

Inside :

EDITORIAL: Emergency of 1975 and the Judiciary - Rajindar Sachar (1)

ARTICLES, REPORTS, AND DOCUMENTS:
Homage to Asghar Ali Engineer - Niranjan Haldar (2); From the Archives: ADM Jabalpur Case: A Supreme Mistake - Rajindar Sachar (5); Kannabiran's comment to Justice Sachar's analysis of the ADM Jabalpur Case: The Court has Always held Against Liberty (6); AHRC Article: INDIA: Have the Judges Gone Insane? (6); A Preliminary Report by PUCL on Jurabaga Police Firing in Jharsuguda, Odisha (8); Double Speak of state: TN Police Preventing Ex-Maoists' Return to Electoral Path! (12); Ugly Face of Caste Politics in Tamil Nadu - Vidya Bhushan Rawat (14); Custodial Murder of a Muslim Youth in UP: Will the Family Ever Get Justice? (17)

PRESS STATEMENTS, LETTERS AND NEWS : Announcement: PUCL NC Meeting on 14/15th September 2013 in MANGALORE (3); Press Release: Yet Another Commission Blames AFSPA for Fake Encounters (4); Press Release: Condemning Arrest of Jaya Vindhyala (4); JHRM letter to the President of India on Bagaha Police firing (10); Letter to the NHRC: Justice for 14 year old Rape Victim (16); AHRC Release: INDIA: Invest in Food Security for your own good (17); Statement on the Uttarakhand Catastrophe: India Climate Justice (19).

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Emergency of 1975 and the Judiciary Rajindar Sachar

Nations which do not remember their tragic past are in danger of repeating the tragedy. This thought came to me on June 26, 2013, (the day the Emergency was declared in 1975) when a random questioning of youth aged up to 35 (who are said to make up about half the population of the country) revealed that an overwhelmingly number of them did not know any particular significance of the day, and more tragically, a fairly large number of people above the age of 35 fared no better.

The reason was obvious. Most in this hyped age group get their information from newspapers, which having a commercial angle in view, never fail to remind us of the Valentine's Day. But on 26th June, newspapers did not even carry a small news item about the Emergency on an inside page -- leave apart on the front page. Even many opposition parties which were the victims of the Emergency chose to keep a low key. Even though the PUCL and other civil liberties organisations, as usual, held protest meetings, TV channels and newspapers viciously avoided any mention, overwhelmed as they are with the government's neo-liberal policies. Or is it a sense of fear because the perpetrator of the Emergency is the ruling party --- so much for freedom of the Press.

And yet tragically it was the day when India lost its democracy and the US President sarcastically boasted that the US was now the largest democracy. It is a different matter that thankfully because of the sacrifices made by Indian people under the inspiring leadership of Jayaprakash Narain (JP), the boast of the US President was to end, but only after 18 months. But the wounds have remained - the danger of it being repeated in the same manner may have been eliminated but the government's use of the various security laws against human rights activists and trade unionists continue to haunt us.

A question often asked is: How come the Emergency could happen despite our Constitution giving us all the fundamental rights and democracy being a basic feature of the Constitution as was so refreshingly held in the Kesavananda Bharati case as far back in 1973 by our Supreme Court?

It is not that there was no resistance to the Emergency. Thousands went to jail, including former Central ministers, ex-Chief Ministers, Governors, lawyers, legislators and a few brave journalists. Many human rights activists went underground but there was a limit for unarmed people to fight an intolerant and a near fascist State which India had become those days. A total fear had enveloped the country. And all this because the rule of law had completely been eliminated by the Supreme Court ruling in ADM Jabalpur case (April 1976), which overruled the view of nine High Courts that the legality of a detaining order passed by the governments could still be examined - in fact in some cases the High Courts had ordered the release of detainees. Had this view been upheld, the Emergency would have collapsed. But to our shame the Supreme Court by a majority of four judges against one honourable exception (Khanna J.) laid down a

proposition of law, which will remain forever a hallmark of shame, thus: "In view of the Presidential Order dated June 27, 1975, no person has any locus standi to move any writ petition under Article 226 before a High Court for habeas corpus or any other writ or order or direction to challenge the legality of an order of detention on the ground that the order is not under or in compliance with the Act or is illegal or is vitiated by malafides factual or legal or is based on extraneous considerations." Is it not obvious that the Emergency could not be fought in a legal and democratic manner because the Supreme Court accepted the Attorney General's argument that if a policeman under orders of his superior was to shoot a person or even arrest a Supreme Court judge, it would be legal and no relief available. Naturally in this situation, no peaceful opposition to the Emergency could continue. I am shocked how the majority decision could rely on *Liversidge vs Anderson* decided during war time in 1942 by the House of Lords, but with a memorable dissent by Lord Atkin. English courts subsequently felt so ashamed of that decision that a conscious effort was made to throw that decision into a dung heap.

Lord Akin caustically remarked about judges who "show themselves more executive minded than the executive" and commented that such arguments might have been addressed acceptably to the Court of King's Bench in the time of Charles-I. In fact, Justice Stable, a Judge of the High Court of London, was so upset that he was constrained to say that the status of the judiciary had been reduced "to mice squeaking under a chair in the Home office". In 1963 Lord Radcliff (HL) referred dismissively to the very peculiar case in *Liversidge Vs. Anderson* and said: "It should be confined apparently to a war time context and that it is already clear that the decision was regarded as an aberration". All this trenchant criticism of the *Liversidge* judgment was available in various law quarterly reviews since the beginning. *Law Quarterly Review* (1970) clearly spelled out how embarrassing the decision in *Liversidge* was becoming for the English judiciary. That is why Lord Diplock (HL) in 1979 was constrained to rule, "For my part, I think the time has come to acknowledge openly that the majority view in *Liversidge vs. Anderson* was expedient and, at that time, wrong and the dissenting judgment right". And Lord Scarman I caused the final

demise by saying that "the ghost of that decision need no longer haunt the law". Some commentators have ironically described the majority decision in the *Liversidge* case as the court's contribution to the war effort of England. Similarly many in this country are inclined to describe the majority view in the *Jabalpur* case as the Supreme Court's contribution to the continuance of the 1975 Emergency. Had the Supreme Court taken the same view as the nine High Courts, the Emergency would have collapsed immediately because no court could possibly have upheld the detention of stalwarts and patriots like Jayaprakash Narain, Morarji Desai, Raj Narain, George Fernandes, Madhu Limaye and thousands of others on the ground that they were a danger to the security of the country. The inevitable result would have been the immediate release of these leaders, leading to an overwhelming Opposition movement which would have swept away the Indira Gandhi government by mid-1976. Alas, how sometimes the fate of nations can be influenced by the pusillanimity of a few individuals - in this case embarrassingly by the highest judiciary which it can never live down. July 10, 2013 □

A Homage to Asghar Ali Engineer

Niranjan Haldar

Those who read 'Twenty Years of Babri Masjid Demolition' by Asghar Ali Engineer in the December issue of IRHA Newsletter, did not imagine that he would pass away so soon. He breathed his last on May 12, 2013 in Mumbai at the age of seventy-six. He was born in a Dawoodi Bohra family in Rajasthan, studied Engineering in Indore, worked in Bombay Municipal Corporation, as an engineer. Here, he replaced his family surname by his adopted surname 'Engineer'. Very soon, he left the job, to work as a social activist. While he was a student, he witnessed an anti-Muslim riot in M.P. after the rape of a college-student in

Jabalpur in 1960. Afterwards, he started a youth organisation, to fight against communalism. For some years, he had worked with *Sampradayikata Virodhi Manch*, led by Subhadra Joshi, of the C.P.I. Soon, he realised that authoritarianism in a community affects the freedom of the individuals much more than class. In the Dawoodi Bohra community, everyone has to sign a letter of loyalty to the religious head, known as *Syedna*, has to pay the donations when demanded. If he, or she said anything against the *Syedna*, he would be expelled from the community, and his/her relationship with parents, brother(s), sister(s), wife, son(s), and daughter(s) would cease

automatically. This is against human rights of the individuals, against fundamental rights as mentioned in the Indian Constitution. Justice M. C. Chagla of Bombay High Court declared that the loyalty-letter to *Syedna* was against the Indian Constitution, but the then Congress Government of Bombay restored the rights of the *Syedna*. In 1970, Asghar Ali Engineer started a movement against the anti-human rights practices in the Dawoodi Bohra community. His movement was supported by Humanists like V. M. Tarkunde, Prof A. B. Shah and others in Maharashtra. His bi-lingual fortnightly, *Bohra Chronicle* became the mouthpiece of the movement. Pro- *Syedna* groups did not sit idle.

Engineer was physically attacked in Cairo. He could not hold meeting in Calcutta, due to pressure from the Bohra businessmen in Calcutta. The Muslim Institute cancelled the booking of the hall.

In 1978, on behalf of Citizens for Democracy, J. P. Narayan and V. M. Tarkunde set up a People's Bench, presided over by a former Justice in Ahmedabad. Dr Moin Shakir, a historian, became one of the judges. But Syedna-loyalists attacked the place of People's Bench and the police had to rescue the judges.

In 1982, he attended a seminar in Madras. He and Balraj Puri of Jammu used to visit the Muslim areas in the evening, and discovered that the Urdu-speaking Muslims of Tamil Nadu belonged to the national political parties, while the Tamil-speaking Muslims belonged to any

of the two main Tamil political parties. The three of us visited the office of the Chief Minister Ramachandran, to deliver a letter, requesting him to withdraw the case of sedition charge against Chandralekha (Bharatnatyam dancer) and Sadanand Menon (journalist) - both of them were active in training the social communicators of Tamil Nadu.

In 1984, we met again in South Gujarat University campus in Surat, in a seminar on Caste and Communal Riots in Gujarat. Later on, he sought donations from his friends, to conduct a study on communal and caste based riots in Gujarat. Myself, and Dr Hussain Rahman (historian), were the two donors from Calcutta. He established the Institute for Islamic Studies in 1980 and the Centre for Study in Democracy and Secularism, in 1983. He interpreted

the Quran from the modern as well as humanist view-point. He was the opposite face of Jihaadi Muslims. His activities spread to other Asian countries. He was the Chairman of Bangkok-based Asian Resource Centre, with Abdus Sabur from Bangladesh as its Secretary. I had the opportunity to attend their workshop on Human Rights Education, in Thonburi, Thailand, in 1993.

He was a believer in God. A question may arise 'Why would atheists and humanists pay homage to him?' The answer is: We fought on the same platform with him against communalism, for Democracy, Secularism, and Human Rights. Considering the areas of agreement, we consider him as one of us. We salute the life-long fighter for Human Rights, and Peace.

□

Announcement:

PUCL National Council Meeting on 14/15th September 2013 in MANGALORE

To:

All National Office Bearers, All State Office Bearers, All National Council Members

It was decided during the National Executive Council Meeting held on 11/12th May, 2013 in Delhi that the next National Council Meeting will be held in Mangalore on 7th/8th September. However the dates had to be postponed by a week due to a local festival.

