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Justice Delayed Need Not Always Be Justice Denied

Mahi Pal Singh

Within about a month there have been two police encounters in Uttar Pradesh, the earlier one in NOIDA in which two-three persons were killed, and the latest one in Ghaziabad in which two alleged antisocial persons were shot dead. In the former case, the police fired about one hundred rounds, but only ten empty covers were found on the spot where the encounter allegedly took place. The encounter took place at a lonely place. In the latter case, which too took place at a lonely place, two of the four alleged anti-socials were shot dead and two disappeared, nobody knows where. Not a single policeman was even remotely injured in the alleged exchange of fire that is said to have taken place in both the cases. And the alleged act of looting the passengers of a van on a busy highway by the four anti-socials in the latter case was not noticed by a single soul. And when the irate neighbours of the two killed young men set a police post on fire, damaged many vehicles and blocked a road alleging that the two had been picked from a market earlier in the day by the police, the authorities put an inspector and five constables under suspension and booked them on charges of murder. The mob fury subsided seeing that justice had begun to appear in sight, at least for the time being.

Hundreds of encounter deaths take place in the country every year and over the years this number has multiplied into thousands. Ask any layman and he will tell you that not more than a few hundred of these cases might have been those of actual encounters. Yet no policeman gets booked on charges of murder even after depriving others of their basic human right of life. Since no case is registered against any of them, no investigation takes place and no question of ever being punished by the court arises even in cases of fake encounters. The immunity from being booked under the law proves encouraging enough to further trample the law under feet. Out of turn promotions and bestowal of awards provide added incentives to become an outlaw to kill in the name of maintenance of law and order or in the name of self-defence. Innocent victims also tend to lose faith in law. This only tends to pave the way for a lawless society. But mere registration of an FIR against the policemen in such cases, as happened in the above-mentioned case, brings back faith in law. Hope of securing justice soothes afflicted hearts even though the dead ones cannot return by punishing the murderers and nothing can compensate for the loss of near and dear ones.

In a recent judgement dated 6th February, 2009 a five judge bench of the Andhra Pradesh High Court consisting of Justice Goda Raghuram, Justice V.V.S. Rao, Justice R. Subhash Reddy, Justice

Ramesh Ranghanathan and Justice G. Bhavani Prasad in one such case, on Writ Petition No. 15419 of 2006 (and others) against encounter killings of eight Maoist Naxalites, including five women, on 23.7.2006 at Nallamala forest, Prakasam District of Andhra Pradesh, filed by Andhra Pradesh Civil Liberties Committee and others, including People's Union for Civil Liberties, ruled that the first information relating to the circumstances leading to every encounter death will be recorded and registered as FIR as 'on information conveyed of death(s) in a police encounter recording and registering of such information is a non-derogable executive obligation u/s 154(1) Cr. P.C., 'a process that structurally ensures judicial oversight, control and supervision, of the integrity of the investigation process', 'treating the information as one relating to commission of the cognisable offence of culpable homicide amounting to murder,' and that in such cases 'an investigation mandated by Section 157 Cr.P.C. must follow,' 'and if in such transaction involving exchange of fire between police officer(s) and civilian(s) there be death(s) of member(s) of law enforcement as well, separate FIRs must be registered - one in respect of death(s) of police personnel and the other relating to the death(s) of civilian(s).'

The Court also observed: "Life and liberty are basic human rights ensured to every person in every civilized society. Article 21 of the Constitution mandates that *No person shall be deprived of life or personal liberty except according to procedure established by law*. This constitutional injunction is to all persons accused of even a heinous or the gravest offence must under the law be charged and convicted by a judicial authority after a due process and infliction of the sanction of deprivation of liberty or extinction of life (as the case may be) must be administered only on the basis of a judicial order.

"As the State does not claim nor suggest any special or extraordinary legislative authority, for employment

of lethal force against a Maoist/ extremist/naxalite and adopts the position that the deaths in police encounters are invariably as a consequence of the exercise of the right of private defense by police officers, it is mandatory that the governance process, including the recording, investigation and where warranted the charge and trial process must conform to the injunctions of Article 21, and the requirements of Articles 14 and 19 as well," (*Francis Coralie Mu/lin v. Union Territory Delhi, Administrator* (1981) 1 SCC 608), and countering the argument of lowering of the morale of the police in case of putting legal restrictions to regulate their functioning, the Court put a lid over the whole matter by observing that: "In any event the inexorable mandate of law cannot be sacrificed at the altar of expediency or to placate executive phobia of the legal processes." This would have given a hope of securing justice to the victims' families in future and provided solace to the 6000 families of those killed in fake encounters over the last four decades in Andhra Pradesh alone.

However, this hope was to be belied and shattered soon. On March 4, 2009 came a verdict of a three-judge Bench of Chief Justice KG. Balakrishnan, Justice P. Sathasivam and Justice J.M. Panchal of the Supreme Court of India, on a Special Leave Petition (SLP) filed by the A.P. Police Officers Association, represented by senior counsel Harish Salve, staying the judgement of the A.P High Court. Though this interim stay cannot be construed as denial of justice, yet nobody can deny that it will further delay the process and the hope of securing justice to the victims' families. The judgement would also have acted as a deterrent for the police trigger happy policemen and would have stopped them from indulging in killings through fake encounters for fear of being found guilty of murder after being booked under the relevant provisions of the Indian Penal Co'de, and punished.

But, at the same time, it was also necessary that the matter got finally settled once and for all. The apex Court is already seized of the matter.

Earlier PUCL had filed a writ petition in the Bombay High Court alleging that a large number of people had been killed in fake encounters in Maharashtra. The High Court dismissed the petition but issued guidelines to the police to be followed mandatorily in cases of police encounters. PUCL Bombay, represented by senior counsel and former President, PUCL-Delhi, Prashant Bhushan, filed a petition in the Supreme Court against the verdict of the High Court. Sh. Prashant Bhushan had suggested several guidelines including no out of turn promotion or award to the officers for their role in an encounter, entering of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offences in the case diary, and handing over of cases against the encounter party for investigation to some independent investigating agency such as the State CBCID, instead of the police officers belonging to the same police station. Expressing serious concern over the increasing incidents of encounter deaths in the country, the Supreme Court Bench consisting of Justice Dalveer Bhandari and Justice H.S. Bedi said that it proposed to frame guidelines to be followed by all the States and Union Territories whenever encounter deaths take place. That was in November 2008 only. The National-Human Rights Commission had also suggested guidelines earlier, but they mostly remained on paper unimplemented by various State governments. Since the matter has come before the Supreme Court of India, which is the interpreter and custodian of the fundamental rights of the people, the matter will get resolved once and for all and the judgement of the apex court will become applicable to the whole country. Let us hope that justice has only got delayed through this inevitable exercise of writs and appeals, but it will not be denied to the people of the country. The right to equality before law and the rule of law will equally apply to the civilians and the uniformed personnel of the government.

Policing the Police

Andhra Pradesh High Court Judgement on Encounters An AP High Court Ruling will Force the Men in Uniform to be Accountable

Suresh Kumar

(In its judgment dated 6th February, 2009 on Writ Petition Nos. 15419 of 2006, 26358 of 1999, 7906 of 2000, 14475 of 2002, 440 of 2003 and 857 of 2008 against encounter deaths, filed by Andhra Pradesh Civil Liberties Committee and others, a five judge bench of the Andhra Pradesh High Court consisting of Justice Goda Raghuram, Justice V. V. S. Rao, Justice R. Subhash Reddy, Justice Ramesh Ranganathan and Justice G. Bhavani Prasad ruled that the first information relating to the circumstances leading to every encounter death will be recorded and registered as FIR. D. Suresh Kumar had appeared in the case to assist Bojja Tarakam, Senior Counsel, who had appeared on behalf of APCLC. K.G. Kannabiran, Sr. Advocate, President, PUCL had also appeared in the case on behalf of People's Union for Civil Liberties. An article giving the details of the case, which appeared in the February 21 2009

Over the last four decades, the Andhra Pradesh police have killed 6,000 people in fake encounters. Some 2,000 were killed in just the last decade. Yet, no policeman was prosecuted. The reason: the police never book the policemen involved in the encounter. Every time an inquiry by an executive magistrate accepted the police version that the police returned fire after being shot at. Case closed.

Not any more. In a historic judgement on February 6, on a petition filed by the Andhra Pradesh Civil Liberties Committee (APCLC), the Andhra Pradesh High Court ruled that the police must file a First Information Report (FIR) every time a death occurs at their hands, and bring the case before a judge. The court said the local police officer's report would only be an "opinion" and not a conclusive finding. Importantly, the court ruled an executive inquiry won't be the final word on such deaths.

This ruling is a sterling blow in favour of India's human rights movement. It is important to quote the five Justices: G. Raghuram, V.V.S. Rao, R. Subhash Reddy, Ramesh Ranganathan, and G. Bhawani Prasad.

"Where a police officer causes death of a person acting of purporting to act in discharge of official duties in self-defence as the case may be, the first information relating to such circumstances shall be recorded and

registered a FIR, enumerating the relevant provision of the law, and shall be investigated.

