

## Role of Satyagraha Rajindar Sachar

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The issue arising out of the people's movement going on at Singur in West Bengal against acquisition of land for Tata Motors is becoming more and more curious. I had thought that the real issue was to the human right aspect of displacing the project affected families without their consent and also without providing an equitable alternative rehabilitation plan for as mandated by international Human Right law. Even World Bank has had to yield under international pressure to mandatory requirement as a condition precedent to giving loanee comply with these international covenants.

But recently, a more dangerous perversion of the understanding of the theory of protest against Government's action is being put forth by seemingly new supporters of West Bengal Government by suggesting "the citizen who lives under a system that assures him not only voting right but extensive guarantees for the inviolability of his person and property, and who accepts the protection of the state in the enjoyment of these rights, owes to the state at least a high measure of respect and forbearance in those instances where he may not find himself in agreement with its politics." and therefore Satyagraha or peaceful resistance as is being done at Singur is undemocratic, monstrous and will spell the end of any prospect of a peaceful change in the social relations of the society. This view is so undemocratic that it

has been even lambasted as back as 1960 in Dr. Lohia's case wherein this argument was repelled, thus "It is said that in a democratic set up there is no scope for agitational approach and that if a law is bad the only course is to get it modified by democratic process and that any instigation to break the law is in itself a disturbance of the public order. If this argument without obvious limitations be accepted, it would destroy the right to freedom of speech which is the very foundation of democratic way of life."

Is it not ironic that notwithstanding the settled law, this outdated jurisprudence of calling Satyagraha as undemocratic should be put forth and more so, when the country is celebrating the centenary of Satyagraha as a humble tribute to Gandhiji.

Carl Cohen-Civil Disobedience 1971, Columbia University Press said "vigorous dissent must be protected and even encouraged; its substantive merit must be judged not merely by those in office but by the governing electorate in the long-term operation of their political process. In a word, genuine democracy demands dissent, thrives on protest."

The view that Satyagraha or civil disobedience is outmoded in a parliamentary democratic state is rejected by the most well known jurist John Rawls who in his Theory of justice propounds it as under: (...on page 14)

## NITHARI

### The Police did not File FIR because they lived in a Rented House The Story of the Poor Who Lost their Children

*The police did not file FIR because they lived in a rented house for the last two years more than forty young children and women went missing from a small urban hamlet of Nithari, at the centre of Noida, a satellite town bordering Delhi (India). The local media regularly covered the incidents of missing children; the National Women's Commission of India also took cognisance of the matter but the children continued to vanish in thin air. However, in the last week of the December 2006, by sheer chance some human remains were spotted at the backyard of a palatial house situated at the edge of the village of Nithari. When the spot was searched further what emerged was a chilling tale of cold blooded serial murders that perhaps qualify as the biggest serial killings any where in the world. What went wrong?*

#### Background of the Incidents

By the evening of 28 Dec 2006 the poor villagers of the Nithari came to know why there were so many police personnel and television OBs at the edge of the entrance of the road that led to the village.

The police had found as many as eight human skeletons from the backyards of an imposing white bungalow that stood on the left side of the road. The house belonged to an industrialist Mohinder Singh Pandher, who owns spare part instrument factories. The crowd outside the bungalow looked seemingly numb as police hired workers began searching the drain in front of the house for more human remains.

As many as 38 people disappeared from the Nithari village for the last two years. These included mostly children, majority of them female. However there were grown ups too who went missing. The poor families who had hoped for their dear ones to come back home looked crestfallen. Their pain increased with the slowly sinking news that their departed ones could be murdered and disposed off as was evident from the emerging human skeletons from the backyard and drain outside the house.

#### The Place and People

Nithari is a small urban village with a population of about 3500 surrounded by posh sector 30 and 31 bungalows in Noida, a satellite

down adjoining Delhi that claims world class infrastructure and living surroundings. In fact the land where the bungalows are built today belonged to the villagers of Nithari. As the mansions around the village began to grow, Nithari began to be turned into a veritable slum. It became home to a huge migrant and floating poor population that included manual laborers, rickshaw pullers, roadside vendors, domestic servants and those engaged in other menial jobs. These are the people who subsist on fringe spending of rich living in the areas surrounding the village. They work for them in various capacities from car cleaner to cook though invisible. The average income of these families is just enough to survive. Most of them live in one room rented house in a dingy narrow laned village leading hard to mouth day-to-day existence.

#### Role of the Police

The children began disappearing for the last two years. The parents would approach the police post barely two hundred meters away. There they would be shoed away; their complaint would not be registered, those who persisted would be directed to the police station in sector 20 around ones kilometer away. In the police station the first question that would be asked of the parents by the police personnel was 'are you a tenant or have your own house in the village?'

The reason for asking the above mentioned question to the parents by the police to those whose wards went missing was to gauge the economic condition of the complainant and potential for possible community pressure that might follow if a formal complaint is not lodged by the police. It may be mentioned that one child whose parents own a home in the village disappeared from the village two years ago. He was the son of one Ashok Kumar. The villagers had jammed the road for a day then and the police was forced to register a FIR. In case of the rest there was no FIR, and therefore no action.

On hearing from the parents that they were poor, living on a rented accommodation and were asking for police assistance in finding their child not as a matter of right but as a token of benevolence, the police first would ignore them; those who lingered would be abused and ordered to go out of the police station. Those who insisted on registering the complaint would be even beaten up.

As per the rules, however the police is supposed to register a case on a missing child if he/she is not traced within 24 hours. In that case the obvious presumption based on commonsense is that the said child has been kidnapped. But in the case of Nithari's poor police neither made use of rulebook nor common sense.

So there was no report registered and no investigation. The children because they were the children of hapless poor continued to be lured, kidnapped, raped and killed!

The police indifference to the pain and loss of the bereaved families was because of several reasons. One these people were poor and therefore had no courage and confidence to take their complaint further up to the senior officers. Their first and the last resort was the local police station. Two they received no solidarity from the neighbors owing to being migrant, living on a rented house that meant frequent change of accommodation. Three they received no political support. Most of these people have no voting rights. They did not count as electorates. Therefore they did not have a petty local political leader who could voice their complaint. And finally these people were semi-literate and ignorant in regard to their civil and legal rights.

#### **Testimonies of Families who lost their Children**

##### **Sonia**

Sonia is 35, mother of four children originally from west Bengal. She lost her 11 years old son. Her sunken eyes give a peep in her despair and pain as she speaks:

My son Shiekh Raja was nine years old. He studied in 3<sup>rd</sup> standard at Rosary public school. We ate once in the day but had dream of giving our child good education even beyond what our means permitted. On 29 December 2006 it is two years that he has disappeared. I immediately went to the *chowki* (local police check post). They told me to go and search for him in orphanages. When I went again they said the child is not in our pocket he will come at his own. When I asked them to register a report they told me to get out of the police station. They abused me in the worst possible language. They said you

people produce so many children and cannot take care of them; some of them are bound to disappear. Having got sick of abuses I stopped going to the police station. I could not take the insult of policemen along the pain of losing my child.

##### **Sunita**

Sunita (w/o Jaggu Lal, who irons clothes in the locality) and resident of Unnav district of Uttar Pradesh held photograph of her daughter Jyoti when I met her. Tears in eyes with dry skin and eyes and torn slippers in feet she said:

My daughter Jyoti disappeared one year and seven months back. I went to police post on the corner of the *chowk* (crossing). The constable on duty told me that as the police will look for her and I should also search for her. When I asked him to register a report of disappearance he asked me to write an application giving details of my daughter. I went the next day with the application. He took it and told me to go. I think my application was put in dust bin by him. Later when I went there I could not find the policemen who had heard me earlier. I asked other police men who told me that they did not know about it.

##### **Jaggu Lal (husband of Sunita)**

Earlier when I heard that the children were disappearing from the locality I paid no attention on it. To me it was not a news. But when my own daughter disappeared I realized what it is like losing one's child. I went to the local police station in charge, Superintendent of city police, senior superintendent of police; I even went to Akhilesh Yadav, the son of the Chief Minister and Mayawati, the former Chief Minister. Every one paid lip service. No one was gave a thought that where the children were disappearing. Imagine what else could I do? When SSP RKS Rathor took charge I went to him with some

hope. He called the police station in charge. The police in charge lied to him that 15 people had disappeared and 12 of them have been traced. I nailed his lie by providing the SSP list of 17 people who had gone missing and took some of the relatives of the disappeared to meet him. He promised help. But that remained a promise. Many of the people whose wards went missing left the village. This was due to the police harassment. When police came visiting their house at odd hours at the pretext of asking information on disappeared ward, the house owner would ask them to vacate the room. No one wants their house to be visited by a police man. This happened to the two families of Rimpa Haldar and Bina Haldar, two girls in their late adolescence who had gone missing and police said that they had eloped.

