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Another SC Judgement in the Right Direction

Mahi Pal Singh

In a significant judgement on 27 September 2013 in the PIL case filed by the PUCL in 2004, "PUCL vs Union of India", the Supreme Court of India has upheld the right of the Indian voters to reject all the candidates in the parliamentary and state legislative assembly elections if they feel that none of the candidates fielded by various political parties deserve their vote. Accordingly the Court has directed the Election Commission to provide a "NONE OF THE ABOVE" or (NOTA) button in the Electoral Voting Machines (EVMs) through which the voter can register his displeasure regarding the fielded candidates. The Election Commission has also taken steps to include this NOTA button in the EVMs from the next assembly elections to five state assembly elections due in November/ December 2013. With this an important milestone in electoral reforms empowering the citizens of the country to elect clean and untainted representatives to the legislative assemblies and the Parliament has been achieved.

The judgement has been welcomed by the civil society and others who have been agitating for electoral reforms to make our democracy truly representative of the will of the people which the political parties and our elected representatives have been neglecting with impunity sometimes reaching the stage of sheer arrogance of power. Now the political parties will have to take note of the will of the people as expressed through the NOTA button if they persist in fielding candidates with a record of serious criminal cases like dacoity, murder, rape and corruption. The Supreme Court has observed in its judgement that "Negative voting would gradually lead to systemic changes as political parties will have to respect the will of the people in selecting their candidates." In a democracy the will of the people as expressed through the voting machines is of paramount importance because it is the expression of the will of the ultimate sovereign and neglecting this will of the people can be detrimental to the interests of the political parties who dare to do so. It is also hoped that more and more voters will come out to vote, who did not do so earlier because of their disgust of the candidates fielded by the political parties, and who felt completely helpless to express their dissatisfaction and disgust against such candidates because they had only two options - either not to take part in the electoral process at all, which deprived them of their legitimate right to elect their representatives or, worse still, to vote for one of the candidates however strongly they felt against him/her. The 'right to reject' existed earlier also under the Conduct of Election Rules 1961, Rule 49-O, but the voters had to lose their privacy of vote because they had to make a declaration to that effect in form 17A, which could even endanger their lives as they could become victims of the ire of candidates who would feel

outraged at their rejection by the voters. The SC judgement provides for the protection of the privacy of the voters' 'expression of will' which was also very important given the number of anti-social elements contesting elections at present. Besides, to vote according to his/her free choice is the fundamental right of freedom of speech and expression of the citizen under Article 19(1) and Article 21 grants him/her protection of life and personal liberty which can be ensured only if he/she is able to exercise the right to vote in secrecy without any fear or risk of losing that protection.

Some skeptics question the utility of the right to reject - maybe their experiences with the political class have been too bitter in the past. Some people had also questioned the utility of the earlier judgement of 2003 in another PIL filed by the PUCL in which the Supreme Court had ruled that all the candidates contesting an election to the Parliament or State assembly would be required to declare his/her financial assets and criminal anecdotes. It is true that in spite of that provision of declaration, the political parties have continued to field tainted candidates with serious criminal charges against them. These parties may not have changed their process of selection of their candidates, but today the voter has an informed choice at the time of voting. At least the voter knows who and what the candidates presented before him/her are even if his/her hands have been tied so far to vote for one of them even though that candidate also has serious criminal charges against him/her. Within a period of ten years since 2003, the question of the presence of criminals in politics and legislative houses has acquired gigantic proportions in public discourse and reached its culmination in another earlier SC judgement of 10 July 2013 whereby the Court ruled that if an MP or MLA was convicted in a serious offence and sentenced to two years of imprisonment or more, he/she would lose his/her seat immediately. Today, Rashid Masood, Laloo Prasad Yadav and Jagdish Sharma

have lost their membership of Parliament after being convicted in corruption cases. Things move slowly in a democratic system but it cannot be said that they do no move at all. The latest SC judgement on the right to reject is another step forward in the right direction, a path-breaking judgement, and its effect may take a few years to become visible. If the political parties do not mend their ways and provide clean candidates, a time will come when more and more voters will exercise this right and the day more than 50% voters reject all the candidates in the fray, the Election Commission, the government of the day and the Parliament will have to consider framing laws to countermand that election and to debar the participating candidates from re-contesting that election, because that will be a clear and incontrovertible evidence of the 'expression of the will of the people' done in a constitutionally legitimate manner which nobody will be able to neglect. Of course, such a law does not exist today. But it cannot be said that such a law will not be framed in future. We have to remember that public pressure has forced the government to pass a strong Act for the protection of women in the wake of the powerful and widespread mass protests across the country against the 16th Dec 2012 gang-rape case of Nirbhaya in Delhi, to introduce the Lokpal and Food Security Bills in Parliament, and to withdraw the ordinance which was brought to circumvent the SC order of 10 July in an attempt to enable convicted MP and MLAs to continue as legislators till the final rejection of their appeal by the highest court, This is the power of the people that democracy grants to them and that has to be respected by all political parties and the government.

People ask: "What next after the 'right to reject'?" Obviously, it will be the 'right to recall', the next and logical step forward. A time will surely come when people will demand accountability from the ruling class. The 'right to recall' will empower the citizens to withdraw the non-performing legislators, unlike at

present when the elected representatives do not care to know the 'will of the people' who elect him, and the citizens feel helpless and at the mercy of the very persons they elect, till the next elections when they get a chance to show their satisfaction or anger against the acts of omission and commission by their elected representatives. They do not know whether the next representative will care for them, or they will have to wait for another five years to express their will again. The 'right to recall' will empower them to punish those elected representatives who betray their faith. The argument of non-viability of holding re-elections and the cost of holding re-elections, in case of mass rejection of candidates through the exercise of the 'right to reject' or the 'recall' of the non-performing representatives, by politicians and the government is a lame argument because the cost of holding elections/re-elections is the price which the people pay in exercise of their right to live in a democratic polity. Has any politician ever questioned their right of contesting election from more than one constituency and vacating of more than one seats from where he/she gets elected, thereby forcing the cost of holding re-election in the constituencies thus falling vacant? Does that not put an extra and avoidable burden on the people? If a proposal were to be made that a candidate can contest an election from one constituency only, all politicians would cry foul and say that it would deny them their democratic right to seek election. Then the cost factor would not come to their mind. By the same argument, it is the right to every citizen of this country to have a clean representative of their choice and to recall him/her if he/she does not perform according to their aspirations. The cost of holding re-elections in such cases will be negligible compared with the dividend of holding the political parties and the elected representatives 'accountable' to the voters without which a democracy is phony and not real. □

"NONE OF THE ABOVE" (NOTA): SC UPHOLDING THE CITIZENS' Right Note to Vote: A Giant Step for Indian Democracy! PUCL demands that EC implement NOTA in 2013 State Assembly Elections in Rajasthan, MP, Chhattisgarh and Delhi

The PUCL welcomes the judgment of the Supreme Court of India in the case of "PUCL vs Union of India", in which the Supreme Court has upheld the citizen's right 'not to vote' as a "mechanism of negative voting that serves a very fundamental and essential part of a vibrant democracy". The direction of the Supreme Court to the Election Commission to include in the Electronic Voting Machine (EVMs) a button for NOTA - "NONE OF THE ABOVE" - for all future elections is a step not too late.

The Supreme Court agreed with PUCL's contention that the prevailing system u/Rule 41(2), (3) and Rule 49(O) of the Conduct of Election Rules, 1961 are violative of the citizen's right to secrecy as provided u/s 128 of the Representation of People Act and Article 19(1)(a) of the Constitution of India. In effect the SC accepted PUCL's position that the voter has a right to indicate their dissatisfaction against all the candidates in secrecy. The Court pointed out that "secrecy in casting

vote is necessary for strengthening democracy".

The inclusion of a NOTA button will ensure participation of voters who are frustrated with all the candidates. The SC has rightly pointed out that NOTA "will accelerate the effective political participation in the present state if democratic system and the voter will, in fact, be empowered". The SC also points out that this will prevent bogus voting.

The apex court points out that the political parties will realise that when a large number of people express their disapproval through NOTA, "there will gradually be systemic change and the political parties will be forced to accept the will of the people and field candidates who are known for their integrity".

PUCL believes that this decision, alongwith the decision of the SC in another PUCL PIL, "PUCL vs Union of India, (2003 (4) SCC 399)" which made it mandatory for all candidates to file affidavits indicating their assets as also criminal cases against them, along with a series of other landmark

decisions relating to electoral reforms would lead to greater probity in public life and would help in creating a more vibrant and engaged democratic setup. It would also encourage greater participation in democratic processes and would help in keeping unscrupulous elements out of the electoral fray.

PUCL appeals to all political parties to see this judgment as sign of changing times, reflecting the aspirations of the Indian citizenry and hopes that all parties will make constant efforts to field 'clean' candidates in order to de-criminalize politics.

PUCL calls upon the Government of India and the Election Commission to include NOTA buttons in the EVMs to be used in the upcoming elections to state assemblies of Rajasthan, MP, Chhattisgarh and Delhi which are scheduled to be held in the next 2-3 months.

Prof. Prabhakar Sinha, President;
Dr. V Suresh, General Secretary,
PUCL National. □

You cannot take the Voter as a Dummy: Sanjay Parikh

Aparna Kalra | New Delhi

Interview with Lawyer for *People's Union for Civil Liberties (PUCL)*

Sanjay Parikh, lawyer for People's Union for Civil Liberties, or PUCL, is a challenger of status quo who often has the Union of India as an opponent in court. In 2003, he won a ruling that candidates for the Lok Sabha and legislative assemblies have to mandatorily declare their assets and criminal records, if any. On Friday, the PUCL won for Indian voters the right to say none of the above (NOTA) when choosing their political representative. He spoke to Aparna Kalra. Edited excerpts:

When did you first file the NOTA petition?

In 2004 Already a letter that Chief Election Commissioner (CEC) Krishnamurthy had written was there, that right of none of the above should be recognised in the Representation of People Act and identity of the voter be kept a secret. This right is there - you can come out of the polling booth and sign a register saying you don't back any candidate, but your identity is not secret.

The right should be made effective, we said. The identity of the voter should not be disclosed.

What were your reasons for this public interest suit?

We won the mandatory declaration of assets by candidates' case in 2003. But if there is no option to say no, even after the knowledge of the background of a person, a voter does not have the option to reject them.

So, in 2004 we filed this case. Justice Sachar was the senior person who argued, I assisted him in arguments.

Our argument is that you cannot take the voter as a dummy. He thinks: Is this a good candidate? If all three are not good, a button will be provided to say I don't want any.

