publications
Price:	150 (for both volumes)
Pp:	256

BOOK REVIEW

The author writes about places unheard of, ignored, forgotten such as Yazali in Arunachal Pradesh, Gwangju, South Korea, Kutch to name a few. He writes about the politics of struggle and creative rebellion; of radical poets and progressive writers and alternative voices.

The book is a compilation of Amit Sengupta's sensitive writings which revolve around the passionate fervour of youth, the undercurrents of love, the overcurrents of violence, idealism of dreams, cynicism of real-

ity, the harshness of the class divide, the ugliness of consumerism, the silence of suffering, the hypocrisy of the mainstream, the wind of revolution, the poetry of rain, and the colour of feelings.

The pieces I liked reading most are "Life is Like this Only" where the author writes, "The world is so full of itself that we miss the daily joy of life's unfolding letters, written with dew drops on leaves..." and "God Lives Elsewhere" where he reveals the irony of the brutal eviction of thousands to make space for the phenomenal Akshardham temple, for a God who lives in our hearts? "So why does God needs this rolling-in-wealth real estate? And if he resides in the quietness of our hearts, in every bird, word, leaf and leaf storm...if he lives in the winter wind which we breathe and if he is formless and infinite, objective and ethereal, essence and presence, then why does he need a lavish place in concrete as his residence on earth? Whose god is this God?.... Days after the festival of lights, the diya still burns in this dark expanse under the Nizamuddin bridge, as if telling the dazzling Akshardham adorned with hundreds of lights, that yes, God lives elsewhere."

I do like how in "Colour of Gratitude is Green" Sengupta writes, "Life beckons the subaltern and the mainstream with equal passion... it is that secret essence of intangible substances, which you must hold when such miracles of life meet you suddenly on the streets." He reminisces on the loss of life's deep simplicity in "Dal Fry at Mughalsarai" where he says "life was not so complicated – the air was not conditioned, water didn't arrive in plastic, food had nothing to do with aluminum foils, and distances were never a big hurry."

Conversations with intellectuals, thinkers and activists like Ashis Nandy, Arundhati Roy, Medha Patkar, Taslima Nasreen, and Dipankar Bhattacharya capture insightful revelations of the times we live in.

Another important characteristic of Amit Sengupta's writing is anger. In some of the writings, there is pain, criticism and dry cynicism, but there is also hope. That is why he celebrates all men and women as intellectuals in his piece "The Necessity of Flowered Man." He writes, "Revolutions move relentlessly in invisible spirals, of quiet, volcanic, unseen social unrest, in the daily struggles of survival and despair, when the radical turning point is waiting in the next by-lane of an unknown village" (The Train Stops at Nandigram).

The unquenching thirst of the author to explore, discover and rediscover is visible in the chapter "Rediscover those Alphabets" where he urges, "Like children, let us rediscover those alphabets which we seem to have forgotten: the dialectic of enlightenment and the quest for a new dream"... "That is why the Sahir song comes back yet again: *Woh subah kabhi to aayegi*. Like the El Salvador slogan in the early 1980s: The Dawn is No Longer an Illusion."

Prof. Avijit Pathak, in the introduction to the book, writes how Sengupta, a former president of the Jawaharlal Nehru University Students' Union, "cherishes dreams, celebrates visions. Read his revelations and get enchanted."

Read *Colour of Gratitude is Green* slowly to savour its poetry, feel its politics. Let its jarring questions and unpleasant truths rankle your conscience. And let its passion drench your soul with hope and dreams.

–Shivani Chaudhry is a human rights activist based in New Delhi

The unquenching thirst of the author to explore, discover and rediscover is visible in the chapter "Rediscover those Alphabets" where he urges, "Like children, let us rediscover those alphabets which we seem to have forgotten: the dialectic of enlightenment and the quest for a new dream"...

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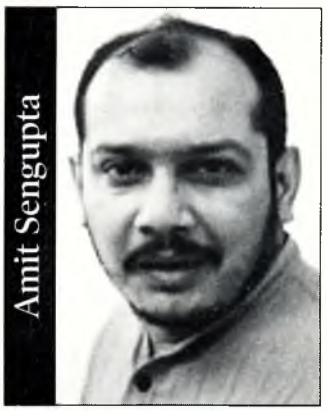

This is not the end, turn on the light

And this was not only what he wrote with amazing lucidity and academic rigour, especially on violence, or the predicaments, incompletions, irrationalities and contradictions of the armed struggle of the Maoists, or the many stoic, non-violent indigenous and people's movements all over contemporary India. It was also the meticulously documented reports which he and his committed colleagues of the HRF brought out regularly, from Kashmir to Kandhamal to Kashipur

That good people die so young is as true as god does not exist. It is a fact that anti-Christ rules the world and brutality, suffering and perversion is the normative doctrine of the day. And since myth is not reality, reality is replete with abject pain. Because this man was larger than both myth and reality, and he never glorified his pain, and he never pretended to be god.