The National Council Meeting will be held now on 14th and 15th September, 2013 (Saturday and Sunday).

We request all National Council members from each state as also National Office bearers to attend the national council meeting without fail.

We also request you to plan your trip so that you stay for both the days and not rush off after the first days' meeting. We are making this request especially because in previous meetings, including in the May, 2013 meeting of the National Executive, a number of people attended only for one day. We understand that all members are busy and have time pressure. We are intimating well in advance so that you can make arrangements to make yourselves free to attend the full session of the National Council.

Many issues of importance to PUCL need to be discussed like streamlining of PUCL, strengthening PUCL, how to put forward the human rights agenda in the context of 2014 general elections, issues of threats and attacks on rights defenders and other issues crucial to PUCL are on the agenda. So please plan to attend the full National Council meeting.

Details of the venue are provided below.

The Karnataka PUCL unit has requested us to inform as to the total number of people who are likely to attend the meeting so that they can make appropriate arrangements. This is important for logistical arrangements.

SO PLEASE INFORM WITHIN THE NEXT 2 WEEKS, i.e, by 27th July, how many members from your state will be attending as also details of time off arrival and departure.

As regards Agenda for discussion, please do send in your suggestions about issues to be taken up for discussion by middle August 2013 so that we can compile them and plan the time for discussion for each issue.

We shall be sending you more emails in this connection in the coming weeks.

We also request you to provide the list of National Council members from your state with full address, contact phone numbers and email IDs. This is required to prepare a final updated list as also to upload the details into our PUCL site. It is quite possible that we may have left out some names. If you know other members' ID please pass it along so that we can send it, as also inform them now itself so that travel arrangements can be made.

PLEASE NOTE THE MEETING IS BEING HELD IN MANGALORE ON THE WESTERN COAST (and not in Bangalore).

So please make your travel arrangements accordingly.

Venue: Sahodaya Hall, Mission Compound, Balmatta, near Jyoti Talkies, MANGALORE.

In solidarity,

V. Suresh, General Secretary, PUCL National. □

Yet Another Commission Blames AFSPA for Fake Encounters Will the Apex Court take Note?

Yet another Judicial Commission, headed by former Supreme Court Judge N. Santosh Hegde, with former Chief Election Commissioner J.M. Lyngdoh and Dr Ajay Kumar Singh, IPS, Retd DGP of Karnataka, as its members, this time appointed by the Supreme Court itself, has highlighted the rampant and gross misuse of the Armed Forces (Special Powers) Act (AFSPA) for fake encounters and gross violation of human rights by the security forces in Manipur, justifying the demand for the repeal of the Act by the PUCL and other human rights organizations and activists like Iron Sharmila who has been on fast against the Act for the last 12 years. The Commission had concluded its hearing on 21st March 2013 on various affidavits filed before it. Earlier in September 2012 the Court had appointed the Judicial Commission on a petition by Extra-judicial Execution Victim Families' Association and Human Rights Alert which had demanded investigation into the encounter killing of 1,528 people by the security forces in Manipur since 1979. After investigating six sample cases of encounter killings the Commission

reached the conclusion that the cases were 'not genuine' and that 'maximum force' force was used to kill people. The Commission also noted that: "Though the Act gives sweeping powers to security forces even to the extent of killing a suspect with protection against prosecution, it does not provide any protection to the citizens against its possible misuse," adding further that, "Normally, the greater the power, the greater the restraint and stricter the mechanism to prevent its misuse or abuse. But in case of the AFSPA in Manipur this principle appears to have been reversed."

Earlier Justice Jeevan Reddy Committee and Justice J.S. Verma Committee had also found that the impunity clauses in the Act provided a shield to the personnel of the security forces for indulging in fake encounters and sexual violence against women in areas where the Act is in force. Whereas the Jeevan Reddy Committee had recommended the repeal of the Act saying, "The Armed Forces (Special Powers) Act, 1958 should be repealed. Therefore, recommending the continuation of the present Act,

with or without amendments, does not arise. The Act is too sketchy, too bald and quite inadequate in several particulars," Justice Verma Committee had also recommended: "Due to the number of reports of sexual offences committed by the armed forces in India's conflict areas such as Kashmir and the North East, the Armed Forces Special Powers Act (AFSPA) - a controversial law that gives sweeping powers to and often confers immunity on security forces - must be reviewed. Security forces must be brought under the purview of ordinary criminal law rather than under army law."

In view of the latest report of abuse of the AFSPA, the PUCL again demands its withdrawal from the states where it is in force and its repeal from the statute book. We hope that the Apex Court will take note of the report and declare it unconstitutional as it has been found by all the enquiry committees to have been misused again and again for extra-judicial killings seriously infringing upon the right to life granted by the Constitution of India.

Mahi Pal Singh, National Secretary, PUCL □

Copy of the PUCL Press Release dated 12 May 2013:

PUCL Condemns Arrest of Jaya Vindhyala, PUCL - AP State President: PUCL Demands Release and Dropping of Charges

The PUCL National Executive meeting in Delhi today strongly condemns the arrest by the AP police of Ms. Jaya Vindhyala, State President, PUCL AP at 7.30 am today (12th May, 2013) in Hyderabad. Ms. Jaya Vindhyala has been exposing the corruption of the Chirala MLA, and other senior officials of AP.

The PUCL feels that the timing of the arrest on a Sunday is to ensure that no legal recourse like bail can be availed by Ms. Jaya. The PUCL questions the need for the state police to arrest Ms. Jaya Vindhyala especially in view of the Supreme Court directions in the case of 'Joginder Kumar vs State of UP',

(1989) that arrest of a person need not be effected if the person will appear before the police on summons and there is no danger of the person absconding, threatening witnesses or tampering with evidence. This is not the case in the case of Ms. Jaya Vindhyala who is a widely respected person, and is a senior and well known Advocate of the AP Bar and is a well known human rights defender. It is revealing to note that the three FIRs registered by the Chirala police against Ms. Jaya, includes offences under section 307 (attempt to murder), 506 (threatening with intention to kill), 120-B (Conspiracy) IPC and Information Technology Act. These

provisions are routinely abused and misused by the police to foist false cases and in the cases against Ms. Jaya, we learn, are all based on false allegations not making out any of these offences.

The PUCL has also learnt that 9 other members of PUCL - AP have also been named in the FIR and the police is hunting them down.

The PUCL demands the immediate release of Ms. Jaya Vindhyala and closure of all the cases against her, as also other PUCL members, in Prakasham district.

V. Suresh, National General Secretary, PUCL

[Also see, **An arresting Act**, *The Hindu*, 15 May 2013] □

From the Archives:

ADM Jabalpur Case: A Supreme Mistake Rajindar Sachar

Certain decisions taken by their highest courts continue to shame all countries, particularly the legal fraternity of their civil society. It was the United States Supreme Court's declaration in the Dred Scott case, that a slave was a private property that ultimately resulted in the civil war. The decision in the *Liversidge versus Anderson* (House of Lords, 1942) case, blasting all civil and political rights of citizens in wartime, makes English judges run for cover even now. In India, the Supreme Court judgment in ADM Jabalpur, holding that the right to life did not survive during Emergency, would continue to proclaim the pusillanimity of the Supreme Court in refusing to act as a sentinel to safeguard human rights.

Many politicians, journalists, and social activists were arrested by Ms Indira Gandhi under the Maintenance of Internal Security Act (MISA) on non-existent or frivolous grounds after Emergency was declared in 1975. The detentions were challenged, but they were met with the government's plea that Article 21 was the sole repository of liberty, and that as the right to move for enforcement of that right had been suspended by the Presidential order of June 27, 1975, petitions were liable to be dismissed at the threshold. This objection having been overruled by nine high courts, the appeal was heard by a five-judge bench in the Supreme Court. Only one of them, Justice Khanna, showed courage in negating this totalitarian claim. Two of them, Justices Chandrachud and Bhagwati (who it was generally assumed would side with the liberties of citizens), however, wilted and joined Chief Justice Ray, and Justice Beg (who in any case no one expected to go against the government) in dismissing the habeas corpus petitions. It was to take another 21 months and people's simmering anger to get rid of the Emergency.

There are still reasons as to why Chandrachud and Bhagwati decided as they did. For their conclusion, they relied on the single most important case of *Liversidge vs Anderson* (1942), wherein the House of Lords in England by majority (the sole dissenter being Lord Atkin) had held that the Home

Secretary's opinion that a person should be detained was final and not renewable by the court.

Khanna, in his powerful dissent, held that Article 21 could not be considered to be the sole repository of the right to life and personal liberty, and such right could not be taken away under any circumstance without the authority of law, in a society governed by rule of law.

But Chandrachud and Bhagwati allowed themselves to be persuaded otherwise by following the majority decision in *Liversidge* to the effect that the opinion of the detaining authority was not challengeable, to the extent that even if a policeman were to shoot a citizen maliciously and capriciously there was no remedy to that action in a court of law.

But surprisingly, both these judges ignored Lord Atkin who was caustic about those judges who "show themselves more Executive minded than the Executive" and commented that such arguments might be addressed acceptably to the Court of King's Bench in the time of Charles I. It is however unexplainable how Chandrachud and Bhagwati chose to ignore that soon after the *Liversidge* decision was given there had been vociferous support given by jurists to Lord Atkin's views as against the majority view. In fact, one Justice Stable was so upset that he said that the status of the judiciary had been reduced "to mice squeaking under a chair in the Home Office."

Lord Radcliffe (1951) (HL) said that "it would be a very unfortunate thing if *Liversidge's* case were regarded as laying down any general rule."

In 1963 Lord Reid (HL) referred dismissively to "the very peculiar case in *Liversidge vs Anderson*" and said, "It should be confined, apparently to a wartime context," and "that it is already clear that the decision was regarded as an aberration."

The trenchant criticism of the *Liversidge* judgment had been available in various law quarterly reviews since the beginning. A review available in *Law Quarterly Review* (1970) clearly spelled out how embarrassing the decision in *Liversidge* was becoming for the

English judiciary. And yet our Supreme Court surprisingly chose to follow the majority view. The embarrassment was becoming more and more intolerable as time went on. That is why Lord Diplock (HL) in 1979 was constrained to rule, "For my part I think the time has come to acknowledge openly that the majority... in *Liversidge vs Anderson* were expedient and, at that time, wrong and the dissenting right." And Lord Scarman hit the final nail by saying that "the ghost of that decision need no longer haunt law."

Some commentators have ironically described the majority in the *Liversidge* case as the court's contribution to the war effort of England. Similarly, in our country people are inclined to describe the majority in the *Jabalpur* case as the Supreme Court's contribution to the continuance of the 1975 Emergency. I am inclined to agree. Had the Supreme Court taken the same view as the nine high courts, the Emergency would have collapsed immediately because no court could have upheld the detention of stalwarts and patriots like Jayaprakash Narayan, Morarji Desai, Bhimsen Sachar, Madhu Limaye, and thousands of others on the ground that they were a danger to the security of the country. The inevitable result would have been the immediate release of these leaders, leading to an overwhelming Opposition movement which would have swept away the Indira Gandhi government by the end of 1975, earlier than in 1977.

