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Press Statement:

Demise of YP Chhibbar

I am deeply shocked to hear the sad demise this morning of my dear friend and colleague in the People's Union for Civil Liberties Dr Yashpal Chhibbar, after a brief illness.

Dr Chhibbar, a Professor in Economics in Delhi University, was a founding member of the People's Union for Civil Liberties and its General Secretary for over two decades. He was a follower of Jaya Prakash Narayana and a Socialist. From 1978 onwards Dr Chhibbar managed the National Office of Peoples Union for Civil Liberties located in his residence and edited the *PUCL Bulletin*.

He was responsible for advising State Units, building the archive of the Peoples Union for Civil Liberties and organizing its Annual Lecture Series. The Civil Liberties Union of India and Peoples Union for Civil Liberties has lost a committed leader and a campaigner of Human Rights. - Regrets. K G Kannabiran, National President, *People's Union for Civil Liberties*, 2 December 2008

Y P Chhibbar is No More

Dr Y P Chhibbar, General Secretary National PUCL died on 2nd December 2008 in New Delhi after a brief illness. He was 76. He is survived by a son and daughter who live abroad. Dr Chhibbar had been General Secretary of PUCL since 1985. He was one of the founding members of the PUCL in 1980 and closely worked with four Presidents of the organization V M Tarkunde, Rajindar Sachar, Rajni Kothari and K G Kannabiran.

Yash Pal Chhibbar was born and brought up at Dehra Dun, presently the capital of Uttaranchal. He was educated at DAV College, Dehra Dun. He obtained his Ph.D. in Economics from Agra University in 1962.

He worked as a lecturer at DAV College, Dehra Dun up to 1963. In 1963 he moved to MPG College, Mussoorie. He came to Delhi in 1968. He moved to the USA in 1971 in connection with his daughter's treatment from where he returned in 1975 and retired as Reader in Economics from ARSD College of Delhi University in 1997.

He has been socially active all his life. On his return from the US on June 25, 1975, the day Emergency was declared, he became involved in the movement opposing the Emergency.

He was nominated by V M Tarkunde to the Delhi Committee of the *Citizens for Democracy* established by Jaya Prakash Narayan in 1974. In 1980 he was made the Executive Secretary of the *PUCL*, which was established by JP in 1976 as *PUCLDR*. At that time the General Secretary of the *PUCL* was Arun Shourie. In 1984 he was

Restoration of Chief Justice and Judges of Pakistan Solvable Without Conflict

Rajindar Sachar

India watched with satisfaction the return of democracy in Pakistan. But one is now finding a speck of cloud, namely the question of restoration of judges removed by President Musharaff.

It cannot be denied that the question of restoration of judges to their original position was the very rationale of the whole movement initiated by Lawyers of Pakistan and joined by the vast multitude of people. It is not a question of esteem and respect for each judge including that of Chief Justice. The principle is the bigger one of supremacy of rule of law namely "however high you may be, the law is above you".

In India we passed through this delicate stage during Emergency period from June 1975 - March 1977. Kuldip Nayar, the veteran journalist was detained for his protest. His Habeas corpus petition was allowed by a Division Bench of Delhi High Court (1975). The govt. took umbrage. It transferred one of the judge who was permanent to North East as a penal Act - Similar number of judges whom the then Indira Gandhi Government considered as too independent were transferred to other High Courts. The other judge (in Kuldip Nayar case) was Justice R.N.A., who was a promotee from District judge. He was still additional judge. Though two other colleagues junior to him were made permanent, Judges of High Court Justice R.N.A. was reverted as District Judge in late 1975. When elections took place in March 1977, opposition Janata Party -von and formed the government with Morarji Desai as Prime Minister.

The election manifesto of Janata party had promised that it will undo the injustice done to the judges, and will retransfer them and restore them to their pre

emergency position. So all judges were transferred back to their original high courts, not withstanding that in some High Courts, some lawyers opposed it. On similar principle Justice R N A was promoted as high Court Judge, Delhi in 1977, from where he had been reverted in 1975. The manifesto of *Janata Party* to restore the victims of Emergency to their original position required that Justice R N A be restored to his original seniority. The government accordingly passed simultaneous order promoting Justice R N A as permanent Judge of High Court Delhi and also restoring his seniority and placing him above two judges who though junior to him had been made permanent during Emergency in 1975. Thus the gap of two years did not stand in the way of justice being done to Justice R N A and restoring his original seniority.

It also needs to be emphasized that none of the judges protested at Justice R N A being given his original seniority. One was the realization that in the changed atmosphere, for those juniors to protest at being placed at their original seniority - would have been resented by people at large.

For same reason I can see no difficulty in just passing earlier an executive order or Parliamentary resolution of reappointment of all judges removed by President Musharaff and a further direction that the seniority will be as it was at the time of their removal or resignation. I have no doubt that all judges will see basic sense of justice and give their consent readily - after all judges do not live in ivory tower, and naturally would not like a situation of unnecessary conflict with the peoples representatives.

Indian Supreme Court (Chandrachud J. including) in 1976

had given a shameful decision upholding the right of government to impose emergency and also to suspend right to life and Habeas Corpus. The General elections in 1978 brought the erstwhile opposition *Janata Party* to power but it did not want to appoint Chandrachud, the senior most Judge of Supreme Court as Chief Justice of India because of said judgment. But many of us, (though extremely critical of Chandrachud's decision) still felt that suppression would not be conducive for the independence of judiciary - so Morarji Desai, let it be said to his credit, listened to this reasoning and appointed Chandrachud as Chief Justice of India. Thus Moraraji Desai executive (read Musharaff) did not go on bearing a grudge that Justice Chandrachud (read Chief Justice Chaudhry) had decided against him or apprehended that there was danger of Chandrachud deciding against Morarji on personal grounds in future. So the storm blew over - Chandrachud court went on doing its duty according to its conscience and similarly Morarji Govt continued on its path without unnecessarily being needed by Supreme Court. A cloud of fire on Indian democracy blew over and democracy was back on the rails - all because of mature behaviour and broader view being taken by both political leaders and judges. I have no manner of doubt that Pakistan judiciary which has similar judicial temper and traditions will also act in that restrained atmosphere and the present uncertainty will immediately blow over.

One of the alternative being mentioned in the press of Pakistanis to create two Supreme courts one called the constitutional court headed by existing Chief Justice and the other dealing with

Civil Criminal matters headed by Chief Justice Chaudhry. In my opinion this alternative is worse than the disease. First the splitting up of Apex Court into two courts is-unworkable in a federal constitution like that of Pakistan. We, in India pondered over it for years and have discarded the idea as unworkable and unnecessarily cumbersome. Also the suggestion that Chief Justice Chaudhry should not head the Constitutional Court but Civil and Criminal Court will rightly be unacceptable to Chief Justice Chaudhry and Bar and public and it will create further strain and complications.

I hope this matter of the Chief Justice and Judges of Pakistan will be immediately and amicably sorted out so that the new government can proceed to Act on various important matters concerning the people of Pakistan and also especially to take immediate steps to work out a stable, permanent, friendly

relationship between India and Pakistan.

(from page 1...) He has been running the National office of the PUCL since 1980, first as the Executive Secretary and then as General Secretary, from his residence.

He was closely associated with civil liberties movement in the country for over three decades and diligently edited the monthly PUCL Bulletin till the very end of his life. He always maintained that if the organization has to have a credibility it should steer clear of any 'isms' and be steadfast in being pro-human rights and civil liberties only.

As the General Secretary it has been his endeavour to put the PUCL on its legs as an Institution, not depending on its association with the name of any individual. When everyone feared that if V M Tarkunde relinquished its Presidentship, the organisation would fizzle out and when

Tarkunde insisted that he would exit as President, it was Chhibbar's untiring work that did not let the organisation feel his absence. Rajni Kothari, who followed Tarkunde as President, had no problems in spreading the network. Dr Chhibbar ably advised and guided various State Units, created the archive of the People's Union for Civil Liberties and organised successfully its Annual Lecture Series besides bringing out several civil liberties related publications. His death is an immense loss to the civil liberties movement of the country. PUCL has lost a noble and committed campaigner and leader of human rights. The real tribute to his memory will be to continue working for the defense of civil liberties in the country with the dedication and selflessness that Dr. Chhibbar so deeply epitomized in all his life time. - **Pushkar Raj**, National General Secretary, *People's Union for Civil Liberties*

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Sensationalisation by Electronic Media in Envelope of Freedom of Expression

Astha Singh¹

1. What is Freedom of Expression?

Our country is the largest democracy of the world but what constitutes democracy. How do we ensure and protect this democracy which is a privilege, a right, a priceless and precious jewel that is to be adored and protected; at the same time it is a duty, a responsibility towards fellow beings and towards the coming generations. To ensure this, the makers of the Constitution gave us many tools and one of these tools is freedom of expression. It is a fundamental right guaranteed by the Constitution of India and is entrusted in Article 19(1) of the Constitution. This right gave to the people a right to express whatever they believe, they experience, they doubt. These basically act as a mirror of reflection of the people for other people or for the government. This right although is subjected to certain reasonable restriction. According to article 19(2) this right does not come into practice if it is against public order or decency. Section 153(a) of Indian Penal Code also apply in these cases which gives the authority to police to arrest someone if it relates to *promotion of enmity and hurting religious sentiments*. These are some of the tools in the hand of government to protect other people's liberty.