In a world, a contemporary context, and in India, where the tyranny of the tyrant and the tyranny of the mediocre is so routinely relentless, boring and infinite, when a man with qualities so intrinsically unique and yet compassionately collective, actually passes by and passes away in quietness, it seems like a sudden end of a brilliant and moving mainstream-offbeat cinematic narrative without

ıe obligatory 'the end'; when the ghts of the 'exit' start flashing. It is ı this contradictory moment of tanible tragedy and loss, that one ɔopens old wounds still simmering, ʌith both the idea of justice and the dea of optimism, in symphony, like n ode to joy written by a genius clasical musician which he himself can't ıear. In that sense, Balagopal was all hat was complex and intertwined in his totality of dogged search, the dea of humanism, compassion, justice, hope, utopia, realism, combined ʌith the melody, rigour and symɔhony of classical music.

One should have heard Balagopal ɔpeak, in a dialogue or in a public ıeeting, his softness of tenor and ucidity of coherence, equally matched by the emphasis, confidence and courage of a man who is critically aware of not only his mind's inner working, but every minute and meticulous detail of the subjects he would discuss, like a mathematician who is also a musician. That is why, his invisible and almost intangible presence in time, space and human gatherings, the amazing absence of self-indulgence, even the humility, stoicism and austerity, living in basic poverty, was like that of an unassumed, uncaring air of solitariness, not carried as an 'socialist' baggage, but a natural, transparent, continuous, moment of modesty.

Amid this external realm of expression or subtlety, indeed, was always hidden a steely mind of extraordinary resilience, dissecting reality on the side of humanity and justice and rationality, with the cutting edge brilliance of a life trained in sacrifice as well as the quest for a new world. A world where suffering is not the scaffolding, nor injustice, or mindless and organised violence, in the collective cobwebs and traps of everyday human life.

That is why it is impossible to locate Balagopal in the ritualistic prison house of either an obituary, or a condolence message. That he should not have died, that he should have lived, is not a lament. It is a historical necessity. His body of work is still incomplete, in word and in deed, in theory and praxis, in subjectivity and objectivity, in language and silence. His history is incomplete, and so is ours without him. The millions of people in the margins, in the resistance, they might know him, or know him not, but his departure is a stark absence, you can touch it in the cold with a banner or a slogan or a book. One memory, one hundred ideas of despair and hope.

And this was not only what he wrote with amazing lucidity and academic rigour, especially on violence, or the predicaments, incompletions, irrationalities and contradictions of the armed struggle of the Maoists, or the many stoic, non-violent indigenous and people's movements all over contemporary India. It was also the meticulously documented reports which he and his committed colleagues like VS Krishna of the Human Rights Forum brought out regularly, from Kashmir to Kandhamal to Kashipur, with such intense objectivity and regard for facts and correct information, pooled together in a crafted narrative. Hence, no one could even hint of the possibility of these reports being an expression of propaganda or didactic politics, or a figment of biased imagination. They were like facts stated with absolute authority and precision – facts that the establishment hated.

Needless to say, Balagopal critically, coherently and consistently opposed the one-dimensional glorification of violence unleashed by the State and the Maoists

In that sense, this civil liberties and human rights movement was as much archival documentation and higher research of grassroots resistances and organised State or State-sponsored repression, as much as an open declaration of war against the State. The war of non-violence and truth in the face of bestiality and untruth.

Needless to say, Balagopal critically, coherently and consistently opposed the one-dimensional glorification of violence unleashed by the State and the Maoists, and the hardline factions of the underground MCC and party unity which had merged recently with the original underground outfit: the Communist Party of India (People's War Group) – then locally called in Andhra Pradesh as 'Piwa'. This he could do with a nonchalant lucidity, because he had truth and history on his side.