"The existence of circumstances bringing the case within any of the exceptions in IPC (Indian Penal Code), including the exercise of the right of private defence, cannot be conclusively determined during investigation. The opinion recorded by investigating officer in the final report to the magistrate is only an opinion. Such opinion shall be considered by the (judicial) magistrate in the context of record of investigation together with the material and evidence collected during the course of the investigation. The (judicial) magistrate shall critically examine the entirety of the evidence collected during investigation to ascertain whether the opinion of the IO (Investigating Officer) is borne out by the record of investigation. The (judicial) magistrate has the discretion to disregard the opinion and take cognisance of the offence.

"A magisterial inquiry (inquest) is neither a substitute nor an alternative to the obligation to record the information as FIR and to conduct investigation into the facts and circumstances of the case, if necessary to take measures for the discovery and arrest of offenders."

APCLC filed the case before the High Court after the police killed eight people, including . Communist Party of India (Maoist) leader Madhav, in a

fake encounter on July 22, 2006, in the Naramalla forests of Prakasam district. Those killed included five women.

The judges, however, said it was "not necessary" to rule on our plea that the policemen who took part in the encounter be named. The Andhra Pradesh police do not mention their names even in the post-encounter reports.

The judgement will change the face of the encounter business in Andhra Pradesh. So far there has been no punishment for the police. In 1996, the National, Human Rights Commission (NHRC) probed six encounter cases brought by the APCLC and ordered that FIRs be registered in five of them. At the time of the NHRC inquiry, police officers would threaten witnesses to discourage them from testifying.

In June 2006, a Cr.P.C. amendment said judicial and not executive magistrates shall probe deaths caused by the police. But police all over India refused to put this into practice. The latest judgement will hopefully trigger a nationwide movement to deter the police from killing innocent people.

* Kumar is a civil rights lawyer with APCLC.

(Vide its order dated 5.3.2009 a three Judge Bench of the Supreme Court comprising of Chief Justice K.G. Balakrishnan,

Justice P. Sathasivam and Justice J.M. Panchal has stayed the above referred Judgement of the A.P. High Court on the SPL filed by

A. P. Police Officer Association represented by senior counsel Harish Salve-Editor).

Satyam **K G Kannabiran**

All of us thought we have arrived. The ignorant thought that computer is everything, the ultimate in resolving human hankering, we were all waiting to download plenty of every conceivable thing. Celebrating the computer, we called a part of the city Hyderabad and in fact it was considered the capital of a capital city. A Contingent of computer qualified youth were hired, employed is no longer the word, at hitherto unknown affluent salaries. The Governments both at the centre and the State reacted with lightning response that was never witnessed ever in worse human tragedies like the 26/11 or the massacre of Sikhs in 1984 or Muslims in 1992 at Mumbai or the massacre in Narendra Modi's Gujarat. This corporate tiger even in its infancy arrogated to itself the competence of giving awards to persons who distinguished themselves in various fields of human excellence. I recollect that my friend Ashgar Ali Engineer was one of the recipients of these right livelihood Awards. Suddenly on the 7 Jan 2009 one read in the papers that Ramalinga Raju resigned his position as chairman of the Board of Directors of Satyam. This was preceded by the Share-holders and investors opposing his proposal for the purchase of Mytas Properties and Mytas Infra for a sum of 1.6 million dollars. The resignation led to the confession of a gigantic swindle of public resource for which there is no provision for any indictable offence under any penal code. The popular reaction to this confession of an unheard of magnitude of white collar dacoity was minimal because the amount ran into several thousand crores and many people even may

not know how many zeroes followed the first digit.

What has gone wrong suddenly with Raju's dream, particularly after he failed in his attempt at corporate cannibalism of foisting the purchase of his sons' enterprises Mytas on the share holders. Why did this dream, created in the public mind, turn into a nightmare? Look at the revelations in the enquiries and investigations going on. He draws twenty and odd crores as salaries per moth in the name of fictitious employees. They have committed forgeries creating fixed deposit receipts running into crores. Governments have granted quite a few thousand acres of lands to Satyam free or at give away prices. The company is a licensed land mafia corporation. He littered a large crop of incorporated companies to mop up the leftover public resources by Satyam. A name given to his enterprise after studying his star and zodiacal signs was Satyam and from day one he seems to have set the course in the opposite direction, with cynical disdain, to the name given to the enterprise.

Did the entrepreneur conduct himself like a cowboy inside a space ship! - to use Kenneth Boulding's figure of speech? Does a capitalist enterprise permit this kind of reckless skulduggery? Has Satyam anything to do with law and did he conform to any law in the formation of his corporate venture? A whole lot of politicians in power and a sizeable section of bureaucrats who are entrusted with Company Law and other relevant laws appear to have abetted this gigantic criminal enterprise.

People belonging to the middle

class, who are new to this corporate culture should get to know the economics of the capitalist enterprise as also the genetic disorder of the system. The freedom these enterprises enjoy for the use and abuse of their privileges for carpet bagging with the share holders wealth and financial infrastructure of wealth the shareholding generates, if told, would not have been believed but for Ramalingum Raju confessing to the enormity of his crime! In doing so he demonstrated that he can defy every law and rule in the statute book in the post liberal India and appropriate crores of rupees worth of public resources and yet would not have been detected by our intelligence agency but for the confession. The Penal Code was not yet authored by Macaulay to prosecute Warren Hastings and so he had to be impeached. Or designedly avoided framing an offence for corporate burglary, for that was how the British entered India. Even after Independence Corporate burglars and dacoits are equally beyond the pale of law as Warren Hastings then was. Raju is prosecuted for charges intended to be used for prosecuting a lower division or upper division clerk. Can we say that Raju who is charged for cheating and the clerk who stands indicted for cheating are equal before law for they are new entrants to the acquisition of unearned wealth by share purchase and share speculation? And the failures can only be disastrous and suicidal. They should also get to know a little of

its history as it grew in the Mecca of corporate capitalism- the United States. Capitalism emerged and Marx followed it with his analysis! For the purpose of understanding the way capitalism works we need not go into an excursus of Marxism but just to remind ourselves that it was Marx who emphasized the genetic disorder of capitalism, viz., the trade cycles where you have the phenomenon of repeated enervating fluctuations known as booms and slumps in trading activities reflected by steep fluctuations of steep rise and fall in the prices of commodities in the markets which all of us experience in our daily lives. But this is sharply reflected in the share and stock trading markets known to all of us as the stock exchanges. These affect every one of us though only a negligible few have at all anything to do with the operation of markets and the stock and share markets as well.

We evolved from barter to money economy where money to start with was representative of asset and later evolved into an asset by itself. There was a total de-linking of money from things of real value. The paper currency represented a certain quantity of precious metal held in the vault and this notion got obliterated in course of time and for some time dollar was substituted for gold, and this also disappeared and the world currencies were de-linked from anything of value excepting the shared expectation that they would be exchanged for goods and services. With advent of computers and in the context of electronic transfers between banks money has become a mere abstraction. Similarly the Shares which represented the assets of the company has become an asset in itself and has become autonomous and shares are bought and sold in the market at less or more than the face value of the share without reference to the company that issued the shares and the rights in the share became transferable.

When Rajus of Satyam admitted to their egregious misdemeanors in the companies they were entrusted with the management by their share holders, quite a few thousand of their employees who helped the entrepreneurs mobilize this vast wealth, lost their right to livelihood. Along with Satyam a lot of subsidiaries and ancillaries floundered and the employment in these had a multiplier effect leading to enormous loss of livelihood. Nobody is taking note of this loss of livelihood. The effort is to recover lost wealth. All of them must have felt that their lives are not under their control and that 'a few have imposed' on their lives a burden which their individual or collective effort can never ward off. It is a grim situation for which there is no redress.

Unregulated capitalism gives rise to these very inhuman catastrophic situations by allowing the growth of corporate entities like Satyam sans law and limitation. Growth of capitalism has nothing to do with Adam Smith excepting in the initial stages when it was just a shopkeepers' economy and some sort of a perfect competition in the production and commercial activity prevailed. The theory of perfect competition and the operation of the invisible hands that brought about equilibrium in the operation of the market forces ceased to function long time back. All market operations including retail, even daily consumables have been taken over by big companies driving out the familiar street vendors.

As the Right to carry on business includes Right to carry on multi dimensional corporate business it is irrelevant whether right to property is fundamental or not. Nonetheless in our country courts took the defence of property and tilted at the Parliament in the first instance in Coelacanth case and the second time in Kesavananda. The first was overruled and the second gave us the

theory of basic structure of the Constitution. All forms of protests are banned not by the government but by the Supreme Court, which has an unfailing record of affirming the restraint of liberty as a matter of policy.