##### **Karamvir and Sunita**

Madhu Gautam was 20, daughter of Karamvir and Sunita of Nithari village. She went missing on 12 November 2006. Interestingly the young woman does not find mention in several reports that have surfaced on the incident. Her parents said:

We searched for her everywhere. In every house in the surrounding we went. We went to police too. They said they could help if she was a child, they cannot do anything about a grown up woman. We felt scared of going to police station after a while because they talked dirty and treated us badly. We kept silent. What could we do?

##### **Murari Lal**

Murari Lal 24, works in a small garment-manufacturing unit. His brother Girdhari Lal 28, who lived in a village in Rai Barelli district of Uttar Pradesh came to visit him two years back. After barely four days when Murari Came back home he found his brother missing. The brothers had no relations in NCR where Girdhari

could go. Neither did he reach back home in village. The other brother went to the police station repeatedly. He said:

The policemen laughed at me. They said how can they find a grown up man; he must be insane. You should go and search in *pagalkhana* (mental disease asylum). Don't bother us otherwise we shall lock you up.

#### **Synthia**

Synthia w/o James Thapa, a resident of Darjeeling who brought her sister's daughter about 12 years of age to Noida for getting her better education rues the time when the idea to bring her niece, Nisha came her mind. Holding an infant of about six months in her lap in the course of conversation she defensively says that she is an Indian and not a Nepali. She said:

My niece Nisha went missing at around 9 in the morning. We searched for her till around 2 in the afternoon. At last we went to the police post at the crossing. There the policeman said that I should come to the police station at 8 o'clock in the evening with the photograph of the girl. My husband and I went to the police station. They gave us a piece of paper and said that the report has been written. Later when we would go to the police to find out about our niece they would say that they are trying to find her, and she would come back. How many times could I go alone in a police station to hear the same answer?

#### **Nand Lal**

The father of another victim Payal whose cell phone call trace helped police to zero in on to the house of the serial killer accused, had to face humiliation and threats as he persisted in getting a report registered on his daughter's disappearance. He said:

My daughter went missing on 7 May 2006. She was carrying my phone. She told me that she was going to D-5 sector 31 for looking for a job for her brother. When till

late night she did not come back, I went looking for her. Next day I went to the police station. I told them that she had gone to meet Surrender at D-5 house. They paid no attention to me. I kept going to the police station. On fourth day they told me that my daughter was a characterless woman and mocked at me. They told me to run away from the police station and never come back to bother us. In the end I had to go to the court. It was beginning of more trouble for the whole family. You will not imagine the humiliation that I have gone through. I don't want to relive it again.

#### **Dolly**

Dolly, a woman in early thirties came about 14 years ago from Nadia district of West Bengal. Her husband is a rickshaw puller. Her daughter Rimpa Haldar aged about 14, but looks elder in photograph that she holds, disappeared on one morning of January 2005. She does not know the date. She said questioningly:

Why does poor come to city? Only too earn and live. Who is ours in this big city. Who do we know? If anything happens to us we go to police. First time when we went to police they said they would look for her. They wrote her name and took her photograph. But later they did not listen to us. Once a police man asked us accusingly why do we come in big cities with grown up daughters (*jinhe jaldi hee shahar kee havaa lag jaati hai aur ghar se bhag jaati hai*) who get affected by the fast life of big city and elope with their lovers. They told us that they would inform us when they find her. Tell me what could we do after that?

#### **Rita Sarkar**

Rita w/o Tarak Sarkar too lost a daughter. Her name is Deepali Sarkar. She does not remember the month or the day when she disappeared. Her brother Amar added that it was 18 July 06. She showed me a photograph in pink frock that

seemed to be clicked when the girl might have been about six years old. She said:

If Police wanted they could crack the case long back. But police is not for poor. They care if you live in a big house. If you go to police station it is scary. Policemen look at you with contemptuous looks. One police officer R N Singh or Yadav told me that my daughter was not in his pocket that he could give me.

#### **Nageshwar Yadav**

Umesh Kumar was s/o Nageshwar Yadav. He disappeared in March 2004, two days after *Holi* (a popular Hindu festival that falls in the month of March every year). His father is a vegetable seller. Umesh used to study in fourth standard in Kanchan Public School. Nageshwar left the village and shifted to another colony of Noida after the loss of the son. He came to the place looking for some news about his son when Nithari episode made head lines on television. He said:

It is all fate. I too went to police a few times like rest. They said it was not their job to go after looking for missing children. We are burdened with a lot of other work. However they took my address. They said they would inform me if they would find him.

#### **Police Version**

At the Noida police station, police men refused to entertain any queries regarding the case. The duty officer sub-inspector Yaduraj Singh said that only the command (SSP's office) is supposed to comment on the case. However at the record section of the police station the in charge constable Ganga Ram admitted that as a rule there were no FIR's in the cases of disappearances whether that be child or the adult. He provided PUCL with a yellow wall poster that mentioned names of twelve victims of disappearance. The poster mentions four disappearances during 10 April

2006 to 7 May 2006. It is notable that Payal, the victim whose cell phone record nailed the accused, disappeared on 7 May 2006.

Former police SSP Piyush Mordia denied that there was any negligence from police side. 'FIR on missing cases as an unwritten rule are not registered', he said. The present police superintendent RKS Rathore admitted that there were lapses on the part of the police and the guilty have been punished. In any case the CBI is working out the case, he added.

### **Political Leadership's Version**

All major political party representatives visited the village and expressed shock at the incident and demanded a through probe into the case. Some political parties called it a blot on civilisation and others demanded dismissal of the state government. However the ruling party's minister and brother of the Chief Minister, Shiv Pal Singh Yadav who visited the site of the incident had words of praise for the police and termed it one of the many incidents that keep happening in a big state!

### **Conclusion**

Nithari incident is a reflection of the functioning of the police system in the large part of our country. It highlights the deep rooted insensitivity among police personnel at various levels of the police organization. It assumes sinister proportions when a crime is committed against poor people.

The incident of Nithari brings forth in open the criminal negligence and insensitivity of the local police towards the crime and the families of the victims.

Many innocent lives could be saved had the local police took serious note of the regular disappearances from a small urban village of 3500 people. In between 7 May 2006 and 10 May 2006 as many as four people including Payal disappeared. It is unusual that police failed to see a pattern of disappearances.

In two and half years as many as 9 heads changed as in charge of the local police station under whose jurisdiction was Nithari village. In a way no one felt responsible and accountable for what was going around. Each officer seemed to be biding his time to give way to another to preside over the police station that seemed to be run at the whim and fancy of unknown.

The police did not take action because the victims belonged to poor families. They neither could bribe the police nor exert any other influence to prompt the police to act against their complaint.

The families of the victims did not receive any community support because they were migrant workers and did not own a house in the village.

The lower level police official's behavior with the families of the victims was inhuman, pathetic and condemnable.

The senior officers failed to take note of the crime and failed miserably in their supervisory and leadership responsibilities.

### **Demands**

The incident of Nithari must prompt central government to look into the state of policing in the country. It must seriously initiate measures to bring police reforms

as per the recent Supreme Court guidelines.

As we have the 'crime against women' cells so should there be created a 'crime against children' cell at the district level in all the police stations of the country, especially in the urban areas where crime against children are more rampant. This becomes pertinent in the light of the UN sponsored report that states that as many as 45000 children went missing in the country in the year 2004; of these 11000 were never traced.

The scope of the investigation by CBI should include the role of the police negligence in the incidence at all levels and the accountability must be fixed; the guilty policemen should be charge sheeted and punished within a specific time period so that it serves as an example for future.

The incident shows that the institutions like National commission for Women (NCW) failed to take effective steps to stem the misery of the people. Two visits from the representative of a national level institution created to protect the rights of women did not bear any fruit. Is there something wrong in mandate, power and functioning of such statutory bodies? There institutions must be reformed positively so that they become useful to the people and do not remain paper tigers.

As per the reports and deposition of the local people as many as more than 40 children went missing from Nithari. However the CBI has registered cases on only 19 cases. CBI must investigate all the cases and bring the truth of the matter. □

## **2**

### **Custody Death of a Dalit Youth in Noida**

*Only Bread Earner for a Family of Blind Parents and Two Teenage Sisters*

On January 27, 2007 Pradeep Kumar, resident of village Cheeti, in Greater Noida belt died in Merrut Medical Hospital. The

police picked up the boy two weeks ago from his home. PUCL investigated the circumstances leading to young man's death. A

fact finding report by Dr Pushkar Raj, National Secretary PUCL

His name is Pardeep, lovingly they call him Chotu. He is young,

handsome, slender and bubbling with life. He is poor. He shares one room with a small courtyard with his blind parents, two teenaged sisters and an eighty years old grandfather in one part of the village that forms part of the cluster of houses of the Jatav (*dalit*) community. The lane leading to his house in the village is partially brick paved, narrow like two wheeler garage and over flooding with seemingly stagnant water.

