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## Mobilising Popular Support for Human Rights

**Prabhakar Sinha**

We have been devoting ample time to consider ways and means to strengthen the organisation, but not enough time to think of the ways and means to win popular support for our cause, i. e., protection and promotion of human rights which include democratic rights and civil liberties. In a democracy, the most effective means to compel a government to concede a demand is to create a strong public opinion in its favour. Political parties do not want to lose votes and are wary of antagonizing voters even on issues on which the voters, in their opinion, are wrong. For example, one may consider the absence of political will of the political parties to act to put an end to pernicious medieval diktats of 'Khap Panchayats'. In sharp contrast, the political class acts identically in blatantly violating human rights of the people while swearing in their name. They believe that they can afford to do it because the number of votes they may lose by the violations are so few that they do not adversely affect their electoral fortune. In short, violation of human rights is almost a non-issue for the electorate and of very little concern to the political class. The attitude of the political class will remain unchanged unless the people react against these violations causing substantial loss of votes to the responsible parties. Changing the mindset of the people is a daunting task even for very big organizations. For a small organisation like ours to so influence the mindset of the people as to make them fight for human rights is still more difficult. Undertaking this daunting task necessitates being analytical, introspective and innovative. We have to assess the human rights situation in the country, understand the cause/causes for the existing state and most importantly, consider the ways and means of achieving our objective. The human rights situation in the country has been growing worse since our independence and India becoming a Republic. There are people who would contest the assertion on the basis of the provisions of our constitution, which truly guarantees most of the human rights in the form of fundamental rights; but often as in this case, there is a vast difference between the appearance and the reality. Within weeks of the adoption of the constitution, The Preventive Detention Act, 1950 was passed. It continued till 1970 and was followed by the more draconian MISA (The Maintenance of Internal Security Act, 1971). MISA was repealed by the Janata Party government in 1977 but was followed by a more draconian NSA (The National Security Act, 1980). In 1984, TADA (The Terrorist and Disruptive (Prevention) Activities Act) was enacted. Following its repeal in the 90s of the last century, came POTA (The Prevention of Terrorism Act). Apart from these central laws, the states had been enacting equally or more draconian laws. As early as in 1967, The Unlawful Activities (Prevention) Act was passed though MISA, TADA and POTA were later almost unanimously condemned as being too draconian and were repealed. However, many of their

pernicious provisions have been included in several other laws by amending them. In fact, most of the black laws enacted by the Indian State are blacker than even the Rowlett Act, which led to the nationwide protest and the massacre of the unarmed protesters at Jallianwala Bagh, in 1919. The most obnoxious feature of these laws is that they can be misused/abused against just anyone in no way connected to the activities the law aims at preventing or punishing. Whereas they provide for impunity to the functionaries of the State who misuse/abuse the laws it absolves the State of the responsibility of compensating the innocent victims for the loss of their personal liberty and financial and other losses they might have suffered. These black laws are an addition to the other normal laws like The Police Act 1861, The I. P. C. 1860, The Criminal Procedure Act, The Prison Act 1998 and a slew of other laws enacted by the colonial government, which are oppressive enough to be a blot on a democracy.

The British government needed the draconian laws to maintain its hold on India and check the revolt by its people against their exploitation. But why should our democratic government need more draconian laws than even the previous colonial government? The democracies like the U.S.A., the U.K. or France with whom we identify ourselves do not need such laws to deal with their own people (though they may be held guilty of oppressing the people of other countries to maintain their hegemony). Why should India need them? The fact is that the Indian State has been arming itself with more and more draconian laws to suppress her own people rising against their exploitation and betrayal by the political class of the country. While the constitution unambiguously directs the State 'to minimize the inequalities of incomes and eliminate the inequality of status, to ensure that 'the operation of economic system does not result in the concentration of wealth and means of production to the common detriment and also to ensure that the ownership and control of the material

resources of the community are so distributed as best to subserve the common good (Art. 38 and Art. 39). The State has been doing the very opposite. The constitution also states that though the Directive Principles enshrined in the constitution shall not be enforceable by any court the principles 'nevertheless are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Taking advantage of the provision that the Directive Principles cannot be enforced by any court, the political class chose to betray the constitution and the people of India by adopting the opposite course. The inequalities of incomes have been widening, the status of the poor has been reduced to almost that of a beggar while the rich have become the new Maharajas, Rajas, and Navabs according to their wealth. Betraying the constitution and the people, the economic system has been operated to ensure that wealth and means of production are concentrated in a few hands and the material resources of the community are used for the benefit of the rich rather than for 'common good of the community'. The class of the rich has become so confident and aggressive that it has begun to show its cruel and ugly face. During a panel discussion (on Times Now) on the bill replacing the The Land Acquisition Act they vociferously stated that after passing The Food Security Bill and proposing to pass the bill on land acquisition the government should declare that India has chosen to become 'Pink' and a 'Communitistic State. They claimed sympathy for the poor and said they were not against them, but spoke in a manner as if the country belonged to India Inc. (the rich) and the poor of the country were beggars who have no rights and who only deserve to be given alms. The debate in which even the compere was aggressively pro-India Inc. was both sickening and revolting. The State, which is bent upon looting and pauperizing the people to serve a handful of the rich is bound to anger the victims of this policy of plundering, and its victims are bound to give vent to their anger in

numerous ways. In response, the pro-rich State is bound to enact more and more draconian laws to suppress them.

The expanding inequality in income and status of the people has emaciated our democracy and reduced India to an oligarchy of the rich masquerading as a democracy. Manmohan Singh (he is not the cause but only the effect of the emaciation) is the most damning proof of this development. Can one think of a nominated Prime Minister of the U.K. or think of the U.S.A. having a President unknown to the people. The Prime Minister or President of a real democracy is the leader of the nation and not a political non-entity ready to be a proxy for someone. The euphoria with which this disgraceful arrangement was received by the rich, the middle class and the media does not augur well for the future of democracy.

Where democracy itself is emaciated, human rights are in increasing peril.

We (PUCL) are not a political party which may think in terms of coming to power and changing the wrong policies pursued by the State and reversing the anti-democratic direction of the governance. We can only make the people aware of the wrongs being perpetrated against them and inspire them to fight for their human rights. It would also be unrealistic to think of fighting each case of violation of human rights and get the guilty punished. This task can be accomplished only if we, too, had the same manpower and vast resources which the State has in its possession. Just as any organisation cannot end corruption by fighting each incident of corruption, we cannot fight each incident of violation to prevent or check it. The solution lies in creating sufficient pressure of public opinion on the government to compel it to introduce effective measures in the law. Individual cases of violations have also to be taken up to create awareness and fighting spirit among the people and also to inspire confidence that fighting for the cause bears fruit.

The task of mobilizing support for human rights is extremely difficult because it is different from fighting

for your own rights. People have been fighting against injustice done to them from times immemorial but have not hesitated in giving their opponents the same unjust treatment which they themselves had been receiving. There was a time when it was done in the spirit of a tooth for a tooth and an eye for an eye, and later under some other pretext. The Universal Declaration of Human Rights 1948 followed by several covenants and treaties is an attempt to reject the notion that human rights of a person can be violated under any pretext. It declares human rights to be universal and inalienable. The implication is that to have human rights, you need no qualification other than being a human being. By making it inalienable, it deprives the State of the right to take away human rights by enacting laws. It eliminates the notion of higher or lower status of individuals on the basis of talent, wealth, position or something else by recognizing the equality of inherent dignity of each person. But for the vast majority of Indians, they are only a dream not a reality. Our task is to inspire the people to fight to make that dream come true.

The human rights movement cannot win popular support unless the people think it concerns them. The State has succeeded to a great extent in persuading them to believe that 'the Human Rights walas' are for the terrorists, Maoists and the other violators of the law and not for them. It has also succeeded in creating the false and dangerous impression that human rights are against the national interest. They do not make categorical statements regarding it but resort to effective insinuation. There is little possibility of winning popular support unless the people consider the movement to be in their interest and are made to realize that human rights are not in conflict with the national interest but are in the interest of the overwhelming majority of the people to whom the country belongs.

The Aims and Objects enshrined in the PUCL constitution are meant to address the problem of the common man, but have not received due attention. It is time we think of the ways and means to achieve them. It

is worthwhile to draw attention to some of them to show how relevant they are for the common man.

(2 j) To work for the reform of the judicial system so as to remove inordinate delays, reduce heavy expenses, and eliminate inequities.

(2 l) To oppose police excesses and use of third degree method.

(2 d) To work for the withdrawal and repeal of all repressive laws including preventive detention.

(2 k) To bring about prison reform.

(2 c) To undertake constant review of penal laws and criminal procedure with a view to bringing them in harmony with humane and liberal principles.

It is the common man who suffers the most from the judicial delays and heavy expenses in litigations. Justice has become unaffordable for an overwhelming majority of Indians. Consequently, they cannot get those, who kill, maim, rape and commit other crimes against them, punished. The police are bought by the criminals, the Public Prosecutors help the guilty for a price and actively aid miscarriage of justice. The poor continue to languish in jails for long periods even for minor offences because they do not have the money to pursue their cases for bail or for defending themselves.

It is again the poor who suffer the excesses committed by the police. They are often implicated in false cases at the behest of the influential persons who have the means to grease the palm of the police. The third degree method is meant only for the poor. It is never used against the rich, the politicians, the bureaucrats and other influential persons who are guilty of robbing the nation of billions of Rupees, though the poor are subjected to it even on the suspicion of picking someone's pocket, stealing things even worth a few hundred or thousand rupees. It is never used against those who have stashed billions of black money in Swiss banks. In fact, this practice continues only because its victims are too poor and helpless to fight this cruelty. We should fight to end this inhuman practice. Nobody, the rich or the poor, should be subjected to this inhuman and degrading treatment.

The excesses committed by the police take so many forms that they cannot be enumerated. Human rights organizations have raised their voice against killing in the police (including security forces') custody and fake encounters, but no concerted effort appears to have been made against police firing on unarmed demonstrators resulting in death and injuries. The number of persons killed in such police firing far exceeds the number of persons killed in police custody and fake encounters. The wanton firing with impunity on unarmed processions is a blatant attack on the democratic right of the people to give vent to their anger and frustration. It is also unknown in any real democracy.