But then we commenced our western liberal politics as the political asset of the East India Company chartered by the Monarch of the United Kingdom and the people, our ancestors, were the wealth producing asset of the British Empire, an item in the balance sheet of the empire. It took around three to four centuries to secure share holding rights in governance by a long and sordid struggle and ultimately Independence about six decades back. When we framed our Constitution we ensured that no person shall become a tyrant/dictator, ensured that power is neither usurped, nor a coup engineered by ensuring that we endorse and authorize governance periodically. We never realized that corporations are subject to same failings as governance of societies have been and that its charters should prevent skulduggery and mismanagement of the enormous public resources they come to manage in the course of their careers. We never realized that enormous private wealth comes from entirely the public wealth some manage and mismanage in these corporate sectors.

They run the economy of the country and manage the lives of the people who work for them and produce wealth for them In fact it was Lord Keynes who pointed out that running a casino is no substitute for the development of capital. This game is going on with other people's money. Like money, which came to relieve us of the problems of a barter economy as a medium of exchange, that evolved as a store of value, has come to

assume value-in-itself, shares representing the divided capital of the company, has become autonomous and leads a life of its own and has become property saleable and heritable and its autonomy has converted the share market into a casino where speculations rife on futures and has produced a class of drones.

Only in the second half of the last decade of the twentieth century the courts discovered that right to vote is a form of free speech and it is the only freedom which has a transforming power and therefore by the exercise of this freedom we should enact laws and elect governments that would not either plunder or allow others to plunder, as the Rajus have done. The rich, when they are criminal, they are wantonly so and nothing can stop them. With our mandatory transforming right we should restructure the legal and judicial structure that would promote egalitarian value system as set down by the Constitution. The clerk who is punished for cheating and Rajus of Satyam, who are being prosecuted for cheating, are hardly equals. It is certainly not equality to punish a clerk who cheated a person of a hundred,

or even a thousand rupees and a person or a group of persons who appropriate a few thousand crores of rupees with a similar sentence for cheatig or misappropriation provided for in the penal code. Corporate characters like the Satyam who appropriate community wealth are worse than terrorists. They destroy the right to live of quite a few thousands of families who, like the victims of terror, enter unsuspectingly their employment; like organized criminals appropriate lands occupied by the poor and deprive them of their rightful possession, and rob the value of shares held by the vast middle class by totally diminishing the value of investment and drive quite a few to deprivation and sometimes suicides. The terrorist never intended to kill a- specific person or group. Terror victims are innocent people like those who visited Gokul Chat or the persons who were in the Lumbini Park. The Economic Terrorist kills by sudden infliction of loss of livelihood and deprivation and a slow and miserable death, quite intended as the terrorist act. What is the great distinction between economic terror and political terror?

Nationalise Satyam Rajindar Sachar

The Satyam scandal which has been described by our Prime Minister as a "blot on our corporate image" gets murkier every day. The larger question is; indisputably when a private management has defrauded and cheated the company, is the effort of the government to bail it out by pumping money into it, so as to continue it in private ownership, the correct response, more especially by ignoring the mandate of Article 39 of the constitution which directs that the State shall, in particular, direct its policy towards securing:

(c) that the operation of the economic system does not result in the concentration of wealth and

means of production to the common detriment.

The Government is trying to find alternative private investor to Satyam who would be given favourable terms, including bank facilities to run it. The persistent query being asked by the poor is as to why when Govt. itself is putting forward its prestige and taking all steps to revive Satyam and when it is obvious that many old customers and market reputation is only being somewhat restored, because of the benign backing by the State, the central govt. is hesitating to follow the path of nationalisation which it followed (1974) when private management squandered many

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prosperous Textile Mills by passing Sick Textile Undertaking (Nationalisation Act. 1974). That course may deny the present shareholders the benefit of revival of Satyam. And why not, when private shareholding has brought this calamity on itself by its own default. On the contrary by nationalizing Satyam the State will create confidence in the foreign buyer and suppliers on the prospect of revival and health of Satyam. And take over will not be prohibitive. It can be done by following legally accepted principle of paying compensation to the

existing shareholders on the net worth of Satyam which in accountancy terms means paid up capital plus free reserves. It is no secret that at present the net worth of Satyam is minimal. Though one may fully sympathize with some innocent small shareholding, but then in free enterprise and speculative economy, investors must take bad along with good and cannot ask his private loss to be compensated by public coffer.

By virtue of nationalization every liability (other than the liability specifically accepted by central govt., say moneys/advances paid by genuine buyers and suppliers) will be the liability only of the old company (owner) and shall be enforceable against him i.e. - the properties of Raju's family.

State take over is not revolutionary. It has history of successful precedents in the past. The resulting benefit will be that immediately from take over Satyam will be discharged from any obligation mortgage, and all other encumbrances created by old management with the result that all attachment, injunction or decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn. More important it will also free Satyam's assets from being proceeded against foreign litigation which has been filed against it. But if Satyam is merely revived and then given over to another private investor it will be under obligation for all liability that may be ordered against it by courts or foreign court. Thus the whole object of revival of Satyam will be frustrated.

There is nothing inequitable about such a course. It is obvious that the old Satyam management is totally incapable of running the company on its own and the only manner in which the it can continue to function is because of extensive support (already over 600 crores by the Banks at the instance of Central

Government). Thus a situation has developed where the very rationale for the existence of private management has failed. The much vaunted claim of the private entrepreneur like Satyam that its existence is necessary to raise untapped resources in the market by his initiative and risk bearing capacity for the purposes of rapid and efficient industrialization is sadly found wanting. If the only manner in which Satyam can now be kept above water is by relying on the prestige and full guarantee of the Central Government, there would seem to be no reason whatsoever why the Central Government should not directly take over the company.

Obviously it is not in the public interest that the State should invest large sums of public money in Satyam with a view to bring it back to health and then return it back to the private management. It makes no difference that there will be a new private investor. If in spite of this fraud another private investor is to be trusted, it may only justify Marx's taunt that "the State is the Executive Committee of the bourgeois class". Thus a policy decision of nationalizing Satyam on the pattern of Sick Textile Mills is the only viable alternative, especially when the preamble of our Constitution reminds us that "we the people of India have resolved to constitute India into a - Socialist Republic."

I know the share holders may suffer but then why govt. money should be spent to benefit a few. The smaller shareholders may be compensated later on when the company revives. After all the private shareholder took chance and also participated in the profitability of the company in the past - surely equity is not hurt if now they take the consequences of having ignored the fraudulent activities of the old management of Rajus.

Most surprising aspect is that with all this fraud and melt down in economy, the government is still

running away from nationalizing Satyam. It is a paradox that in this country where nationalization of oil, Banks have shown far better results than private, (i.e. ONGC, nationalized banks, L.I.C.) government should resist it, while USA with its undiluted privatization thinking, is suggesting nationalization of some of the biggest banks (even though for a short time) as the only method of recovery of banking institutions. Thus Paul Krugman, the nobel- laureate in economics in his latest column has accepted the bitter truth, namely, 'And if government' is basically putting up all the money, the government should get ownership in return - and the road to that system run through nationalization (emphasis supplied). "Even the former Federal Reserve Chairman of USA Allan Greenspan, a staunch defender of free market, has had to concede ungrudgingly "It may be necessary to temporarily nationalize some banks in order to facilitate a swift and orderly restructuring."

An average person may justifiably ask that if die hard capitalist USA is advocating nationalization of banks, why is our Central Govt. reluctant regarding Satyam. The query needs an answer.

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- General Secretary

High Court Judgment

(Hafiz Kamaluddin, a teacher, who ran his Madarsa for poor Muslim children at Prem Nagar, Nangloi, Delhi was allegedly killed by police on the night of 23-24 April 2007. The North-West District police alleged that he was a mad man and was killed by a mob after he attacked a rickshaw-walla. Irate residents of the area protested and even set on fire a number of vehicles parked outside the Prem Nagar Police Post. A PUCL enquiry conducted by Dr. Pushkar Raj, Mahi Pal Singh and Bhupendra Rawat found the police story completely concocted. The report was released by (Justice) Rajindar Sachar and Ali Anwar (MP). The Delhi High Court took a suo moto cognizance of the matter and started an enquiry into the case Sanjay Parikh, Sr. Counsel, was requested by PUCL to represent the victim's family. The following order of the Court dated 2nd February 2009 speaks for itself - Editorj.

IN THE HIGH COURT OF DELHI AT
NEW DELHI
W.P. (CRL) 861/2007 COURT ON
ITS OWN MOTION
PETITIONER
THROUGH MR. ABHILASH K.
MISHRA,
ADVOCATE FOR WIDOW OF THE
DECEASED - KAMALUDDIN.
VERSUS GOVT. OF NCT OF DELHI
AND
ANR... RESPONDENTS THROUGH
MS. MUKTA GUPTA, STANDING
COUNSEL FOR STATE
CORAM:
HON'BLE THE CHIEF JCSTICE
HON'BLE MR. JUSTICE SANJIV
KHAN A

ORDER
02.02.2009

THIS COURT HAS TAKEN SUO *moto* cognizance of the incident, which was reported in 'Delhi Special' dated 2nd July, 2007 regarding death of one Kamaluddin on 23rd/24th April, 2007. Kamaluddin is survived by his widow and a daughter aged around six years.

