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Source: www.thehindu.com Date: 2023-10-04

THE TRIUMPH OF VACHATHI OVER A HOSTILE STATE

Relevant for: Developmental Issues | Topic: Important Aspects of Governance, Transparency & Accountability including Right to Information and Citizen Charter

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October 04, 2023 12:16 am | Updated 08:43 am IST

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At Vachathi | Photo Credit: THE HINDU PHOTO ARCHIVES

The Madras High Court's judgment, on September 29, 2023, upholding the human rights of the people of Vachathi in Tamil Nadu is remarkable — as a constitutional court, it unmasked and recognised that coordinated and large-scale repression by uniformed forces cannot take place without orders from or complicity at the top levels of the government.

The court said, "In order to safeguard the actual smugglers and the big-shots, the revenue officers, police officials and also the forest officials, with the help of the then Government, played a big stage drama (sic), in which the innocent tribal women got affected." In the context of the large-scale violence we see today by law enforcement agents on the common man, the decision assumes importance. The repression of the anti-Sterlite protests, the student protests in Jawaharlal Nehru University and elsewhere, the bulldozer raj in Uttar Pradesh, Haryana, the repression against tribals and the violence in Manipur are but a few instances.

The villagers of Vachathi have created history and the court verdict is testament to their resolve. it is an assertion of their dignity. This is among the rarest cases in the annals of legal history where all 215 accused (the survivors of the 269 accused), government and law enforcement personnel stand convicted en masse of offences under The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Indian Penal Code. Rigorous imprisonment ranging from one to 10 years with fine has also been imposed.

A recollection of some of the events at Vachathi, a remote village of Adivasis in Dharmapuri district, Tamil Nadu is necessary. On June 20, 1992, about 300 uniformed officials unleashed violence on the village on the pretext of unearthing smuggled sandalwood. Eighteen women including a woman who was pregnant were raped. And, 90 women, 28 children and 15 men were illegally confined in the Forest Ranger's office. The custodians of law ordered the "Oor Gounder" (the village chief) to strip the women. The women were then asked to beat him with brooms. Several villagers were sent to Central Jail, Salem. The officials continued the plunder and violence, forcing the villagers to flee to the forests. After visits by members of the Tamil Nadu Tribals Association and the All India Democratic Women's Association in July 1992, A. Nallasivan, the then State Secretary, CPI(M) wrote to then Tamil Nadu Chief Minister J. Jayalalithaa. K.A. Sengottaiyan, Minister for Forests, proclaimed that the complaint was fabricated. The government machinery down to the District Collector, the Revenue Divisional Officer, the Superintendent of Police and the Chief Conservator of Forests failed to take action

despite representations. Former IAS officer, Ms. Bhamathi, who was Director of the National Commission of Scheduled Castes and Scheduled Tribes (Tamil Nadu, Kerala, Puducherry and Lakshadweep) was the only official who sent a report of her findings to the National Commission of SC/ST. Yet, no first information report was registered.

A public interest litigation by A. Nallasivan was stoutly opposed by the State through its Advocate-General, the highest law officer. In 1995, the High Court relied on Ms. Bhamathi's report to rebuff the state, directed the supply of basic needs and asked the Central Bureau of Investigation to investigate.

It has been a long wait for justice. Why so? The obduracy of the state to deny even mandatory interim relief to victimised Scheduled Castes and Scheduled Tribes, the false cases that the police foisted on innocent villagers and the multitude of petitions by the accused to stall the trial with tacit support of the state were a few of manifold obstacles.

However, the main reason for the delay is clear in the court's observation: "It is not the situation that a private individual committed the offence and a single victim made complaint" and that "evidence of the victims clearly show that they were threatened by the uniform force not to reveal the sexual assault committed by the uniform force and if it was... they would take away the life of the individual or their family members".

Why was this state-organised collective crime dealt with as any other individual crime? Is this not a monumental flaw? When crimes are committed by agents of the state, should not "command responsibility" and culpability be fixed on the heads of departments and the Ministers too? The focus of evidence, onus and degree of proof and culpability would then shift. The trial was protracted and justice delayed because of the gross lacuna in the criminal justice system. Our criminal laws do not provide special procedures, evidentiary principles and criminal liability for such organised crimes by state actors. The prosecution had to prove the guilt of each of those accused as if an individual offence had been committed.

In line with Principle 24 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, law enforcement agencies must adopt measures to ensure that superior officers are held responsible if they know, or should have known, that officials under their command are resorting, or have resorted, to a violation of human rights, and they did not take measures to prevent, or report such use.