2. Freedom of Press

The indirect implication of this right is also the freedom of press. These words are not mentioned anywhere in the Constitution. The omission was noticed and criticised in the Constituent Assembly. Dr B R Ambedkar, the principal architect of the Constitution, assured the members that freedom of the press was included in the freedom of speech and expression and it was hardly necessary to provide for it

specifically. Freedom of the Press, like any other fundamental right, cannot be curtailed by executive orders or administrative instructions, which lack the sanction of law. The law must fall squarely within one or more heads of permissible restrictions specified in Article 19(2), namely, (a) security of the State, (b) sovereignty and integrity of India, (c) friendly relations with foreign States, (d) public order, (e) decency or morality, (f) contempt of court, (g) defamation or (h) incitement to an offence

2.1 Evolution of Press

In the pre-independent India, there were two kinds of newspapers and journals. One supportive of the colonial power, if not overtly then covertly. The other spoke of the aspirations of the people, pointed out injustice and oppression.² The number of copies and the number of publications were limited, partly because of the administrative obstruction and partly because of the technological limitations. Yet the effect of what was printed was profound and inspirational

Independence brought with it the freedom of press in form of the freedom of expression. The press in the initial years saw the emergence of a new feature: the ownership of some newspaper passed from the founders and editor-publisher to commercial concerns³.

Advent of technology brought with it the electronic media consisting of televisions, radio and recently the internet. From a modest beginning of being the handmaiden of the central government, it has now been transferred to private enterprises. Now, more importance is given to the marketing division than the editor. The news channels now have to decide what could "sell".

Increasingly journalism as we know today is becoming Entertainment and Media (E&M) industry.

3. Current Scenario

In the present state the moment one switches on the television one is swarmed in the tide of various news channels. Each news channel providing us with a different news and a different point of view but what are these channels and news provider offering us? It is definitely appreciable that there are so many news channels surviving in the market but the real question is how these channels are surviving and what is the effect of these tactics? What has the culture of Exclusives, Breaking News and world premiers resulted in?

The eating habit of some personality from the entertainment industry is shown as the main headline⁴. A furious mob beats up a woman, creates mayhem, damaging cars and public property and attacking police personal based on a television program of dubious credibility⁵. A Mumbai television program carried pictures of a man holding a child being beaten up and dragged by a group of maids in a middle class colony. The allegation was that he had tried to molest his maid. Soon after, the man's side of the story appeared, which was that, suspecting his maid of theft, he had tried to snatch her identity card, giving rise to molestation charge.⁶ In another case a man dropping off his daughter at school was targeted by a mob in the case of mistaken identity after a report in the local news channel⁷. Beside these there are sting operations and other reality shows that again result in various agitations from people. In few minutes Khurana who could have remained as a school teacher with a weakness for

a quick buck was showed as a female pimp⁸. Gitanjali who has been a half successful model gained publicity after being shown as a demented, alcoholic, drug addicted wastrel, abused by journalist who were only doing their job and had a right to express themselves.⁹

If Rakhi Sawant alleges that a man has kissed her without permission, then this triggers a national debate and is a bigger story than the nuclear deal, the presidential election or death of hundred of people in a natural disaster¹⁰. If there is an outcry of the bar dancers then there will be an half an hour program on bar girls' dancing¹¹. If there is a man's wife objecting to his mistress then there is two hours program on them fighting¹². And more recently, there can't be a better example than the Arushi Murder Case in Noida. Almost every news Channel covered it day and night and all the other news became as unimportant as anything. Sometimes the breaking news used to be that the police has not been able to find anything.

In all this the most dangerous is the business news channels on whose verdict sometimes our stock exchanges also fluctuate. These news channels often cater to different companies¹³. Hence all the news channels are ready to do anything to sell and to cater to the customers.

4. Main Reasons for This

The main reason is the fierce competition to get more viewers. For this some news channel don't even hesitate to compromise on the truth. A channel is now seen as a profit making organization and hence survives on the advertising enterprises and more importantly on TRP ratings. They thus focus on 'packaging' of the news rather than on the truth. The main factor behind it is hence the market forces which constitutes of both the competition and the consumers.

5. Conclusion

Democracy is unthinkable without a free press and its success depends to a large extent on the kind of role the media play as an interface between the parliament and the people. This is the reason why freedom of press is included in the Constitution in form of freedom of expression. Now the question is that the media is using this freedom against the people. Today news channels cover various stories in such a detail that parliamentary debates on major issue have ceased to be important. The news channels hence focus more on analysis more rather than on the reporting of the actual facts. The ministry although has introduced the Broadcast Bill in the parliament which was welcomed with great wrath. The ministry said that news channels should emphasize on the accuracy of the news reports and a distinction should be made between news and analysis of news. Distinction should also be made between news and entertainment.¹⁴ The ministry has also asked the news channels to avoid morbid, sensational or alarming details not essential for factual reporting. Media trail of a person should be avoided till the law has taken its course. Presentation of crime, violence, natural tragedy or obscurantist supernatural practices should be dealt with utmost objectivity and sensitivity, as ruled by the state.¹⁵

Although the intention behind this regulation is good but having a regulation on media cannot be justified as it is going against the spirit of journalism. There is an urgent need for self regulation on the media. The media should stop catering to all types of news especially when they are given freedom to show the truth.

¹B.A.LLB, 2nd year, Rajiv Gandhi National University of Law, Patiala, Punjab, did an internship at PUCL

Somnath Chatterjee, "Time for A Round of Introspection", *The Hindu*, 22 November, 2007

³ibid

⁴ibid

⁵ibid

⁵Amrita Shah, "Camera's Begun To Lie", *The Indian Express*, 8 September 2007

⁶ibid

⁷ibid

⁸Shailaja Bajpai, "Everyone for Espresso News", *The Indian Express*, 14 September, 2007

⁹ibid

¹⁰Vir Sanghvi, "No News Is Bad News", *Hindustan Times*, 29 July, 2007

¹¹ibid

¹²ibid

¹³Somnath Chatterjee, "Time for A Round of Introspection", *The Hindu*, 22 November, 2007

¹⁴Chetan Chauhan, "News Please, No Gossip", *Hindustan Times*, 27 March, 2008

¹⁵ibid

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.

— General Secretary

AFSPA and Its Misuse in Jammu and Kashmir

Abhinay*

Introduction

AFSPA stands for Armed Forces Special Powers Act, which was passed in Parliament and approved by the president in September 1990. It was deemed to have come into force from July 5, 1990¹. It was enacted to counter terrorism and stop insurgencies in Jammu and Kashmir. Under the Act, the armed forces in Jammu and Kashmir can (a) Open fire or use force - to the extent of causing death - against persons who, in their estimation, are acting in contravention of any law or order or carrying weapons or things capable of being used as weapons, (b) Destroy any arms dump, fortified position or shelter from which armed attacks are made, likely to be made or attempted, or structures used as training camps or hide outs. (c) Arrest without warrant, any person who has committed a cognizable offence or against whom there is reasonable suspicion that he has committed or is about to commit a cognizable offence, (d) Enter and search, without warrant, any premises to make such arrests, and to recover any person believed to be wrongful restrained or property suspected to be stolen or arms believed to be unlawful.²

Misuse of the AFSPA The Act was enacted for counter-insurgency operations and to tackle terrorism but some officials of armed forces misuse this for their selfish motives to get medals and rewards. According to Parvaiz Imroz, a lawyer and human rights activists, armed forces Act even beyond AFSPA. They cannot interrogate or torture any person after the arrest, they have hand him over to the police. But the Army and other central forces interrogate people, torture them and kill them in custody.³ There have been a numerous cases in which the armed forces

have acted beyond AFSPA for the following purposes

(i) Fake Encounters

Fake encounters are one of the misuses of AFSPA as armed forces target civilians and shoot them down after branding them as a terrorist. Fake encounters take place with the help of local police as what happened in Srinagar where a constable named Padroo helped *Rashtriya Rifles 5* and *Rashtriya Rifles 24* in shooting down two innocent people, one of them was a roadside scent vendor and the other one was a government employee.⁴ In another case, armed forces shot down two people, one of them was a teacher in the education department and other one was an employee in the consumer affairs and public distribution system.⁵

One should not forget that "one of the defining characteristics of the modern state is that it largely retains the monopoly of organised killing. In democratic countries, this right is exercised through judicial due process. Only the Judiciary has the right to order an execution, not the prime minister, president or army chief⁶ But this characteristic seems to have vanished from the state of Jammu and Kashmir. In Pathribal case, five top officials "were put on trial for the murder of five unarmed civilians, but they had escaped prosecution as Supreme Court had stayed the trial and held that they could not be prosecuted as they are protected under para 7 of the AFSPA and permission has to be sought from the Central Government before prosecuting them⁷ [On March 24, 2000, five Kashmiri villagers were picked up and killed at Pathribal in Anantnag district, allegedly because they were involved in Chittisinghpura massacre of March 20, in which 35 Sikhs had been killed by militants. The Army and the J&K Police had claimed that

they were foreign militants. Local residents protested that these men were from nearby villages. The claim of the Army Authorities was that (he Seven Rashtriya Rifles had an encounter with Lashkar-e-Toiba, which was responsible for the massacre of 35 Sikhs. The case could not be taken up under the provisions of the Protection of Human Rights Act 1993. The Chief Minister Farooq Abdullah was compelled to take action because of the local agitation. Ultimately, a CBI enquiry was held and five high ranking army officers were charge sheeted]. In another case, 5 top officials were issued non-bailable warrants as they were accused of involvement in an alleged fake encounter killing of an Imam of a mosque⁸. Later, the Army showed its incompetency to locate them⁹. It shows the lack of commitment from the Army to provide justice to the local people.

