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Law and Order and the Constitutional Value System

KG Kannabiran

Make sure when leaving the world

Not that you were good, but leave

A good world

- Brecht

The Hon'ble Speaker said that Nandigram is a State subject, by which he meant under the VII Schedule to the Constitution. But does VII Schedule deal with governance within the state? Does division of legislative subjects between the centre and the state lead to the division of the people and quarantine them from discussing the lives and living conditions of the people of the state? Is shutting off discussion of the conditions of the people of a state a principle of a federal democracy? Does our quasi federal set up permit taking of such positions? Even assuming everything against the people does not the Constitution integrate the Indian plural society with the values proclaimed by the Preamble, the fundamental rights and the mandatory obligations? Viewed in this background to dismiss a debate as beyond the ken of the parliament is to take shelter under pettifoggery legalism.

Law and Constitution instead of strengthening the Democratic Republic has reduced the whole exercise into a farce. The massacre of Sikhs was treated as a law and order problem. Mumbai riots which targeted Muslims on a large scale was a law and order problem. The post-Godhra large scale mayhem of the Muslim minorities is just a back lash, a mere law and order problem. Once it perceived as law and order problem. Nandigram in West Bengal, a part of West Midnapur for opposing the imposition of a Special I Economic Zone the whole people of the area were dealt with roughly, punitively held isolated from the rest of the people. Print and electronic media were barred from entry. There was a punitive expedition by the Red Brigades of the CPI-M; there were tremendous protests the like of which the State had not witnessed in recent times. Andhra Pradesh escaped national attention though as a matter of policy killing Naxalites for the past forty to five years, because were regarded as law and order concerns of the State. In fact on the basis of Tarkunde Committee's Report on 'encounters' we pressed the post Emergency Janata Government to appoint a Commission of Enquiry into these encounter killings. I as the secretary of Tarkunde Committee approached Sri Morarji with this request. He told me the Centre cannot appoint a Commission because it was State subject. I contested this position with him. It is not a stray killing and it is carried on as part of administration. It can be anything but a State subject. It was that much of an argument he agreed to the course of suggesting (on page 6...)

Jagatsinghpur, Orissa:

Dhinkia under Virtual Siege

A team comprising Dr B D Sharma Ex-commissioner for scheduled Caste and scheduled tribes, K N Pandit, Visthapan Virodhi Jan Vikash Andolan, Chakradhar Haibru, *Visthapan Virodhi Jan Manch*, Kalinga Nagar, B P Rakshit, Peoples Democratic Front of India and Ajay, *Visthapan Virodhi Jan Vikas Andolan* had come for fact finding in proposed POSCO site. The team intended to work out the facts finding and situation prevailing in the proposed POSCO steel plant site in the district Jagatsinghpur, Orissa covering 12 village of 3 *Gram Panchayat* namely Gadkujang, Nuagaon & Dhenkia.

We proceeded to visit the area on 5th December 2007, Via - Trilochanpur to proposed POSCO site. We found the road barricaded by the police. They stopped us and searched our bags etc. Thereafter we again started to move onwards. We found another police picket at Trilochanpur where we are again stopped and our all belongings were searched again by police. The road was fully barricaded at the moment. Some person was standing thereby.

They started to oppose our entry in the village Dhenkia. We found immediately after that some more person in huge number were drawn on the spot seem to be more aggressive and violent. They were using filthy and derogatory language against us in the presence of police who remained silent spectator and asked us to go back immediately. After getting back we met the S.P., Jagatsinghpur at his residence and tell him our agonies and harassment at the Trilochanpur post. This is ironical that Trilochanpur is not including the proposed POSCO site area and the people who misbehaved with us were not from the affected area. We informed the S.P. that we want

to visit the affected area to find the facts prevailing there. S.P. assured us that no body would prevent us while going to the area as local police would be directed accordingly. On 7th December, we again moved to affected area. We found police barricading in two places, but they did not stop us. We found there no nuisance Mongers at the police picket as we found day before yesterday, although we moved through the same road and Trilochanpur village.

Then we experienced that there was complete nexus between police and touts, goons of the company. We also found in the way no villager came in our way to stop us to moving forward.

Thus we first went to Dhinkia where people turned up to us enmesh. Most of them were from Dhinkia and others were from remaining affected villages. Villagers strongly opposed any encroachment on their land by the POSCO Company or by the State Govt. as they have got no right to snatch our land, which is their basic source of livelihood. They spelt out that they would not part with even a smallest piece of their land, which is just like their mother. They also stated further that police were always out to harass the villagers through the goons, touts and anti social elements hired by the company. Even the daily wage earners are not being all being allowed freely to go out from the villages to have wages earned. Thus such laborers put under the situation of starvation for no fault on their part.

Nevertheless, people of the area are maintaining peace fortitude and patient to the maximum extent, but water seems to be flowing even at their nose level. Surprisingly enough police pickets have been put in operation in three places in proposed site i.e.

Nuagoan, Gobindpur and Gadkujang, which clearly indicates the intention of the police to force the people for remaining under fear, terror, etc. The state has siege virtually the Dhinkia village by setting police camp on all the ways leading to Dhinkia, so that they may be compelled to give their land to the company. Even in the presence of the police rowdy and anti-social elements attacked the houses of those villages that don't want to part with their land to the POSCO Company. They injured the villagers who were later admitted to the hospital.

In the Dhinkia we also met Abhya Sahoo, the leader of POSCO *Pratirodh Sangram Samiti* and renowned leader of Communist Party of India. He also explained the situation which prevailed and atrocities by the anti-social elements being meted out to the villagers with the help of the police which has become a regular and day to day phenomenon there. There happened a very shocking incident. There were some *Sarvodayee* related to *Rashtriya Yuba Sangathan*, *Naba Nirman Samitee* and *Yuva Bharat*. They were not spared who were resorting to *Satyagraha* for saving the land of villagers of the affected area to be acquired by the POSCO. Some hired *Goondas* and anti social element beaten them brutally and thrashed the portrait of Mahatma Gandhi by heels of their shoes. There after *Satyagrahi's* driven out of the village. When the team met the *Satyagrahi* at the office of DM Jagatsinghpur they narrated their vows and whole incident. They are still staging *satyagraha* at DM office, Jagatsinghpur.

During the visit we found the land to be acquired are highly fertile and crop yielding. According to some decision of Supreme Court of India, cultivable

agriculture land cannot be acquired for a private company.

In addition of paddy crop, villagers sow and grow 'ground nuts' and *moong* pulse there, which are cash crop. In a very large area of the proposed site Cashew nuts and betel wines are the main source of income for the villagers which according to the Govt. version is a 'forest land' that covers 3500 acre out of 4004 acre of the total land to be acquired by the company. In the recent year 2007, an act namely Scheduled Tribe and other Forest Dwellers (recognition of Rights) Act, making the same effective from 2005 is passed in parliament. According to provision of this Act, holders of the forestland have automatically become *bona fide* and genuine owners of the land. Although the same is under their ownership from several generations in general. At the present situation Govt. has no right to displace the dwellers and dispose off the same to any private company or other agencies.

Taking in view entire situation prevailing in the area and connivance between the POSCO company, Police, and hired anti-social *goondas* and goons, and

taking the same in serious consideration, we have come to the conclusion that almost the same situation and conditions are being created purposely where serious atrocities and genocide by the goons and *goondas* sponsored by the ruling party of West Bengal, the CPM, were created with the help of police in the Nandigram. We are afraid if the situation here is not tackled and controlled prudently before the same goes out of control, it would be most unfortunate as we apprehend that innocent and peace loving farmers of the Gadkunjang, Dinkia and Nuagaon *Gram panchayat* may be further more tortured and crushed. It may become another Nandigram.

We demand that:

1. All police pickets, put around the three gram *panchayats* be withdrawn forthwith.

2. All the hired goons and anti-social elements operating in the villages be arrested and put behind the bars.

3. All the residents of affected villages are allowed to go outside freely to have their earnings and other purposes as usual.

4. The basic and fundamental rights of the villagers should not be infringed in any way.

5. No part of the land of the affected villages is acquired either by POSCO or State Govt.

6. Judicial enquiry should be constituted to prove and investigate the entire happening in the area.

7. Rights of owners of the erstwhile forest land be recorded in their names immediately and these lands should not be considered Govt. land henceforth.

