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Institutional Erosion in a Democracy Pushkar Raj

Vibrant democracies are known for their institutional strengths. It is incumbent on the government of the day to ensure respect for these institutions as well as to make sure that they function smoothly. If it does not do so, the government fails in its trust that people have reposed in it.

Institutions are important in a society as they protect basic rights of people. For example they might be engaged in important work of ensuring that there are no extra judicial killings; public money is spent properly for people's welfare or; those who are guilty of misuse of public offices are held accountable for their misdeeds.

In recent days some of our important institutions have come under scanner due to acts of omissions and commissions of the present government in relation to them. The National Human Rights' Commission, the Comptroller and Auditor General and the Central Vigilance Commissioner have attracted attention for different reasons which have left their image a little tarnished. While the CVC had to resign on the Supreme Court's order, it has shaken people's confidence in the present government that persisted in appointing him. Similarly one of government's ministers' disputing Comptroller and Auditor General's findings on financial loss to exchequer on 2 G Spectrum allocation is an attempt to denigrate a constitutional body that has a reasonably good demonstrable track record of autonomy and impartiality. The said minister's act is an unwelcome attempt to mix governance with petty politics and worthy of censure. The National Human Rights Commission chairman's office too has come under criticism from media and civil society groups for negative reasons. Even though one does not de-construct those reasons, it is a matter of discomfort that such an eventuality arises leaving the office of NHRC chairman somewhat less shining in its stature.

In all these mentioned instances the government of the day is responsible in one way or the other. One must bear in mind that this institutional undermining was one of the cause and fall out of breakdown of democracy in the country during 1975-77. It is important that the civil society groups in country ensure that the present government respects the statutory bodies in letter and spirit, so that an undeclared spectacle of the emergency period is avoided. It is a matter of satisfaction that efforts of civil society have borne fruit in form of CVC's appointment being quashed and investigations being launched in 2G spectrums allocation process. However there are many more battles that are waiting to be fought and won. Each such victory will strengthen our democracy leading to empowerment of our people. □

Bihar PUCL:

1. PUCL Report on the Issues Relating to Setting up of an Asbestos Factory at Marwan in Muzaffarpur District

In the recent days newspapers have published reports on several activities and incidents relating to the controversy surrounding establishment of an asbestos factory at Marwan in Muzaffarpur district. A petition was received from Khet Bachao Jeevan Bachao Jan Sangharsha Samiti (KBJBJS) requesting PUCL to hold an enquiry. In its weekly meeting on 23 January 2011, the matter was discussed and a team was constituted to enquire into the issues emerging from the incidents at Marwan. The team consisted of Prof Vinay K. Kantha, Mr Nageshwar, Prof Kishori Das, Mr Shahid Kamal and Mr Ramesh Pankaj..

1. Visit of the Team & Mode of Enquiry

The team visited Marwan on 25 January and met a large number of villagers besides inspecting the sites of incident. The team met one Mr Vijay Kumar, a supervisor, at the factory gate, who presumably contacted his superiors and finally did not allow the team members to enter inside the factory premises on the plea that only five members of the Core committee formed by the City S P were authorized to enter the factory. He gave the mobile number of one Mr D K Tiwari who agreed to meet us on 26th in his Patna office. When he was contacted in Patna on 26th he asked us to come on 27th at 4.00 pm. On 27th he switched off his mobile and his office in Luv Kush chamber was found locked up. He was given our number earlier, but he did not contact us even as we had explained to him that we are willing and interested in getting his version and if he wants to produce any documents he may do it. But it was clear that the Company people were evading any public contact, much less scrutiny. The team visited the local police station and talked to the P.S. in charge Mr Jogendra Paswan at length besides perusing the FIR filed

by Shashikant the probationary SI who was leading the force on the forenoon of 23rd January. Shashikant was not available in the P.S., but Jogendra Paswan, Officer in charge of the P.S. was the I.O. in the case and his version was important. The team also spoke to some members of SUCI, NAPM and Asbestos Virodhi nagrik Morcha. District officials however could not be contacted, 25th being a holiday, although a message was given to the DM Muzaffarpur and we had gone to the residence of SDO, but he was out for some meeting.

Some documents were also examined to understand the objections of the villagers to the setting up of asbestos plant in Marwan. The letter of KBJBJS to SDO (West) Muzaffarpur along with several supporting documents including couple of papers issued by WHO as well as chronology of events were perused. Villagers also brought before the team the two text books, one book on biology for class X and the other *Inter Rasayan* for Class XII, published by Bharati Bhawan which have listed the harmful effects of asbestos. Environment Impact Assessment report was also examined.

2. Issues to be examined

In the petition submitted by the KBJBJS as well as the numerous reports that appeared in the newspapers and magazines there are implicit charges of human rights violations which merit a detailed enquiry. There are larger questions brought up by this episode, like the importance of the views of local population in the developmental decisions or use of land and water. PUCL thought it worthwhile to examine such emerging issues as well, in the wake of a new thrust proposed for some kind of development in the state.

The purpose of the enquiry was thus three fold: first, it related to the events at Chainpur Bishunpur

particularly on 22 January when villagers were allegedly lathicharged on the factory gate and teargas shells were fired; secondly, there was larger question of the setting up of an asbestos plant when the local population has started opposing it; and thirdly, there are still larger issues relating to industrialization in the state of Bihar or for that matter elsewhere.

Before the first and second questions are raised it would be worthwhile to get an idea about the place of occurrence, including the rival descriptions, and the history of events.

3. Context and the Background

A. Area and the Proposal Brief Profile of the Area

Village Chainpur Bishanpur comes under the Jakhra Sheikh Gram Panchayat in Marwan Block, Muzaffarpur District. The panchayat comes under Karja police station. The village Chainpur and adjoining villages have fertile agricultural land. Paddy is grown in most of the fields, and at the time of visit many fields adjoining the factory had standing crop of mustard. Chainpur is a large habitation with more than 1000 households, including a large number of dalit families. The local mikhia of Jakhra Sheikh panchayat is Ms Lalmuni Devi w/o Suresh Paswan. Adjoining villages are Bisunpur, Parari, Jeean, Panapur, Raksa, Mohammadpur etc, and in the movement that has emerged there some persons of these villages are also involved. For example, Ramchandra Rai who is currently very active and was present in the gathering belonged to Jeean village. A large number of schools were located within a distance of one kilometer from the site of factory. Primary school of Chainpur is barely at a distance of 400 meters, Parari Primary school was reported to be still closer- at a distance of merely 200 meters. In Jeean within a distance of 500 meters from the

factory as the crow flies there were two schools, one primary school and another Urdu Vidyalaya. In Bisunpur likewise the primary school is within 300 meters from the site of factory. Besides there were several anganwadi kendras nearby. In fact the inhabited areas are quite close to the factory, in some directions within 100 meters radius.

Purchase of land

From 2009 'Balmukund Asbestos Cement and Roofing Ltd.' purchased at least about 18 acres of land for the factory through middlemen, without disclosing to the land owners the proposal of establishment of an asbestos factory. The team spoke to the villagers gathered there and several persons gave their versions all confirming that they were not told about the asbestos factory in the beginning. There was an impression apparently based on the versions of middlemen that either an iron rod factory would come up, or possibly some agro-industries would be set up. Most of the land was purchased at the rate of Rs. 10,000 per kathha, and a large number of farmers, more than a dozen, gave their land including some dalit families. Some of their family members were present in the gathering, but they were not aware that the factory to be set up was an asbestos factory.

After the purchase, construction was started on site without clearances. Today the factory stands on a large piece of land amidst farms and close to residential bastis.

Discrepancies in Company's proposal and EIA/EMP Report

M/s Balmukund Cement & Roofing Ltd. proposed for the establishment of Asbestos Fibre Cement Roofing Sheet Plant (3,00,000 TPA) at village Chainpur Block Marwan in Muzaffarpur district for which they have acquired 17.8 acres of 'barren land' of which green belt will be developed in 5.9 acres (33% of the total land). No rehabilitation, resettlement or forest land etc are involved. Total cost of the project is Rs 31.0 crores. as they submitted in the petition for environmental clearance while Rs 125.00 lakhs and Rs 50.0 lakhs are earmarked for capital cost and recurring cost/

annum for environmental pollution control measures, Rs 125.0 lakhs and Rs 50.0 lakhs are allocated towards Corporate Social Responsibility activities and Occupational Safety and Health Measures respectively. Total water requirement of 300m³ / day will be sourced from own bore wells.

The Committee responsible for making recommendations for granting clearance took note of the complaint of Centre for Science & Environment (CSE), a villager and the reply from Bihar State Pollution Control Board in this regard.. A clarification was sought by the Committee w. r. to distance of the project from nearby plants and the proponent clarified that the distance of school from the plant is more than 500 meters. Based on these submissions the Committee recommend the company for environmental clearance subject to a set of 19 specific conditions along with other environmental conditions.

B. Background of Events leading to start of movement against the establishment of factory and incidents of January 22

Background

While the land was purchased or even after that when construction work started, the local people did not raise any objections believing that the factory would be a harmless industry, iron based or agri-based, giving jobs to people. However, some of the local village people working in the factory leaked the actual purpose of the factory, that it would produce asbestos sheets used for roofing. Reportedly some persons (maybe including a person close to the promoters named Sanjay Jalan) were responsible for distribution of a pamphlet describing the ill effects of asbestos in a local meeting some months after. As the truth came out there was discontent building up amongst villagers. Interestingly the matter was brought up by some children as well, who were aware that asbestos production causes various incurable illnesses including lung cancer. This information was passed on to the villagers by their children whose textbooks talk about the ill-effects of asbestos. In the book

Jeeva Vgyan Bhag II published by Bharti Bhawan authored by Banerjee and Varma it was mentioned on p.166 as pointed out by a student of class X Harekrishna Ram s/o Devendra Ram. Their tutor showed them another book *Inter Rasayan* written by Singh & Sinha (published by Bharati Bhawan itself) where again there was a discussion on diseases like asbestosis, mesothelioma or lung cancer which asbestos may cause. During this period some villagers also recalled that three persons of that locality who worked in asbestos factories of Rajasthan had died earlier after contracting asbestos-related diseases. Another development that has provoked people against the factory is the sudden lowering of water table after the commissioning of the boring tube wells on the factory campus. It was pointed out by villagers that the boring of Nirajan Singh which was in the vicinity of the factory had dried up after the start of factory boring. They feared that in times to come water scarcity may also result from running of the factory so close to habitations.

