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Proposed National Judicial Council is Flawed

Rajindar Sachar

The Central Government has come out with two Bills constituting a National Judicial Committee for appointments and judicial council for disciplinary matters regarding higher judiciary. In my opinion, both Bills are seriously flawed.

The proposed legislation changes the name of collegiums to judicial committee. In order to snatch supremacy by the executive it is provided that the President shall appoint "from amongst a panel of names suggested by the committee". A deft move by the executive to have the last word, unlike the present where it is with the judiciary. This permits the executive to play politics. No self-respecting committee can allow final choice to be made by the Executive thus undermining the independence of judiciary, a basic feature. Only one name for each vacancy should be sent by committee.

The next inadequacy is that both Judicial Council and committee consists exclusively of judges. This defeats the very rationale of the necessity for bringing forth these Bills. I am of the firm view that the public at large has a legitimate stake in the judiciary and has a strong justification to insist that the question concerning the integrity of Judiciary cannot be the preserve of the small in house judiciary, itself. It is therefore, absolutely essential that the committee and the council must include at least one lay person as a member – he could be selected by the Prime Minister in concurrence with leaders of the opposition in both Houses of the Parliament. A retired judge of the Supreme Court could be a full-time member because sitting judges may not have sufficient time.

Such like provision exists in other Commonwealth countries also. New Zealand has a judicial conduct panel act. This panel consists of two judges and a lay person.

In Canada, the judicial Council was established in 1971.

Similar is the position in Australia which has a Parliamentary (Judicial Misbehaviour or Incapacity Commission) Bill 2005. The Commission consists of 3 members, 2 of them to be appointed by the Senate and the Speaker of the House of Representatives on the recommendations of the Prime Minister and one to be appointed jointly by the President of the Senate, Speaker of the House on recommendation of the Leader of the Opposition and at least one of the members is to be a judge or a retired judge of the Supreme Court. The fear that presence of a lay person will interfere with the independence of the judiciary is misplaced as Judicial Commission of New South Wales (Ireland) Annual Report said - " In conferring a complaints function upon the Commission. (...on page 16)

Arrest of Human Right Defender in Chhattisgarh

Dr Binayak Sen, a veteran human right defender, National vice president of PUCL & General Secy. Of Chhattisgarh PUCL was arrested by Chhattisgarh police on 14th may, 2007 under the provisions of UPA-1967 & Chhattisgarh (Special) public security Act-2005. Both the laws are draconian laws & which are generally abused against the persons/organizations which do protest the anti-people actions/policies of the Govt. The arrest of a human right defender under such laws speaks itself, the motive & high handedness of the state to silence the dissent voice & legitimate expression of disaffection against the policies of the state.

Dr Sen had been to Orissa on different occasions to participate mass programs. Recently after the Kalinga Nagar incident, he had led a delegation of fact-finding team from Chhattisgarh to Kalinga Nagar. He had also attended a mass protest meeting at Bhubaneswar on 20th January 2007 against the Kalinganagar mass killing.

It is believed that his strong position to protest the human right

violations throughout the country & exposing the evil design of Chhattisgarh Govt. in Piloting "Salwa Judum" program to alienate Bastar tribals from their life, livelihood & culture, was not palatable for the state administration. So his arrest by the Chhattisgarh administration on 14th May, 2007, on the allegation that he had passed on letters to Piyush Guha, written by C P I (Maoist) leaders lodged at Raipur central jail, was not credible. Because the fact remained that Dr Sen met the Jail inmates at Raipur Central jail, with the permission of jail authorities and also in the presence of police & jail authorities.

The arrest of Dr Sen is not an isolated act of repressive measures of the state. It is the part of the same policy which has been followed by different state Governments vigorously to suppress democratic struggles against the policy of alienating the tribals, dalits, peasants, landless labourers, workers etc from their traditional base of life, livelihood & culture. So the arrest of Dr Sen is a matter of concern for all sections of society.

Now, it is minimum responsibility of all democratic, patriotic, progressive, concerned individuals, groups, organizations etc. to condemn this undemocratic act of Chhattisgarh Govt.

1. The chief Minister of Chhattisgarh (Fax No.0771-2331000) (E-mail: cmcg@nic.in) should be urged upon to release Dr Sen without any condition.

2. You may urge upon the Chhattisgarh Govt. & Central Govt. to follow the spirit of the address of Dr Manmohan Singh, Prime Minister of India i.e. "A democratic Govt. has to make a distinction between the genuine & legitimate expression of dissent & disaffection & the manifestations of anti-national, anti-social & anti people threats to our democratic way of life", which he delivered in the conference of CMs on Internal Security and law and order in New Delhi on 15th April 2006.

3. It is also to be urged upon to repeal the Chhattisgarh (Special) Public Security Act-2005. – **Biswapriya Kanungo**, Civil rights activist, (for & on behalf of Committee for Concerned Citizens, Orissa), 17 May 2007 □

Demonstration and Press Conference on Dr Binayak Sen's Arrest

PUCL and other civil liberties organisations staged a demonstration at the Chhattisgarh Bhawan at the capital yesterday. The activists shouted slogan and displayed placards condemning the arrest of Dr Binayak Sen. Later Justice (Rtd.) Rajindar Sachar handed over the memorandum of demands to the resident commissioner of the state. The memorandum demanded the immediate release of Dr Binayak Sen, the repeal of the

Press Release:

Chhattisgarh Special Public Security Act 2006, and UAPA, 1967 and release of all those already in prison under these Acts.

Later in the day, a press conference was addressed by Justice Rajindar Sachar along with writer Arundhati Roy and the Supreme Court lawyer Prashant Bhushan. Justice Sachar said that PUCL is committed to non-violent means of struggle and protection of human rights in the country and an arrest of its officer

bearer is most deplorable. He quoted from the Chhattisgarh Special Security Act 2006 and said that the Act goes against the ethos of a democratic society and contains very draconian and vague clauses that can be grossly misused. He warned the media that it is also not immune to its use against them. Along with the others, he demanded that Dr Sen be released immediately. – **Pushkar Raj**, National Secretary, 18 May 2007 □

Impunity and Arrest of Rajendra Sail

The President and the General Secretary of the PUCL have issued the following statement

"The General Secretary of the Chhattisgarh PUCL, Dr Binayak Sen, has been arrested without any tenable reason. Like all other activists working in our organization all over the country he was fighting against violation of human rights of any person, without relevance to his /her political affiliations. Dr Sen was very critical of the alleged encounters and was demanding a proper enquiry into every one of those encounters. In this connection, a deputation met the Home Minister of the Central Government also recently. His arrest is being debated widely. As against his arrest and the accusations the matter is before the court and the matter would be fought. We learn now that the offences under sections 120B 121A and 124 A were added subsequent to filing of the FIR. At the time of issuing this statement to the press Shri Sen stands

charged for Sedition, Conspiracy to wage war, and Conspiracy to commit other offences. Such post arrest and post FIR confabulations are part of the impunity governments have granted to the law-enforcing establishment.

"While we were trying to enquire in to the status of the case against Binayak Sen we were told that Rajendra Sail, the President of the Chhattisgarh PUCL, is arrested. In connection with the Shanker Guha Niyogi murder case he had made a statement after the judgment of the High Court at Jabalpur years ago. He was punished by the High Court for Contempt and the matter went to the Supreme Court. The sentence was reduced to one week by the Apex Court. This was in April 2005. On the 12 March 2007 the SP there writes to SP Raipur to arrest Rajendra Sail to serve his sentence. Now finding him very active in the matter of arrest

Binayak Sen the arrest was effected to day. While it is true he will have to serve the sentence lawfully imposed, yet the abuse of powers is writ large. They can keep the warrant pending for years and when needed execute them. Would it not be contumacious if the police were to keep the final order pending without executing it? If this contumacious conduct is not impunity what else would be. Niyogi's murder was prior to the formation of Chhattisgarh State. As the crime was registered before the formation of the Chhattisgarh State was formed, after the judgment of the Supreme Court, I (KG Kannabiran) filed an application that Shri Sail be detained in Raipur Jail. And that we learn is pending. We wish to bring to the notice of people how law is abused in the State." – **K G Kannabiran**, President; **Y P Chhibbar**, Ph. D., General Secretary, May 24 2007 □

Press Release:

"Rajendra Sail, the President of Chhattisgarh State branch of the PUCL was arrested yesterday (May 24, 2007) by heavily armed Chhattisgarh police. This is the second arrest of the PUCL office bearers of Chhattisgarh State branch. It is a crude attempt to scuttle the peaceful and democratic protest being organised in Chhattisgarh against the arrest of Dr Binayak Sen, the General Secretary of Chhattisgarh PUCL, and the State policy of repression in the name of suppressing extremist movements.

"Rajendra Sail had made a statement on the judgement of the High Court at Jabalpur regarding the Shanker Guha Niyogi Murder case in 2001. The High Court

Rajendra Sail Arrested

punished him for contempt with a sentence of imprisonment for six months in June 2001, in the case filed in 1998 by the MP Bar Association. The matter went to the Supreme Court and in April 2005 the Supreme Court fixed the sentence to one week of imprisonment. On March 12, 2007 the Jabalpur SP wrote to the SP Raipur to arrest Rajendra Sail to serve his sentence and the arrest was effected on May 24, 2007. Clearly the Chhattisgarh Government found the pending contempt sentence a convenient tool to remove Rajendra Sail from the scene for sometime. He was thus, arrested to serve a two-year old sentence dug up two months ago and implemented yesterday.