Our organization stands for the development of the people with equity, not of the big moneybags whether they are indigenous or foreigners.

Signatories to the Press release:

1. Dr B D Sharma (Ex-commissioner for Scheduled Castes and Scheduled Tribes, Govt. of India).

2. K N Pandit (*Visthapan Virodhi Jan Vikas Andolan*).

3. Chakradhar Haibru Junior (*Visthapan Virodhi Jan Manch, Sukinda, Kalinga Nagar*).

4. B P Rakshit (People's Democratic Front of India).

5. Ajay (*Visthapan Virodhi Jan Vikas Andolan*). □

Are Encounters Not Murders?

Protest against the Andhra Pradesh High Court Judgement on Encounters

[Public Meeting: Venue - Press Club, Basheer Bagh, Hyderabad, 10-12-2007 (Monday); Time: 6:00 p.m.]

Speakers: K G Kannabiran, Senior Lawyer, *Peoples Union for Civil Liberties*; Madabhushi Sridhar, Professor of Law, NALSAR; K Balagopal, *Human Rights Forum*; S Jeevan Kumar, *Human Rights Forum*]

There would perhaps be no one in the State who has not heard the slogan "All Encounters are Murders". This slogan has been the defining element of the civil liberties and rights campaigns and democratic movements for more than 40 years now. People's campaigns and rights movements have also repeatedly clarified that this is not just a political slogan, but one which has constitutional and legal relevance. What this implies is that law itself recognizes an encounter as a murder. There

is no big secret about this. No intricate legal or jurisprudential philosophy to be deciphered.

It has become a habit of sorts for the police to declare after every encounter that, when they confronted an armed person to lawfully arrest him, instead of surrendering, that person attacked them (the police) which put their life in peril and therefore in exercise of their right to self-defence, when they engaged in cross-fire, that person succumbed to death. Even a murder

committed in exercise of the right to self-defence is also a murder in the eyes of law. If that were really to have been applied in the process of the exercise of the right to self-defence, then it would not entail any punishment, but by itself it would not cease to be a murder.

Whether the death was a consequence of the exercise of the right to self-defence is something that must be decided after investigation and by due process of law, but not in the declaration made by the person who has

indulged in the killing, and such person has no right to make a declaration and go scot-free. A case of murder must be registered against him, crime investigation must be initiated, and he must be able to produce evidence in his favour that there were compelling circumstances that necessitated the murder. There is no difference between the police and the ordinary citizenry as far as this is concerned. Would there be any meaning to the right to life if the person who has indulged in killing is set to liberty merely by making a self-proclamation that he did so in self-defence. Would it not sound the death-knell of the right to life? We perceive that this is something that can be understood quite easily by any one. But it took a great deal of endeavour to make the Courts understand this and see the issue in perspective. The success in convincing the Court almost reached its threshold a decade ago, but slipped back to failure.

The Andhra Pradesh High Court has recently ruled that "An Encounter is not a murder by itself; it would be so only when a specific complaint is received that a certain police official killed a certain person intentionally and subsequently cooked up a story of chance encounter and only then should a case of murder be registered against him".

If the police wear masks on their faces and kill someone, or corner someone in the dark of the night and kill or if the deceased happens to be some anonymous Bangladeshi or Pakistani, killed in Hyderabad, who would have no relative or next friend to complain, there would be no specific or concrete complaint. Therefore these would not be murders! The High Court has ruled that in such cases a magisterial (executive) inquiry must be initiated and if anything suspicious is detected, steps must be initiated accordingly.

Not only is this Judgement unconstitutional, and a

transgression of law, but is anathema to the very spirit of the right to life. We are calling upon people to reject this Judgement and campaign for safeguarding the right to life.

The police, obtaining the guarantee that by killing someone, intimidating those who would want to complain and ensuring that no one deposes during the magisterial inquiry would put the very life and existence of common citizens in jeopardy. All of us would vividly remember the incident that took place in Vishakapatnam not so long ago. An honest bank official was very brutally murdered by some ruthless persons. Subsequently, the police caught hold of two suspects and gunned them down and declared that they resorted to that step as the two persons had retaliated against them (the police) and they had no other alternative but to fire at them in self-defence. Either owing to fear or some other unknown reason, none of the family members of the deceased complained. What they said in the magisterial inquiry, whether at all they said any thing is not known. So, is that all? No dispute, those who had callously murdered the bank official must be dealt with as per law and punished. But who is to impose the sentence of punishment? The Courts? Or the Police? Let us assume for the sake of argument that these two were indeed responsible for the murder of the bank official. Today the police have killed these "bad" people. Tomorrow they would go ahead and kill "good" people and in a way best known to them would ensure that there is no specific complaint and that no witnesses depose during the magisterial inquiry. What then?

To attack the opposite person in legitimate exercise of the right to self-defence is a remedy available not just to the police but also to the ordinary citizenry. Law clearly provides that the right to counter-

offensive attack must be proportionate to the threat caused. If a person over-steps his limit and causes injury beyond what is required of that situation, it is a crime. Precisely for this reason, a person who claims that he resorted to violence in exercise of the right to self-defence is not permitted to go scot-free. How much of threat that person faced, how much of force or counter-attack did he resort to in order to overcome that is something that must be established in due process of crime investigation. Moreover, law places the burden of proof on that person to prove to the satisfaction of the Court that he caused only that much force as was necessary in that situation. All this implies that a criminal case must first of all be registered against him, crime investigation conducted and the facts must come out of the investigation.

In the case of ordinary citizens, this is a principle that the Courts accept - a principle that is routinely implemented on a daily basis. Law makes no distinction between the police and ordinary citizenry to the effect that the former must be treated differently. Nonetheless, the High Court opined that a different principle must be applicable in the case of the police. The High Court says that it is quite difficult to concede to the argument that the police, when committing crimes, in the course of their duty must be placed on the same footing along with ordinary citizens, given the fact that the police establishment has been placed in charge of a colossal responsibility of preserving public peace and security, controlling crimes and maintaining law and order. If at all any one has the authority to come to such conclusion, it is the legislators, but do Courts have that authority? The legislators of this country did not opine that to deal with the crimes committed by the police in the name of their duty, a separate Penal Code is necessary.

The Indian Penal Code makes no distinction between the police and ordinary citizenry in this regard. Wherefrom have Courts have the power to imagine what is beyond the pale of law.

"Do those who resort to violence have any rights?" This is a question that many of us come across quite often. Though this might sound quite convincing and even justifiable, is a society that recognizes the rights of only the good people a truly civilized one? Only that society can claim to be a civilized one, which recognizes the rights of even those who, for reasons good or bad, out-step the generally accepted boundaries of society and treats them as equal citizens and even if they are sought to be contained, they are dealt with only within that rights framework. It is because that our Constitution-makers recognized this principle, they incorporated and guaranteed equal rights to all citizens. They did not draft the Constitution in an ambience of peace and tranquility. The Constitution of India was written in one of the most turbulent and violent times in history. In the context of the partition of the country scores of Hindus, Muslims and Sikhs resorted to and were subjected to bloodshed and killing on religious lines. There was an exodus of whole villages. At least ten lakh people died. The international community witnessed a hitherto unknown massive exchange of populace. Notwithstanding the fact that the Constitution was scripted during these intensely troubled times, it guaranteed equal and inviolable rights to all citizens. It is quite poignant and sad that the Courts seem to have conveniently forgotten that spirit.

It would have been a very ideal and welcome situation if everyone respected and followed the law. But the problem arises when some one inflicts harm on others but claims equal protection of law and

rule of law. True, the Penal Code no where recognizes the principle that only those who follow law have the right to seek equal protection of law and rule of law. There is also no principle that there shall be no constitutional protection for those who refuse to respect the law. But the High Court opines that a person or group that indulges in the killing of innocent people and propagates to indulge in such killing cannot have the right to claim all forms of protection in the process of the state containing it. This is a totally anti-constitutional opinion. Setting aside the Constitution for a moment, a society that treats any one and every one in a civilized manner is only a civilized society. That society which treats only those who conform to its norms and standards in a civilized manner is not civilized in the true sense of the term.