Supreme Court on Fake Encounters

The Supreme Court has also expressed concern over the killing of innocent people in Jammu and Kashmir after branding them terrorists. Justice Aftab Alam said that just for getting gallantry awards, innocent people in Jammu and Kashmir are termed terrorist and killed.¹⁰ The Supreme Court also termed fake encounters as "worse than cold blooded murder and condemned a section of the security forces who fake encounters to get gallantry awards and out of turn promotions.¹¹

(ii) Rape and Abduction

The atrocities by Army officials do not end with fake encounters, they are even involved in rape and abduction cases. In one of the case in Bandipore town, two of the soldiers of Army were convicted for molesting a girl. The two had been awarded severe punishment including reduction of rank.¹² In another case, a soldier killed

himself after being accused of trying to rape a girl.¹³ They use their power for abduction of civilians also as what happened with Javed Ahangar, a 16- year old student of class X, who picked up by Army officials when he was outside his house and he never came back to his home after that.¹⁴ Many people have been raped and picked up by Army officials as AFSPA empowers them to enter and search anybody's house just on the mere basis of suspicion and they misuse this power.

Administration of Justice

In Kashmir, 300 cases of murder, rape, torture are struck because the MHA refuses to give the go-ahead to prosecute the alleged perpetrators¹⁵. This is the condition of the administration of justice over there. The affidavit filed in a response to a PIL filed by All Kashmir! *Samaj* by Indian Government in 2007 revealed that over 40,000 have been killed in the state from 1990 to 2006¹⁶. It shows the level of insurgency in the areas of Jammu and Kashmir after the implementation of AFSPA. It has been recommended by the Delhi High Court that atrocities committed by the members of the armed forces could be put an end only if military courts get tough.¹⁷ Justice S N Aggarwal said "that there is no gainsaying that life and honour of citizens cannot be allowed to be invaded by the very same people who are supposed to protect them. A court dealing with such invasions cannot ignore the sense of helplessness of those suffer exploitation at the hands of the members of the armed forces deployed to protect the weak against the tyranny of the strong and the ruthless."¹⁸

Measures to improve AFSPA Armed forces Special Powers Act, 1990 which had been introduced for the betterment of the people of Jammu and Kashmir can be improved by incorporating some changes. First, it should be made ensure that the number of

security forces does not pose a threat to the lives and dignity of citizens especially women. These could be done by scrapping the method of measuring the performance of the security forces by the number of militants they kill because it provides a direct incentive for killing even those who are innocent.¹⁹ Secondly, it should be made mandatory on the part of district authorities to report every case of custodial death to the National Human Rights Commission. Article 370 should not be misused in this regard.²⁰ Thirdly, institution like State Human Rights Commission, State women's commission and Jammu and Kashmir Accountability Commission should be made effective in their policy implementation. Fourth, State Information Commission should incorporate crucial provisions of the central Act as National Right, to Information Act is not applicable in the state of Jammu and Kashmir.²¹

Conclusion

AFSPA is proved as a draconian Act for Jammu and Kashmir. It has been misused by some officials of armed forces for glorifying their carrier as now they have associated themselves with certain kind of acts like fake encounter, rape etc. which were never associated with the Indian Army. Indian Government should take proper steps to ensure that AFSPA is not misused by Army officials and that can be done by the proper working of National Human Rights Commission, National Right to Information Act in Jammu and Kashmir and by making sure that Article 370 of the Constitution of India is not misused for denying basic human rights.

*A B.A.L.L.B student from Christ College of Law, Bangalore, worked as an intern in the National office. PUCL, Delhi.

**Charge sheeted: *Chittisinghpura and the Protection of Human Rights Act 1993; PUCL Bulletin, June 2006: Y P Chhibbar; pp 56*

¹ Kashmir caught in the Act, *Hindustan Times*, March 24, 2007.

²Id.

³Id.

⁴Man who held grave truths, *Hindustan Times*, March 10, 2007.

⁵Civilian deaths trigger protests against Army, *The Indian Express*, March 12, 2007.

⁶Executing justice, *Hindustan Times*, May 2, 2007.

⁷Pathribal Case: Army to petition SC against HC decision, *The Indian Express*, September 10, 2007; Pathribal Encounter: SC stays trial of Army personnel.

⁸NBW against 5 Army personnel in Valley encounter case, *The Indian Express*, April 3, 2007.

⁹Army says no information on officers involved in 'fake encounter' case, *The Indian Express*, April 19, 2008.

¹⁰Judge voice concern over fake encounters, *The Hindu*, April 30, 2008.

¹¹'Fake encounters worse than murder', *Hindustan Times*, April 30, 2008.

¹²Bandipore molestation case: severe punishment awarded to soldiers, *The Indian Express*, November 6, 2007

¹³Jawan accused of rape, kills himself, *Hindustan Times*, July 6, 2007.

¹⁴Kin of the missing meet in capital, *Hindustan Times*, February 11, 2008.

¹⁵*Wa;7 Today*, November 28, 2007.

¹⁶Over 40,000 killed in Kashmir in 16 years, *Hindustan Times*, May 14, 2007

¹⁷Military must shield weak against tyranny, *Hindustan Times*, June 28, 2007

¹⁸

¹⁹The peace process within Kashmir The *Indian Express*, April 13, 2007

²⁰Id.

²¹Id

PUCL Bulletin will carry write ups remembering Y P Chhibbar in its forthcoming issues. Contributions reminiscing Dr Chhibbar are welcome.

Justice Tarkunde - A Compassionate Crusader

Justice V M Tarkunde, was a humanist par excellence who became a symbol of hope for the oppressed people during the emergency regime in the country, and who ever since served as a load-star for all those who were engaged in their separate or combined struggle from Kashmir to Kanya Kumari for the promotion of human rights, especially those who are fighting fascism, communal hatred and majoritarian chauvinistic nationalism. His has been the most sustained voice of sanity in the country during the entire period, which owes itself to his intellectual commitment and activism based on the M N Roy's radical humanist philosophy, spread over more than five decade.

Though I met Justice Tarkunde for the first time in 1990, my spiritual association with him goes back to his founding Citizens for Democracy (CFD) in 1974 and more strongly when during emergency he was instrumental in organizing People's Union for Civil Liberties & Democratic Rights (PUCL & DR) of whose branch I was among the founder members in Aligarh. His speeches and writings impressed me equally for the courage of conviction and for a rare clarity of thought on all issues. I say 'rare' because in the country's mainstream human rights movement not many are prepared to take a consistently humanist position, they would rather accommodate nationalist concerns, but not so Justice Tarkunde, who considers nationalism a reactionary collectivist idea which makes people surrender their freedom on the false altar of patriotism making nations fight against each other like tribes of yore.

After the rise of militancy in Kashmir in 1989-90 I found Justice Tarkunde again combining the

courage of conviction with clarity of thought, saying, as Jaya Prakash Narayan had earlier done, that India had not yet redeemed its pledge given to the people of J&K for ascertaining their wishes about the accession of the State. He said it loudly and clearly, in Delhi and Srinagar. But his concern for the people of Kashmir regaining their freedom and dignity was not motivated by any anti-Indian feelings. His has been the concern for the entire humanity of the Indo-Pak subcontinent. In his speeches and writings on this issue he emphasised that Kashmir should not be considered a territorial dispute between two neighbouring countries. It should be rather viewed in the context of democratic aspirations of a people denied freedom and dignity. He explained to fellow Indians at the height of militancy that our genuine national interests had been harmed a good deal by the policy of retaining the State of J&K at all costs, including those of three wars. Justice Tarkunde led a joint team of the PUCL, CFD and others which after visiting Srinagar and Jammu came out with the first "Report on Kashmir" in March-April 1990.

I found the report very balanced and the approach of the team for dealing with the situation constructive. While exposing and condemning the atrocities of the security forces, it unequivocally condemned the cruelty and violence on the part of militants including kidnapping and killing of innocent persons. It advised the militants to adopt peaceful democratic methods as their "violent activities were providing a semblance of justification to government to assume more and more arbitrary powers." The report called upon the government to replace its policy of repression with

that of reconciliation with the people.

During the first half of 1990 other voluntary organizations had come out with inquiry reports on the situation in the valley. This made me think of organizing a group for not only systematic objective monitoring of human rights situation in J&K but also to promote dialogue between the people of Kashmir and the Government of India. I met Justice Tarkunde whom I considered best suited to lead such a group. He readily agreed with my suggestion and we decided to jointly convene a meeting of human rights workers in Delhi. In the consultative meeting held in this regard on 15th September 1990 it was decided to constitute the 'Coordination Committee on Kashmir' under the Chairmanship of Justice Tarkunde for monitoring human rights situation and promoting dialogue. I became its Vice-Chairman and Mr N.D. Pancholi was appointed Convener. On behalf of the Committee teams periodically visited Jammu and Kashmir and came out with reports. I realized that people of the valley not only held Justice Tarkunde in highest esteem for not only the fearless expression of his frank views but also for his compassionate personality who loved all human beings as humans. In one of the reports by Justice Tarkunde and others, concern was expressed for the plight of the Kashmiri Pandits who were not provided with basic amenities in the camps in Jammu. On one occasion the heart-rending stories of torture and rape narrated by victims in the valley moved Justice Tarkunde so much that he could not control tears-he started just sobbing and weeping.

