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## Judges and Laypersons

KG Kannabiran

A long time back, that is somewhere in the last century when Justice Venkatachalliah was the Chief Justice one senior judge of the Supreme Court compared the Court to the Vatican and the CJI as the Pope and a few years thereafter the Court wanted financial autonomy so that dependence on the Government is reduced. In that context the present CJIs's statement does not come as a surprise. The CJI says no self-respecting judge would like a stipulation that he/she should declare his/her assets or permit any laypersons probe the conduct of the judiciary. By this he also implies that self-respect attaches itself to the judge not to the person before he became a judge. The claim for exclusivity, Insulating oneself from others in the community, appears to be wrongly identified with independence I have serious objection to the claim such exclusivity. The Constitution created three institutions and all in the democratic mould. The Parliament and legislatures are elected and therefore are accountable to the people, the executive formed out of the party or parties in coalition are elected and are accountable to the people at five years intervals or even at shorter intervals. By resort to a vote of confidence the ruling party can be voted out of power. But the judiciary, which is one of the wings of governance. But given jurisdiction of supervising governance within limited parameters, is neither elected nor selected but persons appointed to the judges office until the age of superannuation. Constituent Assembly simply adopted the Colonial Practice. There was no restructuring of the Courts in terms of the Constitution. They are appointed from out of huge body of advocates and that body has not even a consultative status. With the autonomy it is laying claim to, it has become an oligarchy. The judiciary from the late sixties of the last century has secured vast powers to itself by extending its power of judicial review into acts within parliament; it has reserved its authority to review impeachment proceedings against judges as also into politics within the state legislatures. All our political issues are settled in courts as people see this as the only functioning institution. Exercise of jurisdiction is the name of exercise of power by the judiciary. While wrongful exercise of jurisdiction may at best be characterized as a wrong judgment, for a judge has authority to decide wrongly or rightly, whereas wrong exercise of power by the executive is called abuse of power all trust has been possible because of the weak and corrupt political system we have.

Judges come from ordinary people and their attitudes and world vision, if they have any are determined by their education and upbringing, their professional life and their personal experiences. Their attitudes and the prejudices they have enter their decision making processes. They are all too human and susceptible to all the follies (on page 3..)

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# Judicial Power – No Tinkering Please

Rajindar Sachar

Self inflicted wounds are the worst and take longest to heal – and some never heal – that may be said appropriately of the two judge judgment of Supreme Court spoken through Katju J delivered recently setting aside High Court judgment which had directed the State to regularize the plaintiff gardener as a truck driver to which post he had been working for 10 years.

But then the court went on to pronounce on the supposed limitations of PIL, a question not arising in the case, an exercise frowned upon by Supreme Court almost 40 years back thus: “Obiter observations and discussion of problems not directly involved in any proceeding should be avoided by courts in dealing with all matters brought before them, but this requirement becomes almost compulsive when the Court is dealing with constitutional matters” (though I may agree with some observations regarding High Court matters).

But it is embarrassing when it says about 3 judge Bench judgments in “Jagadambika Pal’s case of 1998, and the Jharkhand Assembly case of 2005, that they are two glaring examples of deviations from the clearly provided constitutional scheme of separation of powers”.

Bench observation that constitutional trade off for independence is that judges must show judicial restraint is hurtful if it suggests that judges must look over their shoulders lest the executive feel annoyed at their decisions. Independence of judiciary and judicial Review is the mandate and very life blood of the Constitution – it is not dependant on the creature of the constitution like the legislature or the Executive. Judiciary has always followed the hallowed maxim ‘Let Heavens fall – but justice must be

done’ Judiciary is not weak, nor the people at large so spineless that the arrogant empty threats of temporarily elected Executive and Legislature can deflect the judiciary from its path of Constitutional rectitude and duty.

Chief Justice Earl Warren of United States Supreme Court quoted the observations of Daniel Webster wherein he said, ‘the maintenance of the judicial power is essential and indispensable to the very being of this Government. The Constitution without it would be no Constitution, the Government no Government.’

Let us recollect the wise words of Alexander Hamilton one of the framers of the American Constitution stated, “That the courts were designed to be an intermediate body between the people and the Legislature in order among other things to keep the latter within the limits assigned to their authority. Judges, though they may not be omniscient or for that matter philosopher - kings, are better equipped for the task so long as they are aware of their limitations.”

The criticism of judicial activism as such is untenable. Courts have since long been judicially active in giving relief in social action litigation to Labour, to victims of custodial violence, to the excesses committed by the Executive. But as previously judicial targets were comparatively junior officials and certainly never involving politicians, issue of judicial activism was not raised by the executive. This charge of alleged interference by the Courts has only now been put in issue because the fire of judicial activism is coming nearer home to the high officials and politicians who had falsely hypnotized themselves into believing that they were above the law even though as far back as over 300 years Chief Justice Coke

of England had said “Be you ever so high, the law is above you.”

It will thus be amply clear that judiciary (barring some rare escapades) like mentioned in two judge judgment is aware of its precise role in the constitutional set up. So when seemingly interested people mostly politicians accuse it of overstepping its constitutional limits, the anger is borne more out of frustration at their partisan actions being challenged before the judiciary rather than the usurpation of power and jurisdiction by the courts.

The U.S. Supreme Court struck down several legislations made by U.S. Presidents and Senate. There were severe uproars, but the orders of the Court were enforced. This was illustrated in the case of Brown v. Board of Education which attracted the ire of the white majority and even federal troops were called to enforce Court decision – incidentally Bench has praise for Brown decision.

The bald assumption that judges are not aware of their limitations has been succinctly answered by the wise observations by Patanjli Shastri C.J. in 1953 Judgment thus. “If then, the Courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in crusader’s spirit, but in discharge of a duty plainly laid upon them by the Constitution-and that while the Court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute”.

Frankly I do not think a reference to a larger bench would in any way help. Public interest litigation is not a civil or criminal jurisdiction, PIL is an innovating mechanism evolved by judiciary,

sanctified as it is by the very compulsions and jurisprudence of written constitution.

There is no gainsaying that; "Judges' decisions are influenced by what writers like Pound and Frankfurter called 'sociological jurisprudence' and the Justice Holmes called the "major inarticulate premise". Therefore reference to a larger bench would only get an answer that it will depend on facts of each case.

I remember that in 1983 a two Judge Bench referred to the constitutional Bench various questions, arising out of Public Interest Litigation, so as to give proper guidelines. In 1995-96 when this matter came up before the Constitutional Bench, it was disposed of with the remarks that much case law has already laid down various guidelines and it was not necessary to have a regular hearing. I feel the same history will be repeated, if a matter is referred

to a larger Bench now. So it will be an exercise in futility.

But I do believe there is easier and responsive alternative. I would therefore hope that the Bench now having been made aware of misapprehensions troubling undoubted friends of judiciary, though at the same time appreciating also the genuine concern of the Bench about judiciary not over relating its jurisdiction would in order to give quietus to this controversy themselves recall their observations though on judgements retaining the decision. This would show their appreciation of sentiments expressed by members of public and legal fraternity. Once it is done judiciary would be freed from the flurry of market place gossiping and an easy target of ridicule by the Executive and Legislature. Let no one talk disparagingly of judiciary. □

**Press Release:**

## **Benazir's Assassination Most Condemnable**

"The PUCL is shocked at the most heinous and tragic assassination of Ms Benazir Bhutto. The politics of hate and assassination has no place in a democratic set-up. Ms Bhutto's disappearance from the political scene of Pakistan is a blow to the movement for democracy in her country.

"The PUCL exhorts all those committed to democracy the world over to redouble their efforts for strengthening democratic structure." – **Y P Chhibbar**, General Secretary, December 28, 2007 □

(from page 1...) and foibles we imbibe from the society they come from and to exempt them from the very elementary discipline that is necessary for such Constitutional and high positions would not assist the growth of the institution. A long time back a very much respected senior appellate side lawyer was appointed as a judge of the Madras High Court. In a few years time he became the CJ of Madras High Court. His younger brother without knowing that his elder brother's declared age at the time of elevation was much less than his, distributed his *Sashti Abda Poorthy* celebration cards to his colleagues and some members of the Bar and this led to a controversy and Justice Gajendragadkar from the Apex Court was sent to enquire into the allegations and if true to persuade the erring Chief justice to resign or to face impeachment. The persons called to the Bench were asked to

declare their age because of the presumption that no self respecting person appointed to such a high position would give a false declaration. There are instances where age was reduced by launching a make believe litigation and the decree was ready if called to the Bench as proof of age.

There was an impeachment on corruption charges against a judge of the Apex Court. One impeachment was in the process and did not materialize and one additional judge's term was not extended and apart from all these there has been constant wailing of more than one retiring CJI that the judiciary has become corrupt. These should be the alerting signals to constitutional institutions. Under these conditions to exempt the judges on the ground of self-respect appears to me to be not a very informed approach.

