

Priya Pillai Case

The Shadows Lengthen

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The case of Greenpeace India activist Priya Pillai is a stark example of how the space for democratic dissent in India is not only shrinking alarmingly but also of the central government's parsimony with the truth. In the entire sorry episode underlining the blatant violation of human rights, the Intelligence Bureau, which seems to be a law unto itself, has played a major role.

At most times, the Government of India tends to be economical with the truth on issues concerning human rights. The latest evidence of this can be witnessed in the affidavit filed by the Ministry of Home Affairs (MHA) in response to the petition filed by Priya Parameswaran Pillai. Pillai is employed as a policy officer with the Greenpeace India Society that is registered under the Tamil Nadu Societies Registration Act.

The facts of the Priya Pillai case bear brief reiteration. On 11 January 2015, while attempting to board an Air India flight from New Delhi's international airport, she was told that she would not be allowed to board the London-bound aircraft. Her checked-in baggage was offloaded and her passport was stamped with the word, "off load." She was told that this was being done on the "basis of standing instructions by the Government of India."¹ Pillai subsequently learnt from media reports that the Bureau of Immigration had offloaded her due to the existence of a "look out circular" (LOC). The media forgot to mention that immigration officers at the international airports are drawn from the Intelligence Bureau (IB) and that for all practical purposes the Bureau of Immigration reports to the IB.

Her petition before the Delhi High Court on 22 January 2015 challenged the arbitrary action of the MHA for denying her the liberty "to travel out of India without following any procedure established by law."² She also challenged the LOC issued against her stating that it lacked any legal basis.

India's UN Pledges

In its 2006 voluntary pledge to the United Nations (UN), India had stated that "it will continue to encourage efforts by civil society seeking to protect and promote human rights".³ Later, in its 2008 national

report submitted to the UN Human Rights Council, India stated:

15 The Constitution offers all citizens, individually and collectively basic freedoms which are justiciable and inviolable in the form of six broad categories of Fundamental Rights:

- Right to equality including equality before law ...

- Right to freedom of speech and expression; assembly; association or union; movement; residence; and right to practice any profession or occupation; ...

- Right to constitutional remedies for enforcement of Fundamental Rights.

The bulwark of all Fundamental Rights is found in Article 21 which provides that no person shall be deprived of his life or liberty except in accordance with procedure established by Law.⁴

Deep State

The superior courts have for the most part been clear on the issue. In *Maneka Gandhi vs Union of India*, the Supreme Court held on 25 January 1978, the right to go abroad is part of "personal liberty" within the meaning of that expression as used in Article 21 and that no one can be deprived of this right except according to the procedure prescribed by law.⁵ This principle was reiterated by the Delhi High Court in *Vikram Sharma & Ors vs Union of India & Ors* in July 2010. It also ordered the expunging of the word, "offloaded" from the petitioner's passport.⁶ However, in one case, Teesta Setalvad was reproached by the Supreme Court for forwarding letters written to the Special Investigation Team (SIT) appointed by the Supreme Court to the Office of the UN High Commissioner for Human Rights (OHCHR). In these letters she raised concern about the protection of witnesses in the Gujarat riots cases. The apex court regretfully held that in writing such letters, Setalvad showed a lack of confidence in the Court and also opened it to foreign interference. It further demanded that she refrain from entering into correspondence with the OHCHR in future. This was acceded to.⁷

The space for democratic dissent has contracted dramatically over the last four decades in the country. In the last eight months, the Deep State in India has found even more ideological affinity in the political firmament. The affidavit

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filed by the MHA would have made for comic relief if the subject matter were not so serious with implications that go to the very heart of adherence to democratic norms by the Indian state. Filed by an under secretary from the Foreigners' Division (Foreign Contribution Regulation Act wing), it only informed what is known — that both subordinate offices of the MHA are practically under the control of the IB.

Human Rights Defenders

The MHA will have to explain when the organising of a peaceful protest has become an anti-national activity. With its convenient memory does it remember that India is a signatory, to the United Nations Declaration on Human Rights Defenders? Articles 1, 5, 6, 7, 8, 9, 11, 12 and 13 of the Declaration provide specific protections to human rights defenders, including the rights:

- (i) To seek the protection and realisation of human rights at the national and international levels;
- (ii) To conduct human rights work individually and in association with others;
- (iii) To form associations and non-governmental organisations;
- (iv) To meet or assemble peacefully;
- (v) To seek, obtain, receive and hold information relating to human rights;
- (vi) To develop and discuss new human rights ideas and principles and to advocate their acceptance;
- (vii) To submit to governmental bodies and agencies and organisations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realisation of human rights;
- (viii) To make complaints about official policies and acts relating to human rights and to have such complaints reviewed;
- (ix) To offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights;
- (x) To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations;
- (xi) To unhindered access to and communication with non-governmental and intergovernmental organisations;

(xii) To benefit from an effective remedy; To the lawful exercise of the occupation or profession of human rights defender.⁸

Following her mission to India in January 2011, the UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, in her recommendations for the consideration of the central, and state governments and legislatures, stated:

137 The highest authorities at the central and state levels should publicly acknowledge the importance and legitimacy of the work of human rights defenders, i e, anyone who, 'individually and in association with others... promote[s] and ... strive[s] for the protection and realization of human rights and fundamental freedoms at the national and international levels' (Article 1 of the Declaration on Human Rights Defenders).

