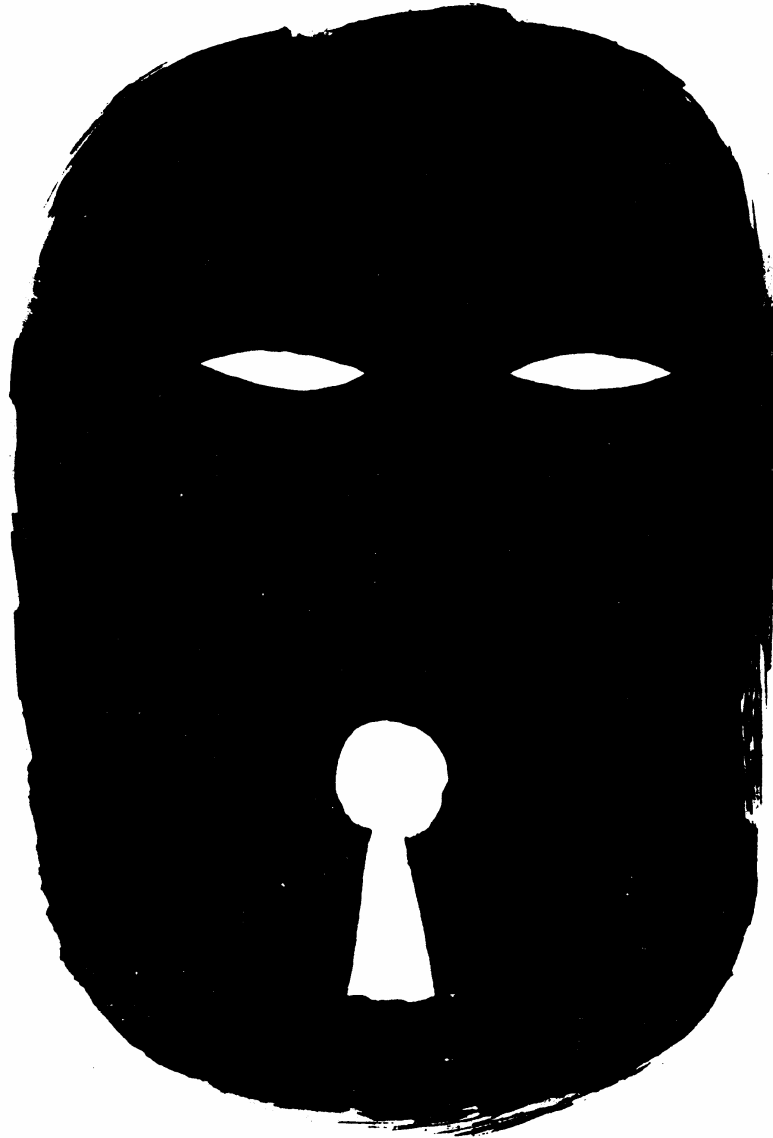


INDIA – 1947-79

SIX PARLIMENTS AND DEMOCRATIC RIGHTS



**PEOPLE'S UNION FOR CIVIL LIBERTIES AND DEMOCRATIC
RIGHTS, DELHI**

*“Those who forget the past condemned
to repeat it”*

- George Santayana

**PUBLISHED BY GOBIND MUKHOTY, CHAIRMAN, PEOPLE’S
UNION FOR CIVIL LIBERTIES AND DEMOCRATIC RIGHTS,
DELHI**

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief faith and worship;

EQUALITY of status and of opportunity;

and to promote, among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this, twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

-Preamble, Constitution of India.

SIX PARLIAMENTS AND DEMOCRATIC RIGHTS

On the fifteenth of August, 1947, "while the rest of the world was sleeping, India awoke to freedom." The freedom promised to be the freedom of thought, of belief and worship, of association, assembly. The Indian people's dream of these freedoms was born of their long and arduous struggles. To guarantee these freedoms a system of adult franchise was introduced. Today, while the nation is going to polls to elect its seventh parliament, it is worthwhile to review the state of democratic rights all these years.

In the first five parliaments, for a span of thirty years, the country was under the rule of virtually one party - the Congress - with the absence of any effective opposition. The gradual elimination of all opposition reached its climax during the sixth parliament when Indira Gandhi clamped down the Emergency in 1975, when even the nominal and legitimate opposition was subjected to repression.

The tumultuous changes in 1977 in the wake of the election of the sixth parliament promised to bring about a transformation of the situation. The political parties of the Opposition, both national and regional, had sworn all these years by the Constitution, and had promised to safeguard the democratic rights once they were brought to power. But during their regime from 1977 till today, the democratic rights of the Indian people have remained as lyrical an illusion as during the earlier 30 years of Congress regime.