The most arbitrary and frequent use of Section 129 of The Criminal Procedure Code is a mockery of Art. 19 of the constitution, which guarantees civil liberties including the right to peaceful assembly and freedom of speech and expression. This fundamental right has been made subject to the whim of any junior police officer. Any Sub Inspector of police or an officer of a higher rank is empowered (under this section) to declare an assembly unlawful and use force to disperse it. He may use laathi, tear gas or open fire with impunity. He has the power to resort to firing and kill with impunity. He is not required to prove before a court of law that it was necessary for him to kill people to save his life even if he claims to have used the force in self-defence. In no case, can he be prosecuted for using force to disperse an unlawful assembly without the sanction of the government (S 132), which is almost never given. The same power has been given to a Commissioned officer of the Arms Forces (S 131). In this respect, it is identical with The Armed Forces (Special Powers) Act, but whereas voices have been raised against the AFSA, the more murderous provision of the Cr.P.C. remains unnoticed.

S 144 of the Cr.P.C. empowers a Magistrate to prohibit an assembly of people, which is in rampant use to prevent public meetings or processions. The use of this power depends on the subjective

satisfaction of the authority and the people have no clue when and how they are used.

Those who replaced the colonial government after independence did not consider the ordinary laws framed by their predecessors oppressive and objectionable and allowed them to continue and used them against the people of free India as in the past. Thus, The Police Act 1861, The Indian Penal Code 1860, The Prison Act 1898 and The Criminal Procedure Act 1898 were retained. In spite of the direction of the Supreme Court to amend the Police Act 1861, it has been retained with a few cosmetic changes. The penal code has been made more draconian by incorporating in them draconian measures from discredited laws like TADA, POTA etc. which had to be repealed because they were widely condemned. The Prison Act is in the process of undergoing some cosmetic changes, which are not likely to be put in practice.

The police have unbridled power to arrest without warrant (S 141 of Cr.P.C.) The provision has been so amended that it hardly makes any difference to the arbitrary power of the police and the security of the personal liberty of the people. The Cr.P.C. was amended in 1973 to make 'bail the rule and jail an exception'. The ground reality is that the lower judiciary continues with the same old practice of refusing bail as if there had been no amendment. The law on bail (u/s 437 of Cr.P.C.) provides that bail may be refused if the court has reasonable ground for believing that the accused is guilty of an offence punishable with death sentence or imprisonment for life or if he has been accused of a cognizable offence and had been previously convicted of an offence punishable with death, imprisonment for life or seven years or more. He may be refused bail also if he had been convicted on two or more occasions of an offence punishable with imprisonment for three years or more. It has been further provided that bail may be given even to such accused if he is under sixteen years of age or is a woman or is sick or infirm. Apart from this, the court may grant bail to any of them for some

special reason if he thinks it proper to do so. If the provision for bail is followed in letter and spirit very few would be remanded to judicial custody.

The first step towards working for ensuring the rule of law is to expose the hollowness of the claim that the rule of law exists in India. It does have a formal existence, but it fails a reality check. Our judiciary is independent, the constitution guarantees equality before the law and all are subject to the same laws and the same courts, but the ground reality is very different. The law is not applied in the same way. For instance, the benefit of the direction of the apex court, that normally no one should be handcuffed, is enjoyed only by the non-poor members of the society. The poor are openly handcuffed and made to walk from the jail to the court with a rope around their waist. Even the courts take no notice of this open contempt of the Supreme Court. Approaching the higher courts which alone have the power to enforce fundamental rights are beyond the means of 80% of our countrymen. Can the claim of the existence of the rule of law be acceptable in a country where the courts empowered to enforce the fundamental rights are beyond the reach of 80% or more of its population? In other words, the fundamental rights enshrined in the constitution are the prerogative of only 20 % or so of our people.

Should we not work to ensure that higher courts are brought within the reach of all so that all may enjoy their fundamental rights on equal footing with the others.

Similar is the state of the dignity of the individual. The dignity of the individual is inseparable from equality of his status. Ours is a society in which the status not only of the individual but also of an entire caste was determined by the caste in which one was born. Thus, inequality does not shock an Indian. Even those born in a lower caste in the hierarchy of castes, instead of asserting equality as a value, tend to assert their superior status when they occupy a position of power. The political class which has to transform the value of equality into a reality is itself unabashedly status conscious

and is engaged in perpetuating inequality of status. Equality of the status of individuals is the very foundation of democracy. Indian democracy, which in practice rejects the ideal of the equality of individuals (while accepting it in principle) stands on a shaky ground.

To fight for the equality of the status of individuals is not a fight only for them but a fight for the survival of our democracy.

Why is that atrocities committed at such a massive scale do not arouse the people to rise and fight? The political class has succeeded in so dividing the people that they identify only with their own group and are indifferent to the plight of others. Thus, the tragedy of the tribal people of Chhattisgarh, Odisha and Jharkhand is perceived by others as their (the tribal people of these states) problem and a matter of indifference for others. No victim of atrocities receives support from others. This policy of divide and rule has been serving the interests of the ruling elite while the rest continue to bleed one by one.

The PUCL constitution does not speak of fighting for our democratic rights but significantly enjoins us to 'uphold and promote by peaceful means civil liberties and democratic way of life throughout India'. Fighting for democratic way of life is different from fighting only for your own democratic rights. The black inhabitants of South Africa suffered limitless atrocities perpetrated by the white rulers and fought tooth and nail for their rights, but when they won the battle and came to power, they did not settle accounts with their tormentors and adopted a truly democratic system in which both the Whites and the Blacks could live in peace and prosperity. Had they chosen to settle scores with the Whites, there would have been a bloodbath and no democracy.

These are some of the issues which must be taken up to win the people to support human rights. There are many more, which we expect the National Council members to suggest.

Human rights include a large number of economic, social and cultural rights, which have been accorded the

same status as the civil and political rights. I have not mentioned them since I have not studied them in depth. The members who have studied them are welcome to make their suggestions.

It is not enough to identify the relevant issues, we also have to find the ways and means to reach the people. The mainstream media are not the means to reach the common man because their concerns are very different. Their interest in common man is very limited. In fact, most of them -print or electronic- are owned by the rich whose interest is in conflict with the interest of the common man. It is unrealistic to expect them to act against their own interest. The editor or the others working in the media have no independence or security of service, which make their personal opinion and concern almost irrelevant. Since they can be hired and fired by the owners, their personal views have to be subordinated to that of the their owners'. The media often uses a human rights issue just to keep an appearance. Media, which are admittedly a mere business to make money, and which are not ashamed of the practice of paid news (passing advertisement as news for money) cannot be expected to speak for those who have no money to pay.

However, there is no reason to lose heart. The media have horizontally a vast reach but vertically their reach is superficial. The Parliamentary election in 1977 was fought during the Emergency when the media were not free to report the excesses committed, yet the people threw Indira Gandhi out of power. They had no need of being told about the value

of democracy. They went by their own experience. They knew what they had been deprived of. In course of time, the political class has successfully misled the people into believing that they are their masters. They have been vying with one another in making more attractive offers as if they are benevolent 'Rajas' blessing their subjects with gifts from their treasury. The people have not yet realized that the country belongs to them, and the treatment they have been receiving is, in fact, denial of their due rights and respect. The absence of that realization is the cause of their acquiescence in the contempt with which they continue to be treated. Once the realization of their power and position comes it would be impossible to deny them their rights. The need is to create that awareness which would make them an invincible force.

During the 1980s, the PUCL launched campaigns on important issues. One of them was against the TADA and another was against the 59th amendment of the constitution under which (Rajiv Gandhi's) the government had amended Art 352 of the constitution (which deals with declaration of Emergency) to provide that an Emergency could be declared on the ground of internal disorder in any part of Punjab. As a result of the nationwide protest the amendment was repealed. Had the amendment remained, the government could have declared emergency in the whole or parts of Chhattisgarh, Odisha, Jharkhand, Manipur, J&K and Nagaland etc. Campaign is an effective tool in the hands of the people.

We should choose issues which concern the masses and launch a

campaign for or against them. The issues which have been referred to from the PUCL constitution may be some of them. Police atrocity, use of third degree, judicial delays, unaffordable cost of justice and the denial of due respect to the common people are issues which concern almost the entire population. There may be many more such issues which need to be identified. The people will ultimately realise that we are speaking for them and the human rights movement is in their interest. We may take the following steps to reach the people:

1. Preparing booklets and pamphlets/leaflets written in a simple language which may be intelligible to the literate among the masses.
2. Holding public meetings including corner meetings to reach the common man.
3. Organising peaceful demonstration and 'Dharna' to highlight the issues.
4. Making use of the media to the extent possible to publicise the issues. The mainstream newspapers have started the practice of devoting pages to cover the local news. They may prove useful for spreading our message.
5. Organising writing and sending of postcards to the concerned government/authorities.
6. Organising seminars to win the support of the middle class.

I have shared with you some of my thoughts and suggestions and urge the National Council to consider the ways and means to mobilize public opinion in favour of human rights.

***(Inaugural speech of the PUCL President at the National Council Meeting, Mangalore on 14 September 2013.) □***

## **Supreme Court says Aadhaar not necessary for essential services The centre and state governments must not insist on Aadhaar from citizens before providing essential services, the apex court ruled**

In a significant development, the Supreme Court on Monday has ruled that Aadhaar or the unique identification (UID) number, the United Progressive Alliance (UPA)'s ambitious scheme, is not mandatory to avail essential services from the government.

Various state governments have been insisting on making Aadhaar compulsory for a range of formalities, including marriage registration, disbursement of salaries and provident fund among other public services.

While hearing a public interest litigation (PIL) filed by retired

Karnataka High Court judge Justice KS Puttaswamy and advocate Parvesh Khanna questioning the legal sanctity of Aadhaar, the apex court said, "The centre and state governments must not insist on Aadhaar from citizens before providing them essential services."

A Bench of Justices BS Chauhan and SA Bobde also directed central and the state governments not to issue the Aadhaar to illegal immigrants.