His rejecting the idea of association of any layperson, coming as it does from the preset CJI is surprising. The reign of the oligarchy is complete with this attitude. Lay persons, very many of them are affected by the courts on various socio-economic issues coming before them and it is for the people that these institutions are structured and "we the people" did not create the Constitution for being ruled by new order of rigid oligarchical structures dispensing justice in a fight between power and the people. □

### **Attention**

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

– **General Secretary**

**Bihar PUCL:**

## Lynching at Dhelphorwa, Vaishali

### I. Background:

Bihar PUCL had been deeply disturbed by the rising incidents of lynching in the state in recent years. Usually the victims have been the people suspected to be thieves, witches or the drivers and passengers of vehicles involved in road accidents. It has become order of the day and not a single week passing without some incidents. In the recent weeks, media, print, as well as electronic has remained occupied with reporting and analyzing a large number of cases from all parts of the state, and also in other places in the country. The growing tendency of dispensing instance justice by mobs was evident at many places. If beating of an alleged thief followed by dragging him, tied to the rear of a motor cycle at Bhagalpur was one such incident shown by many TV channels and newspapers, then beating of three persons allegedly involved in snatching of a motor cycle resulting in the loss of vision of one of the victims and beating and tonsuring of the heads of two children for allegedly stealing some detergents from the shop where they worked were reported from Nawada soon thereafter.

It was in the backdrop of these and other incidents of lynching that the PUCL constituted a team consisting of Dr Prabhakar Sinha, National Vice President, Prof. Vinay K. Kantha, State President, Prof. Daisy Narain, State Vice President, Shri Nageshwar Prasad, State General Secretary, Shri Mithilesh Kumar, State Secretary and Shri Ramchandralal Das to visit Dhelphorwa in Vaishali district - where as many as ten persons belonging to the nomadic Nat community were brutally beaten to death, on September 13, 2007, on a mere suspicion of their being thieves - to not only find facts but also understand the

disturbing phenomenon in its totality.

The team visited the place of occurrence at Dhelphorwa, the Police Station at Rajapakar and talked to its Officer in Charge Ms Vibha Kumari, D.S.P. C.I.D. present there and several women of the village. The men had left the village presumably fearing legal action. Effort was also made to elicit some information from shop keepers and others residing near the police station who were not involved in the incident in the hope that they might give credible information, as they were uninvolved and presumably unafraid. However, they feigned ignorance. Apart from the interaction with the above mentioned persons, we could examine the 'Fardbayan' of the *Chaukidar* Dhaneshwar Paswan, the F.I.R. filed by one Bimala Devi (a resident of Rajapakar Chauripar situated at a distance of 1 to 2 kilometres from the place of occurrence) about a theft committed at her house after 3 a.m. on 13 September, 2007 and a list of articles allegedly recovered from the alleged thieves. The articles were produced by Mithlesh Kumar and Nawal Kishore, residents of Dhelphorwa. We could obtain the photo copy of the alleged confessional statement of Ranjit Kureri, the sole survivor, made before an Executive Magistrate, Hajipur named Shri Shambhu Prasad Singh. The statement is dated 13.9.2007. We also spoke to Ranjit Kureri on 16.9.2007, who was under treatment at the Patna Medical College Hospital (PMCH).

### II. Identifying the Issues:

#### **Victim's crime not an Issue**

It is unfortunate that whenever lynching takes place, it is followed by a debate about the guilt or innocence of the victims thus unwittingly rendering some legitimacy to the heinous crime.

The unintended implication of this approach is that if the victims were criminals, they deserved it. PUCL team does not intend to get into the question whether in this particular incident too the victims were thieves or not. The police enquiry may bring out the facts in this regard and initiate action as per law. But for the very act of lynching this aspect remains irrelevant.

#### ***Lynching cruelty & gross injustice rather than instant justice***

A kind of legitimacy is conferred upon lynching by highlighting that the people take the law into their own hands because the law does not punish the guilty. While the failure of law and order machinery may lead to growing support for acts like lynching but facts do not support the position that lynching is resorted to in types of cases in which the law is unable to punish the guilty. Murderers, rapists, kidnappers, blood sucking bribe takers, and many others indulging in other heinous crimes which go unpunished are almost never lynched. Lynching of the passengers of a vehicle involved in an accident or of the driver without ascertaining his mistake is not justice but injustice of the worst kind. Thus, lynching has nothing to do with justice, it is only a manifestation of savagery and should be perceived and presented as such without any excuse.

### III. The Incident at Dhelphorwa:

*It is asserted at the outset that whatever the facts, it does not give any legitimacy or slightest justification for the heinous crime which those who murdered the ten men committed and they must be given the punishment the gravity of their crime deserves. Still, facts are presented to clear the mist.*

Eleven persons [namely, Bara Kureri (22-25), Anjay Kureri (30-35), Sanjay Kureri (25), Gulten Kureri (45), Ashok Kureri (55), Nand Kishore Kureri (25), Shrinath Kureri (40-45), Jugnu Kureri (20), Sulten Kureri (30-35), Mukesh Kureri (35)] were allegedly seen near the roadside in the small hours of September 13 2007 by the villagers of Dhelphorwa. They were suspected to have been thieves and were beaten to death. It has been claimed by the villagers that stolen articles were found in their possession, which were handed over to the police by two villagers named above. One of the eleven persons Ranjit Kureri (18-20), was alive when the police arrived and was taken to the hospital for treatment. One Bimala Devi of Rajapakar Chauri has filed an FIR regarding a theft that took place in her house. She has given a list of stolen articles a few of which may be those mentioned in the list of articles allegedly recovered from the murdered persons .

In the confessional statement of Ranjit Kureri contradictory statements have been made. First, he states that no stolen articles were recovered from him, and then he goes on to state that stolen articles were found on him.

Ranjit Kureri told us that he did not commit any theft. He had gone to the village to watch a 'Naach' at the instance of Bara Kureri. To a question as to where he spent the night, he stated that he slept in a 'Baingan ke khet mein' (in a brinjal field). He said that they were caught in the morning and beaten up. He categorically stated that he had not made any statement before anybody. At least, he did not seem to be aware of it. He confirmed that they were residents of Tajpur in the district of Samastipur, and were currently camping at Sarai near Hajipur. He also stated that they kept on moving and were originally from Chainpur in Chhapara (Saran)

district. Since he could speak Bhojpuri fluently, he seemed to be telling the truth.

When we met him at the hospital on 16 September (2007), he was not aware of the death of ten of his companions.

Ms Vibha Kumari, the OC of Rajapakar Police Station, stated that she rushed to the place of occurrence within ten minutes of receiving the information, but found that all but Ranjit Kureri were dead. She immediately took steps to save Ranjit Kureri and sent him for treatment. She did not give exact time of her arrival at Dhelphorwa, where the lynching was done.

She stated that the people of the area were very 'dabanga' and violent. According to her the people of the locality were prone to taking the law into their hand, and acting violently. To substantiate her contention, she referred to a case in which a mob forcibly released a person from the 'Hajat' at the Police Station and killed him. They also beat up the OC, who died a little later of shock and injury. She herself had to face the fury of the violent people when she arrested some persons with opium. According to her, she was injured also. The incident took place on 4.9.2007 (Case No. 127/07).

However, she confirmed that theft had taken place at Dhelphorwa on 8.6.2007 (Case No.63/07) and again on 21.8.2007 (Case No.123/07), and stated that the people had become cautious since then. They had begun some kind of night vigil also. The theft had taken place in the house of Nawal Rai and Bhagwat Rai respectively.

#### IV. Conclusions:

Since ten out of the eleven persons attacked by the villagers died on the spot and the lone survivor was unable to give much information and the men from the village were absconding, it has not been possible to get information in any detail. The police were also

reluctant to part with information since departmental action against a few appeared imminent (the OC Ms Vibha Kumari has since been placed under suspension). Even the people from Rajapakar were tight lipped presumably due to the terror of the people involved in the lynching. **On account of this handicap, it is not prudent to make definite assertions, but the following may reasonably be stated with conviction:**

1. The people involved in killing ten persons with *lathis* and other similar objects must be extremely brutal and cruel deserving of the severest punishment for cold blooded mass murder. It is true that mob violence is different from individual crime, but killing of such a large number of defenceless persons at one place through prolonged beating or attack with crude things like *lathis* or bricks was height of savagery calling for exemplary punishment. Presumably the attack would be led by a handful of persons, while the majority either participated or looked on. Those who led were surely savages and criminals, but those who failed to prevent them from committing such a heinous crime are also accountable, albeit to a lesser degree.

2. It was a case of cold blooded murder, as the poor men were lynched on a mere suspicion of being thieves. Further, given that the alleged place of theft that day was at some distance from the place of lynching, there should have been complete absence of the kind of fury, which may be aroused when one catches a thief in his own house (this is not to suggest that the killing of thieves caught red handed right at the site of occurrence justifies lynching). Even if theft did really take place in the house of Ms Bimla Devi, the killers could have learnt about it only much later, as her house is at Rajapakar Chauri at a distance from the place of occurrence, which is at Dhelphorwa.