The ordinary masses of India, toiling day in and day out with no security of food, employment and shelter, are threatened with insecurity of life when they attempt to protest. In rural India, the unquestioned rule of autocratic gentry continues unabated. Whenever people attempt to organize themselves, they are ousted from their land, beaten up and in some cases, even killed. During the last 32 years, whenever the State intervened - whether in Nehru's Telengana, Indira Gandhi's West Bengal or Janata's Bihar - it did so only on the side of the gentry. In the face of continuous onslaught from the state, the position of the other better organized groups like workers and students is no better. The minorities continue to live under economic, social and cultural subjugation. In reality, whenever the people try to assert their democratic rights, they are assaulted. Such assaults are more ruthless in the case of those who choose to disagree with the establishment. These political opponents are assaulted by the hoodlums, tortured by the police, detained by the state without trial and even killed.

Caste and communal violence, extraordinary laws and regulations, inhuman torture, increasing police firings, slow judicial process and abominable jail conditions are some of the form of attack on democratic rights. In the last 32 years six parliaments have come and gone, five prime ministers have changed, promises were made and assurances given. But the assault on people's democratic rights has continued. The following account, mostly based on government reports, bring out the essential continuity of the assault.

CASTE AND COMUNAL VIOLENCE

"In those states in which ethnic, religious or linguistic minorities exists, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

*Article 27,
International Covenant on
Civil and Political Rights, 1976*

"In his book 'Discovery of India' Jawahar Lal Nehru wrote in 1945 ... "in political matters, religion has been displace what is called communalism, a narrow group mentality basing itself on a religious community but a reality concerned with political power and patronage for the interested group.' These words still remain true even after the passing of nearly thirty years.

*Report of the one-man commission
of enquiry in to Sadar Bazar
disturbances, 1974*

India's independence came in the wake of a big communal holocaust. Since then, none of the political parties that held office at the Centre, had made any effort to put an end to Hindu-Muslim animosity. Instead, their leaders had consistently entrenched communal bias in Indian sociopolitical life by furthering the interests of their own communities and discriminating against members of other communities and by spurring fanatics to start communal riots to dislodge rival politicians from power which end up in large scale loss of life and property of the poor people; of the country. The following table is illustrative enough:

Year	Number of communal Riots
1960	26
1961	92
1964	1,070
1965	676
1967	198
1968	346
1969	519
1970	521
1971	321
1972	240
1973	242
1974	248
1975 to 1976 (Emergency)	374
Since April 1977	400

These data indicate that communal riots have become an annual feature of Indian life, although their number varies from year to year. They occur irrespective of the changes at the Centre or of the various political parties who rule in the States. The number of people killed in such riots range from 150 in 1967 to as high as 3,000 in 1969, when one of the worst communal carnages took place in Ahmedabad and other parts of Gujarat. It is also alarming that such riots are spreading to areas and places which hitherto had remained relatively free from communal tensions, like West Bengal, Bangalore and other parts of south India.

Reports submitted by several inquiry commissions set up by the government to inquire into the causes of the communal riots, have often indicted the politicians for their involvement in such riots and the administration for their failure to prevent them. Thus, the Inquiry Commission on the Tellicherry riots of 1971 stated directly: "The chief among the parties who carried on anti-Muslim agitation in the area were undoubtedly the RSS and the Jana Sangh. " In November 1979, in West Bengal newspapers reported that communal riots spread soon after two Congress (I) leaders had delivered inflammatory speeches at a rally held to protest against the occupation of the Kaaba mosque in Mecca. Independent fact finding missions like the PUCL (Delhi) team on the Aligarh riots in 1978, discovered that even the Provincial Armed Police Constabulary of UP betrayed communal overtones. Similar charges have been brought by others against the Bihar Military Police. They indicate how deep communal passions had penetrated the administration. In spite of these findings and recommendations for punishment of the guilty, the government has consistently refused to take any steps which indicates the acquiescence of the ruling political parties in the riots.

While _ political leaders - some time directly instigate communal tensions, their personal behaviour also contributes to such tensions. The case of the former Prime Minister Indira Gandhi is a telling example. Although she claims to be secular, she has no compunction in seeking blessings from Hindu religious leaders, or in instigating Vinoba Bhave to go on fast against cow slaughter, knowing very well that such actions can hurt the feelings of the Muslim minorities and fan communal passions. The main objective in these irresponsible acts by the leaders seems to be to create disturbances to dislodge rival political parties which are in power.

Along with the fanning of communal violence, the other major divisive development in India is the growth of assaults on 'dalits' and other weaker sections of society. Again, the following table indicates the continuity of such assaults under the different regimes:

Incidence of Assault on the weaker sections						
	1973	1974	1975	1976	1977	1978
Scheduled Castes	6186	8860	7781	5678	8872	560
Scheduled Tribes	362	884	N.A.	1067	1138	N.A.