Even otherwise, the police are not just doing away with those who as a systematic programme kill "innocents". They are also assuming the role of justice-dispensers and killing those whom the Courts can, after due process of inquiry punish. They are also straight away shooting down those who are branded as "naxalites" despite having the opportunity of lawfully arresting them, without making any meaningful effort in that direction. As was the case with Mudigonda firing, they are also gunning down those who refuse to budge to their diktats of putting on hold their protest. They are also casually sniffing out the lives of one or two persons, whenever they perceive that crimes are on the rise and these hooligans must be reigned in and are creating a sense of fear-psychosis.

The inappropriate and skewed understanding of law by the Justices of the High Court has also resulted in this wrongful judgement. Citing the incident of the attack on the Parliament of

India on the 13th of December 2001 and of the five persons whom the CRPF *Jawans* gunned down, the High Court asked if cases of murder should also be registered against those 5 *Jawans*. The Court further extending its misplaced opinion said that if a case is registered, the intent of those who had come to attack, was only to kill the parliamentarians and not the *Jawans* and therefore, these *Jawans* would not be able to claim protection under the exercise of the right to self-defence and they would therefore be punished. But the right to self-defence as incorporated in law, not just extends to us but also to safeguard the person of others when in peril. Not just this, the police also have a right recognized in law to use necessary force to control crimes.

Whether in exercise of the right to self-defence or in the course of discharge of ones duties, what needs to be established is whether force commensurate to the situation was exercised or not. And to prove this, a case must be registered and investigation conducted. What if, of the five persons whom the *Jawans* gunned down, only four had come to attack the Parliament? What if the 5th person were to be a tourist with little or no local contacts? Should his death also be counted in the list of the other deaths, if there is so specific complaint to the effect that the *Jawans* killed an innocent person, presuming him to be an assailant? It is therefore very expedient that a case of murder must be registered and swift crime investigation must be done. All this does not mean that those CRPF *Jawans* would be suspended or they would be arrested. There is no rule that as soon as a case is registered they must be arrested or suspended. But an independent and impartial crime investigation must be forthwith carried out.

If after due investigation, it is found that whether in the exercise of the right to self-defence

(includes the right to defend the lives of others in peril – emphasis added) or in the course of discharge of ones duties, the accused resorted to firing in good faith, he/they can be declared as innocent. Adopting this kind of a practice would be a manifestation of a civilized society. Closing down a case un-investigated, as happened with the attack on the Parliament in which 5 people were gunned down, is an expression of incivility.

We conclude by making some observations on the profound faith that the High Court has reposed in the magisterial enquiry and the prominence which the Court has ascribed to it. These inquiries are carried out by officials of the rank of RDO's (Revenue Divisional Officers). They do not have any of the powers that a Court has. They cannot summon any witness for inquiry. They have no power to impose penalty in case any one

does not turn up for inquiry or to depose. There would be no cross-examination of witnesses in that inquiry. The opinion of the Inquiring Official is not the Judgement. Above all, the police, whose respect for the authority of the Judiciary is itself questionable, have little or virtually nil respect for these inquiries. The police can very easily round-up the Office of the RDO and the village of the deceased and make sure that no one turns up for investigation and inquiry, and this is something that they quite often do. To argue that a case must be registered only if truth is established in such an inquiry is equal to saying that it is not necessary to register a case at all.

Looked at any which way, this Judgement is a serious blow to the right to life of people. Protesting against this unconstitutional judgement, the Human Rights Forum appeals to all to participate

in the State-Level Meeting on this issue and campaign for safeguarding the right to life.

This Judgement was delivered by a Three Judge Bench of the Andhra Pradesh High Court. Two Judges Justice L. Narasimha Reddy and Justice G. Ethirajulu gave this verdict. The third Judge, Justice Bilal Nazki, dissenting with the majority judgement ruled in favour of the stance that rights groups have taken. But the majority judgement would only be regarded as the Judgement of the Court.

Organised by: Human Rights Forum (Maanava Hakkulaa Vedikaa)

– **S. Q. Masood**, PUCAAR (People's Union for Civic Action And Rights), 20-4-10, Charminar Bus Stand, Hyderabad, Andhra Pradesh ☐

(from page 1...) that he will suggest the person to be appointed by the State Government and this alone satisfied me.

But what exactly is this "Law and Order" which stuns us all into silence, which closes all debate. And make us all conclude such killings administratively sponsored or supported is part of administrative practice of Governments whether at the state or the central level. With the present steady degeneration of governance it is necessary to debate this issue if we are to ensure for ourselves democratic governance assured by the Constitution. It to be seen as part of this degeneration the court in this state has lifted such state killings out of the purview of law. Law and order only comprehends 'stray or unorganized crimes of theft and robbery do not disturb public order. Law and Order has to

be understood in the context of 'public Order' and 'Security of State'. Chomsky considered these as powerful semantic expressions which are not defined and in fact they supercede all the Constructional values. Ram Manohar Lohia, the intrepid litigant against authoritarian trends in administration litigated fiercely on the interpretation of this expression He argued for a definition of this expression. The Court, whether in his case or in other case that followed described these very powerful expressions The Court said these three expressions may be described by three concentric circles. Law and order represents the larger circle, within which the next circle is the public order and the smallest one the security of state. Law and order comprehends disorder of less gravity from those affecting public order. What happened in Nandigram is not a stray disorder which did not disturb

public order. The invitation of quasi-military forces to quell the disorder certainly does not qualify to be law and order as defined by the court. It is not in any event the privilege of the State Government deny any and every fundamental right without the authority of law excepting the expression 'law and order. Nor the disorders that occurred in 1984 in Delhi, in 1992 in Mumbai or the events that happened in Gujarat in 2002 leading to the massacre in Delhi, in Mumbai and Gujarat of Minorities, or the systematic elimination of dissent in Andhra Pradesh are mere Law and order problems so as to bar debate at the national level. There should be a comprehensive on all these issues where no single party will have an edge and so all of them debate over issues in the interest of the citizens at large.

The problem we are confronting is not (on page 20...)

The Abridgement of Individual Liberty

Chaitanya Kalbag

(Chaitanya Kalbag has been a journalist, editor and manager for over 33 years. In his most recent assignment as Editor in Chief of Hindustan Times, India's second-largest English newspaper, Kalbag headed a team of more than 700 journalists across eight editions. He was responsible for reinforcing professional standards and embedding strong standards of accountability and balance into local and national reportage. During his tenure he

- assembled a top-notch editorial team
- launched a transformational convergent-newsroom and technology project in collaboration with IFRA and Eidos Media aimed at bringing together print and online platforms and aiming at new business model linked at readership connectivity
- re-launched HT's Mumbai edition and led the launch of HT Café, a very popular daily entertainment supplement
- introduced skill-set enhancement training for reporters and sub-editors with a pilot four-week programme in Delhi and Mumbai delivered by a UK-based trainer
- launched ethics training for all senior editors
- initiated a wide-ranging project to map job titles and descriptions, correlate pay and rewards to performance, move senior editors to partial performance-based variable compensation, and introduce strong talent retention practices.

Kalbag decided to return to India in September 2006 after a very successful 23-year career with Reuters that spanned several countries. His last assignment with the global news agency was Managing Editor and Head of Editorial Operations, Asia.

Kalbag joined Reuters in 1983 as a correspondent in New Delhi, India. He moved to Manila in 1987 and in 1988 became a Chief Sub-editor on the Hong Kong economic desk. In 1991 he moved to Tokyo and in 1993 he was appointed Editor, News Production, Japan. His next post as Editor, News Production Asia was based in Hong Kong. There he was responsible for the quality of all text news output from Asia including output from all editing desks.

In 1997 he became Bureau Chief, India – the first Indian to hold this post -- where he was responsible for all text, television and pictures coverage from India, Nepal and Bhutan.

Kalbag then exited journalism briefly to take on a senior business management post in Reuters. He became Managing Director, Reuters India Limited and Manager South Asia, based in Mumbai. In this role he was the senior Reuters company official for all eight South Asian countries including Pakistan, Bangladesh and Sri Lanka, responsible for £ 20 million of business and an array of financial-sector clients.