While trashing the Centre's claim of Rs 50,000 crore expenses on the Unique Identification Authority of India (UIDAI) project, the Bench said that Aadhaar number is not necessary for important services.

In the petition, Justice Puttaswamy had sought an immediate stay on the implementation of the UID scheme. He said, "The scheme is complete infraction of Fundamental Rights under Articles 14 (right to equality) and 21 (right to life and liberty). The government claims that the scheme is voluntary but it is not so. Aadhaar is being made mandatory for purposes like registration of marriages and others. Maharashtra

government has recently said no marriage will be registered if parties don't have Aadhaar cards."

The petitioner asserted that the issue required a meticulous judicial examination by the Bench since it raised questions not only over the government's authority to implement the scheme, but also highlighted the perils of the manner of its implementation.

The Bench accepted his arguments and agreed to hear his contentions on the interim stay as well on while asking the centre and state governments to file their replies.

In its reply, the Centre had earlier claimed that for an Aadhaar card, consent of an individual was indispensable and hence it was a voluntary project, with an objective to promote inclusion and benefits of the marginalised sections of the

society that has no formal identity proof.

In July, replying to an un-starred question in the Lok Sabha on 8 May 2013, Rajiv Shukla, minister of state for parliamentary affairs and planning said, "Aadhaar card is not mandatory to avail subsidized facilities being offered by the Government like LPG cylinders, admission in private aided schools, opening a savings account etc."

Earlier in February, Employees' Provident Fund Organisation (EPFO) had said that looking at the difficulties in enrolment, it has decided not to make the UID or Aadhaar number mandatory for its over five crore members.

**Courtesy:** Moneylife Digital Team | 23/09/2013

**(The order of the Supreme Court referred to herein follows below. - Ed.)** □

ITEM NO.5+56 Court No.5 SECTION PIL

## SUPREME COURT OF INDIA RECORD OF PROCEEDINGS WRIT PETITION (CIVIL) NO(s). 494 OF 2012

JUSTICE K.S. PUTTASWAMY (RETD) & ANR Petitioner(s)  
VERSUS UNION OF INDIA & ORS.  
Respondent(s)  
(With appln(s) for stay)

WITH T.P.(C) NO. 47-48 of 2013  
(With appln(s) for stay and office report)  
(Appln. for deletion of the name of petitioner no. 1)

T.P.(C) NO. 476 of 2013  
(With appln(s) for stay and office report)

W.P.(C) No. 829 of 2013  
(With appln(s) for interim relief and office report)

Date: 23/09/2013 These Petitions were called on for hearing today.

CORAM:  
HON'BLE DR. JUSTICE B.S. CHAUHAN  
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s) Mr. Anil B. Divan, Sr. Adv.; Mr. Ankit Goel, Adv.; Mr. Ranvir Singh, Adv.; Mr. Sanjay Yadav, Adv.; Mr. Anish Kumar Gupta, Adv.; Ms. Deepshikha Bharati, Adv.; Mr. S.S. Shamshery, Adv.; Mr. Rajeev Kr. Singh, Adv.; Mr. Nachiketa Joshi, Adv.; Mr. P.R. Kovilan Poongkuntran, Adv.; Mrs. Geetha Kovilan, Adv.; Mr. Shyam Divan, Sr. Adv.; Mr. Pratap Venugopal, Adv.; Ms. Meenakshi Chauhan, Adv.; Mr. Varun Singh, Adv.; Mr. Gaurav Nair, Adv.

for M/s. K.J. John & Co.

For Respondent(s) Mr. Mohan Parasaran, SG; Mr. L. Nageshwar Rao, ASG; Mr. Farrukh Rasheed, Adv.; Mr. Alok Mishra, Adv.; Mr. D.S. Mahra, Adv

UPON hearing counsel the Court made the following

### ORDER

Issue notice in W.P.(C) No. 829/2013.

Application for deletion of the name of petitioner no. 1 in T.P.(C) Nos. 47 of 2013 is allowed.

T.P.(C)nos. 47-48 of 2013 and T.P.(C) No. 476 of 2013 are allowed in terms of the signed order.

(This is the operative part of the order: UR)

All the matters require to be heard finally. List all matters for final hearing after the Constitution Bench is over.

In the meanwhile, no person should suffer for not getting the Adhaar card inspite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Adhaar Card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant.

| (DEEPAK MANSUKHANI) |(M.S. NEGI) |

| Court Master | Court Master | □

## Stop the Witchhunt!

### PUCL statement condemning the police raid of Prof. GN Saibaba's Residence

The People's Union for Civil Liberties (PUCL) condemns the illegal raid and search of the residence Professor GN Saibaba of Delhi University on 12th September, 2013. Professor Saibaba is a differently abled person and is wheel chair bound. Ironically, over 50 police persons and intelligence officers raided his house! Prof Saibaba and his entire family including his minor daughter and the driver were all locked in different rooms, during the three-and-half-hour search. It is believed that the raid is pre-cursor to the imminent arrest of Prof Saibaba.

#### Search warrant illegal

A perusal of the Search Warrant dated 07.09.2013 issued by N.G. Vyas, Judicial Magistrate, First Class, Aheri (Maharashtra) for search of the residence of Mr. Saibaba and four other premises is most shocking and reveals a total non-application of mind on the part of the Judicial Officer. The order has been issued mechanically and without any consideration of the guidelines stressed by higher courts meant to protect the abuse of such powers.

Firstly, the warrant has been issued under both sections 93 and 94 of the Criminal Procedure Code (CrPC), 1973. Ss. 93 and 94 CrPC are meant to cover different situations. A warrant under Sec. 93 is issued in Form 10 whereas a warrant under Sec. 94 is issued in form 11 of the II Schedule of the CrPC. Nowhere does the statute contemplate a hybrid warrant as has been issued in the case of Prof. Saibaba.

S. 93 Cr.PC is for the purpose of searching for a document or a thing which a person has failed to produce in court after being asked to do so by issue of summons by the Court or for a general search for the purpose of an inquiry, trial or proceeding under the Cr PC. Clause

1 of Sec. 94 Cr PC is for the issue of a search warrant by a Magistrate when upon receipt of information and after conducting an inquiry he has reason to believe that any place is used for the deposit or sale of stolen property. Clause 2 of Sec. 94 is warrant for search of a place which is used for the deposit, sale or production of any objectionable article. Objectionable article means counterfeit coins, currency forged documents, false obscene objects or instruments for the production of any objectionable articles.

In the case of Prof. Saibaba the warrant is not only issued as a hybrid warrant under both Ss 93 and 94, the first para states that the court has reason to believe that the residence of Prof Saibaba is used as a place for the deposit of "stolen property". In the second paragraph the police is directed to search and seize any property which the police believe to be "objectionable articles" required for the purpose of investigation. Thus, it appears that neither the Magistrate nor the police knew what they were searching for! It is therefore clear from a plain reading of the warrant that the search warrant is more of a 'fishing expedition' or 'roving search' and discloses no reasons or circumstances for the issue of the warrant and is therefore clearly illegal.

Courts have repeatedly held that the issue of a search warrant is a judicial function and contemplates an objective determination based on intelligent care and deliberation. The Court should satisfy itself about the necessity for issuing it. A Magistrate is expected to give legitimate reasons for grant of the search warrant. Courts have held that the exercise of discretion by a Magistrate to grant a search warrant is not unfettered and cannot be arbitrary, vague or fanciful.

A search warrant is a grave act which invades a person's privacy and hurts a person's reputation in public eye. Illegal searches are a violation of the right to life and liberty guaranteed under Article 21 of the Constitution. It is most unfortunate that the judiciary which is supposed to be the bulwark against arbitrary state action and which is supposed to be the sentinel of the constitution has allowed itself to become a predator of citizen's rights.

#### Illegal seizure: Brazen Flouting of Legal Safeguards

It is learnt that the police have seized pen drives, hard drives, laptop, mobile etc from Prof. Saibaba's house. Clearly these are not stolen property nor objectionable materials. As per s. 100 (6) CrPC an occupant of a house or some person in this behalf should be permitted to be present during the search. This was not permitted despite the fact that Prof. Saibaba and his family members were present and available. A large number of academics from the Delhi University were also present during the search. Although the law requires that any search should be conducted in the presence of independent witnesses, none of the academics or professionals available at the house of Prof. Saibaba's house were asked to witness the search. Further it is reported that Prof. Saibaba has not been given a copy of the list of all the things recorded to be seized, as required under S. 100 (7) CrPC. As though these illegalities were not enough, it has also been reported that the goods seized were not properly sealed by the Police, therefore leaving the evidence open to tampering.

These are not mere infirmities in the process of search; what has occurred is clearly brazen abuse of the law and legal procedures by the police. The police action, under the

guise of a judicial order, is plainly meant to intimidate, silence and threaten rights defenders and a portent to others who challenge the impunity of state officials nakedly abusing the law.

### **Indian Establishment's new regime of suppressing criticism and its crackdown on Democratic Rights Activists**

PUCL believes that the officials of Gadchiroli Police, Maharashtra, and intelligence officials, who came to search Prof. Saibaba's house, are broadly acting on the Ministry of Home Affairs (MHA) directives and orders. Recently, on 26th and 27th July 2013, in a meeting with the Police Chief's of 27 districts where Maoists are reportedly active, ***the MHA is reported to have ordered that the persons and organizations who raise issues of human rights in Maoist areas must be targeted and arrested as they encourage Maoists with their human rights interventions.*** The Government's strategy of targeting persons and organisations which are doing legitimate human rights and democratic rights work across India, under the guise terming them as Maoists, is condemnable and against the letter and spirit of the Constitution of India and the International principles of Human Rights law to which India is a signatory.

It needs to be stated that Prof. Saibaba has been an open critic of the Government's policy on Operation Greenhunt and the incarceration of hundreds of innocents in the jails of central and East India. His most recent statements related to the arrest of JNU student Hem Mishra and Journalist Prashant Rahi, both of whom were doing legitimate Human Rights work relating to providing legal support to incarcerated prisoners, arrested in the name of Maoism.

It is PUCL's view that the Indian Government's stand of terming any dissenter or critic as 'maoist' or "terrorist", is a part of a long term strategy to silence any dissenting voices and the criticism therein. This,

the PUCL believes, is not just an infringement of fundamental and democratic rights provided under the Indian Constitution but is also violative of the UN Declaration on Human Rights Defenders, 1998. Article 1 of the Declaration states that "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."