In most of the cases, it has been found that upper caste landlords persecute their labourers, who mostly belong to scheduled castes or tribes, whenever the latter try to assert their rights. Almost all the political parties have promised through legislation, to give the weaker sections their due rights, like minimum wages, land, protection from the assaults of the rich. But, while in parliaments, a host of such altruistic laws have been passed, at the village level, the landlords who invariably belong to one of other of the ruling parties throw overboard all these legal provisions and continue to persecute the lower caste people. Although Mrs Gandhi's party claimed in 1976 that it had abolished the hated system of bonded labour - which is mainly concentrated among the country's Scheduled Castes and Scheduled Tribes, the National Survey on the Incidence of Bonded Labour carried out jointly by the Gandhi Peace Foundation and the National Labour Institute in 1978, identified at least two million agricultural labourers in 10 states who were still in bondage to moneylenders and landlords. During the Emergency, when Mrs Gandhi's 20-point programme for the rural poor was supposed to be in operation, in December 1976 in Palamou in Bihar, poor peasants belonging to the Scheduled Castes and Tribes were being ousted from their small plots by "two influential persons holding important political positions in the State, " according to the Commi'ssioner of Scheduled Castes and Scheduled Tribes, who recommended action against these two under the Abolition of Bonded Labour System Act, the Minimum Wages Act and the Indian Penal Code. But no action was taken.

Even after the end of Mrs Gandhi's regime, the lot of the Scheduled Castes and Tribes remains the same, as evident from the burning of Harijans in Belchi, Bihar, soon after the Janata came to power. While the ruling Janata government of the state sought to dismiss the incident as a clash between "two groups of hardened criminals," an eight-member team of MPs which visited the spot discovered that it was a premeditated and cold-blooded attack by the upper caste landlords on the Scheduled Caste peasants. The Commissioner of Scheduled Castes and Scheduled Tribes in a separate finding commented that there was "some tacit understanding between the local police personnel and the accused persons" indicating again the collusion of the local administration and police in atrocities on the lower caste people. Since Belchi, such attacks on the Harijans have become the rule rather than the exception.

The inherent bias of the system is evident from the acquittal by the Madras High Court of the landlords who were accused of burning to death 42 Scheduled Caste landless labourers, including 20 children on December 25, 1968 in Kilvenmani, Tamilnadu. Acquitting them, the High Court said: "Most of them are rich men owning vast extents of land ... it is difficult to believe that they themselves walked bodily to the scene and set fire to the houses..."

Another evidence of the failure of the judiciary to protect the democratic rights of these people who are the lowest in the socio-economic hierarchy, is the escape from punishment of those guilty of practising untouchability against these Harijans. From 1955 to 1976, as many as 22,470 cases under the Untouchability Act were registered, of which 19,893 were taken to court, out of which 3,402 were settled, 3,288 were acquitted and only 6,178 resulted in actual conviction. Commenting on the situation, the Commissioner of Scheduled Castes and Scheduled Tribes in his report of 1975-76 and 1976-77 said: "Since the cases were allowed to hang on for a long time in the courts and

the Scheduled Caste persons were subjected to various kinds of pressurisation, many of the cases were either lost or compounded (i.e. settled).” The Commissioner then added: “But what needs to be emphasized is that for effective implementation of basic socio-economic measures, it is necessary that a very high degree of will at the political level and at the level of the bureaucracy should be manifested.” All through the last 32 years, the ruling political parties and the bureaucracy had not only showed lack of will in protecting the rights of the rural poor, but had often betrayed aggressive tendencies in violating the rights. And, this continues in spite of the Indian government's being a signatory to the ILO convention No. 141 of 1975 on “Rural Workers’ Organization” which guarantees the right of agricultural labourers to organize in defence of their democratic rights .

POLICE FIRINGS

There is no single lawless group in the whole country whose record of crime anywhere nears the record of organized unit which is known as the Indian police force.

From a judgement of Justice A.N. Mullah,
Allahabad High Court (U.P. versus Md. Nasim,
AIR 1964, Sc. 703)

The confrontation between the police and the various sections of the people leading to police firings is a phenomenon that continues to exist throughout the six parliaments of India. The protest by the people -whether it involves workers, students, peasants or any other section -invariably goes through many stages to become eventually a problem of law and order. These incidents are of two kinds. In some cases, the firings are preceded by the spontaneous violence of the masses ranging from pelting stones to the actual causing of death of police personnel involved. In other cases, it is a simple unprovoked attack by the police. To what extent, the manner of police action is justified by the manner of mass action has always remained controversial. The mass violence by and large, is spontaneous and unorganised while the police action is usually, always well-planned and ably executed. That this phenomenon is on the rise is evident from the following accounts of the Union Home Ministry (which are normally under estimated) itself:

	1947-66	1967-70	1971-72	1975-77	1977-78
Number of police firings	2078	1480	1743	313	60
Number of people killed	1900	420	261	178	200

The increasing reliance on the police by the ruling powers to resolve socio-economic conflicts, is evident also from the following table:

Expenditure on police (in millions of rupees):			
1950-51	1966-67	1974-75	1977-78
30	482.7	1564	4280