Pardeep Kumar is a gentle, loving and responsible young boy who in order to tame his poverty has opened a small shop of daily provisions along with a public call facility popularly known as PCO. According to the village school records where he studied Pardeep would have celebrated his 17<sup>th</sup> birth day on 20 May 2007.

But no more he would do that. He died on 27 Jan 2007, due to multiple bodily injuries and the spinal cord broken after he was taken into police custody on the night of 12 January 2007.

#### **The Place and the Incident**

Cheeti village falls under Greater Noida belt barely 40 Kms. east of Delhi. The region is prosperous and is being developed by the government of Uttar Pradesh as Special Export Zone (SEZ). Pradeep was the resident of the Cheeti village that has majority of agriculturally dominant *gujar* community.

On the night of 12 January 2007, 15 to 20 men came to the village and picked up Pardeep Kumar, a *dalit* and the two other young boys belonging to *gujar* community with a richer economic background. He was taken to Dadri Police station, a police station that does not have any jurisdiction over his village. There he was interrogated and later sent to jail after four days. He died two weeks later in a hospital.

#### **Victim's Father, Sh. Harcharn Singh's Version**

About 15-20 police men came in the night of 12 January at my

house. It was after midnight. We were sleeping. They asked for chotu (Pardep). They slapped me and when my wife intervened she was also beaten up and pushed on the ground. Even a neighbour Seeto, who came to our help was also thrashed by the police men. Chotu was wearing a half pant and a banyan. They even did not let him put on the slippers. They thrashed him with a stick in front of us as they dragged him away. In the morning we came to know that two other boys were also picked up. His grandfather, (father himself being blind) went to the Dhankour police *chowki* (post) in the morning. They told him that he is not here. They told him to go to Dadri police station and find out from there.

#### **The Grandfather's Version**

As I spoke to the eighty years old grandfather, the man's wrinkled face oozed pain that flowed from the memories of his grandchild that seemed still raw in his mind. He told PUCL:

After Dhankour police station I went to the Dadri police station. I reached there by 10 o'clock in the morning. When I inquired from them about Pradeep, no one paid any attention to me. I requested the policeman sitting on the chair who seemed to be on duty. He told me not to disturb him early in the morning. He said that there is no one of that name. I was not convinced. I came towards the gate of the police station and waited for some policeman to come out so that I might request him and inquire from him about my grandchild. I pleaded with folded hands with a policeman as he came out of the police station. He found out that Pardeep was there. He took me near the lockup. From a distance they let me see him. Seeing me my child tried to get up. But he was unable to get up. He collapsed as he tried to get up. They did not let me go near him. Two days later we came to know

that the boy was sent to district jail Dasna.

On 23 January the boy's brother in law Moti Lal went to see the victim at the Dasna Jail.

#### **Moti Lal's Version**

I went to see Pardeep at the jail. I reached at around 9 o'clock in morning. I was at outside, trying to know how I could see him. As the chance would have it I saw Pardeep being taken away on a stretcher towards an ambulance. I stopped the men who were carrying him on stretcher. I asked them what had happened to the boy. They said he had been unconscious for last 10-12 hours. I tried to stir him, but there was no movement. I saw that he had no control over his motion and urine. His clothes were soiled. His face and body was all blue. I also went in the same ambulance to the Ghaziabad general hospital where the jail staff was taking him. In hospital he was admitted in the orthopaedic ward. The doctors told me that they cannot handle his case. They said these people have not left anything in the boy. It is matter of days. He will not survive, they told me.

#### **Police Version**

The police station in charge of Dadri, Dharmendra Chouhan where the boy sustained injuries told PUCL that these three boys were taken into custody in the area of Badarpur chowki (police post) that falls under Dadri police station. They were charged with theft of a Qualis car and were sent to the jail on the very next day. When asked how a young healthy boy could die suddenly he said that the jailor Komal Singh Yadav told him that the boy had brain fever and he died due to that.

Ved Pal Singh who arrested these boys and was the investigating officer of the case told PUCL that the boys were traced through a mobile that went missing with the vehicle that they had stolen. A boy from Badarpur was taken into custody. He told us

that these three boys were also involved. We arrested them in the evening of 12 January. We recovered knives and pistols from them. There was firing also. We have registered cases under section 379 and 411 besides others.

The Superintendent of Police (rural) Sudhir Kumar Singh first told PUCL that he would get the record made available to him and then speak on it. After three days when he could be contacted again he said that the boy died in judicial custody, not in police custody and therefore their department has nothing to do with it. When asked what was the cause of death he said that he had seen the post-mortem report and it does not state any cause of death implying that it was a natural death. When asked that the boy died in the orthopaedic ward as per the boy's close relatives who were present beside his side when he died he answered that he has no knowledge about it where he died. When asked if there was any inquiry being conducted in this regard he said he has no knowledge of it as it is a matter pertaining to jail.

### Conclusion

Pradeep along with two others was picked up from the village Cheeti that is about 20 kms away from the place where police claimed to have arrested him. Apart from the family members of Pradeep some milkmen of the village who were on their way back also confirm to this.

Police had no proof to pick up a minor boy with no past criminal record at midnight from his home. He was not a terrorist who was supposed to be nabbed at the dead of night.

He was beaten and tortured in the police custody, perhaps much more in comparison to fellow inmates because he was poor and could not bribe the police for 'humane treatment.'

During the course of beating and torture in police custody his spinal cord was severely damaged

Pradeep was a minor. He was not supposed to be in jail where the police sent him.

He remained in jail medically unattended for several days. Due to the criminal neglect of the jail staff when his condition deteriorated and he became unconscious then the jail

administration removed him first to Gaziabad general hospital and later to Merrut Medical College where he died.

### Demands

A time bound judicial inquiry should be conducted in police /judicial custody death of Pradeep Kumar.

The policemen who are prima-facie responsible for the arrest and torture of the Pradeep must be suspended from the service pending outcome of the judicial inquiry.

In the light of the fact that the victim was the only bread earner for his blind parents, an aged grand father and two teenaged sisters, the family of the victim should be given a compensation of Rs. 10 Lacs.

Senior police officers who are not even aware of full case details of police custody deaths under their jurisdiction must be given charge of less important responsibilities like looking after old paper records or republic day parade rehearsal of men under their command. □

## 3

### Profile of a Police Station in India

*Post Nithari, Lockup Story in Noida - the Infra-structural Capital of India*

As I led a group of researchers on police and judicial reforms from School of Law and Governance from one of the prestigious universities of India, JNU, to one of the police stations in Noida, a suburb of Delhi, I overheard the researchers talking amongst themselves that they were visiting a police stations for the first time. I was not surprised. Most of the privileged of India do not go to the police, the police come to them. For poor it is different. As is evident from Nithari.

The group was excited. More so because they were visiting a police station in Noida, supposedly

the infrastructural capital of the country and home to the cream of India's retired bureaucrats, influential and prosperous. Add to it that the police station they were going to visit was the one that had presided over the doings of the serial killers of the notorious Nithari.

As we entered through the entrance into an alley, two dirt-infested old white plastic chairs greeted us. In front of them laid a bench like long table covered with a piece of mud coloured cloth that was washed long back. Across the table were two more chairs supposedly for the duty officer and

his assistant. All the chairs were empty.

To the left of this alley stood men's lock up, somewhat in darkness and invisible. Opposite to it was woman's lock up. The women lock up was being used as a dumping store including liquor bottles which were there in plenty. On the right side was the record room; opposite to it was a spacious room that was station house officer's (SHO, who is known as SO) office.

The duty officer was a sub-inspector, the same rank that is of the police station in charge. There could be as many as ten sub

inspectors serving under the sub inspector who is the station in charge. How they manage the psychological upheaval of subordinates of the sub-inspector rank serving under the station house in charge of the same rank and its impact on administrative and professional functioning is any one's guess.