But alas, all this is in the realm of speculation. The Supreme Court did not show courage and this case will continue to haunt the Court and the judicial fraternity. We will never be able to live it down. How future of nations can be influenced by the pusillanimity of a few individuals, but then such is life. However, we may not have to pass through that darkness again, because the 44th Amendment to the Constitution (1978) has taken away the power of the President to suspend Article 21. But still we must continue to remember that "Eternal vigilance is the price nations must pay for safeguarding the liberties of individuals."

(Published in the *PUCL Bulletin*, August 2006) □

Kannabiran's comment to Justice Sachar's analysis of the ADM Jabalpur case:

The Court Has Always Held Against Liberty

K.G. Kannabiran

Dear Rajindar, Thanks for the advance copy of your article, A Supreme Mistake. I would like to ask you to permit me to make a few points:

Our Supreme Court did not suddenly develop this attitude displayed during the 1975 Emergency. Our Court has always been colonial one, which treated the people as subjects, and not citizens even after the new Constitution came into force. Supreme Court, barring Fazl Ali and Vivian Bose, always held that rights are granted to us by the Constitution. From A K Gopalan onwards we are repeatedly told rights are granted to us by the Constitution. They always talked about personal liberty when property was attacked by legislation. You may take all the cases from A K Gopalan onwards, the Court has always held against liberty. In Makkan Singh in 1964 Gajedragadkar talked of rights as grants and argued that what had been granted can be withdrawn. Only Subba Rao struck a different note.

In Fagu Shah in the Seventies the same trend continued and in ADM Jabalpur they could not take a different line. Even today the same situation continues. After Emergency we had a galaxy of brilliant but hollow judges. They didn't structure a jurisprudence required for understanding and enforcing the Constitution. They were displaying

their prowess in judicial craftsmanship. They differed from the previous courts in that they were left oriented. What did they do after Emergency? They were writing about the liberties of persons inside the prisons. In fact they canonised scoundrels from Sunil Batra to Auto Shankar! They expatiated on Social Justice and encouraged Public Interest Litigation. These were all exercises in personal salvation with the exception of Justice Iyer and Chinnappa.

Their response to terrorism is a very middle class reaction and you know more about it than I do. You have been consistently arguing for PUCL by challenging the terrorist laws. Can you go before the court today and argue against globalisation? Can we argue before the Supreme Court that market forces cannot bring about social equilibrium by bringing about economic equilibrium, if that is at all possible? Can we go and argue before the Court that as private enterprise has been liberated from governance, will the private enterprise take over the obligation of the State under some of the provisions contained in Articles 15, 16, 17, 23, and 24? (I hope I got the Articles right). Can the court direct them to perform the obligations of the State? How are we to negotiate for the people and their rights in these Courts? PIL is high-jacked by the

upper classes and upper castes; and is it possible approaching the court and requesting them to break the strike when upper caste students are striking against reservations or for not issuing supportive directions? We are in a worse situation than during the Emergency.

The State by not acting is doing greater harm. It is determined to deal with law and order and public order. There are two committees working on tightening the laws on public order and all the participants, except the one held at Delhi, are clamouring for enforcing Malimath Recommendations, a committee which consisted of people all of whom knew nothing about criminal law excepting the police officer who is on the Committee. The only duty the State is willing or compelled to undertake is acting as the security guard for the Indian business and multi-nationals.

That is what should worry us thirty years after the Emergency. One has to express satisfaction about one thing concerning the computer and the internet: You can vent your spleen and transmit it. Thank you for sending the piece. I did enjoy reading it.

With affectionate regards,

K G Kannabiran

28.6.2006, (Published in the *PUCL Bulletin*, August 2006) □

An Article by the Asian Human Rights Commission: May 7, 2013

INDIA: Have the Judges Gone Insane?

*Bijo Francis

Insanity is defined as "doing the same thing over and over and expecting different results." Albert Einstein said this. Applying this definition, to the predicament and expectation of the Supreme Court of India, one may argue that judges in India are at the threshold of being termed 'insane.'

In a criminal writ petition filed in 1996, the Supreme Court of India, in September 2006, said, "This Court

cannot further wait for Governments to take suitable steps for police reforms and thus having regard to (i) the gravity of the problem; (ii) the urgent need for preservation and strengthening of rule of law; (iii) pendency of even this petition for the last over ten years; (iv) the fact that various Commissions and Committees have made recommendations on similar lines for introducing reforms in the police set-

up in the country; and (v) total uncertainty as to when police reforms would be introduced, there cannot be any further wait, and the stage has come for issuing of appropriate directions for immediate compliance so as to be operative till such time a new model Police Act is prepared by the Central Government and/or the State Governments pass the requisite legislations. Since the quality of

criminal justice system in the country, to a large extent, depends upon the working of the police force, in larger public interest, it is absolutely necessary to issue the requisite direction ...".

Six years later, in April this year, the Court once again asked the government, what has been done so far, to implement the Court's directives, in 'letter and spirit?' One has to concede, that the 'letter and spirit' of the Court's directives have been ignored largely, and in the states where the directives were partially implemented, it is being done with the clear intention to maintain the status quo. For instance in Kerala state, the police complaints' authority, a body envisaged in the judgement and directives of the Court, has been constituted, though this new body empowered to accept and adjudicate on complaints against the police, is as good as non-functional, manned by retired police officers and officers who lack a thorough understanding and appreciation of their mandate.

In a state like Kerala, where complaints against the misuse of authority and breach of operational mandates by the police are widespread, the number of complaints upon which the authority has taken affirmative action is far too low, as opposed to the large number of complaints it has received. The largest coalition partner of the current political party that rules the state dictates appointments, promotions, and disciplinary actions taken against police officers.

It is in this backdrop, that the Court, a few days before, has reprimanded the Central Bureau of Investigation (CBI) for the CBI consulting the Union Government, before it filed a report to the Court, in the investigation that the CBI is undertaking regarding the corruption scandal, in the allotment of coal mining blocks. The Court in very clear terms was expressing concern about the bias of the CBI and its servitude to the government. This expectation of the Court, that its directives will be followed, concerning independence of institutions, literally and functionally is farfetched, if not sheer insanity. Without any form of administrative

or policy level changes brought into the functioning of an institution like the CBI, how could the Court expect the institution to shed its old and well-rooted habits, merely because the Court has, on numerous occasions reprimanded the CBI, for not being independent?

It is equally exaggeration for the Court to expect such performance from state institutions, when the Court itself has done nothing more than issuing directions of manifold nature concerning reforms in investigative processes. For instance in 1996, the Court, while deciding the D. K. Basu case, issued a series of directives to the investigating agencies, as to the procedures to be followed while arresting, detaining and investigating crimes. Some of these directives have been incorporated into the Criminal Procedure Code, 1974 by way of an amendment to this law. Central to these directives and subsequent amendments is the securing of fundamental rights, of a person under investigative custody, most importantly to prevent secret detentions, custodial torture, and the menace of what is known as encounter killings in India.

For the past 10 years, organisations like the Asian Human Rights Commission (AHRC) of which the author is a staff member, and AHRC's partners in India have been informing the Court, cases that have meticulously documented serious violations of the Court's directives in the D. K. Basu case. Of these cases, at least 24 of them are of custodial deaths, reported and documented, of persons who have been taken into custody by the state agencies, where at the time of arrest, every single direction of the Court in the D. K. Basu case has been openly negated. I am yet to know about a single case in which the Court has initiated contempt action against the police officers named. All these cases, reported over a period of ten years from across the country are available at the Urgent Appeals page of the AHRC at www.humanrights.asia

The dual standard of the Court, on applying fundamental principles of human rights and the rule of law, is

once again exposed in the manner in which the Court has dealt with the report submitted to it, by a Commission appointed by the Court that has adduced evidence as directed by the Court, in the case filed against the government by an association named "Encounter Killing Victim Families' Association". While the Court allowed the report filed by the Commission to be provided to the government, it has refused the same to be provided to the petitioner in the case, the Association, on the erroneous ground that providing the report to the petitioner in the case would run the risk of the petitioner sensationalising the report. What more is sensational and shameful, for a few widows to approach the apex court of the country seeking justice, for their husbands were killed by the state that is constitutionally bound to protect their person and property?

While the Court agreed that all the cases inquired by the Commission, prove the allegation that innocent civilians have been murdered by the state agencies in Manipur - to quote the Court's own language - the state is engaged in 'executive elimination' that the Court on several occasions has held as unacceptable and intolerable - it has refused the petitioner in the case to exercise their legitimate and constitutional right to know the contents of a document to which the petitioner is a party. In short, the Supreme Court of India does not follow the constitutional mandate that it is duty bound to uphold, at all cost.

When the highest court of the country entertains biased positions, as it suits the Court, or the judges from time to time, what moral standard can it insist upon from an agency like the CBI, that is nothing more than a party to a lie before it? Or, is it time to say, that for some judges at the Supreme Court of India, it is time to get back to the constitution, so that they are refreshed about the mandate they are expected to uphold, even if the heaven falls down?

*The author is a lawyer and currently the Interim Executive Director of the Asian Human Rights Commission.

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A Preliminary Report by PUCL on Jurabaga Police Firing in Jharsuguda District, Odisha

The incident of a police firing upon the striking truck drivers, at the campsite of 'RCP' near Jurabaga village in Lakhanpur Block of Jharsuguda district, in which two people were killed and several others seriously injured, was reported in the local media. The incident took place on June 8, 2013. It was also reported that the drivers had been asked to leave the campsite and section 144 was imposed in the area. After the incident, some local activists approached the PUCL and requested to visit the area for a fact finding. Accordingly, a team of the PUCL members visited the area on 11th June. The team visited the campsite of the coal transport agencies where the firing took place, spoke to the employees present there, visited the nearby village and met some drivers, spoke to the CGM of the Mahanadi Coalfields Ltd., visited the Belpahad police station and met the district Superintendent of Police, Jharsuguda. The following is a preliminary report on the team's findings.

The Context

In the mining areas of Jharsuguda thousands of people are employed in various categories of mining activities. Transporting coals from the mining areas to various points for onward transportaion by rail or to various plant sites is one such activity in which thousands of drivers and helpers are being employed. However, a large number of these workers are not organised into unions. This gives an undue advantage to the employers to deny the workers their legitimate rights such as minimum wage and other benefits that the labour laws of the country require. In the instant case, the truck drivers employed by four coal transport agencies were demanding enhanced minimum wage rates, as fixed by the Coal India, a public sector undertaking. Mahanadi Coalfields Ltd. (MCL) is a unit of the Coal India operating in Odisha which has given the coal transport contracts to those transport agencies. The drivers were also

demanding for an eight hours work-day instead of a twelve hours one, as, reportedly, was the practice.