Available figures also suggest that in the eastern region, where the population grew by 24.7%, the police force grew by 415% over the last 30 years! What is equally disturbing is the fact that while the unarmed masses, vulnerable as they are, to armed police attacks, can be dealt with by years of prosecution and imprisonment, the police are accountable to nobody. The judicial inquiries, set up by the government under the pressure of popular demands, to go into cases of police firings, seldom result in actual conviction of the guilty police officers. In the innumerable-cases of judicial inquiries ordered after the Emergency only two cases have resulted in the conviction of

police officers (Kerala and Delhi). In Andhra Pradesh the Bhargava Commission appointed to examine the findings of Tarkunde Committee was killed by the Congress (I) government of the state while the Janata government at the Centre did not care even to lodge a formal protest against the state government's action. Even the Left front government in West Bengal has failed to take any action against the police officials indicted by the Hartosh Chakravarty Commission, set up to go into cases of police torture. Ironically, the concerned police officials have been accused of torturing the cadres of the present major ruling party of West Bengal - the CPI(M). Of late, judicial inquiries have become a convenient measure to diffuse the popular protest against the police atrocities. In Andhra Pradesh in 1978, the appointment of the Mukthar Commission to go into the allegations of rape of a woman, Ramijabee, in police custody, pacified the irate public demanding the judicial inquiry. But its judgment indicting the guilty officers was not honoured by the Andhra Pradesh government. Again, in Agra the government announced a judicial inquiry into the communal riots there in 1978 on public demand. But although a year has passed, even the judge has not been appointed for the "promised" inquiry.

This absence of any institutional arrangement to evaluate police action and let the law deal with the law enforcing authorities, coupled with the fact that the ruling- political power increasingly relies upon the police, has made the police force in the country virtually an uncontrolled mob of uniformed men going berserk on the people on the slightest possible pretext. The mass killings in firings in recent times - in Muzaffarnagar, Turkman gate, Pantnagar, Bailadila, Kanpur and Faridabad, are pointers towards this growing threat.

In June 1977, a 10,000 strong procession of Faridabad workers marched to the capital demanding a magisterial inquiry over the death of a colleague of theirs in police custody. The delegation was not even received by the Home Ministry. The furious workers returned to an uncontrollable anarchy the next day. The government immediately ordered judicial inquiry into the death of the worker in police custody with a session judge in charge of the inquiry. This telling example brings out the unfortunate situation of our contemporary life where disorder has become the only language through which the ordinary masses can communicate their day to day demands to their rulers, who otherwise inaccessible are forced to listen to them when they speak through violence. What is more striking is the fact that irrespective of the political parties in power, ideological barriers notwithstanding, this phenomenon is continuously on the rise. When not in power, these political parties make electoral capital out of such firings by protesting against the ruling party. But when in power, the same erstwhile opposition parties behave in the same way relying on police to solve socio-economic conflicts. No party has ever faced the problem as a whole and tried to offer a democratic alternative.

EXTRAORDINARY ACTS, LAWS AND REGULATIONS

"No one shall be subjected to arbitrary arrest, detention on or exile."

Article. 9,
Universal declaration on Human
Rights 1948

"No person. (including a foreigner) detained under this act shall have any right to personal liberty by virtue of natural law or common law"

-Section 18, Maintenance of
Internal Security Act (1971)

India has the singular achievement of providing fundamental rights for its citizens as well as for constitutional acts which make these virtually inoperative. The Constitution of 1950 gives to the citizens of India civil and democratic rights, but the very same constitution provides for their infringement through measures like Emergency, Preventive Detention Act, MISA, etc.

For the maintenance of ordinary law and order, the existing measures are quite sufficient, like power given to the states under section 107, 108, 109, 110, 151 and 144 of the Criminal Procedure Code. Besides, many states have passed special acts such as 'Goonda' act aimed at "antisocial elements". For economic crimes and offences, there are such measures as Essential Commodities Act, Essential Services Maintenance Act, the Customs Act, the Foreign Exchange Regulation Act, the Weight and Measures Act and COFEPOSA.

These give the government and various other authorities far and wide power to combat activities ranging from smuggling, black marketing to petty robberies. They are also sufficient in dealing with situations like riots and conflicts. As a consequence it is pertinent to doubt the government's arguments in enacting Preventive Detention Act or imposing internal emergency. Not only are the existing laws sufficient to maintain law and order, it is also wrong to infer that new laws would be more effective means to maintain peace. On the contrary, these wide ranging measures have been used diligently and consistently against all those who question the government, be it a party or an individual. It has been used against the workers on strike or against peasants and Harijans fighting for economic rights and social justice.

The following list traces the history of curbs on our fundamental rights:

1. *In 1947, immediately after Independence, the West Bengal government introduced the West Bengal Security Bill, which allowed the state to detain anyone without trial.*
2. *The Preventive Detention Act was introduced in 1950.*
3. *The Constitution of 1950 lists various conditions under which democratic rights of the citizens can be frozen, and internal emergency*

and emergency during external threats can be introduced.