3. If the savagery of some people was one side of the story, the action or absence of action on the part of the police was another disturbing aspect of the incident. It is unlikely that when the police arrived, all the ten were already dead. Ten persons cannot be killed in a trice with lathis, sticks and brickbats. The police must have arrived at the place of occurrence when many must have been alive, but refrained from taking action to save their lives. If the *fardebayan* of the Chaukidar is to be believed, the OC Vibha Kumari went to the place of occurrence with only six policemen and her driver. The OC failed to assess the gravity of the situation and made a very inadequate preparation to meet it. It is difficult to state whether it was a case of connivance out of helplessness or of free will.

4. The alleged confessional statement of Ranjit Kumar is an act of cover up, and is not at all a genuine confessional statement. To ask an injured person just out of the clutch of death to make a confessional statement is an act of cruelty for which all involved must be punished. The confessional statement is dated 13.9.2007 i.e., on the very day the young man was rescued from the murderous mob. Can any normal person in the given circumstances be in a state of mind to make any statement? It is obvious that the terrified boy did whatever he was asked to do.

5. *Nats* are nomadic, rootless and consequently helpless without any definite livelihood. There is a general social bias often noticeable in the countryside dubbing them as thieves, which may arise from their alien existence at most of the places. This also may be partly responsible for the killing of as many as ten persons on mere suspicion.

6. If the manner in which their dead bodies were disposed of confirms the contempt in which

they are held, it also shows the callousness and indifference of the official machinery in the state. The officials deputed to arrange their last rites just threw their bodies into the river, which were later recovered when the shocking and scandalous act of the officials was reported in the media. Ironically lower officials did so when the incident was being discussed by the media all over. This would be possible only when this was the general pattern of behaviour of the functionaries in similar cases.

#### **V. The Underlying Causes:**

Lynching is a social evil not traceable to a simple straight forward cause. However, a few of them may be identified. It is basically rooted in violence and cruelty innate in our society, which manifests itself as soon as it finds a modicum of legitimacy. The legitimacy is derived when the law and morality of a society do not converge, and when there is a hiatus between the two, specially, in a society where respect for the rule is not an accepted value. For example, looting of public money is acceptable and does not evoke protest, but loss of private property is outrageous and calls for immediate reprisal including the savagery so often witnessed. Individual criminal liability is avoided, but worst crimes are collectively committed. The implicit cowardice involved in the act is not realized.

There seems to be an unmistakable pattern in the cases of lynching that have been taking place in the state. Many of the victims would be poor *dalits*, or destitute women or members of minority groups coming from economically weaker sections of society. On the other hand usually perpetrators belong to the dominant caste groups. May be lynching carries forward the old practice of arbitrary punishments meted out by feudal lords outside the sanction of law in an altered form. When such a mindset

combines with perceived failure of the law and order machinery, cases of lynching become more frequent.

In an annual survey which was conducted by a PUCL study team perusing some Hindi dailies in the year 2005 revealed that there were about 14 cases of lynching taking place every month affecting around 22 persons. While the data for 2006 have not been fully compiled, a quick look at figures for the first ten months show a definite and drastic decline to somewhere around 3-4 cases per month. Possibly it was because of a change in mood first due to President's rule and the new government in power. A fresh spurt in cases has something to do with the erosion of faith of the people in the system, specially the police force. The impression prevailing in the society that the police force is unlikely to lodge an FIR or investigate a case properly and is more likely to let go a criminal by taking bribe creates a kind of public mood in favour of direct action, even if it is illegal, unjust and often unabashedly inhuman.

Even Hon'ble Supreme Court holds the view that delay in justice and the failure of the system of criminal administration has resulted in increase in mob violence. Deciding a civil dispute that was first filed in 1947 a Bench comprising Justices A K Mathur and Markandey Katju observed that the massive delay in disposal of cases was fast eroding public faith in the courts and warned that unless the situation was addressed on a war footing it would soon go totally out of control. The judgement says: "We saw in the media news of lynching of suspected thieves in Bihar's Vaishali district, the gunning down of an under trial prisoner outside Patna civil court and other incidents where people have taken the law in their own hands. This is obviously because many people have started thinking that justice

will not be done in the courts due to delays in court proceedings. This is indeed an alarming state of affairs and we once again request the authorities concerned to do the needful in the matter urgently before the situation goes out of control.”

The causes are deep rooted and cannot be eradicated in a short span of time, but some measures need to be taken immediately.

#### **VI. Recommendations:**

1. The State Government must begin a massive campaign to effect a change in the mindset of the people by making them realize the enormity of the immorality and criminality of their act in resorting to lynching.

It is important that in the civil society also there is continuous informed debate on such issues so that more and more people see the inherent injustice and inhumanity of an act like lynching. Since victims of lynching are usually petty criminals, more often coming from the lower caste groups, making society conscious and agreeable to respect dignity of each individual is important and police force must be trained to develop this attitude and behavioural norm.

2. The law enforcing machinery should be geared up to ensure that the culprits involved in the act of lynching and similar acts of violence do not go unpunished. Only certainty of punishment would act as a deterrent. Lynching can be prevented only ensuring punishment since the police cannot be posted to prevent a crime which is not premeditated and is committed on the spur of the moment.

3. Suitable action should be taken against the police officials as well as others responsible for their defaults in discharge of their duties at different times. This should have a deterrent effect on other state functionaries. If the police looks

the other way passing on the blame to some violent mob then obviously they are failing to discharge their duties diligently.

#### **General Secretary's Message:**

### **Murder of Shri Ram Naresh Sharma**

The murder of Shri Ram Naresh Sharma, APP, Begusarai on November 8, 2007 is highly condemnable. He was a member of the Bihar State Council of the PUCL and was handling sensitive criminal cases against some prominent politicians. A well attended condolence meeting was organised by the Bihar PUCL to protest against his killing.

Violence against Human Rights Defenders is an attempt to psychologically terrorise the Human Rights workers. The matter is so important that the United Nations has made a special Declaration for the Protection of Human Rights Defenders.

The Bihar State branch has demanded a thorough investigation by an independent body and the National PUCL endorsed the sentiments of the State PUCL. It further urges the National Human Rights Commission to take the incidents seriously and institute its own enquiry into the murder. – **Y P Chhibbar**, General Secretary, December 8, 2007 □

4. Bihar, more than many other states in the country, urgently needs police reforms. Hon'ble Supreme Court has issued very clear direction as to the broad principles which reforms are supposed to address. Unfortunately in the Police Act brought in the state most of these issues have been skirted and only high sounding words have been used without making the system accountable and truly pro-people.

In fact in a state like Bihar with no metropolis, about nine tenths population living in rural areas, arguably more than sophistication of arms, reliability and pro-people attitude of the force would be of vital importance. Bihar police neither distinguishes itself for professionalism, nor for sympathy for the poor. – **Dr Prabhakar Sinha**, National Vice President, PUCL; **Prof Vinay K Kantha**, State President, Bihar PUCL; **Shri Ramchandralal Das**, Former President, Bihar PUCL; **Prof Daisy Narain**, State Vice President, Bihar PUCL; **Shri Nageshwar Prasad**, State General Secretary, PUCL, and **Shri Mithilesh Kumar**, State Secretary Bihar PUCL □

#### **Press Release:**

### **Delhi LG's Order**

“PUCL strongly disapproves Delhi Lt. Governor's order making it mandatory for the residents of Delhi to carry an identification document all the time. It is claimed that the move will strengthen security of the capital. The move is beyond comprehension because those who are intent on breaching the security can procure more than one prescribed documents with ease by bribing the concerned officials.

“The move has serious implications for the common citizens who are at the fringe of the society like unorganised workers, migrants, and homeless of the city that constitute millions of people. The order will give another tool in the hands of the already irresponsible and impudent Delhi police that will use the order for harassment and extracting money from hapless public.

“PUCL strongly condemns the order and demands its immediate withdrawal”. – **Y P Chhibbar**, Ph D, General Secretary January 6, 2008 □

# Judicial Restraint and Public Interest Litigation Norms

I Mallikarjuna Sharma

Much is said and written nowadays about evolving some PIL norms by the Supreme Court in the wake of divergent opinions expressed on the matter by the incumbent Chief Justice of India and two other Justices of the Supreme Court – A K Mathur and Markandeya Katju. And newspapers report on 15 December 2007 that a two judge bench of the Supreme Court has referred to a PIL petition filed in 2004 to a larger bench seeking some broad guidelines and parameters for the Apex Court and the High Courts to entertain Public Interest Litigations. And now a three-judge Bench would hear the matter 'to have some guidelines whether these types of PIL can be entertained. 'However, most of us may not know that as far back as in 1983 a two judge bench recommended the matter to be looked into by a constitution bench (i.e. a bench of not less than 5 judges) of the Supreme Court with very detailed queries addressed for consideration by it: (1) Should this Court take notice of epistolary complaints with some paper cuttings and act *suo motu* except when the complaint refers to deprivation of personal liberty?; (2) Should such letters be sent to SC Legal Aid Society by the Registrar for enquiry if any prima facie case is made out and [if answer is yes] then a formal complaint needs to be filed against appropriate parties after collection of necessary material?; (3) Can a *stranger* – journalist, social worker, advocate or an association of such persons initiate PILs or should a petitioner have some interests in common with those whose rights are allegedly infringed (*locus standi*); (4) (a) Can Court act on such letters even though no *prima facie* case of infringement of any fundamental right is there? (b) Even if allegation of infringement