"It is pertinent to note here that Sail was actively organising opposition to the arrest of Dr Binayak Sen, the

General Secretary of the Chhattisgarh PUCL. A week-long programme of activities is to culminate on May 31, 2007 in a massive public meeting in Raipur.

"The chain of events in Chhattisgarh resulting in the arrests of the activists and office bearers of the PUCL is a pointer to undemocratic attitudes and suppression of Civil Liberties and Human Rights by the Chhattisgarh State Government.

"The PUCL urges peace loving citizens believing in democratic methods to do whatever they can for registering their protest against the actions of the Chhattisgarh Government. The PUCL ones again pledges its adherence to peaceful and non-violent methods." – **Y P Chhibbar**, Ph D, General Secretary, May 25 2007 □

Letter:

Chhatisgarh

To
Dr Manmohan Singh, Prime Minister of India, Prime Minister's office, 152, South Block, New Delhi-110011.

Sir,

Permit me to draw your attention to the painful developments that have taken place in Chhatisgarh during the past week or so.

The *People's Union for Civil Liberties* was established by late Shri Jayaprakash Narayan to fight for rights and liberties of the people. It has its own Constitution which states that the organisation is committed to democracy and non-violent methods.

We were all shocked on the news of the arrest of the General Secretary of the Chhatisgarh State branch of the PUCL, Dr Binayak Sen, on May 14, 2007 on trumped up charges of having connections with the extremists movement in the State. This resulted in a chorus of protests all over the country, the centre of the storm was, of course, Chhatisgarh where protest were being organised by the President of Chhatisgarh State PUCL, Shri

Rajendra Sail. A week-long programme of protest was chalked out, which is to culminate in a mass meeting at Raipur on May 31st, 2007.

Shri Rajendra Sail was sentenced by the Jabalpur High Court in 1998 for contempt of court on a statement that he had issued regarding the judgement delivered in the Shanker Guha Niyogi Murder case. He appealed to the Supreme Court and the apex court reduced his sentence to imprisonment of one week in April 2005.

This order was never implemented. However, the Superintendent of Police, Jabalpur, wrote to the SP Raipur on March 12, 2007 to arrest Rajendra Sail to serve the sentence. Again no action was taken. All of a sudden on May 24, 2007, while Rajendra Sail was returning from a meeting, he was surrounded by heavily armed police and was arrested to serve his sentence and was taken to Jabalpur. There can not be any justifiable objection to his arrest, accept that its timing shows a crude attempt to remove Shri Rajendra Sail from the scene of

public opposition that he was spearheading against the arrest of Dr Binayak Sen.

Sir, I am bringing these facts to your notice as the top person of defenders of democratic institutions established by our Constitution and also as the Prime Minister who knows from the development of events in Andhra Pradesh regarding which you had given some time to our President, Shri K G Kannabiran, in connection with our efforts for the peaceful solution of the violent situation in Andhra Pradesh, on 31st October 2004.

We hope that the central government would see that the State government of Chhatisgarh does not play with the rights and liberties of the defenders of Human Rights whose faith in democracy drives them to take-up the defence of the rights of all the citizens without any difference of ideology.

Looking forward to a favourable reaction. Warm regards, Sincerely Yours – **Y P Chhibbar**, Ph D, General Secretary, May 28 2007 ☐

Message for Public Meeting:

Friends,

But for my health I would have been at the public meeting at Raipur. I just talked to our friend Rajendra Sail, who was released early in the morning and was on way to Raipur. His release does not in anyway dilute our protest against the arrest of Dr Binayak Sen.

I would like to take this opportunity to: (1) reiterate the first of the aims and object of the organisation from the Constitution of the PUCL, which says, "(a) to uphold and promote by peaceful means civil liberties and the

United We Stand

democratic way of life throughout India;..." and (2) recall the Resolution of the PUCL National Convention held on March 7, 1982, at Madras (now Chennai): "The PUCL reaffirms its faith in the democratic way of life.

"It appeals to all to use to the utmost the agencies and methods available in an open society. Apart from other factors, violence, even for laudable objectives, will legitimise counter-violence by the State and other groups.

"It reaffirms that even those who have taken to violence are entitled to due process of law. We

believe that this commitment is the very faith of an open society and also that adhering to this commitment is an effective way of converting all to the democratic and peaceful way of transforming our society".

I would like to thank colleagues from all other organisations who have joined us in our protest all over the country, for their combined opposition to State repression is the real voice of democracy. – **Y P Chhibbar**, Ph D, General Secretary, People's Union for Civil Liberties, May 29 2007 ☐

Dharna at Jantar Mantar Bhawan against Repression of Civil Liberties in Chhattisgarh

A large number of human rights organizations staged a protest dharna at Jantar Mantar today to protest against the atrocities against the human rights activists in Chhattisgarh and demanded release of Dr Binayak Sen, General Secretary, PUCL Chhattisgarh.

Interestingly the protestors had to shift the venue of the protest to Jantar Mantar that was originally Chhattisgarh Bhawan because of presence of over hundred policemen and women who claimed that the area was under section 144 and senior officials threatened to arrest the protestors if they gathered there. As one protestor succinctly put it 'the impact of situation in Chhattisgarh is palpable around Chhattisgarh Bhawan in Delhi also.'

The protestors demanded the repeal of Unlawful Activities Prevention Act (UAPA) and Chhattisgarh Special Power

Security Act (CSPSA) that have been used to suppress the people in general and human rights activists in particular and throttle any dissent against the state that has been functioning more as a police than a democratic state.

Today's protest was in line with the call for a series of protests given by PUCL to all its state branches in collaborations with the like-minded organizations all over the country. In Raipur also a large number of human rights activists from all over the country have gathered today to protest against the anti-democratic actions of the state.

The protestors who numbered about hundred reiterated that the charges against Dr Binayak Sen are not only baseless but are malicious and motivated and are aimed at paralyzing PUCL Chhattisgarh for raising issues of state atrocities. It may be noted that PUCL Chhattisgarh has been

exposing fake encounters by the police in the state and has been vindicated as high court too took cognizance of these reports.

The protestors also maintained that the provisions relating to sedition and waging war of the UAPA and CSPSA are designed so as to be abused by the law enforcers and to suppress the fundamental political rights of citizens. These provisions are merely a tool in the hands of the security forces to harass intimidate and suppress the sane voice of dissent in the state and are aimed at destroying the valves of communication and space for civil liberties available in a democracy.

The protesting organizations included PUCL, PUDR, Saheli, All India Drug Action Network, Medico Friends Circle, NAPM, Socialist Front, Worker's Solidarity. – **Pushkar Raj**, Secretary, PUCL, 31 May 2007 □

Dr Binayak Sen, A Victim of Impunity

Dr Binayak Sen is a doctor with a humanitarian approach; he was perhaps working out a way of reaching the poor to provide medical and health access and thus to improve their quality of life. He was of the view that these governments will not improve the quality of life of the tribes living in Chhattisgarh. In my student days quite few doctors were inspired Albert Schweitzer who set up Lambarene in deep African forests where access to medicine was next to impossibility. The generation of the decades of the sixties were inspired by the movement of barefoot doctors in China. We had in Andhra Pradesh the life of Dr Puchalapalli Ramachandra Reddi committed to the Marxist way of thinking and he left behind the concept of people's nursing home. Binayak was setting

his own trend in providing access to medicine and health. He was doctor who went to the people.

He did not know a people's doctor and his work could be sedition, could ever be conspiracy to wage war against a government established by law. Nor did he ever think his activities would amount to a conspiracy to commit offences, or in the fashion of. Even if he were to fashion his style of living on anyone of these, is no sin or an offence under any law. More or less Binayak Sen was the only doctor who was striving to reach the impoverished tribes and tribal children living in Chhattisgarh. He extended the medical health facilities, which the Government at Chhattisgarh was neither able nor willing to do, though under the Directives of the Constitution, which governs these Governments

it is a mandated responsibility of governments to create access medical, and health facilities among others. In Chhattisgarh as in several other States public health and access to health and medical facilities is next to nothing. If Binayak Sen's attempt to enforce the Constitution is an offence under the law he may not have any defense!

He was arrested because he was the General Secretary and Shri Rajendra Sail is the President of the State PUCL. Rajendra Sail was no doubt convicted for contempt of the High Court for which he was sentenced for a week a few years back. The warrant for enforcing the conviction to lie in wait to be used at an opportune time is not the way Rule of Law should be operated. The release does not lessen the

impunity of the State. The State wanted to cut off all material health that may be of use to fight this illegal arrest of Binayak Sen. That was also demoralize the members of the P U C L.