In numerous judgments, the Inter-American Court of Human Rights in South America has established that factors relevant to fix the responsibility of superiors are: knowledge of risk by state officials and the duty to know of the existence of a real and immediate risk to life and/or physical integrity, and the reasonable possibilities of preventing or avoiding that risk. Therefore, ignorance of actual occurrence cannot be claimed if superiors did not exercise adequate supervision and control. Article 28 of the Rome Statute followed by the International Court of Justice also follows the principle of command responsibility. In India, the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill has lapsed. The new criminal law Bills introduced by the central government as an exercise to decolonise old laws do not recognise organised violence by state agents as a separate class of crime and provide no speedy remedy. State violence is a colonial legacy and is anathema in a democratic republic.

STs have been oppressed historically and the law treats sexual and targeted violence against them as aggravated atrocities fit for rigorous punishment. Command liability in the case of Vachathi is writ large. The High Court has, therefore, ingeniously fastened the responsibility on the state to pay the enhanced compensation of 10 lakh and to ensure a job for each rape survivor. Stringent action has been directed against the then District Collector, Superintendent of

Police and the District Forest Officer. Is there no accountability and culpability to be fixed on the political executive? The case has thrown up the urgent need to amend the criminal law to fix command responsibility and consequent stringent penalty.

The atrocities happened two decades before 'Nirbhaya' (2012) that shook the nation's conscience. Criminal law amendments of 2013 and subsequent judicial decisions regarding non-disclosure of the identity of rape survivors, gender sensitive investigation and trial to prevent further victimisation and facility of medico-legal and psychological support were unavailable. For the 18 rape survivors, the full public disclosure of their identities, accompanied by harsh cross examinations on behalf of not one but several accused during the trial amounted to aggravated trauma. But they overcame a hostile state and an archaic and unfriendly criminal justice system. Many are now educated and are full participants in the economic and political activities in the area. These women are the true heroes of Vachathi.

R. Vaigai is a senior advocate practising at the Madras High Court and is a member of the legal team for the Vachathi survivors

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<u>Tamil Nadu / government / crime, law and justice / sexual assault & rape / Caste violence / laws / prison / police / judiciary (system of justice) / international law</u>

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Source: www.thehindu.com Date: 2023-10-05

UNDECLARED EMERGENCY: THE HINDU EDITORIAL ON THE ARRESTS IN THE NEWSCLICK CASE

Relevant for: Security Related Matters | Topic: Role of Media and Social Networking Sites in internal security challenges

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October 05, 2023 12:15 am | Updated 07:25 am IST

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Even for a government that has shown itself to be intolerant of critical journalism, the actions by the Bharatiya Janata Party-led regime on the news website NewsClick smack of extreme vendetta and brazen harassment. The government has, thus far, disclosed no specific allegation on what exactly merited the arrest of the site's Editor-in-Chief Prabir Purkayastha and another person under the draconian provisions of the Unlawful Activities (Prevention) Act among others. Reportedly, the website is under investigation for a "terror case with Chinese links", but no article or content has been brought to light that allegedly suggests any link to "terror" or pro-Chinese propaganda. The news organisation has also said it has not been given a copy of the First Information Report or informed about the particulars of the offences it has been charged with. And yet, the journalists, contributors and employees associated with it have been subjected to raids, with many of their mobile phones and laptops seized. These actions against the website are not new — it has been under the scrutiny of the Enforcement Directorate (ED) and the Income-Tax Department since 2021, with seizures of electronic equipment, but no charge sheet was ever filed against it. The Delhi High Court, finding a prime facie case in favour of NewsClick, granted interim protection to Mr. Purkayastha from arrest and also deterred the ED from taking coercive action against the organisation. A lower court had dismissed a complaint filed by the Income-Tax department on a similar matter.

The trigger for the set of actions now is apparently an article in *The New York Times* that questioned the motives of an investor in NewsClick and alleges his proximity to the Chinese government, but it did not point to any specific article on the site that amounted to illegal propaganda against India. Government representatives first engaged in a systematic vilification and disinformation campaign against the site based on this article. Tuesday's actions seem driven by an impulse to scapegoat a media outlet and to bring about, therefore, a chilling effect on critical journalism. No government can or should so brazenly target journalists solely based on suspicion about its funding and thereby undermine the freedom of expression, which is guaranteed under the Constitution. Mr. Purkayastha was arrested and kept in jail during the Emergency in 1975 under the draconian Maintenance of Internal Security Act, on trumped up charges, when he was a student-activist at Jawaharlal Nehru University. Today, history seems to be repeating itself, but without even the fig leaf of a declared Emergency.