138 Specific attention must be given by all authorities to the categories of human rights defenders mentioned in the present report, in particular defenders working on rights of marginalized groups, including Dalits and Adivasis; defenders working on economic, social and cultural rights; defenders affected by security legislations and militarization; Right to Information activists; journalists; and women defenders and defenders working on women and child rights.

Invalid Comparison

The MHA affidavit becomes even more curious when it states that Western countries also have no-fly lists. It forgets to mention that no-fly lists in the US have already run into major legal hurdles. Two federal judges have ruled that the US government's no-fly lists violate the constitutional rights of US citizens. The issue there is still before the courts.⁹ It conveniently omits the fact that Western no-fly lists do not include peaceful protesters exercising their constitutional liberties. Those lists, problematic as they are, target members of groups that believe in armed struggle for messianic causes.

The MHA dribble in their counter affidavit about Greenpeace India Society having had their funds blocked is nailed by the Delhi High Court's order of 20 January 2015. In it, the high court judge had held,

According to me, there is no material whatsoever on record which would presently justify declining the petitioners request for allowing it to access its bank account

maintained with IDBI bank (Chennai branch). The stand taken by the respondents that the donor GPICWF, is on the list of the Ministry of Home Affairs is not enough, as no material of any sort has been placed on the record which would warrant, respondents reaching such a conclusion.¹⁰

Pillai's rejoinder exposes the McCarthyite mindset of the MHA. It is absurd that when local communities agitate for compliance with important legislation like the Forest Rights Act, the Deep State and its cohorts characterise it as part of an "international conspiracy." As Pillai points out, the terms of obtaining consent from affected villages through the means of organising gram sabhas has been vitiated as signatures were forged on gram sabha resolutions stating that all forest rights claims had been settled. This matter is presently pending before the Madhya Pradesh High Court. The attempts to scuttle consultation with the affected tribal communities have been noted by the Government of India's own High-Level Committee on Socio-Economic, Health and Educational Status of the Tribal Communities of India in its report submitted in 2014.

In the age of globalisation with both the National Democratic Alliance (NDA) and the previous United Progressive Alliance (UPA) regimes rolling out the red carpet for international capital, asking those who are at the receiving end not to appeal for international solidarity is ironical.

Accountable to None

Pillai is not the first nor will she be the last to be subjected to an opaque executive process by an organisation like the IB which is not governed by a parliamentary act, nor subjected to any parliamentary scrutiny. Its expenses are not subject to the audit control of the Comptroller and Auditor General (CAG) of India. Its funds are drawn directly from the Consolidated Fund of India through a process as opaque as everything else about it. It is, in the main, outside the purview of the Right to Information (RTI) Act. It enjoys an impunity that would make intelligence agencies in other democratic countries go green with envy. When the Central Bureau of Investigation (CBI) wanted to prosecute senior officers of this organisation for being

involved in the Ishrat Jahan case, sanction for prosecution was not forthcoming from the MHA. We are the world's largest democracy!

NOTES

- 1 Writ petition (civil) 774 of 2015, Delhi High Court.
- 2 Ibid.

- 3 Voluntary pledge of India dated 19 April 2006 while announcing its candidature for the UN Human Rights Council, <http://www.un.org/ga/60/elect/hrc/india.pdf>
- 4 Human Rights Council Working Group on the Universal Periodic Review First session Geneva, 7–18 April 2008, A/HRC/WG.6/1/IND/1
- 5 *Maneka Gandhi vs Union of India*, 1978 AIR 597, 1978 SCR (2) 621 available at <http://indiankanoon.org/doc/1766147/>
- 6 *Vikram Sharma & Ors vs Union of India & Ors*

on 26 July 2010, available at <http://lobis.nic.in/dhc/SMD/judgement/27-07-2010/SMD-26072010CW101802009.pdf>

- 7 <http://www.epw.in/commentary/step-wrong-direction.html>
- 8 <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>
- 9 <https://www.aclu.org/blog/national-security-technology-and-liberty/no-fly-list-blog>
- 10 *Greenpeace India Society vs Union of India*, [Writ Petition (Civil) No 5749 of 2014].