Between July 2000 and August 2006, Kalbag headed all text, television and pictures news operations in Asia. He was also responsible for the recruitment, safety and security, and career development of nearly 600 journalists in 33 bureaus in 22 countries stretching from Afghanistan to New Zealand.

Prior to joining Reuters, he worked in Bombay for a small Indian newspaper, then went on to edit and produce Transindia, a monthly newsmagazine for Indians living in the United States. He moved to New Delhi in 1978, and held senior writing positions at two magazines -- New Delhi and India Today.

He won the Rajika Kripalani Young Journalist Award in 1977, the Sanskriti Award for Journalism for 1982, and the India Today-PUCL Human Rights Reporting Award in 1983 for his investigations of fake encounters in Uttar Pradesh and the insurgencies in Northeast India. He was included in An Anthology of Bombay Poetry, 1977 – General Secretary)

Professor Amrik Singh, Dr Chhibbar, my friends from the PUCL, ladies and gentlemen:

I am honoured and touched by the PUCL's invitation to speak to you today. My life intersected with the PUCL and Mr Tarkunde more than 25 years ago, and my respect and affection for Mr Tarkunde go back to that time. I published a detailed account of fake encounter deaths in Uttar Pradesh in January 1982. That investigation won me

the PUCL Journalism for Human Rights Award. I then filed a public-interest petition in the Supreme Court against V P Singh, the then chief minister, and the government of UP Mr Tarkunde was my lead counsel, and I remember several illuminating conversations with him. I discovered only recently that later in the same year, 1982, Mr Tarkunde was involved in a facedown with policemen in Madurai. He and fellow silent

protesters including Mr Kannabiran were beaten up and tossed into a prison cell. When a judge let Mr Tarkunde off because of his stature, he refused to leave his companions behind. He had to be dragged by his shirt collar on to a bus leaving town.

In our conversations, the intensely modest Mr Tarkunde never held forth about Radical Humanism, or human rights, or his own deep interest in the rights of

the marginal Indian. But he was tireless in his quest for justice and in his empathy for the ordinary man – the *Aam Aadmi* that is being made so much of by the latest political hodge-podge to rule us. I think it is a sign of the special place Mr Tarkunde holds in the hearts of so many liberty-loving individuals that we have not one, but two Tarkunde Memorial Lectures organised in his memory every year!

What came across strongly in my conversations with Mr Tarkunde was the fragility of individual liberty in a modern state. Those thoughts hold as true today as they did a quarter-century ago. In fact, globalisation has meant, as I shall discuss later on, a corresponding constriction of individual freedom. Cutting-edge technology has sliced through the veneer of civilised conduct and exposed our rights, our space, our freedom of movement, our privacy, to the indifference and depredations of the Monster State.

In itself, technological advancement is excellent provided it goes hand-in-hand with a strong sense of ethics and respect for individual rights.

Sitting at my desk at home, I can now soar across the world, fly through faraway cities in 3D, delve into thousands of books and papers in libraries and journals, write instantaneously to dozens of people, engage them in virtual correspondence, look at pictures and video of people, things and events in a perennial kaleidoscope.

Not to sound paranoid, but I am always being watched by someone, somewhere. It does not have to be a Big Brother gazing from a wall. It could be my neighbours, my friends, my family, my undeclared enemies. There are a million ways in which one is vulnerable.

You don't have to be a "sting journalist" to spy on somebody. Camera photographs and video

are now ubiquitous. We never know who is recording what we are saying. Every e-mail we send is "discoverable" and we should be prepared to see anything we wrote splashed across a blog or a chat room. Forget about the turn of phrase of a Samuel Pepy's – now every one of us is a diarist, spewing stream-of-consciousness on to the World Wide Web, and all it takes is a computer and an Internet connection.

You cannot trust anyone – and nobody trusts you.

It has not taken us very long to move from relative innocence to cunning and coercive criminality. The freedom of the individual has always been as fragile as an eggshell, as ephemeral as a cherry blossom. When we Indians talk about freedom, we are mouthing platitudes based on a wider global sense of human rights. Traditionally we have been subservient, credulous, compliant, fatalistic and mistrustful of one another.

The Reality of Individual Exploitation

It is fitting that we should be meeting today near Rajghat. I have been fascinated by Gandhiji's prescience and ability to see through his fellow Indians. In a November 1934 interview, he said: "The State represents violence in a concentrated and organised form. The individual has a soul, but as the State is a soulless machine, it can never be weaned from violence to which it owes its very existence... I look upon an increase of the power of the State with the greatest fear, because although while apparently doing good by minimizing exploitation, it does the greatest harm to mankind by destroying individuality, which lies at the root of all progress."

I cannot think of a better way to describe the position of the individual.

It is a perilous position. It's a position built on false promises and naïve beliefs.

It's the position of most of us who get pushed around by forces that we have no hope of ever controlling or influencing.

It is the position of the villager whose mud house can be smashed into by a landowner, or the local *thanedar*.

It's the position of the *Dalit* who is likely to be killed just because he dared to dig a well on his own land.

It's the position of the Naga or the Meitei or the Ahomiya or the Kashmiri who can be picked up and made to "disappear" in a fictitious shootout.

It is the person who lost a dear one in a cinema fire ten years ago, or the parent whose child was raped and beaten to death a decade ago, or the parent whose daughter was shot dead at point-blank range all those years ago.

It's the position of a middle-class city dweller dragged from his car and beaten up by debt collectors because he defaulted on one installment.

It is also the position of a law-abiding citizen who can be beaten to within an inch of his life because he remonstrated with a careless and drunken driver.

It's the position of the widows of the two men shot to death in broad daylight in the centre of the nation's capital by a posse of policemen because they were mistaken for terrorists. I will describe later how globalization has actually led to the abridgement of individual liberty. Here I must remind you that the policemen who shot dead Pradeep Goel and Jagjeet Singh said their action was no different from that of policemen in New York or London who shot dead innocent men believing them to be either an armed robber or a terrorist. It is amazing what you can rationalize if you have access to information!

At a less violent level, it is the position of the householder who has watched the price of milk soar by 33 percent over the past year,

or the price of *daal* leap by 50 percent, and listens to economists and ministers gloating about nine percent growth and low inflation while the pay-packet remains the same.

It's the position of all of us with regard to privacy, particularly data privacy. India's data-protection statutes are among the weakest in the world. So are our libel laws. You can be slandered, your most intimate data can be bandied about by a host of insurance companies, your phone can ring incessantly with obtrusive calls from telemarketers, and you have little or no recourse. This is of course an extension of our traditional curiosity in each other's affairs. And I use the word "curiosity" politely. You don't need a Right to Information Act to gossip about your friends, neighbours, colleagues, and relatives. A recent McKinsey study said 34 percent of Indian executives felt privacy and data security issues would impact shareholder value even more than environmental issues.

The Connaught Place "shootout" verdict also took over ten years to arrive. It is interesting how glibly we use the word "shootout" even if the dead men were not armed or fired a single shot.

Former Delhi police commissioner Maxwell Pereira commented after the Connaught Place verdict that "Terrorism changed the whole scenario. Each time there was an encounter killing, I would feel proud of the newfound confidence in the firepower of the Delhi Police. I believed there was a need to send a strong message to terrorists and criminals even if it meant eliminating the miscreant. More so, because of the inability of the criminal justice system to convict and punish offenders."

So here we have a senior law-enforcement officer applauding the cutting down of a human being because the justice system is way

too slow and inefficient. If you use the same logic, those ten Delhi policemen ought to be lined up in front of a firing squad because ten years is too late for justice to be really done.

The Individual Girl

I'd also like to talk a little bit about the rights of the Indian female. Demographers now estimate that by 2020 men will outnumber women by 23 million in India and 26 million in China. One figure I remember was that if girls had been born in the same ratio in Asia as the rest of the world there would have been 163 million more girls and women in Asia today. Just think of that number – 163 million.

What this means is that female infanticide, foeticide, and abortions are depriving huge numbers of girl babies of their most fundamental right – the right to life. Some demographers predict soaring crime and violence rates in countries with an out-of-whack gender ratio. That is something we all need to think about.

The scourge of untouchability that still haunts India is doubly torturous for women. In their book "*Untouchability in Rural India*", Ghanshyam Shah, Harsh Mander and others catalogue the discrimination and violence visited upon *Dalit* women. "In the case of caste-based conflicts, violence often takes the form of targeting *Dalit* women. 'Teaching a lesson' to *Dalit* men involves violating their 'property' – the bodies of their women."