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government / Bharatiya Janata Party / arrest / media / laws / China / terrorism (crime) / judiciary (system of justice) / freedom of the press / history / constitution

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NOT JUST A CASE ABOUT IMPROVING INVESTIGATION

Relevant for: Governance | Topic: null

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October 21, 2023 12:16 am | Updated 02:09 am IST

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'The Court also needs to review the reforms that have taken place in the police' | Photo Credit: The Hindu

The Supreme Court of India, recently, in Rajesh & Anr. vs The State of Madhya Pradesh, while setting aside the conviction of three accused persons alleged to have been involved in murder and related offences, emphasised the need to devise 'a consistent and dependable code of investigation' so that the guilty do not walk free on technicalities. The Court not only pointed out some illegalities in the investigation but also echoed the comments of the Justice Malimath Committee on Reforms of the Criminal Justice System and the observations of the Law Commission of India in its Report number 239. Here is a reality check on both these observations.

A major pitfall pointed out by the Court relates to Section 27 of the Indian Evidence Act which lays down conditions of the admissibility of any fact discovered in consequence of information received from a person 'accused of any offence', 'in the custody of a police officer'. The Court held that the person could not be said to be in police custody till he was formally arrested, as he did not figure as an accused person in the First Information Report (FIR) and was not accused of any offence till his arrest. This assumption does not appear to be a correct proposition of the law.

In Re: Man Singh (1959), the Court held that the word 'custody' does not necessarily mean detention or confinement. The submission to custody, by any action or words, is also custody within the meaning of this section. Even indirect control over the movements of suspects by the police has been held to constitute 'police custody'. In Chhoteylal vs State of U.P. (1954) and many other similar cases, the Court has held that 'an accused is in police custody within the meaning of the section when he is under surveillance of the police and cannot break away from the company of the police'.

The Court in State Of U.P. vs Deoman Upadhyaya (1960) held that the expression "accused of any offence" is descriptive of the person against whom evidence, relating to information alleged to be given by him, can be proved by this section. In Md. Dastagiri vs State (1960), the top court held that it is not necessary that when a statement is made by a person, he should be an accused, that it is enough, if he is an accused person when it is sought to be proven in court. There could be cases where the discovery of incriminating article(s) based on information

revealed by the suspect (not mentioned as accused in the FIR) could be the first piece of evidence (whether substantive or corroborative), thereby necessitating arrest. Therefore, custody under Section 27 of the Indian Evidence Act does not necessarily mean formal arrest by the police.

Similarly, the Court laid too much emphasis on seeking compliance under Section 100(4) and Section 100(5) of the Code of Criminal Procedure (CrPC) relating to presence of independence witnesses during search and seizure of a closed place, in the discovery memos such as discovery and seizure of the body of the deceased and his clothes, and weapon of murder. In Musheer Khan@Badshah Khan & Anr vs State Of M.P. (2010), the Court held that 'if the discovery under section 27 of the Indian Evidence Act is otherwise reliable, its evidentiary value is not diluted just by reason of non-compliance of section 100(4) or section 100(5) of the CrPC'. The reason is that Section 100 deals with processes initiated to compel the production of things on a search, whereas the very basis of facts deposed by an accused in custody is voluntary and pursuant to discovery taking place. They operate in entirely different situations. Therefore, the safeguards in search proceedings based on compulsion cannot be read into discovery on the basis of facts voluntarily deposed. Similar views were expressed by the top court in State (NCT of Delhi) vs Sunil (2001) also. In fact, such panchnamas are prepared by the police as a rule of caution, and not in compliance of any mandatory provision of law.

By highlighting excerpts from the Justice Malimath Committee report and the Law Commission Report, the Court expressed regret that the standard of police investigation is still poor and that the principal causes of a low rate of conviction, inter alia, included inept and unscientific investigation by the police.

There is no doubt that the quality of investigation needs to improve and that the police should use the best available scientific tools of investigation. However, the Court also needs to review the reforms that have taken place in the police in pursuance of the recommendations made by various commissions and committees. On the subject of investigation, the Malimath Committee had recommended that the investigation wing should be separate from that of the law and order wing. Though this separation may not prove to be a panacea for improving investigation in its totality (in the absence of other factors), the efforts made by States must be reviewed before blaming the police in whole for the irregularities.