4. *The Defence of India Rules was imposed in 1962 in the wake of India's war with China. (The Rules were withdrawn in 1977).*
5. *The Preventive Detection Act of 1950 expired in 1969, Between 1969 and 1971 there were no such law - the only period in our long history without any preventive detention law - and that too because the then Prime Minister lacked an absolute majority in parliament to introduce such bill.*
6. *The West Bengal government introduced the Prevention of Violent Activities Act in 1970.*
7. *MISA was introduced all over India in 1971.*
8. *During the Emergency, MISA was placed in the 9th Schedule of the Constitution which makes it beyond the purview of law.*
9. *Preventive Detention Acts were imposed in different states after the withdrawal of the proposed Code of Criminal Procedure (Amendment) Act, 1977, by the Janata government at the Centre. As a result, in Jammu and Kashmir, Madhya Pradesh, Bihar and Andhra Pradesh, Preventive Detention Acts were enacted by the state governments ruled by different political parties.*
10. *Special acts like Andhra Pradesh Suppression of Disturbances Act (Act No. III of 1948), Armed Forces (Special Power) Regulations of 1958, the Nagaland Security Regulation of 1962, the Assam Maintenance of Public Order Act of 1953. Under these acts any executive authority can declare an area 'disturbed' and subject the population to checks and curbs which even inhibit their daily existence. What is more alarming is that they do not require any legislative sanction for their executing decisions. Thus, the Andhra Pradesh Suppression of Disturbances Act gives powers to even a sub-inspector to open fire without warning "upon persons found carrying weapons or things capable of being used as weapons" (Articles). Further, "no prosecution, suit or other legal proceedings shall be instituted, except with the previous sanction of the provincial government, against any persons in respect of anything done, or purporting to be done in exercise of the powers conferred by section 5. The Nagaland Security Regulations (1962) gives the power to the authorities to force "all residents or any class of residents "to be "removed from the said area to any other area specified by the governor and remain in that area for such period as may be specified by him." (5A (1)(a))*
11. *The Preventive Detention Ordinance was passed by the Lok Dal government in 1979, as late as October 15, 1979*

At the time of introduction, most of these acts claimed that they were meant for anti-social elements and external enemies. But in practice, they have

been directed against the political opponents of the government.\ In 1947, in West Bengal, the West Bengal Security Bill was introduced to contain communal riots, but it was used against the peasants of the Tebhaga movement; Similarly, the Preventive Detention Act of 1950 was used against political dissenters all over India. In 1962, the Defence of India Rules, which were ostensibly imposed in view of the Sino-Indian war, were used against Leftists inside India. In 1971, MISA was introduced by Parliament, ostensibly again in view of the situation in the then East Pakistan and the threat posed from there, but was used in fact against people who were suspected of being Naxalties. Later, MISA was used during the Emergency, against the very Opposition which supported the Act at the time of its introduction. At least 60, 000 people from all walks of life, belonging to different political shades were arrested between 1975 and 1977 under MISA. The present laws which were ostensibly introduced to prevent black marketing are used against striking engineers in Uttar Pradesh.

The consistency with which preventive detention laws and extraordinary regulations are used against political dissenters brings out the fact that ambiguities in the Constitution and the consequent laws 'have become a weapon in the hands of the ruling political parties to scuttle the democratic rights of the people,, The ambiguity in the Constitution is-brought out strikingly by the internal Emergency during Indira Gandhi's rule when the assault on democratic rights could be legitimized by the very Constitution which was supposed to protect those democratic rights.

TORTURE

"No one shall be subjected to torture or to cruel, or to inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

*Article 7,
International Covenant on Civil and
Political Rights, 1976*

*'Neither physical nor psychological torture is practiced here.
Whoever says this is only spreading falsehood.'*

*Om Mehta, Minister of State for Home
Affairs in 1976, speaking to the
Reporter of the Mexican daily
'Excelsior,' in April that year*

Even if an executive officer were to deprive a citizen of life on personal liberty by way of settling some personal score, the citizen would not have any remedy so long as the emergency and the Presidential proclamation under Article 359 of the Constitution lasted.

*Attorney General Niren De's
Submission to the Supreme Court
in December, 1975*

Under British rule in India, 'third degree method' was a dreaded term for both political prisoners and ordinary criminals, for the police used this to torture prisoners to make them confess, humiliate them or just to carry out on them their own sadistic desires. It was expected that after independence, politicians who came to rule the country, many of whom themselves were often victims of police torture during the anti-colonial national movement, would put an end to such barbarous methods.

But during the last 32 years, the ruling political parties had allowed the Indian police to perfect the third degree method to such an extent that even the notorious Nazi torturers of the past could take lessons at the feet of the policemen here. During 1948-51, when peasants in Telengana rose in a revolt, Indian army men carved with knives the hammer and sickle symbol on the backs of arrested Communists to teach them a lesson. Since then, the methods of torture have become cruder, as evident from the numerous reports that had come out from Andhra Pradesh, West Bengal, Punjab, Maharashtra and other parts of the country after the lifting of the Emergency.

What happened during the 20-month Emergency period was only a logical culmination of a process of brutalization that had started much earlier.

Raping of Harijan women in villages, sadistic torture of political dissidents in police custody, indiscriminate beating up of people with or without provocation had marked police behaviour all along. Long before the Emergency, the London-based Amnesty International released a report on detention conditions in West Bengal in 1974 and described the plight of victims of police torture. "Allegations of torture include severe beatings-to the extent of fractured limbs - prisoners being hung upside down and pins and nails being inserted into their nails and other sensitive organs of the body, including the genitals. In a number of cases the use of modern electric shock methods is reported, and prisoners are also allegedly burned with cigarettes extinguished on their skin."