The last National Family Health Survey data also point to the inequity of being born a woman in India, especially if you are poor. Look at nearly any category and you will see what I mean. Twenty-five percent of our poorest women aged 15 to 19 were already mothers or pregnant compared with a national average of 16 percent. More than 49 percent of poor women had experienced some form of spousal violence,

against a national average of 37 percent, which itself is 37 percent too many.

The Shining Beauty of Article 21

Our Constitution is one of the most enlightened and well-drafted charters any nation could hope to possess.

The Preamble, which sets out the principles of justice, liberty and equality, also defines fraternity as "assuring the dignity of the individual and the unity and integrity of the Nation". Note that the individual is placed before the nation.

And then we come to that shining jewel of individual rights, Article 21 of our Constitution. It is explicit in its language: "No person shall be deprived of his life or personal liberty except according to procedure established by law."

Justice P N Bhagwati, who championed public-interest litigation, set forth an important and liberal interpretation of individual liberty in *Maneka Gandhi vs Union of India* in 1978. "Equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarch."

At another place the same judgment says: "The spirit of Man is at the root of Article 21. Absent liberty, other freedoms are frozen." And then immediately adds: "Procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself... procedure must rule out anything arbitrary, freakish or bizarre. What is fundamental is life and liberty. What is procedural is the manner of its exercise. This quality of fairness in the process is emphasised by the strong word 'establish' which means 'settled firmly', not wantonly or whimsically."

But does this really happen? Is the average man or woman given the opportunity by the authorities to seek fair trial, fair treatment, or fair judgment?

This year we celebrated 60 years of independence. The Directive Principles of State Policy set out the state's obligations in admirably clear terms, conferring the right to an honourable livelihood on every Indian, along with the equality of economic opportunity, equality of compensation for men and women, education, a uniform civil code, and so on.

Last month Justice Rajendra Babu, the chairman of the National Human Rights Commission, spoke eloquently about rights and the individual when he said: "We realize that protection and promotion of civil or political rights is not enough as deprivation or disparities in economic, social and cultural areas, which are wide spread, have reduced large numbers of citizens to the margins of human existence."

Justice Babu feels that the trust reposed by India's citizens in the NHRC is reflected in the number of complaints it receives – and these have skyrocketed from 496 in 1993 to 82,233 in 2006. Is it not a crying shame that we have 82,000 violations of human rights in the world's largest democracy?

Statistics in India always beggar the imagination. NHRC statistics show as many as 44,000 children go missing in India every year. At least a quarter of them remain untraced. I am sure we have all heard of beggar factories where kidnapped children are maimed before being put to work by modern-day Fagins. What recourse does an abducted child have to help from a passing policeman? What sort of remedy can a grieving parent seek from the state machinery?

Children may be the most vulnerable among us, but they are certainly not the only ones. In the

Punjab mass cremation case, the NHRC recommended compensation to the next of kin of 1,298 people whose bodies were cremated by the Punjab police. At least 195 of them had been killed and cremated while in the custody of the police.

An anguished Supreme Court, in its order in *D K Basu vs State of West Bengal, 1997*, said: "Custodial death is perhaps one of the worst crimes in a civilized society... The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected... If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become a law unto himself thereby leading to anarchy. No civilized nation can permit that to happen. Does a citizen shed his fundamental right to life the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'."

Look at the figures for our prisons. At the end of 2005 India had a total of 1,312 jails and they were designed to accommodate a quarter of a million prisoners. In actual fact, there were nearly 360,000 prisoners and more than a quarter-million of them were under-trials, which means they may have already served their maximum possible sentence behind bars without ever being tried.

I was hard put to find any significant action taken by the NHRC in Kashmir except the celebrated case of the dead carpenter Abdul Rehman Paddar, who was passed off as a dreaded militant commander by the police. The Jammu and Kashmir Disturbed Areas Act and the Armed Forces (Jammu and

Kashmir) Special Powers Act confer extraordinary and sweeping powers on security personnel to arrest, detain, and even kill any person on mere suspicion that he or she might be up to no good.

The Kashmir act is based on the national Armed Forces Special Powers Act, itself modelled on legislation passed by India's colonial rulers to suppress our independence movement.

Both the acts in force in Kashmir, as well as Sections 45 and 197 of the Criminal Procedure Code expressly state that no public servant, including police or paramilitary and army personnel, can be arrested or criminally prosecuted without the permission of the Government of India. Such permission is almost never granted. Please remember that the CrPC applies to every one of us across the length and breadth of India.

Unlike in the United States or Britain, military courts and their decisions are not subject to appeal in civilian courts in India. The Law Commission in 1999 apparently recommended setting up a civilian Armed Forces Appellate Tribunal but nothing has happened.

So we have clear and egregious examples of arbitrary and brutal action, like the encounter killings of five men suspected of involvement in the massacre of 36 Sikhs in Chittisinghpura in 2000 who were later found to have had no connection to the massacre, or the February 2006 killings of four boys playing cricket, or the July 2005 killing of three boys who had sneaked out at night to smoke a cigarette.

Human rights groups in Kashmir say more than 10,000 people have disappeared since 1989. Authorities concede that there might be up to 4,000 missing people.

All this is not to say that the government is wholly devoid of good intentions. The Model Police

Act of 2006 is now grinding its way through the nation's legislative process. What few citizens know in our vast nation is that we are still governed by the provisions of the repressive Police Act of 1861! That was just *four years* after the "First War of Independence" in 1857. So it took one hundred and forty-five years for India to begin to recognise that it needed a police Service (as the Bill states), not a police Force, and that it needed an *Indian* police service. Many experts have combed through the 2006 Bill and found that it does not improve much at all on the original Act – and that is how the police have looked upon the ordinary citizen, as guilty until proven innocent. But who is going to help them prove their innocence?

The Wages of Globalisation

Globalisation has brought tremendous benefits to billions of people. It has freed trade, made information easily accessible, and encouraged the freedom of thought.

But globalisation has also meant the strengthening of authoritarian and repressive regimes at the cost of the individual's rights and the individual's privacy.

It may sound like an exaggeration but it seems that everything you speak or read or write can now be "Googled". And authorities want more and more information from you. This is also a clear loss of individual liberty. How many times over the past year have you had to fill out forms – either paper forms or electronic forms – with a host of personal details, including your parents' names, your religion, your income bracket, your credit card number, your address or your telephone number?

Yesterday I read that because of a clerical mistake, the private details of 25 million people in Britain have been lost – the computer disks may have fallen into the wrong hands. This data

included the names, ages and gender of hundreds of thousands of children.

So globalisation has its risks, and many people, while welcoming the access to information, are also uneasy, although they cannot articulate their fear about the abridgement of individual rights in a globalised world. A globalised world also means weaker nation-states, and weaker nation-states mean weaker enforcement of citizens' rights.

Globalisation affects the economy, politics, social structures, our perceptions of time and space and above all whether there is an immutable constitutional order. Globalisation would only widen the gap between the haves and the have-nots.

The effects of globalisation are only just beginning to be understood by a dazzled public. It is like offering a hundred television channels to a family brought up on *Doordarshan* fare. Individual liberty is not just freedom of expression – it is freedom of movement, of religion, and of economic opportunity.

Do we really recognise, and appreciate, the forces that are at work in our elections for example? It is commendable that India has successfully held 14 national elections, and that we are a beacon of democracy in a neighbourhood of crisis. Look around you at Afghanistan, Pakistan, Nepal, Bangladesh and Sri Lanka. But have our elections really given us the governments we deserve? Our first-past-the-post system of winning an election can bring in a government elected by a minority of the electorate. There is no doubt that six of our 14 elections have resulted in a change in governing party or coalition. But if you look at the extent to which elections can take place under duress, or be downright rigged as in the case of Jammu and Kashmir, then you

have to question whether ours is truly a representative democracy.

I understand – and I am not an expert – that an individual citizen has every right to petition Parliament directly if he or she is in dire trouble. How often has this happened in the 55 years since our first general election? If we did not have an independent judiciary, how many more people would have suffered injustice?