About the transport agencies – the employers of the striking drivers

The campsite where the firing took place is located near village Jurabaga. The local media – both vernacular and the English newspapers – had reported that the striking drivers were working for one Renuka Coal Carriers Private Ltd. (RCP). However, after reaching the campsite and talking to the employees present there the fact-finding team came to know that no agency by the name of RCP exists anymore. Interestingly, the only signboard at the campsite is that of a three letter word i.e. 'RCP' inscribed on a cement pillar at the gate. The team was told that the campsite belonged to four agencies i.e., Mohan coal transport agencies, Cyrus coal transport agencies, Khusi transport agencies and Satish coal transport agencies. About 30 employees were present at the camp but none of them was a driver. The drivers had been asked to leave the campsite and go back to their respective villages and return to work only after a week. The team wanted to know the names and addresses of the owners/managers of the transport agencies but not a single name was disclosed to the team. The team wanted to know who was in charge of the camp but nobody seemed to be identified as 'in charge'. Finally, one R.S. Wahal, who said he was a field supervisor, agreed to talk to the team but he also said that he was not present on the day of the firing incident so he wouldn't say anything about the firing. Regarding some general information that the team wanted to know, he said that all the information is there in the office but he won't be able to give as the officials were not present. Regarding the two people killed in the firing he at first denied that they were employees of the transport agencies. "They might be outsiders", he said. When asked, why would outsiders join the striking

drivers, he said, "There were many onlookers." But later, he contradicted and said that the agencies have arranged for the bodies of these two persons to be sent to their villages. While he was denying that the two were their employees, some of the employees standing by said that one of the two was employed by the 'Khusi' agency, the other they were not sure. When asked how many drivers were employed by each of these agencies, he was evasive and said that "the numbers would be less than 400 as each agencies employs fewer than 100 drivers". When asked which areas the drivers came from he said that about 75% of them are from Odisha and the rest would be from Jharkhand. This was later contradicted by the drivers whom the team met outside the campsite.

Issues raised by the Drivers

Since most of the drivers had left the campsite after the incident, the team could locate only a few drivers who were residing in a nearby village. The drivers were afraid of being seen talking to anyone as they feared that if the agencies came to know of this they would lose their jobs. Nevertheless, they did talk to the team about their general conditions and the incident of firing. The following is the summary of what they had to say:

The four coal transport agencies employ about 1500 drivers. About 75% of these drivers come from Jharkhand, about 15% from Bihar and Bengal and only about 10% are from Odisha. They work in 12 hours shifts – one shift is from 6 a.m. to 6 p.m. and the other shift is from 6 p.m. to 6 a.m., with breaks for breakfast, tea, lunch and dinner. In February/ March 2013 the drivers came to know that the MCL (the principal employer) had enhanced the minimum wage rates from January '13. Since then they have been asking for the enhanced wage rates but the transport agencies continued to pay at the old rates. Every time the drivers would ask for the new enhanced rates, the agencies would assure them that it would be given

the next time. And it continued like this. So it was in June that the drivers resorted to striking work and organised gate demonstrations.

On the day of the incident, the drivers had taken out a rally covering two other campsites of the same agencies, namely, ITPL and Samleswari. Then they sat on a dharna in front of the gate. Their demand was to get the enhanced wage rate as notified by the MCL. The dharna was peaceful and an understanding was reached between the agencies and the drivers by evening. After the negotiation was over, two of the striking drivers, who had got drunk, were shouting using filthy language against the transport agencies. At this, the police present there, took the two drivers away to somewhere inside the camp. There are reports that they were being beaten up. Seeing this, the protesting drivers demanded that the two drivers be released immediately. The police and the transport agencies' people didn't listen to them. When the police took away the two drunken drivers, one of the supervisory level employees of the transport agencies, named Shri S.K. Mandal was present. The drivers allege that in the past some of the drivers had some problems with him and both sides had grudges against each other. And seeing Shri Mandal with the police who took away the two drivers, infuriated the protesters and they insisted that the two drivers be released forthwith. When the police and the authorities didn't respond, this further provoked the protesting drivers, and some of them threatened that if they don't return the two drivers they would drive the trucks inside the camp. The police reportedly took the two drivers to an adjacent room and locked themselves in along with the drivers. And without any announcement or warning or blank firing, started firing at the protesting drivers through the window of the room. Two drivers died on the spot and ten suffered serious bullet injuries.

On the day after the firing incident, the agencies and the district administration asked the drivers to leave the campsite and go back to their respective villages and return to

work after a week. But the drivers protested again as they were not given their salary and they didn't have money with them to travel. They also demanded compensation for the two drivers killed by the police. At this, the administration asked the agencies to give Rs.3000/- each to the drivers and section 144 was imposed in the area. After this the drivers left the campsite and went back home. The drivers who spoke to the team feared that many of the drivers might not come back to work as there are cases filed against them and if they come back the agencies would get them arrested.

The fact finding team also learnt from the drivers that apart from the enhanced wage rates, the drivers are not covered under Employees Provident Fund, which is also a part of the agreement between the MCL and the coal transport agencies.

Role of the police

At the campsite the team observed that one platoon of police force was posted. But the policemen present there told that none of them was present when the firing incident took place. They said that all of them had been posted there after the incident. The team visited the police station at Belpahad. The IIC was not available there but the team learnt that two cases have been registered against the striking drivers and 10 of them have been arrested. One case is registered against 500 drivers under section 147/148/294/223/427 and 149 of the IPC. The other case is registered under section 147/148/294/323/353/332/424/427/442/307 and 149 against the 10 drivers who have been arrested. The team met with the SP of Jharsuguda but he too refused to comment on the incident saying that he was on leave on the day of the incident and the SP Sambalpur was in charge. He said that the SP Sambalpur and the District Collector of Jharsuguda had made an inquiry and submitted their report to the government but he himself had not seen the report yet. Although the SP Jharsuguda refused to speak on the incident, he admitted that the demonstration by the truck drivers was peaceful which is why there were only 7/8 policemen and they were not anticipating any mob

behaviour. But what led to 'mob behaviour' that prompted the police to fire at people, he refused to comment.

Role of the Mahanadi Coalfields Ltd.

The MCL is a public sector undertaking operating in Jharsuguda district. It out-sources a number of its operations in the mining areas through private contractors. Through public tenders the MCL gives contracts to a number of private agencies. The fact finding team met the CGM of MCL Shri B.N.Jha at its Belpahad office. According to Shri Jha the MCL while issuing tenders for various contracts ensures that the provisions of existing labour laws are incorporated and any violation of these laws are treated seriously. Thus, the contractors are legally bound to provide minimum wages and other entitlements as prescribed in the laws. When the team asked specifically about his comments on the issues of striking drivers and the non-payment of enhanced minimum wages and other benefits to the workers, he seemed completely indifferent, saying, "We have made the provisions and it is the agencies who are responsible for implementing it." When asked whether the MCL has a mechanism to ensure that the provisions in the contract regarding labour laws are actually being implemented Shri Jha said, "Yes, we have the mechanism. Our people supervise it at the worksites." Then the team asked, "Why is that the drivers employed by the concerned four transport companies are not getting the enhanced minimum wage and other benefits like the provident fund?" His reply was, "We have notified the enhanced minimum wage fixed by the coal India. It is for the agencies to claim this enhanced rates from the MCL." It was clear to the team that Shri Jha was not taking any responsibility for what was going on between the coal transport agencies and the drivers employed by them. In fact, the team observed that his main concern was to ensure that coal transport to the concerned power plants (which was disrupted because of the drivers' strike, the police firing and subsequent decision of the agencies/administration to

send the drivers back home for a week) was resumed as soon as possible. He showed no concern for the two drivers who had died in police firing. When the team asked if the MCL was going to pay any compensation for these drivers he said that the transport agencies would take care of it.

Role of the Labour Department

The fact finding team could not meet the District labour officer to ascertain the department's response to the specific case of the drivers' issue employed by the four coal transport agencies under discussion as well as to the general concerns of the labourers in the mining areas of Jharsuguda. However, from the interactions the team had with some of the drivers, it appears that the labour department has not played any role in addressing the issues of the drivers. The team is of the opinion that had the department played any role in ensuring minimum wages and other entitlements to the drivers the situation wouldn't have come to such a stage where two people would lose their lives. It is clear that in the absence of any intervention from the labour department the private agencies are taking advantage of the situation and exploiting the workers by denying them their due wages and other entitlements.

Concerns

The police firing of 8th June upon the

striking drivers is an indication of the general status of workers, largely un-organised, employed by private contractors who have been openly violating the existing labour laws. In the instant case, although the MCL had notified about the increased wage rate of coal India from January 2013, the coal transport agencies did not pay this enhanced wage to its workers till June. And no action was taken by any authorities – either by the MCL or the district labour office. Even after the incident of firing, neither the MCL authorities nor the labour department has shown any serious concern to address the wage and other issues raised by the drivers. And the irony is that it is the striking drivers, who have been denied of their dues, who got killed and injured, now have to face the police cases lodged against them. The implications of these cases against the 500 'unnamed' drivers means if any driver raises his voice at any time against any injustice by his employer, he can be arrested and sent to jail. And finally, 'the power of the gun' seems to be the response to any genuine issue raised by the workers. Or else, what was the need for a police firing when the day-long demonstration was peaceful and when an agreement was already reached between the drivers and the coal transport agencies?

Demands

1. An independent inquiry be conducted into the incident of police firing and the guilty be prosecuted.
2. The two drivers killed in the firing be adequately compensated and one person from each of the aggrieved families be given a job.
3. The drivers, who have left the area, must be brought back and employed in the respective agencies. Their dues must be paid and police cases against them be withdrawn.
4. The MCL needs to be made accountable for violation of labour laws by private contractors who get contracts from it.
5. The state government needs to take a serious look at the conditions of un-organised workers working under private agencies in the mining and industrial areas of Jharsuguda as well as in other districts in the state. The labour department must play its role in ensuring that workers' interests are protected and they are not subjected to exploitation by contractors.

(Fact finding team members: **Pramodini Pradhan, Muktakantha Pradhan, Saroj Mohanty, Shambu Mishra, Ananta Panda and Basudev Bhoi – all PUCL Members**) □

JHRM Letter to the President of India on Bagaha Police Firing

To,
Shri Pranab Mukherjee, President of India, Rashtrapati Bhavan, New Delhi - 110004, India
June 29, 2013

Subject: requesting for an investigation and necessary legal action on a case of brutal killing of 8 innocent Adivasis (Scheduled Tribe) including 3 minor in the police firing, took place at Katharwa village come under the Naurangia police station of Bagaha police district (Paschim Champaran) in the state of Bihar on 24 June, 2013.

Respected Sir,

We would like to bring your kind attention on the above said subject

that, 8 innocent 'Tharu Adivasis' (Scheduled Tribe) including 3 minor were brutally killed in the police firing took place at village Katharwa come under the Naurangia police station of Bagaha police district (Paschim Champaran) in the state of Bihar on 24 June, 2013.

The incident took place in the afternoon on 24 June, 2013, when a group of people angry over the delay in recovery of a kidnapped Tharu Adivasi (tribe) Mr. Chandeshwar Kaji, a native of village Tharthari comes under Naurangia police station of Bagaha police district, who was kidnapped on June 22, 2013. On 24 June 2013 there was a rumour that a dead body was found at a place in Bagaha, which villagers suspected

was that of Chandeshwar Kaji.