While this debate has begun in the village a public hearing was organized by the Bihar State Pollution Control Board (BSPCB) on 28th June, 2010, at the Marwan High School. According to the villagers they were not informed about this hearing, but on the day of the hearing Tarkeshwar Giri (an ex-Mukhiya) and Sanjay Singh were present near the venue and went to see what was happening. When Tarkeshwar Giri got to know about the asbestos factory, he tried to register his protest. Some assurance was given to him but apparently nothing came out of it. In a letter written by CSE Associate Director Mr. Chandra Bhushan, it has been pointed out that the public hearing was not done in the right spirit. According to the letter CSE Representative Nivit Kumar Yadav attended the hearing and "found serious flaws in the proceeding of the public hearing, especially not providing proper opportunity to the local representatives who had adverse opinion about the project".

The beginning of protests

After coming back from the hearing Tarkeshwar Giri shared the happenings of the public hearing and this confirmed the rumors that it is indeed asbestos which would be produced in the Marwan factory. This led villagers to form the KBJBJSC, with Tarkeshwar Giri as its convener. After protests were launched by the committee, a tri-partite meeting was held in September, 2010 between the company administration, representatives of the KBJBJSC and the SDO, where it was agreed to stop further construction work of the factory but this agreement was violated and construction restarted. Later in November, 2010 after protests at the BDO office, the BDO gave a public assurance that work of the factory would be stopped, but yet again construction activity was restarted.

In December, 2010 peaceful protestors were allegedly fired upon by company goons. On the same day unknown persons burnt a car (magic van that used to ferry workers) owned by factory management. Villagers believe that the factory management themselves burnt the car, and implicated organizers of the KBJBJSC. Later Mr. Tarkeshwar Giri and Kumod Ram were arrested on charges of arson, and are still in jail.

4. Examined different aspects

A. Alleged Lathicharge on 22 January

The sequence of events

Peeved by the tacit administrative support to the company by allowing it resume construction KBJBJSC decided to organize dharna at the factory gate and informed the officials in this regard. 22nd January was the fifth day of the dharna by the KBJBJSC. At around 11.00 am people were gathering at the factory gate. While the arrangements was in progress, a truck carrying the company's goods arrived, allegedly accompanied by a police jeep from Karja thana. The police team led by probationary SI Shashikant asked the people present to allow the truck to go into the factory. But the protestors refused and this provoked Shashikant who reportedly became

very aggressive. As protestors stood their ground, the SI assaulted Ashok Kumar Singh, a frail old person, who was arguing on behalf of the protestors. Others who tried to intervene and protect him also sustained injuries.

While the protestors retreated in the beginning, people from the villages had already started gathering for the day's dharna. As more people heard about the assault by police more and more people arrived at the factory gate. The protestors insisted on sitting on the dari laid out outside the factory gate and refused to move. The police personnel at this point laathi charged at the crowd, probably in the hope that they would be able to disperse the crowd. The team met five women and two men at the district hospital who had sustained injuries in the lathicharge. Two more persons admitted there, namely, Manoj and Rajesh had left in the meanwhile. Rajo Devi w/o Umakant Paswan, had been admitted to the Muzaffarpur district hospital with head injuries and a hand injury because of which she could not move her left hand. According to Rajo Devi, she was hit by a policeman using his rifle butt and she fell. Seeing his wife fall Umakant Paswan s/o Matukdhari Paswan, went to pick up his wife and in the process was also hit with a rifle butt. He was also admitted in the district hospital, though his injuries were less serious. The team also met Sheela Devi w/o Satyanarayan Paswan, who said that she had come to the dharna sthal in solidarity after she heard about the beatings taking place at the site. When she reached she tried to stand at the site of the dharna but was attacked with a rifle butt. Her hand was swollen and she also got head injuries. It was alleged by the villagers that bricks were also thrown from inside the factory campus. Subhagi Devi w/o Singheshwar Ram was also admitted to the district hospital reportedly hit by one such brick, and suffering head injuries. Police reinforcement reached the factory gate at this time along with a vajra vahan and more police jeeps. By this time people had become very aggressive, having suffered the

lathi-charge and attacks on women. The people in turn attacked the vajra vahan and police jeeps. The reinforcement personnel also lathi-charged and the scene became ugly. It was somewhere around this time that Kalash Devi w/o Harinder Mahto realizing that the scene was going out of control, took shelter by the factory wall with 4 other women. But some policemen attacked these unarmed women, Kalash Devi was hit by a rifle butt and she is in the district hospital with a swollen jaw. At this point the vajra vahan took flight and most police vehicles also left but one police jeep was left behind and the mob, which was out of control by now, ransacked the jeep.

The city SP reportedly arrived there in the afternoon at around 3pm accompanied by the SDO. By that time the crowd was completely out of control and even when the SP tried to address the crowd, people were not ready to listen. At this point the city SP sought the assistance of some senior persons among the organizers who succeeded in bringing order. After that the city SP addressed and made two important announcements. He assured that on the 27 January, 2011 he would himself come to Chainpur and make an investigation in the case of arrests of KBJBJSC convener Tarkeshwar Giri and Kumod Ram. He further assured that the factory would now remain closed and the police will be stationed to protect the people. The city SP also constituted a committee of local persons who could inspect and confirm that the factory has not resumed work.

B. Regarding the demand for the ban on asbestos

KBJBJSS submitted a well argued petition before the S.D.O. (West) Muzaffarpur on 28.12.2010, and a copy of the petition was provided to the PUCL along with three annexures. The first annexure contained a document produced by Public Health and the Environment, World Health Organization (WHO) in September 2006 titled 'Elimination of asbestos-related diseases'. The second one was also a WHO paper on 'Preventing Disease through

Healthy Environments' and a third annexure was a letter written by Dr Sanjay Chaturvedi, Professor & Head, Department of Community Medicine, University of Delhi, Delhi which summarises the findings of medical researches confirming that 'occupational as well as non-occupational exposures to any form of asbestos are associated with mesothelioma and other malignancies among humans'.

These documents supported by a large number of references to researches, resolutions etc establish beyond doubt the various ill effects of asbestos, and the need to curb its production and use. The following brief observations should clarify the underlying issues:

a. There is an international move to phase out and eliminate the use of asbestos. Taking note of large number of deaths taking place in different countries WHO document 'Preventing Disease through Healthy Environments' note," Elimination of asbestos-related diseases should take place through the following public health actions: a) recognizing that the most efficient way to eliminate asbestos-related diseases is to stop the use of all types of asbestos; b) replacing asbestos with safer substitutes and developing economic and technological mechanism to stimulate its replacement; c) taking measures to prevent exposure to asbestos in place and during asbestos removal (abatement), and d) improving early diagnosis, treatment, social and medical rehabilitation of asbestos related diseases and establishing registries of people with past and/or current exposures to asbestos." International Labour Organization (ILO) has passed several resolutions on this issue, the most recent one is a Resolution in June 2006 in its 95th session meet asking for "the elimination of the future use of asbestos and the identification and proper management of asbestos currently in place." The WHO document reports that "To date, more than 40 countries, including all member states of the European Union, have banned the use of all forms of asbestos, including

chrysotile."

b. In India too way back in 1995 Supreme Court had directed the Government of India to take cognizance of the resolutions of ILO. In several studies the ill effects of asbestos has been brought out and demands have been raised to ban it or at least restrict its production and use. A bill on Prohibition and use of White asbestos is lying with the Rajya Sabha since 2009. The preamble to the bill points out that white asbestos is 'highly carcinogenic' and that 'more than fifty countries have already banned the use and import of white asbestos'. It notes further that 'Even the countries that export it to India prefer not to use it domestically' and that safer and almost cheaper alternatives to asbestos are available in the country.'

B. Regarding the agitation and the role of state

It was clearly noticeable in our enquiry that the agitation in Marwan was a spontaneous reaction of the local people. Initially villagers gave away their land willingly, but when they came to know about the asbestos factory, they became uneasy and then suspicious. The mode of public hearing reinforced their doubts about the desirability of the factory in their locality. Interestingly children and their textbooks helped them understand the possible hazards, about which they gathered more information and eventually decided to form an organization and launch an agitation to oppose the opening of factory. It was only after the start of the movement that some political groups like SUCI extended support to their movement. While the local movement is still largely being carried out by villagers, outside groups sometimes expressing their solidarity to the cause, the activities in Muzaffarpur and Patna are being organized by urban support groups. If a determined mood of the villagers and their unity are the hallmarks of the local agitation, widespread support of intellectuals and eminent citizens lends strength and credibility to the movement, which has started addressing larger issues as well.

There is an ongoing anti asbestos movement in India, and even at the global level. The national group has provided informational ammunition to the local struggle. In Patna an Asbestos Virodhi Nagrik Manch has been formed consisting of some doctors, teachers, lawyers etc apart from social and political activists. Impressive citizens march against the proposed factory were organized both in Muzaffarpur and Patna. In Patna it took the form of a rally with a large participation of villagers from Marwan. Already there is an opposition of the other five asbestos plants proposed in the state as per reports available so far.