During the Emergency, new forms of torture were practised like suffocating them by immersion in water, hoisting up of the victims with their hands tied behind their back, dangling them from the ceiling and beating them on their soles.

After the end of a 30-year old monopoly rule by a single party in 1977, it was expected that the new rulers would change the methods of police investigation. But during the last two years we found that the police have been allowed to continue with their old behaviour pattern. Beating up of suspects in police lock-up, often leading to the death of the victim, rape of poor women in villages, sadistic atrocities on innocent people - continue to characterize the actions of the Indian police. India is fast becoming the homeland of institutionalized torture.

From the end of the 1960s, there was an alarming increase in disappearances and the use of summary execution without benefit of fair trial, particularly with regard to the Naxaltes. This has been brought to light by several inquiry commissions that probed into the cases of so-called 'encounters' in Andhra Pradesh and Punjab. In Andhra Pradesh, Punjab and West Bengal alone, independent inquiries have established that at least more than a thousand political activists have been subjected to torture and death by the police under Indira Gandhi's 11-year rule. After the changes of 1977, neither the Janata Government at the Centre nor the state governments took any meaningful action over such cold-blooded murder of human beings and human rights. That the illegal methods of investigation and treatment of prisoners has become part of the Indian police system is brought out by the fact that about 50 people have been killed in lock ups by the police under Janata rule. That no single political party contesting the elections and seeking power, has intention of reforming the repressive apparatus is evident from the performance of the police under their rule.

DELAYED JUSTICE

“No person shall be deprived of his life or personal liberty except according to procedure adopted by law”

-Article 21
Constitution of India

“Durga Baski, held in Behrampur Jail, West Bengal, died of lack of medical treatment on March 27, 1978, in a hospital, while still in custody of jail authorities – seven months after a West Bengal Cabinet Uub-Committee had recommended Baski’s release.”

A News Item

The long judicial process to which the accused are subjected, is itself a denial of their rights. In most of the cases, the accused who come from poor sections of our society, cannot even afford legal aid. The Rustomji report on Bihar and Uttar Pradesh jails, has brought out the cases of thousands of under-trial prisoners who have spent, even before conviction, more time in jails than their crimes could warrant.

The following table indicates the growing need for more courts in India:

Year	Reported incidence of crime	Population
1948	6,25,000	342 million
1978	13,13,564	638 million

But the number of courts has not grown up proportionately. Hence the accused suffer long periods of prosecution. As has been succinctly put by Mr. Rustomji, for the prisoners the whole question is "how to appear before the court, how to be noticed by the dispensers of justice. It is only the court clerk who deals with them. Each of the magistrates has 1200 cases, some of them even 1800 cases on their files. They just do not have the time to look at these people,"

The practice of charging political dissenters with conspiracy cases, which is a legacy from the British days, is continued by independent India. In the famous Parvatipuram Conspiracy case 50 accused have spent more than nine years in jails only to be acquitted by the High Court. The prompt withdrawal of conspiracy charges against George Fernandes and others in 1977, is more an exception than the rule, standing in sharp contrast with the dilatory movement of the law in the case of other political dissidents. Even today, conspiracy cases against writers in Andhra Pradesh continue to drag at the sessions court level, five years after the charges were filed.

PRISON CONDITIONS

"Furthermore, understand that the care and concern bestowed by the state authorities upon the welfare of the detenues, who are well housed, well-fed and well treated, is almost maternal."

Justice Beg, in his judgment in the Habeus Corpus Case, April, 1976

"No Government which dehumanizes human institutions and also uses these institutions as zoological laboratories can continue in power."

Justice V.R. Krishna Iyer and Justice Chinappa Reddy in their Judgment on Bihar undertrial prisoners, February 1979

The post-Emergency prison literature has brought forcefully into light the conditions in jails throughout India. Prisoners herded into overcrowded jails have to live with substandard food, poor medical facilities and even irregular water supply. The jail manuals which are to be supplied to the prisoner by law are seldom seen. In some cases these manuals were drafted as far back as 1861, and have never been corrected since. Thus, the Punjab jail manual ("Corrected upto August 1975") continues to refer to the "crown" as the ruler of India. Colossal corruption that pervades our jails is one of the primary causes of such wretched living conditions. The Amnesty International reports, both before and after the Emergency, have focussed on these living conditions in Indian jails. In particular, they refer to the practice of subjecting prisoners to bar fetters. Bar fetters "consist of an iron ring round the ankle, each of which is attached to an iron bar some 20 inches long, the bar being connected to another iron ring round the waist. " There was at least one instance where a prisoner was kept in such fetters for at least two years.