But please understand. It is neither

rejection nor a negative vote, as it is being called. I have the right to say yes, I have the right to say no. You cannot take away my right to say no.

The implementation will be quick. The election commission has said it will not be difficult to give a slot in the

electronic voting machine for NOTA. No expenditure will be there, it can be done in the November elections.

What is the next case you are on?

I don't know. There are so many cases. But journalists are asking me, if a candidate gets 30 per cent votes, but 50 per cent say NOTA, and this

candidate wins, how can it be a majority decision. So, we might look into that.

The simple solution is parties should introspect. Bring good people, have good governance. Otherwise, it will be one judgement after another.

Courtesy: The Business Standard, September 28, 2013 □

People's Movements Welcome Supreme Court Judgment on "Right to Reject"

Step Forward towards Decriminalization of Politics, Electoral Reforms and a Vibrant Democracy

27th September 2013: National Alliance of People's Movements welcomes the Supreme Court Judgment on "Right to Reject" directing the Election Commission to have "None of the Above" symbol on EVM's. The Judgment puts an end to the lengthy procedure, making it easier for people to register their dissent against the candidates and maintain secrecy of their vote. While the Judgment is a very important step towards decriminalization of politics, but the benefits of it would depend on how effectively it is implemented in the forthcoming elections, both state and general elections.

Electoral Reforms is an important part, but not the only one, in the larger process of complete political transformation leading to decentralization of power and power to people. The eroding faith of people on their representatives who have ignored the long pending reforms of the Electoral Process, has led to the Supreme Court Judgments on Right to reject, disqualification of convicted candidates for serious crimes and other key issues.

The serious challenges remain in front of us today, in implementation of the judgment. While the present government and the members of parliament are willing to concede to legislations and some measures in response to public opinion on entitlements like right to food, right to education etc, they are hell-bent and unwilling to concede anything

which will fundamentally change the balance of power between the citizens and the government/parliament. The very recent short sighted Ordinance brought by the Government of India, surpassing the democratic parliamentary process, to overturn Supreme Court's Judgment on disqualification of MP's convicted for serious crimes, is an example for this.

However, the Nation needs even more radical reforms than those ordered by the Supreme Court. Cancellation of elections and holding re-elections, if more than 50% of voters among the polled votes reject all the Candidates, Institute a system of referendums to put in place a minimal kind of direct democracy, funding of elections, expenses of political parties and their sources of funding, instituting fundamental police reforms, making police and civil services accountable, etc need to be addressed more expeditiously.

NAPM demands that now the Election Commission must formulate rules for proper implementation of the Judgment and contribute to the larger goal of all the struggling peoples groups, who are fighting for power at grassroots levels for good governance and accountability of their political representatives.

We are confident that the government will recognise the force of peoples demand and mood of the nation, and do not take undemocratic steps to overturn the Judgments of Supreme Court by bringing an Ordinance but take steps for effective

implementation of them, which will empower Indian citizens to participate in, and monitor, democratic governance.

Medha Patkar - Narmada Bachao Andolan and the National Alliance of People's Movements (NAPM); **Prafulla Samantara** - Lok Shakti Abhiyan, NAPM, Odisha; **Dr. Sunilam, Aradhna Bhargava** - Kisan Sangharsh Samiti, NAPM, MP; **Swami Agnivesh**, Bandhua Mukti Morcha; **Gautam Bandopadhyay** - Nadi Ghati Morcha, NAPM, Chhattisgarh; **Ulka Mahajan, Suniti SR, Prasad Bagwe** - SEZ Virodhi Manch and NAPM, Maharashtra; **Gabriel Dietrich, Geetha Ramakrishnan** - Unorganised Sector Workers Federation, NAPM, TN; **C R Neelakandan** - NAPM Kerala; **Ramakrishnan Raju, Saraswati Kavula, P Chennaiah, Shashank Rajwadi** - NAPM Andhra Pradesh, **Rajendra Ravi, Anita Kapoor** - NAPM, Delhi; **Akhil Gogoi** - Krishak Mukti Sangram Samiti, NAPM, Assam; **Arundhati Dhuru, Sandeep Pandey** - NAPM, UP; **Sister Celia** - Domestic Workers Union, NAPM, Karnataka; **Sumit Wanjale, Madhuri Shivkar, Simeet Singh** - Ghar Bachao, Ghar Banao Andolan, NAPM, Mumbai; **Dr. Rupesh Verma** - Kisan Sangharsh Samiti, NAPM, UP; **Manish Gupta** - Jan Kalyan Upphokta Samiti, NAPM, UP; **Vimal Bhai** - Matu Jan Sangathan, NAPM, Uttarakhand; **Vilas Bhongade** - Gosikhurd Prakalpgrast Sangharsh Samiti, NAPM, Maharashtra; **Ramashray Singh** - Ghatwar Adivasi Mahasabha, Jharkhand; **Anand Mazhgaonkar**, Paryavaran Suraksh Samiti, NAPM Gujarat □

A Half-Baked Measure Judicial Appointments Bill Needs A Calm Discussion

Rajindar Sachar

Both the government and the Opposition in Parliament have shown remarkable comradeship in accusing the judiciary of all ills in society. The occasion was to find a substitute for the present collegium system of appointment of Judges of the High Courts and the Supreme Court. There is a broad agreement in the public and legal fraternity that the collegium system of appointments needs to be improved upon. But then critics must also answer the query raised by the present Chief Justice of India wherein he has pointed out that a fair amount of consultation with the government takes place and the judiciary takes into account any negative facts brought out against the proposed appointee.

May I scotch the suggestion invidiously spread by politicians that appointments are based only on caste or personal considerations of the collegium members and merit plays no part. May I scotch this slander by pointing out that there is universal acclaim for the present judiciary's impartiality and determination in exposing Coalgate, telecom and other scams. The Supreme Court's recent decision to debar convicted legislators from continuing as legislators is a big blow to the evil of politicisation of criminals. Let me emphasise that the appointments of all these judges were made through the collegium system, while the judges who played a disgraceful role in colluding in the supersession case in 1973, and again during the Emergency in 1975 were all appointed before the collegium system. Because of these vagaries, are we justified in the wholesale condemnation of pre-collegium appointees? Certainly not. Since 1950 we have had stalwart judges like Krishna Iyer, Justice Mukerjee, Justice Mahajan, Justice Suba Rao and Justice Sikri.

No I am not opposing the desirability of change from the present closed collegium system. But this matter needs to be discussed in a calm leisurely manner, and not by the

outgoing discredited legislators and in an atmosphere of suspicion, and half-baked information. Now that the Bill has gone to a standing committee, it is to be expected it will be widely circulated throughout the country so that the legal fraternity, law schools, journals and public men could have time to discuss it at leisure.

Frankly, the strategy of the Law Minister to get passed the Constitution Amendment 120th Bill and send it to the states for ratification without the details of the Judicial Appointment Commission being included in it would have been a constitutional monstrosity. Not to include the details in the amendment would be such excessive delegation as to fall foul of the law. It also has sinister implications for future. The proposed Constitution amendment only provides for a Judicial Appointment Commission for Appointment of Judges being mentioned in Article 124A, and 217 of the Constitution but without full details like the composition and the procedure for appointments being included. They are, of course, mentioned in the Bill, but that cannot prevent mischief being done by a future government.

As an example, the Bill provides that the commission will be presided over by the Chief Justice of India. But if after approval of the Constitution amendment, Parliament were to amend the Act to say the judicial commission would be headed by the Law Minister, there would be no hurdle because the Constitution amendment only provides for a judicial commission but says nothing about details. In fact, but for the arrogance of the legislators it should have been clear to them that the whole of the Judicial Commission Bill with all its provisions has to be part of the Constitution Amendment Bill, just as at present Article 222, specifically mentions that the Governor and the Chief Justice of a state will be consulted when selecting a judge for the High Court.

I feel that the present Parliament lacks moral justification to move such an important Constitution amendment. Elections are due latest by next May 2014. It is reliably understood that the Election Commission may propose to have elections in four or five phases. If so, the first polling may start by February or March 2014. It is normal to expect that half the present members of the Lok Sabha will not be re-elected. Is it morally fair and politically honest for the outgoing members to seek to pre-empt the decision which both legally and morally would be the privilege of the new Parliament?

Also the Bill has been sent to the Standing Committee. Since the full Bill has to form part of the Constitution amendment, therefore till the Commission Bill is finalised the question of sending the Constitution Amendment Bill to the states for ratification cannot arise.

In the Bill for the commission there are serious flaws. At present only the views of the Governor are to be obtained when a High Court Judge is to be appointed. But now slyly the Chief Minister also finds a place in the commission. I feel it is too political and allows partisan appointments - the inclusion of Chief Minister must be removed.

The personnel for the selection of Judges include a vague self-serving category of "two persons of eminence". Pray what is the measure of eminence for selecting judges? Supposing two legislators from Parliament or state legislators were to be included in this 'category of eminence' (even not having had the advantage of beyond middle class schooling), none of them would consider excusing themselves because their claim would be that they were so popular with millions of voters and how could they be not considered eminent? Perverse logic, but in the construction of the law, how could you rule it out? Of course, the simplest thing would be to substitute it by "eminent jurists". This will include a large source, namely

"retired judges", "law Professors", "eminent senior lawyers (who are no longer in regular practice)". Their presence will automatically reduce arbitrariness to quite an extent.

The exclusion of the Leader of Opposition in the Lok Sabha from the Judicial Appointment Commission is a serious flaw. In

such neutral policy matters both the wings of Parliament must be included.

In my view the present Parliament could still redeem itself somewhat of all the scams/scandals, if before its term expires, it passes the Women Reservation Bill. No objection on the ground of imminent

dissolution of Parliament will apply because one House of Parliament has already passed it, and also the first announcement the Prime Minister made after the 2009 general election was a promise to immediately pass this legislation - the same commitment had been made by previous governments.

02/10/2013 □

Message read out in the Conference against Repression, Allahabad, 5th October 2013 on behalf of Dr. V. Suresh, National General Secretary, PUCL

"We know from historical experience that when human beings have defensible rights-when their agency as individuals is protected and enhanced-they are less likely to be abused and oppressed. On these grounds, we count the diffusion of human rights instruments as progress even if there remains an unconscionable gap between the instruments and the actual practices of states charged to comply with them".

Michael Ignatieff, Tanner Lectures on Human Values, 2000

Article 21 of the Indian Constitution guarantees to all Indians, "No person shall be deprived of his life or personal liberty except according to procedure established by law". India is also a signatory to the Universal Declaration of Human Rights (UDHR), 1948 whose preamble states "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind" and stressed that human rights are the "foundations of freedom, justice and peace in the world".