Unfortunately the response of the state both at the political and administrative levels are unsatisfactory. There has been a silence or evasion of the issue at the political level, while in one way or the other there is evidence of administrative support to the setting up of factory. According to newspaper reports the Chief minister first feigned ignorance about the local agitation, shifted the onus on the central government putting forward the plea that if a ban has to come it is the responsibility of the centre. Even regarding the environmental clearance or permission to set up the factory it was done at that level. He may be technically correct, but the state government comes into picture in many ways and will have to take a clear stand, particularly in the wake of a widespread people's opposition. It has led to building of an agitation which is a law and order problem and a definite responsibility of the state government. The land was wrongly certified as barren land by an official of agricultural department. As for the administrative response the police force sometimes seems to have worked in collusion with the company authorities, and the District administration seems to be favouring them. Despite a clear promise of SDO Sadar (West) to stop the construction work at the site and hold a tripartite meeting, work was allowed to be resumed and no meeting took place. Another disturbing feature has been the

general reluctance to meet the delegations of civil society both in Patna and Muzaffarpur. A delegation of very respectable citizens of Muzaffarpur sought an appointment with the DM who reportedly kept them waiting first and then disposed them off standing in the corridor in a few minutes. This attitude is objectionable. After a massive demonstration when a delegation went to see the CM, all that the government conceded was a meeting with a junior Deputy Secretary rank official to receive the memorandum. This kind of response may be on account of an arrogance or some kind of fear of the people, and in either case it does not augur well as it precludes the possibility of negotiation and democratic dialogue. The likely course for an issue on which people are determined to oppose would be some kind of avoidable confrontation at the ground level. It is by no means a feature of good governance in a democracy.

4. Conclusions and Recommendations

A. Regarding Incidents on January 22

1. The initial action of the police force was provocative and uncalled for. They had prior knowledge of dharna being staged and yet they insisted upon trucks to move in forcing the peaceful squatters to allow the entry. The police force was led by Shashi Kant a junior officer and he should be suitably punished for his indiscretion and highhanded behaviour.

2. Subsequent action of the force was also excessive and unwarranted until the arrival of the city S.P. The crowd assembled at the factory gate could have been engaged in dialogue, was clearly established by the later turn of events even as the situation had turned very ugly by that time. It is true that they were uneasy and worked up because continued administrative support to the factory owners. But it will be wrong to infer they were inclined to create scenes on their own.

3. The assault on women, that too by male police personnel, is highly objectionable. Apparently they were

soft targets, and the application of force was surely excessive. It was also clear from the team's visit to the sadar hospital that of the 8 injured admitted here, the 4 women were more seriously injured than the men.

4. The FIR lodged by the PSI Shashikant reveals his strong prejudices and attitudes very clearly. He has recounted the later part of events, omitting the early portion of incidents which could have thrown light on the build up of the confrontation. He goes on to assert that people were armed with 'lathis, bhala, tengari, hathora etc', which is apparently with a view to portray the militancy and preparedness on the part of the crowd. From all the enquiry it is not borne out. Further, the FIR suggests that the militant demonstrators (ugra pradarshankari) were indulging in the act motivated by 'commercial jealousy' and they were misleading the ignorant innocent villagers spreading the illusion that asbestos causes cancer. He goes on to insinuate that they were receiving huge money from the professional rivals. These assertions are obviously uncalled for and sustain the allegation of the local people that police force, at least some of them, are acting as the stooges of the company.

5. The people seem to have no faith in the local thana or those stationed in the factory. The people's perception is that the police are only to protect the factory and not listen to both the sides (i.e. the company and local people). This view seems to have been reinforced by the events of December, 2010 when company goons fired on local protestors, but the police only arrested 2 KBJBJSC members and took no action on the people's complaint of the firing by company goons.

B. Regarding the demand of closure of asbestos factory

1. The people's demand for closure of the asbestos factory should be addressed in earnest by calling all the parties involved. Meanwhile the work should stop in the factory. A state level investigation committee may be formed to look into the manner and validity of grant of

permission despite objections from the local people. The averment of the factory owners regarding the type of land and proximity of habitations and schools need to be re-examined. The PUCL visiting team noticed that the land is fertile and there are several schools, not one in the vicinity of the site of factory. Persons responsible for wrong certification with regard to these should also be suitably reprimanded.

2. As far as PUCL recommendations are concerned we have no doubts that the asbestos factory should not be allowed to be set up there in view of strong protests of local people as well as clear possibility of ill effects including health hazards for the people residing nearby. However, Balmukund Company may be allowed to set up some agro industries or some other safe industry taking the people into confidence.

C. Regarding the demand of ban of asbestos industry

1. It is time that the demand for ban on asbestos is seriously considered by the central government. Maybe a period of phasing out is decided for the present, making assessment regarding the existing unavoidable requirements and the time which may be taken for substitution by some alternative materials. But surely opening of new factories should be stopped. There is a bill pending before the Rajya Sabha for the regulation of import and use of white asbestos and this should be passed without any further delay.

2. Considering the worldwide move for a ban on asbestos it will be unwise and a misplaced idea to promote factories of asbestos in the state of Bihar. It is reported that as many as six plants are coming up in Bihar, the Marwan being in the most advanced stage with largest capacity. Others are proposed in Madhubani, Chapra, Vaishali, W. Champaran and Bhojpur. PUCL recommends an immediate stoppage of the work at all the places. Bihar can not be made the dumping ground of hazardous production exposing the people here to all kinds of risks, because they are poor.

D. Regarding the State policies on industrialization and development

1. After decades of economic stagnation Bihar is supposed to have started its pursuit of development and growth. A high rate of growth, higher than the national average, is being claimed and the level of public investment has increased manifold. This is expected to spur private sector investment as well and beginning of a new phase of industrialization. But meanwhile the world has moved ahead, particularly during the past two decades of liberalization and globalization, accompanied by vast technological changes. All of this has thrown up in new problems, while opening up new possibilities, which need to be carefully appraised in the specific context of Bihar.

2. Agriculture continues to be the mainstay of Bihar economy, while given the high density of population in the state, the pressure on land is heavy. This brings up the problem of protecting fertile land from encroachments by industries or other profitable economic pursuits. Hence clear policy framework is required both for industrialization and land use, including the issues relating to land acquisition. The developed countries and even developed states in our country are

reluctant to allow industries with adverse ecological impact in their own land, preferring outsourcing of such production until substitutes are available. Asbestos is such an item which is already banned in many countries. A state like Bihar has to guard against dumping of such industries here, even if there is a keen desire in the official quarters to attract private investments. Before it is late we have to realize the need and importance of protection of environment and preservation of natural resources like land, water or greenery. Marwan episode has to be appraised in a holistic perspective, and does provide an early warning as to the problems of misplaced zeal of industrialization. Greater care is needed and the state will have to intervene to ensure that industrialization is promoted in a manner which does not harm the people and causes the least injury to environment.

3. As a matter of fact the model of development being pursued in the state currently seems to follow the same course that started two decades back in India and taken up vigorously in some of the relatively developed states like Gujarat or Maharashtra or backward states keen on development like Orissa or Andhra Pradesh. This strategy of development however has been

opposed by many for their inequitable exploitative character, and there are people's movement noticeable particularly in the backward states. While Bihar is poised for growth, it has to carefully work out its strategy of development keeping in view the large poor population of the state and its precarious control over natural resources. After all development is meant for human beings and in a democratic country it is all the more necessary to respect the views and interests of the bulk of the population while designing policies.

Whatever is happening at Marwan is of larger significance than one off local problem at this point of time in Bihar. The present government will be well advised to appreciate the complexities and lay down clear policies with regard to industrialization as well as development. Development is a matter of human rights, and no less. It is time that the government accepts this fact.

Prof Vinay K. Kantha, Former President; **Mr Nageshwar Prasad**, General Secretary, **Prof Kishori Das**, Former General Secretary, Bihar PUCL.; **Mr Shahid Kamal**, District Secretary, Muzaffarpur PUCL; **Mr Ramesh Pankaj**, Member, Bihar PUCL □

Bihar PUCL:

2. PUCL Report on Alleged Killing of Naxalites in Munger

Newspapers carried reports that a number of Naxalites were massacred on 29 November, 2010 in Harinmarg Bishunpur Panchayat, under Bariarpur Police Station, Munger. Ram Adhar Singh of Rajnitik Bandi Rihai Samiti made a request to the PUCL for investigation as it involved a large number of killings. A six-member team was constituted, consisting of Prof. Vinay K. Kantha, Mr. Nageshwar, General Secretary, Mr. Kishori Das, Mr. Mithilesh, Co-coordinator of the team, Udayan and Jitendra. The team visited the place of occurrence and also perused newspapers including Times of India, Hindustan Times and Telegraph.

The geographical location of the panchayat where the incident took place as follows: South of this Panchayat lies the river Ganga and west of this panchayat lies river Gandak. The exact location of the said incident was Bhelwa, on the other side of the bank of river Gandak. It was a riverine area where, people especially of Bind caste, do fishing for their livelihood. The team visited the villages around the place of occurrence on 25th December 2010 and spoke to a large number of people before seeking the police version of the story.

Kaaremandal Village: It was a Dhanuk (Jaswar Kurmi) caste dominated village. The Mukhiya, Rita

Devi, of this Panchayat belongs to this village. Almost all villagers have their agricultural lands. The largest landholder of this village was Bhola Patel, who was reported to own 36 Bighas of land. This region was suitable for all crops except paddy crops.

As the PUCL team reached Kaaremandal village, the villagers gathered in front of the house of local Mukhiya. As the team started seeking information from some of the male members present there, the Mukhiya Rita Devi also joined the discussion. Others who had gathered there and gave their versions included Naresh Patel(44 Yrs), Bhola Patel(50 Yrs), Jay Narayan(45 Yrs),

Tilak Dhari Mandal(75 Yrs), and Ajay Kumar(22 Yrs) among several other persons. The entire congregation seemed to agree with the versions given by these persons.

Their version: It was at around 4 pm on 29 Nov. 2010, that suddenly sound of bullets being fired was heard in the village. The people of Kaaremandal village initially thought that it may be a clash between the members of Bind caste supported by Bhagwan Singh gang and some Yadav families supported by Dharnidhar Yadav gang. But later revelation shocked everyone in the village. They learnt that the clash had occurred between the Maoists and the Binds at Bhelwa, riverine area of this Panchayat. At least four people died along with a local villager Murari Singh, a resident of Reta village, because the number of bodies found so far was only four. Some newspaper reports gave a much higher number of deaths, while local people also thought that the death toll must be higher. Most of them were Maoists. Recently nine skeletons have been found from riverbed nearby which could be of the Maoists killed in this incident as per newspaper reports.