2. The version of the police is that Kamaluddin was an insane person, who was found throwing stones at the people and he was beaten to death by public. It is also alleged that Kamaluddin had beaten up one Rickshawala -Rajender. In the status report dated 30th June, 2008, it has been stated that two FIRs were registered: (1) FIR No 647/2007 under Section 304 regarding the death of Kamaluddin and (2) FIR No.

648/2007 under Section 308 regarding the injuries caused to Rajender. In the status report, it has been further stated that:

'It is also respectfully submitted that despite best efforts the persons who had given beatings to the deceased could not be identified hence untraced report has been prepared and the same will be sent to the concerned court in the due course. In case FIR No. 648/2007 U/s 308 IPC P.S. Sultan Puri also untraced report has been prepared as the assailant Kamaluddin had died.'

3. The learned Amicus Curiae has recorded the statement of widow of deceased Kamaluddin and also statements of his neighbours and has also enclosed number of documents. Paragraph 9 of the report of the learned Amicus Curiae is as follows:

That a perusal of all the statements would show that the deceased Kamaluddin was a person of sound disposing mind. He was a teacher who used to teach at *Madarsa*, He was also a Secretary of an Association called 'Anjuman Razai Musaffa Committee. He was also the President of another Society namely 'Jamia Islamia Tazwedal Quran' He had a friendly and caring dispositions. He was neither insane nor mental, as is being alleged by the police. The police had enmity with him as neither he gave bribe to the police, nor did he let the other neighbours do so.

4. It is seen from the statements of the widow of Kamaluddin and the neighbours that Kamaluddin was a teacher and was not an insane person; he was honest, compassionate and friendly with the people. The widow has stated that he had gone out for a stroll after taking

dinner on 23rd

April, 2007 when he was taken away by the police and was beaten to death. She has stated that she was not allowed to see the dead body of her husband and that she was informed by the hospital staff that Kamaluddin's hands were tied when he was brought to the hospital and that he was asking for water. She has further stated that Head Constable Rakesh told her that Kamaluddin was taken to the Police Station, Prem Nagar at 11 p.m. on 23rd April, 2007.

5. After this Court issued suo moto notice, an affidavit dated 13th August, 2007 was filed by the DCP. In the affidavit, the DCP has stated that two PCR calls, one at 2 a.m. and the other at 3.55 a.m. to P.S., Prem Nagar ere received on 24th April, 2007. Both calls were attended to by Head Constable Rakesh Kumar. It appears from the averments in the affidavit that the call (DD No. 3) at 2 a.m. was with regard to an alleged insane person having scuffle with police of the PCR.

6. Mr. Sanjay Parikh, learned counsel appearing for the widow and the minor daughter submitted that the statement made in the affidavit dated 13th August, 2007 that Kamaluddin was lying unconscious at the spot is contrary to the statements of Mr. Amit, Constable Ashok Kumar and Head Constable Rakesh, who had stated that Kamaluddin was alive and to control him he was tied with the rope on a stretcher. He pointed out that in the status report dated 1st July, 2008, the earlier statement made in the affidavit was changed and now it is mentioned that the insane person was being attacked

BY THE PEOPLE AND *rickshawwala* was found lying unconscious. He submitted that it has not been clarified as to why the PCR did not report the incident to the Police Station. Instead it is claimed that the incident was reported to the police by Mr. Surender Singh son of Gulab Singh. He pointed out that statement of Mr. Surender Singh is not available in the record filed in this Court. He also pointed out that the officials of PCR have not been identified as yet and the Investigating Officer has not enquired about the role of the PCR police officials. He submitted that it cannot be believed that the policemen of PCR had left the spot after the scuffle without taking any action. He also drew our attention to the post

mortem report to show that there were as many as 51 injuries (lacerations, abrasions, contusions) on the body of Kamaluddin. He submitted that there are too many loopholes in the version of the police and the story that Kamaluddin was beaten by public as he was pelting stones at them seems to be completely concocted.

7. *Prima facie*, we find substance in the submission of Mr. Sanjay Parikh that there are any contradictions and inconsistencies in the version given by the police. Statements recorded by the police are contradictory and discrepancies exist between the statements and the documents. The truth and correctness of the status report is

seriously disputed by the petitioner. In our opinion, this is a fit case to direct an enquiry in order to find out whether it was a case of custodial death or Kamaluddin was killed by the public as claimed by the police. Accordingly, we direct Mr. R.K. Gauba, Registrar Vigilance to hold an inquiry into the incident of death of Kamaluddin on 23rd/24th April, 2007 by recording evidence of all the concerned persons, including the Doctors and concerned police officials and to submit a report to this Court within a period of three months from today.

Adjourned to 4th May, 2009 for directions. - Dasti, Chief Justice, Sanjiv Khanna, J., February 02, 2009, VKR

PUCL-Begusarai:

1. Custodial Death: 4 Policemen Awarded 6 Years' RI

Begusarai: PUCL Begusarai unit initiated a protest against the incident of the custodial death of Ram Udit Singh at Manjhoul outpost lock up in 28-29 April 1999 and formed a committee of four members to investigate into the matter. The committee reached the conclusion that the cause of death of Ram Udit Singh was the merciless thrashing in the police custody by the policemen. On the basis of the enquiry report an FIR was lodged against these policemen. PUCL also sent a report to the National Human Rights Commission for necessary action to this matter. NHRC enquired into the incident and directed the Bihar Government to pay a compensation of Rs.50 Thousand to the family of Ram Udit Singh.

After, 9 years of hearing of this case finally on Tuesday a decision of

conviction against the policemen by the Fast Track Court IV judge, Sh. Ravi Prakash Dhar Dubey, a sub-inspector, Mohan Prasad, and three constables were awarded six years' of rigorous imprisonment (RI) by the court. This is the first conviction against the policemen in such types of cases in this region.

According to the case, the then officer in-charge along with five constables caught hold of Ram Udit Singh of village Pabra and after the thrashing him mercilessly put him in the lock up at Manjhoul outpost where he died. After the death, police made an abortive bid to hush up the incident. Following PUCL's investigation, a murder case was filed against the police personnel.

2. Protest Day against the Arrest of Dr Binayak Sen

PUCL Begusarai unit observed a

protest day at Durga Ashtan

Sonma, Bakhri district Begusarai, Biha- against the Chhatisgarh govt. for keeping under arrest Dr Binayak Sen since 14 may 2007. The protest meeting was presided by Ramashray Pd. Singh, General Secretary, Bihar PUCL, and editor of Manavadhikar Patrika. The Chief guest was Chitranjan Singh, Organizing Secretary, National PUCL. PUCL demanded that the govt. of Chhatisgarh should withdraw false cases filed against Dr. Binayak Sen and immediately release him. The main speakers who addressed the meeting were Mahesh Bharti Patrakar; Ramesh Prasad Singh, Advocate; Ramashish Pd. Singh, Amarnath; Prabhakar Maharaj, Advocate; S.P. Ray, Advocate; Sakuntala Devi, Hare Ram Pal; Hare Ram Thakur; Najiruddin; Mahesh Kumar; and Hareram Sahu.

Jharkhand PUCL:

An Open Letter to Mr. Naveen Kumar Singh, IPS

Mr. Naveen Kumar Singh, S.P.,
East Singhbhum, Jamshedpur,
Jharkhand 831001

Dear Mr Navin Kumar Singh,

I am thankful to you for giving me audience when I talked to you on phone on 13th evening bringing

a case of violation of custodial right at Sakchi P.S and informed you about the abusive language used by the O.C, Sakchi P.S. when I contacted him on phone.

During the conversation we got dragged to one of the most serious issue of Maoists' violence occurring very frequently in the District of East Singhbhum and elsewhere of the state of Jharkhand.

On this pressing issue, I would like to place the view of PUCL before you. I take this opportunity to quote from our book on bye laws "Know PUCL" as under:

"There is a common belief that those who believe in capturing power through violent means, having no faith in the existing parliamentary democracy or the Constitution, have no rights and liberties. PUCL thinks otherwise, while disagreeing with their methods and deploring their actions, PUCL maintains that condition existing in the society is no less responsible for motivating people to alter them through violence. In certain cases their violence is retaliatory against that of Government. Rule of law has to be guaranteed to every citizen of country. This is the basic test of Civil Liberties. The same is the attitude to criminals, prisoners, anti-social elements etc."

I am enclosing copies of 4/5 press releases/ papers of PUCL which will further focus our view on Maoists' violence and police action to terrorise villagers.