Our constitution and our laws protects for us citizens of India, our fundamental rights of freedom of speech and expression, of association, of life -our laws and courts have upheld, while interpreting the fundamental rights, that we also have the right to protest and dissent against the state's policies.

The moot question today, in October 2013, is about how much of these protections exist in reality; or are mere words on paper! The reality, sadly, is that the governments, both the Central as also most of the State governments so brazenly and openly break the law and crush citizens - falsely arresting, torturing, killing, maiming, silencing anyone who challenges them - with impunity, that across the country today, there is a reign of terror. For an ordinary Indian

it is extremely hazardous to ask questions by way of the citizens "right to information" from the government and ruling interests, about a development project, about being consulted before a decision is going to be made on a development project which will acquire lands and evict people from their homes, means of livelihoods. To demand accountability of government officials, rulers and industrial elite for massive corruption, scams or misrule is playing with death itself. Dalits and minorities are especially targeted and have suffered huge human rights abuse.

Such is the type of repression let loose on citizens who demand simple things: please implement the constitution, go by the rule of law, protect our human rights as guaranteed by the Constitution and other laws. The sad reality is that our rulers have so little respect for the law, are so filled with their own power that they think of themselves beyond the law.

A harsh truth is that we are living in a land of two Indias! One land is the India for the `netas' - not just the political leaders, but also the ruling elite - industrialists, business tycoons, the rich and propertied. The `netas' will break all the laws of the land, think it is their right to suppress voices of dissent and repress any

opposition too them using the vast police powers of the state; think it is their birthright to loot and plunder the country's resources.

Then there is the land of the `janta' or the ordinary citizen. For the rest of 1.2 billion Indians, life is difficult existence; expressing themselves against the rule and misrule, against the grabbing and looting and plundering by the `netas' is dangerous; and they are expected to keep silent and quiet if they want to remain safe. The judicial system which for long, offered some solace, is increasingly becoming difficult to access and get justice. The fight of the people for their fundamental rights is becoming more difficult.

This is not a new trend. What is new in the politics of 2013 is a sad change in the political scenario, Until a decade back, whenever large scale human rights abuse took place, some amongst the mainstream political parties would oppose and launch mass agitations. However in recent time we are witnessing a curious `Conspiracy of Collusion' emerging amongst most of the mainstream political parties. According to the unwritten collusion, when any of the political parties is exposed for having committed a scam or a political excess, the other political parties are allowed to oppose or protest. The mainstream

political parties alone will be permitted to conduct mass demonstrations, agitations and so on. Yet, we notice, that rarely do the political parties cross a 'lakshman rekha' and really mobilise common citizens against a repressive state abusing the laws and violating human rights. Especially when the matter concerns crushing movements of minority communities or dalits tribals.

In stark contrast, if any citizens group or political movement outside of the mainstream political parties dares to challenge the state or ruling elites, then the state crushes their voices using police power; break the people's strength through indiscriminate arrests and imprisonment for long period thereby threatening and intimidating people from joining popular struggles. The government has many legal weapons in its hands - Unlawful Activities Prevention Act (UAPA), Armed Forces Special Powers Act, preventive detention laws, anti-sedition laws - which it uses ruthlessly. As the governments view it, the idea is to freely abuse the law today and prosecute persons; for it will take many years for courts to finally decide that the arrests were improper. It does not matter, for the urgent thing for the moment is to

silence people and movements opposing anti-democratic and anti-people policies and actions of state and ruling elite.

We in the PUCL have personal experience and have suffered from such violations of law by the state; two of our colleagues, Binayak Sen and Seema Azad, have both been convicted for life imprisonment in cases where there is absolutely no evidence to establish any wrong doing, let alone the crimes of sedition and anti-national activities they have been accused of. As both of them repeatedly point out, their cases are not exceptions, but only the rule. Hundreds, no, thousands, languish in jail arrested or convicted on totally false cases; they have no one to fight for their rights.

In the middle of so much which is going wrong, there is still reason to HOPE. Across India, in different nooks and corners of this vast country of ours, ordinary people on a daily basis are waging a thousand mutinies. Whether in the anti-Posco struggle of ordinary farmers, agricultural labourers and villagers of Dhinkia area in Odisha or the primitive tribal groups fighting the Vedanta plant in Niyamgiri or the fishermen and peasants of Koodankulam in Tamil Nadu fighting the Atomic Power Plant or the anti-Jaitapur struggle in Maharashtra,

hundreds of battles are being waged against the path of destructive development. Ordinary citizens are raising their voices against scandals which threaten our natural resources, against destructive development projects and numerous other anti-people acts of governments and ruling elites. Dalits, minorities, tribals, the poor - all are caught up in the fight to demand rule of law, democracy and human rights. We need to stand by these ordinary citizens.

It is in such a scenario that today's Conference is an important occasion to celebrate the solidarity of people who believe in human rights and in the rights of people to live decent, dignified, contented, meaningful, independent and democratic lives. Ours is a fight not just against abuse, oppression and repression; ours is the fight for a life with dignity, for well being for a sustainable life on earth ... in simple words, ours is a fight to reclaim democracy.

May we derive strength from one another; let us rededicate ourselves to protecting human rights so that future generations will say, 'ours was a generation which dared to fight state terrorism, and tyranny, human rights abuse and worse, and won!' I wish the Conference all success!

Dr. V. Suresh, National General Secretary, PUCL ☐

PUCL Jharkhand FF Report on Alleged Mango Encounter: 15.07.2013

Inquiry Report of Alleged Mango Encounter dated 05.07.2011 at Jamshedpur

PUCL, District Committee constituted an inquiry team on 11th July 2011 to inquire into the alleged encounter of three alleged criminals who allegedly came to kill one Mr. Upendra Singh proprietor of Yarana Bar located at Mango Bus Stand. It issued press statements on its preliminary inquiry claiming the same as fake encounter. The team members included Dr. Ram Kavindra, Nishant Akhilesh, Prof. Jagdish Mishra, B.N Das etc.

PUCL team visited the spot several times and spoke to scores of people including independent eyewitnesses, family members of deceased and

other related persons. The PUCL also went to see the SSP, East Singhbhum but failed to see him. The city SP deliberately misbehaved with one of the PUCL functionaries for obvious reason. The team also tried to meet the IO of the case one Mr. Arun Roy. He spoke to one of the team members but refused to meet in person. All other police officers were inaccessible to the team members. One of the members of the team spoke to Mr. Upendra Singh one of the main accused in the FIR of the father of the deceased Nilesh, Mr. Ramanuj Singh. His statements have been mentioned at the relevant places of this report. He also refused

to meet in person to the inquiry team.

F.I.R. details in the alleged encounter –

1. P.S. Case No. 55/11 dated 05.07.2011 u/s 302/34/120B IPC and u/s 27 of Arms Act by Ramanuj Singh, father of one of the deceased Nilesh registered at Sitaramdera Police Station
2. P.S. Case No. 54/11 dated 05.07.2011 u/s 353/307/34 IPC registered by Mr. Vijay Kumar, Police Inspector & P.S. In charge Jugsalai.
3. P.S. Case No. 53/11 dated 05.07.2011 registered by Mr. Upender Singh.

As per P.S. Case No. 55, the deceased Nilesh Kumar was murdered by Vijay Kumar and Vinay Kumar, both P.S. in charge, in witness of Mr. Chintu Kr. Singh, Mr. Amitabh Mishra and Mr. Karu Singh. As per the eye witnesses, the deceased Nilesh Kumar was dragged by Mr. Vijay Kumar and then fired at point blank.

Claims under the two FIRs registered by District Police and Upendra Singh –

As per the F.I.R. of Mr. Upender Singh, while climbing up the steps of the Hotel at 7.30 on 05.07.2011, Friendship Inn, at Mango Bus Stand they were purportedly fired at by three assaulters from behind. One of the bullets purportedly hit the glass of the door of the hotel. They turned back immediately and pointed their licensed arms towards them. The assaulters purportedly fled and one of them fired again while so fleeing which injured his personal bodyguard, Angad Rai, on the left knee.

As per the assertion of Mr. Upender Singh, he caught hold of one of the alleged criminals and there was a scuffle with him for some time. In the meantime, that criminal managed to fire at him again which passed by his head whereas immediately when he fired at by his licensed revolver on that alleged criminal, the same purportedly got hit and the criminal fell down. As per the assertion of Mr. Upendra Singh he purportedly killed an alleged criminal by exercising his right of self defense as mandated under section 100 to 104 or the IPC, 1860.

The contention in the F.I.R. of the Police runs as supplement to the contentions of Mr. Upendra Singh with arbitrary variations here and there. The contents are not reproduced here again for profligacy and the main contentions are already explained wherever referred in the findings.

Inquiry & Our findings –

After analysis, observation of the place of occurrence, interviews with the eyewitnesses we didn't find any

merit in the claim of FIRs of both Mr. Upendra Singh and the Police. Our detailed observation is herein below narrated.

The story of both the Police and Mr. Upendra Singh appears untrustworthy in light of the fact in the story that during Mr. Upendra Singh's alleged scuffle with one of the alleged criminals, the other two alleged criminals kept on firing as asserted by him in his FIR however, their bullets failed to hit either him or his personal bodyguard. He also failed to explain the position of his personal guard who was already purportedly injured by them in firing by them before the said scuffle started. It appears either the alleged criminals did not fire at all or they were purportedly firing in the air or aimlessly.

Mr. Upendra Singh further asserted that during this ongoing firing by the other two criminals both him and his personal body guard were able to flee and take shelter of the wall of the State Road Transport Nigam's building wall and then started firing again. By doing so he and his body guard apparently took serious risk of getting hit by exposing themselves more in front of the alleged criminals who were firing indiscriminately instead of taking shelter in his own Bar which was nearer to their position as well as much safer compared to the place they purportedly decided to take safety position. In doing so still they escaped unscathed. Now, this again raises a serious doubt that either the purported criminals were not firing at all or were firing in the air or aimlessly.

The biggest flaw in the story of both Mr. Upender Singh and the police is that while he kept on firing after taking shelter by the wall of Nigam's building and the criminals on the other hand exposed openly without any scope of any shelter or safety places. Police Party comprising of Fourteen Police Officers entered from the Mango Golchakkar side. The alleged criminals were firing at Mr. Upender Singh and his personal bodyguard facing their backs towards

the police. When they were alerted by the police, they turned back and started firing at police party and exposed themselves completely to Mr. Upender Singh and his body guard who claimed to have continued firing at those alleged criminals till they were dead, to be hit on their backs and despite threats from two sides, they stood their ground and did not try to flee towards the river side, which was open and was not manned by police officers as per assertions in their own FIR. The whole story appears to be incredible. Police claims fourteen firings from their side and twenty firings from the side of the alleged criminals. The police FIR does not mention the number of firings by Upender Singh and his personal bodyguard nor claims any khokas recovered out of his and his bodyguard's firing. Further, it also failed to mention the number of khokas found towards the police party and the number of khokas found towards Upender Singh and his personal bodyguards who were facing each other. Police also failed to explain how they could have avoided risk of getting hit by the bullets being fired by Upendra Singh and his bodyguard from the front and still managed to hit the criminals in their heads and chest without any injury to anyone of them.