Binds belong to the Extremely Backward Caste category. Binds here, as in other places generally, are mostly landless. They were reported to have migrated from Toufeer *diara* (a riverine landform) consequent upon land erosion on the other side of river Gandak. Kaaremandal villagers claimed that Bind's men were involved in criminal activities and they have regular conflict with Yadav caste over the usurpation of land. The region has a landlord, named Devakinandan, who, according to the villagers, still held more than 600 acres of the land. There was a constant conflict between the Bind gang led by Bhagwan Singh and Yadav gang led by Dharnidhar Yadav. The villagers seemed to have a soft attitude towards Dharnidhar Yadav presumably because he has been challenging the authority of Bhagwan Singh. They alleged that some persons belonging to the Bind caste may have joined the Maoist group. Otherwise they thought Maoists to

be outsiders. Their main concern was with Bind not Maoists. One of the villagers went to the length of alleging that some of the Bind criminals were so audacious as to enter the houses of some dalit families suggesting molestation of women.

In 2008, Maoists had allegedly raised a demand of Rs 50,000 from the local Mukhiya Rita Devi as extortion. She claimed that the administration did not provide any help. Later, Sub-Inspector K.K. Jha of Bariyarpur P.S., who was then camping in this area after the recent killings as the Investigation officer in the case, denied this charge and said they did not inform the police about the demand and possibly settled the issue on their own.

The villagers apprehended that a violent reprisal may take place which may trigger a continued feud in this region. The villagers alleged that some members of a Bind group were responsible for several murders earlier. They had killed villagers Kamal Dealer, Kako Mandal, Jaani Singh, Sikandar Yadav in last few years. After the killings of Kako Mandal, the police have been camping in this region. They said Kako Mandal was killed due to personal enmity.

They said after this incident Police has made some arrests, but let them off soon thereafter. They have failed to recover the looted arms from the Maoists by the Binds. They alleged that the Police recovered arms from Suryadewan Singh, a Bind and husband of village Sarpanch, but did not admit it. In this case also, police had made arrest of the four Bind men and latter let them off.

Reta Village: Athasaheea and Reta were adjoining villages. A person, Murari Singh, who got killed in the said incident, was from the Reta village. The entire population of the village consists of Bind caste. There were few male members coming out to discuss like in Kaaremandal village. Only deceased father Pooran Singh and Ex-Mukhiya Brahmdeo Singh of Reta village came forward to discuss the incident along with some local women. The group included the family members of the deceased; among them, Mungo Devi, mother of the deceased was

also present.

They said Murari Singh(35 yrs), who was also got killed in that clash, had five children. His wife left house for her maternal home after this incident due to fear. Only women were available in the house except the father of the deceased named Pooran Singh, but all of them denied in unison that Murari Singh was a Maoist. It was the Maoist who killed him. Mungo Devi, the mother of the deceased said that only after the Maoist killed her son Murari, that the rest of the villagers chased them and lynched some of them. But she denied that any her son Murari carried any arms.

Pooran Singh alleged that the Maoists imposed levies on them. Besides fishes they demanded money from all and sundry without discrimination which included even the poor fishermen. Only after they killed his son, that then rest of villagers killed the Maoists. According to them the number of Maoists was more than what the Police claimed. They suspected some links between the people of Kaaremandal village and the Maoists.

The PUCL team discussed the incident with Athsaheea villagers like Pandeshwar Singh, Prakash Singh, Baleshari Devi and other persons all from the Bind community. They alleged that the Kaaremandal village gives shelter to the Maoists. They support them. They said fishing right (*Jalkar*) belonged to Dharindhar Yadav. So, he came there along with Maoists to settle the issue of levies. Brawl created over this and clash occurred. Four people were arrested from this village after this incident, but later they were let off. The arrest was made at the behest of Mukhiya Rita Devi.

Police version: The cops were generally tightlipped. The Investigating officer KK Jha refrained from giving details of the incident, advising PUCL to contact SP of Munger and as per media report the SP had redirected the queries to the Bhagalpur IG. Nevertheless, he went on to say that Police had recovered utensils, liquor bottle, cooked mutton, sweet rice pudding and some Maoists uniforms and slippers

scattered over the spot. KK Jha told the team that senior officials had shifted them from this camp during the election for two months. On 23rd July they had arrested Manoj Patel, Maoist area commander from this region. He appeared to be in disagreement with this decision. This incident took place just after the election and thus he seemed to suggest that the area may have been neglected during the absence of police force.

A senior officer of this Police camp made some off the record remarks which throw light on the incident. He opined that the Maoists were pressing Binds for the levy, who engaged in fishing. So they were fed up with this 'un-just' demand and planned to get rid off of the Maoists menace and invited Maoists for a feast and then attacked them.

According to the information shared by Ram Adhar Singh who brought this case to PUCL fore, for investigation, Maoist apparently have some recruits in their cadre from Bind community. The Maoists were invited through them and were poisoned and then killed. But the Police denied this theory as Postmortem report didn't confirm it. Police further sent the bodies for Forensic laboratory test.

Police also ruled out the role of Bhagwan Singh as according to them he was not active in the area for some years, an opinions which was not shared by the local people. Police also claimed that victims and perpetrators would be within a 10 km radius of the place of occurrence, and they must have local support. Surprisingly even after more than a month, Police has neither been able to identify the killers nor arrest them nor recovered any arms.

Conclusion and Observations:

1. Villagers were apprehending

retaliatory violence. The retaliatory violence may escalate into long drawn out caste conflict because the two caste groups, Binds and Dhanuks, are suspicious of each other. Binds have a doubt that Dhanuks give shelter to the Maoists. Dhanuks denied this allegation and pointed finger towards the Binds over their involvement in criminal activities. Some Binds go to the extent of saying that the Dhanuk instigated Maoists to collect levies from Bind who were involved in fishing. There was always tension and suspicion between Bind Sarpanch and Dhanuk Mukhiya.

It is disturbing to note that caste tensions persist to continue in the countryside despite all the talk about development in the state. If it surfaces in new pockets it will be very unfortunate.

2. Police appeared to be soft towards the Binds and did not arrest them except rounding up some of them presumably merely for interrogation. Their intention was doubtful and raises a suspicion if they intend to use the Binds in their fight against the Maoists. If so, it would have far reaching consequences.

3. Maoists did not seem to enjoy popularity in this region. Their claim of being the champion of cause of the marginalized sections appears to be hollow in this area, which is one of the most inaccessible areas of the state. They imposed levies even on the poor men including the Binds.

4. Tensions may have lately increased due to an additional flow of public money in the Panchayat. It may be a reason behind demand of ransom money or 'levies', as also enhanced level of hunger for land and competition.

5. The schools in Reta village do not function properly. There was teacher absenteeism on the one hand and the supply of mid-day meal was also irregular and lacking in quality. These villages are neglected and inadequately served by state services in health or education sector.

6. At least in two schools police has been camping for long thus causing a disruption of school education. In Athsaiya Bahadurpur Madhya Vidyalaya 15 SAP jawans were posted, while in Harinmarg police camp at least 35 BMP jawans including 10 horse riders were camping for months inevitably affecting the normal functioning of schools. This practice of police occupation of schools is in total disregard of the right to education of a child, and must be stopped.

7. However mentha was being grown and processed in Athsaiya village showing a definite NGO presence there. There is evidence of enterprise among Binds and it will be sad if a handful of black sheep among them turn to crimes, or some activists among them are dubbed as criminals.

8. It may be a fact that some Binds had joined Maoists and were involved in levy collection. The nature of killing appeared in this region in last few years revealed it. It is reported that riverine Policing is being introduced in Bihar. It may be helpful if the quality of policing is good enough.

Prof. Vinay K Kantha, Former State President, PUCL; **Nageshwar Prasad**, General Secretary, State PUCL; **Kishori Das**, Former General Secretary, State PUCL; **Jitendra**, Member, State PUCL; **Udayan**, Member, PUCL; **Mithilesh Kumar**, (Co-ordinator), Joint Secretary, State PUCL □

Iliina Sen's Statement at the RTI Convention, Shillong

As I fight the long and painful legal battle to extricate Binayak from the clutches of the penal administration, I realize that this battle is as much mine as that of any Indian citizen. Today, at many levels and in many fora including this one, the people of

India are struggling for the establishment of accountability and transparency in our governance structures as befitting our status as the world's largest democracy. However, it is a sad reflection on our system that once a false case is

registered in the name of security, it is almost impossible to turn the clock back, even if facts stare us in the face that indicate that the case had no basis. To this, if we add dimensions of face saving, prestige, and drubbing the nose into the

ground of uncomfortable critics, we have Chhattisgarh and Binayak Sen. Binayak Sen has been convicted of sedition and of violating sections of the UAPA and the Chhattisgarh Special Public security Act and sentenced along with two others to rigorous life imprisonment. His jail ticket notes his provisional date of release as 2028, The conviction has followed an unfair prosecution and prejudiced judgment based on confessional statement recorded, according to the judge, during 'preliminary investigation' before the first accused in the case was taken into police custody, thereby defeating the provision of inadmissibility of custodial confessions. In the absence of any visible crime, this first arrest and the so called 'preliminary investigation' become the 'incident' around which the case is woven. The charges framed are equally vague regarding nature, time and place of the 'crime'. Extensive and expensive police investigations (sadly beyond the orbit of the RTI Act!) into Binayak's (and mine) homes, places of work and associates failed to provide any evidence other than social service in remote rural areas, and obviously was not brought on record. The case against Binayak hinged upon his 33 meetings with jailed Maoist leader Narayan Sanyal, his supposed couriering of Sanyal's letters and their passing on to Pijush Guha, through which letters, the death and destruction being carried out by the Maoists was supposedly given effect.

Since the prosecution failed to produce even a single jail official or any other eye witness testifying to any letter or message, oral or written, being passed by Narayan Sanyal to Binayak Sen in their jail meetings, the verdict makes much fuss about certain entries in jail registers referring to Sen being Sanyal's relative, ignoring the defence contention that these entries were filled in by the jail officials, and not by either the visited or visitor, as apparent from the face of the record. On the contrary, all the applications

Binayak Sen submitted to the jail officials, requesting a meeting with Sanyal, were written on the letterhead of his organization - PUCL (a Civil Liberties and Democratic Rights organization founded by leading Sarvodaya leader Jayprakash Narayan). These visits were duly permitted by the jail officials and transpired in their full view and hearing. Binayak's own statement to the court gives a perfectly rational explanation for these visits and the way in which his intervention was essential in facilitating the hand surgery of Narayan Sanyal at the Raipur Medical College., but this was not taken into account.