However, the dead body was identified as another person but the villagers resisted for recovery of Mr. Chandeshwar Kaji and protested against the police who had gone to recover the dead body and investigating on the case. The anger of the villagers was fuelled when the police alleged the Adivasis for killing of a person, whose dead body was recovered instead of taking action to recover the kidnapped person.

Consequently, there was clash between the Police forces and the Adivasis. The Adivasis blocked the police and when the police charged lathis against them, they also pelted stone on the police. Finally, the police opened fire on the crowd,

which led to death of 6 persons at the spot and 2 in the Hospital. There were several villagers who got severe

and minor injuries in the incident. This incident could have been avoided but the police was totally non-sensitive

to the issues of the Adivasis, which led to loss of 8 precious lives.

List of Victims who died in the police firing

S. No.	Name of Victims	Age	Village
1.	Mr. Anup Kumar Chautaria	16	Semridih
2.	Mr. Shivmohan Kumar	10	Kataharawa
3.	Mr. Bhupendra Kumar	22	Kataharawa
4.	Mr. Tulsi Rai	18	Semrajusukpur
5.	Mr. Anil Kumar	12	Amua
6.	Mr. Dharamjeet Khatai	25	Devataha
7.	Mr. Brahamdev Khatai	32	Devataha
8.	Mr. Bhukdev Kumar	23	Dardari

The injured persons were also identified as Mr. Ganesh Kumar, Mr. Madan Kumar, Mr. Kamalesh Rai, Mr. Chandrashekhar Kumar, Mr. Harinarayan Kumar, Mr. Rajesh

Kumar, Mr. Mohan Kumar, Mr. Rajan Kumar, Mr. Gaya Kumar, Mr. Jawahar Kazi, Mr. Bhagirathi Kumar, Mr. Keshav Raj Khatai, Mr. Dinesh Rai, Mr. Mukesh kumar, Mr. Kedar

Kumar and Mrs. Lilawat Devi. Of them, 12 villagers are seriously injured and have been admitted to Bettiah MJK hospital.

List of Perpetrators

Sl. No.	Name of Perpetrators	Post	Role in the Incident	Address
1.	Mr. Anil Kumar	SP	Didn't prevent the police firing	Bagaha Police Headquarter
2.	Mr. Shailesh Kumar	DSP	Led the firing	Bagaha Police Headquarter
3.	Mr. Shailendar Kumar Sinha	SDPO	Involved in firing	Bagaha Police Headquarter
4.	Mr. Vinay Kumar Singh	SHO	Involved in firing	Naurangia PS
5.	Mr. Rajan Pandey	SHO	Involved in firing	Laukaria PS
6.	Mr. D. Qazi	SHO	Involved in police firing	Balmikinagar PS
7.	Mr. D N Jhar	Inspector	Involved in police firing	Naurangia police station
8.	Inspectors and other police personals	Inspectors and Constables	Involved in firing	Naurangia, Laukaria and Balmilinagar

Hence, it is a clear case of gross violation of the right to life of 8 innocent Adivasis (Scheduled Tribe) guaranteed under the Article 21 of the Indian Constitution. It is also the gross violation of juvenile Justice Act, 2006, Rights to Education Act 2009 of children and violation of Constitutional safeguard to the Scheduled Tribes.

Since, you are the custodian of the Adivasis/Tribal people constitutionally, therefore, we humbly pray you for the following actions:

1. An investigation should be done by the CBI on the case of brutal killing of 8 innocent Adivasis (Scheduled Tribe) including 3 minor children in the police firing.
2. A murder case should be registered against all the police

officers and constable who were involved in the police firing, which led to killing of 8 innocent Adivasis (Scheduled Tribes).

3. A case should be also registered under the different sections of SC/ST Prevention of Atrocity Act, 1989 against all the non-SC/ST police officers and constable who were involved in the police firing.

4. All the police officers and constables, who were involved in the police firing should be dismissed from their posts and arrested for killing of 8 innocent Adivasis (Scheduled Tribes).

5. The family members of the deceased persons should be given Rs. 25 lakh and a government job per person as compensation.

6. The severe injured persons should be also given compensation as Rs 5 lakh and a government job each along with free treatment and the minor injured should also be given Rs. 1 lakh as compensation.

Therefore, we strongly pray for your intervention on the matter immediately to protect the rights of the victims of police firing. We hope you'll understand the pains, sufferings and agony of the Adivasis/Tribals of Bihar.

We shall be highly obliged to you for the same.

Thanking you.

Yours sincerely,

Gladson Dungdung, General Secretary; **Sunil Minj**, Chairperson, JHRM, Ranchi □

Double Speak of state:

The Curious Case of the Tamil Nadu Police Preventing Ex-Maoists' Return to Electoral Path!

A. Marx

We, the undersigned, wish to bring to the public's notice a curious case of doublespeak by the state. The central and state governments constantly advise Maoists to give up arms and join the mainstream. But, in Tamil Nadu, the government in collusion with the police is torturing a group of ex-Maoists who have joined the mainstream. These comrades have given up armed struggle and have come out to function in the open under a party named People's Democratic Republic Party (PDRP). They have also accepted the electoral path to pursue their mass line. It is clear from their case that the intention of the state is not to mainstream the armed fighters but to incapacitate anyone who dares to criticize the state's policies, without any compromise.

Background:

Earlier, many PDRP members were part of CPI (Maoist). Some of them were arrested and imprisoned under POTA in 2002, on charges of undergoing arms training in Uthangarai, Tamil Nadu. They eventually came out of the prison with women getting bail in 2005 and men in 2007. Many of the comrades who came out criticized the armed struggle line of CPI (Maoist) and stressed for a mass line. The CPI (Maoist) reacted to this by dismissing them from the party towards the end of 2007.

Some of the dismissed cadre started working under the name Puthiya Porali. Later, they started PDRP. Com. Duraisingavel (aged 52) started working as its president and his partner Ragini (aged 44) worked as the leader of the women's wing. They started a political magazine named Puthiya Porali, which was circulated

widely. So far, 3 issues have been released. It's available even online. They have stressed on returning to the mass line in their pamphlets too. They have also taken part in public meetings.

Here are some examples of their participation in open forums/meetings. Com. Duraisingavel took part in the book release function of Prof. A. Marx's Tamil book named Arabu Puratchi. He spoke on the occasion along with other speakers, including professors from the Madras University. He also spoke on the review meeting of Mao's compilations, organized by the Communist Party of India (Marxist), in Chennai on May 5, 2013. He stressed the need for a mass line even in his TV interview to Puthiya Thalaimurai, a Tamil news channel, which aired a programme related to the Chhattisgarh killings by Maoists few weeks ago.

However, the events that happened at Kundrathur, a suburb of Chennai, in October 2012, show how the Tamil Nadu police and the clandestine organization Q branch, can't deal with or welcome these changes among the PDRP comrades. On that fateful day, the PDRP members, along with their supporters and some educationists, were discussing their participation in elections in a meeting organized in a school. The police surrounded them suddenly, arrested and imprisoned them. Till this day, the police have maintained a stoic silence about why they arrested people who were discussing about returning to electoral politics! Com. Duraisingavel and Ragini were among those arrested.

Another important fact:

Com. Duraisingavel and Com. Ragini started their life together after he got

his bail in 2007. However, the peace was not to last too long because the Tamil Nadu police continued to harass them. The police claimed to search for a woman named Bharathi, who wasn't arrested at Uthangarai in 2002; she was however charge-sheeted. Police didn't even know whether Bharathi was male or female. They continued to torture the couple by claiming that Ragini was Bharathi. Due to continuous harassment (the Q branch visited their house every day), Ragini sought the High Court's help.

Com. Ragini's appeal (CrL. OP No.9141 of 2012 dated 16.04.2012) was heard by Justice Nagamuthu. The public prosecutor and the police responded that Ragini wasn't required for arrest or for enquiry as of now. Then, the court ordered that if the police wanted to enquire Com. Ragini, they should follow proper criminal law procedure. It also cautioned them against harassing her under the hood of enquiry.

What happened now?

We were shocked to read reports of the couple's arrest on 14.06.2013 from the Kadambathur railway station in the Dharmapuri district, where they were 'caught' distributing pamphlets. On enquiry, the actual sequence of events is as follows:

1. The couple were arrested in their house at Kundrathur, Chennai on 13.06.2013 at 11 PM, when they were having dinner. Com. Ragini tried to call a comrade as soon as some men barged into their house and dragged them out violently. The comrade who received the call realized that they were trouble because she couldn't speak properly, and the call was cut abruptly. He informed other comrades, who also tried calling both

their mobile numbers. But nobody could reach them. When they enquired the neighbours the next day morning, it was confirmed that the couple was dragged out of the house violently. When the comrades entered the house, they saw half-eaten food, which confirmed that there had been quite a scuffle.

2. The next day afternoon, High Court advocate, Sengodi contacted Mr. Sampath, the Commissioner of Q branch and asked him. He replied that they have taken the couple to Dharmapuri for enquiry. Therefore, the police version of arresting them in Dharmapuri is an outright lie.

3. The police have continuously harassed Com. Ragini and forced her to accept that she is Bharathi. This is brazenly against the prior mentioned court order. She is being harassed even in the prison on this issue. It has been exposed that the Tamil Nadu police is intent on arresting her under POTA in the Uthangarai case. Now, it has charged the couple under sections of CrPC 353, 124, 17(1) CLA.

One more important fact:

Another oft-repeated blatant lie of the police is that the couple has missed attending the court proceedings. Actually, there are two cases pending on Com. Duraisingavel. One is the 2002 POTA case and the other is the 2012 Kundrathur case. The latter is yet to come for hearing, and Com. Duraisingavel has appeared without fail for each hearing of the POTA case. He appeared even on June 3, 2013 for the same case in the Poonamallee court, Chennai. Com. Ragini has only the Kundrathur case pending, and that's yet to come for hearing. Hence, it's an utter lie that the couple doesn't appear for the court proceedings.

Our questions and demands:

1. J. Jayalalitha, the Chief minister of Tamil Nadu, always says that she has wiped out the Naxalbari movement from the state. Everyone knows that PDRP comrades turned

to mass line, including elections after being dismissed from CPI (Maoist), owing to their criticisms. So, how does one account for the harassment meted out to these comrades? Is it a message to those who belong to such organizations that they won't be allowed to enter the mainstream even if they give up armed struggle?

2. Naxal Special wing, which has no work but to harass, and the Q branch, an organ above law, which was formed as an intelligence wing and later endowed with policing authority, should be abolished.

3. The sedition act, called as 124-A, was originally enacted by the British to harass freedom fighters during the Raj. It's completely against citizen rights (Section 19) granted by our constitution. Our constitution grants rights to support or oppose the policies of the government. Moreover, it has granted unconditional rights to anyone to propagate his ideas, to build movements based on them and to collect funds for the organization. Hence, we strongly condemn applying 124-A, which is opposed to the above-mentioned rights, to harass various activists, from Binayak Sen to Com. Duraisingavel and Com. Ragini. The Tamil Nadu government should immediately stop harassing activists by this law. This anti-constitutional law should be scrapped.

