

Dr. Balagopal

Last year, a group concerned with civil liberties set up the Indian Peoples Human Rights Commission. This bold experiment is a significant step in creating awareness of systematic violation of human rights in the country. It has important lessons for the judicial system, which has proved itself to be a failure in protecting innocent victims of State violence. **Dr. Balagopal**, one of the main activists who helped set up the Tribunal talks about its aims and objects.

Q. What are the objects of the Indian Peoples Human Rights Commission?

A. The object of the Commission is to set up a Tribunal for investigating and adjudicating gross, systematic and significant violations of human rights by the State. We receive complaints about violations of human rights by the State and after preliminary enquiry submit to the Tribunal for adjudication. The Commission also tries to establish contacts with civil liberties and democratic rights organisations in India and abroad. It campaigns for the implementation of international covenants against State violence, extra judicial killings, illegal detention, rights of undertrials and for the recognition of political prison status for prisoners of conscience.

Q. How do you select members of the Tribunal?

A. Retired Judges of the High Courts and the Supreme Court are eligible to be on the Tribunal. There are no specific criteria for selecting from among retired judges. We have approached judges who have shown an interest in human rights and who are willing to investigate into allegations of State violence against people. When a particular judge's name is recommended, we approach him and explain the objects of the Commission and request him to be on the panel. There has been a good response from retired judges.

Q. Why did you feel the need to have former judges on the Tribunal?

A. We felt that judges would have a legitimacy with the public and with the State. Their findings would be acceptable and being trained as judges, they would follow the rules of natural justice in arriving at their conclusions.

Q. Does the setting up of the Indian Peoples Human Rights Tribunal reflect a lack of confidence in the established judiciary? Do you feel you have not been



able to get justice from the courts?

A. Although we have on several occasions failed to get justice from the courts in cases of violence by the State against the individual, that was not the motivating factor for setting up the Tribunal. The setting up of the Tribunal is more of an effort to supplement the work of civil liberties organisations. The Tribunal will serve the purpose of educating people about their rights, and about the existing state of violence against the exploited sections of society. The findings of the Tribunal, given that they are made by retired judges, after a thorough and impartial enquiry, will also serve to put moral pressure on the State by demonstrating that the State is violating its own laws.

Q. Do you see the Tribunal as an alternative justice delivery mechanism?

A. In the sense of actually bringing the culprits to trial, it cannot be a remedy. The findings of the Tribunal are obviously not binding nor does it have power to punish anybody. But as far as the impact of the findings is concerned, I can tell from experience that it is very positive. We have been able to generate favourable public opinion in the Arwal case, which the Tribunal is investigating. It has received wide coverage in the press. The enquiry into the Arwal massacre is being conducted by retired judges. The Arwal firing took place almost a year ago. Even in

Bihar, people had almost forgotten it. We have brought it back into the memory of the public, the press and the intelligentsia.

Q. How is the work of the Tribunal different from the efforts of fact finding committees?

A. Fact finding committee would have been unable to marshal the amount of evidence that the Tribunal has collected. Moreover, the Tribunal enjoys a credibility in the minds of the general public as it consists of retired judges. These are the same people whom the State itself had appointed at one time for the administration of justice. The Tribunal has insisted on detailed documentation. The detailed collecting of evidence is crucial to the functioning of the commission.

Q. How do the proceedings of the Tribunal differ from those of a court?

A. Proceedings are conducted in the language understood by the people. Access to the Tribunal is open to everybody. The members of the Tribunal go to the scene of offence and record evidence. In Arwal, almost the entire population turned out to witness the enquiry. It had a tremendous educative value. They learnt a lot about their rights and the way in which rights are systematically violated. It gave them a lot of self-confidence and restored their courage to fight for themselves.

Q. The Tribunal does not have the power to summon witnesses? Is this a handicap to its functioning?

A. This is an obvious limitation. But despite this limitation, we have been able to collect very extensive evidence. As the enquiry is being conducted by retired judges, we have received a lot of co-operation.

Q. What procedure does the Tribunal follow?

A. It tries to combine the advantages of

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a judicial trial with the method of fact finding. The lawyers assisting the Commission take an active interest in collecting evidence to present to the Tribunal. The rules of natural justice are complied with.

Q. In the Arwal case, did the State Government come forward to present their case?

A. We issued a public notice signed by Mrinal Sen, President of the Indian Peoples Human Rights Commission, asking people to come forward and give evidence. Letters were sent to the State Government by Justice V.R. Krishna Iyer, Chairman of the Tribunal, asking them to co-operate. Letters were also sent to the individual Government officials and Revenue officials and Police officers who had knowledge of the Arwal massacre. Unfortunately, they did not respond. We asked them to send their Government Pleader and also to furnish us with documents. They refused to send a Government Pleader on the ground that the matter was pending in the Patna High Court, but offered to give documents such as post-mortem reports, dying declarations and panchnamas.