Binayak is also supposed to have had prior acquaintance with Sanyal and facilitated the hiring of a house by him. This is based on the testimony of a landlord who, while testifying to this fact also alleges that Sanyal was arrested from his house, which is contrary to the facts brought on record during this trial. Sanyal's arrest was in Andhra Pradesh according to the testimony of the arresting officer, and how a witness who perjures himself in one part of his testimony becomes a reliable witness for the other part, beats imagination.

Hearsay evidence from police officers about Binayak's presence in naxal meetings, his supposed association with 'hard core naxals' who are not even named in any case anywhere in the country, supposed seditious literature pertaining to resistance of US imperialism and atrocities committed during the salwa judum seized from our house during police search, correspondence addressed to the ISI (read Walter Fernandez, Director, Indian Social institute, New Delhi) and the evidence of correspondence with people bearing Muslim names constitutes the rest of the evidence. While weaving a narrative of sedition against Binayak Sen and other accused in the case, the Sessions court verdict violates a well laid judicial principle of the Supreme Court in matters of sedition. In

Kedarnath Singh Vs State of Bihar the Supreme Court has held that the provision of sedition in the Indian Penal Code must be interpreted in a manner consistent with the fundamental freedom of speech and expression guaranteed by the Indian Constitution. In this regard the Supreme Court held that the offence of sedition, which is defined as spreading disaffection against the state, should be considered as having been committed only if the said disaffection is a direct incitement to violence or will lead to serious public disorder. No speech or deed milder than this should be considered seditious. The Sessions court verdict in the case against Binayak Sen and others fails to establish that the words or deeds of the accused were a direct incitement to violence or would lead to serious public disorder. This would be the case even if it was established beyond doubt that Binayak Sen had passed on Narayan Sanyal's letters to Pijush Guha, or Pijush Guha was likely to pass on these letters to other members of the CPI (Maoist), or that Narayan Sanyal was a politburo member of the CPI (Maoist).

Both the trial court as well as the appellate court (while passing and upholding the maximum sentence for sedition) have gone on record that the situation of violence and uncontrolled Maoist bloodshed calls for non application of any grounds for leniency in sentence. This is without any clear establishment that Binayak Sen had any involvement in such bloodshed, in fact even the court does not allege this. How criminal justice can be based on the doctrine of lateral responsibility is mind boggling. Clearly the verdict and the sentence are both intended to make an example of a civil society activism, and to send a message to all of us who are asking any kind of questions. The issues in this case thus go beyond the case itself and the fight for justice for Binayak becomes the struggle of all of us for the Rule of Law in our polity. □

Orissa PUCL:

PUCL Report on the Custodial Death of Lalit Dehury

On March 1 and 2, 2011 it was reported in the media that one Raju Nayak died in police custody, under Chamakhandi Police Station of Ganjam district, allegedly by hanging himself with a blanket. However, the media also raised doubts about the identity of the person who the police claimed 'killed himself' and whether it was not a case of illegal detention and death due to prolonged torture by the police. About the identity of the deceased, it was alleged that the deceased was actually not 'Raju Nayak' as claimed by the police but he was one 'Lalit Dehury', who was picked up from Patapur area by the Ganjam police on February 9, 2011 allegedly for Maoist activities, and was kept under illegal detention till he died on March 1. Many local political leaders and activists also questioned the police version of 'suicide' and alleged that it was a case of death due to torture. The local unit of the Communist Party of India (CPI) staged a *dharna* on March 2 protesting against the police action and demanded for a judicial inquiry into the incident. The incident was also taken seriously by the local media and some political groups because there was a similar incident, about two months ago, of an alleged death in police custody and the police had claimed that the deceased, Pradeep Majhi, died by hanging himself with a shoe lace. Considering the seriousness of the case, the PUCL decided to do a fact-finding into the incident and a two-members-team was constituted for the purpose. On March 4 the team visited the police station at Chamakhandi and discussed about the case and visited the *haazat*, where the deceased allegedly attempted suicide. At Chamakhandi, the team also met the local CPI leaders, including Shri Narayan Reddy, ex-MLA of the area, and some local reporters of the print and electronic media. The team couldn't meet the Superintendent of Police,

as he was not available at his office and was busy even to talk on the telephone. But the team could meet the SDPO Chhatrapur, who is also the Investigating Officer of this case. The team also met two nurses at MKCG Medical College and Hospital, Berhampur and inquired into some aspects related to the case.

Based on the team's preliminary investigation, the PUCL would like to state that

(a) the police's account of 'death by suicide' does not seem plausible, and

(b) illegal-detention and torture of Lalit Dehury by the police cannot be ruled out.

The following is a detailed account of the team's findings.

A. The Suicide theory

According to the IIC of Chamakhandi PS, Raju Nayak (later identified as Lalit Dehury) was arrested by a blocking squad of the Ganjam police while patrolling in Chamakhandi area on the intervening night of 28 February and 1 March. The special patrolling was going on as a precaution to any law and order problem because of Panchayat by-election in the area scheduled on 3 March. While doing a random checking, the police caught a man, who had no documents of the bike he was riding and was carrying a pistol and some live ammunition. The man identified himself as Raju Nayak of Rambha area. He was arrested then and there and kept in the *haazat* room of Chamakhandi police station. The timing of the arrest is shown as 2.30 A.M. in the arrest register and one Havildar, Sri G. Behera, of the blocking squad has signed as arrest witness.

The IIC told the PUCL team that Raju Nayak was given breakfast in the morning by one of the police staff. Soon after, at 8.30 A.M. he was noticed hanging with a blanket from the iron rod of a small window. He was found alive and taken to

Chhatrapur, a distance of about 4 km. where he was admitted in the hospital at 9.45 A.M. He died in the hospital at 11.10 A.M.

The PUCL team examined the lock-up room at Chamakhandi PS where the deceased allegedly committed suicide. The room is situated in such a way that if the person inside it makes any noise/movement it would be easily noticed by people from outside. The lock-up room is attached to a hall which is the working space for the police staff. The IIC of Chamakhandi PS told us that they generally cover the lock-up room door (the top and bottom part of the door is made of iron grills and one can see through it) with a blanket to maintain privacy of the locked-up person as well as of the staff working in the hall.

There is a latrine in one corner of the lock-up room which is enclosed on two sides by a small wall of about 2 feet height. The PUCL fact-finding team was told that the deceased tied the blanket on the window grill by standing on this small wall and hanged himself.

However, the PUCL team's observation is that considering the height of the window from the latrine wall level it seems it wouldn't be easy to tie a blanket on the window grill. The window is also properly netted and there isn't enough gap in-between the grills to tie a blanket. Besides, it also seems implausible that the man in the lock-up would have tried to hang himself around 8.30 in the morning – a time when people were around right outside the door. The deceased would have known that there were people outside the lock-up room as he was given breakfast earlier by a staff, as told to the team by the IIC, Chamakhandi. It was also revealed to the PUCL team by Shri Narayan Reddy, ex-MLA of the area and who led the protest *dharna* on March 2, that the SP, Ganjam had told Shri Reddy on the day of *dharna* that 'the lower level

police officials did beat up Raju Nayak as they suspected him to be a hardcore criminal'. The PUCL team also met one C.H.Satyanarayan Reddy (of Banabulapalli village) at Chamakhandi who claimed that he had gone to Chhatrapur on February 28 and had seen the deceased being beaten up by 7/8 policemen near the Bus Stand at about 10AM.

B. The Allegation of Illegal Detention

It has been alleged that Raju Nayak alias Lalit Dehury was kept under illegal detention and taken to various police stations for interrogations where he was subjected to torture. In fact, a section of the media had reported the news of Lalit Dehury and two girls being picked up by the Ganjam police on 9 February 2011 allegedly for their links with the Maoists. The two girls were reportedly injured and admitted in Berhampur Medical College Hospital.

The suspicion that the police was hiding the identity of the deceased arose when the media people were not allowed to take photographs of the dead-body at Chhatrapur hospital. Since the deceased had no claimant then and since questions were already being raised from various quarters as to the real identity of the person, the police should have – if it had nothing to hide – allowed the media to publish the photograph for wider circulation so that the person could have been identified. The PUCL team met a number of media personnel at Chhatrapur and Berhampur who told

the team that the police kept them waiting for hours and tried to shift the body surreptitiously without allowing them to take a photograph. After much argument with the authorities they were allowed to take the photograph of the face only.

Secondly, although the deceased had died at the Chhatrapur Hospital at 11.10 AM, post-mortem was not done at this Hospital and the body was shifted, allegedly in a hush-hush manner, to Berhampur Hospital in the evening. The PUCL team asked the SDPO Chhatrapur as to why the post-mortem was not done at Chhatrapur. He told the team that the Hospital authorities at Chhatrapur referred the case to Berhampur for post-mortem but gave no answer as to why they did so.

Thirdly, right from day one i.e., March 1, there was the demand to get the girls from Berhampur Hospital to identify the body since it was reported earlier that the girls and Lalit Dehury were picked up together by the Ganjam Police. Instead of doing that, which, perhaps, would have set the matter straight, one girl was allegedly shifted from the hospital on March 2. The PUCL team's enquiry at the Hospital confirms that the girl, who was under the guard of the police, was in fact shifted from the Hospital on March 2.

As it turned out, the deceased was finally identified as Lalit Dehury by his mother and brother who identified the body on March 3.

After the body was identified as that of Lalit Dehury, there were further protests and *bandh* calls by different

political groups. The CPI-ML (New Democracy) and the CPI (Maoists) gave a *bandh* call on March 7 in south Orissa. On the same day, the CPI blockaded the National Highway near Chamakhandi. All these groups demanded for a judicial inquiry into the incident and compensation for the family of the deceased.