4. The couple, who were functioning openly, was arrested in midnight in their home in Kundrathur, Chennai. They were violently dragged out of the house without even giving them an opportunity to inform their relatives or friends. The next day afternoon, a higher official of the Q branch tells their lawyer that they have been taken to Dharmapuri. Yet, a false case has been registered against them. Actually, they have been violently kidnapped. No procedures mentioned by the Supreme Court in T. K. Basu case has been followed in this arrest. Hence, we demand the government

to suspend the concerned police men, start an enquiry and punish them appropriately for committing such violations and spreading such lies.

5. The public prosecutor has admitted in the High Court that Com. Ragini is not Bharathi. The court has also ordered that Com. Ragini must be duly summoned if there's a need for an enquiry. But, what we see now is that she has been violently kidnapped and threatened to accept that she is Bharathi. The police is trying to implicate her in the 2002 POTA case through these desperate measures. This is a clear case for contempt of court. A contempt of court case should be filed against the concerned policemen and the police should abstain from harassing and trying to convict Com. Ragini under POTA.

6. Two people who were functioning openly have been arrested secretly. This kind of harassment meted out to those who have turned to electoral politics after giving up armed struggle goes completely against the government's assurances or policies. Com. Duraisingavel and Com. Ragini should not only be released immediately, they should also be duly compensated for the harassment they have faced.

(Translated from the press note released by the above on 20.06.2013, in Chennai)

P.S: According to latest information, Tamil Nadu police has filed a case on Com. Ragini under POTA today (24-June-2013).

Prof. A. Marx, People's Union for Human Rights; **Ko. Sugumaran**, People's Rights Forum; **Dr. P. Sivakumar** and **Prof. M. Thirumavalavan**, Ex-Principals of Government colleges; **V. Srinivasan**, Environmentalist; **Advocate Manoharan**, People's Lawyers Association; **Advocate Sengodi**; **Advocate K. Natarajan**; **Advocate Rajini** (Madurai). □

Ugly Face of Caste Politics in Tamil Nadu

Vidya Bhushan Rawat

The death of E. Ilavarasan in Tamilnadu might be a single column report in our newspapers but it has reflected the mindset prevailing in India and the deep rooted caste prejudices against the Dalits in our society. It has also proved that the Dravidian politics has not been able to overcome its own prejudices against Dalits and they largely represent the politics of the powerful politicized OBCs who at the social level have been at the loggerheads with Dalits. It is not strange therefore that none of the mainstream Dravidian parties have spoken unambiguously on the issue though the political parties particularly representing Dalits, such as Puthia Tamilgam and Viduthalai Chiruthaikal Katchi have sought action against PMK, yet so far no visible action is seen on the ground by the Tamilnadu government. The Madras High Court is now observing this matter as the family of Ilavarasan has asked for a second autopsy as they refuse to believe that it is a case of suicide.

It is deeply regrettable that the party which is responsible for this act and has outrageously spoken against Dalits by supporting the anti-Dalit violence among the Vanniyar community in Dharmapuri district of Tamilnadu is roaming freely and propagating its hate philosophy. In fact, PMK had warned against the love marriages as well as abrogation of the Prevention of Atrocities Act. The Vanniyar community members have been instigated by the PMK and its leaders who had been organizing various meeting against the marriage of Divya, their community girl with Ilavarasan, a Dalit boy from Dharmapuri. It saw violence by the Vanniyar community against Dalits after the marriage. Afterwards, Divya's father committed suicide under intense social pressure resulting in more pressure of breaking of marriage. The social pressure was so high that Divya was compelled to break the marriage unilaterally in the High-Court without informing Ilavarasan. She told the Madras High Court that she would not like to live with Ilavarasan

anymore. It is reported that heartbroken Ilavarasan committed suicide after that.

The PMK has been part of government both at the Centre and in the state and it is reprehensible that they could be so irresponsible in addressing this issue. Their stand replicates the values of Khap Panchayats in Haryana who have been violating the laws of the land but without any action from the government of Haryana merely because of political reasons. Contrary to this, action has been taken against Dalits who have been speaking against violence. This shows the connivance of the state with powerful communities. It is true that these issues are socio-cultural in nature and need social response. Unfortunately, politicians have proved to be too petty in such cases and we still feel a big vacuum after Periyar's death in Tamilnadu who could have spoken against such violence.

Today, some of the parties might condemn the incident but just as a passing reference while many pretend that it is a 'social issue'. One does not understand what is the meaning of 'social issue'? Is the Indian Constitution not applicable to 'social issues'? If that is true then we have accepted that it is the Manusmriti which rules India and not the Constitution of India and all those parties who speak against *brahmanical* order have in fact strengthened it to strengthen their own political position and anti-Brahmanism remains a mere rhetoric for them to control the levers of powers. Unfortunately this tendency and pattern is absolutely contrary to the thoughts and actions of Periyar who not only raised a banner of protest against the system but also provided alternatives through self-respect marriages but today it looks that these marriages are more political and less social. Therefore, a few of such marriages will not change the situation in Tamilnadu. The death of Divya's father actually reveals the reality of village life in Tamilnadu where religiosity and

caste supremacy remain intact. It means that Periyar's movement did reach and ignite some of the OBC communities but not all. Moreover, these communities revolved around him not to bring about a change in the social structure but purely for political empowerment. Dr Ambedkar always maintained that in the absence of social equality our political power would be nothing but a big humbug and would not help the lowest of the low in the social strata. In a society where caste prejudices are highly prevalent and where individual's choices are secondary to that of the community, the role of politicians and local *goondas* promoted by them cannot be absolved. The fact is that Divya's father committed suicide because of the very thought of facing possible humiliation of having married his daughter to a lower caste boy as the PMK had already been organizing people on those lines. He could not accept his daughter's choice, while the daughter pursued her own choice and was happily living with Ilavarasan, because an individual's choice never matters on 'social' issues and gives a big 'agenda' to political parties to actually 'celebrate' without really working for the people. And this is one of the reasons why parents face social pressure, mostly that of the local politicians, and relatives, who make politics of everything and use it for their own benefits. Definitely, her father committed suicide to force his daughter to break the marriage which she refused to do. This means that Divya did not agree to the family blackmail of not marrying Ilavarasan as he was her love. But after his suicide, the pressure came on the daughter. Once you live with your family where your marriage or action is considered as the reason of father's death then one can understand what decision would a girl or a boy take. They are emotionally blackmailed and if that too fails then they are 'managed', whether through calling off the marriage or getting 'rid' of the obstacles'. There is no other option for them except surrendering to the

'community' wishes. Therefore Divya's affidavit in the High Court cannot be taken on face value as it is six months' pressure on her which resulted in that statement. The pressure of isolation, losing everything and most importantly the pressure of losing her own life and a sense of guilt for being 'responsible' for her father's death. How could a girl alone face such pressure from a brutal and barbaric society? After having lost her father, it was possible she might have felt the intense pressure on her mother and she would not like to lose her mother. And this resulted in another death. Whether the death is suicidal or a murder, it needs to be thoroughly investigated but the cause of Ilavarsan's death for sure is the caste system and the political parties using this for their own purposes. You will have to delve deep into the reasons of death and you will find the dirty games of political parties and that is why it is important for the government to bring out a law against honour killing which has been putting humanity to shame.

It is time for the government of India to bring out a caste violence act on the ground similar to that of the communal violence bill so that parties who thrive on caste hatred cannot do so. It is shameful that a party like the PMK has been part of power in Delhi as well as in Tamilnadu and the way the party leaders have behaved shows clearly that they violated the Constitution of India and spread hatred. In fact, the PMK leaders must be booked for the death of Ilavarsan and the election commission must warn them of future action if they don't mend their ways. As the Madras High Court is hearing this petition, we hope that it will order free and fair investigation into the matter so that politicians who use caste hatred as a tool to mobilize their communities could be taken to task.

Ilavarsan's death and our conspicuous silence also reflect the hypocrisy of our society and its activists who raise all kinds of issues and come out with candlelight marches. Why has this issue not outraged us and pricked our conscience? A boy is killed for loving

a girl from Dalit community and the state of India is unable to protect them and those responsible for his death are 'well connected' leaders who have held senior positions in the government and are wandering free and threatening people. Is India a society which hates love and still lives in its own myopic social order which violates all the principles of equality and social justice? In spite of being signatory to various international covenants we allow such incidents to happen and don't even raise a slogan which shows how our world is much narrow and pathetically racist.

The painful thing is that all this is happening in the state of Periyar who was much ahead of his time, who promoted women's rights and talked against caste system. Unfortunately, Periyar's followers hailing from powerful backward communities became much worse than Brahmins and looked down upon all the Dalits. That is one reason why despite a Dravidian government in Tamilnadu, violence against Dalits is very high in the state. It makes a mockery of our Constitution that at many places Dalit Sarpanches cannot hoist the national flag on the Independence or the Republic day. The incidents in Tamilnadu have a bigger message for us all that mere negative agenda will not work and without ensuring participation of wider section of people in governance and the political structure we cannot ensure social justice. It means that mere anti Brahmanism will not make any one pro-Dalit or pro-social justice. The idea of social justice is to create a level playing field for all and not simply to destroy the hegemony of a community and create another one, a more brutal one, which has happened in Tamilnadu. The creation of monopolies is the very idea of brahmanical structure and needs to be dismantled at all levels and only then we will have an equitable society.

Rights and wrongs in India have become victims of caste identities. We keep quiet and speak only when it suits us. That is the most disgusting part of the new generations of Indians who have kept quiet on the issue which is of greatest

importance in India as it exposes our political parties as well as the social system. It is easier to speak against 'state' violence and oppression in India but very difficult to speak against social oppression and *varnashram* dharma. That is why we find activists, lawyers and journalists speaking against 'state' 'oppression' but they remain silent on these issues and this exposes their very nature. Issues of love and caste are 'private' and hence our 'activists' don't speak on them and the political parties just use them if that suits their interest. While we have complained against the PMK, what is shocking that none of the parties speak on these issues openly for the fear of losing Vanniyar votes?