On 2-3 March 1991 we organized a seminar on "The Kashmir Problem: Perspectives and Options" in New Delhi. During

seminars it is not rare to find oneself in difficult situations caused by clash of views or personalities. But what happened in our seminar was very unusual. An extremist section of displaced Kashmiri Pandits came to the place determined to create trouble. They had brought posters and placards which they wanted to display. We allowed them to do so. A good number of them were present in the session uninvited and were heckling the speakers. A senior friend was even contemplating calling the police. All along I found Justice Tarkunde calm and composed. They demanded that their case must also be heard. Justice Tarkunde allowed one of them to read his unscheduled paper. It was a long one full of distortions, but it was patiently heard, just because of Justice Tarkunde. It was a rare experience which made me respect Justice Tarkunde all the more. It was not a tactful handling of a difficult situation but rather manifestation of compassion for fellow human beings by one steeped in humanism.

AMU Riots 1990 Inquiry On the occasion of *Shilanyas* in Ayodhya in 1990, communal riots broke out in Aligarh, during which a sensational false story was published in Hindi dailies that 78 persons including some patients had been killed in the University's Medical College Hospital. Justice Tarkunde along with other members of the PUCL inquiry team visited Aligarh. That the report gave a convincing rebuttal to the false allegations of killings in the hospital is only a part of the work done by the team. Since I accompanied the team in its work, I was impressed by the thoroughness with which it conducted its work. Justice Tarkunde visited all the far flung sites in the old city and even suburbs where rioting had taken place. Some areas were so dirty and stinking that I did not enter it,

but Justice Tarkunde did not show any hesitation to go to any place. I admired his stamina and perseverance. By visiting these places and seeing bullet marks and after hearing the stories from the victims Justice Tarkunde and the team got convinced of how a brutalized State Security force i.e. the PAC had deliberately chased and targeted Muslims, shooting them to kill sometimes in the innermost part of their houses. The PUCL inquiry report on Aligarh riots prepared by Justice Tarkunde, Dr R.M. Pal, Justice Rajindar Sachar, Prof Dalip Swamy & Prof Abu Baker is one of those thorough reports which establishes how in the face of communal political and media onslaught a law enforcement machinery which is not impartial and efficient can cause large scale killing of innocents and destruction of property. This led Justice Tarkunde to subsequently agree with the demand for training the police in human rights and removal of their prejudices against minorities and adequate presence of minorities in all wings of the law enforcement machinery through reservation.

Religion and Morality In one public meeting on corruption some one from a Muslim religious party, expressed the opinion that without the fear of God people could not be expected to strictly observe moral norms in their conduct. Pat came the reply from Justice Tarkunde that more than 20 years ago he had come to the conclusion that there was no God and till date he had found no reason to change his opinion. It was rather unusual for Justice Tarkunde to be so brutally frank. But he hastened to add that he would like believers to continue faithfully practicing their religion. It was not a mere matter of politeness, but sincere expression of his view that religion was not necessarily evil to be eradicated. On other occasions he took the

position that it was possible for a religious man to be a humanist. When we heard news of the death of Rev. MA Thomas, the founder of the Bangalore based '*Vigil India Movement* Justice Tarkunde told us that Rev. Thomas was the example of a religious man as a humanist. On the issue of religion, politics and communalism Justice Tarkunde again had the ability to distinguish between different categories of religious people and not calling every one 'communal or 'fundamentalist' as is generally done. He maintained that a religious person or party was not necessarily communal.

Threat of Communal Fascism

Justice Tarkunde like most others in the JP movement and other democratic rights movements, were earlier concerned with the rise of authoritarianism that Mrs Gandhi represented. Subsequently he expressed grave concern about the rise of communal fascism that the *Sangh Parivar* represented. He devoted most of his energies in the post-^yodhya phase to combating the communal fascism of the *Sangh Parivar*. Apart from the existing forums of the RHA and the PUCL-CFD, he helped found the Forum for Democracy and Communal Amity (FDCA) for this purpose. Under the auspices of this forum he addressed large meetings in almost all parts of the country. It was a good experiment in bringing together individual and groups of diverse backgrounds in the common endeavour of making people aware of the threat of communal fascism.

Minorities Council

As a follow-up of a seminar on 'Constitution, Law & Minorities held in January 1990, I convened a meeting to discuss the 'why' and 'how' of promotion and protection of minority rights in India within the human rights framework. It was presided over by Justice Tarkunde who blessed the idea of setting up

a Minorities Council of India. He agreed with me that mere formal provision of right to equality and non-discrimination could not be considered adequate for real enjoyment of equal rights by vulnerable religious minorities, which wanted to preserve their distinct identity. To make rights of minorities a real human rights concern, I proposed that the Council should universally promote equal rights of all minorities especially in South Asia. Justice Tarkunde was a major source of inspiration for us in the Council's work.

In the post Babri Masjid demolition period in various seminars and meetings Justice Tarkunde lent support to my plea not only "to fight communalism" politically and socially but to reform and strengthen the institutions especially the police, the district administration and the justice system to make law enforcement machinery impartial, effective and humane, so that rule of law is upheld in all conflict situations. It led to the convening of a seminar in Bombay in January 1994 jointly by Asghar Ali Engineer and I on the subject. I further started working on a book-length study on the subject, which resulted in the publication of the volume *Communal Riots, the State & Law In India*, to which Justice Tarkunde contributed a significant article on secularization and mixed composition of the law-enforcement machinery. My Report on *Communal Riots: Prevention and Control* for the National Commission for Minorities (NCM) in 1999 was a sort of culmination of the same effort.

In December 1997 Prof. Tahir Mahmood, Chairman of the Commission constituted the NCM Committee On Communal Riots: Prevention and Cure, of which I was made the convener. I requested Justice V.M. Tarkunde to Chair the Committee and asked Soli J. Sorabjee and Mr Rajeev

Dhavan to be its members. The Committee's terms of reference required us to recommend adequate administrative and legal measures for prevention and control of communal riots.

During one of the earlier meetings of the Committee when BJP led government had been formed at the Centre, Justice Tarkunde informally expressed the opinion that now since the BJP had come to power there would be no riots. I disagreed with him and submitted that even Bosnia-like situation could not be ruled out, depending upon the political situation and calculations of the game of power and the ascendance of *Hindutva* ideology. He agreed with me that irrespective of our views on the chances of occurrence of riots, we were expected to give suggestions for prevention and control of riots if and when ever there were chances of its occurrence.

Soli J. Sorabjee, subsequent to his appointment as Attorney General, did not formally continue his membership of the committee, though he extended support to it. Rajeev Dhavan also asked to be relieved, because of his preoccupations. Eventually I had to prepare the entire Report dealing with prevention, control, prosecution of the guilty and compensation to victims of communal violence under the over-all guidance of Justice Tarkunde. It was submitted in early 1999 and was approved by the Commission in March 1999, and sent for action to the Union & State Governments.

The Minorities Council published the Report in 1999 with a Foreword by Justice Tarkunde.

In 1993 when the Protection of Human Rights Ordinance was promulgated, in a well attended meeting of PUCL-CFD and others I was perhaps the only one who opposed the total rejection of the move. Justice Tarkunde went to the extent of calling it a fraud. He

like others including me, were concerned about the mode of appointment of the chair and members and exclusion of violations by even paramilitary forces from the proposed Commission's purview. I pleaded that we should mobilize opinion for the amendment of provisions of the proposed Act ensuring non-partisan appointments and independent functioning of the Commission. I am happy that Justice Tarkunde was among those who changed their views and lent support to the move subject to its independence and inclusive jurisdiction.

A Graceful Person

During the years of personal contact with Justice Tarkunde I was impressed by a rare combination of qualities of head and heart that he possessed. He never spoke for effect or to score a point and never indulged in rhetorical flourishes. His speech and writings both appealed to reason, dealing only with the issue under discussion with economy of words, though going into all the aspects of the question. Apart from his natural mildness and unassuming nature, what was again rare in him was the complete absence of rancour, and bitterness even when he was critical/condemnatory of some individual or group or point of view. He maintained his good humour even when dealing with fascists, communalists and authoritarians. Instead of shrieking and shouting at 'enemies' he was capable of mildly laughing at them. He was never so fanatically attached to any idea, person or creed as to lose sight of the sense of proportion and practical considerations. He did not allow, for example, his commitment to the philosophy of Radical Humanism propounded by MN Roy and his views on partyless democracy to become such a fad as to prevent him from involving in the reform of the existing party and electoral

system. His acceptance of the possibility of a sacred variety of humanism deriving from religion is another example of his preparedness to reject monopoly of truth for his own secular humanist creed. This made me

invite him to a seminar on 'The Concept of Man in Comparative Perspective' in which mostly scholars of religions were participants.

Justice Tarkunde's perseverance and sustained

interest in the promotion of the philosophy of radical humanism is worthy of emulation by all those who are working for any good cause.

National Executive Meeting of PUCL

National PUCL:

A meeting of the National Executive of PUCL took place at Rajendra Bhawan New Delhi on 1st November 2008. The meeting was presided over by Shri Prabhakar Sinha, senior Vice President of PUCL.

Shri K. Kannabiran and Dr Y. P Chhibbar could not attend the meeting.