This is not to say that the cloud is all dark. There is a silver lining and that is the Right to Information Act. In the two years that the RTI Act has been in force, there have been 11,000 requests, and the RTI Commission has resolved 7,500 of them. More and more poor and marginalised people in different parts of India are becoming aware of RTI and of its inherent power – for instance, to obtain data on what the minimum wage ought to be, whether money allocated for a rural project was indeed spent, and so on. RTI will force major changes as time passes – chiefly, it will practically render the Official Secrets Act redundant and useless, and force every government department, ministry and subsidiary to digitise its records so that they are accessible by the average citizen.

I said the cloud is not all dark, but dark it certainly is. Despite years of grandiose promises and noble intentions, our politicians cannot find it in themselves to enact the *Lok Pal* bill which would give us a national ombudsman. The *Lok Ayukta* mechanism is working in some states, but the road to improving our dismal ranking on the global corruption index of Transparency International is long, rocky, and arduous.

To go back to globalisation, let it not be said that business does not have a conscience. The McKinsey study I referred to earlier asked senior executives from around the world how large corporations can harm the public

good. At the top of the list, 65 percent identified “polluting and damaging the environment”, 39 percent put their finger on “putting profits ahead of people’s well-being” and 33 percent admitted to “exerting improper influence on governments”.

“I’m here to fight for truth, and justice, and the American way”.

Recently, when I watched the movie *Superman* again and heard Christopher Reeve utter this classic line, it did not sound at all ridiculous, since America has really decided to be the “inspector-general” of the world.

Globalisation inevitably refers us to the status of the individual in other countries. Is that any better? Is the global citizen or the global villager any more empowered, more secure, more prosperous and happier than before the iPod was invented or before you could eat Kentucky Fried Chicken in Karol Bagh, or sip Starbucks coffee in Beijing’s Forbidden City?

The United States, where so many of the world’s great ideas take birth, has of course invented the term globalisation. Sadly, it has also in the post-September 11 world invented unique ways to seek and incarcerate, or even kill or destroy the individual human being, wherever he or she may be living or hiding. The U S is currently the world’s only super power, and it ought to bear the greatest responsibility to protect human rights. Unfortunately, this is not the case.

The first time I read the phrase “extraordinary rendition” I thought it described a great performance by an opera singer. You can count on the Americans to find imaginative uses for the English language. “War on Terror” is a tautology. War itself is terrifying, and terror?

The U S also resorts to proxy detention, which means detaining suspected terrorists in foreign prisons at the behest of the United States.

In June this year six human rights organisations jointly announced the names of 39 individuals who had been held in secret prisons by the U.S, and whose current whereabouts are not known. Their report says the 39 were captured in countries like Iran, Iraq, Pakistan, Somalia and Sudan and then renditioned.

Ironically, the United States is a signatory to the most high-sounding international agreements on behaving in a humane manner. For example, the International Convention for the Protection of All Persons from Enforced Disappearance, which defines enforced disappearance as the arrest, detention, abduction or any other form of deprivation of liberty by the State or its agents.

The U S is also a signatory to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. But that does not stop US authorities from holding a large number of suspected terrorists at Guantánamo Bay, and in the secret CIA prisons that George W. Bush only pretended to shut down earlier this year. And it does not stop the Americans from using interrogation techniques that are torture by another name, for instance, the inflicting of intolerable pain or injury without causing actual death, or waterboarding.

The US is not alone in re-inventing the definition of torture. Torture is common in India too. As for the narrowing of individual rights, you could range across the globe and come up with dozens of examples. Singapore, where you are now actively encouraged to spy on your neighbour in case he or she is or is harbouring a terrorist suspect. China, where every new showcase of prosperity ranging from Beijing’s preparations for next year’s Olympics to the Three Gorges dam is built on human displacement, ecological damage,

and repression. And Russia, where former world chess champion Garry Kasparov is fighting a lone, and increasingly dangerous, political battle against Putin and his oil-fuelled dictatorship. Or Myanmar, where the world has decided to let the junta have its cruel way.

Our Jewelled Earth

I am sure many of you saw a photograph in the newspapers the other day of Planet Earth. Shot by a Japanese satellite in delayed sequence, Earth looks like a beautiful blue-and-white jewel, shining bright against the inky blackness of space.

Every idea is born in the mind of one human being, one individual, and that individual is but one infinitesimal and fragile speck on that jewelled Earth. Without the genius and the creativity of the individual we will not evolve. We will not set our compasses for a brighter future. We will not live individually happy and satisfying and achieving lives.

So is there hope?

Capitalism and democracy together are a very potent and rich combination. But it has to be true democracy, and it has to be capitalism of equal opportunity.

Perhaps the most pellucid illustration of what I am saying comes from Howard Roark’s trial speech in Ayn Rand’s “The Fountainhead”:

“Throughout the centuries there were men who took first steps down new roads armed with nothing but their own vision. Their goals differed, but they all had this in common: that the step was first, the road new, the vision un-borrowed, and the response they received – hatred. The great creators – the thinkers, the artists, the scientists, the inventors – stood alone against the men of their time.”

So, dear friends, let us make sure the response they get is not hatred. Let us make sure they do not stand alone.

Thank you. ☐

Third PUCL V M Tarkunde Memorial Lecture

(The 3rd PUCL V M Tarkunde Memorial Lecture was held on November 23, 2007 at the Hindi Bhawan, Delhi. The Lecture was delivered by Shri Chaitanya Kalbag, Former Editor-in-Chief of the Hindustan Times. Prof Amrik Singh presided over the Lecture.

Starting the proceedings, the General Secretary, Y P Chhibbar, said that the V M Tarkunde Memorial Lecture was held every year on November 23. This is the date on which the Constitution of the PUCL was adopted in a Conference at Delhi in 1980 under the Presidentship of Justice Tarkunde. Dr Chhibbar also said a few words about Prof Amrik Singh (see elsewhere).

Dr George Mathew, President of the Delhi State PUCL, said a few words about Justice Tarkunde (see elsewhere).

Dr Pushkar Raj introduced Chaitanya Kalbag and invited him to deliver the Lecture (see the Lecture elsewhere).

Prof Amrik Singh, in his presidential remarks after the Lecture, said that the PUCL was a movement which needed more strength. Referring to the disappointment Dr Chhibbar had expressed to him before the Lecture that the PUCL had not been able to identify the next General Secretary, he said Dr Chhibbar had been running the national office since 1980 and therefore it was but natural for him

to think about finding some new person and new blood to take over from him. He was confident, Dr Amrik Singh said, that the problem will be solved. Chaitanya Kalbag, Dr Amrik Singh continued, was an example of new blood in the Human Rights movement. He praised the Lecture of Chaitanya Kalbag saying that such a global perspective introduced new dimensions in the work of the PUCL. His Lecture was like a whiff of fresh air in the movement.

*Mahipal Singh, General Secretary of Delhi State PUCL, thanked Chaitanya Kalbag, Prof Amrik Singh, the audience, the donors of the PUCL, and all others who had helped in organisation of the Lecture – **General Secretary***

V M Tarkunde

Vithal Mahadeo Tarkunde was born on July 3, 1909 at Saswad in Pune. Second son, amongst four brothers and sisters, he was educated at Pune. He obtained his B A Agriculture degree in 1929. He proceeded to England and attended the Lincoln's Inn and qualified as a Barrister. He returned to India in 1932. In 1934 he joined the Congress and the Congress Socialist Party.

Barrister Tarkunde started his practice in Pune. As a leftist Congress man, he used to devote 15 days in a month to work amongst the peasants. In the meantime, he came in touch with the writings of M N Roy, who was in jail at the time. M N Roy was released in 1936 and joined the Congress along with his band of workers. Tarkunde became a member of the League of Radical Congressmen inside the Congress. The League of Radical Congressmen became an independent party in 1940 under the name of the Radical Democratic Party.

In 1940 Tarkunde married Chitra, who was studying for MA in Pune. The RDP was dissolved in 1948. Tarkunde recommenced his legal practice in Bombay High Court in 1948 and was elevated to the Bench in 1957.