The duty officer as a matter of exception was not arrogant. He pleasingly agreed to address the questions of the researchers. He enlightened the researchers that a suspect always needs `thukai-pitai' to tell the truth. To him that was not only a rule but a cosmic truth that could be ignored at the peril of the investigation. He further said that generally they end up spending money out of their own pocket while investigating a case if it involves stiff dead lines when influential people are involved or if that involves travelling. Or it is done at the expense of the party that might benefit if the case is worked out. The provisions under law that provide for release of money for investigation of a case are too antiquated, cumbersome and inadequate that they are left unused. It is insulting to ask for money from the police station in charge who has discretion over that fund.

As the rest of them were engaged in serious conversation with the duty officer I peeped into the men's lockup room.

The men's lock up, a fifteen by twelve room without light had a worn out *dari* spread over it. In one corner stood a wall of around three

feet height separating the rest of the room that served as a bathe room and the toilets for the inmates. Being in a corner of an unventilated lockup the place was enveloped with a stink of urine and excreta.

There were two inmates - one awake and the other asleep. As I spoke to the one who was awake the other also got up. He was wrapped in a thin blanket, definitely not adequate in under 5 degree Celsius temperature in cold winter of the capital and its surroundings.

One was Anil. The other was Ravinder. Anil was 24, dark, well built and handsome. Under matric from Bihar he worked in a factory in Noida. His friend Ravinder, a little taller matched his friend's physique and education and was 26. Ravinder works in Delhi.

Anil was charged with eloping with a girl who the police say is minor, Anil says she is not. Ravinder has nothing to do with it. He was there because he was Anil's friend. He came to visit him in police station and thanks to the police he got stuck up in lock up. Both of them are there for four days- a clear violation of article 21 of the Indian constitution.

As I looked into the eyes of these two inmates in lockup there was tiredness, grief and resignation. I asked them what the matter was. They reluctantly told me that they were hungry. It was four in the afternoon. They were given food last night. They told me that generally they were given food once a day- during the night only.

That too was not adequate. There was no drinking water in the lockup.

I asked the police in charge why they were kept in lock up for four days while they should be presented before the judicial magistrate under the law. He answered in `know all tone' that these people have committed a very serious crime and that these types of the cases get solved like this only. I did not reason with him what law provided, for I knew that it would not make this over fifty years old officer see reason.

When I asked him why they were not given adequate food he said that they get Rs. Three and fifty paise per meal (or was it Rs. Five and fifty paise, he was not sure and he did not think it fit to confirm it). And he implied that it was obviously not enough to feed them three times a day.

I wondered how many future inmates of this lockup will be starved and dehumanized before the officers of this police station will respect the law of the land. And this is one of our better police stations on the edge of the capital. Imagine about the rest! – **Dr Pushkar Raj**, Secretary, PUCL □

#### **Please Note**

In case of: **(1) Change of Address** - Always send your old address along with your new address; **(2) Money Order** - Please give instructions (if any) with your complete address in space provided for communication.

– **General Secretary**

### **Victims of 'Operation Veerappan' Compensated**

The National Human Rights Commission had constituted an enquiry Panel headed by former Karnataka High Court Judge A J Sadashiv in 1999 on the petition of a number of Human Rights organisations, [viz., TN PAZANGUDI MAKKAL SANGHAM, PUCL TN, SOCO TRUST, SICHREM (BANGALORE), INDIAN SOCIAL INSTITUTE, AND PEOPLE'S WATCH TN] for the relief and rehabilitation of victims of Special Task Force. The two members Sadashiv Panel submitted its report on December 2, 2003. The NHRC ordered the Governments of Tamil Nadu and Karnataka in January 2007 to pay compensation of Rs 2.8 crore to 89 STF victims in four weeks. The moving spirit behind this successful petition was Henry Tiphagne of the People's Watch Tamil Nadu stationed at Madurai. – **General Secretary** □

# Malegaon Blasts-Partisan Approach and Biased Police

**Asghar Ali Engineer**

Malegaon blasts took place on 8<sup>th</sup> September 2006 in which 37 people were killed and many more were injured. It was Friday and *Shab-e-Barat*, a holy festival of prayer for the dead. Thousands of people had gathered on that day to pray for their dead in the cemetery and for noon prayer in the mosque. It was when worshippers were coming out of the mosque that three bombs went off at short intervals causing death and destruction.

Unlike Mumbai train blasts the police showed hardly any enthusiasm for investigation. In Mumbai the Anti Terrorist Squad worked overtime and finally solved the case in one month. In case of Malegaon it appeared, as the police is hardly interested in catching the culprits. Most of the human rights activists and Muslim leaders from Malegaon felt that the bombs could have been planted by some extremist Hindu organisations like the Bajrang Dal.

The Malegaon Muslim leaders maintain that in Nanded in the month of April 2006, before Malegaon blasts, there was explosion in the house of a RSS activist Laxman Rajkondwar in which two persons were killed, one of whom was Laxman Rajkondwar's son Naresh Rajkondwar. Also, in Ahmednagar, some bomb shells and 1.95 Kg RDX was caught from one Shankar Shelke's shop on 16<sup>th</sup> September. The shop owner committed suicide next day. Then more than 300 Kg of ammonium nitrate, timers and fusers were caught from the house of a Sarpanch of a village few kms from Aurangabad.

Many activists and Muslim leaders urged upon the government and police authorities in Maharashtra to investigate the connection between Malegaon explosions and these incidents but

the police and the ATS authorities turned deaf ear. The ATS and district police had prejudged the whole issue and was connecting these blasts to Mumbai train blasts and were looking for ISI connection.

There was no headway until recently when the police started arresting some labourers from Malegaon and then they arrested two Unani doctors alleging they have Pakistani connection. There is no doubt police is highly biased in investigating Malegaon bomb blasts and it has as if inbuilt bias against Muslims in investigation.

I visited Malegaon along with Nandini Chavan of our Centre to meet people and try to find out possible cause of the blasts and persons likely to be responsible. We met Hindu as well as Muslim leaders, Hindu as well as Muslim politicians and social activists and ordinary Muslims and Hindus on the street to assess their opinion as to who could be responsible for the bomb blasts in Malegaon.

We found that the city of Malegaon was completely polarised between Hindus and Muslims; all Hindus maintaining that some Muslims are responsible for the bomb blasts and all Muslims saying extremist Hindus have done it. However, both Hindus and Muslims said the perpetrators are not from Malegaon. It is job of some outsiders. They emphatically said that no one from Malegaon would do it. They all love Malegaon.

And ironically the ATS has arrested some young Muslim men from Malegaon only. They are allegedly ex-members of SIMI. Somehow police has its fixation with SIMI and thinks all ex-members of SIMI are involved in bomb explosions. Those persons arrested are ordinary workers and two Unani doctors. All Muslims in Malegaon irrespective of their

political and religious affiliations strongly refute police approach that it is handiwork of Nurul Huda, a worker in battery factory of Shabbir Batterywala.

Malegaon Muslim leaders also say that though so much RDX, ammonium nitrate and fusers, timers etc. were caught from some Hindu shops and houses, police is not prepared to look into this aspect and interrogate these persons in connection with Malegaon blasts. I met the S P Rural of Nashik district who is in charge of bomb blast investigation in Malegaon and had detailed discussion with him. It was quite clear that he also had same approach that it is work of some Muslims and there is no possibility of any Hindu being involved.

His logic was that Malegaon city is a Muslim majority area and no Hindu will dare do it in Muslim majority area. It was strange logic indeed. It is just Malegaon that is Muslim majority area, not even district. Along with rural areas it is Hindus who are in majority and then what about the district, state and country? He also argued that if a Hindu had done it he would have tried to inflict maximum loss of life and would have planted bomb at night when many more people gather.

But the time bombs went off on 8<sup>th</sup> September (1:30 P.M.) was also a peak time as thousands of Muslims go for prayer on Friday specially on *Shab-e-Barat* and if loud speakers had not stopped for few minutes, thousands of Muslims would have come out of the mosque and damage would have been much greater. There was no explanation for this. The Muslim leaders also told us that bombs were kept on two cycles, which were bought from a shop in Malegaon and buyers' sketches were prepared by the police.

However, Muslim leaders say, police has made no efforts so far to arrest those two persons whose sketches were prepared and instead arrested Nurul Huda and others. What happened to those two persons who bought cycles? Who were they? Can the police jump to the final conclusion as to who the culprits are without first tracing those whose sketches were prepared? Police has no answer.

The Malegaon Muslims are very perturbed that why police is not interrogating extremist Hindus and why is it after some Muslims from Malegaon? Has the police completely written off the possibility of some extremist Hindus being involved? Rajwardhan, S.P. Police told us that he has interrogated some Hindus but he is not prepared to disclose their names? Why? When the police interrogates Muslims their names are publicised through the media. Nurul Huda was detained and his name was publicised in the media. But so far no Hindu who was interrogated or detained has come out in the media. Why keep these names under wrap?