Following members attended the meeting:

- Ajit Jha
- D Bhattacharjee
- D. Jagannathan
- George Mathew
- Kavita Srivastava
- Mahipal Singh
- Prabhakar Sinha
- Pushkar Raj
- Rajindar Sachar
- Ravi Kiran Jain
- Sudha Ramalingam
- Surendra Mohan

The first item of the agenda was decision regarding shifting of office of PUCL from 81 Sahayoga

Apartment and replacement of Dr Chhibbar as General Secretary as per his request and illness. On this issue the meeting resolved to shift the office of the PUCL to one room accommodation that Shri Mast Ram Kapoor owns in the neighborhood of the present office depending upon its suitability. After the meeting Ravi Kiran Jain and Pushkar Raj could go to see the suitability of the place. At the same time both should look for a more appropriate alternate place.

The meeting resolved that Dr Pushkar Raj should take over as the General Secretary of the PUCL. He would be assisted by Shri Mahipal Singh, General Secretary Delhi PUCL. Shri Mahipal expressed his ability to come to the national office of the PUCL every afternoon and whenever required otherwise. Dr Raj will also manage the publication of *PUCL bulletin*.

2nd item on agenda was the proposal of Mr. Balakrishnan. Mr. Balakrishnan, an admirer of Mr. Tarkunde had expressed his willingness of supporting PUCL in form of donating Rs. 6 lakh and explore avenues of further financial assistance from other sources. The meeting accepted his proposal deeply appreciating his gesture of support.

It was resolved that a Trust be formed independent of PUCL. This trust will be formed by the friends of PUCL and will assist PUCL financially for running its national secretariat. The trust in general will be for the cause of promoting civil liberties in the country. Modalities of formation of this trust will be chalked out by the committee consisting of Justice Rajindar Sachar, Dr George Mathews, Shri Ravi Kiran Jain and Dr Jagannathan. Dr Jagannathan shall be its convener. - **Pushkar Raj**

SELECTIONS FROM PUCL BULLETIN, VOLUME II

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Supreme Court Judgement:

PUCL vs. Government of NCT of Delhi & Others with Regard to Sewage Workers

In the Supreme Court of India, Civil Appellate Jurisdiction

Civil Appeal No. 4911 of 2008

(Special Leave Petition (Civil) No. 5145 of 2006)

People's Union for Civil Liberties - Appellant(s) vs Government of NCT of Delhi & Others -

Order

1. Leave Granted

2. the appellant, a public charitable society, had filed a writ petition before the Delhi High Court alleging that there were large number of sewerage workers who meet with accidents in the course of their employment; that these workers were engaged by the Municipal Corporation of Delhi/Delhi Jal Board; that the workers were not provided with safety equipments; and that the departments do not take precautionary measures to save the lives of these workers. The appellant alleges that under similar

situation the Bombay High Court had entertained a writ petition and issued certain directions. The appellant wants that as regards Municipal Corporation of Delhi/Delhi Jal Board also, similar directions should be issued. The appellant also prays that the National Human Rights commission (NHRC) has framed an elaborate scheme and the same shall be implemented by the Delhi Municipal Corporation. It also

prays that the Delhi Jal Board, under whose jurisdiction the sewerage work is being done, shall also take care of all the lives of these workers.

3. in view of the scheme formulated by the NHRC the High Court declined to interfere and the writ petition was dismissed. Challenging the same, the appellant is before this court by way of this appeal.

4. heard learned counsel for the appellant and also learned counsel for the respondents.

5. counsel for the appellant pointed out that in spite of the scheme being approved by the

NHRC, these organisations are not implementing the scheme effectively and sincerely, and the workers are met with serious accidents and they are not being taken care of well when they met with accidents.

6. learned counsel for the Delhi Jal Board has stated that the scheme suggested/recommended by the NHRC has been fully implemented and the additional posts have also been created and a separate debarment, namely, Department of Safety and Disaster Management has been set up and a special consultant for safety measures appointed. It is also submitted that all the directions suggested by the NHRC are being fully implemented.

7. it is important to note that the NHRC has suggested very detailed guidelines and some of the guidelines deal primarily with measures to be taken when a sewerage worker is engaged to clean the sewerage. It is suggested by the NHRC that (i) emergency first aid treatment kits should be provided to take care of all minor injuries like cuts and burns; (ii) a physician's services should be available for emergencies; (iii) the workers should be educated about the hazards of waterborne diseases, such as typhoid and cholera through sewage and tetanus through cuts and wounds. Cuts and grazes should be covered with waterproof plasters. Effective immunization of workers against diseases such as typhoid, cholera, tetanus, etc. should be done by vaccination; (iv) the importance of personal hygiene should be emphasized and the workers

should be instructed to keep finger nails short and well trimmed, wash hands with soap and hot water before taking food or smoking and to keep fingers out of nose, mouth and eyes, because the hands carry most infections; (v) use of rubber glove should be insisted .so that sewage or sludge does not come in direct contact with the hands. Before starting work, skin likely to be exposed to sewage should be covered with barrier cream or worker should be provided with wader suit; (vi) the workers should be provided with a complete change of work clothes to be worn during working hours. Gum boots should also be provided for the workers; (vii) when the work is completed, all contaminated parts of the body should be thoroughly washed; (viii) in laboratory work only pipettes with rubber teats should be used to prevent contamination of the mouth, laboratory glassware should not be used for drinking purposes. In no event food should be prepared in the laboratory; (ix) adequate facility of clean water and soap should be provided for the workers for cleaning their body after completion of the job; (x) the gangs /JE/Site-in-charge must have telephone numbers for call of an ambulance, fire service, police and nearby hospital for any emergency; and (xi) those who are regularly engaged in sewerage work should be given proper training. These guidelines and the other guidelines issued by the NHRC may also be implemented by the Municipal Corporation/Delhi Jal Board whenever the occasion arises.

8. The appeal is disposed of accordingly. No costs. **-KG Balakrishnan, A K Mathur**, New Delhi, 6th August, 2008 Q

PUCL Gujarat:

Assault on Freedom of Expression

A conference was held in Ahmedabad on the problem of assault on Freedom of Expression on June 22, 2008. The conference drafted a memorandum which was handed over to the Governor on June 24.

The delegation that called on the Governor comprised Shir Digant Oza, National Convenor, People's Movement of India; Fr. Cedric Prakash, Director Prashant; and Gautam Thaker, General Secretary, Gujarat State branch, PUCL. The delegation urged the

Governor to safeguard the Constitutional right of freedom of expression.

The Governor gave the delegation a patient hearing and assured that he would do his best to address the issue. - Gautam Thaker

UP PUCL:

PUCL Activities in Uttar Pradesh

State Unit of the PUCL has made effective intervention in some of the important issues which are major concern of human rights defenders in U.P. On 23rd November, 2007, serial blast rocked the district courts of Varanasi, Faizabad and Lucknow in which several people were killed. Special Task Force (STF) of the State arrested some youths in this connection, particularly Sajjad, Khalid, Tariq, Kauser. Later, it was found in investigation by some human right organizations, that the arrest was fake and innocent youths have been implicated by the U.P. Police and STF. They were tortured in the custody and in jail and their family members were harassed and humiliated. Some advocates dared to take up cases pending in various courts of Lucknow, Barabanki and Faizabad. During this period, some lawyers belonging to *Hindutva* ideology started attacking those lawyers and prevented them from appearing in that "Serial Blast Cases" and passed resolutions to terminate the membership of those lawyers appearing for alleged terrorist. In this backdrop, PUCL

intervened in the matter and with the active assistance of some human rights organizations, convened a State Level Conference of Lawyers and Human Right Activists in Allahabad on 1st June, 2008 in which about three hundred delegates from 15 districts participated. It was inaugurated by Sri Amrendra Nath Singh, Chairman of Bar Council of Uttar Pradesh and presided over by PUCL State President Ram Bhushan Mehrotra, Former Advocate General S.M.A. Kazmi, Senior Advocates M.A. Qadeer, Sankatha Rai, D.S. Mishra, I.M. Khan, Yogesh Agrawal were main speakers and a resolution was passed condemning this fascist onslaught on lawyers and litigants and demanded fair trial for accused. PUCL General Secretary, O.D. Singh gave vote of thanks. On 7th January, a group of lawyers from Allahabad and Lucknow went to Faizabad to appear for alleged accused and on their protest, an order was passed to remove the handcuff of the accused in Court room.

It is to be noted that on 12th May, 2008, Advocate Mohd. Shoaib was attacked in district

court, Barabanki, Faizabad. On 5 April, 2008 Mohd. Shoaib, Advocate and Zaheer Ah mad Falahi a social activist was assaulted in Faizabad Court. On 16th June, 2008, Jamal Ahmad, Advocate was insulted and humiliated in Faizabad Court premises and on 12, 13, and 14 August, 2008 Mohd. Shoaib, Advocate M.A. Faridi, Rizwan, Rehan, all advocates were beaten in Lucknow Civil Court and Mohd. Shoaib was also paraded in Court premises, his cloths badly torn.