of fundamental right is there, can Court act if no allegation of illegal custody is made?; (5) Can Court act on such letters in matters for which ordinary civil, criminal or revenue courts remedy is there? Can the Court give directions to District Magistrate or District Judge in such cases to enquire into allegations or should it merely give necessary legal aid to victims to pursue the legal remedy?; (6) Can the Court take action on letters when the facts disclosed are not sufficient to take action? Should it treat such letters differently from other regular petitions in this regard and should the District Magistrate or District Judge be asked to enquire and make a report to the Court to ascertain whether there is any case for further action?; (7) If after investigation, it is found a baseless complaint was made, should not costs be imposed on writer of the letters? Can it be treated differently from other such instances?; (8) Should a petitioner having some interest common with such victims be exempted from court fee and all other expenses that normally entail? Should all the relevant rules be suspended when an epistolary complaint is made?; (9) If the Supreme Court can act on such letters in such informal way, why cannot High Courts, other courts and authorities follow in the same vein?; (10) Would such informality not lead to greater identification of the Court with the cause than it would be when a case of same type is filed in a normal way? Though the main stress here is on epistolary jurisdiction the reference is wide enough to encompass all PILs. Since these and other important questions arose, a bench consisting of Justices S. Murtaza Fazal Ali and E.S. Venkataramaiah referred the matter to be decided by a constitution bench; such

constitution bench was probably never constituted. The decision to refer is (1983) 2 SCC 258 in the Writ Petition (Criminal) No. 1420 of 1982, which was later disposed of partly by another two judge bench of Justices K. Ramaswamy and G.B. Pattanaik on 15 July 1996 with this observation: "The writ petition is... disposed of partly. The proceedings in this writ petition are accordingly closed. On maintainability, reference is awaiting the decision of the Constitution Bench."

And the wait has been quite long – about 15 years before and 10 years after this closure, and it has not seen light of any constitution bench. Perhaps the current reference to a 3-Judge Bench would also meet the same fate and perhaps in some 2020 or 2025 an antiquated guidelines decision would surprise the then still ignorant public and lawyer circles. All this is just on the inordinate and ridiculous delay aspect of our justice delivery system and not to go into any merits of whether it is desirable at all for any such guidelines which might well become a procrustean bed for the judiciary and also the people at large that may ultimately foil their efforts to deliver or seek adequate justice. □

## THE WAGES OF IMPUNITY

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## Karnataka Report:

### Farmers' Suicide in Mysore and Chamaraj Nagar Districts

A fact finding team comprising Peoples Union for Civil Liberties (PUCL), PDF, Agricultural Labourers Association, Samata Vedike, Revolutionary Youth Association and Pedestrian Pictures visited Hosapura village of Nanjangud taluk, Mysore district and Harave village of Chamaraj Nagar taluk & district, on 26<sup>th</sup> Dec 2007 to investigate the suicide of two farmers Manjunath and Siddaraju of respective villages, Who had availed loans from ICICI Bank for purchase of tractor. The team comprised of Prof Muzaffar Assadi, Prof. Nagari Babaiah, Prof. V S Shridhar, Dr Lakshminarayana, Dr E. Ratirao, Shri Venkataraju, Punajur Doreswamy, Maridandaiah budha, Chowdalli Javariah, Abhishek and Rashmi. The team visited the villages and personally met the family members of Manjunath and Siddaraju to ascertain the facts leading to the suicide of the two farmers. The facts are as under:

Harave and Hosapura are villages situated in dry lands with rain fed cultivation. Both the farmers had lands to the extent of 4 acres each, considered to be small farmers. Both belonged to Lingayat (Veerashaiva) community. Siddaraju of Harave village was induced by an agent of ICICI Bank to take loan from the bank for purchase of Tractor. The open well situated in the land prompted the agent to depict the same as irrigated one and Siddaraju was made to sign on Loan documents in English, which obviously he was unable to understand. The agent encouraged Siddaraju to take loan so that he can clear of his private debts. But he was not supplied with the trailer even after 8 months but for the bank authorities, a different trailer was shown as security. Siddaraju was operating his tractor to supply sand and

stones to construction sites on rental basis. When the Bank authorities issued notice to Siddaraju for recovery of installment Siddaraju, unable to bear the depression committed suicide on 19<sup>th</sup> Dec 2007 by consuming pesticide. Later Farmers' associations led by KRRS and Green Brigade protested in front of ICICI Bank demanding for compensation for the dead farmer and stopping the practice of using Coercion tactics for recovery of loans. Government promised a compensation for no avail. Till date no bank official or government representative has visited the village. The police are visiting the village regularly everyday. Harave village has got 17 tractors in all out of which 15 are financed by Canara Bank, 1 by Syndicate Bank, 1 by ICICI Bank.

Earlier in the month Manjunath of Hosapura village of Nanjangud Taluk, who had borrowed from ICICI Bank Mysore for purchase of a tractor committed suicide on 5<sup>th</sup> Dec 2007. Manjunath had repaid his first installment of Rs.48000/- promptly though with much difficulty. The Second installment was due on 5<sup>th</sup> Nov 2007. Manjunath received a notice from the Bank instructing him to repay Rs.53899/- being second installment. Manjunath received notice on 4<sup>th</sup> December 2007. On the same day three men came to the village posing themselves as ICICI Bank agents and after threatening the tractor driver seized the tractor by throwing out the grass loaded in the tractor. Manjunath who was in Nanjangud at that time came to know of the matter and did not return to his home that night.

On 5<sup>th</sup> December by 10.30 in the morning his dead body was found in the water tank in his land and Manjunath had committed suicide by consuming pesticide. In

his suicide note Manjunath has stated that "He had already paid one installment of 48000/- towards the loan and now the Bank authorities have seized the tractor, feeling ashamed to come to the village, hence he is committing suicide". Later Farmers' association held a protest in front of ICICI bank premises in Mysore and unable to withstand public pressure the Bank officials and District commissioner held talks with the representatives of Farmers' association. In the talks held on 14<sup>th</sup> Dec the Bank agreed to waive the liability of Manjunath and return his documents as well the tractor. The Bank also assured to pay a monetary compensation of Rs.10 lacs, incase it is proved in the enquiry that Bank is responsible for the suicide. The amount is reported to have been kept as Deposit in the Bank.

#### The Team's Opinion and Observations:

1. For the past several years, after the Central government decided to increase agricultural lending, banks have started lending huge loans to farmers. Earlier farmers were to struggle hard to fetch small loans from Banks but of late Nationalized and private banks have started lending huge amounts. The private sector banks have appointed their own agents, who in tie up with Tractor manufacturers and dealers, have created a nexus to drag the farming community in to debt trap. Though Post dated cheques are not to be obtained for Priority sector, agricultural lending, the banks are obtaining the same and are resorting to legal methods in case of dishonour of the cheques.

2. Capital has become scarce in rural economy. Farmers, who are already in a debt trap, courtesy private money lending, are hankering for loans from Banks and other government institutions.

In this situation the Banks, especially private ones, are resorting to violent methods to recover dues from the farmers which has driven the farmers to suicides.

3 Globalization policies have forced the farmers to approach private Banks for finance, as Nationalised banks and Co operative banks are shirking from their responsibilities in implementing welfare schemes. Primary Land Development Banks and APMCs are becoming irrelevant in the recent days.

4. Instead of probing into the causes for the crisis in Backward Agrarian system the government is resorting to populist schemes like Loans, Subsidies, Minimum support prices and the team believes that these measures would bring only temporary relief to the farming community.

#### **Demands of the Team**

1. The government should pay monetary compensation to Manjunath and Siddaraju, the farmers who committed suicide. Their loans should be written off

and ICICI bank should pay compensation to the families of the dead.

2. ICICI Bank should be penalized and blacklisted for misusing the government's directives of doubling rural and agricultural finance.

3. Agents and Recovery agents and hooligans appointed by Banks should be abolished and any violations be punished according to law.

4. Government to establish an autonomous body to monitor Bank finance to Agrarian sector and the body should be pro farmer.

5. The whole agrarian crisis is because of uneven land relations and lopsided capital formation in the rural economy. Globalisation process has exacerbated the crisis. The Peoples organizations and progressive groups should probe into the causes of the crisis to find a final and lasting solution □

### **Organisational Queries**

We receive from time to time queries/requests from new members regarding the PUCL identity card and also regarding the privileges of the *Life* members and *Patron* members as compared to *Annual* members.

The three types of membership, i.e., *Yearly*, *Life*, and *Patron*, do not represent a hierarchy of membership. All members are equal. *Life* membership and *Patron* membership simply afford an opportunity to those who desire to contribute some extra money to the PUCL to strengthen its financial position. No membership carries any privilege. All members shoulder the burden of fulfilling the aims and objects of the PUCL. The PUCL does not issue any identity cards to its members as they are not supposed to take initiative independently. – **Y P Chhibbar**, General Secretary □

## **Orissa: Anti Christian Violence**

### **Ram Puniyani**

Gladys Stains is a name etched in our memory for wrong reasons. Her husband and two sons were torched to death around a decade ago in Keonjhar Manoharpur Orissa. She wrote to Prime Minister Man Mohan Singh recently, to ensure that communal peace is restored in Orissa. This she did in the backdrop of the scattered attacks on Christians, over 40 churches torched in Orissa (24 Dec 2007). In the violence which broke out, many of the people have been severely injured. Some of the priests and laity have run for shelter, leaving their homes and hiding in the forests in the biting cold. All this has happened in the *Adivasi* area in and around Phulbani and Kandhamal. The

timing is around the Christmas celebrations, 2007.