However, we do not feel like reaffirming or taking an oath on our integrity and sincerity every time a violent incident triggered by Naxals takes place after functioning for 33 long years as National human rights organization. However, we expect a responsible behaviour and better knowledge when we talk to a senior Police Officer of the State. Is it not finding a scapegoat in accusing the PUCL as supporter of Maoists than to retrospect and take stock of your own force which is incapable of apprehending the culprits? So far, in

the last eight years of the creation of the Jharkhand State, the State police force has miserably failed to maintain the law and order of the state which is its principal mandate under the Constitution. It invited world-wide attention by making maximum arrests in the country under POTA, which was meant for combating terrorist activities and there was no such terrorist activity reported during the period. We hope that you are well aware of the fact that the ordinary people of the State do not prefer taking help of police for obvious reasons. They fear the police. Your officers violate human rights of the people with complete impunity indulging themselves in corrupt practices. Do they have the moral courage to apprehend culprits? Naxal or whoever killed the MLA from Bagodar Mr Mahendra Singh, Jamshedpur MP Mr. Sunil Mahato, MLA Mr Ramesh Singh Munda are brother of former Chief minister Babulal Marandi, are the offenders of the State and have committed crimes under the IPC. What is the progress on that front? Not a single offender has been arrested so far? That's the success story of the Jharkhand police. On the other hand we have innumerable cases of fake encounters, illegal arrests and detentions in the state, implicating innocent people in false cases, third degree treatment of innocent and hapless people Issuing threats and extorting money have been the highlight of the police force in the State. Not only the cases investigated by us are flaring examples of this, but also the same state of affairs can be gauged from the complaints filed with the National Human rights Commission.

It time to act and act according to the Rule of Law established in our country and prosecute the offenders irrespective of the status of the person to restore faith in the police system, than to point an accusing fingers at others.

Our mandate is promotion and

protection of Human Rights and we solemnly do it without any fear of police, Naxals or any other quarter. We do not fear for our lives in doing our duty for Human Rights and the people of this country. Our history has been one of the brightest of post independent struggle and quest for democracy and human rights, which is the goal of our nation, and we do not have to prove our credentials again and again.

With regards, Yours sincerely,
Subrato Bhattarjee, President,
PUCL, Jharkhand, 15 January 2009.

It is a matter of great concern that serious violent incidents are taking place very frequently in this region. PUCL in no uncertain terms condemns such incidents of killings of police personnel and others by CPI Maoists. Dozens of people, policemen and security forces have died by now by land mine blasts triggered by CPI Maoists. We appeal to the CPI Maoists to stop such bloody violent activities.

PUCL is also concerned about the way the police is functioning to counter the violent means of the Maoists. After almost every violent act by Maoists, police is finding itself helpless and incapable of apprehending the culprits. Their incapability is looming large not only in Singhbhum but also in the whole Jharkhand state. They are, instead, resorting to terrorise the innocent villagers. After murder of NASUS leader Dhanai Kisku and killing of police personnel by land mine blast triggered allegedly by Maoists, police again started arresting the villagers indiscriminately. From 4th to 9th January 2009 eight villagers from Jian, Kasaibera, Maheshpur ere picked up and kept in illegal confinement at the Gurabandha PS up to 13.01.2009. This is

serious violation of Custodial Rights. We strongly feel that by terrorizing the innocent villagers, Maoists' violent activities cannot be countered. It will be rather counter productive. People in this region have already lost their faith in police administration and the disappointment of people is increasing day-by-day.

The police are yet to apprehend the killers of IPF MLA Mahendra Singh, MP Sunil Mahato, MLA Ramesh Singh Munda, brother of former Chief Minister, Babulal Marandi and of police officers, civilians and other lesser leaders of different political parties. The police failed to recover the loot of lacs of rupees of a bank

in Tamar area and book the culprits under the law till date whereas after every incident, scores of innocent villagers are harassed and tortured, illegally detained with impunity and with total disregard of the rule of law. PUCL has investigated some of the cases where the police knew that the villagers were not only innocent but also neutral. The reason for such illegal acts is that the police force does not seem to have the moral courage and the means to apprehend the real culprits. The total police force in Jharkhand appears to be a demoralized and directionless lot.

We are also disillusioned by the policy of the State. In fact the

Jharkhand State does not appear to have any policy to address the Naxal issue and there no effort to bring the marginalized, hapless and starving people of Jharkhand into the democratic State polity and take initiative to ensure minimal human conditions of life to these hapless people, who appear to find an alternative in the Naxal organisations.

We appeal to the police administration to stop Human Rights violations in this region. **-Nishant Akhilesh**, National Organising Secretary, PUCL, **Subrato Bhattacharjee**, President, Jharkhand PUCL.

Brutality of UP Police Exposed Once Again

Mahi Pal Singh

Brutality and insensitivity of UP police was once again exposed when two policemen pulled the hair of a six-year old Dalit girl and also beat her up on charges of stealing Rs. 280/- from a woman. Senior Sub-Inspector Shyamlal Yadav was shown on many TV channels grabbing the girl by her ears and hair, threatening and asking her to admit that she had stolen the money and given to another boy in a market near Lohamandi in Jaswantpur area as alleged by one Anju Katheria. Six policemen including the SHO Chandrabhan Singh had just looked on. The incident took place on Feb 2, 2009 at Jaswantpur Police Station of Etawah District in UP in front of TV cameras.

The District police later claimed that the girl confessed to having stolen the money although after the incident was shown on the TV channels the DGP of the State came into action and promised that the matter would be investigated thoroughly. Two days later Additional Director-General of Police (Law and Order) Brij Lal declared that the case registered against the girl was found to be false and that action against the

complainant under Section 182 of Cr.P.C. had been initiated.

The State DGP, Vikram Singh, later sacked Sub-Inspector Shyamlal Yadav. He was also booked on charges of torturing the six-year old Dalit girl under Sections 323 and 506 IPC and the Scheduled Castes, Scheduled Tribes (Prevention of Atrocities) Act and sent to jail. The other accused, SHO Chandrabhan Singh was also charged under Sections 323 and 506. The DGP also issued strong directives to the District police chiefs and other senior police officers to ensure that no human rights violation is committed by policemen: yet another example of such shameful and illegal incident of police atrocity on innocent people. Even if the girl had actually been guilty of theft, the police had no business to take on the duties of a judge and start punishing the girl, which the police do with impunity in all such cases, particularly those involving poor and helpless people. The guilty may have been punished in the present case but the hapless little girl, a mere child with a tender mind, who

had undergone the traumatic experience of custodial torture for no fault of hers, will, however, take a long time to come out of the trauma. Fear of the police must have got entrenched in the depths of her mind and no punishment to the guilty can ever remove the traumatic memories of the treatment she received at the hands of the policemen. No punishment is enough for such people.

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Andhra Pradesh PUCL Convention:

Minutes of the PUCL AP 13th State Committee, General Body Meeting held on 31.01.09, at Press Club, Basheerbagh, Hyderabad

Ms Jaya Vindhya started the inaugural session at 10:30 a.m. by welcoming the Chief Guest and all the delegates and participants to the 13th PUCL-State general body meeting. The following persons addressed the meeting...

Mr. Muthalu Yadav in his speech spoke about the present inhuman attacks on the civilians. Mr Yadav concentrated on the recent incidents which happened in and around the Hyderabad city and Andhra Pradesh State.

Mr. Janardhan Reddy, a former member of Andhra Pradesh Legislative Assembly, speaking about the importance of civil rights, also explained about the imposition of Emergency during the reign of Mrs. Indira Gandhi. He also stated that he was the only person who opposed it in the A. P. Legislative Assembly. He stated that present society is badly in need of organisations like the PUCL.

Mr Kanaka Rao said that PUCL is working for the fights of the people. He also stated that Shri Jaya Prakash Narayan, founded the PUCL to protect the civil rights after the emergency imposed by Mrs. Indira Gandhi. He also stated that whenever our rights are violated, we should fight hard to get back our rights. He further stated that the PUCL should think keenly on the issue of Telangana.

Ms Malladi ' Subbamma, a famous feminist and former President of PUCL, spoke on all the issues related to civil rights and she praised the way in which the present committee is taking up the people's issues. She recollected the inhuman act of Vegal Rao's Government which killed almost 300 Naxalites in the name of Encounter by tying them to the trees.

She also stated that the rights

guaranteed under the Constitution are becoming useless as they are not being properly safeguarded.

Mrs Kuthuhalamma, Deputy Speaker, AP Assembly, speaking on the Civil Rights spoke about the importance of organisations like the PUCL, which are paving the way for the welfare of those who are really in need and who are oppressed by authorities. She also spoke about the issues of women and their oppression in various ways. Thereafter, she said that the governments have been failing continuously in implementing the laws which are enacted for the welfare of the society.

The inaugural session concluded with the speech of Mr Vittal Rao, Secretary, Telangana Lawyers Association.

After the inaugural session and before the commencement of the delegates' session the Convention paid a tribute to the eminent humanist and All India General Secretary of PUCL, Mr Y P Chhibbar and observed silence for two minutes in his memory. After this the General Secretary submitted her report.

During the discussion on the General Secretary's report Mr Hanmanthu Naik, Ex-Municipal Counsellor, Kukatpally ward said that the Police in Andhra Pradesh are acting in favour of anti-social elements instead of the sufferers & oppressed people in society. He also stated that the police registered false cases against him also and he was jailed for 3 months. Thereafter, before concluding his speech, he expressed gratitude to the PUCL for the efforts it made to protect his rights and those of his community.

Mr Khaja Bee contented that the

Police in the Old city also failed to protect them against the activities of *Gundas* and *Pahelvans*.

Mr S Abraham, a humanist and trade union activist spoke about the Government's high-handed action in acquiring lands of the poor people and selling the same lands to the industrialists and various other influential persons in the society in the name of Special Economic Zones (SEZs).