Persons acquainted with police operations against radical politics in AP would guess what sections of which law they would invoke. They are the trendsetters in this part of the country. They have assumed the lead of these Maoists infested states though they have not all been a success in eliminating the CPI ML movement in the state in all the forty-five years of its manifestation. They have physically liquidated a large number of militants but that never did lessen the rigor of the movement though there may be setbacks in certain areas where they operate. This is not a law and order problem. It has always been law versus order. There has been no attempt by the Indian State to work for the limited social transformation of this exploitative order. If the Government does bring about the social transformation provided for in a limited manner the content of the lives of the poor will become better and livable the ragged edge of radical movement can be blunted. This is what the PUCL has been debating with the government for the past four decades. The persistence of the debated in the last four decades led to the talks between Maoists and the AP State Government. The talks failed. This effort taught us that one should search for other ways of politically dealing with such radical movements. Any debate on Binayak Sen.'s arrest will have to deal with these aspects of the Maoist Movement, Now n dealing with this movement you overtly deal with it as exclusively law and order problem the Government will be compelled to resort to unauthorized State violence and that would be with the sanction of the political government. This

would result in a variety of Human Rights violations and that is where human rights organization will inevitably step in. In the process of contending with such human rights violations Dr Binayak Sen, like many of the human rights activists who preceded him, risked his life and liberty for preserving human rights the constitutional value system and democracy. Without reference to law, legality and the Rule of law system under which we operate if political movements are dealt with that will be impunity. Accustomed to sanction of large scale and near absolute impunity the government does not know to govern by other means. This inability to resolve issue by other means makes governments inefficient.

As a General Secretary Binayak Sen, was opposing as a true representative of the organization the destruction of households and displacement of tribal habitats in the name of *salva judum* or police combing operations in the guise of searching for Maoists. We are bound to oppose. A human rights person does not support the politics of the targeted but we do certainly oppose use of violent methods. Human rights activists are fighters of the kind of impunity that has been sanctioned to the State law enforcing agencies. In fact human rights movement emerges on account of arbitrary and undisciplined governance ignoring written norms set down for protecting life and liberty.

What does this impunity mean? The State sees any person condemning or preventing State violence unjustly unconstitutionally used against even a terrorist or a Maoist for doing this very constitutional duty we are seen as a supporter of outlawed terrorist or Maoist and we will be dealt with without reference to either law or the constitution.

Impunity - Perhaps no word defines the experiences of Latin

America as well as this one: Lack of punishment, of investigation, of justice. The possibility of committing crimes - from common robberies to rape, torture, murders - without having to face, much less suffer, any punishment. And therefore, the implicit approval of the morality of these crimes. Forgiving and forgetting without remembering - or remembering too well, but not caring - that what is forgotten will be repeated. As thus what is done without any punishment, can be repeated without fear.

How many died? How many were taken from their homes, from their children, to later find death in a cot under a cattle prod, before a gun, from a flying plane? Dozens, hundreds, of thousands perhaps, if we multiply them by all the countries of Latin America. And the guilty, invariably, are free, enjoying life, often at their old posts *where they can do it again*. How many die today by their hands?

This definition gives you an idea of what is happening in the villages of Chhattisgarh. This is the experience of almost all the States in the country. Black's Law Dictionary defines Impunity, after referring to legal maxim translates the same as follows: "This disposition is not sanctioned by any Constitution, any law or any International Covenant before the Universal Declaration of Human Rights and certainly not subsequent to the Declaration Yet this "disposition to commit crimes" has become the unailing habit of almost all the Governments in the World including Indian Government. - **K G Kannabiran**, June 5 2007 □

Attention

Please do not send money by Postal Order. Always send by D.D., Cheque, or M.O.

- **General Secretary**

PUCL – Jan Hastakshep Meeting on Fake Encounters

PUCL and Jan Hastakshep held a meeting on the issue of fake encounters on 5 June at Gandhi Peace Foundation. The meeting was presided over by Shri. Surendra Mohan, Former M.P. and the introductory note was presented by noted journalist Shri. Jaspal Sidhu. Those who addressed the gathering were: well known journalist Mr. Manoj Mitta, Senior Advocate, Ms Nandita Haksar, Civil Rights Activist and journalist Mr. Gautam Navlakha, Dr Aparna from CPI-Marxist Leninist (New Democracy) and Advocate Mr. N.D. Pancholi.

All the speakers addressed the serious concern about manner in which the Centre and State governments have now adopted “fake encounters” and “custodial killings” as the sole means of curbing political dissent. Despite clear guidelines laid out by NHRC on Encounters, in 1997, little has been done to implement any of these guidelines. On the contrary, what is even more dangerous and insidious is that these so called encounters now become a routine matter and are increasingly being conducted through state sponsored vigilante groups such as *Salwa Judum*, Special Task Forces and *Ikhwan*.

Dr Aparna of CPI-ML (ND) noted that; the poor, the working class and the peasant are getting increasingly discontented with the adverse impacts of the “New Economic Policies” and the Indian government acting as an agent of the multi national and mining corporations, the World Bank and developed nations is using fake encounters to curb this dissent and terrorize people’s political movements.

Mr. Jaspal Sidhu talked about his personal experience with these so called “encounters” during the period of militancy in Punjab, where the armed forces acted with complete impunity and arrested and killed anyone at their whims and fancies just in order to garner rewards and promotions and many “encountered” militants are now resurfacing. More than 25000 “unidentified” militants were secretly cremated in Tarantaaran and the investigating lawyer was also killed and yet nothing has been done. He urged that only a strong democratic movement can become an effective check and balance on the state’s power for a healthy democratic system.

Noted Senior Advocate, Ms Nandita Haksar talked about the shocking direct involvement of the Indian armed forces in conducting cold-blooded executions of Myanmar Karen tribals who were protesting the military junta in Myanmar. She expressed anguish that civil society and human rights groups were no longer expressing the outrage they should at these cold-blooded executions, just because people and civil rights groups have become partisan and are not willing to fight on the general principles of justice anymore.

Advocate Mr. N D Pancholi noted to his dismay that existing draconian laws such as the Disturbed Areas Act, and the Armed Forces Special Powers Act, National Security Act allow the Armed Forces to act to kill with impunity. It is a dangerous trend that the armed forces are no more willing to uphold and follow any rules and procedures of law, however this arrogance is only because of the tacit approval and support for these extra constitutional “barbaric shot cuts” being given by the Indian government. He noted that while all deaths and murders

immediately result in an arrest and an FIR being lodged against the accused, in the case of “encounters” no FIR is lodged, the case is simply shut and on the contrary the state files a report accusing the dead person of being a militant or a terrorist and thereafter nothing can be done to reverse this.

Civil Rights Activist, Mr. Navlakha talked about how easy it is for the state to kill anyone today and get away with it. When in 2006 there were directives issued by a central government committee to “liquidate the top 100 Maoist leaders” what can we expect from lower level functionaries. More than 100 encounters took place in Mumbai itself between 1998 and 2003 and there were reported 2035 in Andhra between 1968 and 2000. He expressed dismay that neither are NHRC guidelines on Encounters being followed and neither are the courts taking serious note of Human Rights violations.

Journalist, Mr. Manoj Mitta noted the vacillating response by the media in condemning or investigating these fake encounters, so while a few such incidents get extraordinary coverage, most are left unreported. He mentioned about how the state uses the argument of bringing about “peace and democracy” while itself violating all given norms of democratic functioning and accountability.

Later a resolution was passed that denounced these extra judicial killings which are fast becoming the accepted norms for state intervention in quelling dissent and also voiced the opinion that only a sustained democratic movement can deter India hurtling towards fascism and anarchy. Noted poet Mr Pankaj Singh read out the resolution which was unanimously passed by the full house. – June 5, 2007 □

Historical Perspective:

Fake Encounters, Custodial Killings

The practice of encounters is as old as the every new generation discovers the age-old practice as new, in Andhra during the Telangana armed struggle around 2500 were shot. After the formation of Andhra Pradesh state when in the late sixties of the last century around 1399 were killed in fake encounters. In those days the AP Suppression of Disturbances Act 1947 was adapted long after the Constitution came into force in the year 1967 to meet the emergence of Naxalite movement during the emergency of 1975 which lasted for thirteen months around 75 people were killed in fake encounters we 9 in the APCL were fighting the foul practice, a ten to fifteen thousand strong procession against fake encounters was organised and that was led by V M Tarkunde our first president. The emergency encounter led to the formation of what came to be later known as Tarkunde committee. I was the secretary of the committee and the members were among others Arun Shourie, B G Varghese, and M V Rama Murthy. The reports of the

committee are published in Arun Shourie's 'Institutions of the Janata Phase' at that time a formidable campaigner for civil liberties and human rights. His later transformation and his later very objectionable and irrational writings have literally damaged whatever reputation he had as a champion of peoples' rights, despite our radical divergence of views. Cutting the history short in 1997 my young friend was shot in the busy locality called Ashok Nagar. I suspected that that he was the person shot dead and as soon as the court assembled for the day I walk into the chief justice's court and moved an oral application to restrain disposable of the body of Madhu but to hand over the body to his young wife and to decide whether the encounter was fake or not after hearing arguments the court found that it was homicide and directed the CBI to investigate and file a charge sheet. Of course that was not done to my knowledge, previous to this Chaitanya Kalbagh an India to day journalist, SV Rajadurai from Tamil Nadu and we in Andhra file writ petitions nothing ever came out of these proceedings. We were told that

there were magisterial enquiries in to unnatural deaths which certified they were killed in encounters and we were advised that we can file private complaints. This by an apex court constituted afresh after the constitution came into force and after we became signatories to universal declaration of human rights. They do not have sense of the history of independence struggle. In Bengal Sidhartha Sanker Ray was a minister without portfolio at the centre when the left front ministry came to power they started an enquiry but abandoned after some time Charu Majumdar's son filed a petition much later and I went and argued the matter in the Calcutta high court. Now it has become part of administrative practice and was extensively employed in the states of the North-East. It didn't happen in Gujarat for the first time. Police officers Rebeiro, KPS Gill and Aravinda Rao of AP are great exponents of the theory liquidation of political dissent will ensure democracy. I left out Punjab quite a few thousands between the age groups of 25-35 were killed Jaswanth Singh Kara dared audit these killings and he disappeared. This cannot be contained. You have to campaign continuously against the jillings that is what you have to plan for in this meeting. –