The police continue to maintain that there was no violation of rule at any point in the entire episode that caused the death of Lalit Dehury. However, the police's position is not convincing for reasons mentioned above. Many questions remain unanswered. Apart from serious doubts about the 'suicide', questions remain regarding the whereabouts of the three picked up by the police on February 9. If the deceased Lalit Dehury was picked up on February 9 then where was he all these days till he died in custody? And where are the two girls? The PUCL team asked the SDPO Chhatrapur about the reports of arrest of February 9 and whether Lalit Dehury was arrested then. He told the team that the investigation had not progressed that far so he won't say anything regarding it.

PUCL Demands

Considering the seriousness of the allegations and prima facie evidence to support these, the PUCL demands that a judicial inquiry must be instituted on the incident and the guilty must be brought to the book.

Ms. Pramodini Pradhan, Convenor, PUCL Orissa; **Mr. Narendra Mohanty**, Member, PUCL. □

Press Statement: 7 March 2011

PUCL Condemns the Ban on Public Hearing at Jaitapur

PUCL views with grave concern the ban on the public hearing of the grievances of the people against setting up of a nuclear power plant at Jaitapur, Maharashtra scheduled to be conducted by Justice A.P. Shah, former Chief Justice of Delhi High Court and Justice Sampath of Madras High Court on March 6 and 7, 2011 and considers the ban as yet one more nail in the coffin of civil

liberties and democratic rights of the people. It is shameful and utterly undemocratic to note that while even the imperial British government allowed such public enquiries, including Mahatma Gandhi's enquiry into the grievances of the peasants of Champaran despite vociferous protest by the white farmers, the governments in free India should persist in gagging the voice of the

people by banning fact-finding enquiries even by former High Court judges. In fact, the policy of the governments to treat with contempt and hostility all peaceful means of ventilating and seeking redress of grievances by resorting to lathi charge, police firing, indiscriminate ban on public meetings and processions by invoking section 144 of the Cr.P.C. undermining the

people's faith in peaceful means as an effective instrument of achieving their legitimate goals and driving them to resort to violence ranging from the pelting of stones on the police to sympathizing with or admiring organizations resorting to

armed struggles. The PUCL urges the governments in India to show due respect to the right of the people to agitate for the redress of their grievances using peaceful and democratic means, and desist from resorting to repression. It further

urges the government of Maharashtra to allow the public hearing at Jaitapur without further delay.

Sd/-

Prabhakar Sinha, President; **Mahi Pal Singh**, Secretary, PUCL National ☐

The Quality of Mercy **V.R. Krishna Iyer**

The life sentence imposed on Binayak Sen on a charge of sedition has provoked much vocal, even militant and hostile, public opinion. The judicial verdict is seen widely as being unjust, contrary to the people's conscience, and as an act of violence to public justice. It has invited severe mass criticism as an outrage.

It is nobody's case that Dr. Sen can be above the law or that the courts can ignore the evidence on record and rely merely on rumour or reputation or other arbitrary irrelevance. Nobody challenges the obligation and the duty of the court to act only on the evidence before it, but that does not apply to mercy power or privilege beyond the record. There is a clemency jurisdiction that can act on other benign considerations and show compassion beyond the technical ambit of the law in order to do justice. Mercy is nobler than law and it can have priority over law. This is a finer function of public conscience that does not destroy the conviction but deals only with the sentencing. The law remains; so too any guilt.

The court's decision based on the letter of the law is not undone, but a larger vision and certain sublime considerations prevail. Good things done with admirable motivation ought to be given recognition in giving a fair deal to an accused. Mercy is more than law or narrow judicial justice. This clemency factor is a dialectical operation that not the courts but members of the highest executive, like a President or a Governor, alone can exercise. This special jurisdiction is particularly relevant in Dr. Sen's case at this stage.

Extraordinary charge

Dr. Sen has been found guilty of sedition. This charge is an extraordinary one and is based, according to newspaper reports, on his association with certain Maoists. Dr. Sen has worked extensively in the rural areas, providing medical assistance to the poor. He has a reputation for having sacrificed much of his time and his skills for the poor. This should be an important factor in considering the sentencing dimension of his guilt.

Similarly, the Maoists have received medical aid, which is expensive; doctors often charge heavy fees. Dr. Sen's services are commendable and the general public feeling is that he deserves praise for his commitment to those who suffer from disease. To serve the public is not sedition. I would regard this as an alleviating consideration in the sentence that has been given to him. When a government provides hardly any medical facilities to the poor, service-minded doctors are not guilty of sedition even if their words go against the government's. Otherwise all opposition will turn out to be sedition.

Philanthropy is not fascism and public commitment critical of the state administration should not be confused with a traitor operation. I therefore view Dr. Sen as eligible for tribute, not to be condemned for sedition. Was Gandhiji or other critics of the state that hardly cared to wipe the tears of the poor, guilty of sedition? There is often grave confusion between criticism of a government demanding its overthrow — not by violence but by positive service and commitment to the people. Operation patriotism is not sedition.

Every confident motion, every

instance of strong criticism that seeks to expose a government's operation against the people and their liberties, is not meant to overthrow the government and its bad politics. This is not sedition but a patriotic mission on account of public commitment. When you go to the villages and serve the people by providing them medical aid, where the state has failed to do so; that is patriotism, not sedition. Because the government does nothing to serve the people's right to live it is not sedition; otherwise every writ petition filed against a government or one of its agencies could be considered as seditious. Every activity in support of public causes that are meant to counter the government's grievous failure is the fulfillment of a democratic duty, not sedition.

Judges cannot miss a glorious vision of great sacrifice for the common people for fear of being imputed with sedition. The rule of law must support the rule of life and not scare away integrity, fraternity, fellowship and compassion and national commitment for fear of misconstruction by justices. Justices who miss the majesty of swaraj, which means wiping every tear from every eye, do not deserve their robes. To describe service done to the poor as sedition will be an outrage of the mandate of the Mahatma. Binayak Sen should be released. To put him behind bars is a grave violation of social justice. Every instance of criticism that seeks to expose a government's operation against the people and their liberties is not a bid to overthrow it. That is not sedition but a patriotic mission on account of public commitment.

Courtesy the Hindu, 28 February 2011 ☐

Ecological Destruction by the Corporate House

The Senior NDTV reporters Ms. Sikta Dev, Ms. Sarah Jacob, cameraman Mr. Davedeep Kunvar, well-known environmental activist Mr. Bharat Patel and their driver Mr. Manish Thakker threatened, illegally detained and manhandled by Mr. M. P. Yadav, Nodal Officer of Adani Securities, Kutch .

Why does the company want to hide the environmental destruction of the coastal belt of Kutch?

Has the Mundra coastline turned in Adanis' private property?

We the activists of Gujarat condemn the manhandling and illegal detention of senior reporter Ms. Sikta Dev, Ms. Sarah Jacob, cameraman Mr. Davedeep Kunvar of NDTV and well-known environmental activist Mr. Bharat Patel by the security personal of the Adani Securities. They were illegally held by, Mr. M. P. Yadav, the Nodal Officer of the Adani Securities in Kutch on 24th February 2011.

We understand that they were only engaged in video shooting at 'Abhanvadi Creek' in the Mangrove Forest to gauge the impact of construction on the creek and mangroves in the area. After finishing their work when they came back around 3.00 p.m. to catch their Vehicle parked at distance they found their driver Mr. Manish Thakker and their vehicle missing. Mr. M. P. Yadav told them that they are under arrest as the reporters had entered the SEZ area of Adani and they were taken to the Adani House located at

Adani Port, Mundra. At Adani House when they meet their drive Mr. Manish Thakker he was scared and even started crying. The staff at Adani House manhandled the cameraman damaging his camera as a result. When the reporter insisted on proper legal procedure being followed they were taken to the Development Commissioner's Office of Mundra Port and Special Economic Zone, Mr. Mathew. The Additional Development Commissioner agreed that the Adani staff could file a complaint but detaining anybody was illegal. The Development Commissioner also agreed that the area where the NDTV reporters video shooting was not part of SEZ.

This is not only a matter of reporters being obstructed from exercising their right to report by private corporations. The other serious implications are:

- the corporation is trying to hide the reality of the irreparable damage to the costal belt, filling up of the creek & destruction of mangroves
- it is tantamount to covering up crime with crime
- public property, natural & national resources are being turned over to corporations
- the authorities that boast about law & order choose to remain completely blind to wanton disregard for law & natural rights
- a Government that claims to be

pro-people acts as a handmaiden of the powerful corporate interests, so much for our democracy

The area under mangrove cover along the Gujarat Coast is the second largest in India - after the Sunderbans. The Gulf of Kutch accounts to 93% of Gujarat's mangroves. There is an attack on the ecology of the Kutch as almost the entire stretch of coastal Kutch is taken over by the Port, SEZ and nearly 22000 MW coal based power plants that are planned. If the authorities have any modicum of respect for rule of law they must immediately:

- i) put a stop to the ecological destruction of the Kutch
 - ii) take action against Adanis personnel who acted in a wanton manner and beyond their powers
 - iii) demand a public apology from Adanis for its illegal actions
 - iv) ensure that public property is not treated as private property by anyone, however powerful
- We appeal to the progressive people of Gujarat to condemn the concerned corporation for the grave illegal action.

Swati Desai, Rohit Prajapati, Trupti Shah - Paryavaran Suraksha Samiti; Rajnibhai Dave - Manaviya Technology Forum; Anand Mazgaonkar - National Alliance of People's Movements; Dr. J. S. Bandukwala - People's Union for Civil Liberties, Gujarat; Amrish Brahmhatt & Kantibhai Mistry - Jyoti Karmachari Mandal □

Intern's Report:

Housing Rights Vyoma Gaur*

Introduction

"All human beings, whatever their cultural or historical background, suffer when they are intimidated, imprisoned or tortured. . . We must, therefore, insist on a global consensus, not only on the need to

respect human rights worldwide, but also on the definition of these rights. . . for it is the inherent nature of all human beings to yearn for freedom, equality and dignity, and they have an equal right to achieve that."