The PUCL believes that the Government's crackdown on democratic rights activists is a dangerous trend which imperils democracy and has a chilling effect on free speech which also includes criticism of Governmental policies. Human Rights Defenders, such as Prof Saibaba must not be unfairly targeted by the State's machinery, in consonance with national and international legal norms.

PUCL condemns the ill treatment of Prof. Saibaba, his wife and young daughter during the raid by the police. They were reportedly locked inside their house for several hours, threatened with dire consequences; Prof. Saibaba was reportedly also not permitted to communicate with his lawyer. This amounts to committing the offences of wrongful confinement and criminal intimidation and violating the fundamental right to consult a lawyer. The fact that the search was a 'fishing incident' without any clear description about what was being searched for or reasons given in the judicial order as to why such an order was passed makes us concerned that the entire episode may have been with the ulterior purpose of somehow implicating Prof. Saibaba in cases of alleged Maoist activities.

### **ILLEGALITY OF SUMMONS TO APPEAR FOR ENQUIRY U/S 160 CrPC**

PUCL learns that the Sub-Divisional Police Officer, Aheri District, Gadchiroli District, Maharashtra has sent a summons dated 17.9.2013 u/s 160 CrPC to Prof. Saibaba directing him to appear before the police officer within 8 days in a palce out of Delhi

or in Nagpur. The notice also conceals a threat that if he did not respond, appropriate action will be taken against Prof. Saibaba.

PUCL will like to point out to the illegality implicit in the order. Section 160 CrPC as recently amended in 2013 clearly states in the proviso that "no male person under the age of 18 years or above the age of 65 years or a woman or a mentally or physically disabled person shall be required to attend at any place other than the place in which such make person or woman resides".

The SDPO and police officials know very well that Prof. Saibaba is wheelchair bound; AIIMS has by a certificate dated 9.7.2013 noted that Prof. Saibaba suffers from "post polio residual paralysis of both lower limbs" and suffers from 90% handicap. Despite knowing his physical condition, the Gadchiroli police have directed Prof. Saibaba to attend inquiry outside Delhi and at Nagpur, which is clearly prohibited by law. The police do not conceal the veiled threat of the consequence if he does not appear.

PUCL condemns the patent illegality in the order directing appearance for inquiry u/s 160 CrPC before the police officer. Added to the illegalities abounding in the search of his house and confiscating objects without giving search list, the order u/s 160 CrPC makes clear the police intention to somehow implicate Prof. Saibaba as a Maoist.

Prof. Saibaba is a respected academic of Delhi University as also a well known activist. Even if the prosecuting agencies will like to question Prof. Saibaba, PUCL would like to remind the police agencies about the cautionary words of the Supreme Court in 'Joginder Kumar vs. State of UP' (1994) in which the Apex Court has said that while the power of the IO (investigating officer) to arrest is one thing, the need to and justification for effecting arrest is another matter altogether, fully subject to judicial review. Arrest should be the last resort to be effected only if the accused person may escape, threaten or intimidate witnesses or destroy evidence. Apart

from such circumstances, if a person will appear on summons, arrest should be avoided.

PUCL learns that Prof. Saibaba has clearly stated that he is always willing to participate in the enquiry by the police officials in order to show that he is not involved in any offence. However, in view of his disability he has sought the police officials to conduct such enquiry in his residence in Delhi. This is not only reasonable but also part of the mandate of law. PUCL therefore demands that the SDPO, Aheri conducts the enquiry of Prof. Saibaba at his residence in Delhi strictly conforming to procedure prescribed by law.

PUCL stresses that while the CrPC authorises the Investigating Officer to prosecute, the same powers are subject to checks and balances provided in the CrPC itself and these are meant to ensure preventing the abuse of process of law by investigating agencies. Additionally the Supreme and High Courts have expounded the legal safeguards

through numerous judgements. The IO and police officials are expected to strictly adhere by not just the letter but also the spirit of the law.

#### **APPEAL TO THE JUDICIARY**

PUCL also would like to point out that in the scheme of separation of powers, the judiciary is expected to play an independent, neutral, non-partisan role balancing the need for prosecution with safeguarding the liberties and fundamental rights of citizens. PUCL is concerned by the non-application of mind and the non-chalant attitude displayed by the judicial officers at the subordinate judiciary, which is the cutting edge of the operation of criminal justice system. PUCL appeals to the judiciary, to implement not just the letter of the law but the spirit of the law underlying the separation of powers and independence of the judiciary. The ordinary citizen only has the judiciary to protect themselves against a vindictive, aggressive and intolerant state machinery. As a country we are going

through troubled times when all the protective laws, from the Constitution to state laws, are being trampled with impunity by police officials, state functionaries and others. We appeal and have confidence that the judiciary will rise to the challenge and play the independent, objective and unbiased role it is expected to play as envisaged by the Constitution of India.

In conclusion, PUCL calls upon the Government of India and Maharashtra to:

1. Immediately return the illegally seized articles from the house of Prof Saibaba during the illegal raid on 12th September 2013;
2. To conduct the enquiry u/s 160 CrPC in his residence at Delhi and not to arrest Prof Saibaba;
3. To immediately stop the witch hunt against Prof Saibaba and other human rights defenders; and
4. To stop forthwith all attempts to silence and criminalise dissent.

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

#### **PUCL Press Release Clarifying position on pheku.in: 29th August, 2013**

### **The new site *pheku.in* is not a PUCL initiative**

Reports have appeared in some sections of the media that PUCL has launched a new website called 'pheku.in'.

PUCL would like to clarify that the new web site 'pheku.in' is not a PUCL initiative. We would also like to point out that even in the website there is no mention of PUCL although news reports from a section of the media created confusion that the site belonged to PUCL.

We would like to point out that the new website has been launched by scores of eminent and well known personalities from the field of academics, law, activism, creative arts and other professional fields.

Simultaneous inaugural meetings were held in about 25 cities across India which were addressed by a panel of persons from different walks of life and organisations. In a few of such inaugural meetings the panels included some PUCL members who participated in their personal capacities.

PUCL is, and has always remained, an impartial human rights movement, totally independent of any political party, especially in the context of elections. PUCL has always prided itself on playing the role of non-partisan and independent watchdog of human rights by conscientious and critical analysis of human rights

actions, activities and records of the central and state governments as also political parties and players. We stress that we are dedicated to being independent, non-partisan and non-aligned human rights movement and there is no change in our position.

We request that this clarification is reported in your publication with the same importance that was given to the reports of the launch of the website.

With thanks,

**(Dr. V. Suresh) National General Secretary, PUCL** □

#### **Regarding Enrollment of Members**

PUCL National office gets a large number of requests for membership. This should please be noted that the PUCL National office does not enroll any member directly except at the instance of the National President/ General Secretary as an exception. Prospective members are advised to contact their respective state or district unit for being enrolled as members of the organisation.

# INDIA: A Republic of the rapists, by the rapists, for the rapists?

(An Article from the Asian Human Rights Commission)

**Avinash Pandey**

The news had sprung up from nowhere. All that I had picked up the newspaper for, was to kill some time on that long flight and here it was, tucked away in a small box, staring at me. Reading it had sent a shiver down my spine. No, it was not about some unseen horrors. It was not about gruesome murders, kidnappings or even collapse of yet another state exposing its citizenry, or at least minority section of that, to grave human rights violations.

The news was just about another advisory issued by United Kingdom for a section of its citizens travelling in India. But it was not the advisory that has made me this uneasy. As it is, western countries are quite used to issuing advisories to their citizenry travelling in the underdeveloped countries warning them about everything from food to fanaticism. Many of us, in fact, have often scoffed at these advisories located in the racist past of these countries that treated the natives as nothing more than barbarians unable to govern themselves.

Not this one, though. It was an advisory that the government of United Kingdom had issued for its women, yeah, not all UK citizens but just its women travelling in India. It has advised them to remain alert even when travelling in groups for saving themselves from getting violated, sexually and otherwise. I tried stealing a glance at my co-passenger, stuck in the economy class seat as cramped as mine and wished that she had not read this piece while aboard a flight to Delhi, the capital of the country at the receiving end of this advisory. To the very same Delhi which has earned the dubious distinction of being the rape capital of the country as well.

The news had opened floodgates of unsavory memories of similar horror stories told to me by my female, non-Indian colleagues, strangers and acquaintances alike. I remembered the very friendly owner of the wine shop I frequent on Fridays almost without fail. He had had heard about the Delhi Gang rape and was shocked. Knowing people like me,

he had added, did not make him think that my country is home to such sexual predators. No, he was not being sarcastic; he was very genuinely sad and angry. There I was, thinking of all those 'proud to be an Indian' campaigns I had grown up on.

The advisory reminded me of a beautiful evening of partying around in Hong Kong with colleagues, a rarity in our line of work that begins with extrajudicial killings and ends with starvation deaths, with all other horrors stuck in between. It was after ages that we had let ourselves loose on that non-touristy beach we had discovered on one of our regular hikes. It was an evening of getting nostalgia fits and missing our countries, our homelands, with all the pains and agonies that the expats stuck up in foreign cultures live with. I missed mine and recounted all that was great about it. India is not merely about Maharajas, magicians, snake charmers and Sadhus, I had told my friends. Of course, it is not, quipped Sofie, a Danish friend, cutting me short. It is also about sexually frustrated men thinking all white women are always available and can be taken against their will, she added. We were stunned, all of us, more on the matter of fact way she had said that than the comment itself. She, like the wine shop owner, was not angry. She could not be as she had lived in India for long stretches and had many good friends here, including me. She loved India and still does. Yet, her idea of Indian males was definitive and her friends, like me, came as aberrations and not rule.

Available! The word was haunting me on my way back to home that night. It reminded me of all those questions whispered into ears of any 'foreign-returned' Indian. Have we not been used to questions like 'wahan to free sex hai na?' Did you do it? How many times? There were other words ringing in my ears too. They were the hymns celebrating goddess, or the feminine, as source of all power that had been drilled into our psyche since childhood.