It is no coincident that the BJP is part of the ruling coalition in Orissa, and those involved in the vandalism are part of some or the other organization directly affiliated with the RSS. The major such are Vanvasi Kalyan Ashram, Bajrang Dal and their local variants. While the media reports are sketchy, the Citizens Inquiry team, which was to visit the area has been denied permission to visit the districts and was escorted out of the area.

The attacks on minorities and weaker sections is launched for short term or long term political goals, but the care is taken that a pretext is manufactured and then the attacks are unleashed. In this case it has been said that Swami

Lakkhanand was attacked by Christians and so the retaliation. One is supposed to believe that a Swami from the majority community, with sizeable following, will be attacked by the section of miniscule minority!

The Christmas season is the chosen time for anti Christian attacks. Earlier also such occasions have been chosen for beating and attacking the Christian community, notably in Dangs in 1998. This time in Phulbani area the declarations being made by the Swami and associates is that the presence of Christians will not be tolerated in the *Adivasi* areas.

The visible attacks on Christian minorities started from 1996. The areas selected for these attacks have spread over from Gujarat,

Dangs on the extreme West, to the Orissa on extreme east of the tribal belt. It is in these areas that anti Christian violence have been going on in scattered form since then. Most of these acts of violence have a bit different characteristic, i.e. unlike the anti Muslim violence which is more in the cities and occurs as spurts of killing hundred or thousands in a single go, here the cauldron is kept boiling continuously, The intensity is that of a slow but sustained intimidation and attack.

The most ghastly anti Christian violence was that done by Bajrang Dal activist, Dara Singh, who instigated the *Adivasis* and led the burning of Pastor Graham Stewart Stains. He and his organization kept propagating for months that Pastor has come from Australia for converting the gullible *Adivasis* to Christianity, that his work amongst the leprosy patients is just a ploy to do his 'real work' of conversions. The Wadhwa commission, appointed by the NDA Govt. with Advani as the Home minister, in the aftermath of this brutal killing, concluded that the Pastor was not involved in any conversion activities and that the percentage of Christian population in the area has remained static despite the Pastor working in the area.

At national level the attacks on Christians have been investigated by different civic groups, compiled in 'The Politics behind Anti Christian Violence' (*Media House, Delhi*). Most of the reports conclude that the attacks have been deliberately stepped up in the *Adivasi* areas. The main targets of these attacks are the Christian missionaries working in the area of education. The contrast is very glaring. The city based Christian mission institutions are upheld and respected for their contribution in the area of education, while in the *Adivasi* areas the same are being hounded out. The reports also observe that the RSS affiliates have been trying to do anti

Christian propaganda along with *Ghar Vapasi* (re-conversion in to Hinduism) campaign. The major work of *Ghar Vapasi* has been undertaken in the BJP ruled states, or in the states where BJP has been sharing power. The subtle assistance of the state machinery in the anti Christian tirade is always at the service of RSS affiliates. The *Ghar Vapasi* asserts that *Adivasis* are basically Hindus, who had to flee to the forests to escape the conversion by Muslim invaders, so they are 'nationally' Hindus, who have forgotten the Hindu rituals and gods and so have fallen low in the hierarchy of Hindu religion. This ritual of re-conversion is supposed to religiously restore them to their old Hindu glory!

The case of Orissa was specifically investigated by India Peoples Tribunal, led by Justice K K Usha (retired) of Kerala High Court in 2006 (Communalism in Orissa). This tribunal forewarns about the shape of things to come. "The tribunal assessed the spread of communal organizations in Orissa, which has been accompanied by a series of small and large events and some riots... such violations are utilized to generate the threat and reality of greater violence, and build the infrastructure of fear and intimidation." It further notes that minorities are being grossly ill treated; there is gross inaction of the state Govt. Outlining the mechanism of the communalization, it points out, "The report also describes in considerable detail how the cadre of majoritarian communal organizations is indoctrinated in hatred and violence against other communities it holds to be inherently inferior. If such communalization is undertaken in Orissa, it is indicative of the future of the nation... the signs are truly ominous for India's democratic future." (p 70).

In these *Adivasi* areas, swamis have made their permanent Ashrams, Lakkhanand, in Orissa, Assemanand in Dangs, and followers of Asaram Bapu in Jhabua area to name the few. Also Hindu *Samagams*, congregations, are being held, the culmination of which was the Shabri *Kumbh* in Dangs where thousands of *Adivasis* were brought. In those areas the *Hindutva* organizations spread the intimidating rumours that those who do not attend these functions will be dealt with in due course. Interestingly these are precisely the areas which are the poorest; these are the areas where the problem of land, education, water and food is the highest.

Anti Christian violence is in the continuation of RSS agenda of Hindu *Rasthra, Pehle kasai Phir Isai* (First the Muslims then Christians). There is an additional factor in the anti Christian violence. One concedes that there may be many a Christian groups who might be focusing on the conversion work, within the bounds of Indian constitution, of course. But one has to note that in India, over all population of Christian minorities is declining over a period of last four decades, (1971-2.60%, 1981-2.44%, 1991-2.34%, and 2001-2.30%). While Christianity is a very old religion here, during last nineteen centuries or so only 2 odd percent have become Christians.

The major problem is that the effort of missionaries to reach education to the *adivasi* areas. Educated *Adivasi*, empowered *Adivasi* will be more aware of their rights and that's precisely what RSS combine cannot stand.

That the tiny minority can be a threat to the huge majority of Hindus is quiet a concoction. There is a need to deal these violations of human rights firmly, there is a need to curb the 'hate others' propaganda in these areas and of course the need to promote modern education and other welfare schemes in these areas. Christmas which should be a festival of joy is being turned into an annual ritual of violence and mayhem by the RSS combine. –  
By E-mail: Indian Social Institute ☐

## Karnataka NGOs and Social Action Groups:

### Seek Public Opinion on Police Bill

Prominent civil society groups from across Bangalore today call upon the state government to consult the public on the Karnataka Police (Amendment) Bill 2007 without delay, prior to its introduction into the Legislative Assembly.

Accountable policing is responsive to every citizen, not just a privileged elite. It protects everyone and is based on the Rule of Law alone, was the consensus of the workshop on the need for better policing in Karnataka held at the National Law School in Bangalore on 29 September 2007. This workshop was held to discuss the lack of public input in the drafting of the Karnataka Police (Amendment) Bill 2007. This workshop coincides with the first anniversary since the Supreme Court judgement on police reforms handed down on 22 September 2006.

Workshop participants felt that the Karnataka Police (Amendment) Bill 2007 does not reflect the majority of reform measures from the landmark Supreme Court judgment in *Prakash Singh & Others vs. Union of India and Others*.

The workshop urges the Karnataka Government to undertake its drafting of the Bill in the context of the mandatory directives of the Supreme Court and the detailed guide provided by the Model Police Act, 2006. The workshop holds concerns about the transparency of the state government and public participation in the process of drafting a Bill of such major public significance.

The Karnataka Police (Amendment) Bill is of critical importance for all citizens of this state. Therefore we call upon the state government to consult openly and lay down a transparent process of consultation with

timelines, as part of the reform process. As a matter of urgency, we ask you to consider the following:

1. Make public and invite submissions on the Karnataka Police (Amendment) Bill 2007 drafted for the state.

2. Instruct the Drafting Committee to take serious consideration of the above submissions and re-draft the Bill so that public participation is optimal and the process is transparent.

3. Use the Supreme Court directives and the Model Police Act 2006 as the basis for drafting any new police legislation for the state.

4. Ensure that the final draft Bill that is to be tabled in the Legislative Assembly has been viewed and discussed publicly.

**Participating NGOs and Social Action Groups:** Forum for Democracy & Communal Amity (FDCA), Karnataka; Torture Prevention Centre India Trust, Cochin; National Law School of India University (NLSIU); People's Union for Civil Liberties (PUCL); South India Cell for Human Rights Education & Monitoring (SICHREM); *Stree Jagruti Samiti*; Alternative Law Forum (ALF); Lawyer's Collective Consumer Care Society; Prof. N. V. Narasimhaiah, Kolara Janasampraka Vedhike; Consumer Rights Education & Awareness Trust (CREAT); BOSCO; Association for Promoting Social Action (APSA)

**For more information on the Karnataka NGOs and Social Action Groups for Better Policing, please contact:** Prof. Hasan Mansur, PUCL 222 111 09; B. N. Jagadeesha, ALF 9448043941; Kathyayini Chamaraj, FDCA 9880397401; Mathews Philip, SICHREM 9845001338; Sarasu Thomas, NLSIU, 23213160; P. Lakshapathy,

APSA 25232749 – Bangalore, 29 September 2007 □

### J & K PUCL: Press Release Right to Information Act

Balraj Puri, Convenor PUCL J&K State expressed deep regret over sending back by the State government the RTI Act 2007 to the Governor, who had earlier withheld his assent and returned it to the government with his objections, for reconsideration of the state assembly. But the state government by sending it back to the governor forced him to give his assent, without presenting it to the assembly which was in session.