A. Rights are legal, social, or ethical

principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people. A person is born with rights. These rights are of essential importance in disciplines as law and ethics.

Rights are often regarded as established pillars of society and culture, and the history of social conflicts can be found in the history of each right and its development. The connection between rights and struggle cannot be overstated — though a person is born with rights but these rights are not as much granted and therefore they are fought for and claimed.

- Natural rights are rights which are derived from nature. They are universal; that is, they apply to all people, and do not derive from the laws of any specific society. They exist necessarily, inhere in every individual, and can't be taken away. For example, it has been argued that humans have a natural right to life.
- Legal rights, in contrast, are based on a society's customs, laws, statutes or actions by legislatures. An example of a legal right is the right to vote of citizens. Citizenship, itself, is often considered as the basis for having legal rights.

Human rights are "rights and freedoms to which all humans are entitled". Such entitlements can exist as shared norms of actual human moralities, as justified moral norms or natural rights supported by strong reasons, or as legal rights either at a national level or within international law. However, there is no consensus as to the precise nature of what in particular should or should not be regarded as a human right in any of the preceding senses, and therefore abstract concept of human rights has been a subject of intense philosophical debate and criticism. Often when people think about human rights, they think about issues of torture or freedom of speech. However, human rights actually cover both civil and political issues and what is known as social and economic rights such as health, housing etc.

Right to housing is the most basic human right which talks about the right to have your house needs met by the state, if one cannot meet them from his own resources.

When one talks about housing, there are various other elements attached with it. Some of them can be security, affordability, adequacy etcetera. Also, the house must be easily accessible i.e. a person should not have to wait an appropriate length of time before being housed and the allocation system should be fair and transparent. (There are internationally agreed guidelines on most of these areas that allow them to be measured).

The total homeless population in India is 78 million (based on the 2001 Census). "This problem was more acute in Kolkata, Mumbai and Delhi, which put together were reported to have 78 per cent of the houseless population," the report states. New Delhi has a population of between 100,000 and 150,000 homeless persons. Even the Delhi Development Authority (DDA) admits that at least 1 per cent of the population in Delhi is homeless. This means that no fewer than 140,000 people live on the streets of Delhi. This indeed is a matter of great disappointment, anguish and astonishment. Thousands of people have been thrown out of their houses at the peak of the winter season. They are living around the demolished site under the open roof without shelter, food, livelihood and basic amenities. The recent example of DDA's inhuman action in demolishing night shelters at Nehru Place and Kalkaji in south Delhi, made the Supreme Court lash out for its apathy.

There is no medical facility provided either and their ration cards are confiscated and water services have been stopped. The children are out of school, women unsafe, thousands of people living in a state of complete insecurity; utterly defenseless

against the elements of nature. Most of these people belong to the Schedule Caste, Schedule Tribes, Nomadic Tribes and other backward classes and minorities.

Currently only 24 temporary night shelters operate for Delhi's homeless. Only one of these shelters is exclusively for women. The number of shelters this winter season has fallen to 24 from 46 in the year 2008–09, despite an increase in the number of homeless. The current shelters cater to only 3% of Delhi's homeless population. The majority of the homeless are out in the open, left to fend for them in the severe cold. Homeless groups repeatedly have submitted demands to the Delhi government for urgently setting up 44 temporary night shelters in priority areas where the homeless are located. The government instead of promising 65 shelters, has, however, taken no action so far.

The worst effect of this brutal act is on women and children. On one hand the Indian Government has ratified the International UN Convention on rights of children ensuring every child the rights to survival, protection, development, and participation in 1992. On the other hand more than 1, 00,000 children have been rendered homeless, out of school, insecure and vulnerable.

The problem is not limited to people who are homeless but also extends to people whose houses have been demolished by the government authorities. The people are forcefully evicted from their houses without giving any notices. Demolishing houses have become common nowadays.

These actions of forceful eviction and the continued failure of the Delhi government to ensure access to housing and basic services for the homeless are gross violations of a range of internationally recognized human rights, in particular, their rights to adequate housing,

livelihood, food, water, health, education, work, security of person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement.

What does law states??

International Law

The Universal Declaration of Human Rights - This great and inspiring instrument was born of an increased sense of responsibility by the international community for the promotion and protection of man's basic rights and freedoms. An important shift in how people thought was that it was recognized that everyone should have individual rights that were not negotiable. The world has come to a clear realization of the fact that freedom, justice and world peace can only be assured through the international promotion and protection of these rights and freedoms. These rights were the virtue simply of being a person, and not being a citizen of any country.

Forced evictions, as affirmed by the United Nations Commission on Human Rights in 1993, constitute a gross violation of human rights, including the right to adequate housing. The UN Committee on Economic, Social and Cultural Rights encourages State Parties to ensure that "legislative and other measures are adequate to prevent, and if appropriate punish, forced evictions carried out without appropriate safeguards by private persons or bodies."

The Delhi authorities responsible for forced evictions have violated people's entitlements to security of tenure and freedom from forced evictions.

Article 11.1 of the International Covenant on Economic Social and Cultural Rights (ICESCR), states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family,

including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Article 25 of the Universal Declaration of Human Rights, states: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control

According to Miloon Kothari, former United Nations Special Rapporteur on adequate housing, "The government needs to be held accountable for the persistent human rights violations against the homeless. There is an urgent need for a combined human rights and humanitarian approach to uphold the rights of men, women, youth and children to adequate housing, security of the person, water, health, food and work. Failure to take these steps indicates a clear violation of India's commitments under constitutional and international law".

Therefore, the Indian government is bound by constitutional and international human rights law to respect, protect and fulfill all human rights. The UN Committee on Economic, Social and Cultural Rights in 2008 also called upon India to address the issue of rising homelessness, including the need for disaggregated data on the homeless. There is a critical need for all government departments to consolidate efforts and take urgent measures to protect the rights of Delhi's homeless. Continued failure to take the required measures is

nothing short of criminal negligence of Delhi's poor and dereliction of duty of elected and appointed officials at all levels of government.

The Indian authorities, including the local authorities, have breached their treaty obligations under, inter alia, Articles 2, 11, 12, 13 and 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which India acceded on 10 April 1979. The State has been derelict in its obligations as elaborated in the UN Committee on Economic, Social and Cultural Rights General Comments No. 4 on the right to adequate housing and No. 7 on forced evictions. The State of India also has contravened its obligations under Articles 16, 27 and 39 of the Convention on the Rights of the Child (CRC), to which it acceded on 11 December 1992, and Article 14 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which it ratified on 9 July 1993. The evictions also violate the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.

Indian Law

The forced eviction and demolition of people's homes without due process also violates the Indian constitution. The Supreme Court of India has held that the right to adequate housing is a fundamental human right emanating from the right to life. The High Court of Delhi in its February 13, 2010 judgment in the case *Sudama Singh and others v. Government of Delhi and others*, clearly calls for the protection of the right to adequate housing, minimizing of evictions, and adequate rehabilitation.

Article 21 of the Constitution of India guarantees Right to Housing as a fundamental right. The Supreme Court had stated that the Right to Housing includes adequate living spaces, decent structure and clean

surrounding. In 1997, it specified; "it is the duty of the State to construct houses at reasonable rates and make them easily accessible to the poor. The State has the constitutional duty to provide shelter to make the right to life meaningful". India's international obligations under various conventions also emphasize the state's duty to house the poor. The UN Commission on Human Rights in its Resolution on Forced Evictions emphasized: "The practice of forced eviction constitutes a gross violation of human rights, in particular, the right to housing".

Despite these decisions of the Apex court and in spite of the country's commitments in the National Habitat and Housing Policy and in the face of our international commitments, slum dwellers who have lived in the city for years have their homes demolished without notice or alternative accommodation and without any real 'public purpose', finding themselves vulnerable and powerless against the elements of nature day in and day out.

These forced evictions without adequate rehabilitation and the failure to provide adequate housing for the homeless, violate the affected people's fundamental right to life and livelihood as enshrined in Article 21 of the Indian Constitution. Reaffirming the principle of indivisibility of all human rights, the fundamental right to life encompasses the right to live with human dignity. Furthermore, Article 14 of the Constitution of India guarantees equal protection under law is also violated by these actions.

Very recent example of this violation is been witnessed by all of us during the preparation of Commonwealth Games. While the attention of the media has been centered on lack of preparedness, organizational glitches and financial scandals related to the CWG, the more severe impacts of the Games have largely been ignored. Attention needs to be

drawn to the serious human rights violations, especially of construction workers who have been denied minimum wages and decent working conditions, of the homeless and 'beggars' who have been arrested, detained and forcefully banished from the city, of women and children who have been trafficked, of over 300,000 street vendors who have been denied their right to work and are going hungry, and of slum dwellers who have been evicted for the Games. These abuses have contributed to the creation of a permanent negative social legacy of the Games, in contradiction to the claims of benefits and false notion of 'national pride' that the organizers constantly harp on.

"Peace can only last where human rights are respected, where the people are fed, and where individuals and nations are free."

Working with PUCL

While working with PUCL, I tried to find out the reason behind the disparity been faced by the poor and the rich. As India moves closer to the mid-point of the Eleventh Five Year plan, urban poverty remains a problem of huge proportions. Of the world's total number of urban poor, 39% live in India. Most of the urban poor are the result of rural poverty. They migrate to cities in search for better livelihood opportunities and better standard of living but most of them subsist on the periphery of the poverty line, and remain vulnerable to economic and business vicissitudes and cycles. The biggest challenge in front of a poor person is to first come out of vicious circle of poverty. Poor people are characterized by low income groups. The vicious circle starts with low investment. This results in low income which is inadequate to meet consumption needs. This result in low savings and low savings again lead to low investment. Thus, this circle moves. Now a poor person if wants to break the shackles of poverty has

to first break the vicious circle by increasing the level of investment.

While working with PUCL, I have been to 3 places and talked to many people regarding the problem of forced eviction and in turn demolishing their houses. The experience was very educational and I learned many facts and aspects attached with this problem.