This was because he himself was beaten into pulp, then almost assassinated, chased by the invisible and visible death squads of the Andhra government even as he took on the 'encounter regime' of Andhra in the 1980s and 1990s, along with legal luminaries like K Kannabiran and others, with a rock like solidity and fearless defiance. Those were the days of the APCLC, the legendary civil liberties movement, with strong support base in various dimensions of the civil society, which even the State and the media could not ignore. So solid and irrefutable was their work on human rights violations. This was till the sectarians within the Maoists ousted Balagopal and others from the APCLC in the late 1990s. No wonder, this same organisation became rudderless, faceless and without credibility.

They saved so many lives, young lives, from police encounters, they risked their lives to redefine the idea of the Naxalite and mass movement, they consistently argued for a rational dialogue, for a 'massline' instead of the 'class annihilation' line, that even the hardliners within the Maoists had unqualified respect for them. Balagopal stood unanimously with the marginals and worked for them unilaterally and collectively so that they would achieve empowerment, equality, social justice and true freedom from exploitation, hunger and injustice. This doctrine was in synthesis with his constant argument that violence is counter-productive, that killing for killing, by the State

and the Maoists, is a vicious and bloody loop with a spiral which can only become an uncontrollable hyperbole of absolute dogmatism and irrationality, and of course, more brutality, in revenge or for a 'cause', either way, getting rapidly perverted and alienated from the 'massline'. He said that this nonlinear stream of mindless violence must give way to political engagement and dialogue, because this is not the only struggle. There is the struggle for gender justice and women's empowerment, against globalisation and the new political economy of the corporates, against feudal tyranny at the grassroots, against communal fascism. And let us not for a moment forget, that this massive ocean of accumulated suffering and tragedy and resistance, this relentless theory and praxis, is for a better world, a different world, a rainbow with many colours of dreams and realism.

Balagopal was a lawyer and a human rights activist, but he was also a man of letters, and Andhra was then the epicentre of the movement, in the forests, streets and universities, in theatre, media, literature, in the academia, in the richness of philosophy, in the revolutionary bondings with resistances of the world like with the legendary Zapatistas of Mexico. Hence, every word he wrote became a singular moment of debate, of enlightenment. Where else will you find an article on post-modernism written in a Telugu publication became a subject of mass debate, with points and counter-points? And this is when the entire English media ignored the debate, thereby highlighting their own illiteracy and ignorance.

So you can feel the raw and gutsy substances with which this classical brilliance was so resiliently shaped. You can take a knife and cut this cold absence, and you know that he is not there. But he is there, in this book, in that land where the line divides the feudal landlords and the landless slaves, in the impeccable script of the Mundas in Kalinganagar, in the suffering of the black bodies of adivasis in Kandhamal burnt by the sun and hard labour, in the bloody police state of Chhattisgarh where tragedy and injustice is basically state-craft, in that report which will yet again be written on how the Indian state cares two hoots for the human rights of its citizens, especially on the margins.

Today, as I write this on a cold January night, the BJP-led Chhattisgarh state's goons have thrown sewage and eggs on a delegation led by Medha Patkar trying to meet the superintendent of police. They are resolute and non-violent. They want atrocities to stop, on all sides. They want democracy and fair-play, freedom for those imprisoned, the right to dissent, the right to be non-violent, amidst this bloody civil war of a ravaged landscape. They will not allow the people to be eliminated so that the corporates and multinationals can dig the treasures below the forests and the land. They will fight the fascists till the end.

That is why I say, this darkness must not overwhelm us, it should become a revelation. Because this is not the end. Turn on the light. That's what, I am sure, Balagopal would have done. With the quietness and silence of trained resilience. ■

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HRLN

Human Rights Law Network

The Human Rights Law Network (HRLN) is a collective of lawyers and social activists dedicated to the use of the legal system to advance human rights, struggle against their violations and ensure access to justice for all. A not-for-profit, non-governmental, human rights organisation, HRLN recognises rights in the widest sense including civil and political as well as economic, social and cultural rights.

Recognising law as an arena of struggle, HRLN views the legal system as a limited but crucial weapon for realising human rights.

We believe that large scale struggles against human rights violations have to be waged by social and political movements and the legal system can play a significant supportive role in these struggles.

Starting in 1989 as an ad hoc group of lawyers and social activists, HRLN has since evolved into a human rights organisation with dedicated activist lawyers and social workers in various Indian states. In addition to pro bono legal services and public interest litigation, HRLN engages in out of court advocacy, conducts legal workshops, investigations, publishes 'know your rights' material and participates in campaigns.

In collaboration with social movements and human rights and development organisations, HRLN works with women, prisoners, Dalits, workers, children, farmers, indigenous people, refugees, HIV positive people, the homeless, people with disabilities, religious minorities and sexuality minorities, among others.

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