

Speech Accepting

THE 16TH ANNUAL PUCL AWARD ON 'JOURNALISM FOR HUMAN RIGHTS', 1996*

Subhas Ganguly[†]

Ladies and Gentlemen,

Though the article ("*The Forgotten Decade: Archana Guha Case*") on Archana Guha Case, prepared by me, received this award for journalism, I am not a professional journalist. It was love's labour for me. My involvement at emotional plane with the two-

* **Publishing History:** An abridged version of the above speech was published in the English weekly *Frontier* (May 24, 1997, Vol. 29, No. 42 issue), which had earlier published the article "*The Forgotten Decade: Archana Guha Case*" (published separately as an accompanying article in this same website), that happened to receive the annual PUCL (People's Union for Civil Liberties) "Journalism for Human Rights" Award, 1996, meant only for published articles. The award occasioned the speech, delivered at the award giving ceremony, held in Ahmedabad (capital city of Gujrat, a province in India) on March 23, 1997. A Bengali translation, by the author himself, of the full speech was published in *Biggan O Biggankarmi* (January-June, 1997, 19th year, joint first-second issue).

The entire speech is now being **published online** as an **open access article** in the website, *Writings of Subhas Chandra Ganguly* (<http://sites.google.com/site/subhasganguly/writings>): March 31, 2010.

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decade-long judicial battle, waged by the victims themselves, against custodial violence led me to narrate the same in the article. I consider myself privileged to have the opportunity to observe part of this struggle from close quarters both inside and outside court-room. And I thought it worth communicating, however inadequately, to others. The exercise was beneficial to me in the first place in terms of what I learnt about the judicial process. The discussion with Sri Saumen Guha, the main architect of this battle, though he has got no institutional training in law, went a long way in gaining the little insight (into the legal matters) that I had come to possess. Also, free access to all the documents, papers and books in possession of Sri Guha was indispensable for producing the article and this speech. I feel personally indebted to him for this. The responsibility for any error of omission or commission is of course fully mine.

“ ... Sri Saumen Guha [was] the main architect of this battle, though he has got no institutional training in law...

I pay my tribute on this occasion to the indomitable spirit, fortitude and civic courage of the fighters, viz., members of the Guha family (Sri Saumen Guha and his wife Smt. Latika Guha) and Smt. Archana Guha, Saumen’s sister...”

I pay my tribute on this occasion to the indomitable spirit, fortitude and civic courage of the fighters, viz., members of the Guha family (Sri Saumen Guha and his wife Smt. Latika Guha) and Smt. Archana Guha, Saumen’s sister, who by virtue of her marriage to a Danish citizen, now belongs to another family. The battle was not only against the state which backed the accused and ultimately convicted policemen through to the end, but also against what almost amounted to breach of trust by some of those whom the Guha’s had deeply trusted because of their professed faith in civic or human rights. I also pay my tribute to all those, both home and abroad, who helped in small and not so small ways in conducting the struggle and also to those who enthusiastically welcome the

victorious outcome of the battle. But in spite of such overt and covert support, the couple Saumen and Latika had to plod along a lonely path, as I have tried to show in my article, the full story of which with its agony (a lot of it) and ecstasy (here and there perhaps), can only be told by the fighters themselves. I have only tried my best.

“The battle was not only against the state which backed the accused and ultimately convicted policemen through to the end, but also against what almost amounted to breach of trust by some of those whom the Guha’s had deeply trusted because of their professed faith in civic or human rights.”

I express my gratitude to *Frontier* under the present editorship of Sri Timir Basu, thanks to which such a longish article (though a fuller treatment of the theme needs much larger space than a mere article can afford) could see the light of the day. This is of course in the old tradition of *Frontier*. In the seventies, when jail-killings and so-called ‘encounter deaths’ appeared for the first time, among the relatively well-known members of the press, *Frontier*’s perhaps was the only voice which cried hoarse month after month against such brutalities. The big press showed any awareness of violation of democratic rights by state only when axe fell on them too during Indira Gandhi’s Internal Emergency (1975-1977). In this context, I cannot check the temptation to quote from a *Frontier* editorial of that period (Late Samar Sen was the editor) to give you a flavour of the time when the incident which led to Archana Guha case took place:

“... killers in uniform are stalking West Bengal. Fresh evidence is piling up of how a blood-lust has informed the police force, how a gang of Draculas go on rampage every night to quench their thirst for young blood. They have even copied the methods of the fictional monster; it is said, they no longer ring the door-bell but scale walls to surprise the inmates and ‘ambush’ the chosen victims.