All the alleged criminals were hit on the chest and in the heads and one on the thigh of one of the alleged criminals. However, their heads were intact and the bullets pierced their heads. Piercing of the heads of alleged criminals points towards firing at them from point blank and not from a distance. None of the police men were hit or injured in the alleged encounter.

Further, nowhere in the F.I.R., the police even tried to claim that they made any attempt to arrest them. As if police had planned to kill them before hand. Apparently the Police have claimed indiscriminate firing on the alleged criminals who prima facie not only defies any logic but is strong evidence against their claim of self defense under the same.

Page No. 3 of the F.I.R. of the Police mentions that 5 minutes after the firing stopped one person along with two-three people came out from the side of the wall of the State Road Transport Nigam building whereas the F.I.R. of Mr. Upendra Singh clearly mentions that he was hiding behind the wall only with his body guards. This contradiction is another proof of their incredible claim of encounter.

F.I.R. of Police further mentions that the deceased were holding the fire arms in their hands even after their death which is absolutely ridiculous and shows not only the falsity of the F.I.R. but also the audacity of the Police who executed those killing in connivance with a private person Mr. Upendra Singh in cold blood.

The FIRs have talked about self-defense but did not specify how eminent the threat was? They also failed to talk about having taken any safety position near wall or otherwise or even lying down on the ground immediately after the alleged firing from the side of alleged criminals on their alert which is the basic training they receive that means they rushed towards the two criminals firing on the Upendra Singh and the body guard on the opposite side alerted the alleged criminals and on having been fired from the side of criminals, they retaliated by firing their bullets on their head, chest and thigh whereas none of the bullets fired by the alleged criminals succeeded in even touching the hair of any of the police officers. The police officers apparently also failed to adhere to the basic training that they receive, that in case of any eminent danger they must lie down on the ground and take their positions prostrate, if there are no other safety positions nearby.

The contentions of the said FIRs are also not supported by any of the eyewitnesses the names are withheld for obvious reasons in this report or any additional evidences nearby the spot of occurrence of the said encounter. On an estimate after having perused the FIRs there must have been 60 firings from all sides.

There is a mention of one hit on the door of the Yarana Bar, one on the knee of the Bodyguard of Mr. Upendra Singh and few on the bodies of the deceased. Rest of the 50 odd bullets have failed any of the objects or any person, tea and other stalls, wall of the building of State Transport Corporation where the duo Mr. Upendra Singh and his Body Guard had allegedly taken safety positions, nor any side of the boundary wall of the area covered where State Transport buses rest. 50 odd bullets appeared to have vanished completely without any trace or sign whatsoever.

One eyewitness claimed to have given lift to one of the deceased Guddu Singh in his motorbike to the place of occurrence and had also offered him a cup of tea which was refused by him. As per his statement the said deceased looked worried but was not having any arms. Similar is the claim about the other one Vikash Ojha. The deceased Nilesh was not even connected to the former two and was allegedly dragged by one of the police officers and shot from the point blank just by reason of the fact that he tried to inquire into those firings.

Conclusion -

Prima facie, it appears that the whole story has been cooked up by both Mr. Upendra Singh and the Police to fraudulently claim an apparent cold blooded murder as an encounter death.

The person exercising the right of private defense must consider with the threat to his person or to his property, real and immediate, if he reaches the conclusion that the threat is real and immediate, he is entitled to exercise his right. In the exercise of his right he must use force necessary for the purpose and he must stop as soon as the threat disappears. This is applicable to ordinary people. The Police are trained people to take adequate measures as per exigencies of the situation.

Given the circumstances in the F.I.R. analyzed just above, these two judgments serve the purposes of the law of the land on self-defense:

“The absence of injury on the body of the accused may lead to an inference that the deceased was unarmed and that the accused was the aggressor. It is of course a rebuttable presumption because the right of private defense could accrue to the accused irrespective of the fact whether or not an injury was caused to him by the deceased. The test to determine the accrual of the right of private defense of person is whether the accused could reasonably apprehend that death or grievous hurt would be caused to him by the deceased and that could not protect himself otherwise than by using force against his assailant.* In an Orissa Case it has been held that the prosecution is not obliged to explain minor and superficial injuries sustained by the accused. But it is bound to explain serious injuries.”**

* Gangada vs. State of Rajasthan, 1975 CrLJ 1445.

** Balgopal Panda vs. State of Orissa, 1990 CrLJ 1848 relying on Lakshmi Singh v. State of Bihar, AIR 1976 SC 2263; 1976 CrLJ 1736: (1976) 4 SCC 394; Jagdish v. State of Rajasthan, AIR 1979 SC1010: 1979 CrLJ 888: (1979) 2 SCC 178; Hare Krishna Singh v. State of Bihar, AIR 1988 SC 863: 1988 CrLJ 925 : (1988) 2 SCC 95.

The above Orders of the Hon'ble Courts were dealing where scuffle between private parties were involved essentially two persons whereas in the alleged encounter not only two private persons but 14 other police officers were involved who were all having prior information of alleged movement of alleged criminals in that area and the police party came to the spot on specific direction of the SSP Mr. Akhilesh Jha and they claimed indiscriminate firing by all concerned – Mr. Upendra Singh and his bodyguard, Police party comprising 14 members and the alleged three armed criminals. Still none of the persons on the opposition sides were even injured except the body guard who got hit on the second firing by the alleged criminals and suffered only minor injury and thereafter they lost touch

and failed to fire at their targets and eventually hit by the police party and Mr. Upendra Singh and his body guard firing on each other as per their taken positions and were also fired at more than 20 times by the alleged criminals but still escaped unscathed all of them.

Further, a right of private defense however cannot be pleaded by persons who expecting to be attacked, go out of their way to Court an attack.***

*** Padia Patra v. Stae of Orissa, (1966) 32 Cut LT 441: AIR 1966 Ori 199: 1966 CrLJ 1176.

**** Deonarain v. State of U.P., AIR 1973 SC 473: 1973 CrLJ 677: (1973) 1 SCC 347: 1973 SCC (Cr) 330.

All the evidences collected through our investigation led to the conspiracy angle and the source of which lies in the SSP office and a prima facie evidence has been provided none other than the Police F.I.R. itself which says that Mr. Vijay Kumar, SI, Jugsalai received instruction from SSP at 6.45 PM on 05.07.2011 that there was information of movement of alleged criminals. For three alleged criminals 14 policemen were sent on perfect information to SSP still all the alleged criminals were shot dead. None of them were arrested alive or even injured.

The claim of self-defense is to be proved during the trial. We are shockingly amazed by the fact that in this case even after named FIR and claim by both the Police Party and Mr. Upendra Singh to have killed the three alleged criminals the police failed to make any arrest even after two years of happening of such incident. Even the lower court appears to have failed to pass any reasonable order in this regard till

date, to arrest those mentioned in the FIR of Mr. Ramanuj Singh. There appears to be complete lawlessness. The CID has as usual submitted a false report concurring with the assertion of the said two FIRs.

Police tend to connive with one criminal gang with a view to eliminate the other criminal gang. This is a well-known formula of police but is fraught with serious threat to rule of law and civil society.

Demand –

As there exists prima facie evidence and a credible F.I.R. against all the accused the incident must be investigated by an independent agency like NHRC and till then all the accused including other suspects viz. SSP Mr. Akhilesh Jha, Mr. Vijay Kumar and all the rest 13 police officers along with Mr. Upendra Singh and his body Guard must be arrested and sent to jail lest they influence and/or threaten the crucial eyewitnesses.

Background of Upendra Singh – Upendra Singh at one pint of time secured a Railway Parking contract at Tatanagar Station. There used to be scuffle with Auto Drivers occasionally purportedly by reason of terror tactics of the men of Mr. Upendra Singh. In one such incident one of the Auto Drivers was killed in firing by the men of Mr. Upendra Singh, a criminal case against that is still pending with civil court of Jamshedpur. Further his past background is also said to be of doubtful history.

Role of judiciary (Lower Court) –

It is difficult to believe that in an alleged encounter well published and analyzed by the newspapers and the local electric media is still waiting in the lower court for an odd initial

order under the same. This can't be a matter of delay in proceedings only. The court has a duty to ensure justice and in matter so highlighted by the media it was expected to act sensibly.

It has been widely observed that dozens of cases have been registered in the lower courts for inquiry where the same have been referred to the police. Police in most of those cases mismanaged the inquiries only by reason of its corrupt and inefficient machinery but the court is still sitting idle on those cases and even on reference refused to take cognizance of the same.

Previous precedents –

In a similar incident one Ajoy Kumar Barman was killed in broad day light at Golmuri Plaza allegedly by the owner of T M Jewellers and his henchmen in connivance with the police. One Sanjeet Munda was killed by one Nagarik Adhikar Suraksha Samiti member in connivance with the police in the Gurabandha area. No arrests have been made in those two cases either. The police appear to have turned facilitator for the influential who if ready to accommodate the police may get their rivals or adversaries killed through them. We demand reference of these two cases also to the independent agency and arrest of delinquents.

The status of inquiries made under Right to Information Act, 2005 -

PUCL for the purpose of its inquiry sought the post mortem report as well as the forensic inquiry report of the state. The State tried everything including a fraudulent representation to refuse furnishing of those reports to us. Below here we provide a translated version of their communication with PUCL.:

Therefore, the copies of the F.I.R. have been sent to the C.I.D., Jharkhand, Ranchi.

Encl.: Copies of F.I.R. No. 53/11; 54/11 and 55/11.

Deputy S.P., City, East Singhbhum, Jamshedpur.

Letter No.- 2075, Dated:07.12.2011
Deputy S.P., East Singhbhum,
Jamshedpur

To,

Nishant Akhilesh

Subject: Demand of Copy of F.I.R. no. 53/11, 54/11, 55/11 registered at Sitaramdera P.S.

With reference to the subject mentioned as above, the copies of F.I.R. No. 53/11, 54/11 and 55/11 are attached herewith for your reference. Presently, the investigation in the aforesaid criminal complaints is being carried on by the Crime Investigation Department, Jharkhand, Ranchi (C.I.D.).