It was a serious subject directly concerning rights of the people to get information of the working of the government and ensure transparency in the administration, he said. The government should have at least given a serious consideration to the recommendations of the seminar organized jointly by the Commonwealth Human Rights Institute and the University of Jammu which was attended by eminent public man and members of the civil society of the state, as also representatives of the government, he added.

According to Puri, the state had missed an opportunity to pass an act on Right to Information which could be a model for the country, taking into account the comments on the working of the present central and the state RTI acts. People and members of the assembly were at least entitled to know the comments of the Governor on the state act which wanted the assembly to reconsider to, he said. – **Balraj Puri**, January 8, 2008 □

## Press Release:

# Chhattisgarh PUCL Wins a Legal Battle in Fake Encounter Case

The People's Union for Civil Liberties (PUCL), Chhattisgarh branch had both a moral and legal victory today, when the Judicial Magistrate (First Class), Ambikapur, today registered a case against 8 police officials u/s 302, 201, 34 IPC and has issued warrants against them in a fake encounter case on 5.3.2004, where 5 innocent villagers were gunned down in the name of "Naxalites" in village Kothali Police Station Shankergarh.

The Eight police officials include, Shri Brijesh Tiwari (so-called Encounter specialist of Chhattisgarh), and Shri Nazar Siddique, who were given out of turn promotions and President Award.

The PUCL-Chhattisgarh had constituted a Fact-Finding Team with its Dr General Secretary Binayak Sen, and the then member of the State Executive Committee, Adv Amarnath Pandey as members. This was the first case of fake encounter in the Sarguja District, in which the PUCL Fact-Finding Team had clearly established that the victims were ordinary villagers, who were shot dead in cold blood by the police party led by Shri Brijesh Tiwari and Shri Nazar Siddique, even after they had been forced to raise their hands. Adv Amarnath Pandey, a senior advocate and also a leader of the Communist Party of India (CPI), had filed a complaint with the concerned Court, when the State Government refused to recognize and act on the serious crime committed by these police officials. On the contrary, they awarded the members of the Police party in order to demoralize the human rights and political organisations in particular and the public in general.

Although the accused police officials presented the Magisterial

Enquiry Report in the Court claiming that it had absolved them of their complicity in the crime, it was totally rejected by the concerned Court.

It may be recalled that the PUCL-CG had investigated about 13 Encounter Cases in Sarguja & neighbouring districts, where it had clearly established that these were not only fake encounters, but the State Government and the Police were totally ignoring the guidelines provided by the National Human Rights Commission (NHRC) in the death due to police action. Even the Magisterial Enquiry reports had sufficient evidence pointing to these Encounters being Fake. In one such case, the Medical Report (Autopsy) had clearly established that the member of the CPI (Maoist), killed in the police encounter had, at least, 8 ribs broken on both sides. That raises question as to when the ribs were broken -- before or after the killing. If the ribs were broken, how did he pick up and fire from the gun on the police party, and if it was broken after he was shot dead by the police, how did it happen. These and other relevant questions were never addressed by the Magisterial Enquiry. In almost all 13 cases of fake encounters, the statement issued by the Superintendent of Police is exactly the same.

The Superintendent of Police, S K P Kalloori, now famous for fake encounters, and notorious for wrongfully confining and manhandling Jaen Draz, Professor of Economics from Delhi University, and his team members, who were campaigning for Rural Employment Guarantee Scheme in Sarguja District. Remember his famous statement: "*jo bhi laal salaam bolegaa, voh naxalwaadi hai. Yeh us par nirbhar kartaa hai koi saboot de ki voh Naxalwaadi*

*nahin hai*" (All those who salute with *lal salaam* will be considered Naxalites. It is for them to prove otherwise). He too has been given President Award for Bravery!

The implications of today's Court Order will have to be understood in the context of "illegal detention" of Dr Binayak Sen, General Secretary, Chhattisgarh PUCL since May 14, 2007 on the pretext that he was assisting CPI (Maoists). Adv Amarnath Pandey, Adv D P Yadav, and Adv Nag have been harassed, threatened with dire consequences even with murder, by Kalloori and Brijesh Tiwari, both police officials called the "Encounter Specialists" of Chhattisgarh Police. Fake Cases were registered against Adv Amarnath Pandey, Adv D P Yadav and Adv Nag under Scheduled Caste and Scheduled Tribes Atrocities Act, and hounded like "criminals" by the State Police under the leadership of both Kalloori and Tiwari, who enjoy political patronage both from the BJP & Congress (I) in the State.

The Public Interest Litigations or Private Complaints filed in the Chhattisgarh High Court by the victims relatives or human rights organisations have also witnessed a strange phenomenon manipulated by the State Police. Almost all such cases registered were withdrawn by the petitioners/complaints under duress, so much so that the human rights lawyers representing the cases (like Adv Amarnath Pandey, Adv Saurabh Dangi, Adv D P Yadav, etc.) were pressurized and threatened by the Police officials directly. One such case that shocked the citizens was widely reported in the press pertains to the Fake Encounter of Ramesh Nagasia, a commander of the CPI (Maoist). His wife, Leda had filed a Petition in the

Chhattisgarh High Court claiming that she was an eye-witness to the Fake Encounter of her husband, and that she was illegally detained by the police and repeatedly raped during this period. The police party brought Leda to the High Court at Bilaspur on 24th October, 2007 in full view of the lawyers and clients, and forced the lawyer, Adv Saurabh Dangi to give in writing that the Petitioner Ms. Leda had willingly changed her lawyer. A police woman claiming to be her sister, and a surrendered Naxalite, Shri Dheeraj Jaiswal claiming to be her brother forced the lawyer to withdraw from representing Ms. Leda. According to the eye witnesses, Ms Leda did not utter a single word in spite of repeated requests by the High Court Judges, and kept crying. Even then the Petition was permitted to be withdrawn by the High Court.

According to information received by the PUCL, the

National Human Rights Commission (NHRC) has also expressed doubts about the encounter killing of Ramesh Nagasia, on the complaint of both Ms. Leda and PUCL. The Report is yet to be made public. But, the PUCL has information that the NHRC has recommended enquiry by higher and independent agency, and also recommended suspension of awards given to the policemen involved in the encounter killing of Ramesh Nagasia.

It may be worth mentioning that Shri Dheeraj Jaiswal, surrendered Naxalite, now enjoys police and political patronage, has been strangely appointed as a Special Police Officer in spite of several criminal cases of serious offences pending against him, and who provides cover and indulges in Fake Encounters himself. Shri Jaiswal also has constituted his gang of several followers and

police personnel, and has been founded to be involved in continuing committing crimes, with the police turning a blind eye to it. This pattern is visible in several other regions of Chhattisgarh, as has been investigated and reported by the PUCL in several Fact-Finding Reports.

The PUCL - Chhattisgarh is contemplating preparing a Fact Sheet of all such cases/petitions that were permitted to be withdrawn by the Chhattisgarh High Court, mostly containing serious allegations against the police personnel, and proceed further with legal action, preferably at the Supreme Court of India. The incidences of withdrawal of such petitions draw a parallel to the famous Zahira Sheikh case of Gujarat Carnage. – **Rajendra K Sail**, President, Chhattisgarh PUCL 26th November, 2007 □

## Update on Dr Binayak Sen's Illegal Detention:

### 28th December Fixed For Framing of Charges

Next Hearing in Dr Binayak Sen's case is on 28<sup>th</sup> December, 2007 at the Court of the Additional District Judge (Fast Track Court), Raipur for framing of charges. It may be recalled that the Supreme Court of India dismissed the Special Leave Petition and did not grant bail to Dr Binayak Sen on 10<sup>th</sup> December, 2007. Thus, this stage of trial fixed for framing of charges is considered crucial. In addition to senior legal counsels representing Dr Binayak Sen, a number of human rights organisations and activists, representatives of social movements and political parties are expected to be present on 28<sup>th</sup> December during the proceedings.

The PUCL-Chhattisgarh Unit has appealed to all human rights and democratic organisations and activists to be present in large number to express solidarity with

one of the most articulate and active defenders of human rights in India.

The PUCL-CG has also expressed concern at the delay tactics and interference in legal proceedings by the Chhattisgarh Police. One of the examples was the presence of the Investigating Officers right inside the Court during last hearing on 5<sup>th</sup> December 2007, while according to the letter of the law they, being prosecution witnesses, are not permitted to interfere with the trial proceedings. On being pointed out by the counsels of Dr Binayak Sen, the concerned police officials were asked to leave the Court. The State also appears to be playing its own manipulative games in the Trial, as was pointed out that the railway reservation ticket seized from Piyush Guha, one of the co-accused, was not given to Dr Binayak Sen along with the Charge Sheet, but was submitted in the Court as a "property". This lacuna too was pointed out by the Legal

Counsel for Dr Binayak Sen to the Trial Court, who gave directions that all such "documents" should be handed over to Dr Binayak Sen without any further delay before the framing of the Charges on 28<sup>th</sup> December, 2007. It appears that the State is submitting evidence in parts, and has also taken leave to submit further evidence, as according to the prosecution, the investigation is still in progress. Some additional documents having been filed as reply to the SLP in the Supreme Court are examples of such tactics.