Being a Judge of the High Court, Judicial discipline required that Tarkunde did not participate in any movements or express views on controversial issues. He, therefore, retired pre-maturely on September 15, 1969 and shifted to Delhi with his wife and daughter and started practicing in the Supreme Court. His life in Delhi and his association with JP and his movements is known to everybody. He expired on March 22, 2004.

The PUCL decided to commemorate his work in the shape of a Memorial Lecture. The PUCL National Council decided that the Lecture should be held every year on November 23, the date on which the Constitution of the PUCL was adopted in 1980 – **General Secretary**

Prof Amrik Singh

Former Vice-Chancellor of Punjabi University, Patiala, Dr Amrik Singh (born 1920) has been involved in education throughout his life. He is known for his writings on education, particularly higher education. Dr. Singh was President of the International Congress of University of Adult Education for 10 years. In 1993 he was honoured by Punjabi Akademi, Delhi for his creative work. He was the Chairman of a Committee appointed by the Government of Andhra Pradesh to review the working and programmes of the various universities in that state. He has been one of the Vice-President of the PUCL for a long time.

The University Grants Commission awarded him the Swami Pranavananda Saraswati Award in Education 2004 for his books and writings on Key Issues in Universities and Colleges in a Global Perspective – **General Secretary** □

Press Release:

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 8 police officials u/s 302, 201, and 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, Sri Brijesh Tiwari (so-called Encounter specialist of Chhattisgarh), and Sri 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 Sri Brijesh Tiwari and Sri 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, Mr. S K P Kalloori, now famous for Fake Encounters, and notorious for wrongfully confining and manhandling Mr. 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 bolega, voh naxalwadi hai. Yeh us par nirbhar karta hai ko saboot de ki voh naxalwadi nahin hai*" (All those who salute with *Laal 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 Mr. Kalloori and Mr. 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 Mr. Kalloori and Mr. 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 were 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*, Sri 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 Sri 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. Sri 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, Raipur, 26th November, 2007 □

Binayak Sen's Bail Rejected:

Rejection is Unjust, Disappointment in Human Rights Circles

The People's Union for Civil Liberties (PUCL) Chhattisgarh is sadly disappointed with the Order of the Hon'ble Supreme Court of India, which today rejected the Bail Application of Dr. Binayak Sen, General Secretary, Chhattisgarh PUCL, and Vice-President, National PUCL.

Millions of patriotic citizens of Chhattisgarh, and hundreds and thousands of social and human rights activists all over the country were looking towards the Supreme Court for justice, which has not been done. The PUCL considers Bail as a right of an accused, rejection is an exception, as has already been spelt out in various historic and landmark judgments of the apex court of the country. By restraining an accused in the prison who is to be considered innocent till proved guilty by a court of law, is like denying him freedom to defend himself through fair and free methods available to

an accused released on bail. Thus, it also amounts to discrimination over against others who are out on bail. Dr. Binayak Sen almost all conditions laid down by the apex court in the matter of Bail. Thus, it is not only disappointing but also strange that the Supreme Court did not consider this to be a fit case of granting bail.

Chhattisgarh PUCL has issued this statement today while observing the Human Rights Day in Raipur which has also been declared this year to be observed in defence of the Defenders of Human Rights. Dr. Binayak Sen falls under this category of Defenders of Human Rights.

The PUCL is contemplating taking further legal action after consulting legal luminaries in the PUCL, and also carrying out a concerted campaign in every nook and corner of Chhattisgarh demanding the repeal of the Chhattisgarh Special Public Security Act, 2005, and release of all citizens detained under this Black

Law, including Dr. Binayak Sen. If need be, it would give a call to the peace loving and patriotic citizens of Chhattisgarh to go to Delhi to demonstrate and demand justice in this case.

The CG-PUCL has raised the relevant question as to why was the State Government hiding behind the Black Laws, and that if the State Government had any evidence against Dr. Binayak Sen, why was it not taking recourse to legal action against the normal laws of the land like the Criminal Procedure Code and the IPC, etc. – **Rajendra K Sail**, President, Raipur, 10th December, 2007 □

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– **General Secretary**

Letter:

Supreme Court Order on Binayak Sen's Bail Petition

Dear Friends,
Greetings from CG-PUCL!
Many of you may have been eager to know as to what the Supreme Court Order is in the Bail Petition of Dr. Binayak Sen. We are attaching the order herewith. I was really surprised to see that it is one line order. Only 5 words from the Apex Court, on a matter which has shaken the conscience of the nation - as being the most illegal and un-democratic detention of a human rights activist. The All India Convention on Suppression of Democratic Rights in Chhattisgarh held on 8th, 9th & 10th of December, 2007 at Raipur adopted the following resolution on Dr. Binayak Sen's continued detention: "That we strongly condemn the act of the State Government in vindictively framing of Dr. Binayak Sen, General Secretary of the Chhattisgarh PUCL in a false and politically motivated case under the Chhattisgarh Special Public Security Act 2005, and the UAPA (1967) 2004, only because he dared to expose the human rights

violations by the State police, paramilitary and Salwa Judum. We are gravely concerned and distressed by his continued detention. It is indeed ironical that even today, which has been declared "day of the defender", this much-loved doctor, committed social activist and courageous human rights defender remains behind the bars due to the mechanizations of the state machinery which has demonstrated utter disregard for the human rights and the rule of law. Such attacks on known human rights activists are designed to curb and curtail the right to dissent and democracy, and carry out the globalization agenda in the State that threatens the right to life and liberty of the citizens. We also condemn the harassment of all other human rights and social activists, lawyers and journalists such as foisting false cases against lawyers like Amarnath Pandey, Indradev Nag and DP Yadav in Ambikapur; human rights activist Subhash Mohapatra of FFDA, Raipur;

Gandhian social worker Himanshu Kumar, Dantewara; CPI activist Kamal Kumar Gajbhiye and Manish Kunjam; or environmental activist Jayant Bohidar. "We will soon share with you our future strategy and action plan for the release of Dr. Binayak Sen. Already, almost 14 People's Organisations, political parties and Social Action Groups are observing the SHAHEED VEER NARAIN SINGH DIWAS on 19th December, 2007 at Raipur, the capital city of Chhattisgarh. It may be re-called that *Shaheed* Veer Narain Singh was a tribal peasant who fought the British Empire, and was hanged to death by the British Government on this day in 1857, exactly 150 years ago of the *Gaddar* Movement. Illegal and un-democratic detention of Dr. Binayak Sen under the Black Laws by the Chhattisgarh Government would be one of the major issues and demands during the *Shaheed Diwas*. Looking forward to your continued support and solidarity,
Yours sincerely, **Rajendra K Sail**,
President Chhattisgarh PUCL □

Janhastakshep Meeting:

A public meeting organised by *Janhastakshep "Nandigram and Erasama (POSCO) State Policy and Emerging Patterns of Oppression Against People"* was held on Dec 17.2007 at Gandhi Peace Foundation, ITO, a large number of intellectuals, activists of revolutionary movements and concerned people participated in the meeting. Speakers who addressed the gathering included Dr. Manoranjan Mohanty (ex-Prof. of Political Science, DU), Shri K.B. Saxena (ex-Secretary, Government of India), Mr. Sumit Chakraborty, editor *Mainstream* and Professor Imtiaz Ahmed, (JNU Dept of Social Sciences).

Nandigram and Erasama

For the last two and a half years the *Posco Pratirodh Sangram Samiti* a coalition of various groups and political parties have been successfully opposing POSCO's steel plant in Jagatsinhpur. In this fight, on the one side stand the struggling people of the area who want to protect their sustainable 'Beetle leaf- Paddy farming - Fishing economy' for themselves and their future generations and on the other side stand the combined forces including POSCO, CM Naveen Pattnaik, his colleagues such as the local pro POSCO agitator, BJD MLA Damodar Rout and senior bureaucrats, all of whom have obviously received

hundreds of crores of rupees as kickbacks and finally the goons employed by all these people. The Police and the administration instead of protecting the agitating people is preparing itself to work as a rear guard action force in the interest of POSCO and all the above mentioned anti-people forces.