Mr Abraham in his speech further stated that the Government is proudly saying that it is spending 1400 crores for the welfare of SC & ST, but he pointed out that the same government is spending 3600 crores only on advertising their programmes.

After this the state committee elections were conducted. The elections for the committee of Greater Hyderabad were also conducted.

In the open session held after that Mr Prattipati Venkateshwarlu in his speech first thanked Justice Rama Swamy, former Judge of the Supreme Court of India for coming to the open meeting.

Mr Venkateshwarlu in his speech stated that as per our Constitution ALL are equal before Law but in reality it is totally different. Despite having many natural resources the people of this country are unable to utilize them due to inefficient governments. Speaking further he stated that Justice Rama Swamy in one of his judgments observed that "Right to work" should be made a fundamental right. Finally concluding his speech he stated that we should fight wherever injustice is caused and we should support organisations like the

PUCL which are fighting for such causes.

Mr Chandranna, President, State AIFTU, spoke about the problems facing the workers. He stated that in our Constitution we have the "Right to life", but in today's position the core question involved is whether the Rights guaranteed under the Constitution are being protected or not? Further in his speech he spoke about the burning issues like the setting up of SEZs. He strongly contented that the setting up of SEZs is violating the rights of the poor people. They are becoming a nightmare to the poor farmers.

(Justice) Rama Swamy stated that PUCL has been successfully working for the protection of the rights of the people. Right to work is provided in the Constitution but the only thing in question is whether every one is enjoying it or not in spite of the fact that the Supreme Court in a number of cases has held that Right to life is a fundamental right.

Keshav Rao Jadav speaking on Civil and Human Rights stated that

in all communities there are some customs which violate constitutional rights.

Mr Chakrapani, Honourable Chairman, State Legislative Council started his speech by going to his past life as a student when he had worked in such organizations for fighting against the problems of the people. He stated that the organisations working for the protection of civil and human rights of the common people should also oppose when attacks on government employees take place. Civil Liberties organisations are architects of better society. Mr K Pratap Reddy, Senior Advocate cum President, Vigil India and Mr Sarasani Satyam Reddy, President, Andhra Pradesh High Court Bar Association, also participated in the meeting.

The open meeting concluded after Mr Chandra Sekhar, Advocate proposed a vote of thanks.

Office bearers elected for the State Committee in the State Convention, Andhra Pradesh on January 31, 2009:

Honorary President: Keshava

Rao Jadav; **President:** K.Chandra Shekar, Advocate; **Vice-Presidents:** 1. C. Narender, 2. Iqbal Khan, 3. Riyazuddin, 4. William; **General Secretary:** Ms Jaya Vindhya; **Joint-Secretaries:** 1. Bali Reddy, 2. S. Abraham, 3. Hanumanth; **Treasurer:** Venkat Reddy; **Executive Members:** 1. Raju, 2. D.Shankar Rao, 3. D. Nagesh, 4. P.Shankar Reddy, 5. Mallesh, 6. Narsamma, 7. Md. Hussain, 8. Dvij'endar Reddy, 9. S.Prabha Das.

List of the newly elected body of the Greater Hyderabad:

President: P. Vittal Rao, Advocate; **Vice-Presidents:** 1. G. Muthyalu Yadav, 2. Akbari Begum; **General Secretary:** Iqbal Khan; **Joint-Secretaries:** 1. S. Ratna Devi, 2. Madhu; **Treasurer:** Prakash; **Executive Members:** 1. Y. Rajendra Prasad, 2. Feroz Khan, 3. P Chandra Kala, 4. D Shankar Rao, 5. T Lalitha, 6. Pushpa Neela, 7. Chand Pasha, 8. Hameeduddin, 9. Afsar, 10. Sami.

Letter:

Kannabiran's Letter on the Formation of a Separate Telengana State to Mrs. Sonia Gandhi

Mrs. Sonia Gandhi
10 Janpath
New Delhi

Subject: An Appeal to Ms. Soniaji, Chairperson, UPA: The issue is formation of a separate Telengana State

Madam,

I am the National President of People's Union for Civil Liberties, an organization founded by Jaya Prakash Narayan in 1976 of which Justice V.M. Tarkunde, Dr. Rajini Kothari and Justice Rajndar Sachar were Presidents before me. I am a Senior Lawyer based at Hyderabad in whose office Madhu Yashki,

presently Member of Parliament representing your Party, devilled in my chambers before he left for USA.

In our organization we are of the view that there should be smaller states as that would reduce the plurality of regions and cultures and, therefore, governance of communities would be easier and more democratic. Claims to equality of status and equal opportunities are mandatory principles of governance in a country where plurality of communities exists. In our view, though the Constitution recognizes the plurality of religious and ethnic communities, most often the dominant majority has been in governance and working out equality

among regions and communities are much simply at constant belligerence. Sikh riots were a pretext to subjugate the Minorities. So also were Mumbai and Gujarat riots.

There was a violent agitation for the Telengana State and Mrs. Indira Gandhi, the astute politician she was, managed to bring about a consensus by making some constitutional adjustments. The dominant elected majorities do not want to govern plural societies. Water Management and distribution has become a big political issue in this state. There are two inter state rivers to which Telengana is a riparian region and the inter state tribunal does not ensure equitable distribution to the

riparian region. With reference to language the intellectuals and the educated middle class feel their language is a dialect which is entirely different from the Telugu spoken in the coastal region and this dialect is totally neglected in the national broadcasting institution and the complaint is that the Telengana dialect is the language in which mafia characters in films talk and constant use of the dialect in movies by rowdies and thugs should be quite insulting to the community. The list of charges against the Andhras and of the abuse of, rights suffered from the Andhra-dominated governance is quite long and justified. They have in course of time colonized quite heavily all over the state. These cannot be altered. The formation of a State will only mean that Andhras will no more be the dominant community in this newly proposed state and, as in all cases of plural governance, they are entitled to recognition, equal status and equality of opportunity. The issue of guidelines for governance of plural communities has to be taken up as a national issue for a Hindu majority government at the centre and states have been making homogenizing decision making processes. The judiciary is no exception. Once a Supreme Court judge complained that the Constitution has not defined the expression 'Minority', as if the Constitution is a lexicographic exercise.

From: Prabhakar Sinha, Vice President, PUCL
Dear Pushkar ji,

A few days ago, I was deeply moved by a news item published in a Patna daily about three children, the eldest being only seven years old, left to fend for themselves, as their parents were dead. They were in desperate need of immediate

The fact is there has been a demand for a separate state. The demand for Uttarakhand and Chhattisgarh came much later. It dates back to the first State Reorganization Commission. It would be wrong to avoid the issue by saying that it would be considered at the Second SRC.

Such questions were never raised when these states were formed. In fact, through the formation of the second SRC the Government will not only stir up a hornet's nest but would also invite chauvinistic forces to create political instability. I am not arguing that the postponement of this, issue will not lead to political disorder. A country-wide political disorder is entirely different from a disorder that can be contained locally. They have been quite patient and very democratic in their demand. The problem is that when the Chief Ministers are used to reign over a vast extent of territory and a few crores to be governed they feel like kings of yore and they would not give up their suzerainty over these vast extents and vast people residing in those areas.

But then we have a Constitution and that provides for formation of new states under Article 3 and the proviso to that Article contains certain stipulations. It would be most democratic to introduce the Bill in the Parliament. I am not even saying that it should be passed before the elections. The debate will be on in the election process.

Letter to Editor

attention. I wrote to the Chief Justice of Patna High Court in the hope that my letter might be converted into a PIL. I am pleasantly surprised to find that my effort has born fruit. The Times of India, Patna dated 21.2.2009 has reported as follows:

"Letter **Petition PIL**: A division bench comprising acting Chief Justice Chandramauli Kumar Prasad and Justice D.D. Jha on Thursday

Your Intelligence may obstruct any step towards the issue as it is likely to be partisan because the force is Andhra dominated though the IPS officers come from different regions of the country. They may bring in the excuse of Naxalites. Andhra Pradesh has always had left politics. Naxalite movement has been present in this state for six decades. They enacted atrocities against them. When we accused them of human rights violations they branded us as Naxalite supporters. And now they brand us as Terrorist supporters. What we, as human rights activists, do .is to catch the police violate human rights. We have always held the view that from the time a suspect is arrested and he is charge sheeted is the time and the space within which human rights violations take place. That is where we human rights activists operate and the investigation is busy torturing and obtaining forced confessions and statements leading to discovery, and we are implicated, sometimes shot. I am not requesting you to look into our grievance. In the US Mac Carthy did it, and in India Manmohan Singh is allowing it and Advani, if he comes to govern, will promote it. I am only mentioning it so that you may not summarily discard this representation for a separate Telengana State. - K.G. Kannabiran, National President, People's Union for Civil Liberties, 28 February 2009

treated as PIL the letter petition of national vice president of People's Union of Civil Liberties Prabhakar Sinha, who sought direction to the state government to take care of a seven year old orphan Govinda and his two younger cousins. They belong to Sonpur in Saran District.