The last act of operation is generally performed on the streets, or in police stations, to spice the tedium of cold-blooded murder with variety.” (Frontier, November 28, 1970)

It is sad but perhaps a sign of the time that in these days of glossies, and of quick co-option of people’s slogans (including the slogan of ‘human rights’) by powers that be a magazine like *Frontier* is passing through serious crisis in terms of both its finance and readership, notwithstanding its international reputation as standard-bearer of democratic principles. I appeal to my esteemed audience to come forward to help the magazine by **donation and subscription**. Its address is 61, Mott Lane, Calcutta-700013. Phone: (033) 244-3202 [current (March, 2010) phone, website and e-mail addresses are (033) 2265-3202, www.frontierweekly.com, frontierweekly@hotmail.com, and frontierweekly@yahoo.co.in, respectively].

“... killers in uniform are stalking West Bengal. Fresh evidence is piling up of how a blood-lust has informed the police force, how a gang of Draculas go on rampage every night to quench their thirst for young blood. They have even copied the methods of the fictional monster; it is said, they no longer ring the door-bell but scale walls to surprise the inmates and ‘ambush’ the chosen victims. The last act of operation is generally performed on the streets, or in police stations, to spice the tedium of cold-blooded murder with variety.”

— Samar Sen in *Frontier*, November 28, 1970

Though the award is being given to me, I consider Saumen Guha and *Frontier* as equal co-sharers of the award. I wish they were present here and I had the honour to introduce them to you. I am happy to tell you that Saumen Guha and *Frontier* have

kindly agreed to accept parts of the prize money as a token of my humble tribute to their decades long fight for democratic and human rights. Of the total amount Rs.20, 000 (twenty thousand), Rs.2000 (two thousand) goes to *Frontier* and the rest 18, 000 (eighteen thousand) to Sri Guha. Latter informs me that the amount will be used to bring out a publication entitled ARCHANA GUHA CASE AGAINST TORTURE IN POLICE CUSTODY — ARGUMENTS, COUNTER-ARGUMENTS AND JUDGEMENT AT THE TRIAL COURT, by Saumen Guha. In my opinion, it will be an important document for students of criminal laws and civil/human rights movement. I say this because I was fortunate enough to hear these being delivered live within the court-room. For those who are interested to contact Saumen Guha, here is the address: LD/5, Kusthia Housing Estate, Kusthia Road, Calcutta – 700039. Phone: (033) 343-8374 [current (March, 2010) phone, and e-mail address are (033)2343-8374, and saumenguha@rediffmail.com, respectively].

“... custodial violence and death are on the increase and when questioned on specific instances of custodial death, the spokesmen for the state, instead of showing alacrity in detecting the culprits inevitably seek avenues of escape. And in this, there is absolutely no difference whether political bosses in the states are ‘right’ or ‘left’.”

On this occasion, may I appeal to you to ***contribute generously*** towards successful continuation of the Archana Guha case, which is now in lowest possible appellate court (session’s court). It may be years before it may be over. Contributions are to be sent to the address of Saumen Guha.

I am thankful to PUCL and the jury for choosing my article for award as this has enabled me to be instrumental in being of some material help, however insignificant, to two fighters for democratic cause, associated with the production and publication of the awarded article. My additional reason for satisfaction is the hope that, the award, by

drawing attention of a larger section of people may help spread the message of the case further, a possibility in which I am vitally interested. I hope that as a chronicler, I shall always have the sense enough not to forget that a chronicle cannot surpass, in importance, the events and the personalities chronicled.

My first hand experience with Archana Guha case, my earlier experience as civil rights activist in 70's when voices for civil rights were too feeble to be heard and my observation of the current activities from sidelines have given rise to certain perceptions and feelings (some of which may or may not reflect opinions already held by you), which with your permission, I want to share with you.

“There is move afoot, through parliamentary enactments, to clip the wings of judiciary as well as to discourage human rights activists to seek judicial redress, though the immediate context is somewhat different from usual human rights issues. It is interesting to note that there seems to be overt or covert unanimity on this score among political parties of all hues cutting across party lines. This once more confirms the already widespread notion that professional politicians in India, no matter which party they belong to, have no sincere commitment to causes of civil liberty, though they are never tired of singing homilies on it.”