Q. Have you submitted a statement of allegations against named individuals?

A. We have not done that as the matter under investigation is whether the State, as it claims, really had to take such drastic action as killing off 23 people in order to prevent an attack on the police. An investigation into this kind of allegation would be almost impossible in a court of law. Hundreds of witnesses have to be examined on the spot. The law simply says that minimum force must be used as preventive action. Only a Tribunal which goes to the people to record their statements will be able to decide whether excessive force was used.

Q. Is there any restriction on the kind of cases that can be brought before the Tribunal?

A. The Tribunal deals only with cases which involve violation of civil liberties by the State. No case of private violence will be taken up. Even within this category, we have laid down broad guidelines, namely that cases involving gross significant or systematic violations of civil liberties will be taken up. Gross would mean that a large number of people are involved in the violation.

Significant would include cases in which the victim is a prominent person, e.g. an ex-member of Parliament was killed in a police station in Bihar. Systematic violations would include the 'encounter' killings of 'Naxalites' in Andhra Pradesh where about 500 people have been killed one at a time, over a prolonged period of 15 years. Obviously, the secretariat of the Commission will have to screen the cases to decide which should be brought before the Tribunal. It will have to take care to see that proper cases are brought for decision.

Q. Will the Commission make efforts to bring cases before a court of law?

A. The Commission itself will not make any such effort but in cases where courts have not helped or the Government has refused to appoint a Commission of Enquiry, such cases will probably be taken before the Tribunal. Even in cases where the Government does appoint a Commission of Enquiry, its bonafides may be suspect as in the case of Ranganath Mishra Commission, and we may have to take up the case. Even in cases which are pending in courts, we may have to start an enquiry. We cannot hesitate merely because a case is said to be sub-judice. If we do, the Government can effectively prevent our functioning merely by filing an FIR or charge sheet against somebody. The problem has not arisen as yet. Fortunately, as far as Arwal was concerned, the Supreme Court sent the case back to the Patna High Court. Though there was a case in the Patna High Court, the Judges on the Tribunal took the view that the pending cases were against the citizens whereas it was inquiring into the conduct of the police.

Q. Does the Commission propose to file petitions in the High Court or Supreme Court?

A. No, there is no such proposal. But it is likely that on the basis of the findings of the Tribunal, the victims themselves or organizations on their behalf may take action in court. We hope that in such proceedings the reports of the Tribunal will be useful and credible evidence as it has been made by Judges.

Q. There is general dissatisfaction with the Ranganath Mishra Report. The consensus of opinion seems to be that the vic-

tims lacked confidence in the impartiality of the Enquiry and its ability to give protection to witnesses. Its findings are not acceptable to the victims. Do you plan to take up the case before the Tribunal?

A. Until the Secretariat takes a decision, I cannot give an answer. The suggestion has been made by many people that it should be taken before the Tribunal. One major weakness of the Ranganath Mishra Commission was that the enquiry was held in camera. If we take it up, it will be an open enquiry, everybody can come and hear what happened in November, 1984. That is a very strong argument given by many people in favour of taking it up.

Q. What has been your experience with cases of State violence in courts?

A. It has not been a very positive experience. Even when a report is made of an incident of police 'encounters', it is not made public. The Government claims privilege and gets away with it. Even the Supreme Court has not ordered disclosure of the reports. We do not expect the Supreme Court to prosecute the individual police officer, but we do expect the court to deny the claim of privilege. Often it has been a waste of time going to court.

Q. Are there any other cases pending for being taken up by the Tribunal?

A. No, but we are thinking of a few important issues. The question of the 400 detainees in Jodhpur has come up for discussion. We are not concerned with the question whether they are guilty or not, but they have been held in detention without being brought to trial. This is a gross violation of civil liberties. Many of them were innocent pilgrims who had gone to the Golden Temple and were caught in the fire. Another suggestion is to take up the killing of so called Pakistani agents at the border. More than 200 people have been killed. Many of them are innocent people crossing the border without even knowing that there is a border. There is also a suggestion to take up the cases of sedition against three prominent editors for publishing reports on the situation in the Punjab. They have been charged under the Anti-Terrorist Activities Act. This is a serious threat to freedom of the press, the punishment could be very stiff, even capital punishment.