K G Kannabiran, June 6 2007 □

J&K Statement:

Binayak Sen's Arrest Uncalled

PUCL, J&K State joins the civil rights activists of the country in protesting against the arrest of Mr Rajendra Sail and Dr Binayak Sen, President and General Secretary of the People's Union for Civil Liberties of Chhattisgarh by the government of the State. In a

statement, Balraj Puri Convenor of the PUCL J&K State, said that only crime of the arrested PUCL leaders was that they had raised their voice against ruthless oppression by the state government against innocent villages in the name of fighting extremist elements. Having known

personally Mr Sail and his dedicated work for the tribals of Chhattisgarh for the last many decades, Puri asserted that his arrest was completely uncalled for. A letter of protest has also been sent by J&K PUCL to the Governor of the Chhattisgarh. – **Balraj Puri**, June 9 2007 □

Jharkhand:

A well-attended meeting of important people of Jamshedpur coming from different walks of life was organised by PUCL, at Tata Press club Hall, Northern town to lodge a strong protest against the ill conceived design of Chattisgarh Government police to terrorise the Human Rights Defenders.

Dr Binayak Sen, the General Secretary, of Chattisgarh State PUCL and a well-known and very respected specialist medical practitioners working for the down trodden people of Chattisgarh and exposing one after another the serious acts of violations of Human Rights by the police forces and administration of Chattisgarh Government, was arrested on flimsy ground under the notorious 'POTA' like act of 'Chattisgarh Vishes Jan Suraksha Adhinyam'

Binayak Sen

on 14.05.2006. The farm house and the property of his wife Mrs Ilina Sen was reportedly ransacked by police on 15.05.2007 without having any search warrant. The meeting condemns these acts of Chattisgarh police and demands as under:

1. Drop all the charges falsely implicated against Dr Binayak Sen and arrange unconditional and immediate release of Dr Binayak Sen.

2. Government should acknowledge and respect the constitutional mandates and internationally recognised protections and safeguards of the different UN conventions specially the Declaration on Human Rights Defenders, 1999.

3. Stop immediately the harassment of Human Rights

Defenders and other activists belonging to PUCL and other Human Rights organisations.

4. Chattisgarh Government should repeal draconian legislations like Chattisgarh Vishes Jan Suraksha Adhinyam.

The above demands were unanimously passed in the meeting and the meeting was addressed by Smt Sudha Bharadwaj, the senior lawyer of High court and leader of *Chattisgarh Mukti Morcha*, Shri Jainandan, the eminent writer of Hindi Literature, Prof Jagdish Mishra, Shri Nishant Akhilesh, Shri Phudan Murmu, Dr S M S Huda, Shri Jawaharlal Sharma, Shri Meher Madan, Dr Ramkabinder Singh, Shri Sumit Kar, Shri Gautam Bose, and many other intellectuals, workers and activists. – **S Bhattacharjee**, President, Jharkhand PUCL, June 10 2007 □

House of Commons Deplores Dr Binayak Sen's Arrest

In a welcome development today, the British House of Commons took notice of the arrest of Dr Binayak Sen and condemned the action in no uncertain terms. It demanded the immediate release of Dr Binayak Sen and called the Chattisgarh police to put an immediate end to the harassment of other Human right Defenders in the state. The text of the resolution:

"Arrest of Dr Binayak Sen

5:6:07 *11

Ms Diane Abbott, Peter Bottomley, Lynne Jones, Mr. Martin Caton, Mr. Ronnie Campbell, Jeremy Corbyn, Mr. George Galloway, John Hemming, Mr. Mike Weir, Mr. Dai Davies:

That this House is concerned at the arbitrary arrest of the human rights activist and General Secretary of the Chhattisgarh unit of the People's Union for Civil Liberties (PUCL), Dr Binayak Sen, in the Indian state of Chhattisgarh; notes with concern that this arrest

has taken place in the aftermath of the alleged involvement by the police in the unlawful killing of 12 adivasis or tribal people; further notes that, despite these allegations being substantiated by a police inquiry, the state government still refuses to approve the prosecution of those suspected to be involved; further notes that this has occurred in the context of an escalation in violence between Maoist rebels and the Salwa Judum militia, which is widely believed to be sponsored by the state government; further notes with concern that other members of the PUCL have been subject to harassment and threats of arrest; and therefore supports the calls of Amnesty International for the state government to release Dr Sen immediately unless he is charged with a recognizably criminal offence and take urgent steps to end the harassment of the other human rights defenders in the state.

We make an earnest appeal to all of you to stay united to ensure Dr Binayak Sen's release and to compel

the Chhattisgarh government to do away with the draconian Chhattisgarh Special Public Safety Act 2005." – June 12 2007 □

Press Release:

Deraa Sachchaa Saudaa

"The PUCL is concerned at the turn of events in Punjab on the question surrounding Dera Sachchaa Saudaa and its chief Baba Gurmeet Ram Rahim Singh.

"The Sikh organisations and the Deraa should not precipitate a situation in which there may be dangers of loss of life. In a democratic set-up there are a number of means available for solving or resolving a controversy.

"The PUCL hopes that better sense would prevail and that emotions and sensibilities will not be allowed to be derailed." – **Y P Chhibbar**, Ph D, General Secretary, May 27 2007 □

International Protest:

Release Dr Binayak Sen, Repeal Chattisgarh Act

We, the undersigned, are dismayed at the continued detention of Dr Binayak Sen, General Secretary of the Chhattisgarh People's Union for Civil Liberties (PUCL), since 14 May. Dr Binayak Sen is also National Vice-President of PUCL, one of the oldest civil liberties organizations in India.

Dr Sen epitomises a dwindling tradition in India of public health professionals taking health care to the poorest sections and most underdeveloped regions of this country. For the past 30 years, he has been promoting community rural health care centres. He was a member of the state advisory committee that piloted a community-based health worker programme in Chhattisgarh. He also helped establish the Shaheed Hospital in Dalli Rajhara, set up and operated by workers for over 25 years.

We believe that the arrest of Dr Binayak Sen is a grave assault on the democratic rights movement in India. PUCL Chhattisgarh has been one of the foremost independent organizations to draw attention to the excesses committed by the Chhattisgarh government under its Salwa Judum campaign. The fake encounters, rapes, burning of villages and displacement of adivasis in tens of thousands and consequent loss of livelihoods have been extensively chronicled by several independent investigations. Dr Sen's arrest is clearly an attempt to intimidate PUCL and other democratic voices that have been speaking out against human rights violations in the state. In recent days, the targets of state harassment have widened to include Dr Iina Sen, who for years has been active in the women's movement, Gautam

PUCL Report:

Bandopadhyaya of Nadi Ghati Morcha, PUCL's Rashmi Dwivedi, and other activists of PUCL.

Dr Sen has been detained under the Chhattisgarh Special Public Security Act, 2006 and the Unlawful Activities (Prevention) Act, 2004 on charges that are completely baseless. Both these extraordinary laws have been criticized by numerous civil rights groups for being extremely vague and subjective in what is deemed unlawful, and for giving arbitrary powers to the State to silence all manner of dissent. As was feared, these undemocratic laws have been used to target Dr Sen and PUCL Chhattisgarh.

We demand:

1. That all charges against Dr Sen be dropped and that he should be released immediately,

2. That the threats to and harassment of other activists be stopped immediately,

3. The immediate disbanding of the Salwa Judum, and

4. That the Chhattisgarh Special Public Security Act, 2006 and the Unlawful Activities (Prevention) Act, 2004 be repealed.

Signatories

Professor Noam Chomsky; 2. Professor Romila Thapar; 3. Professor Irfan Habib; 4. Dr Ashok Mitra; 5. Habib Tanvir; 6. Arundhati Roy; 7. Professor Amiya Bagchi; 8. Professor Prabhat Patnaik; 9. Rajendra Yadav; 10. Professor Sumit Sarkar; 11. Dilip Chitre; 12. Professor Jean Dreze; 13. Professor Utsa Patnaik; 14. Professor Namwar Singh; 15. Shyam Benegal; 16. Professor Jayati Ghosh; 17. Anand Patwardhan; 18. Professor Utsa Patnaik; 19. Professor Imrana Qadeer; 20. Dr Rama Baru; 21. Dr Ritu Priya; 22. Professor Tanika Sarkar; 23. Anand Swaroop

Verma; 24. Sayera Habib; 25. Professor Abhijit Sen; 26. Geetha Hariharan; 27. Professor Jasodhara Bagchi; 28. Dr Uma Chakravarti; 29. Professor Anand Chakravarti; 30. Gopa Sen; 31. Krishna Suman; 32. Dunu Roy; 33. Dr K. J. Mukherjee; 34. Amar Kanwar; 35. Vrinda Grover; 36. Dr Mohan Rao; 37. Professor K R Nayar. – June 16, 2007 □

How to use the Right to Information Act

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Custody Death of Hafiz Kamaluddin and Subsequent Atrocities on People by Police in Sultanpuri, Delhi

It was reported in the media on 24th April, 2007 that a man named Hafiz Kamaluddin had died in the early hours of the day in police custody under the Police Post of Prem Nagar, in the jurisdiction of the Sultanpuri Police Station, North-West district of Delhi. Subsequent to the death people of the area alleged that it was a custody death. They gathered in a large number and shouted slogans against the police. Some people were also alleged to have damaged and burnt some vehicles standing outside the police post. As per the police version given to the media the deceased was of an unsound mind and that he had a quarrel with a cycle rickshaw puller, in the night in which both were injured and that some people had beaten the Hafiz with due to which he died.