The presence of the Police Investigation Officers within the Court and continuing handling of the case file and documents by them amounts to gross violation of established procedures, where the prosecution lawyer is meant to deal with the case. Being Prosecution Witness, the IO can appear in the Court only on the summons of the Trial Court. – **Rajendra K Sail**, President, 26<sup>th</sup> December 2007 □

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**Press Release:**

## Dr Binayak Sen Awarded the Prestigious RR Keithan Gold Medal

Dr Binayak Sen, General Secretary, People's Union Civil Liberties (PUCL) - Chhattisgarh has been given the prestigious RR Keithan Gold Medal instituted by the Indian Social Science Congress at the SNTD University, Mumbai on 29<sup>th</sup> December, 2007 in recognition of his service to the community. The Award was given at a function chaired by Dr B N Mungekar, Member, Planning Commission, and Chairperson of the Indian Academy of Social Sciences, and received by his wife, Dr Ilina Sen, on his behalf who also made the acceptance speech. About 200 strong crowd, mostly academics and social scientists, and Administrators, etc. gave a standing ovation as the Award for Dr Sen was announced.

Issuing a press release today, Adv Rajendra K Sail, President, Chhattisgarh PUCL informed that the Award is instituted in the memory of the noted Gandhian activist R R Keithan by the Academy. The Citation given to Dr Sen mentions that: "the Academy recognizes the resonance between the work of Dr Binayak Sen in all its aspects with the values promoted by the Father of the Nation. In bestowing the Award on

him while he is incarceration and unable to receive it personally, the Academy expresses its solidarity with people's movements and defenders of human rights. In so doing, it would like to recall what Gandhiji refer to the true meaning of *Swaraj*. *'The real Swaraj will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused'*."

According to Rajendra Sail, the irony of the situation was that while the BJP led State Government in Chhattisgarh has falsely implicated Dr Sen under the anti-democratic and Black Law called The Chhattisgarh Special Public Security Act 2005 for allegedly assisting the '*naxalites*', the highly reputed association of Social Sciences in India had conferred on Dr Binayak Sen this prestigious Award in recognition "for his lifetime association with people's movement for health and justice and equity".

According to the citation, "His work offers fresh and radical interpretation of Gandhiji's core concerns, and his present personal predicament is a poser to all who profess and practice similar ideals. He has rendered a valuable

service in the spirit of *antayodaya* to those of our people whose lives are at the margins of our consciousness, while also creating with them opportunities for their development in the truest human sense of the term".

The Citation states categorically that "Dr Sen, a paediatrician by training, graduated as one of the top students from one of our most prestigious centers of medical education and research, the Christian Medical College, Vellore. His social concerns were evident early in the work in his M D thesis, which was on malnutrition, and his prize winning essay on Medical Education, which addressed the gulf between the healthcare needs of our people and the present system of medical education. Rather than use his professional skills as a passport to personal success in urban India or abroad, Dr Sen took the dusty road scarcely travelled by people of his ilk to rural India, to parts of rural Madhya Pradesh and present-day Chhattisgarh, which have absorbed his energies since then." – **Rajendra K Sail**, President, 31<sup>st</sup> December 2007 □

### Report from Uttar Pradesh:

#### PUCL Meeting at Lucknow

On 3<sup>rd</sup> November 2007, a meeting of state executive members of PUCL was held at Lucknow at Press Club.

In the first session, the meeting was chaired by former National President, PUCL Justice Rajindar Sachar (Retd.) attended by an august gathering held at Lucknow representing several organizations.

Sachar vehemently criticized the imposition of emergency, removal of Chief Justice, attack on lawyers and arrest of Human Rights Leader Asma Jahangir in Pakistan. He pleaded that by introducing UPCOA, the present

regime of UP is going to suppress the peoples' movement and suspend the human rights of common people and toiling masses: "it should be opposed tooth and nail". He also demanded the quashing of the pending TADA cases. He said that in 1927 the population of the country was 30 Crore and now there are 30 Crore people living below the poverty line. Families are living under less than Rs.12 wages per day. He quoted Solomon that one who lives with injustice and does not oppose it deserves hell.

Senior advocate Ravi Kiran Jain, Patron and former President of PUCL U P stressed the need of decentralization at the level of decision and implementation to ensure social justice, equity and to guarantee the social, economical, political and cultural rights of people. He cautioned that the World Bank and WTO are increasing the trend of centralization and bureaucratization of planning and implementation.

Sandeep Pandey, a Magsaysay Awardee, prominent social worker said that the arrest of

Binayak Sen and indefinite fast of Sharmila is a clear indicator that the state apparatus has no respect for Human Rights and Judiciary is also narrowing down its scope in matter of peoples' movement. He gave details of corruption in PDS, NREGA etc.

Roop Rekha Verma, former Vice Chancellor of Lucknow University and Convener of 'Sangtiti Duniya' spoke about the growing force of communalism and fascism in the society which is directly and indirectly supported by the state machinery. She said that the real issue is dragged in the

background in the atmosphere of communal frenzy.

Lastly, many participants asked questions to Sachar on various Human Rights issues.

In the second session, the State Executive held a meeting which was attended by Tanveer Ahmad Siddiqui, Ajit Singh and Gurender Singh (Varanasi), S Ali Manjar (Banda), Mohd. Jonaid Ejaz (Moradabad), Ravi Kiran Jain, O D Singh, K N Bhatt (Allahabad), Farid Abbasi, Sandeep Pandey. The meeting was conducted by state general secretary O D Singh. At first, the draft of the letter to be sent to the state chief minister for

implementation of decentralized planning at local level was passed with certain amendments. The worsening Human Rights situation of the States and stress the need of expanding the units at various level and start membership drive. It was also felt to revise the state committee and inducting some more office bearers to strengthen it. It was also decided to file PILs on some cases of violations.

Participants thanked Farid Abbasi and the Lucknow unit for excellent and successful organization of the meeting. – **Om Dutt Singh**, General Secretary, PUCL, U P, 15<sup>th</sup> November 2007  
□

## **Barak Human Rights Protection Committee, Assam:**

### **Humanity Was Raped in Guwahati on 24th November 2007**

More than 20 people were killed, 3 women raped, one girl stripped off in the highway and paraded, about 3 thousand injured of whom the condition of 10 is critical and 45 persons simply disappeared when the demonstrators belonging to *Adivasi*, as some tribal communities--mainly Kul, Santal, Munda--who work in tea gardens are known here, were marching towards the state secretariat in Dispur, Guwahati on the fateful day of 24th November as a part of their programme formulated to push for the age-long demand of including the communities in the list of scheduled castes. In the course of the march while police stopped them before they reached the Last Gate of the MLA Hostel some of the demonstrators turned violent and destroyed properties such as shops, vehicles etc. and injured some pedestrians. Some local residents came out to retaliate the violence, to take revenge and to teach the tribals a lesson. In the process they got wild and savage so much so that they lost every sense of humanity and unleashed the brute within them. The beast killed many innocent

persons, kicked the dead bodies with diabolic enjoyment, stripped many women off all cloths, raped them and it raped the humanity. We saw in Guwahati the wild dance of the beast.

Circumstances cry to yet another most diabolic fact that during the period of 4 to 5 hours of this wild dance of the beast in the political and administrative power center of the state no worth mentioning state presence was there. The beast danced with the tacit leave of the state. The state allowed the beast to finish its horrendous ritual by making it self absent. It is nothing but the naked parade of electoral politics in its worst.

The officials of the organisation which coordinated the programme told that they did not have any intention to create a violent situation. They regretted the fact of committing violence by some of their members.

The facts which indicate clearly towards direct and indirect abetment of the government are:

1. When the tribal groups sought permission for a meeting and a demonstration, they were denied.
2. When they held the meeting and

demonstration there was no adequate arrangement of security forces. 3. After the mayhem started no forces sent to control the situation. 4. Government is trying desperately to show down the incident reducing the number of casualties in its statement, perhaps in order to save the perpetrators from the law. 5. The authorities of the medical college hospital where most of the injured were admitted released many of them without proper treatment to show down the enormity of the mayhem, perhaps in order to save the perpetrators from the law. 6. At first just an inquiry by an additional chief secretary was ordered and later a judicial inquiry overlooking callously the demands of CBI probe. 7. More cases registered against the demonstrators that against the local residents. 8. No case was registered regarding rape cases.

There some other more painful facts indicative of the callousness of the so-called civil society which include the attitude of the media in covering the incident. Most of the local media presented the story in such a way as if they are justifying, or at least making an excuse of,

the brutality meted out to the demonstrators by making tacit statement of who-started-it-first. There are also allegations that doctors raped a victim girl who was brought in Guwahati Medical College. These speak a volume of the attitude of Assamese people towards the tribals which also can explain the barbarity committed against the *Adivasis*.