In his backdrop, a largely attended meeting was called by PUCL and PUHR in Lucknow in which Justice RB Mehrotra, Ravi Kiran Jain, Sr. Advocate Sandeep Pandey, Magsaysay awardee and others were main speakers. All speakers were unanimous on the question that every accused has the fundamental right to have a counsel of his own choice and advocates cannot be prevented by any group of hwyers from appearing in any case. - O.D. Singh, General Secretary; K.K. Roy, Organizing Secretary

PUCL Protest against Attack on Christians in Orissa

UP PUCL along with many civil society and human rights organisations staged a *dharna* on the attack on Christians in Orissa by Hindu communal elements on 4 September, 2008. It was staged

in Allahabad Collectorate in which about 80 persons participated. A memorandum was also given to the District Administration which was addressed to the President of India. Thereafter, on the initiative

of PUCL, a peace march went through a 5 Km. route in main city in which around one thousand persons, School Children, Trade Unions activists participated. Veteran Gandhian and '*Azadi*

Bachao Andolan' Leader B.L. Sharma, PUCL Patron, Shri Ravi Kiran Jain, Father Isodor Fernandes. Freedom fighter Zia-UI-Haque, O.P. Malviya, Krishna Murari, Karri Jee Rai, Seema Azad, Padma Singh, Meena Rai,

O.D. Singh, PUCL District President Sun it Singh, Nandita Adaval, Khurshheed Naqvi, Sunil Yadav, Krishna Murari, Com, Naseem, Jafar Bakht, Anshu Malviya were the main speaker.

It was demanded that Naveen Patnaik Government should be dismissed and the centre should intervene to protect the life and property of Christians in Orissa. - **O.D. Singh**, General Secretary; **K.K. Roy**, Organizing Secretary

Special Economic Zones (SEZ)

AP PUCL:

The Civil Liberties has organised a open debate on SEZ at Press Club, Basheerbagh, Hyderabad on 12.07.08. It was presided over by K Chandra Shekar, Advocate, High Court and PUCL EC Member.

The different section of people like Small Farmers from 2 to 3 Districts, Economists, Educationalists, Journalists, Doctors and other sections of the society. All of them spoke elaborately on the origin of the Act and dangerous impact of the Act.

Ms Jaya Vindhyaala inviting the participants, explained the velocity of danger to the rural area and rural mass and smaller and big farmers with constituting the SEZ and requested the participants to give valuable advice on the subject.

Shri N Saida Rao, Working President-of PUCL elaborated the problems of SEZ and said the SEZ is anti people and they should fight against it.

Ms Ratnamala of Virasam said Bihar and Goa, have rejected SEZ, the Act is providing total concessions to industrialists, and throwing the farmers into the streets after snatching their land. This Act was made in the Parliament in haste, with in three days. Against this Act the people who lost the property will have no legal claims. Mostly women are effected by this act. So SEZ should and must be scrapped.

Shri. Hanumandlu, General Secretary - Teleangana said the Act is anti agriculturists. Region wise movement be organised to oppose this Act and to scrap this Act.

Shri Suryanarayana of Janavignana Vedika said this system firstly came in China and with globalisation entered into our country. It is swallowing the entire rural area and the Act should be scrapped.

Prof Keshav Rao Jadav, said the Economic system, Anti

Agriculturist System, and SEZ are, the reasons for the massive suicides of farmers. Political and Organisational leaders should fight on Gandhian lines against this Act and the Act should be scrapped.

Shri Mulyalu of Socialist Forum said SEZ is the conspiracy of Foreign imperialists countries. Agriculturists should fight against it and SEZ should be scrapped.

Shri Y Koeshwar Rao said SEZ is against the spirit of our Constitution and Act should be scrapped.

Shri L K Gopal Rao and Shri Suresh Babu also opposed SEZ and demanded for its scrap.

Shri K Chandra Shakher presiding the meeting said that, land acquisition Act is already there, though it is mostly misused can be questioned in court of Law, SEZ Act is against the sovereignty of our country and should be scrapped. - Jaya Vindhyaala, General Secretary, AP PUCL

State Council Meet & General Election

Jharkhand PUCL:

Conference and General Election of Jharkhand State PUCL was held at Vikash Bharti, Jamshepur, East Singhbhum on 18th and 19th October 2008.

Inaugrating the conference, Dr Prabhakar Sinha, National Vice President in his speech described the present Human Rights situation and challenges ahead in India in the context of Globalization and economic crises. He referred that Jharkhand is among the five states where maximum human rights violations are reported.

Victims are mostly marginalized and poorer section of people. The privileged class of the society deriving all the benefits while majority other downtrodden people are badly deprived of essentials and basic needs Of livelihood.

Shri Rajendra Sail, President, the Chhattisgarh State branch of People's Union for Civil Liberties (PUCL), in its assessment, has clubbed Jharkhand with Bihar, Andhra Pradesh, Gujarat as well as Chhattisgarh as states which reported maximum human rights

violations, including police encounter, custodial deaths (extra judicial killings) and rape.

Jharkhand, Bihar, Andhra Pradesh and Chhattisgarh and Naxalite-hit areas while Gujarat has a dubious distinction of police excesses. Rajendra Sail said that the State has also, been ticked off for enactment of several draconian laws, poor condition of jails and delay in disposal of cases lodged against under trials.

Rajendra Sail, along with PUCL ' National Vice-President

Prabhakar Sinha and Vinay Kanth, State President of Bihar State PUCL, came to attend the two-day State Council conference organised by the PUCL Jharkhand State branch at Samekit Jan Vikas Kendra in Sundernagar, Jamshedpur.

Nishant Akhilesh, National Organising Secretary said that Jharkhand topped the chart related to the number of arrests made under the Prevention of Terrorist Act. Jharkhand also topped in custodial rape in 2007, he said.

Following day of the conference i.e., on 19th October

2008 election of Jharkhand State PUCL was held. Dinanath of Ranchi branch and a founder member of PUCL conducted the Election. Rajendra Sail, President, Chhattisgarh PUCL, Vinay Kanth, President' Bihar PUCL and Dr Prabhakar Sinha, National Vice President were observers. After Election, following contestants unanimously declared elected:

President: Subrrrto Bhattacharjee, Jamshedpur

Vice-Presidents: Tridiv Ghosh, Ranchi; Saukat Ali Khan, Palamu' Satya Narain Bhattacharya, Dhanbad; Baboolal

Chakraborty, Jamshedpur'
Shailendra Sinha, Dumka

General Secretary:
Shashibhusan Pathak, Ranchi

Organising Secretary:
Phudan Murmu, East Singhbhum

Secretaries: Nirmala Murmu, Dumka-Pakur; Sunil Kumar Singh, Dhanbad; Suresh Manas, Garhwa; Shakti Ranjan Nag, Jamshedpur; Arvind Avinash, Ranchi

Treasurer: B.N. Das, East Singhbhum

Punjab and Chandigarh PUCL:

Letter to Senior Superintendents of Police

To
The Director General of Police
Punjab, Chandigarh

Sir,

On behalf of People's Union for Civil Liberties (PUCL), a letter has been sent to all the Senior Superintendents of Police of Punjab. In the said letter, a request has been made to implement the judgement of Hon'ble Mr Justice R. L. Anand (Retd.) dated 29-4-08. In

this judgment, a direction was issued that all the instruments of torture kept at the police stations, CIA Staff Officers, Interrogation Centre, police posts etc should be removed forthwith.

Vide this letter dated 6-10-2008, PUCL has requested that a team of PUCL wants to visit the police stations, interrogation centre, police posts etc and the compliance may be ensured. You are requested to get the directions

of the Hon'ble High Court complied with in the State of Punjab. You are also requested to give us a suitable time for a meeting with your good self in this regard so that the compliance of the Hon'ble High Court's order be ensured. Yours Sincerely,
Roshan Lal Batta Bar-at-Law,
Senior Advocate, President PUCL,
Punjab & Chandigarh Branch,
2096, Sector 15-C Chandigarh

Prisoners on Strike for Justice

Letter:

This year on 10 December, the Human Rights Day, the so-called Naxalite under-trial prisoners in the jails of Nagpur, Amravati, Chandrapur and Mumbai will be going on a token hunger strike. The hunger strike is intended to remind the state legislative about its unfulfilled promises discussed at its previous session in April 2008. In a reply to a query by Shri Kapil Patil (MLC), the state Home Minister spoke of giving justice to the concerned under trial prisoners after a thorough enquiry into their problems. Almost eight months have passed since, but rather than providing a solution to the problems the Home department

has chosen to further aggravate them.

As one remembers, about thirteen such under trial prisoners of the Nagpur central jail including a woman) accused of Naxalite related crimes had commenced on an indefinite hunger strike on 7th April 2008. They were soon joined by other similar under-trials imprisoned at the Amravati Central Jail. The issues raised by them broadly reflected the challenges posed before social activists, democrats and ordinary prisoners and therefore struck a sympathetic chord both within and outside the prison. Among the list of six demands submitted to the Home

Minister some contained references to the arrest and re arrests of 'suspected Naxalites', while others were related to prison reforms. The strikers mainly demanded the immediate release of all alleged 'Naxalites' who have been acquitted by the judiciary in a number of cases but were immediately rearrested on their release from jail. The immediate release of social activists falsely booked as naxal-sympathizers was also demanded along with an end to the labeling" of social organizations as 'naxal fronts' by the state police. Some other demands that were related to an improvement in prison facilities

such as lawyer interviews, providing telephone services and allowing inmates to accept eatables from relatives, found the support of many jail inmates. The strike also sought to raise the issue of the misuse of section 110 of the Criminal Procedure Code as a method of preventive detention by the state police. Under the pretext of curbing crime, it has become a tool used by the police to harass hundreds of unemployed urban youth or the tribals in Gadchiroli and Gondia.