We feel that no Muslim, much less from Malegaon itself, would keep bombs in a mosque that too on Friday and a holy festival. When I asked Shri Rajwardhan why should a Muslim keep bombs to kill Muslims on such a day of festivity, his reply was that they intended to cause Hindu-Muslim riot. Again if Hindu-Muslim riot takes place, it is Muslims who will heavily suffer as the past riots in Malegaon clearly show. Why then Muslims from Malegaon itself should do something to cause Hindu-Muslim riots? Perhaps he was suggesting that ISI of Pakistan was interested in inciting Hindu-Muslim riots.

This is hardly convincing. In case of Mumbai train explosions ISI involvement seemed quite possible and the police claims to have established ISI links in case

of Mumbai blasts and it appears to be quite convincing. But to suggest this in case of Malegaon is absurd. Even the police has not claimed so far that there is any ISI link. It has only suggested SIMI connection so far. But it is beyond ones understanding as to why ex-SIMI members from Malegaon should cause death and destruction of their own people where they have to live for rest of their lives.

It is also beyond ones understanding that how can police investigate with such one-sided approach? Is it not the duty of police to investigate impartially without pre-judging the issue? Does police pursue only one line of investigation with such determination eliminating all other possibilities. It is totally unfair by any standard of police behaviour. Even Hindus in Malegaon, including the Shiv Sena leader Shri Bhuse maintained that no Muslim from Malegaon can do such a ghastly thing. Yet, the ATS and Malegaon police is pursuing such a course with single minded determination.

The Prime Minister Shri Manmohan Singh and the Congress Chief Ms Sonia Gandhi have stated publicly that one community should not be targeted. In case of Mumbai blasts also the police had arrested many Muslims indiscriminately and there was unrest among Muslims in Mumbai also. It was only after repeated protests that the Police Commissioner of Mumbai wrote a letter to prominent Muslims in Mumbai that police is not after Muslims and that if any one is harassed by the police his attention should be drawn. This letter was also just a formal letter and there was hardly any sincerity behind it.

Even the Congress Government, complain Muslim leaders bitterly, seems to be totally indifferent to the woes of Malegaon Muslims and is doing nothing to assure them. The police theory of

ex-SIMI members' involvement seems to be unconvincing and it has so far failed to give cogent reasons for arresting these persons. All the evidence they have is traces of RDX in the soil from the Battery factory where Nurl Huda works. This is hardly convincing evidence. For the rest it relies on the statements given by the accused to the police in custody. These statements might have been extracted under duress and might be retracted in the court.

However, ATS Deputy Inspector General S K Jaiswal claimed, that the police were conducting the probe in a fair manner. He also said that "We will gain the faith of the community once we file the charge sheet." In fact there is great need for police-Muslim dialogue to bridge the gap and police have to take initiative to gain confidence of the Muslims of Malegaon.

The Maharashtra police has not acquitted itself from the charge of one-sided investigation. It hardly did anything to book the culprits named in the Srikrishna Commission Report and closed many cases which now the Supreme Court has asked it to reopen. Not only this, the Congress Government which had promised that it would implement Srikrishna Commission Report within three months of coming to power but did not do anything and turned a blind eye to this demand. In Malegaon too it is hardly winning the confidence of the Muslim community. At the time of election it will make some symbolic gestures and try to woo them again. This approach will not work forever. □

# Custodial Deaths in Kashmir & Jammu: Police No Better than Army

Balraj Puri

As reports of custodial deaths started coming out, one after the other, five in number, a wave of shock and anger spread throughout Kashmir valley, rarely witnessed before. Similar protests followed in Jammu region when incidents of custodial deaths took place in Rajouri and Phallain Mandal in Jammu district, though both were unrelated to links with militants. It, above all, proves that people in Jammu cannot remain indifferent to the killing of innocent civilians in other region of the state. At a time when progress in the Indo-Pak dialogue had raised expectations that normalcy and peace were perhaps round the corner and the Prime Minister had declared, a few months back, at the second round table conference in Srinagar, that there would be zero level of tolerance of human rights violation, people were completely unprepared for the tragic happenings.

However, unlike earlier occasions, the protests were not monopoly of separatist parties. All mainstream parties viz National Conference, People's Democratic Party and the Congress strongly condemned the incidents equally strongly. The state assembly remained exercised over it for days. Issue was forcefully raised by the opposition National Conference and the Congress Chief Minister promptly announced series of measures to deal with the situation. Seven police officers, including an SSP and a DSP have been arrested who were prima facie involved into the killings in Ganderbal area. Experts from Chandigarh; Forensic Laboratory work were called to conduct DNA tests. A High Court Judge has been entrusted with the task of enquiry.

Similar action has been taken against five police officers in

Rajouri and four in Jammu. The chief minister has also promised to hold enquiry into all cases of custodial disappearance since 1990. One hopes that these enquires do not meet the fate of earlier such probes.

There is welcome realization on the part of pro-India parties as also the government that killing of innocents was not only against the principal of humanity but also against the best national interest. I am reminded of the reaction in early days of militancy when our reports on human rights violation faced storm of protest from ultra nationalists for what they call our "anti-national" work. The improvement in the role of security forces and overall situation within the state and international opinion, to which our work had contributed, vindicated our stand.

However, some pertinent lessons need to be drawn from the current situation. Lest we should be taken off guard and instead of ad hoc and piecemeal measures, some institutional arrangements have to be strengthened to avoid recurrence of such incidents. Firstly to measure the performance of police and security force officials by the number of militants they kill is a very crude method for measuring their performance and for rewarding them. For it is a direct incentive for killings including the innocent. Next, while in the rest of the country it is mandatory for deputy commissioner and superintendent of police of every district to report to the National Human Rights Commission an incident of custodial death within 24 hrs, J & K is exempt from this decision under Article 370 of the Indian constitution. It is clearly a misuse of the Article, which is not meant to provide protection to culprits of Human Rights violations. The

State Govt. should urgently consider, with the cooperation of the opposition, to get this practice extended to J & K State.

Likewise there is need for strengthening the State Human Right Commission, which has been, described as a "toothless tiger". The state government should take a serious note of its recently released report for 2005-06 which exposes its utter helplessness. Its autonomy and powers, as provided in the SHRC Act 1997, should be fully restored and prompt action should be taken on its recommendations, including on custodial deaths. At present its reports are not been regularly presented before the state assembly, as required by law, and often sent to deputy commissioners for further inquiry. It has no investigation machinery of its own. The services of an IGP which were placed at the disposal of the first term of the commission were later withdrawn.

How causally the state government takes the issue of missing persons would be obvious from the fact that while the minister in charge, Muzaffar Hussain Beig admitted in the budget session of the state assembly in July 2003 that the number of the disappeared persons in the state was 3931, in the year 2006, senior Congress Minister Pandit Mangat Ram told the BBC that the number of such persons was only 108. The non-official estimates put the figure much higher.

Finally the role of the state police has also to be considered in the context of debate on the demilitarization of the state. Apart from the Pakistan president General Pravez Musharraf who mooted the idea as a part of his four-point proposal for solution of Kashmir problem, many parties of the state, too, have endorsed it.

The duties of the army, it is proposed, should be gradually taken over by the state police. It is argued that this step would also provide employment to the people of the state. The recent causes of custodial deaths are all attributed to the state police officers. There is no ground to presume that the police is more disciplined than the army. In fact the ministry of defence has organized regular lectures to the army officers on the value of Human Rights. A similar course in human rights needs to be introduced in the training of the police personnel. Otherwise, the remedy of replacing Indian army

by the state police might prove a remedy worse than the disease.

The state government already announced its decision to double the strength of the police. This decision along with the proposal to restore pre-1953 autonomy of the state would result in an "autonomous police state" without the checks and balances of the federal institutions like the Supreme Court and National Human Rights Commission, which has its own hazards.

India owes it not only to the people of J & K state but also to the rest of the world to ensure strictest observance of human

rights. Only recently India was elected a member of the UN Human Rights Council with record majority. It signed an international covenant against custodial deaths on February 2, 2007 this year. Its international honour and prestige would suffer an irreparable loss, if it cannot observe human rights within its own country. If these are not safe in a part of the country, they would not remain safe in the rest of the country.

Let leaders of public opinion in the country and the state apply their minds to learn appropriate lessons from the recent incidents so that they do not recur. □

## West Bengal PUCL Committee:

### Land War in Nandigram, Midnapore

The peasants with a holding of 1-3 Acres of agricultural land are opposed to any proposal of industrialisation in the form of hub/complex/SEZ. This is the majority opinion of Garchakraberia, a village in Nandigram Block I, Dist. East Midnapore, West Bengal. A team of PUCL members visited the village on 24 January, 07 to make an enquiry about the violent incidents of Nandigram causing 7 (officially) or 11 deaths on 7 January, 07.