Additional Advocate General Roy Shivaji Nath sent letter to the

state welfare department and Saran D.M. to seek details.”

My letter to the CJ is attached.

With best wishes, Prabhakar Sinha, Saturday, February 21, 2009

To
Hon'ble Justice Mr Chandramauli Kumar Prasad,
Chief Justice,
Patna High Court,
Patna.

Sub: Prayer for saving, protecting and shaping the lives of Pinky (3), Sonu (5), whose parents are dead and Govinda (7), whose mother is dead and whose father has deserted him.

Sir,

According to a news item published on the front page of *The Hindistan Times*, Patna dated 6.02.2009., (photocopy attached) Pinky (3) and Sonu (5) have lost their parents while Govinda (7) has lost his mother and has been deserted by his

father. The three children are left to fend for themselves. Reportedly, it is seven year old Govinda, who runs errands to earn some money, cooks for his two cousins named above and is struggling to keep himself, Pinky and Sonu alive. The report filed by correspondent Mr Rajesh Kumar Thakur describes their miserable plight as follows.

“I earn about Rs 35 to Rs 40 in a week, he said.” I cannot go to school. If I do so my *bhai* and *bahan* will starve. There is none to look after them, “Somedays, we have to sleep empty stomach.”

The report goes on to say, “The sad plight of this ‘family’ of three minors is known to all in the village, but no one cares to help them. But Govinda carries on with his ‘duty’ in the hope of someone, someday...!”

According to the report the children are from Sonepur under Saran district.

It is submitted that the children are incapable of moving any authority

including the Hon'ble High Court and are bound to starve without support. They can survive only if the State supports them and shape their lives without sending them to an orphanage. Your Lordship may consider whether the children deserve the indulgence of the Hon'ble High Court. Yours faithfully,

Prabhakar Sinha

PUCL National Office
has now shifted to: 270-A, Patpar Ganj, (Opposite Anand Lok Aptts., Gate No. 2), Mayur Vihar Phase-I, New Delhi-110091. (Ph. No. 011-22750014)

PART II OF THE REPORT:

ROLE OF POLICE IN ORISSA

JOSEPH GATHIA*

(Continued from the March, 2009 issue of the *PUCL Bulletin*)

Is Entire Police Force to be Condemned?

Though riots after riots police role has been questionable one cannot condemn the entire police force. There are policemen who are upright and follow the rule and perform their duties professionally. Even in Orissa we found such officers who handled the situation quite professionally but they were, unfortunately, not given free hand by the political bosses. Some officers were transferred and these transfers were described as ‘routine’ or ‘promotions’. It was more a culpability of political bosses than lack of professionalism among these officers

The Locale and the Brief History

Kandhmal - the area where the

riot broke out in Orissa is burning for the second time in eight months. The sociologists point out that though the latest spark was the murder of a saffron leader, Swami Laxmananda Saraswati, the underlying cause is the battle between the Hindus and the Christian converts over reservations in educational institutions and government jobs.

Of the 6.48 lakh people in the district, 3.36 lakh (52 per cent) belong to scheduled tribes (STs), while another 1.05 lakh (17 per cent) are scheduled castes (SCs) Of the 1 lakh Christians, 60 per cent are converts from SCs, locally known as ‘Pana Christians’. This group’s demand for ST status, and the ensuing reservations in jobs and educational institutes, is what has fuelled tension between the local Kondh community

and the Pana Christians. Under the rules, STs who convert to Christianity continue to enjoy reservations, but not SCs who convert.

Government jobs are precious in Kandhmal, since there are barely any private outlets offering employment. So the STs seethe with resentment against the SCs over jobs. Often, they fight. Since the STs are Hindus and the SCs form the bulk of the Christians, the battles can easily take a religious turn.

Then, there is land. The tribals are original dwellers here In the early 1900s, the tribal land opened up. *Pattas*, a certificate indicating ownership of land, began to be given out. The tribes have a complex social structure. Within themselves, they had given land to neighbours for various reasons. When they had to prove ownership of land, they could not. Others

came in and the tribals could not integrate with the market economy. Loss of land could, therefore, be a cause for of fight between the Scheduled Tribes, who now call themselves Hindus, and the Scheduled Castes, who became Christians.

A new dimension emerged in November 2007 when the Orissa Government said that both the Dalits and the tribals were part of one family, the *Kui Samaj*. Kui is the dialect spoken in Kandhamal, and the Government intended to bring the Dalits and the tribals on a common platform using language as glue. More importantly, it intended to give Dalits job reservation and other social advantages that the tribes were given, even if they had converted to Christianity. The tribals objected strongly.

Kandhamal is poor, even by Orissa's standards. While the per capita income in the state is Rs 5,264, it is a mere Rs 4,743 in Kandhamal. While employment opportunities in other tribal districts like Keonjhar have brightened due to Arcelor-Mittal's plans for a 12-million-tonne steel plant with an investment of Rs 40,000 crore, Kandhamal is devoid of any industrial investment.

Adding to this explosive mix in one of India's poorest states is the *Vishwa Hindu Parishad* (VHP), which is also opposed to reservation for Pana Christians as it would eat into the benefits meant for the Hindu tribals. "If Pana Christians are demanding ST status simply because they speak the local Kui language, then there are people from general castes in the same areas who speak it too. If speaking Kui is the yardstick for according ST status, then it should be uniformly applied to all," said VHP state Chief Gouri Prasad Rath.

Sometime in the 1960s, the RSS leadership summoned Saraswati. The RSS had begun to implement its plan of working in the most backward

areas of India. The then RSS Orissa head Bhupendra Kumar Basu chose Kandhamal for Saraswati.

From all accounts, Saraswati was a driven man. He pursued his Christian foes with all his energy. By 1969, he had begun his ashram in Chakapada, where he is now buried. The ashram has between 300 and 400 students. All of them are Hindus and trained to be fulltime RSS activists. Saraswati also enlisted volunteers for the renovation of several small and dilapidated temples. And, to thwart the Christians, he worked on the lifestyle of the tribals.

He began to hold *satsanga*, an assembly of people with the guru who listen to and talk about issues and the truth. Saraswati began to preach against drinking alcohol and consuming meat.

His followers say that he helped restore healthy lifestyle among the tribals. Coincidentally, the Christians were doing exactly that among their followers.

The trouble started brewing in December 2007 just around Christmas time. At that time the violence broke out and several hundred Christians took shelter in the relief camps.

Security forces had already been deployed in Bolangir, Bargarh, Kandhamal, Gajapati, Ganjam, Koraput, Rayagada, Bhadrak and Kendrapada districts to curb the violence.

Some 40 thousand Christians have taken refuge in forests and some 20 thousand have taken refuge in 10 government relief camps. The condition in relief camps is very bad. There are no facilities and food for the victims taking shelter there.

More than 100 Christians - including women, children and babies walked to reach the state capital city Bhubaneswar, covering more than 300 kilometers (186 miles). It took them four days to reach

Bhubaneswar. One of the victims said, "We did not eat anything. We survived on water from rivers along the route. We also encountered wild animals in some forests."

Many Christians from different villages reached Bhubaneswar on August 28. They were taken by local Christians to a YMCA centre, where several other victims also are temporarily residing.

The police deal with its tough terrain every time they need to rush to a crime scene. The entire district has just 15 police stations with a sanctioned strength of 647 personnel looking after 6.48 lakh people. Since habitations are scattered and most roads run through jungles, they can be blocked by cutting just one tree. The attacks, both in 2007 and now, were possible only because the roads were blocked with felled trees.

Versions of Christians

Ever since Biju Janata Dal came to power with the support of Bharatiya Janata Party (BJP) in Orissa the trouble started. Forcing Christians to reconvert to Hinduism become main the programme of some Hindu organizations. Several times Swami Lakshmanananda had declared that he would eliminate Muslims and Christians from Orissa. There are complaints made to the government.

In a memorandum submitted to the President of India Smt. P. Patil the Christian leaders have summed up their version. It says, "Nine months after attacks in Kandhamal District on Christians, on Dalits, hill peoples and Tribal ethnicity celebrating the birth of Jesus Christ, the Prince of Peace, we are deeply saddened by a repeat of the violence in the month of India's Independence. The Christmas 2007 attacks claimed the lives of at least four Christians, and we verified the destruction of at least 105 churches and 730 Christian homes. The current spate of violence will exceed these totals as it continues to spread into other districts."

It further stated that "The groups, which favour a "*Hindu Rashtra*", have made Orissa their laboratory, as they earlier did Gujarat. The so-called saffronisation of the state has been the subject of well-documented academic and socio-political studies."

Blaming Maoists for killings, the Christian leaders stated that, "Orissa authorities have repeatedly said there was ample circumstantial evidence of Maoist involvement in the killing of VHP leader Lakshmanananda Saraswati and four others on August 23rd".

Father Alexander of the church at Sankarakhola says, "The authorities were aware that there would be trouble after Swami Saraswati's killing. Yet, they allowed the body to be brought in a procession from Tumudibandha to Chakapada, a distance of over 200 km. The sight of the body incited passions and led to attacks on churches and Christian homes."