One would try to wish away this sexual frustration, our national sickness, as something reserved for the 'other', white women. Can one? Not really, for even a cursory glance at public spaces would bring the truth that this national sickness is all pervasive. If white women are 'available' for Indian males, okay, most of them, then Indian women are either achievable or violable. This is the continuum they locate all women into, from being available to violable.

The violability, in turn, is reserved for the women from weaker sections of the society despite them having to bear the brunt of most brutal forms of violability. But then, it does not save the rest of them, Indian women, from getting violated. The thing is that the Indian male psyche fed on axioms like 'ladki hanso to fanso' (if a girl smiles, she is all yours) and 'na bole to haan hai' (rejection is in fact acceptance) does not differentiate much between achievability and violability. Any retaliation to their sexual advances, thus, makes them tread the thin line between the two.

This is why, for every Khairlanji that fails to stir the society, urban feminists and media included, one can easily find a Hotel Taj in Bombay seeing two of its women patrons sexually assaulted by a mob on the New Year eve. For every Bhanwari Devi in the feudal fiefdoms of Rajasthan there would be a Naina Sahni being burnt in a Tandoor, or a Jessica Lal getting killed in a posh South Delhi private party. And if the horror is not enough for you, for every woman being paraded naked in Uttar Pradesh, there would be one molested by a mob on national television in Guwahati.

Talk of these cases as a comment on our 'national character', and self appointed moral brigades would pounce on you while blaming the victims. They have, in fact, quite an expertise on pouncing on the victims, literally, as well. These self-designated 'keepers of the sacred feminine' (a friend coined this term though she uses a much more hard-hitting and little unprintable word for the feminine) would sexually assault

women in Bangalore for the crime of going to a pub and the police would arrest and imprison the journalist recording the attack instead of the perpetrators. They, in the form of a senior Congress leader, sermonize the women not to wear indecent clothes and venture out at night instead of ensuring their safety and security. They, in the form of a senior BJP leader, would rubbish the outrage such attacks cause as a drama of lipstick wearing women. Quite understandable, as they would be watching porn clips on their mobile phones amidst an ongoing assembly session as well.

This is why the advisory should not have shocked me. I know, and have known, my country way too well to get shocked. It was not for nothing that the advisory had come before the gruesome gang rape of a foreign national in front of her husband in Datia district of Madhya Pradesh. It was not for nothing that the advisory had come before another foreign national was forced to jump out of her hotel room to thwart a rape attempt by none other than the hotel owner.

And it was not for nothing that the advisory had come after Delhi Gangrape but before Bhandara killings and suspected gang rape of three minor sisters which did not find

even as much as a mention in national outraged-at-everything media. The girls, hailing from dispossessed background, did not mean much to it. The girls, hailing from the hinterlands, did not mean much to the urbane and suave feminists as well. But then, there rests the root cause of the problem. If Bhandara girls are violable, no women of the country, or outside, can be safe. If the men out on prowl do not find such 'easily violable' preys, they are going to pounce at any other woman in sight irrespective of her status of being available, achievable or violable in their eyes. Yes, I know how painful it is to refer to a section of our own women as 'easily violable preys' but then wishing the reality away does not help much, does it? The reality is that we are 'proud' citizens of a country that lets deeply entrenched casteist and communal forces commit gory crimes against the marginalized sections of its population with impunity. We can either stand up and fight or hide in our cocoons tucked inside the gated communities, looking away is not an option available to us.

It is also high time for rewriting the grammar of shame and social stigma attached to such crimes against women. The perpetrators do it with impunity for they know that the

shame of getting violated would be written on the bodies of these women and not over their own persons. Till then, we can hang our heads in shame and hide after every such advisory issued by any country.

I am afraid, in fact, of the day they would issue an advisory telling women to get alert as soon as they see an Indian man anywhere in the world. And if you find this fear unfounded, or farfetched, remember the acts of the Indian youth leaders' delegation that visited China earlier this year. If you don't, know that many of them sexually harassed every women in sight, Chinese as well as female members of their own delegation. The only way authorities could devise for stopping them for bringing more shame to the country was restraining a large section of them from going out and forcing them to remain in their hotel rooms for the rest of the visit.

The youth leaders are back with their honours intact. They would grow into the future leaders of the country. Need one say more about the exigency of an advisory warning against the presence of any Indian male anywhere in the world?

April 17, 2013

*\*Mr. Pandey, alias Samar is Programme Coordinator, Right to Food Programme. □*

## Joint Press Note by Women and Human Rights' Organisations Against Slanderous Remarks by Ram Jethmalani: Jaipur, 17th Sept. 2013

We women and Human rights organisations of Rajasthan condemn in no uncertain terms, the slanderous arguments provided by Senior Advocate Ram Jethmalani in the Rajasthan High Court, Jodhpur, while arguing that bail be granted to child sexual abuser and assaulter Asumal Harpalani alias Asaram AS highlighted by the media, presenting arguments that the girl (victim) was afflicted with a chronic disease, "which draws a woman to a man", is completely violative of the law. As indulging in character assassination and , stating sexual histories is not permitted under the revised CrPC. Making such vile and slanderous arguments against a minor shows

the low level to which the even senior lawyers of the stature of Ram Jethmalani can stoop too in order to influence the court.

The Women's groups will write to the Bar Council of India against this slander so that Mr. Jethmalani be debarred from arguing in court, unless he apologises.

We are,

**Renuka Pamecha** (Women's Rehabilitation group), **Kavita Srivastava** (People's Union for Civil Liberties, Rajasthan), **Kusum Saiwal & Sumitra Chopra** (Akhil Bharatiya Janwadi Mahila Samiti), **Mamta Jaitly** (Vividha: Women's Documentation and Resource Centre), **Nisha Sidhu** (National Federation of Indian

Women, Rajasthan), **Pawan Suran & Dr. Malti Gupta** (Rajasthan University Women's Association), **Komal Srivastava** (Bharat Gyan Vigyan Samiti), **Mewa Bharti** (Domestic Workers Union, Rajasthan), **Nishat Hussein** (National Muslim Women Welfare Society), **Asha Kalra** (Women's Cell, State Employees Union), **Vijay Lakshmi Joshi** (People's Union for Civil Liberties), **Bharat** ( Vishakha: Women's Education & Resource Centre), **Dr. Meeta Singh** (Dignity of the Girl Child Foundation), **Rakhi** (Centre for Advocacy and Research, Jaipur), **S Suman Devathia** (Dalit Mahila Manch, Rajasthan) and **Shabnam Aziz** (Action Aid, Jaipur) □

## COORDINATION OF DEMOCRATIC RIGHTS ORGANISATION (CDRO)

### Arrest of Hem Mishra and Prashant Rahi: Silencing voices questioning Violation of Fundamental Rights

The CDRO strongly condemns the arrest of Prashant Rahi and Hem Mishra, accusing them of Naxal links. Though the exact date of Hem Mishra's arrest is yet to be ascertained, he was most probably picked up by the police around 15th August. Prashant Rahi was on the other hand was arrested on the 2nd September. The allegation against both of them is that they were carrying some documents/literature. Both have been charged under the notorious Unlawful Activities (Prevention) Act [UAPA]. Both are serving a long period of police remand without being provided a lawyer.

Hem Mishra (32 years) had been active with a student organization in Uttarakhand before coming to Delhi, when he obtained admission at the Jawaharlal Nehru University. In the year 2007/08, a number of activists involved in organizing youth and the rural poor in Uttarakhand were arrested on the allegation of Maoist links. So potent was the terror unleashed, that few would dare to question the allegations or meet the arrested persons for fear of being implicated. Hem Mishra, handicapped in one hand, was the person who visited all the arrested in jail and helped them get legal support. One of the arrested at that time was Prashant Rahi.

Prashant Rahi (52 years) worked as a journalist in Uttarakhand. He was also passionately involved with a host

of protest movements ranging from issues of forest-dwellers, and of rural labour, to the displacement by the Tehri dam. Arrested in December 2007, alleged to be a most-senior Maoist leader, Prashant was kept in solitary confinement through most his 3 year 8 month stay in the jail. Once released on bail, Prashant took upon himself to visit those imprisoned as Naxalites all over the country and to help them obtain access to a lawyer. To this end, he was regularly travelling to across the country collecting details of cases and reaching the same to lawyers.

That there is no real allegation of any crime against both Hem Mishra and Prashant Rahi, it is evident from the fact that both have been charged solely on the basis of the UAPA. For, it is this law that makes normal social and political activity into a crime solely on the whims and fancies of the police. Banning of political organisations and converting any association with such organizations and their opinions into a crime is what opens the gates to the law becoming an instrument of injustice.

In addition, the illegal, yet reasonably settled practice of the police of not registering a panchnama at the time of the detention, makes it difficult to ascertain the exact date, time and place of arrest. Such unlawful detention leaves much scope for abuse. It is ironical, in cases where UAPA is applied, courts have been

less critical of the blatant violations of procedure, in the name of larger security concerns.

Thus while the alleged "crime" as well as the circumstances of the arrest remain suspect, a vilification campaign has been mounted by the police that masquerades as information in the newspapers. No doubt, that this has become the preferred method to silence those working for basic civil liberties and implementation of fundamental rights.

Another favourite practice of the police has been to foist new cases against accused, especially under the UAPA and its previous incarnations, when those accused are either released on bail or else when acquittal in the existing cases is at hand. This has been done ad nauseum to frustrate the bail or acquittal orders of the court and has not yet found serious criticism from the judiciary. In the case against Prashant Rahi too, no incriminating evidence has been found against him in the case in Uttarakhand and he would be acquitted soon.

We therefore demand the immediate dropping of all charges under the UAPA and the immediate release of those arrested.