Professor Mohanty talked about how the massive uprooting of population from their lands and livelihoods for establishment of large sized 'industries', infrastructure projects and SEZs has now become a country-wide phenomenon. The people who are struggling against such policies and the people in general have

begun to understand the implications of these pro-imperialist industrial and SEZ policies. Massive unemployment, fall in food grain production, exhausting of country's mineral resources, plundering of forest, water and other natural resources, handing over of the reigns of the Indian economy to the MNCs and their Indian agents, massive destitution of Indians and the spectre of slavery are some of the most drastic consequences of the policies of the Government. Rightly, therefore, the affected people are resisting such projects and have launched powerful movements against such mindless, anti-people 'industrialisation' and SEZs.

Mr Sumit Chakraborty talked about the political response by the BJD government to the anti POSCO protest also highlights the importance of Nandigram, where, after failing to forcibly acquiring land in the recent past through its armed forces, the state is now using goons, instead of party cadre which the CPI(M) had used at Nandigram, to suppress public dissent which is clearly another active step towards the dangerous path of fascism. He also talked about the manner in which ruling class parties are openly subverting all norms of justice and existing constitutional provisions.

Professor Bhattacharya talked about the manner in which certain parts of the country are quickly turning into "foreign territories" and how the police in active connivance with hired goons prevents the press and other civil

liberties groups from entering. He narrated his recent personal experience, when he and two others were stopped from entering the anti POSCO agitation area. The creation of such enclaves where Indian citizens cannot move freely are a clear indication of the dangerous times ahead.

Prof Imtiaz Ahmed talked about the failure of the Indian state in not being able to provide even the basic necessities of drinking water, education and job to the large part of the country and how they have subverted and thrown away the dreams of the Indian people during Independence.

At the meeting a resolution was read out and unanimously accepted, that the state's use of terror against the people to crush any resistance which has now become the norm must be halted. An appeal was made to all progressive democratic forces to stop the Navin Patnaik government by rallying behind the anti - POSCO struggles of the peasantry and fisher folk and give them their utmost support. This appeal was to support the anti-POSCO struggle, lest the state combined with the forces of imperialism breaks this critical point of democratic protest and further unleash their horrors of anti - people development. The resolution also condemned the brutality of the Orissa government in suppressing people's democratic right to dissent.

The members of the meeting put forth these Demands:

(1) The Government should immediately withdraw the police force from the area.

(2) The BJD and POSCO should withdraw its Goons from the area

(3) Scrap the POSCO project and repeal the SEZ Act and Land Acquisition Act

– **Jan Hastakshep Campaign Against Fascist Designs** □

Bihar HR Defender Murdered - 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 □

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 □

Barak Human Rights Protection Committee Statement:

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 300 thousand injured of whom the condition of 10 is critical and 45 persons simply disappeared when the demonstrators belonging to *Adibasi*, 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 to 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 *Adibasis*.

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** (E-mail from Surendra Mohan) □

Letter:

Sir

I was very happy to read a report in *The Afternoon DC* (19th June 2007) that an NGO named *Janhit Manch* is planning to file a

Protect Environment and Life

PIL in the Bombay High Court for prohibiting immersion of Ganesh Idols in the sea during the Ganesh *Chaturthi*, in order to preserve water resources. There can be

little doubt that immersion of the idols made of Plaster of Paris, painted with toxic paints in the sea, rivers or water tanks and even wells from which humans draw

water for drinking, pollute the water resources on a large scale leading to death of marine life. Should we not find out some safe alternatives that are clean and eco-friendly?

The Hindus settled in America who install Ganesh Idols cannot immerse them in seas or rivers according to the law of the land. Therefore they immerse them in large plastic vessels filled with water. In India Jayantrao Salgaonkar, an authority on religious practices advised the Ganesh devotees to similarly immerse the idols in large vessels filled with water or on land. Accordingly the family of one Nilkanth Shastri of Andheri followed the advice of Salgaonkar and wrote a letter to that effect in the *Marathi Loksatta* of 5-8-2006 and *Maharashtra Times* of 30-6-2006. In fact as I retired from legal practice since 2004 I have been pleading for such a safe disposal

of idols by writing letters to the Press.

There is also another safe method followed by my neighbour. He has got a silver idol of Ganesh which he installs and worships during every Ganesh *Chaturthi*. According to Hindu beliefs, divinity enters the idol after its *Prathisthapan* and leaves the idols after it is moved from its original position at the end of the ceremonies. There is no compulsion to install idols made of clay. In fact in many Ganesh temples idols are made of stone or metal.

The question remains about the huge idols of the height of about 20 feet installed by *Sarvajanik Mandals*. Does a larger idol confer more blessings than a smaller one? Our people should exercise their wisdom and save themselves and humanity from life threatening pollution of water, air and sound.

Ganesh *Chaturthi* is followed by Navratri when large idols of Durga are installed particularly in West Bengal and at the end of the ceremonies they are immersed in rivers like Hooghly, the life line of West Bengal.

The idol makers will not be out of a job if the clay idols are immersed in large vessels at home or elsewhere. – **M A Rane**, Advocate, Mumbai □

THE WAGES OF IMPUNITY

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Letter:

The Editor
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

"A Consummate Demagogue"

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 □

Letter:

Resolution of the State Council of Bihar State PUCL

The Chief Minister,
Chhattisgarh, Raipur.

Subject: Resolution of the State Council of Bihar State People's Union for Civil Liberties for withdrawal of cases and release of Dr Binayak Sen.

Sir,

We are reproducing below the resolution of the State Council of Bihar State PUCL passed at its meeting held on 3-11-2007, which is self explanatory:

The State Council of Bihar People's Union for Civil Liberties (PUCL) strongly condemns the

institution of false cases and arrest of Dr Binayak Sen, Vice President, National PUCL and a well-known human rights activist, and demand his immediate release and withdrawal of the cases against him. It is well-known that the doors of defenders of human rights have

to be kept open for any person whose human rights are under a threat or have been attacked, and it is the duty of every human rights activist to come to his defence regardless of his political or other activities. To construe it as support to the victim's ideology, goal or activity can either be uniformed and misconceived or motivated. In view of this fact, no human rights activist should be arrested without very substantial proof of his involvement in a criminal activity. The flimsy ground on which Dr Sen has been arrested leads to the inescapable conclusion that he is a victim of vendetta of the Chhattisgarh Government for his strong and fully justified opposition to the killings in fake encounters and the notorious *Salwa Judum*. It is also a naked attempt to terrorise the other human rights activists and to stifle the opposition to the continuing repression of the downtrodden in Chhattisgarh.

We hope you would understand and appreciate the position on stated issue in the resolution and order the release of Dr Sen and withdrawal of cases against him. Your's faithfully,
Nageshwar Prasad, General Secretary, PUCL Bihar, November 13, 2007 □

(from page 6...) dismissal of the Ruling Party and giving a chance another eligible party, if available, a chance to govern. It is not about President's Rule. We have long history of imposition of President's Rule very often for flimsy reasons or no reason excepting the wish of the Ruling Party at the Centre. We have also the Experience of the *Janata* Party imposing the President's Rule. We are not enamored of securing the dismissal of the Marxist Government. Dismissal of Government either in West Bengal and Gujarat is likely to result in the change in the Government in the elections held after dismissal. The politics of dislodging the Ruling

Party never bought about good governance Every Party is so vulgarized by the election politics and the power play it has spawned they can be as bad and brutal as the other. Every one of them has become the Tweedledum of the other. In this state of political degeneration the Apex Court recognized that the right to vote is part of free speech and expression and that was the period you also discovered that the emerged as representatives of the people. It becomes therefore necessary to free the people from the influence of the market economics. One thought that Marxists would have a vision which other parties lack. They have not left behind the Stalinist legacy. The protest should not be a partisan. It should be Massive and since all the politicians in governance and representative institutions have sworn allegiance to the Constitution the common minimum guarantee should be the Constitutional Minimum Programme contained in the Preamble, the Freedoms and the Equality clauses in the Constitution and for he enforcement of the mandatory obligation in the Directives. Laski told his wife Frida "every time an intellectual has the chance to speak out against injustice, and yet remains silent, he contributes to the moral paralysis and intellectual barrenness that grips the affluent world." It is always the silent sheep that has been destructive of democracy and good governance – 21 November 2007 □

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PEOPLE'S UNION FOR CIVIL LIBERTIES

Founder: J.P. NARAYAN
President: K.G. KANNABIRAN
General Secretary: Y.P. CHHIBBAR
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