Compared to the days of 70's, there have been a few very welcome developments in the field of movement for civic/human rights. A very important such development on the judicial side is the concept of Public Interest Litigation (PIL) cases where a person not personally affected by an action or lack of it can go to court with or without the participation of the direct victim(s) for redress and highest court of the land can take cognizance of an allegation written even on an ordinary post card by anybody on behalf

of anybody else and can treat it as a writ petition and often does. This has opened up a new vista for individuals and organizations interested in the protection of human rights through judiciary and many a significant victory have been won through utilization of this new avenue. Earlier, one interested in others' causes had to confine oneself to assisting the direct victims who only had the right, i.e., *locus standi* to seek judicial redress.

“... some of the [disturbing] trends within the camp of human rights movement itself. Organisations professedly dedicated to the cause of human rights are increasingly found to be engaged more in “image” building exercise than to fight on specific issues to the last.”

Besides, ambit of human rights have been significantly extended both in popular perception and judicial decisions bringing into its fold newer and newer areas related to life, livelihood and general wellbeing of the people. Till about 80's even protest against custodial violence was principally confined to political prisoners. Now protection against custodial violence is being sought for all kinds of prisoners, not excluding so-called 'anti-socials'. Courts also by and large have come forward. Since 80's there have been spate of judicial pronouncements in defence of prisoners' right to be treated with dignity whatever be the nature of accusation. In fact, in Archana Guha case citation used by non-professional counsel Saumen Guha which was extensively quoted in the judgement in buttressing the verdict of guilt were mostly from the above judgements in higher courts after eighties. A very recent significant judgement may be mentioned in this connection. The judgement was passed by Justice Kuldeep Nayar and Dr. A. S. Anand of Supreme Court on December 18, 1996 after a legal battle for ten years. It was a case of D. K. Basu vs. The State of West Bengal in which other states also were made parties later on. Sri Basu is the Chairman of a non-profit organisation named 'Legal Aid Service'. His letter to Supreme Court was treated as writ petition. The judgement granted the victims' right

to compensation by state for custodial violence. It further issued eleven requirements to be observed by the arresting authorities in all cases of arrest without exception. The judgement instructed that these requirements be broadcast on All India Radio (AIR) and shown on Doordarshan and published in local languages in the form of pamphlets and distributed among people by the respective states [*Vide* Supreme Court Cases (Criminal), 1997, page 93 to 117].

“While they are too eager to show to the world how big a champion of human rights they are by displaying catalogue of their “achievements”, they are shy of admitting failures and impatient with criticism from others. ... sometimes they would call a press-conference with fanfare to announce in how many cases of custodial death, victims have filed cases against state/police with their (formers) assistance. But before long, when cases get stuck in the quagmire of intricate judicial process of Indian courts, victim families are often left to fend for themselves. When these bereaved lonely families are threatened or even sometimes assaulted or murdered for daring to seek justice, those who made a showpiece of them are not found by their side.”

These are on the credit of the accounts. On the debit side, any one would be struck by continued and even increased indifference of the states towards violation of human rights except when alleged violators are fighting against the state. Notwithstanding certain window-dressing like Human Rights Commissions formed to appease primarily the creditor nations abroad, or some isolated instances of courageous action by some state officials of exceptional qualities, violation of human rights by state agencies or goons of the ruling parties in respective states continue unabated showing scant regard for judicial opinions. For example, custodial violence and death are on the increase and when

questioned on specific instances of custodial death, the spokesmen for the state, instead of showing alacrity in detecting the culprits inevitably seek avenues of escape. And in this, there is absolutely no difference whether political bosses in the states are “right” or “left”. Though matching people’s movement forcing the political executives to respect the judicial order is lacking, this increasing, what has come to be called “judicial activism” is making the powers that be fidgety. There is move afoot, through parliamentary enactments, to clip the wings of judiciary as well as to discourage human rights activists to seek judicial redress, though the immediate context is somewhat different from usual human rights issues. It is interesting to note that there seems to be overt or covert unanimity on this score among political parties of all hues cutting across party lines. This once more confirms the already widespread notion that professional politicians in India, no matter which party they belong to, have no sincere commitment to causes of civil liberty, though they are never tired of singing homilies on it. On specific cases of violation, they make a hue and cry only when their own followers are affected through some unfavourable turn of fortune or when such incidents can be used to settle score with their political rival. The behaviour of present Left Front Government and its present principal opposition Congress Party with respect to the Archana Guha case and custodial death during the current regime, as described in my article is a very recent example of this mind-set.