Ilavarsan was killed by Indian caste order and the point is that such killings have not raised any outrage is another reminder that despite all the self-proclaimed progress India remains notoriously a caste society with deeply injected prejudices. The tragedy is that we have seen lots of candlelight marches for everyone but so far have not seen any one coming forward to raise a candlelight for the martyrdom of Ilavarasan. Yes, Ilavarasan is a martyr for the cause of love who was killed by our notorious caste minds and the Indian state could not protect him. Let us light a candle for his courage and love despite known hatred of Vanniyaars against him and his community. The fact is that the Vanniyaars have been duped by the parties in 'false' 'community pride' which makes them feel above the Dalits. But why should the Dalits feel that they are below them? The very thought of such graded inequality, as Baba Saheb had put, makes the battle of Dalit Bahujan much more difficult. Unfortunately, we are not ready to address these issues where we will be required to work with the people. A constructive work is difficult as it needs energy, commitment and also lots of moderation skills to bring communities together and making them part of the mainstream social and political process. All human beings are equal, declared the UN Declaration of Human Rights in 1948 and our Constitution provided equal opportunities to all but how

shamelessly we are following the same path of considering people less equal. It is more disturbing that after so many years of 'political empowerment' if the Dravidian politics remains the victim of caste

identities and maintains a status quo then you cannot blame 'others' for the deeds of these parties. Caste identities will only divide Dalit Bahujan and the only way out is a complete cultural change which

Baba Saheb Ambedkar felt was important for India, otherwise 'strengthening' caste identities will only help those who have maintained a status quo and developed these contradictions in our lives. □

Letter to the NHRC for Justice to a 14 year old Rape Victim

Mr. Satyabrata Pal, Hon'ble Member,
The National Human Rights
Commission,

Faridkot House, Copernicus Marge,
New Delhi-110 001

Date: 06/07/2013

Subject: Requesting for an investigation and necessary legal action in a case of victimization and repeated rape of a 14 year-old student Ms. Shanti Kumari (Munda) by the SPO, Police Officers and CRPF officer.

Dear Sir,

I would like to bring your kind attention on the above said subject that, 14 year-old student Ms. Shanti Kumari (Munda) D/o Mr. Dhirju Munda resident of village Katai Dari Tola comes under Arki police station of Ranchi district in Jharkhand was victimized and repeatedly raped by SPO Mr. Devendra Munda, Officer-in-charge of Dalbhanga (Saraikeela district), OCs of Rania, Tamar, Arki police stations and Officer of Hut CRPF camp (Khunti district).

The victim Ms. Shanti Kumari (Munda) has been studying in class 8th in Project Girls High School, Arki of Khunti district. Since the school is situated at a distance of 20 km from her village she used to stay near Arki block office in the house of Lalsab in rent. Lalsab used to sell liquor, where Mr. Devendra Munda (SPO-Special Police Officer) used to visit to consume liquor. When Mr. Devendra Munda came to know that Ms. Shanti comes from a very remote village, the area is highly Naxal affected therefore he trapped her. He promised her to pay Rs. 4000 per month if she works for the Police. Finally, she agreed to work with him and joined him in the month of December 2011.

Ms. Shanti started giving information to Mr. Devendra Munda regarding the Naxals' presence in the region. In the end of December 2011, Mr. Devendra Munda took her to his rented house

and raped her. He also threatened her that if she opens her mouth he'll shoot her with his pistol. After this incident, Shanti refused to work for the police but again Mr. Devendra Munda threatened to kill her. In the month of January, 2012 Mr. Devendra Munda took her to Dalbhanga police station, where the officer-in-charge raped her in the night and let her go with Mr. Devendra Munda.

In the month of February, 2012 Mr. Devendra Munda took her to Rania police station with the promise that she won't be raped again but she'll be paid her salary in the police station. However, in the night the officer-in-charge of Rania police station also raped her. In the month of March, 2012 Mr. Devendra Munda asked her to go to Tamar police station with him and when she refused, he threatened her to shoot after coining her as Naxal.

Finally, when they reached the Tamar police station in the night, she was taken to a dark room and raped by the officer-in-charge. In the month of April, 2012, again she was taken to Hut CRPF camp, where the CRPF officer raped her. Finally, in the month of May, 2012 she was taken to Arki police station, where the officer-in-charge raped her. Meanwhile, Mr. Devendra Munda paid her Rs. 4000 for working as SPO. She was fed up with the rape after rape therefore, decided to leave the work and started studying in the school.

However, on the basis of her information the police had killed Mr. Sukram Munda (Maoist) and arrested some Maoists therefore the Maoists were angry with her and searching to kill her. During the summer vacation, she was at home. The Maoists went to her village on 17th June, 2013 and kidnapped her with a villager Mr. Samband Pahan. They wanted to kill her but she could convince them therefore, they released her on 5 July, 2013.

Ms. Shanti Kumari (Munda) doesn't remember the dates of rape but she

tells about the duration (Night), month and year. Now there is severe threat to the life of Shanti Kumari (Munda) as the SPO Devendra Munda, family members of Sukram Munda (killed by police), Maoists, the Officers-in-charge of five police stations and of the CRPF camp have become her enemy.

Hence, it is a clear case of victimization of a 14 year-old student and gross violation of the right to life, liberty and dignity of Ms. Shanti Kumari (Munda) guaranteed under Article 21 of the Indian Constitution. It is also the gross violation of the Juvenile Justice Act, 2006 and the Right to Education Act 2009. Therefore, I request the NHRC for the following actions:

1. A high level investigation should be done in the case of victimization and rape of the 14 year-old student Ms. Shanti Kumari (Munda) by the SPO, officers-in-charge of four police stations and officer of the CRPF Camp.

2. A legal action should be taken against the SPO Mr. Devendra Munda, police officers and officer of the CRPF (Hut camp) under the section 376 of IPC, SC/ST Prevention of Atrocities Act 1989 and other appropriate Acts, who have victimized and raped the 14 year-old student Ms. Shanti.

3. The victim Shanti Kumari (Munda) should be shifted to a residential school in Ranchi with full protection, she should be given compensation of Rs. 10 lakhs and free education and medical support.

Therefore, I strongly demand the NHRC to intervene on the matter immediately to protect the rights of the 14 year-old student Shanti Kr. (Munda).

I shall be highly obliged to you for the same.

Thanking you.

Yours sincerely,

Gladson Dungdung, General
Secretary, JHRM, Ranchi. □

Custodial Murder of A Muslim Youth in U.P.: Will the Family Ever Get Justice? Visit to Akhtar Mujahid's Home

Subhashini Ali

In the evening of 24th June, I visited the home of Akhtar Mujahid along with members of the CPI (M) in Jaunpur District. Akhtar's home is in Madiyaun, a kasba of Jaunpur, UP. We arrived in the evening, following a darkening sky. Just as we entered his mohalla, the rain came pouring down and we had to run into the narrow lane that led to his house. Many of his neighbours had collected to welcome us and all of us sat in the small room in front of the home that he and his widowed mother shared with his Taya (father's elder brother), Tayi, their son, Shahid, his wife and their two children.

Khalid's uncle is an extremely dignified man who seems to have aged because of the burden of grief and despair that he has carried since December 2007 when his nephew was suddenly picked up by an unknown group of people in an unmarked jeep. This occurred just fourteen days after Khalid's marriage. As we sat in the small room, Khalid's uncle told us about the day when life as they had known it came to a standstill for him and his extended family. He manages a madarsa and library in the neighbourhood and Akhtar taught there. It is on record that he attended to his duties on 16th December 2007 and was then picked up and whisked away by unknown persons to an unknown place. His cousin, Shahid, accompanied by a large number of people, went to the police station immediately but his FIR was not accepted. This was reported in several newspapers the next day and Akhtar's uncle and others sent faxes to the Chief Minister and others. On the 18th, the police visited Akhtar's house and took away some books and papers including a copy of the Koran.

Finally, on the 22nd evening, the police station in charge informed his uncle that he had been arrested that morning from Bara Banki.

Akhtar's uncle said that a living nightmare for the family had begun. When he visited his nephew in the Bara Banki jail, there was little said between them but Akhtar managed to give him a small, folded piece of paper. When he returned home, he read the letter which spoke of indescribable torture and abuse. The fond uncle could not sleep that night or many nights that followed.

Within a fortnight of Akhtar's arrest, his wife's family came to take her away. His uncle said that the whole family wept as they saw the same vehicle being loaded with all the belongings that the young bride had brought them in to their house just a month earlier. She left never to return.

The long battle for justice had begun. Another young man, Tariq Qasmi from Azamgarh, had also been picked up on the 16th of December and then shown to have been arrested with Akhtar in Bara Banki. After his abduction, members of a local political group had sat on a dharna in Lucknow and, on the 22nd, the Bara Banki story was made public by the police. Since there were so many who had witnessed what had actually happened on the 16th, there was an uproar and, finally, the Mayawati Government appointed the Nimesh Commission to enquire into the matter. R.D. Nimesh, a retired judge, submitted his report to the Akhilesh Yadav Government in August 2012 but it has not been made public since.

Akhtar's uncle's travails, therefore, yielded nothing but took a toll on his health. He suffered a major heart attack

a year ago and was not able to meet his nephew in jail for many months. He remembers the last time that he met him about 4 months ago. Akhtar had given up hope on that occasion.

On the 18th of June 2013, Akhtar was taken to the Faizabad district court from Lucknow. On the way back, he felt unwell and the police escort with him took him to the district hospital at Bara Banki. Tariq Qasmi was in the police van. Within half an hour he was given the news that Akhtar was dead.

Akhtar's uncle told us that he reached Bara Banki in a matter of a couple of hours and was able to shoot a video of his nephew's body before the post mortem. He showed us the CD on a laptop. Akhtar's face was swollen and there was dry blood near his nose and ear. His fingernails were blackish. His back showed marks of severe beating and there was a large bruise on one side. After seeing the video, it did not seem credible that he had died a natural death. His post mortem report says - Cause of death, uncertain.

We could not but agree with Akhtar's uncle that an inhumane State was responsible for the young man's death in custody. Had it responded to the Nimesh Commission's recommendations, Akhtar would have been released or at least granted bail and would have been alive today.

Akhtar's uncle then took me to meet Akhtar's wife and mother. How can one describe his mother's inconsolable grief and unending sorrow. But her quiet dignity in the midst of such tragedy was heart-rending. She told me that she had gone to visit her son once in the jail with her sister-in-law and he had told her that while the world was very cruel, he hoped that in the Next world he would find happiness and justice. □

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INDIA: Invest in Food Security for Your Own Good

*Simon Ladegaard Jakobsen

The National Food Security Bill (NFSB) has been the center of much debate since it was introduced in Parliament by the UPA government in December 2011. One of the most

persistent arguments against a food security bill from the corporate lobby, lead by the FICCI and CII,* is that its costs will burden the budget and slow economic growth. They argue

that to sustain a high growth rate it is necessary to use available resources on keeping taxes down and supporting industry which are perceived to be better drivers of

economic growth. Such an argument, however, is misplaced. It assumes that securing food for everyone is a matter of generosity, and that nothing is gained from providing food security. Both propositions are wrong. First, The Supreme Court, on the basis of the Constitution, has ruled that the right to life with human dignity, including the right to food and other basic necessities, is a fundamental right which the government carries the main duty to respect, protect and fulfil. Second, securing the right to food is integral to economic development. Providing adequate food for everybody should be seen as an investment in human capital. According to the Copenhagen Consensus, an expert panel consisting of leading economists identifying the most worthwhile solutions to the most pressing problems of the world, securing micronutrients is the investment carrying the highest returns. There are several reasons why malnutrition is bad for economic growth. It can be useful to divide the losses into three categories. 1) Direct losses in productivity from poor physical status. 2) Indirect losses from poor cognitive development and schooling. 3) Loss in resources from increased health care costs of ill health. This leads to a vicious cycle since 1+2+3 leads to poverty for the individual which in turn increases the likelihood of malnutrition. Children are especially vulnerable, so children in households faced by food shortage are likely to enter adulthood without the physical or mental ability to earn enough to secure adequate food for their children, which means that malnutrition is likely to be persistent through generations.