The Law Commission's Report number 239 which was submitted on the directions of the Court in WP(C) No. 341/2004, Virender Kumar Ohri vs Union of India and Others pertained to suggestions made with regard to 'Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities'. With regard to investigation, the commission observed that 'the police stations are understaffed', 'sufficient priority is not given for investigation of crime' and that 'there is no periodic exercise to upgrade the skills of investigation'. The commission not only mentioned its own 154th report (which recommended separation of investigation from law-and-order duties), but also reiterated the directions of the top court given in Prakash Singh & Ors. vs Union of India and Ors. (2006).

Prakash Singh, former Director General of Police (DGP), Uttar Pradesh, former DGP, Assam and former Director General of the Border Security Force, has reviewed the recommendations of all previous commissions and committees. Out of a total of seven directives by the Court, one pertained to a separation of investigation from law and order to ensure quicker investigation, better expertise and improved rapport with the people. This separation was to be taken up first in towns/urban areas (with a population of 10 lakh or more), and gradually extended to smaller towns.

Summing up the responses of State governments, Mr. Singh writes in his book, The Struggle for

Police Reforms in India (2022): 'Seventeen states have taken measures to separate the investigative and law and order functions of the police. The remaining states are not opposed to this directive but have yet to initiate necessary steps for separation'. When it came to overall compliance of the seven directives, nine States fell under the 'good and satisfactory' category and 20 States in the 'average and poor' category. However, going into the details of responses, one could decipher that most States have either made some provision in their State Police Act or have issued administrative orders. The police authorities are, however, aware that unless additional manpower is sanctioned, except in major cities such as Delhi and Mumbai, it is practically difficult to separate the two wings because of a lack of manpower. 'Separate staff for investigation has not been provided for', the book says about Madhya Pradesh, where the directive of designing a code of investigation was given by the Court.

It is difficult to believe that a code of investigation does not exist in the States. These are also revised from time to time, and the Supreme Court's instruction included wherever required. However, the investigating officers are not only inadequate in number but are also unable to upgrade their skills because there is a shortage of officers. Only symptomatic treatment of police reforms by having some provisions in the rules and regulations will not help much. The Supreme Court needs to step forward and ask every State and Union Territory to report compliance of its directives on investigation and other issues in letter and spirit. Similarly, there must be consistency in its rulings unless earlier judgments are clearly overruled for cogent reasons.

R.K. Vij is a retired Indian Police Service officer. The views expressed are personal

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judiciary (system of justice) / investigation / laws / police

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Source: www.pib.gov.in Date: 2023-10-25

SHRI DHARMENDRA PRADHAN ALONG WITH SHRI MANOHAR LAL KHATTAR TO INAUGURATE ICT LABS AND SMART CLASSROOMS FOR PM SHRI SCHOOLS IN HARYANA TOMORROW

Relevant for: null | Topic: Important Schemes & Programmes of the Government

Union Minister for Education and Skill Development & Entrepreneurship Shri Dharmendra Pradhan along with Chief Minister of Haryana Shri Manohar Lal Khattar will inaugurate ICT labs for PM Shri schools on 25th October 2023 at Rohtak, Haryana.

Haryana School Education Minister Shri Kanwar Pal, Secretary of the Department of School Education & Literacy Shri Sanjay Kumar, Senior officials, dignitaries, and eminent academicians will also grace the event.

Opening remarks and welcome address will be delivered by Shri Sanjay Kumar followed by a presentation on PM Shri schools. In the latter half of the event, Shri Dharmendra Pradhan and Manohar Lal Khattar will inaugurate ICT labs and Smart Classrooms for PM Shri schools.

Apart from these, the Ministers will also launch the Accreditation of the Schools app and Mobile Application (NIPUN). Books and Learning Materials for Balvatika-3rd will also be launched during the occasion.

SS/AK

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Source: www.thehindu.com Date: 2023-10-30

TIME AND CHANGE: THE HINDU EDITORIAL ON THE PARLIAMENTARY STANDING COMMITTEE ON HOME AFFAIRS AND NEW CRIMINAL LAWS

Relevant for: Developmental Issues | Topic: Government policies & interventions for development in various Sectors and issues arising out of their design & implementation incl. Housing

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October 30, 2023 12:20 am | Updated 12:20 am IST

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The demand for more time to examine the report has emerged because the draft report was said to have been circulated in English only days before it was scheduled to be adopted, and that the Hindi version was made available only on the eve of the sitting. The panel's next meeting is scheduled for November 6. It would be unwise to treat the current deferment as nothing more than a brief interlude to give more time to panel members to study the draft report. Rather, it should be seen as an opportunity to extend the time given to the committee by a few more months. The government seems to be keen on getting the Bills introduced in Parliament and passed during the winter session. There is no reason for such haste. It might be argued that considerable sections of the new laws are mere reproductions of the old Codes and that one study by the Standing Committee may be enough before they are introduced in the legislature. However, there are areas that may require deeper scrutiny: for instance, the scope for misuse, if any, in the new definitions, the desirability of introducing new offences such as 'hate speech' and whether there is further scope for procedural reform in the criminal justice system.