But much more disturbing than this are some of the trends within the camp of human rights movement itself. Organisations professedly dedicated to the cause of human rights are increasingly found to be engaged more in “image” building exercise than to fight on specific issues to the last. So, some among them are more interested in hugging the lime-light than in doggedly pursuing justice if each step of this effort is not newsworthy for the media. While they are too eager to show to the world how big a champion of human rights they are by displaying catalogue of their “achievements”, they are shy of admitting failures and impatient with criticism from others. Instead of putting themselves behind the victims, they show an all-too-evident tendency to put the victims behind themselves. For example, sometimes they would call a press-conference with fanfare to announce in how many cases of custodial death, victims have filed cases against state/police with their

(formers) assistance. But before long, when cases get stuck in the quagmire of intricate judicial process of Indian courts, victim families are often left to fend for themselves. When these bereaved lonely families are threatened or even sometimes assaulted or murdered for daring to seek justice, those who made a showpiece of them are not found by their (formers') side. And public who were treated to a big show of fight are not further kept informed of the miserable end of these efforts. Such callousness can come only from a mercenary attitude of trading in human misery and not from a sincere concern and respect for sufferers. Paradoxically, such an attitude could gain currency because of apparent progress of the cause of human rights both home and abroad. Slogans for human rights have apparently become fashionable or "in" things, which can earn for one even scholarship or trips abroad. In selecting or highlighting the cases of violation (of human rights) sensationalism becomes an overriding factor. And in many cases even interest of simple truth is sacrificed as it happened in Archana Guha case. In fact, necessity to put the record straight was one additional reason which prompted me to write the article. Even well-known international organisations on human rights are not free from this unfortunate tendency to sacrifice truth in the interest of sensationalism, as has been found in Archana Guha case.

“What to speak of the democratic rights of the people, democratic principles within the organisation are given a go by. Clique and intrigue become rampant. A corollary to this approach is the wrong view that the greater the number of people who run to a human right body for redress, greater is its success. ... There should be nothing secretive about the discourses within the organization. Whatever goes on within the organisation including, among other things, differences and squabbles should be public knowledge.”

Another misconception from which human rights activists sometimes seem to suffer is that expansion of the organization, in terms of numbers of both member and branches, by itself is an index of progress of the movement. But all it does in practice, particularly when such an unwieldy large organization is centralized, is to breed squabbles, faction fights and party style jockeying for power within the organisation. Transparency is lost. What to speak of the democratic rights of the people, democratic principles within the organisation are given a go by. Clique and intrigue become rampant. A corollary to this approach is the wrong view that the greater the number of people who run to a human right body for redress, greater is its success.

But in my humble opinion, real index of progress in human rights movement is not the swelling up of membership ranks of civil rights bodies or of number of people seeking help from such bodies, but increase in the number of people who come forward on their own to assert their civic and human rights. One of the principal tasks of human rights bodies should be to foster this spirit of independence among populace and not to encourage abject dependence on the human rights bodies. And instead of beating its own drum such a body should make it a special point to highlight each example of individual or joint effort of citizens to assert their civic rights on their own. A centralized big organisation is hardly suitable for this purpose. Rather a network of autonomous units joined in a completely federal structure, where a central body, if any, will have nothing more to do than to help maintain the coordination among the units and to supply the necessary information and logistics, is what should be aimed at. There should be nothing secretive about the discourses within the organisation. Whatever goes on within the organisation including, among other things, differences and squabbles should be public knowledge.

“As a part of this drive to develop self-dependence among citizens, they should be encouraged to take an active interest in the legal aspects of their cases, while seeking judicial redress. Even when they are not in a position to take up their legal defence on their own, blind dependence on professional lawyers should be discouraged. ... Experience in West Bengal shows that abject dependence on lawyers may sometimes be very costly, as my article will show. And in the matter of legal self-defence, Archana Guha case has set a precedent, which is worth emulating.”

As a part of this drive to develop self-dependence among citizens, they should be encouraged to take an active interest in the legal aspects of their cases, while seeking judicial redress. Even when they are not in a position to take up their legal defence on their own, blind dependence on professional lawyers should be discouraged. This is not a comment on the lawyers’ community as a whole. In fact, any member of legal profession, not suffering from professional arrogance and genuinely interested in the progress of human rights, is expected to welcome an enlightened interest on the part of their clients. Experience in West Bengal shows that abject dependence on lawyers may sometimes be very costly, as my article will show. And in the matter of legal self-defence, Archana Guha case has set a precedent, which is worth emulating. In this connection, I may mention another historical precedent from abroad. Right of self-defence along with assistance from professional lawyer, whenever felt necessary, was one of issues of contention in the black civil rights movements in USA from mid sixties to early seventies. Black political prisoners like Ruchell Magee, Professor Angela Devise, who were accused of false charges like murder, kidnapping etc., in their elaborate argument before the American courts, showed with specific instances how the professional lawyers supposed to defend the black prisoners collaborated with white racist prosecution side to

sabotage defense. Though perhaps not for same reason, but from no less ignoble consideration, such instances are not totally unavailable at least in West Bengal.