M.G.M. College, Jamshedpur
Letter No.: M.C./587/11 Dated: 29/08/2011
To,
Shri Nishant Akhilesh
State President, PUCL.
Sub.: Application for Information under RTI Act, 2005
Dear Sir,
A Letter bearing No. 1522 dated 18.08.2011 was addressed to Civil

Surgeon cum Chief Medical Officer, East Singhbhum, Jamshedpur asking for the copies of the post mortem report of (1) Late Nilesh Kumar; (2) Late Vikash Ojha and (3) Late Guddu Singh.
With reference to the letter mentioned as above, a letter was addressed to the Departmental Head, F.M.T. Department, M.G. Medical College, Jamshedpur and it was informed vide Letter No. 17/11

dated 25.08.2011 that furnishing of Post Mortem Report was prohibited under RTI Act, 2005. It is further advised to consult the Investigation Officer in this regard. The copies of the Post Mortem Report are available with the Investigation Officer bearing No. 789/11, 790/11 and 791/11 dated 07.07.2011.
Thanking You
Dr. Ratan Kumar, Public Information Officer, M.G.M. College

Letter No.: 2458 Jamshedpur dated 18/12/2010
From: Superintendent
M.G.M. College Hospital, Jamshedpur.
To,
Deputy Commissioner, Development Asst. Public Information Officer East SinghBhum, Jamshedpur
Sub: Application for Information under RTI Act, 2005

Ref.: Your Letter No. 913/Go dated 11/11/10
Dear Sir,
With reference to the letter and subject mention as above, it is stated that no such facility of PIO/Asst. PIO/ Appellate Authority, is provided by the Government, for this department.
It is further stated that the following officers are recognized for providing

information under RTI Act, 2005-
1) First Appellate Authority - Deputy Director, District Health Services
2) Public Information Officer - District Civil Surgeon
3) Asst. PIO - District Chief Medical Officer.
Thanking You
Superintendent
M.G.M. College Hospital, Jamshedpur.

Letter No. - 281/J.CU. Dated 17.08.2011
To,
Deputy S.P. (City)
East Singhbhum, Jamshedpur
Ref.: Letter from Department of S.P. bearing No. 19933/C dated 14.08.2011

Sub.: Application for Information under RTI Act, 2005
With reference to the letter and subject mentioned as above the information comes under the provisions of the RTI Act, 2005. The copy of the information should be sent to applicant and also to the he department of S.P.

Deputy S.P.
Asth. PIO
East Singhbhum, Jamshedpur

CC: Nishant Akhilesh, President PUCL, Jharkhand, 27, Tulsi Bahvan, Basement, Bistupur, Jamshedpur.

From: Civil Surgeon cum Chief Medical Officer, East Singhbhum, Jamshedpur
To,
Principal, M.G.M. Medical College, Jamshedpur
Jamshedpur Dated 18.08.2011
Sub.: Application for Information under RTI Act, 2005
Sir,
With reference to the subject mentioned as above, information is sought under RTI Act 2005 by Nishant Akhilesh, State President,

PUCL. The following information is asked to be furnished to him:
Post Mortem Report of the three persons killed in the encounter with Police at Mango Bus Stand at 05.07.2011. Name of the persons are:
(1) Late Nilesh Kumar; (2) Late Vikash Ojha and (3) Late Guddu Singh.
Hence, it is requested to send the Report to the applicant within 7 days from the receipt of this letter and also a copy to be sent to the signatories of this letter.

Yours Faithfully
Civil Surgeon cum Chief Medical Officer, East Singhbhum, Jamshedpur
CC: Nishant Akhilesh, PUCL, Jharkhand, 27, Tulsi Bahvan, Basement, Bistupur, Jamshedpur.
FOR PUCL, Jharkhand & Singhbhum
Nishant Akhilesh, State President;
Prof. Jagdish Mishra, President, Singhbhum; **B.N. Das**, State, Vice-President □

PUCL Jharkhand: Press Release: 04 October 2013

Seminar on "Human Rights and Fake Encounters"

PUCL organized a seminar on "Human Rights and Fake Encounters" on 04.10.2013 at Center For Excellence Library, Bistupur from

2:00 P.M. to 5:00 PM. Prof. B. N. Das, Vice President, Jharkhand PUCL, welcomed the participants. The subject was introduced by Prof.

Jagdish Mishra, Singhbhum President PUCL who elucidated the basics of human rights. Noted Social Activist, Mr. Jawaharlal Sharma

referred guidelines on fake encounter enunciated by Hon'ble Maharashtra High Court in a PUCL Case. The arguments on the issue of encounter and fake encounter were led by Shri Siya Sharan Sharma, Shri Manthan, Mr. Alok Kumar, Capt Tarun, Prof. M. A. Makki, Prof. SMS Hoda, Prof. Amitabh Bose and Shri Dinesh Sharma highlighting some of the social contrasts leading to a voice of justification for such fake encounters by a section of the society.

National Vice President of PUCL, Mr. Chitranjan Singh, who was a guest speaker today pointedly underpinned

the theoretical frame work of PUCL by concluding that Fake encounters are perpetrated by the state against rule of law. He added that even the remotest justification for a fake encounters will lead to negation of rule of law in the country which is dangerous for the survival of democracy in India, therefore people should **desist from justifying such extra-judicial killings** on any ground whatsoever.

The meeting was conducted by Shri Arvind Anjum who also intervened in concluding the arguments. The discussion was finally concluded by Nishant Akhilesh, State President PUCL, Jharkhand, by stating that

Human Rights are addressed against State therefore, State is not allowed to violate the fundamental rights of the people conferred by the constitution either by legislation or by any executive action whatsoever. Fake encounters are most despicable infringements of Fundamental Rights of the people of India which is destructive of rule of law.

State secretary Hareshwar Singh, thanked the gathering in behalf of PUCL.

For PUCL, Singhbhum

Nishant Akhilesh, State President, Jharkhand PUCL □

Army's Right to Rape and Kill Must Go if Northeast is to be Part of India

T J S George

It was pop culture at its defiant best when the Nirvana band sang in 1993: Rape me, Rape me again/ Hate me, Do it and do it again/ Waste me, Rape me, my friend. Kurt Cobain who wrote the lines described it as "a life-affirming song... like she is saying. 'Go ahead, rape me, beat me. You'll never kill me. I'll survive this and I'm going to **ing rape you one of these days and you won't even know it". For the pop stars of America, it was one more Indian army, rape me!" They had been reduced to impotent anger by the rape of a local woman, Thangjam Manorama, by animals in uniform.

As always, it was with honourable intentions that army and paramilitary units assigned to the disturbed areas of Kashmir and the Northeast were given special powers and operational freedom above and beyond the penal code. But, as always, honourable intentions quickly turned into utterly dishonourable conduct on the ground. The Indian Army, of which all Indians are proud, allowed itself to be maligned by jab of fashionable militancy. For a lost generation of women in Manipur in 2004, it was a question of survival when a bunch of them marched to the gates of an army camp, stripped themselves naked and shouted, " its own excesses.

A 24x7 reminder of its atrocities and

an astonishing phenomenon of our times is Irom Sharmila, described variously as the Iron Lady of Manipur and as Mengoubi, the fair one. Provoked into a protest fast in 2000, she is into the 13th year now, with her rather pathetic nose-feeding photograph becoming familiar in all countries of the world.

Her ordeal began with 'The Malom massacre', the shooting down by Assam Rifles of 10 civilians waiting for a bus. Among those killed was an 18-year-old girl who was a National Child Bravery Award winner. Her bravery was of no use before cowards with guns.

Outraged but helpless, Sharmila did the only thing she could: Deny herself food. The government never tackled the basic problems behind her protest, but simply resorted to farcical ways to ensure that she did not die. She received support from political parties, youth organisations and international associations. Awards came, as did books and songs and plays. In her honour, Pune University started scholarships to enable 39 Manipuri girls to take degree courses.

What is a blot-yet another blot-on our democracy is that despite the non-stop protest by Sharmila and her supporters, and despite the continuing killings that trigger mass demonstrations in Kashmir, nothing

is done to address the issue. Army bosses often say that their operations against militants in the border areas cannot go on without the protective shield of the Armed Forces (Special Powers) Act. Even if we accept that argument, does it follow that abuses of the Act should be condoned? Most ironically, despite all these many years, the Army's operations in the border areas have neither put down the militancy nor improved India's position in the troubled areas. In fact, the operations have demonstrably generated hatred among the local peoples against India whom they see as a different country. So what is the point of AFSPA?

This is why the Supreme Court's anguished strictures against the government have not come a day too soon. An expert committee had found that seven persons were killed in Manipur in fake encounters in six cases. That this committee comprised three men of exemplary credentials -Justice Santosh Hegde, former Chief Election Commissioner J M Lyngdoh and retired Director General of Police Ajay Kumar Singh- gave its findings rare authority.

The Supreme Court said, "We can't tell you how sorrowful we are. What is the use of sitting here? Everything appears meaningless... How many times this court laid down guidelines.

We want to proceed further and these things should not happen in future."
A lame-duck government will not

proceed further. The people's only hope is that the Supreme Court will. The Hegde committee recommended the withdrawal of the AFSPA. That

would be a welcome starting point. Enough is enough.
14th April 2013 □

Civil Liberties & The Armed Forces (Special Powers) Act

Mahi Pal Singh

(This article was written in 2004 exclusively for the PUCL Bulletin but for unknown reasons could not be published in it at that time. It was later published in The Radical Humanist in September & October 2004, in two parts. It is being published in two parts here because the issues raised herein have not been resolved so far and the facts provided in the article are as relevant even today as they were in 2004. Ed.)

The economic policies based on the principles of globalization and privatization have, in their wake, brought to this country, imported consumer goods from developed countries for which India has provided a market with a vast potential, even if at the cost of the closure of a very large number of local manufacturing units resulting in the unemployment of a still larger workforce. This has done tremendous harm to the conditions of physical survival of those for whom keeping together their body and soul was never an easy task. At the same time the increased inclination of the youth belonging to the middle class, (in any case, the elite sections have always shown a tendency to be consumerist going to the extent of a blatant and vulgar display of their wealth earned, nay, amassed through the exploitation of the working classes, corrupt means or speculation in the share-markets - those legally sanctioned, unproductive gambling houses of the rich meant to deprive the unsuspecting people belonging to the lower middle class of their hard-earned and frugally saved money, if our experience of the last 13 years is any evidence), has taken away all his sense of honour, human dignity and the commitment to protect his civil liberties and human rights. His commitment towards his fellow human beings and their welfare has also received a serious jolt as a result of the mad pursuit of his self-centered motives.