Subsequent to the alleged custody death, the police rounded up about 34 people, all but two from a particular community, took them to the police station, abused, humiliated and beat them up. Police later slapped charges against the detained people who were later released by the court pending trial.

PUCL General Secretary Dr Y P Chhibbar constituted a three-member fact-finding committee to investigate the incident of the alleged custody death and subsequent police brutality against the police and prepare a report on it. The committee included Dr Pushkar Raj, Secretary National PUCL Shri Mahipal Singh, General Secretary PUCL- Delhi, and Shri Bhupender Rawat, Convenor, Jan Sangharsh Vahini.

The Committee submitted the following report:

The Person

Hafiz Kamaluddin was a man of forty with a wife and two years old daughter. He lived in Prem Nagar locality, a very densely populated area with unpaved streets and lacking in civil amenities. He has a two room flat to himself in which lived his brother in law too with his wife and child. About two hundred meters from his home is a under construction mosque that covers about two thousand square feet of area adjoining to it is a tin roofed narrow lane six by twenty feet covered space that is named Noorani Madarsa Talimulkoran, a *madrassa* where about twenty children mainly from poor families of rural Bihar are living and studying. It is their hostel as well as school. Hafiz Kamaluddin took care of these children and taught them in this *madrassa*.

The Incident

On the morning of 24 April 2007 a police constable informed the brother in law of Hafiz Kamaluddin that he is admitted in the Sanjay Gandhi. He gave no further details. The call was to inform about the person who was injured and in the hospital. The relatives, including his wife and brother in law reached the hospital. In the hospital after a considerable

wait they were told that Maulana Hafiz was dead.

Police Version

Police said that the *madrassa* teacher was of unsound mind. At about 3 o'clock in the morning he had a quarrel with a rickshaw puller. Both beat each other. Seeing the quarrel some people gathered and taking side of rickshaw puller beat Hafiz badly injuring him seriously. The police took him and the rickshaw puller to the hospital. Here owing to injuries, Hafiz died. In the FIR, initially, on inquiry police said that Rickshaw puller's name was Rajender. On our request to see the injured rickshaw puller Rajender in the same hospital where Hafiz had been taken. Police showed its inability to do so.

Speaking to the media, subsequent to the protest by a large number of the people of the area, District Commissioner of Police (DCP) Manish Aggarwal said that the diseased was a mentally disturbed person who was beating people and the mob in turn thrashed him and he died.

PUCL asked for the FIR no 647 dated 24 April 2007 that was registered in connection with the quarrel between the rickshaw puller Rajender and the diseased. The station house officer (SHO) refused citing the rule that it could

be given to the one who was the victim or one who had filed it. When it was pointed out that please let us know the victim so that we could at least speak to him, police officer had no answer.

However, PUCL could get the copy of the FIR from the court.

The FIR No. 647 dated 24 April 2007, timed 3:55 morning mentions that the head constable Rakesh, Dalvir, Ashok Kumar reached the spot subsequent to a call by the PCR that a mad person had stuck the head of a rickshaw puller at Mubarakpur, seventy feet road. They saw that the unknown rickshaw puller was bleeding from head and face. There was a *paagal* (mad) man who was absolutely naked. People told the police men that this mad man was stoning the unknown rickshaw puller and in turn the people stoned this mad man. The FIR further says that no one came forward to record his statement on the matter. The concerned policemen took both the mad man and the injured to the police where the doctor under MLC 6274 declared the mad man dead. Constable Ashok Kumar was told to stay in hospital to look after the unknown rickshaw puller. In the end the FIR records an offense under section 304 of IPC against unknown persons.

Hafiz Kamaluddin's Wife Mubarak's Statement

On the evening of 23rd April, 2007 my husband went out for a stroll as usual after his dinner. When he did not return till about 1.00 a.m. after mid-night, I requested my brothers, Amzad and Wazid to search for him. They took their motor cycle and went in search for him. At about 3.00 a.m. they returned without his trace. At 6.00 a.m. on 24th April we received a phone call from the local police post at Prem Nagar which was attended by my brother Amzad. He was told that my husband was in the Sanjay Gandhi Hospital and he had been sent there along with a constable named Rakesh. On hearing this I immediately took a cycle-rickshaw and reached the hospital at 8.30 a.m. There I searched for my husband but I did not find him anywhere. On making enquiries from various people present there, I was told that they had seen a 'Mullaji' (a Muslim religious preacher) outside the hospital accompanied by several policemen. The *Mullaji's* arms and legs were tied and he was crying for water. But the policemen did not give him any water. Nobody else too had the courage to offer water to the man in the presence of the policemen. The man, the people said, had perhaps died during the beating by the policemen.

Thereafter I continued my search for him. During that time, a man was brought out of the hospital on a stretcher. He was covered with a sheet of cloth and some policemen were accompanying him. I made enquiries from a policeman about the person on the stretcher. He told me that on the stretcher was a sick man whom they were carrying elsewhere for treatment. Soon some more people came out of the hospital and they told me that on the stretcher was *Mullaji's* dead body. Some policemen had already carried the body away

from the hospital. I again asked the policeman who had told me earlier that it was a sick man. Then he told me that on the stretcher she had seen was indeed *Mullaji's* body. I was also told that he had a quarrel with somebody who had also been injured. Then I asked him about the whereabouts of that person but he failed to give me any details about that man to me. He also did not tell me where the dead body of my husband had been taken. In the meantime my brothers also reached there and I told them the whole story.

On hearing about Hafiz sahib's death a lot of people gathered at the hospital and the police chased them away with *lathis* (wooden baton) and I, along with my daughter, my brother Amzad and his younger son were taken into police custody and we were kept under police custody until after Hafiz sahib was buried at Mangolpuri funeral ground.

Statement of Amzad, the Brother-in-Law of Hafiz Kamaluddin

On 23rd April, 2007 my brother-in-law Hafiz Kamaluddin went out for a stroll after his dinner as he usually did everyday. When he did not return home till 1.00 am, my sister Mubarak asked me to find out and I along with my brother Wazid went in search of him on the motorcycle and searched for him on the roads and in the mosques. The mosques were closed. We came back at about 3.00 a.m. and thought that he might have gone to sleep at the *madrassa*, that was closed. After that we also went to sleep. At six in the morning, we received a phone call and the caller asked me about my brother Wazid. I told him my name. Then the caller told me that he was calling from the Police Post and that our man was in the custody of the police. I told him that I was coming to the Police Post at which he told me that I should not come to the Police Post. The man had given a lot of trouble to the police

at the police post during the night and he had been taken to the Sanjay Gandhi Hospital by the constable named Rakesh. I told this to my sister and brothers and also rang up people who knew Hafiz sahib. We sent our sister to the hospital on a cycle rickshaw and I also followed her along with some people. My sister reached there before me. I found my sister weeping and when I enquired about the reason she told me that when she was searching for her husband, some policemen carried his dead body covered with a sheet of cloth on a stretcher and on enquiry a policeman, who was still standing there, had told her that it was a sick man whom they were carrying for treatment. She also told me that if she knew that it was the body of Hafiz sahib, she would not have allowed the police to carry away his body at any cost. I also asked Rakesh, the policeman, what had happened and he told me that Hafiz sahib had beaten a man at around 4.00 a.m. and that man was also in a critical condition and about to die. He also told me that they had not kept Hafiz sahib in police custody and had taken him directly to the hospital.

People present in the hospital told us that just outside the hospital, *Mullaji* was lying on the ground with his legs and hands tied and the police was present there. The man was asking for water but he was not given any water by the policemen. Nobody else too gave him water. The policemen were beating him with their feet and he died because of the beating by the policemen.

When the police started taking people gathered there into their custody, I along with my sister and children entered the van of Sahara TV Channel but the police pulled us out and took us into their custody. I, along with my sister, her daughter and my son were kept in police custody until after the burial of Hafiz sahib

There is a question in my mind and I have asked this question publicly. Hundreds of people came to the hospital on hearing about the death of Hafiz sahib but the person with whom Hafiz sahib is alleged to have quarreled is neither in the hospital nor did anybody come there to visit him. I have no doubt that my brother-in-law has been killed by the police.

Vinod Sharma's Statement who was Present in the Hospital

Vinod Sharma's wife was admitted in the hospital and he was with her there. He said that when he came down to take water, he saw a *Mullaji* lying there with tied hands and feet outside the emergency section gate. He was asking for water and the policemen standing there were not listening to him. There was also blood lying on the ground near him. It was around 2.30 a.m. at that time. He took water and went up. When became down in the morning he came to know that the *Mullaji* who was lying there with tied hands and feet, had died.