The initial response to the hunger strike was overall positive. Right from the state legislative council to the mainstream media and the common citizen everyone criticized the police for its labeling of social activists such as Medha Patkar and Baba Aadhav as naxalite - sympathizers. Surprisingly the Home Minister himself took lead in such a criticism. But the nodal point came along when the additional DGP (anti-naxal operations) was given the responsibility to conduct an inquiry into the strike. This was extremely shocking! The very office of perpetration was chosen to conduct an 'impartial' enquiry. Thereafter starts the famous method of the rulers wherein the issues of injustice are conveniently swept aside and the character of the dissenting voices are brought into focus. In this case, it was not much of a problem for the home department to lead this campaign in accusing the strikers of 'horrendous naxalite crimes.' A mere printout of the various fabricated charge sheet would suffice. Once the victims were projected as 'mass-murderers', it was enough justification for the injustices committed on them. So although the under trial prisoners continued their strike no government official was willing to assure the delivery of justice. The only reply was another criminal case registered on the strikers on the charge of 'attempted suicide.'

Finally considering the deteriorating health of the participants, the strike was withdrawn on May 3rd, 2008. A whole 27 days of fasting.

One would assume that the home department would quietly rectify its unjust practice rather than publicly accept the genuineness of the demands raised. But nothing such happened. In fact the spate of re-arrests of the released under trials has continued unabated. Below are details of some alleged naxalites who were rearrested after being released during the past year.

1. Mallesh Sailu Kusma: He has been in jail from May 2004. he was acquitted in all of his criminal cases in September 2007. there after he has been rearrested thrice at the prison gates of Nagpur and Bhandara. Twice the district police of Gondra and Gadchiroli detained him for 6 months each under section 110 Cr. P. C. he is currently in a Madhya Pradesh jail.

2. Yadanna Kawli: He has been in jail from 2005. He too has been rearrested thrice in the past one year whenever he was released from jail. The Gondia and Gadchiroli police. Similarly used section 110 Cr. P C on him he is currently in the Chanrapur district jail.

3. Madho: After spending five years in the Amravati jail the Gadchiroli police rearrested him on his date of release in February 2008 under 110 Cr. P. C.

4. Kaiash Punaem, Vinod Netam, Shomeji Sher Singh Pundre and Triveni: These four under trials have been in jail since 2003. Acquitted from their cases in Chattisgarh they were transferred to the Amravati Central jail for the trial of their Gadchiroli cases. After the acquittal of these Gadchiroli cases they were released on October 21st 2008 from the jail to be once again rearrested by the district police under section 110

Cr. P. C. they are presently at the Chandrapur District jail.

5. Jayakka and Vishwanath Kudmethe: This husband and wife duo has been in the Nagpur central jail for the last 41/2 years as under trials. Together they were tried in about 48 criminal cases and were acquitted in all of them. But once again on the day of their release in March and September 2008 respectively the Gadchiroli police rearrested them in about seven old criminal cases. They are presently at the Nagpur Central Jail.

The above evidence makes it clear that these re-arrests are not just actions of a couple of maverick police officers but rather a conscious government policy so as to incarcerate such under trials indefinitely. By using this method such under trials are kept in jail even though they are simultaneously being acquitted by the judicial system. As the number of acquitted cases grow the police subsequently impose a whole lot of old cases even years after the under trial was initially arrested. If such a step is not possible, the police then resort to re-arresting the person under section 110 Cr.P.C. legal experts say that this section is used as a form of preventive detention for habitual criminals and the detained person should be immediately released after signing a bound of good conduct. But such procedures are not followed with regards to alleged Naxalite undertrials. After the under trial has been acquitted by the court, the Maharashtra police rediscover his/her's habitual criminal nature during his 3-4 years stay in jail so as to detain him for another six months under section 110 Cr. P C. the recent Supreme court judgement by a bench comprising of Justices Altamas Kabir and Markandey Katju has warned against such indiscriminate preventive detention by the police. Such actions are violative of the (on page 20...)

Illegal Arrest of Student for Organising Meeting against Recruitment of Special Police Officers

Letter:

Barak Human Rights Protection Committee (BHRPC) has received information from local reliable sources including Human Rights Alert (HRA), a human rights organisation working in Imphal, Manipur regarding the illegal arrest and detention of Mr Sapam Cha Kangleipal, a student who was engaged in organising a protest meet against the recent recruitment of Special Police Officers (SPO) in Manipur. BHRPC is informed that Sapam who was arrested on 7 May 2008 was detained till 13 May and released, only to be rearrested on fresh charges. Sapam is a student activist in Manipur, India.

Case Details

Sapam was one of the organisers for a panel discussion organised by the Manipur Forward Youth Front (MFYF). The panel discussion was held on 7 May 2008, condemning the recruitment of the SPOs by the Manipur State Police. The panel discussion was attended by members of the civil society, representing a large spectrum. Participants included university professors, senior lawyers, and journalists. The discussion was held at the Manipur Press Club on 7 May 2008.

At about 7 pm on the same day, the police officers from the Manipur State Police led by Officer in Charge Mr R.K. Kohndeon surrounded the press club and arrested Sapam. The arrest was executed after issuing an arrest memo. According to the memo, Sapam was charged for offences under Section 124 A of the Indian Penal Code 1861; Section 9 of the Punjab Security of State Act 1953 and Section 8(b) of the Assam Maintenance of Public Order Act, 1947.

Sapam was initially detained in police custody at the lock up at Imphal-West Police Station. He

was later produced before the local magistrate and was remanded to judicial custody for six days. In fact, Sapam was released from custody and from the original charges on 13 May and rearrested on the same day on additional charges framed under the National Security Act, 1980.

The Manipur State government has been recruiting special police officers under the pretext of countering insurgency activities in Manipur since early this month. The move to arm a faction of civilians and to train them to attack insurgents and counter-insurgent activities in the state is opposed by various civil society organisations and concerned individuals within and outside Manipur. The same tactic which is employed in the state of Chhattisgarh was proven unsuccessful. Several individuals who opposed the state and the atrocities committed by state agents in Chhattisgarh are being countered by charging with draconian laws in that state. One of the well known voices against SPO's in Chhattisgarh is Dr Binayak Sen who is currently detained in custody charged with similar offences that are now alleged against Sapam.

Local human rights organisations including HRA alleges that Sapam is an innocent student activist who has been targeted unfortunately as the first victim by the Manipur state police and administration after the recruitments of SPOs commenced in Manipur. The AHRC is not aware whether Sapam will be released in the coming days, but is concerned about his safety and security whilst in custody.

Background Information In a decision made by the state cabinet early this month it was decided to recruit SPOs in Manipur in an alleged attempt to empower

the ordinary citizen and to defend their rights against the atrocities committed by insurgent groups in Manipur. A recruitment drive was initiated by the state government, monitored by the state police, early this month.

The recruitment was carried out despite a large protest by civil society organisations and individuals. The opposition for the recruitment of SPOs was on the ground that arming a faction of the citizen for whatever reason it might be is not a correct move by the state government. Even if this recruitment was for counter insurgency activities it is reported that arming citizens for a state duty like counter insurgency activities, particularly where the state have failed in countering insurgency in the state is a dangerous move.

Examples from the state of Jammu & Kashmir and Chhattisgarh were quoted as adequate examples for substantiating that this is a wrong move by the state government. The¹ civil society organisations also were concerned that the ordinary civilian armed with 303 rifles facing insurgents reportedly carrying automatic assault weapons would not only provoke the insurgents to attack the citizens but also would be a soft target for the insurgents in the state.

The Indian Police Act 1861, particularly Section 17 of the Act, is taken as an excuse by the state government to recruit SPOs is an ancient law which is still unfortunately available in India. This law that predates independence by 147 years was sought to be scraped and redrafted by the central government at least on three previous occasions. In fact, the law has been redrafted by the central government while recruitments based upon the same

law is on the way in states like Manipur.

Suggested Action

Please write to the authorities below requesting them to ensure that:

1. Sapam is released from custody immediately and that all charges against him are dropped.

2. To pay him adequate compensation for his physical harassment and mental trauma.

3. To initiate an enquiry to find out what prompted the Manipur police to arrest Sapam, in absence of any specific charges against Sapam or his involvement in any criminal activities.

The BHRPC has also written to them and to the Special

Representatives to the Secretary General on human rights defenders calling for an immediate intervention in this case. Yours Sincerely. - **Neharul Ahmed Mazumder**, Secretary General, Barak Human Rights Protection Committee, Steamerghat Road, Silchar-1, Assam, India

Chhattisgarh PUCL: Press Release

NHRC on Salwa Judum

The Chhattisgarh Unit of People's Union for Civil Liberties (CG- PUCL) has been able to get a copy of the National Human Rights Commission (NHRC) Enquiry Report on SALWA JUDUM submitted to the Supreme Court of India on 19th September 2008 in the WRIT PETITION (CIVIL) NO.250/07 (NANDINI SUNDAR AND OTHERS VS. STATE OF CHHATTISGARH) AND WRIT PETITION (CRIMINAL) NO. 119/07 (KARTAM JOGA AND OTHERS VS. STATE OF CHHATTISGARH).