To cater to the needs of the elite sections of our society, including the neo-rich, who have reaped the fruits of the new economic order, and also the not-so-rich, who emulate the other two classes because people from these classes spending a lot of money on luxuries, (and also the

trigger-happy film hero killing people with impunity), attract them to the extent of becoming their role models, are coming up the costly shopping malls and multiplexes in all metropolitan cities as a result of which the new culture of consumerism has drowned the culture of human rights discourse in the country.

How else should one interpret the trend as reflected by the print as well as the electronic media where indecent photographs - so much so that, thanks to the efforts of the journalistic fraternity, some sections of the papers have come to be known as 'porn pages' - and stories from the film and fashion world and descriptions of marriages and parties of the rich invariably fill a large portion of the front pages of most of our national dailies and they also get a place of prominence on the news channels, and people's struggles, protests and movements even for their basic rights and tales of their sufferings and deaths due to hunger, mal-nutrition and at the hands of various agencies of the state hardly find a mention even in an obscure corner of the news-papers? Otherwise, how does one explain the complete obliteration of everything related to the imposition of emergency in the country on 26th June, 1975, the greatest danger to democracy, civil liberties and human rights this country has faced ever since attaining independence in 1947, from the news-papers and the electronic media even on the anniversary of that black day, and of any reports of meetings held on that day to observe anti-emergency day to keep alive a continuous struggle for the protection of our civil and political rights from the next day's news-papers, as if an emergency had

never been imposed in this country, or perhaps to remember such events is considered a useless exercise to be undertaken only by some intellectuals in their seminar rooms as a ritual having nothing to do with the present day life.

It would be a happy turn of events if we were no more required to recall such events, if they really became a matter of the past, never to recur again. But as things stand today the danger to our civil and political rights has not diminished a bit even after the 44th Constitutional Amendment to Article 359 disabling the President from suspending Articles 20 and 21 of the Constitution of India, thereby denying him the power to forfeit the fundamental right to life and liberty of any person even during a period of promulgation of Emergency in the country. Although promulgation of Emergency has been made more difficult, than it was in 1975, because 44th Amendment has introduced 'armed rebellion' in place of 'internal disturbance' as the condition for such a promulgation, and such a promulgation has also to be endorsed by a special majority in Parliament, yet there have been lesser laws which have been depriving people of the country of their basic civil and political rights with impunity, and what is worse, they do not require any such sanction of 'special majority' in Parliament for their imposition.

Why to Remember the Emergency?

For those who suffered the excesses of the Emergency, it will always remain a nightmarish experience never to be forgotten. But the young generation can hardly understand the importance of keeping its memories alive; we must not forget that those events took place twenty

nine years ago. How can the youth of today know that "the darkest chapter in the history of independent India was written on the midnight of 25-26 June, 1975?" and that "With the imposition of Emergency on that day, thousands of people including opposition leaders were arrested and put in jail, and all the important fundamental rights were suspended. There were violations of all standards of morality, justice, and freedom; acts of barbarism and violence were committed. With the promulgation of Emergency, all rights and justice, civil liberties, law and order were trodden under feet. The Emergency waged war upon democracy. Excesses that were committed were not accidental, but the logical and deliberate acts of an authoritarian political philosophy. The object of this philosophy was the destruction of all freedoms, and triumph of the strong." (Remembering the Emergency - Dr. R.M. Pal, PUCL Bulletin, June 1997).

We have to remember that the Emergency was imposed in the country because on a petition filed by Late Sh. Raj Narayan who had been defeated in a parliamentary election by Mrs. Indira Gandhi, the then Prime Minister, from Rai Bareilly, in its judgement delivered on June 12, 1975, the Allahabad High Court had held Mrs. Gandhi guilty of corrupt practices in her election, and declared her election as null and void, and that in a meeting on June 25, all opposition leaders had declared that if she did not quit as the Prime Minister of the country, they would start a civil disobedience movement from June 29. Defying the court judgement and making a mockery of the rule of law, Mrs. Gandhi declared a state of Emergency in the country, usurping all authority into her own hands, suspending fundamental rights including the right to life and liberty only to perpetuate her illegal, immoral and authoritarian rule by ruthlessly silencing all opposition by putting all opposition leaders behind the bars, without warrants or charge-sheets and for periods nobody knew how long, and also gagging all the national press, first by ordering their electric supply to be cut and then through the introduction of very stringent

and censoring laws which did not allow anything to be published against the Prime Minister or her decisions, or any of the excesses perpetrated by her or her son Sanjay Gandhi, who enjoyed the status of an extra-constitutional authority and whose orders, as a member of the Nehru family wrote later, "sometimes verging on criminality were obeyed without question." Under his leadership the Youth Congress, the youth wing of the Congress (Indira), had acquired the notoriety as a band of goons and its leaders as the unelected executives of the areas under their command, and government officers including police SHOs thought it to be their most solemn duty to obey their word of mouth as if it had come from the Prime Minister herself. Such was the atmosphere during the Emergency regime of Mrs. Gandhi and her infamous son Sanjay Gandhi that one could not move freely, talk freely or breathe freely in this very democratic country of ours. What is even more disturbing is that "the fundamental lack of commitment to values of freedom and democracy, tolerance of dissent, and the capacity to look beyond one's immediate interests which had made the intellectuals, with a few honourable exceptions, accept the Emergency and abide by its soul destroying demands." (Remembering the Emergency).

If democracy as a form of government, by and of the people, and the cardinal values like civil liberties and political rights, the freedom of the press, the right to profess any faith and the right to elect any government are to be preserved and protected, the people themselves have to exercise an eternal vigilance to ensure that those in power do not succeed in subverting the democratic system to satisfy their greed to stick to power through unconstitutional, corrupt or divisive means because all shades of politicians and political parties have adopted these means to come to power, and once in power, to stick to it. If Mrs. Gandhi's Emergency regime was an example of the first kind, Narsimha Rao's government was an example of the second and Narendra Modi's present government

in Gujarat is an example of the third kind. Atal Behari Vajpayee's NDA (National Democratic Alliance) government also came to power riding the chariot of Hindutva, moving on the wheels of the divisive agenda of building the Ram temple at the site where Babri Masjid stood earlier at Ayodhya, to consolidate the majority Hindu vote and garner its support for achieving its narrow political end of capturing power, and his government also made a frantic effort of keeping to stick to power by adopting the corrupt means of spending something like Rs. Seven hundred and fifty crores from the public exchequer to boost his own image, and his party's, through the 'Feel-good' and 'India Shining' campaigns. It is a different matter that these slogans invented by the think-tanks of the BJP could not befooled the uneducated and poor people of this country who thwarted their attempts to regain power at the Centre. To quote once again Dr. Pal from the article cited above, "We must take note of increasing corruption, manipulative politics, and other evils in the system which have been systematically eroding the values of democracy and destroying it."

Anti-democratic Draconian Laws in the Garb of Public Order Laws

In the name of bringing under control various terrorist and disruptive activities, the state of India has brought about various legislations and Acts ever since the country got independence in 1947. While it is true that various groups in different parts of the country took to arms or indulged in unconstitutional methods to press their demands, the methods adopted by the state to bring them into the mainstream have also been dubious. While nobody having a faith in the rule of law can and should support the use of arms to press any demands, however legitimate they might be, it is also equally true that a serious attempt has never been made to understand their problems, or to find out the compelling reasons which might have made them take to arms against the state. Poor, deprived people who had hoped to get a better deal at the hands of local rulers after attaining independence from foreign rulers, felt neglected and cheated when nothing was done to

improve their conditions and they continued to suffer from starvation and disease. Their appeals of SOS continued to go unheeded and unheard and when they tried to organize themselves into a movement to force the powers that be to listen to their voices they got bullets in reply. When out of desperation they took to arms, they got Maintenance of Internal Security Act (MISA), Terrorist and Disruptive Activities (Prevention) Act (TADA), National Security Act (NSA), Armed Forces (Special Powers) Act (AFSPA) and Prevention of Terrorist Act (POTA). While it is true that all these special Acts came into being with the purported intention of bringing under control only those few who were thought to be uncontrollable otherwise, and that too for a limited time and purpose, the fact remains that all such people could well have been brought under control under the ordinary criminal law, under sections 121 to 130, 153A, 294 and 295 of IPC. Another fact that cannot be contradicted is that all of them have invariably been used for a much longer period than they were originally planned to exist for. And the most dangerous common factor amongst them is that all of them have been used against the most innocent people to deprive them of their life and liberty, when these hapless people have tried to voice their grievances, and that too for excruciatingly long periods. All of them have been misused, by those in power, to subvert democracy they were purported to protect. All of them have been used ruthlessly against the people they were supposed to protect, to silence the voice of dissent, to crush the right to demonstrate against injustice and to decimate political opposition.

For example, TADA, which came into existence a decade after the imposition of Emergency in June 1975, following the assassination of Prime Minister Indira Gandhi which in turn was followed by a ruthless collective massacre of the members of the Sikh community, is still considered by the Sikh community as an Act which was brought into force as a measure of continuing vengeance against Punjab. It was later extended to Kashmir, Andhra

Pradesh, Assam, LTTE Tamils in Tamil Nadu and against Muslims after the demolition of Babri Masjid. This Act has been perhaps the most criticized law ever since independence. It was also one of the most 'lawless' laws along with the Armed Forces (Special Powers) Act and N.S.A. It gave wide powers to the police to arrest and to detain people without trial under its custody for periods which could run up to one year and confessions made before a senior police officer were admissible as evidence before the court of law. The Act thus made a mockery of civil liberties and the fundamental rights of the people as laid down in the Constitution of India, and in fact, of democracy itself.

The following statistics prove beyond any doubt how this law was misused against the so-called 'terrorists': "This law was abused in almost every state for silencing activists and political opponents. According to the NHRC 165 men above the age of 75 years, 160 women, and 43 children below the age of 15 years were detained under this Act until the end of 1994, and the oldest detainee was an 83 years old woman in Gujarat," ('Open Letter to the Prime Minister for the Repeal of TADA' by K.G. Kannabiran - PUCL Bulletin, May, 1995.)

Within a short period of its passage by the Parliament, POTA has also achieved the same notoriety which was earlier enjoyed by TADA, and the list of those arrested under it in a short period in Chhatisgarh alone reads like the list given above. Its misuse to silence the opposition is exemplified by the detention of Vaiko, a prominent opposition leader in Tamil Nadu, by J. Jaylalithhaa's government, and his release by the POTA court under the directions of the Supreme Court, as the charges framed against him were not found tenable under POTA. The very fact that of the 76,166 persons arrested under TADA till 1995, when the Act was allowed to lapse, only 843 (that is only 1.11 per cent) were convicted, as per Union Home Ministry's own statistics, is enough to show how widely and wildly the Act was misused to deprive people of their right to life and liberty by various governments.