Statement of 67 Years Old Irfan Ulla Khan, Brutally Beaten by Police (Named in the FIR at Sr. No. 18)

I heard that an *Alimudin* had been killed by the police. I reached the office of the Municipal Councilor of the area, Mr. Anil. There were already some people, including Mr. Anil and the MLA of the area. As more people started coming there, Mr. Anil suggested that a committee should be formed to talk to the police regarding the case. In the committee apart from the Municipal Councilor and the MLA ten people, including myself, were kept. After that a police van came there and the committee members were taken to the police station. The Municipal Councilor and the MLA also accompanied in their own cars. After waiting in the police station, the ACP and the DCP came there and the committee started discussion with them.

Mr Dulare, one of the members of the committee, suggested that since the Hafiz had been killed, a case should be registered under section 302. Ikram Bhai suggested that something should be done for the wife and daughter of the deceased. I suggested that as there were many complaints against the Prem Nagar Police Post, the officers should look into the matter. The officers continued to listen to our suggestions and said that they should be given a time of 12 hours but the committee suggested that instead of 12 hours, they should take a decision in 3 hours.

At that point of time, the officers said that they were going to Sanjay Gandhi Hospital and we could also go there if we liked. Along with these officers, we also reached the hospital at 2.00 p.m. Hundreds of people were already gathered there and they were raising slogans of '*Delhi Police murdabad*', 'they have killed our man' and 'the police forcefully takes people from our houses' etc. We were standing there when some 20-30 *maulvies* came there and told the police officers that they wanted to join the *mayyat*. After about two hours, the police closed the gate of the hospital and started *lathi-charge* on the public. All this happened in the presence of the Municipal Councilor and the MLA. The MLA ran towards the canteen. I also ran along with him. When the noises somewhat diminished, I returned to the original place. I saw that some people had already been taken into custody by the police. As soon as the police saw me, I was also taken into custody. Inside the police vehicle we were 22 men and two women. On the way to the police station, a police man started hitting the younger ones with his feet. We were taken to the Samaipur Badli Police Station. At the time of coming out of the police van at the police station, everyone was hit twice with a *lathi*. I was

also hit twice. The women who were not beaten were abused very badly. Inside the police station we were made to sit in a row. After we were called by name one by one, given two slaps and our attendance marked. But when Mohd. Yusuf sahib's name was called, he was slapped by one and another policeman hit him with *lathies*. These policemen were not having their name plates on their uniforms. While beating Yusuf sahib, a policeman called him a (unprintable, religiously derogatory word) and said, "You were raising slogans against the police. I will pick your beard off your chin and urinate in your mouth." When he was not satisfied even with this much, he asked three young men taken into custody along with us that he would let them go if they hit the *maulana* with their shoes. The '*maulana*' was sitting in a corner and weeping.

Then My Name was Called: Irfan Ulla Khan, Aged 67 years

When my name was called, I stood up. The Head Constable started beating me with *lathies*. I was beaten so brutally that because of pain and dryness my tongue came out. He caught me with my beard, spat on my face, hit me with his leg and threw me to one side. I sat down in a corner. Others were made to sit after two slaps each. The women and an 82 years old man were spared from beating but foul abuses were hurled even at them. The behavior and brutality of the policemen suggested that they would not even hesitate in killing us. We do not know why they did not do so. While beating us, the police was asking us "Who is Bihari?"

Kari Mohd. Lukman, the Principal of Madarsa Jamia Rahmania Tazvidul Koran (Named in the FIR at Sr. No. 19)

After hearing about Hafiz Kamaluddin I reached Sanjay Gandhi Hospital. On reaching there I was taken into police

custody and put into a police van. There were two women, 20 *maulivies* and two other people in the van. On way to the police station a policeman named Vijender continued to beat the people in the van with his boots. At the time of being taken out of the van at Badli Police Station, Vijender called us the agents of Bangla Desh and Pakistan and Laden's men. On being asked what work we did, we replied that we ran *madarsas*. On hearing that he called us 'terrorists with beard and cap'.

Statement of Mohd. Yusuf (Named in the FIR at Sr. No. 12)

On hearing about Hafiz Kamaluddin I reached Sanjay Gandhi Hospital at 3.00 p.m. There was a big crowd there. The ACP, DCP and SHO were present there. There were many media people also. Women present there were shouting slogans against the police. I asked Amzad, the brother-in-law of Hafiz sahib, who was present there what could we do to help them and what the police was saying. Amzad told me that the police wanted them to give their consent for the post-mortem and he thought that they should first release the people arrested from Prem Nagar. But the police officers were adamant.

I went near the place where women were shouting slogan against the police. A woman who was one of those who were not shouting slogans was telling the others that the policemen had beaten the '*mullaji*' outside the emergency ward brutally with fists and boots covered feet. I requested that woman to tell me everything in detail and also to the media persons present there. By the time I called some media persons there to hear the version of the woman who had herself seen the policemen beating Hafiz sahib, the woman had gone to attend to her patient in the hospital. Then I told them what the woman had told me. The woman

had told me that she was in the hospital with her patient. When she had come down to take tea for the patient, she had seen a '*mullaji*' with tied up hands and feet being beaten up by the policemen with their fists and feet. He was asking for water, crying with pain and also calling for help but the policemen were not taking pity on him. As soon as I told the media persons this account as given to me by that woman, the police surrounded me and took me into their custody lest more people who had seen that incident should come out before the media persons to tell them about it. On way to the police station, I myself and another person *maulvi* Sheikh Amman Ulla were badly beaten by the policeman Vijender with fists and feet because we had talked to the media at the hospital. He was also hurling bad abuses at us. At the time of marking our attendance at the Badli Police Station, when my name was called out I stood up. At that time Head Constable Vijender beat me up with a *lathi* and another constable started beating with his shoe. He also abused me saying that I had made a statement before the media. These policemen were not wearing their name plates on their uniforms. After my release on 25th of April when I visited Sultanpuri Police Station to claim the things police had taken from me at the time of my arrest I recognized Head Constable Vijender and learnt his name because at that time he was wearing his name plate. While beating us the Head Constable was calling us and asked us why we were shouting slogans against the police. He also threatened me that he would pull out my beard and urinate in my mouth. He even asked three young men arrested with us that he would allow them to go away if they agreed to beat me with their shoes. I sat down in a corner with pain and insult and started weeping.

Statement of Iqbal Alam

I have been a good friend of Hafiz Kamaluddin since 1988. I am a heart patient. I was going to the hospital at 8.30 in the morning on 24th April in an RTV. There was a road jam. So I decided to walk on foot. At that time I came to know that Hafiz Kamaluddin had been killed. I was surprised and shocked. Because the jam was near the 70 feet road, I walked into the local Councilor's office to know what had happened. I was told that Hafiz Kamaluddin was at the Sanjay Gandhi Hospital. I was thinking of going there when some people returned from there. Some police officers had also reached Prem Nagar. At the office of the Councilor, a committee was formed and I was also named a member of that committee. But as I was not feeling well already and my condition was getting worse, I decided to go to the hospital and walked towards the Mubarakpur Road. As I reached the road, I was called from behind by the SHO by my name. As I reached near him, I was caught by the hand and made to enter the police vehicle. Inside the vehicle there were already some more people. We were then taken to the Police Station. I told the SHO about my condition who sent me to Sanjay Gandhi Hospital and from there I was sent to G. B. Pant hospital. From Pant hospital next day at 5.00 a.m. I was sent back to Sanjay Gandhi hospital and from there to Sultanpuri Police Station. There I was made to sign some papers and sent to the court along with the other people. From the court I was released on bail.

Statement of Ashraf Ansari (Named in the Fir at Sr. No. 8)

I received a phone call from my friend, Shiva Kant Gorakhpuri, that a Muslim had died in the custody of police at Prem Nagar police post on 24.4.2007 at about 12.00 noon. He asked me to go there and find out the details as he himself was also reaching there after some time. I took my motorcycle and

proceeded towards the police post at Prem Nagar along with my friend Gulfam. We reached the local MCD Councilor's office. Some people were already gathered there and were discussing the death of Hafiz Kamaluddin. I also started making enquiries from some of them. The police caught me from there along with some more people and put me inside their vehicle. On the way to the Police Station at Sultanpuri the policemen accompanying us hurled all kinds of abuses at us, misbehaved with me and others and beat up some of us. The same kind of behavior was repeated at the police station. The police seemed to be clearly biased against Muslims because they were brutal against those who appeared to be Muslims from their appearance. Perhaps my being clean shaven saved me from being beaten. Later I was charged along with some more people and I got my bail from the court the next day.

Statement of Shyamji Dube, a Social Worker

I live at Prem Nagar. When I came to know about the death of Hafiz sahib, being a social worker I went to 70 Feet road on 24th April 2007. A large number of people were gathered there and were expressing their sympathy for Hafiz sahib's family. Many more people were shouting slogans against the police. After some time the police started resorting to *lathi* charge against the people and started taking people into their custody. I was also taken into custody and put inside the police van. Many Hindus were let off at the Police Station after the police came to know our names. I was also let off. On way to the police station, the police misbehaved with most people, hurled abuses and beat up many of those who were taken into custody along with us.