**Kranthi Chetanya** (APCLC, Andhra Pradesh), **Paramjeet Singh** (PUDR, Delhi), **Parminder Singh** (AFDR, Punjab), **Phulendro Konsam** (COHR, Manipur) and **Tapas Chakraborty** (APDR, West Bengal) (Coordinators of CDRO). □

## Polarization with a difference: Muzaffarnagar Violence

Ram Puniyani

Communal violence has been the bane of Indian society, more so from last three decades. One can see its coming up prominently from 1893 to begin with and then it went through different phases. It became stronger after 1937, peaked in 1946 and then the post partition holocaust shattered

the lives of lakhs of people. After a gap of a decade it started coming up again from 1961, Jabalpur violence, later anti Sikh violence of 1984 was not just violence, it was genocide. At different levels after this we see the big surge, Meerut, Maliana, Bhagalpur, Mumbai, Gujarat (post

Godhra) being the worst of them. Pre partition it was both communal parties Muslim League-Hindu Mahasabha, and the communal patriarch RSS, which were major players in this dastardly game. This phenomenon led to the polarization along religious lines. This

polarization was the hallmark of this violence which kept going up. The stereotypes about 'other' community kept worsening up; still the intercommunity rupture was not total or complete. The intensity about adverse sentiments about 'the other' went going up gradually, remaining at subcritical level till probably 1992, after which the ghettoisation of minorities started becoming a prominent urban phenomenon, and the misconceptions about minorities became a major part of social common sense. The other observation was that the communal violence, which is the superficial manifestation of politics in the name of religion, is predominantly an urban phenomenon. Many a social scientists made it the fulcrum of their understanding and blamed urbanization as the bane of our society, which was responsible for this type of violence.

As the matters stand after the recent Muzaffarnagar violence, it is clear that communal violence being a major phenomenon in urban areas was just a phase of this process. Having polarized the urban populations, the agenda of communal outfits has now targeted the rural areas. Its implications surely are going to be more disastrous for our nation as a whole and it is time that the dangers of the trajectory of this process are assessed. There are many factors about Muzaffarnagar violence, which should make us sit up and take notice. So far the communal violence in different parts of the country benefitted the RSS-BJP in a major way and the litmus test of this was the increased social presence of RSS affiliates in the areas affected by violence and increase in political strength of BJP in electoral arena. Gujarat is a classic case where after the post Godhra violence, BJP has dug its heels in the state, and RSS affiliates are ruling the streets.

As the political players calculate on the political chessboard, this time there were two players who thought they will benefit. On one side from the usual beneficiary, the BJP associates, which in the aftermath of 84-Kosi Parikrama, activated its workers in this game of polarization. The other player the Samajvadi party

probably calculated on the similar lines, if Hindu polarization benefits BJP, Muslim polarization should benefit Samajvadi party was their thinking, which let the violence happen. It is also true that since Samajvadi party came to power a year and a half ago, communal violence has gone up in Uttar Pradesh.

In this case of Muzaffarnagar violence as the three boys got killed on the pretext of teasing of the girl or a skirmish on the road (there are two versions of the beginning of the episode). There was enough time to see the dangers of such an inter-religious violence and control the same. But that was not to be. The officers in violation of the rules and even the imposition of 144 in the area let the Mahapanchayat of over a lakh people take place. The caste-communal outfits are patriarchal to the core and slogan-theme 'Bahu Beti Bachao' (save daughters and daughters-in-law) was enough for the village Jats to turn up in large numbers with weapons. Communal propaganda is taken to the higher pitch. And so the communal violence enters the villages. And here the BJP communalises the social space. Though it did not have much base amongst Jats, this occasion was cleverly manipulated to introduce divisive politics. Two factors were made use of. One the image of Modi as the savior of Hindus. Now Jat goes from the caste identity to Hindu identity. In communal politics religious identity is the foremost. The Muslim crowds also confront, play some role in violence but as is the usual case the partisan police machinery does not do its job in an objective manner and the result is a lopsided violence more against minorities, displacement and increase in the sense of insecurity amongst minorities follows.

The Samajvadi party's gamble will pay or not, time alone will tell. During the reign of Samajvadi party the monster of communal violence has been permitted to come out as is obvious from the observations that during Akhilesh Government every month nearly two acts of violence have taken place. How come during previous regime of BSP, the monster

of communal violence had been restrained? Same officers, same people. Surely it is up to the ruling Government to let the violence take place or not. Communal forces, BJP and company, always keep instigating it and looking for opportunity to unleash violence. In UP the additional factor of course has been the presence of Amit Shah, who is on bail and who has the experience of Gujarat carnage, his role will have to be watched, but as such the RSS-combine machinery is in place and can take such assignment on the drop of a hat. While at one level, the instigation used was to propagate that 'our' daughters, daughters-in-law are not safe, on the other hand a BJP MLA uploaded a video clip showing some people dressed like Muslims killing two young men brutally. This was a video shot a few years ago in Pakistan when two young persons were lynched by the mob with the suspicion that they were dacoits. It went viral on the social media, which is reaching villages in good measure, and created a hostile atmosphere. Earlier Jats and Muslims have had affable relations, but for some years tension cropped up and the recent violence drove a deep wedge amongst these two communities and violence could spread to the villages. The tragic factor is the propagation of Modi, as a 'strong' leader who can save 'us' (Hindus). The major back up of communal forces is to promote an autocrat, on the backdrop of the massive propaganda that majority community is not safe due to the miniscule minority. So Modi is supposed to fill the gap of a powerful leader who can protect the majority community. All this is far from true but popular perceptions have gone on and on and the contestation to these misconceptions has neither been effective nor far in reach.

The lesser said about the role of police and administration the better. The administration has powers enough to ensure that such violence does not take place and if at all it takes place, it can control it in a day or two. Many of those in top echelons of administration-police have a biased mindset, and this if supplemented by the calculating

Government, that violence will benefit their electoral prospects, the tragedy takes no time to flare up. UPA Government had promised to bring a Communal Violence Prevention bill. The subcommittee of NAC which did a lot of home work has submitted a draft of the bill. Surely there may

not be a consensus on the draft, but probably by putting it to the grill of different mechanisms, the grain of the draft can be saved from the chaff to ensure that the officers and those in seats of power who do not do their job as per the norms of Constitution are punished. The provision for punishment to the officers guilty of

dereliction of their duties, acts of commission and omission is a must. The political leadership has to be taken to the task for its inaction at the crucial time. The communal forces have to be combated at ideological, social and political level if we wish to have the country with communal peace and amity. □

**AIDMAM Report on Rape and Murder of a Dalit Girl of Haryana: Sept. 3, 2013**

## **All India Dalit Mahila Adhikar Manch (AIDMAM)**

**Report of the fact finding investigation conducted by All India Dalit Mahila Adhikar Manch to ascertain facts in the case of alleged rape and murder of Dalit girl in Jind district of Haryana:**

Background to the Formation of the Fact Finding Team

On 24th August, a 20 year old Dalit girl was brutally raped and murdered in Jind, Haryana, while she was on her way to write an examination. Her body was found near a canal the next day by the police. There were cigarette burn marks on her body and significant indications of sexual violence. It is \*clear \*that she was kidnapped, raped and then murdered.

However, at the time of the fact finding, even after four days the culprits had not been identified or arrested, and there was no progress on the investigation beyond sending the body for post mortem. In fact, the parents of the girl, members of her village and various Dalit activists refused to cremate the body and were sitting on /dharna /in front of the Jind Civil Hospital to protest against police and administrative apathy and callousness. It was very clear that the Haryana police and administration was exhibiting gross negligence in this case, ignoring the law and evading established investigative procedure.

It is at this point that the All India Dalit Mahila Adhikar Manch (AIDMAM) decided to put together a fact-finding committee to visit the area, meet the key people involved and ascertain the facts of the case.

### **The Fact Finding Team**

The fact finding team was led by Asha Kowtal AIDMAM. She was accompanied by Kalyani Menon-Sen (WSS), Nisha Kumari (Action Aid), Jenny Rowena (SAVARI), Rajat Kalsan, Dalit activist and lawyer from Haryana, journalists from Tehelka, CNN IBN, The Hindu, Times of India

and Dainik Jaagran.

### **Report of Meeting with the Protestors**

The fact-finding team arrived in Jind town at around 10:30 am. The team proceeded to the Jind civil hospital to join the protestors who had been staging a dharna with the body of the girl. When the team arrived there, they found about 300 persons including men and women from the nearby villagers who had assembled and were peacefully demonstrating. The team also was informed that a 22 member committee was formed by the community to lead the agitation and also to negotiate with the authorities.

The protestors were raising slogans demanding justice for the girl and against the police inaction in conducting proper investigation. Another concern raised by the protestors was with regard to the police lathi charge on them, false cases and the arrest of four young men.

Adv. Rajat Kalsan and Asha Kowtal from the fact-finding team addressed the protestors and informed them about the plans of the fact-finding mission.

### **Report of Meeting with the Father (at the site of the Protest)**

The team met the father of the girl at the site of the protest.

The father met with us along with the uncle and the grandfather of the girl. The father appeared extremely distraught and could hardly speak. He told us that he had received a call on his mobile, from an unknown person around 4 in the noon on August 24th, the day the girl had disappeared. The person told him

that he had a polythene bag containing the girl's college papers near a canal. The call got cut and the father was busy with his work and did not think too much of it at that time. The girl didn't come back home even after 6.30 and so they went to Pillukhera police station to complain. The police officer made them call the man who had called the father. They found out that he was from Amarheri Gaon. So the father and other relatives were sent to the police station there. From here they were sent back to Pillukhera police station and the police refused to look for the girl.

At last the father and relatives set out for Amarheri Gaon to look for the girl. There they conducted a thorough search for the girl. However, they found nothing and went back home around morning.

Next morning, they received a call from the police that a body was found in the bushes near a canal in Amarheri gaon.

The father also told us what most others did, that the girl's salwar (pants) was red with blood and that the women folk had found her body marked with cigarette burns and other wounds. (More of this in the mother's account)

The father then told us about how the police delayed conducting the post-mortem, the whole of August 25th, the day the body was found. After this delay there was further delay again on the next day, August 27th, to conduct the post-mortem

The father also told us about how the police had beaten up the protestors and even kicked the dead body of the girl.

### **Report of the visit to the site from where the body was found**

The team also visited the spot in Amarheri Gaon where first the girl's polythene bag and later her body was found. We found it a very deserted place. We saw the spot on the side of the road where the polythene bag with papers was found was found. This spot is about 5 km from the examination centre. Leading off this road is a kaccha path alongside an irrigation canal. The other side of the path slopes down to agricultural fields. The slope is thickly covered with undergrowth and thorny kikar bushes, with a few tracks leading to the fields. We were told that this path is usually deserted. We walked down the kaccha path to the spot where the body was found.