Armed Forces (Special Powers) Act, 1958 - a Tool to Subvert Democracy in the North-Eastern States

The Armed Forces (Special Powers) Act [AFSPA] which has been in force for forty six years since 1958 is in clear violation of the letter and spirit of the Constitution and has led to an undeclared Emergency and Martial law in the North-Eastern states of the country. The AFSPA has been responsible for the untold misery, death, rape and torture and the denial of civil and political rights to the people of Nagaland, Manipur and Assam. Extra-legal killings have become the order of the day there and people are denied their civil and political rights because the armed forces there enjoy unfettered powers over areas declared as 'disturbed area' prohibiting the assembly of five or more people. The citizen is wholly dependent upon the whimsical and subjective satisfaction of a warrant officer or a non-commissioned officer who becomes the ultimate officer to define "order" and determines the steps to be taken to maintain "order". Under Section 4(a) of the Act if the concerned officer is of the opinion that it is necessary to maintain public order, after giving such due warning as he may consider necessary "fire upon, or use such force, even to the causing of death," and under sub-section (c) arrest any person without warrant who has, or is likely to commit a cognizable offence; and under sub-section (d) enter, and search without warrant any premises to make such arrest." And the worst part of it all is that to take such action the officer needs no permission from a superior and is not answerable to anyone. Under Section 197 of the Code of Criminal Procedure (Cr.P.C.) no court can take cognizance of an offence alleged to have been committed by a public servant or member of the Armed Forces while acting or purporting to act in the discharge of his official duty except with the previous sanction of the central or state government whereas the permission of the central government has to be obtained to prosecute a military officer under Section 7 of the Armed Forces (Special Powers) Act, which practically means that people

have no right to approach the court and launch prosecution for atrocities committed by any such officer. Even various commissions of enquiry appointed by the government have found security forces guilty of gross human rights violations but in most of the cases the guilty officials have not been prosecuted for the offences committed by them.

In Manipur, where AFSPA was extended 27 years ago in the name of fighting militancy, successive governments have retained it and there have been complaints of military excesses from the people. Only recently a 30-year-old woman, Manorama Devi, was allegedly raped and killed by Assam Rifles personnel. Students supported by many NGOs and human rights organizations there

have been agitating for action against the guilty as well as for the repeal of AFSPA which has become a tool in the hands of rifle wielding criminals to perpetrate such crimes.

(To be continued in the next issue...)

Courtesy: The Radical Humanist, Nos. 414-15, September & October 2004 □

Foeticide and Dowry Real Killers of women in western Uttar Pradesh:

Not Love Jihad, As Purported By Some Ashish Tripathi

Lucknow: The threat to *bahu-betis* (women) in west UP is actually from their families, not from 'Love Jihad', a term coined by right wing groups to describe a holy war waged by Muslim boys to trap and convert Hindu women.

Love Jihad is said to be one of the factors that has provoked communal passions in the area for the past one year, eventually triggering the blood bath, killing 62 innocents and turning over 50,000 refugees in their homeland. The starting point was the killing of three youth at Kawal village in Muzaffarnagar over harassment of girls. Even after riots, every incident of harassment of a Hindu girl involving Muslims, even with a remote link, is hyped up as Love Jihad.

But, there is no evidence to support the Love Jihad theory but female foeticide, poor maternal care and dowry, together kill one bahu/beti every four minutes in these areas.

In the past 10 years, almost all major political parties have ruled UP but, no movement or campaign, as the one which stoked communal flare-up, has been witnessed to address the real threat, which has now acquired monstrous proportions.

Sample this: Every day, foeticide kills 330 unborn girls in UP, poor maternal health 46 women and dowry six women-total 382 per day. This amounts to one killing per four minutes. The same applies to west UP.

Several government and non-government studies, including one by

United Nation Population Fund, have revealed that the female foeticide is rampant in UP and the situation is worse in the western parts. The studies gain credence from the rising number of ultrasound and in-vitro fertilisation centres and decline in child sex ratio (number of girls against 1000 boys in 0-6 age group). While the centres where sex determination can be done have increased in UP from 400 in 2001 to over 5,000 in 2013, the CSR has declined from 916 in 2001 Census to 902 in 2011, a 14-point drop. This means, in UP, only 902 girls take birth and survive till six years against 1,000 boys.

The national CSR is 919 and natural 945. This means in the past six years 7.2 lakh female fetuses were killed, which comes to 1.20 lakh every year, 10,000 every month and 330 daily.

The west UP, particularly the riot-hit area, has lowest CSRs in the state and have earned the dubious distinction of being called as 'killing fields for unborn girl child'. The CSR of Muzaffarnagar, for instance, is 863, which means 82 girls less than normal ratio. Similarly, the number of 'missing' girls in Meerut is 91, Baghpat 104, Bijnor 62 and Saharanpur 58.

"The betis are losing right to take birth and life because of highly patriarchal mindset which prefers boys over girls," said gynecologist-turned-activist Dr Neelam Singh, also member of several national bodies

formed under the PCPNDT Act to check female foeticide. "The skewed sex ratio also reflects in the child population in Census 2011. The number of boys in 0-6 age group is 1.56 crore, whereas girls 1.40 crore (total 2.96 crore)," she added.

Dr Singh warned, "The imbalance may lead to dangerous social and economic repercussions. Studies have revealed that it is a major factor for the rise in sex crime against women. Already, bride-buying has started as girls are not available for marriage in some west UP districts." The warning does not seem misplaced. According to the National Crime Records Bureau, rape cases doubled in UP from 911 in 2003 to 1963 in 2012. Of 1963, in one third (679) offenders were close family members, relatives or neighbours. Similarly, molestation increased by three times from 1098 in 2003 to 7661 in 2012.

If betis are being massacred, bahus are not safe either. The NCRB data shows around 187 bahus are being killed every month for dowry in UP. Dowry deaths in 2003 were 1322, which increased to 2244 in 2012, a 70% rise. And, the cases of cruelty by husbands increased by 2.5 times from 2626 in 2003 to 7661 in 2012.

UP ranks first in the country in dowry deaths and third in cruelty by husbands. The situation in western parts is no better. In 2012, around 108 cases of dowry deaths and cruelty were reported every month from the six districts (Muzaffarnagar,

Meerut, Bijnor, Saharanpur, Baghpat and Shamli)."Such crimes are reported from all communities and there is nothing substantial to suggest that one is targeting the other," said a senior police officer. When bahu and betis are under threat, how can mothers be secure? According to the latest Annual Health Survey the maternal mortality ratio of UP is 300, among highest in the

country. In comparison India's MMR is 212. The MMR is the number of women who die during pregnancy and childbirth, per 100,000 live births. This means every year 16,500 mothers die in UP while giving birth to their child, which amounts to 46 deaths per day. And, the average MMR of Muzaffarnagar, Saharanpur, Meerut, Baghpat and Bijnor is 240, which amounts to 1,100 maternal deaths

every month and 37 per day.

While madness continues, said Rakesh Rana, a Bijnor-based activist, instead of sensitising people against social ills, which is their duty in a democracy, the political parties and the government are exploiting patriarchal mindset and indulging in communal politics for electoral gains.

Courtesy :

epaper.timesofindia.com □

CRPP Statement on the arrest of Jayeeta Das: 7th August 2013

CRPP Statement on the arrest of Jayeeta Das

The **COMMITTEE FOR RELEASE OF POLITICAL PRISONERS [CRPP], West Bengal** (Preparatory Committee) expresses its deep concern over the arrest by the STF of one of the prominent women activists of democratic movements, Jayeeta Das, on August 1, 2013, and over the charges under various sections of Indian Penal Code that were slapped on her. The government is also trying to book her under UAPA, the most draconian piece of legislation ever since Rowlett Act, which is violative of Chief Minister Mamata Banerjee's own promise of not using the act in West Bengal.

Procedures not followed

1. She was picked up by *plain clothes sleuths* from the street near Charu Market of south Kolkata. It is patently illegal and absolute violation of Supreme Court's directives of 1996, set out in the famous D.K. Basu case, which stipulates that at the time of arrest, insignia and designation of the arresting police personnel must be prominently displayed. The apex court did not provide any exception to any kind of investing agency.

2. It is mandatory, since the above-noted judgment of Supreme Court and after 2006, under section 50A of Criminal procedure, [Cr. P.c.], to prepare the memo of arrest, and also inspection memo in connection with the arrest made; as because Jayeeta was picked from the street

,the arresting agency was duty-bound to inform her nearest kin – husband, father or mother – immediately after the arrest. That was deliberately flouted. Hence, she was held incommunicado for hours together.

3. As because no memo of arrest was prepared at the time of arrest, no signature of on-the-spot witnesses [i.e. shop owner, passer-by] were taken. The signature of the arrestee was also not taken at the spot. Hence, we have reason to say that the memo of arrest, which was supposed to be produced before the learned magistrate was false and fabricated evidence.

No inspection memo [regarding health condition, and external injury on the person of the arrestee, if any, etc] was also not prepared and no copy was given to the arrestee. Both are complete violations of the Supreme Court Order.

Search

Jayeeta's house was raided without any search warrant which again is a blatant violation of the law of the land. It is reported that the father of Jayeeta was forced to sign a paper which was blank. And even after such illegal and sudden search, no 'indiscriminating document(s)' were reportedly found. One voter ID card is among the seized materials which not only proves that she is a bonafide voter, but also proves that she acts openly, has been exercising her fundamental

constitutional right of freedom of expression as a citizen. In the court, the police failed to exhibit/submit any material that can be termed illegal.

False Charges

Yet the police charged her with serious sections of the Indian Penal Code with the prayer to the court to book her under various sections of UAPA. However, it is clear from several versions of the police, as appeared in the media, her 'offences' do not attract any kind of penal section.

If we analyze police versions, we can prepare a list of the so-called "CRIMES" alleged to have been committed by Jayeeta Das:

1. "SHE IS VERY ACTIVE. Is it an offence under any Indian law?"

2. "Active participant in Nonadanga "movement and in Kamdhuni in recent past." To participate in a democratic movement and make protest in a lawful manner is no offence at all in the Indian Penal Code.

3. Previously, "she was active in Nandigram". Who was not? The present Chief Minister and a large number of social activists were active participants in Nandigram in support of agitators. If their participation is no offence, then how can Jayeeta's participation be treated as an activity against the State? If it is so, why not then the present CM and others should also not be charged under the same sections of Indian Penal Code?