Most of the people I talked had come from villages in search for livelihood opportunities as it was becoming difficult to sustain in village. After coming to city they purchased land from the landowners (usually farmers) or was given land by the government under 20 point. The basic facilities such as water, electricity, election cards, ration cards has been provided to them. But later on, these people were in constant threat of eviction.

The first place I visited was Agar Nagar in Nangloi. The area which was proposed to be demolished was total of 26 acre. The demolition took place without the notice to the residents although according to the petition the area was protected under The National Capital Territory of Delhi laws act, 2000. The residents of that area claimed that the landowners from whom they bought their houses has never accepted the compensation from D.D.A. In 2003, Congress government promised the people to legalize this area so that no further inconvenience will be caused to the people but nothing has been done yet. In 2008, provisional certificates were also distributed to the people. I also found out that most of the children in slums went to schools but could not develop interest in learning. They would drop out of school by the time they reach class eight. Health facilities were also not adequate. Roads which leads to Agar Nagar is not clean and almost broken. Drainage system was also poor. While interacting with people, I came to know that they have been living in this place from

last 5-6 years. This place has been demolished 3 times before, but due to lack of administrative check, people again build their houses. The average earning per house is around Rs 2000.

The live scene of demolition was disheartening. Between the cries, protest, police, media and law, it was difficult to decide that which side of the coin is correct. However the mastermind behind the act seemed well prepared to overpower the resistance. The police was armed with guns and rifles in most of the cases. People have suffered several injuries. In such a situation, the community could only raise verbal protest

As rightly remarked by one of the residents, the force which is been used now should rather have been used earlier when the people were building their houses after the demolishment. This is the cycle which will be rotating again and again. What needs to be done is the proper check or the removal of the problem from the very source. I think alternative houses should be provided to these people near their work of place so that this section of society will not be roadblocks in the development of the country.

Next to this, the place I surveyed was Bajitpur. For this, I have gone to Deputy Commissioner's office as the case is presently going there. In 1975, Prime Minister, Mrs. Indira Gandhi has started the 20 point program, under which Harijan's were allotted plots of 125 GAJ of land. These plots were given as a financial help to these people. Out of total of 364 plots allotted in Bajitpur, 138 plots have been demolished. As told, the demolishment happened without providing any notice. The people living here have form LR37 allotted to them. Moreover, they have their residence proof, election card, power of attorney of the house too. The residents of this place are mainly

labour class earning Rs. 1500-2000 per month. Many people are living here since birth and now they have no place to go. Very evidently, their right to shelter has been denied. No alternative homes have been promised to them. An old person of around 75 year of age, questions Mrs. Sonia Gandhi that she is meeting Kalawati in Bareilly, why doesn't she visit the area of Bajitpur, because here also she can come across many Kalawatis.

Similar problem is been faced by the people of Narela. Here in the disputed place, there are total 400 plots. Similar to Agar Nagar, these places has been demolished 3-4 times previously. The demolitions were conducted by use of vehicles and bulldozers. There was no legal notice served to the concerned communities prior to the eviction. This created a lot of unrest in the affected communities and they resisted against the brutal act. In places wherever there has been any attempt towards mass mobilization and demonstrations, people – both men and women were assaulted. The people residing here have bought this place from builders at the cost of Rs 4000 per yard. The people claim that demolition happens without notifying them. Allegations of corruption have also been put forth by the people. But there is no one to answer these allegations or reply to their questions.

After visiting these places and pondering about the problem, I drew the conclusion that bulldozing is definitely not a solution. We should consider this problem in a broader aspect. People living in such areas are mainly Taxi drivers, vendors across street, labor, maids in our houses, washer man, sweepers etc. We cannot imagine our life without them and the only grudge is that they are not provided with adequate infrastructure where they can thrive leaving their past behind. In India people have right to move wherever

they want. The government should adopt an approach of institutional development.

Humanitarian Problem

There are lots of problems faced by not only general public but also by the government officials in this regard. Lot of money, time and energy is been wasted just because proper procedure is not followed by anyone. The forced eviction contributes to a permanent negative social legacy. During common wealth games, these evictions have taken place for various reasons ranging from constructing stadiums, building parking lots, widening roads, city 'beautification,' and clearing of streets on grounds of 'security.'

Housing and Land Rights Network (HLRN) has been involved in a study on forced evictions carried out due to the Commonwealth Games in Delhi. HLRN estimates that at least 250,000 people in Delhi have lost their homes as a direct result of the Games since 2004.

Not only this, but there are many other elements attached with Demolition and forced eviction and violation of Housing Rights. They are-

- Failure to provide notice and reason for the demolition

In majority of the cases, authorities did not provide a notice for the demolition. The usual trend has been of police threatening people to vacate the area on the evening before the demolition. People of the settlement near Nangloi area, were very vocal about the fact that they had not been informed about the demolition. Said Mrs. Anju Rani, "If they had to break our homes, at least they could have told us." This is a clear instance of violation of due process.

- No compensation or resettlement provided

The most disturbing fact is that no compensation or resettlement has been provided at any of the sites surveyed. This is sheer violation of

right to life. In a previous judgment by the honorable Supreme Court of India it has been clearly said that alternative homes should be provided to the evictors.

□ Wrong government policies

What needs to be thought is that what went wrong and how it can be prevented for future? On one hand official government housing policy, in its principles, states that it is the primary function of the government to enable housing or accommodation, which is affordable, accessible, of good quality, suitable to their needs, culturally acceptable, located in a sustainable community and, as far as possible, in a secure tenure of their choice and on the other hand, we come across instances of cruelty done to people of Narela, Nangloi, Bajitpur and many other places.

There are several provisions for the homeless in local laws and policies too, which the government is also violating. The Delhi Master Plan 2021 clearly calls for the provision of night shelter. Instead of working toward the establishment of 140 night shelters as per the Master Plan, the government on the contrary has reduced the number of shelters, thus pushing the homeless into further destitution. The Delhi Municipal Corporation Act 1957 also stipulates the “construction and maintenance of poor houses and provision of shelter and relief for destitute persons.”

Miloon Kothari, Special Rapporteur on Adequate Housing, United Nations Commission on Human Rights, agrees that the government has no definite policy on housing in Delhi. “Historically, we have a grave crisis of housing. Every time the municipality demolishes slums, the vast majority are rendered homeless. We believe this is a violation of human rights.”

Therefore it is very much evident that the issues which need to be

addressed immediately includes—the lack of an effective comprehensive policy to address the housing rights of Delhi’s poor, non-existence of low cost and public housing options; large scale eviction drives and slum demolitions without adequate livelihood-based rehabilitation; shift in land use towards intensive infrastructure development—and taking immediate measures to ensure that all city inhabitants are able to live in homes that are safe and secure and adequately serviced. The severe winter, however, calls for an immediate and focused humanitarian response in the form of adequate, warm, and clean shelters that provide all basic services and are located close to people’s sources of livelihoods.

□ Children adversely affected

The psychological impacts on children who lose their homes and witness a demolition, are severe and long-lasting. Several children have been forced to drop out of school. As it is the schools are far away from their places and such incidents leave a long lasting impact on their minds.

□ Loss of livelihood and income

For most of the affected, demolition of homes also means a loss of livelihood opportunities.

Wage labourers find it impossible to go to work when their possessions are lying in the open, as they fear theft. Evicted families at all sites reported a marked increase in expenses on healthcare, travelling and rent.

□ Use of force and large police presence during the demolition

All slums demolitions took place in the presence of a large police force. Approximately 100 police personnel were present for the Agar Nagar demolition which in turn leads to injury and adverse effects on health. At Agar Nagar, 2 women lost consciousness on seeing the bulldozers. Ladies were crying and begging to stop this process so that they can

salvage their possessions.

There was a stampede like situation once the demolition started. This is very obvious that because of lack of access to medical facilities, and living in the open, contributes to the spread of illnesses like fever, cough, and cold, and diseases such as pneumonia, malaria and dengue.

This and many other problems are felt by the general public. But as they say that God help those who help themselves. Hence what is essential right now is ENTHUSIASM and HOPE to continue this fight and stand for what is right and what one believes in. As already stated, right to housing is one’s right and a person is born with certain rights which could not be snatched away from him.

Recommendations

Immediate compensation to be provided to all evicted families for loss of their homes, possessions and livelihoods.

Compensation to be paid to all those who suffered injuries or adverse health impacts.

Adequate rehabilitation to be provided to all evicted families, in accordance with international human rights standards, including the UN Basic Principles and Guidelines on Development-based Evictions and Displacement and judgments of Our Honorable Courts.

Improvement of living conditions in existing resettlement sites, including provision of basic services, infrastructure, healthcare, education and transport.

Restoration of educational facilities for evicted children, including provision of school books, uniforms and other material destroyed during the eviction.

Prosecution of all officials who are found guilty.

Immediately set up more temporary night shelters for the homeless (as

per demands submitted by civil society organizations and the homeless) that provide basic amenities and services like blankets, toilets, water and sanitation, and are located close to their livelihood sources;

Provide separate shelters for homeless women and children, and families;

Develop a comprehensive policy to address the housing rights of Delhi's poor.

A right to housing isn't one individual thing. Looking at housing from a rights perspective is about a range of interconnecting issues like law, policy and practice, which when combined deliver a measurably better outcome for vulnerable people of society. We need to understand that why people are forced to build houses on so called 'unauthorized' land in first place? It's because the government has not been able to provide affordable housing to people and they are forced to squatter investing whatever little resources they have. Therefore what is essential is right perspective. Looking at housing from a rights perspective puts the individuals and their needs at the centre of the system and is based on the premise that no matter where you are in the country, what your background is or

who is advocating on your behalf you will have your needs met in a timely and appropriate fashion.

"I am - Somebody. I may be poor, but I am - Somebody! I may be on welfare, but I am - Somebody! I may be uneducated, but I am - Somebody! I must be, I'm God's child. I must be respected and protected. I am black and I am beautiful! I am - Somebody!"

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*Ms. Vyoma Gaur, student of second year B.B.A. LLB, in Symbiosis Law School, Pune, worked as an Intern from 27th November to 27th December, 2010 with PUCL ☐

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.

– Pushkar Raj, General Secretary ☐

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