The Barak Human Rights Protection Committee categorically

condemns the violence and the mayhem. The committee demands: 1. A CBI probe into the whole incident. 2. Compensation of 5 lakhs to the family of deceased, 2 lakh to the victim of rape, 1 lakh to the victim of abuse 50 thousand to the severely injured, 25 thousand to the other injured and adequate compensation to those whose properties were destroyed.

The Barak Human Rights Committee urges the Assam State

Human Rights Commission to register a *suo-moto* case against the police and other government officials for whose negligence in duty made the mayhem possible.

The Committee requests all people to maintain peace and harmony. – **Sundara Babu Nagappan** (By E-mail, Surendra Mohan) □

## Letter to Editor:

### A Consummate Demagogue

Sir,

From the verbatim report of the proceedings of the Election Meeting at Mangrol in South Gujarat (vide *TOI* Dec 5, 2007) it is clear that Narendra Modi is a Consummate Demagogue. It is an attribute of fascism. In spite of his Government filing an affidavit in the Supreme Court in a petition filed by the brother of Sohrabuddin that he, his wife, and an associate were killed by named police officers in fake encounters, Modi announced at the meeting that

Sohrabuddin stored illegal arms and ammunitions and sought guidance from the audience as what should be done with him. As anticipated by Modi the frenzied mob shouted "Kill him, kill him". Modi it seems does not bother about rule of law or the courts where the cases are pending. It is for the Apex Court to decide whether Modi's acts prima facie amount to contempt of court and if so to issue *suo motu* notice against him in that behalf. As a complaint has already been filed

before the Election Commission it is for the Commission to take such legal steps as are permissible under the law. In the meanwhile the Senior Counsel K.T.S. Tulsi appearing for the State of Gujarat in the S.C. deserves congratulations for deciding to withdraw from the same, alleging that Modi is playing "ducks and drakes" with the rule of law and the Apex Court". Yours faithfully. – **M A Rane**, Advocate, Mumbai, December 6, 2007 □

## Bihar:

### Nitish Kumar's Churlish Response to PUCL Report

According to a report published in *The Prabhat Khabar*, Patna dated 11 December 2007, Shri Nitish Kumar, in course of the debate on the floods in Bihar Vidhan Sabha, said that PUCL was a 'pocket organisation' (*Jebi Sangathan*) and its report on the floods in the state was 'imaginary' (*Mangharant*). He is reported to have made the statement when Mr A B Siddiqui, President of Bihar, RJD referred to the critical comments in the PUCL report on the relief measures (published in the *Bulletin* of December 2007). The report was not contradicted though it was so prominently published that it could not go unnoticed. Since no contradiction was issued, and the media are not

at liberty to attribute to the legislators statements not made by them on the floor of the house, the Bihar PUCL was left with no choice but to accept the report to be true and to contradict the slanderous comment of the Chief Minister.

After waiting for a week, the PUCL called a press conference on 16 December and issued a statement, which was carried by almost all the newspapers. Speaking to the press on the same day on the subject, Shri Nitish Kumar gave the impression that he had not made the statement. According to *The Times of India*, Patna dated 17.12.2007, "*Nitish said whatever he said on the floor of the Assembly could not be discussed outside. He said those*

*criticizing him should have checked from Assembly records what actually he had said. "Sometimes, such things are made an issue only to gain publicity", he said.*" Since it is common knowledge that whatever is said on the floor of the house is expected to be freely discussed by the concerned and interested people in public, his contention on the point followed by his churlish remark has the look more of confirmation than contradiction.

The press release reminded the C.M. of J.P. and the movement of which they all were the product, and also asserted that the report was based on the basis of interaction with the victims at different places. – **Prabhakar Sinha** □

## Human Rights Day Observed in Ahmedabad

A meeting was held to observe the Human Rights Day on December 10, 2007. The meeting was held in Mehandi Nawab Jung Hall, Himavan, Paldi, Ahmedabad at 3 p.m. The meeting was presided over by the Convener of Movement for Secular Democracy (MSD) Shri Prakash N Shah, the veteran journalist and the activist.

The meeting was organised by Movement for Secular Democracy, AWAG, PUCL, *Sanchetana*, *Janapath*, *Prasant* and others. For last 10 years the programme was held in open space but this year the hall meeting was held because the police did not give permission on the plea of election code of conduct.

As the area of the Hall of the meeting place comes under the Ellisbridge Constituency, the six candidates contesting from this constituency were invited to express their point of view before the audience and face the

questions of the audience. Only two candidates came forward to deliver their point of view. They were Shri Upendra Acharya, (Independent), Bhavik Raja (SUCI).

The programme with the songs presented by Nitin Prajapati and his group followed by Bhadrabehn Savai. Thereafter the meeting was addressed by one after one concerned citizens expressing their concern on the overall decline of Human Rights in Gujarat, more so under the regime of Narendra Modi in the name of development, which is illusive. All said that the women, Dalits, minority, workers, children rights are violated nakedly.

The speakers in the meeting were Shri Dilip Chandulala (MSD), Shri Dwarika Nath Rath (SUCI), Ms Ilaben Pathak (AWAG), Shri Indukumar Jani (Editor Naya Marg), Prof. Ghanshyam Shah (Social Scientist), Damayantibehn

Parikh (Social Activist), Rajani Dave (Sarvodaya), Prof R D Dave (Adhyapak Mandal), Suvarnabehn (Journalist), Shri Hiren Gandhi (Social Activist), Shri Gautam Thaker (PUCL), Father Cydric Prakash (Prasant), Chandu Maheria (Dalit Activist) and others.

A resolution was moved and passed unanimously by Shri Prakash Bhai condemning the justification of Narendra Modi in encounter death of Shohrauddhin which is a violation of human rights. The resolution demanded a public apology from Modi. It was decided to hold a public meeting on 24<sup>th</sup> December, (after the declaration of the election result) to decide the plans and programmes for restoration and preservation of Human Rights in the State. – **Gautam Thaker**, General Secretary, PUCL Gujarat, December 10, 2007 □

### Letter to the Editor:

Sir,

This is in response to the feature, "Are Encounters not Murders?" - A protest against the AP High Court judgment on Encounters" published in *PUCL Bulletin*, January 2008 issue.

It would not be correct or proper or meaningful to insist on filing cases of murder for deaths in alleged fake encounters. But what can and should be done is that such allegations should be treated as allegations of culpable homicide which may or may not amount to murder and a case can immediately be registered under Section 304 of the Indian Penal Code. If the investigators in the course of investigation find it is in fact murder, they can submit the charge-sheet requesting the Court to upgrade

### Encounters

it to Section 302. Or if the investigators opine that it is just a case of rash and negligent conduct they can request the trial judge to downgrade it to Section 304A. The trial judge also has a lot of discretion to act on his own in upgrading or downgrading the charges or even discharging the accused on the basis of perusal of all the documents including charge sheet, etc. and also on the basis of evidence sought to be adduced or recorded. This should not cause any prejudice to honest and sincere police officers really acting correctly and properly in the exercise of their duties because there is the crucial protection of Section 197 Cr.P.C. for them i.e. that a prior sanction by the government is necessary for prosecution of any

offence against them. The AP Government, 'in its wisdom' has extended this protection to each and every policeman without any classification and on par with armed forces of the country. This part of extension of protection indiscriminately can and must be challenged since it is hit by Article 14 and over-protects certain class of citizens.

My consistent plea and demand has been that the Human Rights Commissions are toothless bodies and they should be converted into Human Rights Courts to which all allegations of use of excess of force by the armed forces or police should go and be tried. Such Human Rights Courts should be composed of sitting High Court or Supreme Court judges as the case may

be, and their judgments appealable **only once** either in the appellate jurisdiction of the High Courts or Supreme Court.

Further the government has a '**duty of disclosure**' to the public, not just when asked but even on its own. Public are not expected to know, indeed are prohibited and even must be prohibited to know, the identity of police officers going for an anti-terrorist or anti-naxalite operations. The desire for knowledge generally comes only *post facto* after encounter deaths occur. In such a case none among the public may be able to name any police officer participating or being responsible for the operation. So the facts should all come from state records and it is here that Courts should interpret and mandate 'duty of disclosure' in favour of people. There is simply no point in saying you go and file a private complaint against police officers you suspect, since the victim's relatives or friends may not know who those police officers are and generally magistrates are averse to take private complaints against unknown accused.

The conversion of Human Rights Commissions into Human Rights Courts and vesting them with original jurisdiction with powers to refer all such complaints through the Court, as a matter of course, for sanction under Section 197 of Cr.P.C. and in unusual cases endowing them with powers to take cognizance even without the sanction contemplated under Section 397 is a must. We [as a country or nation] should emulate the European Court of Human Rights at least in regard to the use of excessive force by the police and military. The human rights and civil liberties organizations and outfits can do best service to the

people by agitating towards this end. Thank you. Yours sincerely,  
-- I **Mallikarjuna Sharma**,  
Advocate and Editor, *Law Animated World* □

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