Why was Jayeeta singled out then? 4. Jayeeta has been accused of visiting Chandi Sarkar's house. What is the harm in it, we wonder. Chandi Sarkar is very much at home, not an absconder at all, as the STF again want to make people believe in order to create a social legitimacy to curb all dissident voices. Do the West Bengal government and its Special task Force mean to say that they would dictate to the citizens whose house should one visit or not? Is it a crime to visit Chandi Sarkar's place at his daughter's wedding? Such obnoxious and fascistic attempts can only deserve universal condemnation.

Why?

We have reasons to believe that, even after having full knowledge of her open activities through regular fascistic surveillance, the police arrested her under false charges to please their political boss, the Chief Minister of West Bengal with intent to prove the CM's statement that some "Maoists were present in Kamdhuni" correct. Had she been attached to underground organization, she would not have been spared so long. The previous Left Front government earned much notoriety and public hatred in pursuing this policy of witch-hunting. Now this new state government is toeing the same policy resulting in illegal, criminal arrests of social and democratic activists with longstanding record of standing actively by the side of the people. It

is pertinent to recall that in last two years a quite good number of social activists in rural and urban areas including Debolina Chakraborty, Partho Sarathi Roy, Abhigyan Sarkar and many others had been routinely rounded up. Sabyasachi Goswami and Zakir Hussain had been picked up and tortured in new cooked-up cases again even after being acquitted in another cooked-up case after spending 6-7 years in prison. Very recently, according to media reports, Chandi Sarkar, who had also been acquitted in another case after being in prison for 6-7 years, is being threatened to be booked under new false charges. We are deeply concerned at these authoritarian tendencies, besides many others, to create a police raj on the part of the newly formed WB government.

Our Demands:

* We hold that this policy of stamping democratic activists as "Maoists" is an assault on democracy and we in unequivocal terms condemn this policy of government and demand UNCONDITIONAL RELEASE OF JAYEETA AND WITHDRAWAL OF ALL CASES AGAINST HER.

* Jayeeta's lawyer must be allowed to be present at the time of interrogation at regular intervals, as permissible under SC's directives in DK Basu case.

* In the name of interrogation, Jayeeta must not be subjected to deprivation of sleep, continuous interrogation for 8-9 hours, physical and mental torture; adequate rest must be

provided as per international human rights norms for prisoners.

* We also maintain that the WB government should immediately stop intimidating country's citizens like Chandi Sarkar and come to their senses. It is a pity that a government that had been formed with people's support is trampling underfoot the constitutional rights of its citizens.

* We also condemn police atrocities on Gorkhaland activists and demand release of all activists, stop arresting activists by reviving old cases and demand for dialogue with the stakeholders.

We Also Demand:

* Unconditional release of all political prisoners languishing in correctional homes for years together.

* There must not be any change/amendment relating to Section 24 of West Bengal Correctional Services Act, 1992 which deals with the criteria for the status of political prisoners. We also demand that the proposed amendment bill, scheduled to be placed in the assembly on August 25, 2013, be withdrawn.

* The Government should honour its own promise of not implementing UAPA in West Bengal. We demand that all the arrestees booked under UAPA since 2009, must be released.

Sujato Bhadra, Amit Bhattacharyya, Sukhendu Bhattacharyya, Guru Prasad Kar, Arun Chakraborty, Ipsita Samanta (Press Club of Kolkata)
(Forwarded by Sudha Bhardwaj)

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Report of NCHRO Public Hearing at Jola Camp at Muzaffarnagar: 30.9.2013, New Delhi

Report of NCHRO Public Hearing At Jola Camp At Muzaffarnagar

National Confederation of Human Rights Organisations (NCHRO) conducted a Public Hearing on 29 Sep 2013 at Jola Camp in Muzaffar Nagar. The panel consists of Adv. N.D. Pancholi, (PUCL, Delhi), Prof. Nandini Sundar (Delhi University),

Adv. K.P. Mohamad Shareef (Vice-Chairperson, NCHRO), Adv. Vijendra Kumar Kasana (Delhi), Adv. Y.K. Shabana (CPDR, Mumbai), Adv. Sharfuddin (Kanpur), Swati Sinha (Student Activist, Delhi), Adv. Amith (Delhi), Mool Chand (Journalist,

Delhi) and Dr. Rahul Singh (BAMCEF, Delhi) heard the vows and testimonies of riot victims of Muzaffarnagar.

The total number of 182 victims including injured boys, men and women also deposed the atrocities

meted out from the miscreants. Some of them were brought the copies of FIR and the written complaints. The Public Tribunal could identify the non-reporting of umpteen number of crimes. The victims also deposed how the violence started and the manner in which the culprits carried out the crimes. Further they testified the incidents of the arson, looting, manhandling and murder. The details of some of the missing persons also made mentioned by the witnesses.

Victims' testimonies: The victims described how they started being attacked from the night of 7th September after the Jat mahapanchayat, and fled to the relief camp on the 7th and 8th, arriving at different times. Some of the refugees were brought on the 8th evening by the forces, but others arrived on their own, after a family member had been killed enroute. Women and children had to hide in the jungle all-night, hungry and thirsty.

Nature of loss: Women described how their husbands had been brutally killed; and many of them reported that their entire house had been ransacked and looted. Many houses were burnt.

Prior planning: In one village on the 7th night there was a call from the temple to Jats to gather. Some people also reported that weapons had been stockpiled in different shops and in the temple – sickles, guns, lathis and other weapons.

Role of police: The victims said that

despite repeatedly phoning the police, either they did not take the call or they said they did not have the time. They said that police personnel were mute spectators during violence. If the police had risen to the occasion, the major chunk of the untoward incidents could have been averted.

Relations with Jats: The Muslims said they did not expect this behaviour from their Jat neighbours as there was no history of enmity in the villages. Women were especially hurt by seeing their Jat woman neighbours climb on to the roofs of their houses and clap when they were being attacked. This is very similar to what happened in Gujarat 2002. But people also reported cases of Jats saving them, often at considerable risk to their own lives.

Social conditions: Almost all those who have been attacked belong to the lower castes among Muslims, and worked as labour in the villages, or as barbers and other occupations.

Compensation: The victims have not got adequate compensation for the injuries and loss sustained. While some have got cheques for loss of kin, others have not. The compensation has not been properly ascertained and assessed promptly.

Aftermath: None of them want to return to their villages as they are scared.

FIRs: The panel was very much anxious on the contents of many FIRs registered, since it seems to

be very feeble in the eye of law. A number of local advocates rendered full cooperation and assistance to the panel.

The number of local advocates rendered full cooperation and assistance to the panel.

In nutshell,

1. Several crimes have not been identified
2. Most of the crimes have not been registered
3. Many of the FIRs registered are ambiguous
4. There was bias, lapses and inaction on the side of Police
5. The thousands of culprits are still absconding and the police is not making any earnest endeavour to nab the Jaat miscreants.
6. The compensation shall be paid to all the victims and it should be ascertained and assessed properly and the same should be promptly paid.
7. The steps to be taken by the government machinery in war footing to locate the missing persons and issue a white paper to remove the fear of the victims and public.

N.D. Pancholi, Head of the Panel Press Conference was attended by Adv. N.D. Pancholi, Adv. K.P. Mohammad Shareef, Adv. Y.K. Shabana, Adv. Vijendra Kumar Kasana, Reny Ayline and Adv. A. Mohamed Yusuff. □

Organisational Queries

We receive from time to time queries/requests from new members regarding the PUCL identity card and also regarding the privileges of the **Life** members and **Patron** members as compared to **Annual** members.

The three types of membership, *i.e.*, **Yearly**, **Life**, and **Patron**, do not represent a hierarchy of membership. All members are equal. Life membership and Patron membership simply afford an opportunity to those who desire to contribute some extra money to the PUCL to strengthen its financial position. No membership carries any privilege. All members shoulder the burden of fulfilling the aims and objects of the PUCL. The PUCL does not issue any identity cards to its members as they are not supposed to take initiative independently.

V. Suresh, National General Secretary, PUCL □

30 September 2013, New Delhi

NCHRO Preliminary Report of Fact Finding Inquiry on Muzaffarnagar Riots

National Confederation of Human Rights Organisations (NCHRO) conducted a fact-finding inquiry on 27 & 28 Sep 2013 on Muzaffar Nagar riots.

The team consists of Reny Ayline (Secretary, NCHRO), Adv Y.K. Shabana (CPDR, Mumbai), Adv. A. Mohamed Yusuff - Tamilnadu, Adv. Vijendra Kumar Kasana, Delhi.

The team visited three relief camps situated at Loi, Jogia Geda and Kandhla and have enquired number of victims.

We also visited the Meerut Medical College Hospital and met victims under treatment.

Then we had an elaborate discussion with Dr. Subash Singh, Superintendent of the Hospital; Mr. Koshal Raj Sharma, District Magistrate of Muzaffar Nagar and Mrs. Kalpana Saxena, Senior Superintendent of Police (in-charge), Muzaffar Nagar.

Observations and Findings

1. This is the planned attack by the Jaat community on Muslims and they are using local bodies to spread violence.
2. The police was openly supporting the communal forces. The SSP (in-charge) admitted the failure of intelligence agencies to smell or stop the violence. She disclosed that immediately after the violence broke out, it would have been controlled if adequate police force was provided. But unfortunately, we didn't have then.
3. All the reports of DM are only mechanical and figure oriented and sufficient efforts are not taken by the district administration to retrieve peace of mind and confidence among the victims. The Magisterial power was not used to stop communal violence.

4. While we were visiting hospital, we could see only one Jaat patient affected in riots among seven Muslim patients admitted with severe injuries.
5. We were told by the local people that Muzaffar Nagar was thickly populated by Muslims as more than 50%. There have been posted 66 SPs and SSPs as the district police chiefs in Muzaffarnagar since independence. But we could see only one Muslim SP (Manjoor Ahmed) posted as SP, that was also in early 70s.

Recommendations

1. Deploy more army force in the riot-hit villages
2. Provide immediate and adequate compensation to the affected families
3. Immediate registration of proper and clear FIRs of riot-affected victims should be done.
4. Spreading of false and fake photos and video clippings through mobile phones to incite violence should be properly investigated and the culprits should be punished.
5. The rape victims should be given care, counselling and medical treatment in a serious manner.
6. The police officers, who acted in a prejudiced manner, should be probed and punished.
7. The culprits involved in the Mahapanchayat should be punished without any prejudice and action should be taken against the political leaders, who were behind the violence.
8. Adequate number of doctors and women constables should be provided to the relief camps.
9. Enactment of Communal and Targeted Violence Bill is the need of the hour.
10. Seize all weapons and cancel the arms licenses of all. □

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