How much can be won by eradicating malnutrition in India? Much it seems, because the problem is huge. India is placed 106th of 120 countries in the World Hunger Index from 2012 below Rwanda, Sudan and Niger. The proportion of undernourished in the population rose from 17% to 19% between 1996 and 2012, while the proportion of undernourished children under 6 year has risen from 41.1% to 43.5% during these 16 years. According to the

National Family Health Survey of 2005/06 the proportion of stunted children is 44.9%. 69.5% of children and 55.3% of women suffers from Anaemia primarily caused by malnutrition. Calculating the exact cost of malnutrition is notoriously difficult, but conservative estimates says that India lose about 4 % of its GDP in efficiency loss alone. In addition to this comes increased health care cost to take care of a staggering number of physically and mentally impaired people. That is, if any medical care is provided in the first place.

Compare this to the estimated cost of the proposed food security bill. The estimated cost of implementation of the bill is around Rs 100,000 crore per annum. This is just Rs 35,000 crore, or less than 0.4 % of GDP, more than the existing food subsidy cost for the Targeted Public Distribution System and other welfare schemes. Tax revenue subsidy for the financial year 2011-12 was Rs 622,000 crore or more than 17 times the additional food subsidy cost. There is little evidence that tax subsidies is an effective driver of growth, in the same explosive manner as investment in human capital can be. If it was, then we should see vast improvement in the economy of India as tax subsidies have skyrocketed in recent years. It seems as spending could and should be allocated differently.

The investment deal looks like this: The government secure that no one is deprived of the opportunity to feed themselves. In return it can reap the benefits from a more productive workforce that requires less health spending. Like with any investment, it is important to ensure that the returns of the investment are as high as possible. This is best done by adopting a broader focus on securing nutrition instead of the grain-centered approach currently proposed in the NFSB. The food items provided should be more diverse. As a minimum, pulses, to provide protein in a protein deficient population, and edible oil, to provide fat, should also be provided to ensure better overall nutrition.

Children under the age of two are those who carry the greatest risk of

permanent physical and mental underdevelopment through malnutrition. It is therefore regrettable that the NFSB does not make the Integrated Child Development Services (ICDS) a legal guarantee. It is not included on the grounds of programmatic and operational shortcomings. The services of the ICDS should instead be universalized. Through the anganwadis the ICDS should deliver supplementary nutrition, health check, referral services, immunization and education in nutrition and health in order to ensure the nutritional status of children and lactating and pregnant women. The NFSB should also provide support for breastfeeding.

Food is important but access to clean drinking water and sanitation is also an integral part of reducing malnutrition, as the food has to be absorbed to provide nutrition. Every year 200,000 children die from Diarrhea in India, and 88% of these deaths are a result of inadequate sanitation and unsafe drinking water. Many of the children who survive will be permanently malnourished. Therefore, The Rajiv Gandhi National Drinking Water Mission and The Total Sanitation Campaign should be linked to the food security legislation and provide incentives for improved coverage. A major problem of the Public Distribution System (PDS) has been that less than 60 percent of the food reaches its intended beneficiaries. The restructuring of the PDS included in the proposed bill will go some way in reducing the leakage by removing the above poverty line quota, broaden the base of beneficiaries and creating clear entitlements. The bill, however, still faces the problem of relying on an arbitrary cut-off point of 75% of the rural population and 50% of the urban population, where it is up to the states to identify the eligible households. This leads to inclusion and exclusion error causing ineffectiveness, corruption and human tragedy. Effectiveness could be improved by instead relying on a system of self-exclusion based on easily identifiable criteria.

There are a lot of reasons why the government should prevent

malnutrition and hunger: It is a necessity for the dignity of human beings, it empowers the powerless, it reduces child mortality, it promotes gender equality and it aids the

achievement of universal education. But it is also recommendable through purely economic reasoning alone. The question should thus read: Can India afford /not /to have a

comprehensive food security bill?

**Simon Jakobsen is a student at Aarhus University and currently interning at the AHRC. □*

Statement on the Uttarakhand Catastrophe: India Climate Justice: 25 June 2013

We cannot ignore the Climate Crisis Anymore!

The India Climate Justice collective notes with deep anguish the devastating loss of life, livelihoods, and homes in Uttarakhand and beyond. The death toll is likely in the thousands, way beyond current official figures. We extend our deep condolences to the families and friends of those killed, and our support to those still fighting for survival, and to local populations whose livelihoods will take years to rebuild.

This tragedy was triggered by extreme unseasonal rains in North India, 2-3 weeks in advance of what is normal for this region. The Director of the Indian Meteorological Department (IMD), Dehradun, said that 340 mm fell in a single day at Doon, a record not seen for five decades. Such extreme and unseasonal rainfall seems to us to indicate a global warming induced climate change phenomenon. Warmer air due to global warming has the capacity to hold more moisture, leading to more intense bursts of rainfall in a particular region. The natural monsoon cycle in India has already been badly disrupted, and a new cycle of extreme rainfall events and prolonged droughts have been reported from all over the country in the recent past. Thus, contrary to statements by senior politicians, the Uttarakhand disaster is not natural: it is no less man-made than the other contributors to the tragedy. And if it is indeed induced by global warming, similar catastrophes could recur with increasing frequency and intensity anywhere in the country in the coming years.

In Uttarakhand, a chaotic process of 'development' that goes back many years exacerbated the effects of this extreme rain. Extensive deforestation of mountain tracts, by the state and

more recently due to 'development' projects, led to soil erosion and water run-off, thus destabilizing mountain slopes and contributing to more intense and frequent landslides and floods. Unchecked hill tourism has resulted in the huge growth of vehicular traffic, spread of roads not suitable to this mountainous terrain, and the construction of poorly designed and unregulated hotels and structures, many near rivers. Sand mining along river banks has intensified water flows into rivers.

Most of all, the construction and planning of hundreds of small, medium and large dams across the Himalayan states from Himachal Pradesh and Uttarakhand in the northern Himalayas to Sikkim and Arunachal Pradesh in the east, have destabilized an already fragile ecosystem and threatened biodiversity. A staggering 680 dams are in various stages of planning, or construction in Uttarakhand alone! These dams have a direct connection with the extent of the damage that can be caused in such flooding events, in that the tunnelling and excavation in the so-called run-of-the-river projects cause huge and unregulated dumping of excavated debris into river basins, leading to increased siltation, and in turn aggravating the flood situation. The electrical power generated by these dams will be consumed by urban elites elsewhere. It is ironic that these dam projects, while adversely impacting people's access to their river commons, claim to be climate change solutions in the guise of renewable and green energy, and have already made huge profits by fraudulently claiming CDM (clean development mechanism) status. In 2009, the CAG had warned the government of Uttarakhand that the "potential cumulative effect of multiple

run-of-the-river projects can turn out to be environmentally damaging". Like many other warnings by environmentalists and local community groups in the past, this was also ignored. And now we are facing one of the biggest disasters that the country has seen in decades.

The central government of India and various state governments, including the govt of Uttarakhand, have prepared action plans for combating climate change. Any such plan ought to include the establishment of a disaster-prediction and warning mechanism. The Uttarakhand government has taken no measures to prepare for this kind of eventuality, though it has paid lip service to climate action plans over the last three years. In the present case, the IMD issued inadequate warning, which was disregarded by the state government. An urgent prior warning could have ensured that pilgrims don't move forward and retreat to relative safety, that locals reduce their exposure to risk to the extent possible. Thousands of pilgrims from different states, locals, workers in hotels and dharamshalas, and transport animals have been killed. Cars with people inside them were washed away. Those who have survived had to go without food for several days. Thousands are still stranded at different points, or in forests, and we are still counting the dead.

There has also been extensive devastation of local lives and the regional economy. Serious devastation has been reported from over 200 villages, so far. Innumerable locals, including agricultural workers, drowned in the raging waters or were submerged under mud and debris. Houses have collapsed or been washed away.

Tourism and the local employment it generates have been hit indefinitely at the peak of the tourist season. Floods, landslides and debris have devastated agriculture along the rivers. Irrespective of whether these extreme rains are due to climate change or not, this is what a climate change world in the Himalayas looks like. This devastation is a glimpse into a climate uncertain future.

We see this tragedy as a result of cumulative and widespread injustice and wrongdoing: not only against the Himalayan environment, but also against mountain communities whose survival depends on that environment. This tragedy is also a crime, because our policy makers and administrators are also part of the larger climate injustice at a global scale that threatens, displaces and kills the marginal and the poor everywhere. On another plane, they simply let it happen. We believe that adaptation to disasters does not just mean desperate rescue work during and after the event, but also reducing vulnerability and risk before. Effective adaptation involves a series of measures that need to be adopted on a war footing. The sustainable development of a hill economy, and equity - not profit for a few - should be at its core.

India Climate Justice demands:

- That the governments at the central and state level retreat to a low carbon pathway of development that has equity, decent employment, and sustainability at its core.
- That the planning and construction of dams in the entire Indian Himalayas be reviewed, and all construction be halted until such a review is carried out.
- That the use of explosives in all such infrastructure development works is completely stopped.
- That, given the likelihood of extreme rainfall events and other climate extremes in the future,

extensive and sub-regional warning systems are put in place urgently across all the Himalayan states, the coastal areas and beyond.

- That a proper assessment of the carrying capacity of specific ecosystems is carried out.
- That the stretch from Gaumukh to Uttarkashi be declared an eco-sensitive zone without further delay.
- That a river regulation zone be enforced such that no permanent structures are allowed to be constructed within 100 metres of any river.
- That the residents and their organizations are thoroughly consulted in a democratic plan on climate change, in the revival of the local hill economy, and the generation of decent employment.
- That local people are compensated for the loss of life and livelihood, and that urgent plans are put in place for the revival of local livelihoods and agriculture.
- That the central government learn from the Uttarakhand catastrophe to put in place prior adaptation measures not just for the mountainous regions but beyond, for coastal and the drought-prone interiors as well.

(INDIA CLIMATE JUSTICE)

Including: Organizations: All India Forum of Forest Movements; Pairvi; Beyond Copenhagen; South Asia Network of Dams, Rivers and People; National Alliance of People's Movements; Himalaya Niti Abhiyan; New Trade Union Initiative; Chintan; Bharat Jan Vigyan Jatha; Toxics Watch Alliance; Nadi Ghati Morcha, Chhattisgarh; Rural Volunteers Centre, Assam; Vettiver Collective, Chennai; Himal Prakriti, Uttarakhand; Maati, Uttarakhand; Bharat Gyan Vigyan Samiti; River Basin Friends (NE); **Individuals:** Benny Kuruvila, Arun Bidani, Subrat Sahu, Nagraj Adve □

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