“Such callousness can come only from a mercenary attitude of trading in human misery and not from a sincere concern and respect for sufferers. Paradoxically, such an attitude could gain currency because of apparent progress of the cause of human rights both home and abroad. Slogans for human rights have apparently become fashionable or “in” things, which can earn for one even scholarship or trips abroad. ... Even well-known international organisations on human rights are not free from this unfortunate tendency to sacrifice truth in the interest of sensationalism, as has been found in Archana Guha case.”

I cannot check the temptation to place before you an incident from long past showing how people of our country, on their own, came forward in defence of their civic and human rights, though these terms, as we understand them these days, in all probability, were unknown to them. In 1854, during the regime of East India Company, a Commission was appointed in Madras Presidency to investigate into the allegation of collection of revenue through torture. In those days a combination of revenue, judicial and magisterial function was vested on the same person. It is not surprising that details of the methods of torture, revealed in the Commissioner’s report were as brutal as they are today. But what is of special significance is that in those days of bullock-cart transport and postal connection through runners and no media hype or guardian angels to sermonise on civic rights, as many as 519 complaints and suggestions came from people who came in person as far as 300 to 400 miles for depositions before the Commission. Besides, there were 1440 complaints by post. And all these happened within a time span of only three months. Among many suggestions that they placed before the Commission,

one was to withdraw police system in “Toto”! This, in their opinion, would save the state exchequer a lot of expenses without endangering peoples’ safety!

“I do not know what more shining example can there be on the independent and autonomous civic rights spirit of the people. If it is not found any more today is not a large part of the responsibility is to be borne by those who presume to lead the masses? And if it is still found here and there is not task of highlighting such instances to spread message across the nation should occupy topmost priority in the scheme of activities of civil/human rights bodies?”

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Thanks.

March 23, 1997
Ahmedabad, Gujrat

POSTSCRIPT: AN UPDATE

With No End in Sight, the Battle for Justice in Archana Guha Case is Now Continuing for Over Three Decades

At the beginning of the above speech in 1997, the “Archana Guha Case” was described, till that time, as “two-decade-long judicial battle” by the couple Saumen and

Latika Guha. One more decade and more have passed. But the battle is not yet (March, 2010) over. The “lowest possible appellate court (session’s court)”, spoken of in the speech, sent it back for retrial, on some or other technical ground, to lower trial court, where the accused policemen had been convicted earlier. And there it is continuing. In all, it has been going on for well over three decades now, with no end in sight.

“... this [has become] almost life-long historical battle for justice against custodial violence inflicted on their near and dear one. ... it has been going on for well over three decades now, with no end in sight.

... the couple Saumen and Latika Guha ... started the battle when they were still young, and now one is above 60 years and another is above 70 years.

... this battle, in effect, is on behalf of all the victims of custodial violence, past and present. For, custodial violence, including custodial death (on paper, i.e., according to the laws of the land, both are cognizable offence deserving serious punishment), is still as rampant as before under the brutal Indian police system.”

Financial “contributions”, as spoken of in the speech, as well as words of solidarity (over phone or to postal and e-mail addresses given above) are as necessary as before and may be of considerable help to strengthen the effort of this couple, conducting, with little resources at their command, this almost life-long historical battle for justice against custodial violence inflicted on their near and dear one. But this battle, in effect, is on behalf of all the victims of custodial violence, past and present. For, custodial violence, including custodial death (on paper, i.e., according to the laws of the land, both are cognizable offence deserving serious punishment), is still as rampant as before under the

brutal Indian police system. They started the battle when they were still young, and now one is above 60 years and another is above 70 years.

In this context, I would also urge any interested reader of these pages to send order for the purchase (details, necessary for placing order, can be had from Saumen Guha through phone, post or e-mail) of the now published book, ARCHANA GUHA CASE AGAINST TORTURE IN POLICE CUSTODY — ARGUMENTS, COUNTER-ARGUMENTS AND JUDGEMENT AT THE TRIAL COURT, by Saumen Guha, for reasons already explained in the speech.

Subhas Ganguly with input from **Bharati Ganguly**

March 31, 2010

Kolkata, West Bengal

[But for one, article excerpts that appear in boxes were selected by Sudipta Saraswati. In addition, the displayed heading of the materials under ‘Postscript’ (materials were first prepared by me as a footnote without any heading), incorporates his suggestion.

– S. G.]