Statements of Jai Pal Nehra, Shiva Kant Gorakhpuri, Ajay Yadav, Gulfam and Abdul Rab

All the above mentioned people had gone to the Sultanpuri Police Station on the evening of 24th April 2007 to see the position of those who had been taken into custody from Prem Nagar area. It was about 8.00 p.m. The DCP, Manish Aggarwal, who was present at the Police Station along with other police officers of the North-West District, was addressing about 30 people present there who had gone there to meet their friends and relatives who had been arrested. Some social workers of the area were also present there. In their presence the DCP said that he would teach a lesson to the people of a particular community, which showed a deep-rooted communal bias in the mind of the DCP. All the above mentioned people felt that perhaps that was the reason why many people who belonged to the majority community and had been taken into custody from Prem Nagar, were let off from the police station after learning about their identity which is also reflected in the FIR under which out of the 34 people booked, 32 are from the minority community.

All the people arrested on 24th April from Sanjay Gandhi Hospital were first taken to Sanjay Gandhi Hospital at 5.00 a.m. the next day. The purpose was to get their medical examination done. However in the name of their medical their names were asked and they were made to put their thumb impressions. They were neither treated for their injuries nor any medicines given to any of them because they were the people injured by the police. The other 12 people who were arrested from Prem were also booked under the same FIR No. 650 dated 24.4.2007 u/s 147/148/149/186/353/332 of IPC and u/s 3/4 of the Prevention of damage to public property Act 1984.

Findings

- Hafiz Kamaluddin was not a mad man as police make him out to be. PUCL met several people living near his home and students who studied in the *madrassa* and not a single person said that his behaviour was in any way abnormal.

- Police theory of Hafiz Kamaluddin's quarrel with the rickshaw puller appears not only false but ridiculous from the very beginning for various reasons. One at between 3:30 and 4 o'clock in the morning how would one imagine a crowd who would be in come into a lynching mood in the quarrel of two unknown persons taking side of one and stoning the other.

- It is highly improbable that from a crowd that is angry and furious at the 'mad man' and performs a wonderful task of saving another person 'the rickshaw puller', from the so called mad man's violence not a single person would come forward to give a summary statement, even if that be one for simple explanation. No one from the crowd gets injured, save mysterious unknown rickshaw puller. The victim is disrobed by the crowd, his hands and feet are tied (as borne by the witnesses). The whole thing defies the crowd psychology in terms of its behaviour given the fact the time of the incident is between 3 and 4 in the morning.

- Police has no explanation for the mysterious rickshaw puller. Who was he? Where did he live? What was the extent of injuries suffered by him? Where was he admitted? When was he discharged? Police FIR no. 647/24 May mentions that constable was left in the hospital for his care. In a way he was the victim who 'began to be stoned', by the mad man, why was he not made a part of FIR.

- Police FIR above cited mentions that police came to know about the 'unknown mad' man's name when his wife came to the police station. But it

was because of the telephone call by the police at 6 o'clock in the morning that the Hafiz's wife reached the police station. It is interesting to note that police did not know his name but it knew his relative's telephone numbers. Who provided police this information?

Conclusion

1. The police theory that Hafiz was mentally unsound is an absolute lie.

2. Police theory that Hafiz was stoning a rickshaw puller and crowd is also a bundle of lies.

3. A healthy person had died; the policemen last seen with him explain his death in the most ridiculous manner without providing any proof. Therefore it is but natural that these policemen come under serious suspicion.

4. It seems police in the area have a history of indulging in atrocities and inflicting violence on the people. In people's perception Hafiz became victim of police violence. That is what triggered a large-scale protest. Police instead of clearing its name with convincing proofs and facts indulged in further violence and atrocities against the people.

Recommendations

1. A CBI inquiry should be instituted to get into the bottom of the truth behind the death of Hafiz Kamaluddin.

2. The staff of the local police station and the police post should be transferred with the immediate effect. More so because the SHO of the concerned police station and the police post in charge continue to intimidate the relatives of the deceased and issue veiled threats to the local people.

3. A departmental inquiry must be instituted against the men in uniform who have indulged in custody violence against the people who had been detained in the wake of protest against the police.

4. All cases registered against the people, 32 in all, must be withdrawn by the police. It is apparent that the move is to keep people in awe and intimidated so that if a similar incident take place they dare not protest.

5. During the course of incident and in its aftermath it has been reported that police men of the area including senior officers have shown utter insensitivity to community feelings and respect for basic civil

liberties and human rights. It is highly recommended that Delhi police constitute a centralized human rights education cell that ensures that its all men at least attend one workshop annually on basic rules of police-public interaction and civil and human rights of the people under the constitution.

The General Secretary has sent the case to the NHRC. □

(...from page 1) The Parliament struck a balance between independence and accountability. Judicial independence is not some kind of industrial benefit generously extended to judges and magistrates; it is fundamental principle of our society's constitutional arrangements". To assume that lay persons would not be easily available is to insult the public standing of large number of public men, academicians and intellectuals, who inspire the same confidence as the judges themselves.

The other Bill constituting National Judicial Council to look into various disciplinary measures into the judges of High Court and the Supreme Court suffers from the same infirmly.

Section 7 of the Bill is flawed because it does not provide for investigation agency to be appointed independently by the council. It repeats the deficiency pointed by human right activists for decades with regard to the powers of National Human Rights Commission. I see no reason why investigation agency to be appointed should require the government's consent.

There is a bar to filing a complaint against a judge who has retired. I appreciate that there may little more tendency to file frivolous complaint against a retired judge. But then I do feel that there should not be a total embargo – may be the misbehaviour alleged should have taken place 3 months from the date of retirement, as against 2 years of a sitting judge.

Section 14, which says that the enquiry shall be held in camera - this is against all principles of fairness. Personally, I feel that once the council has not found the charges to be frivolous, then broader consideration and the opt repeated maxim of Bench and Bar being the two wheels of a chariot, representative of Bar must be allowed to watch the proceedings, because there is no agency more

concerned with the honour and impartiality of the Bench. An enquiry into a judge's conduct cannot be held in like a sealed conclave of Papal Council – Judges conduct is an open book and should not fear being exposed to sunlight of public scrutiny, though with all dignity and respect. And there is precedence for this Course. In New Zealand the enquiry is in public.

Another flaw is that Section 20 requires that the charges must be proved beyond reasonable doubt. I feel that this test of proof is misplaced when dealing with test of integrity of such institution like that of higher judiciary. I feel the test should be of probabilities like in a civil case. In Australia, Section 27 of Act provides that the question of proof is on the balance of probabilities. Surely, judges must not be de-meant by applying the test of a criminal complaint; judges' chair is too sacred to be allowed to be occupied, even if there is a slight whiff of suspicion regarding judges' integrity.

Next serious drawback is that majority of 2/3 present and voting for removal is being dispensed with by substituting a simple majority voting. This will give a serious handle to the government party to hold this menace of impeachment and is, therefore, unacceptable.

Section 30 provides for an appeal to the Supreme Court against an order of removal by the President which follows after each House has held that misbehaviour has been proved. Nowhere in the world is there an appeal against the verdict of the Parliament. Such a provision, even on charitable consideration shows a gross ignorance of the mechanism of delicate relationship of Parliament and the courts. The provision should be deleted.

It is to be hoped that Parliament while passing this legislation, will also at the same time pass Lok Pal Bill which is lying in hibernation in for a decade and a half. Passing of these both legislatures at the same time will be a fitting recognition that both the executive and legislature accept with deep reverence the real sovereign in a democracy as mentioned in preamble to the Constitution i.e. "we the people of India". □

Copy of the Letter:

Controversy of Faculty of Fine Arts, M S University

To,
Honourable Shri Naval Kishore
Sharma, The Governor of Gujarat,
Gandhinagar.

Respected Sir,

We believe that the vandalism that occurred during the examinations of Fine Arts Faculty of the world-renowned M S University, Baroda is disgraceful for the educational and cultural field of Gujarat. The students drew some paintings as a part of their internal assessment of the annual examinations of Fine Arts. The self proclaimed "Moral Police" of saffron brigade trespassed into the campus and found those paintings objectionable destroyed them with the help of the police. We strongly condemn this incident.

The student Chandra Mohan who drew these paintings was arrested by the police and sent to jail for five days with out granting bail to him. The rooms of the archives of the fine arts were sealed by the university authority

and the Dean of the Fine Arts Dr Shivaji Panikkar was suspended abruptly. We consider this as an assault on academic freedom of the university.

Freedom of expression as well as academic freedom is vital for any educational institutions. Any attempt to obstruct it, it an assault on education.

To obstruct the academic activities of higher learning of the educational institutions (who are engaged in seeking the truth and knowledge for the society), and that too during the examination, by the saffron brigade backed by the State is alarming and we consider it as a fascist design.

It is the fundamental duty of the Vice-Chancellor of the University to protect the students and teachers from any kind of attack from outside. Instead of providing protection to them, the Vice-Chancellor connived with the saffron brigade which is deplorable and mater of grave concern.

Sir, you are the Chancellor of all universities of Gujarat. We request you to intervene in this matter for the larger interest of the academic world and arts. More over we request your honor to take care to withdraw all administrative and judicial measures against the student Chandra Mohan and withdraw the charge of suspension on Dr Panikkar.

You are aware of the shameful and shocking incident of the M.S. University of Baroda. The whole country condemned the vandalism. Gujarat has been defamed again. We earnestly request you to take timely and appropriate measures in the larger interest of Gujarat and higher education.