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laws / parliament / crime, law and justice / lawyer / language / hate crimes

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Source: www.pib.gov.in Date: 2023-10-30

DELEGATES FROM STATES AND UNION TERRITORIES REACH THE NATIONAL CAPITAL TO PARTICIPATE IN THE FINALE EVENT OF MERI MAATI MERA DESH

Relevant for: null | Topic: Important Schemes & Programmes of the Government

For the finale event of Meri MaatiMeraDesh, delegates from 36 States and Union Territories are reaching the national capital through various modes of transport like specially dedicated trains, buses, and local transport to take part in a two-day programme at Kartavya Path/Vijay Chowk on 30th and 31st October. These Amrit Kalash Yatrisare staying at two camps- Dhanchiri camp in Gurgaon, and Radha Soami Satsang Beas Camp in Delhi.



Delegation from West Bengal arrived in Delhi, carrying the AmritKalash with soil, to participate in the concluding ceremony of MeriMaatiMeraDesh campaign scheduled to be held on October 31, 2023



Delegation from Chhattisgarh, carrying the AmritKalash for concluding ceremony of MeriMaatiMeraDesh campaign



Karnataka delegation, infused with zeal, arrive at Hazrat Nizamuddin Railway Station, Delhi to participate in the final leg of 'Meri MaatiMeraDesh' campaign



With the AmritKalash, delegation from Gujarat arrive at Delhi



Delegation from Goa, carrying AmritKalash, arrived at Hazrat Nizamuddin Railway Station, Delhi to participate in the concluding ceremony of MeriMaatiMeraDesh campaign



Maharashtra delegation with Amrit Kalash arrived at New Delhi Railway Station to participate in finale event of MeriMaatiMeraDesh campaign

Tomorrow, i.e., 30th October, a day long programme on "Meri MaatiMeraDesh" will be held in

which participants from States and Union Territories would march in ceremonial attire at the concluding event of Amrit Kalash Yatra. Participants would arrive zone wise in batches at the venue. State wise programme to be conducted including patriotic songs and relay of choreographed cultural dance presentations in sync with representatives from State/UT coming up and pouring soil/rice from their State/UT Amrit Kalash into one giant Amrit Kalash reflecting the spirit of Ek Bharat Shreshtha Bharat at Kartavya Path. The programme is slated to begin at 10 A.M. and will go on till late evening.

Prime Minister Shri Narendra Modi willaddress the finale event of **Meri MaatiMeraDesh** campaign at Vijay Chowk/Kartavya Path on 31st October 2023. This event will mark the culmination of Meri MaatiMeraDesh campaign's Amrit Kalash Yatra in which Amrit Kalash Yatris from over 7000 blocks of 766 districts will be present. It will also mark the wrap of the two years long campaign of Azadi Ka Amrit Mahotsav which began on 12th March 2021 to celebrate the 75 years of India's independence. Azadi Ka Amrit Mahotsav has since witnessed more than two lakh programmes organized throughout the country with enthusiastic public participation.

This event will also witness the launch of autonomous body **MeraYuva Bharat (MY Bharat)** which will help in setting the focus of the Government on Youth Led development and to make the Youth "active drivers" of development. The aim of this autonomous body is to inspire youth to become community change agents and nation builders allowing them to act as the YuvaSetu between the Government and the citizens.

Union Minister Shri Anurag Thakur has said that 'Run for Unity' will be heldon 31stOctober. Shri Thakur stated that the 'Meri MaatiMeraDesh' program will end under the chairmanship of Prime Minister Shri Narendra Modi in Delhi.On that day, the MeraYuva Bharat portal will also be launched. It will provide a platform for the youth of the country where they can contribute to nation-building.

<u>#WATCH</u> | Union Minister Anurag Thakur says, "...On October 31st, 'Run for Unity' will be held... The 'Meri Maati Mera Desh' program will end under the chairmanship of PM Modi in Delhi... On that day, the Mera Yuva Bharat portal will be launched. It will provide a platform for... pic.twitter.com/2M9WjUiyCi

BY/SKT

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