The INDIAN EXPRESS investigations in 1979, has brought out the fact that 53% of our prisoners were undertrials. At that time in Bihar alone there were 29, DOO undertrial prisoners. A report in early 1979 gives the position of undertrials in some of the prominent jails as follows:

Secunderabad (Andhra Pradesh)	80
Surat (Gujarat)	78
Ahmedabad (Gujarat)	72
Lucknow (UP)	82
Bangalore (Karnataka)	55
Alipore (West Bengal)	50
Trivandrum (Kerala)	38
Bhopal (MP)	38

What is noteworthy is the fact that political parties in power at the time in the above-mentioned states include Congress, Congress (I), Janata, CPI, CPI(M) - all the major parties. Even after the historic-judgement of the Supreme Court on one habeas corpus petition following which thousands of undertrials from Bihar were released, the large majority of prisoners continue to remain in jails for long periods of time for the crimes which are yet to be proved.

The political prisoners are seldom recognized as such and given the lowest possible treatment under class 'C'. The abominable living conditions are a source of constant tensions between the prisoners and the staff often leading to clashes. In West Bengal during 1971-77, over 70 prisoners were killed in jails. In Andhra Pradesh, at least two prisoners have lost their lives due to lack of timely and adequate medical facilities.

The scant regard of the various political parties for the democratic rights of the prisoners is more ironical since, barring the present generation of the Congress party, the leaders of all political parties have been to jail one time or other. But when they assumed power, no party sought to reform this prison system. On the contrary, in one case - during the Janata regime at the centre - the government even introduced a preventive detention bill (which was later withdrawn) which had a provision to withhold ordinary 'medical, recreational and other facilities' for detainees.

FREEDOM OF EXPRESSION

"The Government has no intention of limiting or abridging the freedom of the press."

Mrs. Indira Gandhi, May 20, 1972

"The purpose of censorship is to restore a climate of trust."

*Mrs Indira Gandhi is an AIR
Broadcast on June 27, 1975*

One of the freedoms guaranteed in the Constitution is the freedom of speech and expression, from which is derived the freedom of press. It should be remembered that the largest circulated dailies - which are likely to have the widest influence on the readers - are owned by big industrial houses. The adverse effect of this on 'news dissemination was recognized by the Congress which ruled India for 30 years, as evident from a speech by the late Jawaharlal Nehru at the All India Newspaper Editors' Conference -in New Delhi on September 17, 1952, when he said: "Does the freedom of the press ultimately mean freedom of the rich man to do what he likes with his money through the press ? A poor man or a man with inadequate means, whether he is good or bad, won't have much of an opportunity to express himself except in a very limited and small way". But even while recognizing this, Mr Nehru's government apparently did not do anything to allow the "poor man" to express his desires and aspirations through newspapers, as evident again from the findings of the First Press Commission which examined the news presentation in the big dailies in 1954 and concluded: "The most obvious instance of bias that has been stressed before us in evidence is that the bulk of the persons who own and publish newspapers are persons who believe strongly in the institutions of private property and who in consequence encourage the expression of views and news which favour the continuance of the present order, while discouraging contrary views and blacking out news from the other side,"

Such a bias has been evident all these years in the newspapers giving only the industrialists' point of view when covering strikes and blacking out the workers' version, or while reporting police firings, invariably carrying-the police version leaving out the point of view of the victims of such firings.

After Mrs Gandhi came to power, she posed as a champion of press freedom and said: "The Government is determined to correct the present situation of concentration and monopoly in the newspaper industry..... Newspapers should not be house magazines for big business. We want the press to be an independent industry which is not subservient to other industries. We want the press to serve the people and be the voice of the people," (From her speech at a function in Calcutta on May 20, 1972). But during her long regime, she hardly lifted her little finger to delink the newspapers from the control of the industrial houses.

What she did instead, after clamping down the Emergency, was to impose full-fledged government control over the press. She imposed pre-censorship, and all news critical of her government were blacked out. Suppression of truth, propagation of falsehood, artificial creation of opinion and boycotting of inconvenient facts reached its climax during those days. She even resorted to cutting off power on the night of June 25, 1975 to prevent certain newspapers from appearing the next day to carry the news of the arrest of political opponents on the eve of the Emergency. Reports of forcible sterilization, the gunning down of protestors against such coercion in places like Muzaffarnagar, the police firing on people who protested against the demolition of slums in Turkman gate in Delhi were prevented from appearing in the newspapers.

But while denouncing these assaults on the rights of the press, we should also remember that the Indian Constitution itself contains the germs of such aberrations. Although Section 19 (1) (a) guarantees us freedom of speech and expression, the next clause, number two puts a strong rider on the operation of the first clause by saying- "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the state from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement of any offence". Thus, the government is empowered to impose censorship on the plea of a wide variety of developments. The freedom of the Indian press is therefore constantly threatened by the provisions of the Constitution itself, just as the Indian citizens' fundamental rights are rendered inoperative by constitutional provisions which curtail them.