We request you to give as an appointment. Thanking you, Yours
Sincerely – **Prof J S Bandukwala**,
President; **Gautam Thaker**,
Secretary, PUCL, Gujarat, May 25
2007 □

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International Shame:

Sexual Harassment

The PUCL has received a case of sexual harassment from an Indian woman against the Country-head of UNICEF in Delhi, who is not an Indian national. Shri K G Kannabiran has been in touch with the advocate of the victim. The next hearing of the case in the Court of the Metropolitan Magistrate is fixed for August.

I have contacted the *Human Rights Watch* in Washington and the *Amnesty International* in London so that they may take/advise some action at the International levels.

I am giving below a brief excerpt from the synopsis of the case handed over to me by the victim on June 3, 2007:

My name is Ms Archana Pandey and till December 2006 I worked in UNICEF India Country office in various capacities for more than five and a half years.

Today, I stand as a stateless person whose fundamental rights have been forfeited because I chose to work for the UN. I am completely disillusioned with UN rules, regulations and policies, by double-facedness of persons and organizations and utter disregard of dignity and rights of a woman working with UNICEF, an organization which ironically works for upholding rights and dignity of women and children as one of its prime mandate.

In October 2006, I had filed a complaint of sexual harassment and abuse of authority against Mr. Cecilio Adorna, the Representative of India Country Office and of harassment and abuse of authority against my supervisor Ms Corinne Woods, Chief – Advocacy & Partnerships with UNICEF Headquarter at New York. This gory saga was going on for quite some time but despite complaining through internal channels, it did not stop. It went to a peak when I completely broke down physically and mentally after being brutally assaulted by Mr. Adorna with the help of my supervisor inside the

office. I was systematically and strategically harassed for over two years with the sole intention that my spirit was killed and as a result I would surrender to the Representative's sexual demands.

After I recovered, I complained to UNICEF headquarter at New York in October 2006. The case was investigated by a team of three members (all were UNICEF staff/ex staff members and all junior to the offender) and the decision was announced only after my Fixed Term appointment was terminated on December 31, 2006. Mr. Adorna had made it very clear to me that my contract will not be extended if I do not give in to his desires. As was expected, the investigators could not find a 'convincing' evidence to support my claims. I was even reprimanded that had I still been a staff member, disciplinary action would have been taken against me.

I was shocked beyond words because sexual harassment which otherwise is so difficult to prove, was proven without an iota of doubt in my case. I have witnesses who, without caring for their jobs, are still willing to stand by me.

After the verdict was announced, I requested for a copy of the investigation report which was denied to me. When I informed them that as per the UN rules, I wanted to file an appeal to the higher UN channel, they informed me that I could not appeal since no disciplinary action or administrative decision was taken against me. Then I requested them to get the investigation process and findings reviewed by some higher authority. They turned down my request and declared the case closed.

I have written memorandums to the Executive Director UNICEF, Mr. Vijay Nambiar, Principal Adviser to the Secretary General United Nations, Ms Aparna Mehrotra, UN focal point for women, the office of UN

Ombudsman and many more. I have not received any response from them.

Finally I was not left with any option but to go public and to seek redressal from the Indian legal system. I first filed a complaint with National Commission for Women on 21 February 2007 and then with the National Human Rights Commission on 23 March 2007. No solid step has been taken by them till date because "the UN does not fall under their jurisdiction". They are not willing to give this fact in writing though.

On 30 March 2007, I registered a complaint with the 'Crime against Women' cell of Delhi Police at Nanakpura. On 4 April 2007, I again filed a complaint with Tughlak Road Police Station. The copies were also received by A C P Chanakya Puri, D C P New Delhi and Commissioner of Police, Delhi Police. No FIR has been lodged till now despite my continuous follow-up. The Police have verbally informed me that no action will be taken against the offenders because they enjoy diplomatic immunity. I have pressed charges against four UNICEF officials which are self explanatory and have been given below.

1. Mr Cecilio Adorna, Country Representative for UNICEF India Country Office UNICEF, 73 Lodhi Estate, New Delhi for outraging my modesty, causing sexual harassment, attempting to rape, criminal intimidation, criminal conspiracy, causing hurt, assault, criminally confining me at the work place with the intention to force me to succumb to his physical assault and advances.

2. Ms Corinne Woods, Chief – Advocacy & Partnership, UNICEF India Country Office UNICEF, 73 Lodhi Estate, New Delhi for helping, abetting and conspiring with Mr Cecilio Adorna in his above mentioned criminal actions and intentions and for putting pressure on me and causing me harassment at work place with the

sole intention that I succumb to the criminal intentions and advances of Mr Adorna.

3. Mr Sam Frederick, the Chief of HR based at UNICEF, 73 Lodhi Estate, New Delhi for his acts of omission and commission in not providing adequate safeguards to me and taking necessary action which he was duty bound to do under the UNICEF internal rules, when he became aware of the criminal activities of Mr Adorna and Mrs Woods and he allowed and abetted the criminal activities of the above two accused and conspired and helped them in their the criminal activities.

4. Ms Ann Veneman, Executive Director, UNITED NATIONS CHILDREN FUND (UNICEF) Headquarter, New York United Nations Children's Fund, Three United Nations Plaza, New York, New York 10017 for her acts of omission and commission in not providing adequate safeguards in workplace for the safety of women employees (*as per the UN directives and further as per the ruling of the Hon'ble Supreme Court of India in Vishakha v State of Rajasthan*) and for violating HR rules & policies and for not ensuring that an effective mechanism of protection and redressal exists, in the event the India Representative (UNICEF) were to sexually assault and criminally harass a women employee and hence by illegally omitting in performing her duty to me as a UNICEF staff thus abetting, conspiring and covering the above criminal acts of accused numbers 1, 2 & 3 and continuing to cover them up till date.

On 20 April 2007 I filed a petition in the court of Metropolitan Magistrate at Patiala House Court with the prayer that the court directs the police to file my FIR. The court has heard me four times and has ordered the police to send notices to all my witnesses and interrogate them to establish authenticity of my claims without

registering an FIR. Since this is inconsistent with the prevalent laws, I have requested the court to correct its decision. The next date of hearing has been fixed up for 8 June 2007.

All I am asking is a forum where my case can be investigated impartially, transparently and without bias. Doesn't Constitution of India give me fundamental rights which are being blatantly violated because the offenders enjoy immunity? Can a foreigner get away with attempting to rape an Indian woman under guise of diplomatic immunity?

I have lost my job despite extra-ordinary performance. My earlier performance appraisals prove that. I am a single parent with three minor children to take care of. I have been professionally murdered. Every UN and international organisation, NGOs, donors and related organisations in India know about this case and none is willing to give me a job out of fear of offending UNICEF in particular and United Nations in general. My reputation as a woman has been shredded beyond repair since Mr. Adorna had reversed the charges that in fact it was I who was trying to seduce him for two years. I have suffered complete physical and emotional breakdown and had to be on sick leave for more than five months. Is this what powerful people can do to a woman who dares to say 'No'? And will our Indian Government allow all this injustice to happen?

Our constitution provides right to every citizen to seek judicial redress. Am I worse than a hard-core criminal who enjoys the right of going to the highest court in the land despite getting defeated every time? I am not asking to persecute the offenders just based on my complaint. I am asking to be given a chance to go the court, if UN chooses not to take any action, and let my case be heard and

decided on its own merits. Why is the Government of India denying me this basic right of mine?

I do hope you can spare some time to go through my case and ensure that I get the justice that has been denied to me until now.

I hope it is not too much to ask for. – **Archana Pandey** □

Press Release:

Guwahati Bomb-Blast

"The Bomb-blast at Athgoan in Assam which killed six persons and injured many more on May 26, 2007 morning is an act which does not serve any purpose. It is alleged that the device was planted by ULFA.

"The PUCL believes that such acts of violence only kill innocent civilians. The families of those killed and those injured suffer irreparable damage for no reason.

"The PUCL recognises that movements that take recourse to violence have their own logic of development and yet it appeals to all such movements to use agencies and methods available in an open society. Violence even for laudable objectives legitimises counter violence by the state." – **Y P Chhibbar**, Ph D, General Secretary, May 27 2007 □

Use of School Children

Finally the National Human Rights Commission has come to the rescue of thousands of children across the country and condemned the practice of using children as showpieces

during functions related to VIPs. The Commission has ordered the UP government to provide compensation of Rs 5000/- each to the 49 children who fell ill waiting for the Samajwadi Party General Secretary Amar Singh from 6 a.m. to 1 p.m. in unfavourable weather at Gandhi Jayanti in Kanpur in 2005.

It is worth mentioning here that the PUCL had taken up this matter in November 2000 with the NHRC. The General Secretary had written to the Chairperson of the NHRC that on days of national importance, on the arrival of foreign dignitaries, and on many other occasions school children are mobilised and lined-up for cheering and for decorating the roadsides, irrespective of weather conditions. The General Secretary opined that it was a cruel practice and should be stopped. In August 2001, the Assam State Human Rights Commission took-up the matter with the UNICEF asking it to probe the circumstances in which more than 200 school children had fallen sick after consuming spoiled at a peace rally organised by the State Government at Barpeta.

The General Secretary wrote again to the NHRC in April 2002 sending photographs of children lining the roadside.

It is not clear whether the directive of the NHRC in connection with the UP incident is specifically for that case or is a general directive.

The PUCL has written again to the Commission appreciating its stand on the Kanpur incident. – **General Secretary**

□

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