We were told by a relative of the girl who had rushed to the spot when informed about the body being found, that the body of the girl was lying face down with the head at a lower level than the legs, which were sprawled closer to the path. This seemed consistent with the suggestion that the body was thrown down from a vehicle on the path. The body was fully clothed but the dupatta was missing and the clothes were dishevelled.

We spoke to the man who discovered the body, who was sleeping in a shack near the fields to guard the crops. He said he found the body when he went into the bushes to relieve himself in the morning. He could not confirm whether any vehicle passed by on the path during the night.

He confirmed that the path was little used. This man, and the others who collected at the spot, appeared intimidated and did not give us much information.

A neighbour of the girl who had joined the protest had come along with us in the car to this spot. He now talked to us about how the police had brutally beaten up the protesters, how there were no women police present even though many of the protesters were women. He also showed us bruises and welts on his back that he said was because of the lathi blows. He said that he was afraid of the police now and was trying not to come face to face with

them.

### **Report of the meeting with the Mother (in the village)**

The team met the mother, in the Baniyakheda village. This village lies far away from the main town in Jind and the villagers have to cover a long distance on foot or cycles and tractors to reach the nearest bus stop. We could clearly see the aspirations of the raped and murdered girl who had travelled all this distance to gain higher education. Later we also came to know that most girls of her age and her own sister had stopped studying before completing their 10th standard and were married off early.

We met with the mother in an upstairs room along with a number of women (about 15) All of them were angry and enraged and talked to us with great emotion and power. The mother was broken by the tragedy, but unlike the father, spoke about it quite articulately and in greater detail. The women in the room kept agreeing with the mother and also filling out the details. All of them looked worried and anxious but also seemed determined to expose the truth and fight the injustice.

A summary of the points emerging from the interview with the mother and sister of the girl and women from the village is given below.

The mother said that they had run to the local police station on the day the girl had disappeared. However, instead of helping them, the police refused to lodge a complaint and asked them to go to Jind town. The search for the girl was delayed by several hours because of police apathy. The mother feels that if they had begun the search immediately, they could have saved her daughter from being murdered. The mother and several women from the village rushed to the morgue after being told that the body had been found. The body was lying on a stretcher with no refrigeration and no supervision, and there was no reply to their queries on when the post mortem would be conducted.

The mother and the women with her examined the body carefully. They found that the salwar was drenched in blood. There were scratches and wounds on both of the girl's thighs and calves. There were cigarette

marks on her upper torso.

The mother also said that the girl's hands looked like they were broken and that the girl's neck was also tilted to one side as if it was broken. Her feet were badly injured and the toes seemed to be broken.

The mother and the women with her told us that they had observed her salwar and lower body parts and found them covered in blood.

The women then took the decision to carry the body outside and sit in a dharna in the middle of the road, blocking the traffic so as to protest the delay in identifying and arresting the perpetrators.

Many of them were brutally beaten up by male police officers and 3 men were arrested.

### **Report of meeting with DC, SP and Deputy SP**

The team met the DC and SP at the DC's camp office in Jind.

Both officials were extremely hostile and reluctant to enter into discussion with the team. They flatly refused to share anything about the progress of the official investigation or even indicate the lines of enquiry that were being pursued, claiming confidentiality. Even direct questions, such as whether statements had been taken from key informants (such as the people who had recovered and identified the body and the women who had seen it before it was sent for the post mortem), were evaded by the duo.

When asked about the lathi-charge on the protestors sitting with the body, the SP initially denied that any such an action took place. Instead, the team was told that it was the protestors who had resorted to violence, breaking the windows of a State Transport vehicle and attacking the police with brickbats and stones. Four young men have been arrested and charged with rioting and damaging public property. The SP stated that all four of the arrested men are well-known local criminals. On being told of the villagers' assertion that at least two of the boys are from Baniyakheda village and do not have any previous criminal record. He refused to discuss the matter further.

When told that both local and national channels (including NDTV),

had aired video footage of the lathi-charge, clearly showing a DSP in plain clothes kicking the body and beating up women protestors, the DC said that he had asked his deputy to conduct an internal inquiry into the incident. No timeline has been defined for this exercise, the scope of which was described as "identifying the causes for the violence resulting in damage to public property".

When asked whether the ADC conducting the enquiry would visit the village and take statements from women injured in the lathi-charge, the DC stated that anyone with any information relevant to the enquiry was welcome to come and give their statements to the ADC. When asked whether there had been any public announcement in this regard, he said that the decision to mount the enquiry had only been taken on the previous day and the process had not yet started.

The SP added that any claims of being injured in the lathi-charge would have to be supported by a medical report from a government doctor. On being asked whether the District Hospital would carry out a medico-legal examination without an order from the administration, he insisted that this would be done.

When asked why the administration was not talking to the protestors or giving them any assurances, the DC stated that he had held several meetings with the girl's father to "find out his wishes with regard to the investigation". When asked whether it was usual to conduct a murder investigation in accordance with the wishes of the family rather than in accordance with the legal procedure, he declined to reply.

The SP repeatedly referred to the murdered girl as "hamari betiya" and claimed that it was his bounden duty to deliver justice to her family. When asked why, if he really felt 'in loco parentis' to the girl, he had not gone to the protest site to assure the family of his efforts to identify and arrest the culprits and request them to cremate her body, he had no answer.

#### **Additional Concerns**

The investigation team is concerned that this case is following the usual

pattern in cases of unnatural death of young girls. Our experience shows that in all such cases, the authorities follow their casteist and patriarchal biases and try to find ways to make the girl responsible for her own death. Suicide is the default option, and all efforts are made to establish this scenario, if necessary by concocting evidence and producing unlikely witnesses.

In this case also, we are concerned that the police have made an /a priori /assumption that the girl committed suicide, and the investigation is focusing on establishing this scenario rather than on carrying out a scientific and unbiased examination of the material evidence. The team is also concerned that labelling this as a case of suicide is an effective strategy that totally excludes the caste factor. This is not the first such case in Haryana. More than 22 such cases of brutal rapes of Dalit women have been documented and are in various stages of legal battles for justice, even as we write this.

Our apprehensions are heightened by a news item in the /Indian Express/, on 30th August, the day after we conducted our fact-finding visit. This says that the administration claims this to be a case of "suspected suicide" based on the autopsy carried out in AIIMS, which supposedly found "traces of poison" in the viscera. However, Dr Sunil Gupta of AIIMS (who was among the doctors who conducted the autopsy) was contacted in this regard, and was categorical in stating that no such assertion was made in his report.

This press report, also quotes the SP as saying that several witnesses had seen the girl "roaming about alone" near the spot where her body was found. It is a matter of concern that the authorities, who refused to share any details of the investigation with the fact finding team, were able to make such a categorical statement only hours after telling us that they did not have any clear leads.

The team suspects that these "witnesses" were not mentioned during the meeting because of the risk of their being identified and questioned by the team. It is more than likely that these individuals will

be well tutored before recording their statements which, like all concocted statements, will be identical in every respect and will be designed to support the suicide theory.

It is also very disturbing that that the girl's father has been summoned to the DC's office without the knowledge of the lawyer who is supporting the family. It is significant that these meetings were not mentioned by him during his interactions with the team. We should not be surprised if the father, a landless agricultural worker from a Dalit community, is intimidated or persuaded into agreeing with anything that is proposed by officials who present themselves as all-powerful and offer inducements such as cash, employment or housing.

#### **Conclusions**

From our preliminary investigation, we strongly feel that this is a case possible rape and murder that deserves to be rigorously investigated.

As in several other cases of unnatural death of young Dalit girls in Haryana, the district administration and the police appear eager to close the investigation by declaring that the girl committed suicide. The suicide theory is questionable on several grounds.

The first post-mortem was clumsily and incompetently conducted, probably by a member of the mortuary staff. This is corroborated by the report of the second post-mortem, which records that the organs were not cleanly or completely removed, and a segment of the large intestine was left hanging outside the body. Any conclusions based on the first post-mortem are therefore completely unreliable and must be rejected.

The first post mortem report states that the 'hymen' was ruptured and the second one done at Rohtak states that the hymen was intact. The fact finding team is angry at the callousness which has resulted in such serious lapses and we have ample reason to doubt the procedures that were conducted, and we believe that vital evidence was lost due to the callous attitude of the police and medical officers.

The post mortem was delayed and

was conducted with a shocking lack of rigour or care, probably by an unqualified member of the mortuary staff. The two botched post-mortems have destroyed valuable evidence in the case. The degree of carelessness shown by the police leads to the suspicion that the authorities are more interested in closing the case than in carrying out a proper investigation.

The fact that rape has not been confirmed in the AIIMS post-mortem is irrelevant, since the body was in a fairly advanced state of decomposition and the uterus had been removed in the first post-mortem. The report of the second post-mortem does in fact record significant bruising and two haematoma inside the vagina, indicating an attempt at forcible intercourse.

We feel that the police and administration has failed on many counts to ensure the rights to safety and bodily integrity of the Dalit community, particularly Dalit women. The police failed to register a "missing person" complaint and refused to conduct a prompt search for the missing girl on August 24th, when the incident was first brought to their notice by the mother and relatives.

They failed to ensure a proper and rigorous post mortem and thus the dead girl's body had to be moved from Jind to Rohtak and AIIMS.

No one has been arrested even after a week of the girl's death and in spite of all the protests No official has either visited the spot of protests or the girl's village. There has been no statement from the concerned officials and there is a general apathy to the protests.

Instead of using the State machinery to provide justice to the raped and murdered girl, the police have been hell bent on attacking those who are demanding justice. They have brutalized the protestors and even women protestors were attacked by male police officers. Shockingly, in a show of utter contempt to Dalit lives and personhood, the police is said to have kicked the dead body of this girl. This only reveals the really violent attitude of the dominant castes to Dalits in Haryana society.

The villagers sat with the dead body of the girl for 6 days and had to cremate the body on the 7th day. This is a harrowing and tragic situation for all, compounded by the fact that they have yet to get any kind of justice.