After the takeover by the Janta party, it was expected that things would change. But the control over the press reverted back to its original owners - the industrial houses and the rich - genuine journalists hardly having any say in the day to day reporting or policies of the papers. As a result, the readers are never allowed by these newspapers to hear in time the dispute which leads to a strike or a lockout, but the industrialists are allowed to put their version of the dispute both in the news columns as well as in the advertisement columns. During the Janta regime, when the police shot down workers of the Swadeshi Cotton Mills owned by the house of the Jaipurias in Kanpur, not 5 single big newspaper thought it necessary to undertake a thorough investigative reporting, to hear the other side of the story - the story of the workers. Again, in Faridabad when workers were shot dead on October 17, 1979, it was left to the PUCL, Delhi, to disclose the enormity of the police crimes and reveal how injured workers were tied down with chains to their beds in the local hospital. The state governments also have begun to behave in the old fashion, preventing newsmen from gathering news. In Faridabad, after the October 17 police firing, reporters were not even allowed to enter the hospital to find out how many wounded people were admitted there.

Today, with the elections round the corner, politicians even threaten to burn particular newspapers with whose reporting they are not happy, or brand journalists as corrupt and even induce their followers to manhandle reporters and press photographers from time to time.

Thus, the Indian press remains all through the various regimes, a captive of the ruling powers - whether the big industrialists or the ruling politicians - unable to reflect the genuine desires and aspirations of the common people of India.

The assault on the freedom of expression extends to literature also. The practice of banning literature, which was initiated by the British government continues today. In Andhra Pradesh while the government initiated legal procedures in 1975 against a magazine - SRJANA - for publishing a poem in support of the railway strike, in Punjab, the Akali government banned in 1978 the literature of the Nirankaris, its religious rivals. The ban imposed on Telugu poetry and short story anthologies continue to be in force eight years after their proscription.

THE SEVENTH PARLIAMENT - WHITHER DEMOCRATIC 'RIGHTS'?

This then is the process by which the democratic rights of the people of India have suffered continuous assaults. Almost in all the various forms of such assaults referred to above, one can easily notice the essential continuity of this process right from 1947. All political parties, national or regional, which are recognized by the Election Commission, are in power or were in power at one time or another in either the Centre or the states. Still the flow of assault has been uninterrupted and its growth consistent. This brings out the sharp contrast between promises and performances of these parties. It is no wonder therefore that, when these parties are seeking votes for the coming mid-term election, they show little concern in their campaign about the state of democratic rights in India which stands threatened by their actions.

Today a situation has come to pass where maddening communal violence, arbitrary actions of executive authorities, large-scale killing of people in police firings, the mysterious disappearance of militant youths and the continued imprisonment of large number of undertrials no longer affect the conscience of the public. A whole generation in independent India is growing up whose sensibilities to life and death are being deliberately destroyed,

All these are an ominous indication of the dangers lying ahead the country as it goes to the polls. The People's Union for Civil Liberties, Delhi, takes this opportunity to remind the people of the grim question that faces them: Can we remain helpless spectators to the rapid disappearance of all democratic rights and end up by being passive victims of a ruthless tyranny?

THE DELHI STATE PEOPLE'S UNION FOR CIVIL LIBERTIES AND DEMOCRATIC RIGHTS CAME INTO EXISTENCE DURING THE EMERGENCY. A SMALL ORGANIZATION WITH LIMITED RESOURCES, ITS ACTIVITIES TOO FLUCTUATED WITH THE TYRANNY AND THE TURBULENCE OF THE LAST THREE YEARS.

THOUGH A DELHI-BASED ORGANIZATION, IT ALSO HELPED TO STRENGTHEN THE CIVIL RIGHTS MOVEMENT OUTSIDE DELHI. WHEREVER IT COULD, IT TRIED TO INVESTIGATE INTO CASES OF ASSAULTS ON DEMOCRATIC RIGHTS, WHETHER IT INVOLVED MUSLIMS IN ALIGARH, PEASANTS OF ANDHRA PRADESH, TRIBALS OF BIHAR, WORKERS OF FARIDABAD, FISHERMEN OF GOA OR STUDENTS OF DELHI OR INDIAN IMMIGRANTS ABROAD. HOWEVER FEEBLE ITS ATTEMPTS HAVE BEEN, IT HAS TRIED TO SAFEGUARD THE DEMOCRATIC RIGHTS OF THE PEOPLE AND PROTESTED AGAINST THE ARBITRARY ACTIONS OF THE AUTHORITIES, IRRESPECTIVE OF THE PARTY IN POWER.

TODAY, WHILE THE NATION FACES THE PROSPECTS OF YET ANOTHER CHANGE IN THE GOVERNMENT, IT FEELS THE NEED FOR FOCUSING THE ISSUE OF DEMOCRATIC RIGHTS. THIS BOOKLET, BY NO MEANS A COMPREHENSIVE ACCOUNT, IS PREPARED WITH A VIEW TO DRAW ATTENTION TO DEMOCRATIC RIGHTS IN RETROSPECTIVE. THE PEOPLE'S UNION FOR CIVIL LIBERTIES AND DEMOCRATIC RIGHTS, DELHI, WILL BE HONOURED If THIS HUMBLE EFFORT HELPS THE PROCESS OF INCREASING AWARENESS OF THE PERILS THREATENING OUR PEOPLE.