After Singur, Dist. Hooghly, Nandigram captured the headlines of Media as the local people of two villages viz. Garchakraberia and Sonachura went berserk with the circulation of a special notice issued by the Haldia Development Authority. The said notice, without any signature and official stamp, declare that 29 Mauzas in Nandigram I and Khejuri Block may be taken over for setting up of a chemical hubs, SEZ, Port development, Ship building and repairing units. After the siege, District Magistrate of East Midnapore said that he had no knowledge of issuing such a notice. The Chief Minister, Mr. Buddhadev Bhattacharya said, it was a blunder. Destroy the paper (Notice).

On 7 January morning, the news of the Notice got spread like wild fire in

the villages, is Sonachura, Gar Chakraberia, Sandkhali, Kalicharanpur where villagers set fire on cottages of C.P.I(M) members, Gram Panchayat Pradhans who spoke in favour of land acquisition. A mob of 150 attacked the house of Laxman Mandal, Sonuachura Panchayat Pradhan. Sankar Maity, Biswajit Maity, Bharat Mondal, Seikh Salim, Anukul Patra, Bhudev Mandal died, and 11 others seriously injured.

As a retaliation, C.P.I (M) cadre in Police dress armed with rifles and bomb attacked Sonachura village. The villagers under the banner of Bhumi Uched Pratirodh Committee resisted C.P.I (M)'s attack and cut off all link roads from Nandigram and Khejuri. It was a land war between the supporters of C.P.I (M) and the villagers. It is alleged that C PI (M) will forge a Keshpur type armed operation from Khejuri to drive away the protesting villagers. The Police and administration refuse to visit the areas apprehending further disturbances.

The PUCL team led by Dr. Sajal Basu, with Dr. Gautam Pal, Pampa Das, Barun Ghosh interviewed the villagers of Garchakarberia. The data provided by Seikh Harun Rashid, Upapradhan of Kalikapur, and other members of Resistance Committee reveal that the Mouzas to be affected are double crop area plus fish and Betel leaf cultivation. Both Betel, prawn are export potential products

yielding high return. After paddy cultivation, Khesari pulse is produced here without much effort. Prawn, Magur Koi fish are produced without much effort in the water logged paddy field, during cultivation. Villagers are least interested in industry as they know from experience that villagers would not get any job whereas their land and homestead will be taken away. The Gangra Jellingham project under. taken by Bum Standard and ONGC on the seaside has been closed, the owners of 250 Acres of land are yet to receive the compensation money. 'During last 30 years, the present government, didn't bother to improve our areas, let it provide us with electricity, we will set up cottage industry.'

The main contention of the villagers being why the govt. and ruling party enforce us to give up our land without any consideration of our interests and will? Our basic fundamental rights have been violated at gunpoint. As our findings reveal, the villagers are vigilant in protecting their land, but armed forces of Police and C.P.I (M) goons may soon launch another attack against the villagers of Sonachura and Gar Chakraberia. – **Sajal Basu**, for West Bengal PUCL Committee (**Niranjan Halder**, **Dr. Sajal Basu**, **Dr. Dilip Banerjee**, and **Ajay Datta**, Coordinator) □

## Letters:

### 1

## Guidelines for Judges - Lack of it

Dear Sir,

I sent a letter to the Supreme Court of India on 10<sup>th</sup> January 2007 under the Right to Information Act, seeking clarification with regard to the guidelines for the judges about participating in public functions and speaking in public meetings.

A reply was received from the Supreme Court of India stating that no guidelines exist about the conduct of the judges on above matters.

This situation causes considerable concern for me, since I believe that the Indian judiciary

system should maintain highest standards in all respects.

I strongly think that the judges who have the responsibility of interpreting the law and protecting the rights and privileges of the citizens and punishing the corrupt, guilty and the law breakers should keep away from public and private functions, except family functions and refrain from expressing their views on any subjects.

In this connection, I have sent an appeal to Chief Justice of India requesting him to provide guidelines to judges about their participating in public and private

functions and airing their views in such meetings.

The copy of the letter sent to the Chief Justice of India and copy of the reply received from Supreme Court of India for my earlier letter are enclosed herewith for your information.

I request you to kindly publish the details in your esteemed newspaper. Thanks and regards  
Yours sincerely – **N S Venkataraman**, Chief Editor, *Nandini Voice for the Deprived*, Chennai, TN

### 2

## Guidelines for Judges

To  
Chief Justice, Supreme Court of India, New Delhi

Respected Sir,

I sent a letter to the Supreme Court of India on 10<sup>th</sup> January 2007 under the Right to Information Act, seeking clarification on the following points:

\* Are there any guidelines for the judges at various levels about the type of public and private functions that they should participate?

\* Are there any guidelines that the judges should not participate in public functions where any persons facing trials in any court would also participate?

\* Are there any guidelines that the judges should not make any observations during such functions and meetings which are unrelated to judiciary function?

A reply was received from the Addl. Registrar (Admn.), Central Publication Information Officer, Supreme Court of India, Delhi stating that no guidelines exist about the conduct of the judges on above matters.

This situation causes considerable concern for me, since

I believe that the Indian judiciary system should maintain highest standards in all respects.

In recent times, one frequently comes across instances of the judges at the level of Supreme Court, High Courts and lower courts attending many public and private functions and freely airing their views on several subjects that do not concern judiciary. Judges are also seen to be taking part in meetings and sharing positions on platform with politicians, business men, NGOs and bureaucrats some of whom could be facing trials in the courts at various levels in the past or in future.

Judges often make remarks and express views on various matters during such meetings which are personal opinions. Obviously, by making such remarks, the judges reveal their mindset.

The same judges expressing such views in public or private meetings may have to handle cases on similar subjects and sit on judgment in some judicial proceedings later on. The known opinion of the judge in such matters will certainly prejudice the

quality and fairness of the proceedings in the court and create doubts about the fairness of the verdicts in the minds of the public.

The judiciary and the judges have a very crucial role to play in India today and common men have great expectations from the judiciary. It is very important that the judges should not only be very honest but should also ensure that no conditions would be created where their utterances or presence in any gathering could be misconstrued or misinterpreted.

I strongly think that the judges who have the responsibility of interpreting the law and protecting the rights and privileges of the citizens and punishing the corrupt, guilty and the law breakers should keep away from public and private functions, except family functions and refrain from expressing their views on any subjects.

I request you to kindly look into the matter and provide guidelines to the judges at various levels all over India about their taking part in public and private functions and airing their views in such meetings.

Copy of my earlier letter to Supreme Court and the reply

received from the Supreme Court are enclosed.

Thanks and regards. Yours sincerely, N S Venkataraman.

### 3

## Requirement of Information under Right to Information Act

To,  
Public Information Officer,  
Supreme Court of India, New Delhi  
Dear Sir,

Kindly provide me the following information which are required by me under the provision of Right to Information Act (RTI 2005).

\* Are there any guidelines for the judges at various levels about the type of public and private functions that they should participate?

\* Are there any guidelines that the judges should not participate in public functions where any persons facing trials in any court would also participate?

\* Are there any guidelines that the judges should not make any observations during such functions and meetings which are unrelated to judiciary function?

I am enclosing herewith the demand draft for Rs.10/- (Rupees Ten only) drawn in favour of Public

Information Officer, Supreme Court of India towards the stipulated fees.

Thanks and regards. Yours faithfully – N S Venkataraman

Encl.: Demand Draft No.458009, dated 9.1.2007 for Rs.10/- drawn on The Delhi State Co-op. Bank Ltd., Daryaganj, New Delhi 110 002

### 4

## Reply from Supreme Court

From: S Chatterjee, Addl. Registrar (Admn.) & Central Public Information Officer, Supreme Court of India, New Delhi

To: Shri N S Venkataraman, M-60/1, IV Cross Street, Besant Nagar, Chennai - 600 090

Sir,  
With reference to your letter dated 10<sup>th</sup> January, 2007, I write to inform

you that as regards paras 1 to 3 there are no such guidelines, Yours faithfully. – **S Chatterjee**, Central Public Information Officer ☐

(...from page 1) "Since I assume that a state of near justice requires a democratic regime, theory concerns the role and the appropriateness of civil disobedience to legitimately established democratic authority.

Those who use civil disobedience as a to protest against unjust laws are not prepared to desist, should the courts eventually disagree with them however, pleased they might have been with the opposite decision.