While the NHRC Report makes an interested reading, and is a futile attempt to perform a balancing act, it depicts the inherent prejudices of the police in stating and interpreting the facts about the SALWA JUDUM. The prejudice is understandable as the entire 16-member Fact-finding Committee constituted by the Director General (Investigation)-NHRC to submit an enquiry report to the Commission consisted of police personnel/officers under the supervision of the Director General (Investigation). The List of the entire Fact-Finding Committee with their designation is given below:

Members of the Enquiry Team

1. Shri Sudhir Chowdhary, IPS, DIG; 2. Shri Satinder Pal Singh, IPS, SSP (III); 3. Smt. Mamta Singh, IPS, SSP (I); 4. Shri. P. S. Rao, Dy SP; 5. Shri. A. V. Issac, DySP; 6. Shri. O.P. Vyas, DySP; 7

Shri. H. C. Mishra, DySP (Retd.); 8. Shri. Rajbir Singh, Insp.; 9. Shri. Bhag Singh, Insp.; 10. Shri. Ved Dhankar, Insp.; 11. Shri. Ravi Singh, Insp.; 12. Shri. Lal Bahar, Insp.; 13. Shri. Kuldeep Lohani, Insp.; 14. Shri. D. N. Rath, Insp.;

15. Shri. Simanchal, Constable;

16. Shri. Raj Kumar Goel, P.A.

Without casting aspersions on the integrity of any individual member of the Fact-Finding Committee, one wonders as to why the Commission and/or the Director General (Investigation) could not find other prominent citizens drawn from different professions? Surely, it would have been creditable to constitute the Fact-Finding Committee with members drawn from various walks of life with experiences and understanding about the issues and concerns related to Human Rights etc., instead of an All-Police Personnel Fact-Finding Committee into such a sensitive matter, on which not only PUCL, but widely recognized and respected organizations and individuals have conducted investigations and concluded that Salwa Judum is a violent and state-sponsored campaign carried out by those having vested interest - both economic and political - in the Bastar region. Anyway, some of us have seen the systematic transformation in the character and composition of the NHRC during the past few years.

Thus, growing

disappointment, disillusionment, and disbelief in many of the NHRC operations! The CG PUCL has, time and again, expressed concern at the composition and character of the State Human Rights Commission in Chhattisgarh.

While the NHRC Report refers to "extra-judicial killings" in this report, it is surprising that not once does it refer to its own Guidelines issued in the matter of "extra-judicial killings", which are not only exhaustive but, at times, issued to State Government in exasperation by the Chairman of NHRC.

We refer to a relevant finding by the Fact-Finding Committee as reported:

"6.24 In some instances², however, the security forces and SPOs seem to be prima facie responsible for extra judicial killings. Such instances need to be enquired into, for those acting on behalf of the State must Act within the boundaries of law (howsoever grave the provocation) and be accountable." (Refer to Page 37 of the Report).

We quote below some of the salient features of these Guidelines, and also enclose a letter issued by the then Chairperson of NHRC, Justice A S Anand, Former Chief Justice of India on 2nd December, 2003.

"The guidelines issued by the Commission in respect of procedures to be followed by the State Govts. in dealing with deaths occurring in encounters with the

police were circulated to all Chief Secretaries of States and Administrators of Union Territories on 29.3.1997.

Subsequently on 2.12.2003, revised guidelines of the Commission have been issued and it was emphasised that the States must send intimation to the Commission of all cases of deaths arising out of police encounters. The Commission also recommended the modified procedure to be followed by State Govts. in all cases of deaths, in the course of police action, and it was made clear that where the police officer belonging to the same police station are members of the encounter party, whose action resulted in deaths, such cases be handed over for investigation to some other independent investigating agency, such as State CBCID, and whenever a specific complaint is made against the police alleging commission of a criminal Act on their part, which makes out a cognisable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall invariably be investigated by the State CBCID. A Magisterial Inquiry must invariably be held in all cases of deaths which occur in the course of police action. The next of kin of the deceased must invariably be associated in such inquiry.

All the Chief Ministers and Administrators have been directed to send a six monthly statement of all cases of deaths in police action in the States/UTs through the Director General of Police to the Commission by the 15th Day of January and July respectively in the Performs devised for the purpose." (The Guidelines are enclosed herewith as ANNEXURE I).

On behalf of the CG- PUCL, we have drawn the attention of the State Government at several occasions that the Guidelines issued in connection with the

"extra-judicial killings" are not being followed. The CG PUCL has definite information that in one of the "extra-judicial killings" of Ramesh Nagasia, the NHRC itself has been able to conclude that he was killed in "fake encounter". We have no information about the action taken in this regard. The efforts by the human rights activists, family members of Ramesh Nagasia, lawyers, etc., who took the matter at the Chhattisgarh High Court, were not only harassed and intimidated, but the entire matter was hushed up.

Some of the findings in the NHRC Report that bring forth the inherent prejudices are quoted below:

1.54 Some of the SPOs have, however, also been found to be responsible for certain incidents of atrocities against the tribals. There are some instances where action under law has been taken against them in this regard. As reported by the State Government, 1579 SPOs have even been dismissed on disciplinary grounds in the past three years or so. However, the atrocities committed by SPOs during security operations against Naxalites cannot be blamed on Salwa Judum.

1.58 The phase of Salwa Judum processions, as a show of strength and expression of resistance and rejection of the Naxalites, has now been reduced to ceremonial meetings in the camps. In fact, during interactions with members of the enquiry team, most of the tribals residing in the camps expressed their desire to go back provided a police post is established in the village.

1.59 Disbanding Salwa Judum in the present context, thus, means disbanding these camps, which, in turn, means putting all those who are in the camps at the mercy of the Naxalites. The massacres let loose by the Naxalites after the failed *Jan Jagaran Abhiyan* in 1990-91 doesn't leave any doubt about their response in case the

Salwa Judum camps are disbanded.

1.60 Today most of the tribals living in the camps are earning money from various employment generation schemes like the Food for Work Programme, PMRGY, etc. In addition, they also collect and sell forest produce like *tendu* leaves, *mahua*, *fora*, etc. from nearby forests, where they normally go under protection in day time. Many tribals from the camps even visit their villages for farming purpose, but they return to the camp in the evening. There have, however, been instances where villagers leaving the camps to go to nearby forests have been abducted and/or killed by Naxalites.

2.03 Right to life is the most important right as all other rights can be enjoyed only when this right is protected. However this basic right of the tribals is being practically enjoyed, especially in the areas dominated by the Naxalites¹, only at the mercy of the Naxalites. Anyone who tries to raise a voice against their tyrannical ways pays with his life². Needless to say, there is hardly any room for freedom of any kind.

The PUCL-CG would like to draw the attention of all and especially of the Government of Chhattisgarh towards the RECOMMENDATIONS of the NHRC Enquiry Report, and hope that these would be implemented. However, one wonders as to how a Government which is already involved neck-deep into sponsoring SALWA JUDUM (and, of course, the Central Government with their State Vidhan Sabha Leader, Sri Mahendra Karma, projected as the known leader of SALWA JUDUM) would be able to implement any of these recommendations. The need is to monitor the implementation by the Supreme Court of India and NHRC. But, the vigilant social/political groups and human rights organizations must also take

initiative and appropriate steps to monitor these while simultaneously putting pressure on the Government Machinery to implement these recommendations.

We would like to end this press release by repeating the demands that were made in the Report of the All India Fact-finding Team in December 2005 consisting of representatives of the People's Union for Civil Liberties (PUCL) Chhattisgarh, People's Union For Civil Liberties (PUCL) Jharkhand, People's Union for Democratic Rights (PUDR) Delhi, Association for the Protection of Democratic Rights (APDR) West Bengal, and Indian Association of People's Lawyers (IAPL).

We Demand:

1. That the government stop using people as a shield and creating armed Village Defence Committees as part of its anti-naxal operations;

2. That paramilitary forces be withdrawn from the area and the civil administration be restored;

3. That all killings by the state, the Salwa Judum and the Maoists be stopped.

4. That sincere dialogue with the Maoists be initiated, and a political resolution to the situation be found;

5. That FIRs be registered for all crimes committed by the Salwa Judum and security forces and the culprits be prosecuted;

6. That the government and the CPI (Maoist) ensure that people return to their homes in peace and security;

7. That people be assisted in regaining their livelihoods in their villages and camps be dismantled."

We would like to APPEAL to all democratic forces in the country to join this campaign to end Salwa Judum, repeal the Chhattisgarh Special Public Security Act 2005, and release Dr Binayak Sen, and all others detained under this draconian law. In Solidarity. -

Rajendra K Sail, President
Chhattisgarh PUCL

¹Most of the South and South-West portion of district Bijapur and the contiguous portion of Southern and Western parts of district Dantewada. In addition, the area across the river Indrawaty towards the North of district Bijapur.

As per statistics made available by the State Government, 132, 311, and 170 civilians were killed by the Naxalites in the years 2005, 2006, and 2007, respectively Q

(from page 16...) fundamental right to life and liberty under Article 21 of the constitution and should not be lightly transgressed, the bench mentioned.

We appeal to all the justice loving citizens to support us in our endeavor to defend our human rights. We also appeal that such citizens should see through the false publicity of the police department in branding us as 'horrendous criminals' so as to rationalize their incorrect practice. The protection of Human Rights of its citizens is one of the primary duties of any ruling government. We hope that the Maharashtra state government will fulfill this duty to property commemorate this year's 'human Rights Day.'

- **Arun Ferreira**, On Behalf of
Striking Prisoners, Central Jail,
Nagpur, Maharashtra Q

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