Christian activists have produced lists of people who have been killed and those who have been forced to flee from their homes. Many people whose houses were either burnt or looted narrated their woes with tears in their eyes to the media.

Some Christian leaders have praised some police officials for their brave work.

Hindu Version

In Kandhamal District alone the Christian population has increased from 6 percent in 1970 to 27 percent in 2001, despite an Act enacted by Orissa Legislature in 1967 to prevent conversion. Swamiji has been fighting a lone battle by making the tribal district his home for the last 40 years, and he is targeted by the Church. Earlier, there were two other lethal attacks on Swamiji in 1971 and 1995.

According to the VHP statement: "The whole series of incidents started from unprovoked and pre-planned attack on Vedanta Keshari Swami Laxmanananda Saraswati who was

visiting his disciples in Darsingbadi village in Kandhamal District on December 24. Swamiji, 82, has been working relentlessly in the district since 1967 to protect the local population where more than 75 percent are below poverty line and are not literate. Swamiji has opened schools and hostels, hospitals and temples to protect mainly the tribal and the downtrodden from the clutches of missionaries who are operating with massive funds from foreign countries pumped into NGOs in disguised operations to convert the local tribals to Christianity.

Various reservation facilities to which scheduled tribes are entitled are not available to persons converted to Christianity. On hearing the assault news on Swamiji, the already agitated Kui community reacted and protested throughout the district against the 'Pana' community converted to Christianity. Interestingly, the Maoist (Naxalites) activists in the district are also mostly from among the recent converts to Christianity.

Since then the government has provided armed protection to Swamiji. In spite of that, he was attacked by armed assailants on December 24 in which he and his driver and armed security personnel were seriously injured and hospitalized in Cuttack Medical College Hospital.

Nearly 30 heavily armed assailants attacked the *ashram* on 23rd August 2008 during a *Janamashfemi* celebration. The attackers were armed with automatic weapons. They were wearing black robes and speaking to each other in Oriya. They sprayed bullets at the Swami and killed four others.

The police stated that the People's Liberation Revolutionary Group has claimed responsibility for the attack.

But VHP leaders disagree with the police theory blaming Maoists and believe that they are "hoodwinking people by shifting the blame". State

VHP secretary Gouri Prasad Rath told media "This attack is the handiwork of the Christians. There were four home guards at the ashram. Had the attackers been Maoists, they would have first attacked these cops. Swamiji was fighting the missionaries for four decades. We see a clear Christian conspiracy behind this attack."

According to the Hindu leaders the main reason for violence is sudden spurt in the emotions of the people. They accuse that the police did not provide adequate protection to Swamiji.

The VHP Orissa State President Gauri Prasad Rath stated that the state government was wrongly linking Saraswati's killing to Maoists." We know and believe that Christians killed him," he said.

Police Version

According to the Kandhamal police website, the conversion of tribal population has been a major source of trouble in the area. The number of Christians in the district has been increasing steadily and, as per 1991 Census, account for 15 per cent of the population. There is opposition to the activities of missionaries in some areas such as Kotagarh, Balliguda, Sarangada, Phringia PS areas. Due to this recent development, there is ill-feeling and tension on communal lines in villages.

The police had taken note of the communal tension that was building up in the area and taken preventive measures like providing police safety. But the area is without roads and interior areas are difficult to monitor.

After the news of the killing reached the police, the authorities, apprehending violence and communal tension, promulgated prohibitory orders under Section 144 Cr.PC. in the entire Kandhamal

district and deployed para-military forces at all sensitive and strategic places across the district. **Analysis**

As it happens in any such incident, both sides have their own version and perhaps without having any dialogue with the other party. We presented the versions of the three major parties involved in this riot. The objective facts on grounds and the various stories people gave did vary vastly. While the Christian version created the impression that they were attacked mercilessly by the Hindus and were tacitly supported by the police (albeit, they praised some police officers), the reality in Kandhmal, where some Christian persons were arrested for their alleged links with Maoists and where some Hindu houses were burnt, tells a different tale. Likewise, the Hindu version does not cohere on many of the facts of the case and has many loopholes. There is a political angle to which both parties are giving ideological colour.

Out of the three versions presented above one feels that the police version is the most plausible one. The Maoist theory projected by the police has several loopholes and falls flat in the face of the facts. Firstly, the police, after initial announcement, did no further investigations. The Christian population too has observed silence over alleged links of some of its members with the Maoists.

But what is more shocking is that Christian leaders were so late in issuing the denunciation of the killing of Swami Lakshmananada that it gave rise to doubts.

Later on some statements were issued but they looked like a mere renovation. But this does not provide reasons to any groups of people to take law into their hands and attack innocent women, children and old people. Burning down of the houses of the innocent poor people and raping a nun is a heinous crime against humanity.

The facts resultantly corroborate

building up of communal tension in the Kandhmal area after the last elections. The police records also bear out the fact that a number of communal skirmishes took place after the election results were out in Kandhmal. The communally explosive atmosphere built there just needed a spark from any source to explode. It was seemingly provided by the incident of killing of Swami Lakshmananda by some unknown assailant/assailants.

The procession of 200 kilometres further aggravated the situation. As it turned out, many incidents of burning and looting took place during and after the procession. It created a misgiving in the minds of Christians that the administration is partisan in allowing the VHP procession.

The role of the police in this riot also raises several questions. Notwithstanding the complaints of the Christian community that they were being discriminated against in enforcing curfew and that the police were picking up more of Christian boys than Hindus. It proves long held hypothesis that if there is involvement of political bigwigs, the police force cannot control the situation. The situation in Kandhmal was like this.

The Christian hierarchy should have sought relief from the Orissa High Court rather than rushing to the Supreme Court. This action has further created rift among the two communities.

Conclusion

The genesis of the Kandhmal riot clearly shows how politics creates communal divide among the communities that lived for years without any ill feeling. Communal strife has always been the handiwork of politicians. As it comes out clearly from both the sides that except for the recent past, people of both the communities had really lived without any such notions. The poor people both Christians and Hindus have been misled and instigated to attack each other by their leaders.

In the whole controversy the name of World Vision has also been dragged. I am sure that this wonderful agency involved in helping children and poor people around the world would clear its name. The NGO community in India is keenly watching it.

There is a dire need to institute more accountability in the police force than exists today

The attack on Christians, it is needless to say, was not an accidental, spontaneous occurrence. Various reports suggest that the machinery to perpetrate the carnage was ready and waiting for an incident to spark it off. The *Hindutva* forces are unapologetic about Kandhmal. They still perceive electoral gains through the communal polarization and the riots as the instruments to achieve it. Patnayak's Orissa has done double damage. On the Hindu side it has emboldened people to try it in order to 'teach lesson' to the Christians and on the Christian side it created a wounded psyche and engendered fear psychosis that could manifest in any unpredictable form. It has mutated the social fabric representing plurality not in Orissa alone but everywhere in India. Unless civil society comes forward to consciously restore it, such riots may become a feature of our society.

“Joseph Gathia is human rights activist and Assembly Member of World Organization Against Torture (OMCT having consultative status with UN. He can be reached via e mail: josephgathia@yahoo.co.in

Notes and References:

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2. *Vishwa Hindu Parishad*, Resolution No. 8 on Swami Lakshmananada, 2008

3. Hindu Jagriti Samiti Report on Kandhmal, 25 Aug 2008

Meaning of Not Voting in Election Clarified

Rule 49-O is a rule in the Conduct of Election Rules, 1961 and **NOT** a section in the Representation of People Act, 1951

The Election Commission in a press release on Dec. 5th, 2008 clarified the air around 49-O as under:

"It has been brought to the notice of the Commission that various misleading reports are being circulated through the Press, the electronic media, emails and through SMS to the effect that if the number of voters who choose to exercise their option not to vote for any contesting candidate as provided in Rule 49-O of Conduct of Election Rules, 1961, exceeds the margin of votes secured by the winning candidate over the runner up, this will invalidate the election and a re-poll will be held. It is clarified that under Rule 49-O the voter has an option not to vote at the election after he has been identified at the polling station and his name has been registered in Registers of Voters (Form-17A). The Presiding Officer shall thereupon make a note to that effect against the name of that voter and obtain his signature (thumb impression in the case of an illiterate). **In such case, the voters who exercise the option of not voting at the election under Rule 49-O would only be deemed to have abstained themselves from voting** and under the law, the candidate who secures highest number of valid votes polled, irrespective of his winning margin, is declared elected."

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13. Rev. Richard Hovell, EFI, report on Orissa, 2008

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16. *The Times of India*, reports on Orissa, Kandhmal between 24 Aug till 10 Sept 2008

Organisational Decisions and Future Programmes

1. PUCL National office has now shifted to 270-A, Patpar Ganj, (Opposite Anand Lok Apts., Gate No. 2), Mayur Vihar Phase-I, New Delhi-110091. (Ph. No. 011-22750014).

2. Lists of Membership as available in the National office have already been sent to the various State branches. State Presidents and General Secretaries are requested to update their lists at the earliest and send the same to the National Office electronically along with the membership share.

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