To engage in violent acts likely to injure and to hurt is incompatible with civil disobedience as a mode of address."

"Rawls further says that by engaging in civil disobedience one intends, then, to address the sense of justice of the majority and to serve fair notice that in one's sincere and considered opinion the conditions of free cooperation are being violated. We are appealing to others to reconsider, to put themselves in our position, and to recognize that they can not expect us to acquiesce indefinitely in the terms they impose on us." He says that this mode of

resistance is morally correct of maintaining a constitutional regime.

Rawls has no hesitation in supporting civil disobedience, which by the very nature of it is peaceful and non-violent. He recognized that there is no way to avoid entirely the danger of divisive strife, any more than one can rule out the possibility of profound scientific controversy but still holds that even if civil disobedience seems to threaten civic concord, the responsibility falls not upon those who protest but upon those whose abuse of authority and power justifies such opposition. For to employ the coercive apparatus of the state in order to maintain manifestly unjust institutions is itself a form of illegitimate force that men in due course have a right to resist.

Dissent by different non-violent non-corporation has a long respectable presence, Thoreau defied against the raising of taxes by American Government because even though it was constitutional law, it was unjust. He was only echoing Tolstoy who wrote 'I can not be silent' when indiscriminate execution of workers

was taking place in Russia. In the circumstances when gross human rights are being violated, 'it is a duty to dissent and a sin to be silent'. That is the essence of Satyagraha.

The last word of Satyagraha must necessarily belong to apostle of peace and originator of Satyagraha – Mahatma Gandhi.

"On the political field, the struggle on behalf of the people mostly consists in opposing error in the shape of unjust laws. When you have failed to bring the error home to the law – giver by way of petitions and the like, the only remedy open to you, if you do not wish to submit to it, is to compel him to retrace his steps by suffering in your own person, i.e. by inviting the penalty for the breach of the law. Hence, Satyagraha largely appears to the politic as civil disobedience or civil resistance. It is civil in the sense that it is not criminal".

*The article has been published in Tribune, Sunday on 11.3.07* ☐

**Bihar:**

## **Bihar Information Commission Directs Patna High Court to Place Rules on Website**

On an application filed by Mr Prabhakar Sinha to the Chief Information Commissioner, Bihar (Justice Mr Shashank Kumar Sinha) the Commission in its order dated 2 February, 2007 has directed Patna High Court to place its rules framed under section 28 of the Right to Information Act, 2005 on its website. Mr Sinha had applied to the Public Information Officer, Patna High Court to inform him of the number of civil contempt cases (contempt of court due to non-compliance of the orders of the court) pending in the court (i) on 31 December, 2001, 2002, 2003, 2004, and 2005 (ii) the number of civil contempt cases disposed of in each of these years (iii) the total number of civil contempt cases filed in each of the years mentioned (iv) the total number of contempt cases filed against the Government of Bihar between January, 2001 and December, 2005 (v) the number of such cases in which the contempters were punished (vi) the approximate number of days or

hours spent on hearing civil contempt cases and (vii) the approximate interval between the filing of a civil contempt case and its coming up for hearing for the first time. The Public Information Officer of the High Court wrote to him: "your application is not (sic) accordance with the Rules framed by Patna High court in this regard particularly relating to the fees etc. The Rules framed by this court may kindly be seen for guidelines in the Bihar Gazette (extraordinary, dated. 19.10.2005 by the Govt. Press Gulzarbagh, Patna."

It was in this context that Mr Sinha approached the Commission for a direction to the High Court to publish and place on its website the Rules to make it accessible to the general public, as the general public do not read the Bihar Gazette.

In Bihar, several thousand contempt cases remain pending before the Patna High Court, and it takes much more than a year before it may be taken up for consideration due to the large

number of such cases. Apart from the monetary loss to the petitioners who are compelled to spend money for the second time (first for obtaining the order and then for its implementation), it results in the waste of the valuable time of the court (in hearing the petition for contempt), which could have been spent on hearing fresh cases and reduced the number of pending cases before it. The information was sought to draw attention of the High Court to this aspect of showing indulgence to the people responsible for treating the orders of the court lightly and to suggest that the State should be made to compensate for wasting the precious time of the court by imposing heavy fines on it and send to jail persons responsible for committing the contempt of court. The step would save the precious time of the court and spare the hapless victims harassment and unnecessary expenditure.

Note: Mr Prabhakar Sinha is a National Vice President of PUCL. □

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## Press Release:

### Slaughter at Nandigram

*The PUCL has issued the following statement on the recent incidents in Nandigram:*

“The PUCL is horrified at the turn of events at Nandigram in West Bengal on March 14, which resulted in the death of eleven persons, as reported in the press. It is reported that a posse of about 3000 police persons was deployed to, what the DGP of West Bengal

says, “restore the rule of law”. The situation has irked even the Governor of West Bengal who has expressed “a sense of cold horror”.

“The PUCL strongly condemns the strong armed action by the police and demands an enquiry into the incident by a

retired judge of the High Court and the resignation of the State Home Minister.” – **K G Kannabiran**, President; **Y P Chhibbar**, General Secretary; **(Justice) Rajindar Sachar** (Retd) Former President, PUCL; **Pushkar Raj**, Secretary, March 15, 2007 ☐

## Gujarat PUCL: News

### Protest on Parzania

Shri Gautam Thaker, the General Secretary of Gujarat State PUCL addressed a letter to the Governor of Gujarat along with resolution signed on behalf of 20 organisations condemning the blocking of release of the film *Parzania* by unconstitutional means. The resolution is as follows.

PUCL- Gujarat Condemns the Government for banning the screening of film *Parzania* in Gujarat. It is a direct assault on the freedom of expression. The fascist groups are openly obstructing the filmmakers' right to exhibit the film and people's right and freedom to watch it, by threatening the concerned persons.

There is an outcry of protest from all over and within Gujarat itself on the move, yet entire Government establishment is unperturbed like mute spectator.

Maintaining an atmosphere of peace, free of fear is state Government's responsibility. Instead it appears to be indirectly

supporting these undemocratic groups in their fascist agenda of intimidation of civil society. It is a matter of concern that it has not taken adequate steps against them. We hold the Government in power and administrative establishment responsible for this situation. The Chief Minister who had promised 'fear-free' (*bhaya-mukta*) Gujarat, Home Minister who is duty bound to maintain law and order, and also Chief Secretary, Director General of the Police, Police Commissioner along with complete police department share the blame for the people's plight.

As the socially concerned citizen's groups and representative institutions, we demand from the Government and administration that they perform their constitutional duties and take proactive steps to stop these fascist elements, behaving as the extra-constitutional powers.

Persons and groups who have endorsed the resolution:

1. Manishi Jani, Yashwant Mehta (*Gujarati Lekhak Mandal*)
2. Dwarika Nath Rath (*Movement for Secular Democracy*)
3. Girish Patel (*Lok Adhikar Sangh*)
4. Gautam Thaker (*PUCL*)
5. Hiren Gandhi, Jayesh Solanki etc. (*Samvandan Sanskrutik Karykram*)
6. Father Cedrik Prakash (*Prashant*)
7. Sarup Dhruv (*Darshan*)
8. Harinath Pandya (*Janpath*)
9. Sukhdev Patel (*Ganatar*)
10. Indukumar Jani (*Naya Padkar*)
11. Prakash N Shah (*Nirikshak*)
12. Rajni Dave (*Bhoomiputra Pakshik*)
13. Gujarat Sarvodaya Mandal
14. Damyanti Parikh (*Manila Punruthan Sangh*)
15. Stalin K (*Drishti Media Arts And Human Rights*)
16. Saumya Joshi (*Fade in Theatre*)
17. Father Vergese Paul (*Gujarat Christian Press Council*)
18. Mahadev Vidrohi (*Abhikram*)
19. Manaviya Technology Forum
20. Pariyavarana Surksha Samiti ☐

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## Gujarat PUCL:

## Press Note on Black Magic, etc

The PUCL Gujarat organised the meeting to discuss the evils of Black Magic and Aghori practices prevailing in the State. Shri Ashwin Bhai Karia and Shri Gautam Thaker explained the practices in details. The meeting discussed the practices and their ill effects on the society and decided that the State Government should be requested to bring forth a Bill on the lines of the Maharashtra Act on the same subject, in the forthcoming session

of the Assembly. The meeting adopted the following resolution. This meeting urges the State Government that in order to create social awakenings and awareness in the society and to create a healthy and safe social environment against practices that exploit the poor and the ignorant it should adopt legislative measures. The meeting underlines the evil and sinister practices like Black Magic and Aghori customs which

exploit the poor people in the name of the super natural powers. Generally these practices exploit and harm the illiterate people mentally, physically, and financially. Slowly the social fibre becomes weak. This meeting unanimously urges the State government to bring forth such a Bill in the State Assembly. – **Gautam Thaker**, General Secretary, February 1, 2007 □

### Update:

## State Repression in Birkoni in Chhattisgarh

*The Court Exposes the Fallacy of the "Attempt to Murder" Case by the BJP Government in Chhattisgarh against Innocent citizens & activists - A LEGAL & MORAL VICTORY FOR STRUGGLING PEOPLE*

Dear Friend,  
Greetings from the struggling and suffering people of Chhattisgarh!

This is to share the great news that the 32 innocent citizens and social activists won a legal battle today, when the Additional District & Sessions Judge, Mahasamund, Mr. V B Singh struck down some of the serious offences from the Charge Sheet, while framing charges in the false criminal case filed against them by the BJP-led Chhattisgarh Government. After hearing the arguments from both sides, the judge ruled that there was no matter to charge them with "attempt to murder" u/s 307, and others u/s 427, 332 and 149 of the Criminal Procedure Code. The judge has transformed section 307 into section 324 (Voluntarily causing hurt by dangerous weapons or means), and has sent the case to be tried by the Chief Judicial Magistrate, Mahasamund, Smt Anita Dahariya.

This has exposed the grand-design of the BJP-led Chhattisgarh Government to falsely implicate in criminal cases those villagers, Gram Panchayat leaders and social activists who led the opposition to setting up of industries on the agricultural public land in Birkoni village, 15 kms

away from the district headquarters of Mahasamund. It may be recalled that 14 were arrested and were put behind bars for 28 days in June-July 2006, and later 18 others, including 9 women, were detained for 57 days in December 2006 and January 2007, under these cases.

Much earlier, while granting bail, the ADJ, Mahasamund had already observed in the bail order dated 3<sup>rd</sup> July, 2006 that "A *Perusal of the Case Diary and the material evidence contained therein does not warrant such an action. Besides, the medical examination report also reveals that the policemen alleged to have been hurt in the stone pelting had received simple injuries.*" Similarly, the Acting Chief Justice of Chhattisgarh High Court, Sri L C Bhadu hearing the Bail Petition of 18 other accused observed on 25<sup>th</sup> January 2007 that "no grievous injury was sustained by the Police party". These orders go on to prove that the Police Administration had deliberately and falsely implicated the innocent citizens in serious offences like the "attempt to murder", because of which they had to suffer long periods of confinement in jail.

These 32 so-called "accused" were recognized for their 'courage

and conviction' on the Women's Day (8<sup>th</sup> March, 2007) by the Chhattisgarh Mahila Jagriti Sangathan, and were provided with a memorabilia.

The repressive measures used by the BJP-led Chhattisgarh Government against the struggling people and social activists is not limited to Birkoni in Mahasamund, but in Bastar, Rajnandgaon, Chowrenga, Bilaspur, Kanker, and Kawardha, etc., where similar agitations are being staged against the ruthless implementation of "industrial policy" of the State Government at the cost of uprooting the people from their livelihood resources like farms and forests, and also causing industrial pollution thus cutting at the very base of their right to life.

It may be recalled here that Raipur is the "most polluted capital city" of the country, and the "third most polluted city" of the country. Every fifth citizen of Raipur is said to be suffering from one or the other form of respiratory diseases. The large-scale industrialization, especially the sponge-iron plants being set up by the State Government, has been a subject matter of debates in the Chhattisgarh Legislative Assembly, currently in session. It has been reported that each sponge-iron

plant destroys about 3000 acres of agricultural land due to pollution. The State Government has signed MoUs with the MNCs and industrial giants in the country, including TATA, ESSAR and Texas Power Generation Corporation (said to be close to President George Bush of USA), etc.

The repression of the struggles of the Birkoni villagers for their right to life and livelihood is also seen as an attack on the "democratic processes and institutions" as the Gram Panchayat and Gram Sabha, both had passed unanimous resolutions against setting up of the industries on the farm and public land. However, the District Administration got these resolutions reverted on 9<sup>th</sup> June, 2006 in the presence of heavy police post, while the leaders were "illegally arrested" and put behind bars. These detainees included the

leaders of the peaceful and democratic movement: Toop Singh Nishad (Member, Janpad Panchayat), Pooran Sahu (Member, Gram Panchayat), Shiv Kumar Patel (District Convener, Chhattisgarh Mukti Morcha), Bhuwan Lal Kuldip (President, KN Oil Mill Worker's Union affiliated to CMM), Akshay Sail (State Convener, Indian Social Action Forum). Others falsely implicated include Ms. Harshlata Kanwar (Chhattisgarh Mahila Jagriti Sangathan), and Surendra Kumar (SAMVEDNA).

The people's struggles of Birkoni villagers also acquired significance in the context of recent but similar struggles of people at Singur and Nandigarm in West Bengal. While a short-term "relief" has been received through the legal battle in this regard, we need to strategize our future plan of action as the "fascist" and "pro-globalization" forces are out-and-

out to discredit the peaceful and democratic movement for people's rights and justice, by framing false criminal cases against the social and political activists and organisation, and treating them like "criminals".

The People's Union for Civil Liberties (PUCL) – Chhattisgarh State branch has chosen as its Theme: Fake encounters, fake surrenders & fake cases for the forthcoming State Convention to be held on 14<sup>th</sup> & 15<sup>th</sup> April, 2007 at Ambikapur, Chhattisgarh. The State Convention would definitely address the growing state repression also reflected in the filing of "fake criminal cases" against struggling people and activists in Chhattisgarh. Thanks for all support and solidarity. In Solidarity. – **Rajendra K Sail**, President, Chhattisgarh PUCL, March 15 2007 □

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**Book Review:**

## Human Rights

*Human Rights*, H.O. Agarwal (Central Law Publications, Law Publishers and Booksellers, 107, Darbhanga Colony, Allahabad, Ninth Edition, 2006) Rs.155/-.

“Human Rights” has become one of the central concepts of international law since the close of World War II. With the establishment of the United Nations, the Human Rights have received recognition through universal instruments and national Constitutions. Indubitably, there is a great demand for the protection and promotion of Human Rights all over the world. As Justice Krishna Iyer has pointed out, “the human inhumanity takes many forms and social injustice afflicts in various ways; and the ideal of human rights is still very far off”.

The ever-growing and the complex subject of Human Rights has been incisively discussed by Dr. H.O. Agarwal. The work, in fact, has grown considerably from its first edition in 1983 to the present tenth edition, which has in all 13 chapters and useful appendices. The discussion on the concept of Human Rights, the Universal Declaration and the International Covenants provide an excellent background material to understand the framework, implications and the attitude of States. The learned scholar has paid adequate attention to the implementation procedure as provided in the two Covenants. Also, he has mentioned the Indian position, be it in the context of the Universal Declaration, Forced Labour, and Trafficking in Women, Child Labour or Refugees.

Another important merit of the book is that it has minutest details such as ‘Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (1998), Application of the Genocide Convention in Kashmir, Apartheid

in Sports, The Optional Protocols to the Convention on the Rights of Child, Kargil Conflict and International Humanitarian Law etc. In addition, as pointed out by Justice PN Bhagwati in the foreword of the book, the author has made a highly commendable analysis of the decisions of the Supreme Court that include Hussainara Khatoon, Bihar Undertrial, Bhagalpur Blinding, Kadra Pehadia, Meneka Gandhi, Sunil Batra and Francis Coralie Mullin cases.

Certainly, the discussion on the ‘Collective Rights’ and ‘Human Rights Council’ enrich the work; the former called as *fraternite* (Solidarity Rights) by French jurist Karel Vasak, is a succinct narration of the Right to Development and the latter, an excellent informative piece on the adoption of 2005 World Summit Outcome document and the implementation thereof.

Chapter XI, XII, XIII deal with India and International Covenants, India and the Human Rights Conventions and Human Rights Commissions in India. These three chapters would be of special interest to the Indian students. In these three sections, the author has very ably handled the subjects with the help of numerous leading cases. The same kind of treatment, however, is missing when it comes to Human Rights and Non-Governmental Organisations (Chapter IX). There are a large number of NGOs in India; some of them have made significant contribution, and that includes PUCL. These NGOs have fought relentlessly and successfully against Human Rights violations; their contribution to Human Rights literature has been substantial. It is hoped that in the next edition the author would deal with the subject more exhaustively.

This informative work will be received very well by one and all having interest in Human Rights. – **Sunder Raman**, MA, LL M., Ph D; Reader in Political Science, PGDAV College (Morning), University of Delhi

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