Before we conclude we want to bring attention to an important issue. It is not only the police and the administration in Haryana that has been exhibiting a callous apathy regarding this gross violence on a Dalit woman. The national media and other national activists have also been keeping a chilling silence, which is leaving the villagers at the mercy of the regional police and the State, without access to any national solidarity and support. Till the day of our fact-finding visit, there was no substantial coverage of this issue in the National English media. In fact, the only report about it was in TOI where the paper described the protestors as a 'mob that went on rampage.'

The villages had been sitting on a protest with the dead body for more than 5 days and there were reports in the Haryana media about this. However, the Delhi media, in spite of the fact that Jind is so close, failed to make it a national news, thereby bringing attention to the violent situation in which Dalits and especially Dalit women are caught in Haryana. This is in spite of the huge number of such brutal gang rapes reported in this area in the past few months. In fact, more than 22 such cases of brutal rapes of Dalit women have been documented and are in various stages of legal battles for justice at present. Dalit organizations like All India Dalit Mahila Adhikar Manch (Haryana and Delhi) had also conducted a protest against these gang rapes in 2012 which travelled to 10 districts of Haryana.

Further, we also need to see that this national apathy and silence is happening at a time when there is a loud outbreak of protests and statements against the gang rape of the Mumbai journalist. More importantly this is also happening after India gained international recognition for having witnessed the largest urban protests against the

brutal gang rape of Nirbhaya in Dec, 2012.

We need to seriously think of the reasons behind such apathy and device ways to resist and change it.

**In conclusion, the Fact finding team would like to reiterate** the demands that have been put forward by the family of the raped and murdered girl and the many groups and organizations that are protesting this brutal atrocity on the young Dalit woman.

**Our recommendations:**

The Fact finding team has listed the demands that have been put forward by the family of the raped and murdered girl and the many groups and organizations that are protesting this brutal atrocity on the young Dalit woman.

Transfer the case to CBI or constitute an independent enquiry into this case.

Proper investigation and immediate arrests of culprits.

Invoke the relevant sections of SC/ST PoA Act on the accused, including Section 4 of the Act on the negligent officials.

Immediate legal aid and support be given to the family. Remove the false cases on the protesters and immediate release of the four boys who have been arrested. Take action against the police who beat up the protesters and the official who kicked the body of the raped and murdered victim.

Constitute a special enquiry team to prepare a report on the status of all the rape cases that have been reported in Haryana in the past one year. This process should include collaboration with Dalit and women rights activists.

Minister - Social Justice and Empowerment, Ms. Selja Kumari, should call for a Round Table discussion with all the concerned officials from Haryana and review the situation.

All the National Human Rights Institutions (NHRC, NCW, NCSC) should have a joint meeting to discuss the recent crimes against Dalit women in Haryana and release a plan of action to address these issues.

**Asha Kowal**, All India Dalit Mahila Adhikar Manch □

## Victims of Police Torture again Physically Manhandled - No Action from Any Quarter

To  
The Chairman, National Human  
Rights Commission,  
Faridkot House, Copernicus Marg  
New Delhi-110001 19h July 2013

Respected Sir,

On 27th June 2013, we lodged a complaint before your Commission on serious physical torture by police personnel of Jalangi police station on Mrs. Merina Bibi, wife of Mr. Piyarul Sk and Ms. Anwara Bibi mother of Mr. Piyarul Sk and ransacking of their house, the incident took place on 13.06.2013. We requested for an urgent action over the incident. Till date we have not received any communication from your end regarding the registration of the complaint.

On the date of incident Mr. Abhijit Singh, Mr. Jaydeb Chakraborty ( the Officer-In-Charge of Jalangi Police Station, Murshidabad ) came up to the victim's residence with 30-35 police personnel. At that time the

police first threatened then physically tortured the victims and ransacked their house due to non- payment of bribe by Mr. Piyarul Sk. The victim's family lodged a written complaint before the District Magistrate (DM), Murshidabad and urged for an urgent intervention over this incident.

The complaint to the District Magistrate, Murshidabad made the errant police more offensive and furious and they started further intimidation of the family and in this course on 24th June 2013 at around 2am, Mr. Joyjit Chakraborty, IPS and Mr. Mainuddin Khan; ASI of Jalangi Police Station entered the residence of Mr. Piyarul Sk like a intruder and destroyed their household items, those were damaged in previous occasion also. At that time Mrs. Merina Bibi, wife of Mr. Piyarul Sk tried to restrain them by pleading before them but they did not heed on their pleas. They shoved and heckled Mrs. Merina Bibi and her mother in law Ms. Anwara Bibi.

During this, the police personnel tried to sexually abuse Mrs. Merina Bibi as well and touched her private body parts. During the whole incident, the police personnel time and again asked the womenfolk to withdraw the complaints, which were lodged in different quarters of administrations. The whole incident was eye witnessed by Mr. Habibur Rehman and Mr. Asraf Ali with others from neighborhood.

In this situation, I demand for ultimate security and safety of the family and specifically of the womenfolk and our complaint dated 27th June with this update information must be registered with your Commission. The errant must be booked under specific charges and witnesses be protected.

Sincerely yours,

**Kirity Roy**, Secretary, Banglar Manabadhikar Suraksha Mancha (MASUM) & National Convenor (PACTI) Programme Against Custodial Torture & Impunity. □

## NAPM Condemns Brutal Police Attack in Kathikudam and Demands Immediate Closure of Nitta Gelatin Co.

New Delhi, July 21: In a shocking and highly condemnable incident police brutally attacked the peaceful gathering of villagers, yesterday, who were removing the illegally laid effluent pipeline of the Nitta Gelatin Company in village of Kathikudam in Thrissur District of Kerala. The people were discharging the legal responsibility of removing the pipe laid through a private citizen's land without his consent and through the Panchayat land against the order of the Panchayat. While it was the natural duty of the police to support the Panchayat and the people in enforcing the Panchayati Raj Act of Kerala, they launched a rabid war on the people. Women and children were illegally arrested along with entry into houses damaging the property and verbal abuses by the Police. More than 70 of the

protesters were in various hospitals in Angamaly and Chalakudy seeking medical help for the injuries they suffered, while some of them were rushed to ICU with more serious injuries.

Kerala, is much touted for its decentralisation of power and development planning but this incident and earlier the struggle around Coca Cola factory in Plachimada exposes that commercial interests often take precedence over the constitutional rights of the citizens. The Company is a joint venture of Kerala Industrial Development Corporation and Nitta Gelatin Co. set in 1975, starting production 1979 and uses per day 130 tons of crushed animal bones, 1,20,000 liters of hydrochloric acid, and 20 tons of lime. It also uses ferric chloride, alum, caustic soda and

other unknown chemicals. It has been discharging large quantity of toxic effluents in river Chalakudy, main source of drinking water in nearby areas and distributing sludges as fertiliser to farmers in nearby villages, something which Coca Cola also did. Huge profit from the company operations goes to the Japanese counterparts of the company, the Nitta Gelatin Inc and Mitsubishi Corporation.

It is unfortunate that despite the fierce struggle led by people's group Action Council against the plant since 1996, State government has connived and failed to respond to the challenge and demands of the many nearby and downstream villages which have been demanding closure of the plant. **The presence of huge tanks storing 30 lakhs liters of hydrochloric acid at the densely**

**populated area of Kathikudam makes the situation potentially catastrophic and renders a nightmare to the local inhabitants.** It makes them panicky as and when they read industrial disasters elsewhere in the country or outside. **It is a disaster in making and unfortunately government of Kerala has failed to protect the lives of people and instead chose to attack the villagers yesterday.**

**Disrespect to the law of land, non-compliance of rules and regulations issued by the local governments, blatant denial of abject truths, harassment of Action Council members arresting and implicating them in fake criminal cases, misleading the courts, bribing police and public servants, and manipulating the media are common characteristics of both Coca Cola and NGIL.**

The lessons we learned from the Union Carbide case and the Coke controversy are enough to be more vigilant in the matter of foreign investments in our land, something which no one in power seems to care. Those industrial initiatives, no matter how big they are and how fabulous are their promises, should not be allowed to enter the country if they do not conform themselves to the laws of the land.

**NAPM demands that Kerala Government heading to people's struggle immediately shut down NGIL plant at Kathikudam, initiate long term measures for treatment of land and water, compensate people for loss of livelihood, health and take action against the officials who ordered brutal lathi charge on the gathering yesterday,** which was incidentally inaugurated by Prof. Sara Joseph, Congress MLA T.N. Pratapan, who

is fully supporting the struggle, Vilayoty Venugopal (convener Plachimata struggle) and attended by many others.

Given the current circumstances we have all the reason to believe that **NGIL IS AN IMPENDING DISASTER** just like Bhopal Gas tragedy in 1984, both plants belonging to the same era. Victims of Bhopal tragedy are yet to get justice even after nearly three decades and we must all unite to stop any such tragedy at Kathikudam.

**Medha Patkar, C R Neelakandan, Geo Jose, Prafulla Samantara, Gabriele Dietrich, Sister Celia, Major General (Retd.) Sudhir Vombatkere, Arundhati Dhuru, Suniti S R, Hussain Master, Vilas Bhongade, Dr. Sunilam, Suhas Kolhekar, Bhupender Singh Rawat, Kamayani Swami, Mahendra Yadav, Rajendra Ravi, Vimal Bhai, Seela M, Madhuresh Kumar** □

**POSCO Pratirodh Sangram Samiti Statement Exposing Project's Destructive Potential:**

## **Ministry of Environment and Forest's (MOEF) Roy Paul Committee Report Reveals More Illegalities, Exposes Project's Destructive Potential**

At a time when our people are facing bombs, *lathis* and violence in order to defend their basic rights to their homes, lands and livelihoods, yet another official committee has confirmed that the POSCO project is being pushed through without a thought for the welfare of the people of the area or of this country.

On October 22nd 2012, the second official review committee to be constituted on the POSCO project

– constituted in May 2012 (this time, on the directions of the National Green Tribunal on March 31, 2012) submitted its report to the Ministry of Environment and Forests (MoEF). This report has not yet been made public but has been obtained by an Right to Information (RTI) request.

The POSCO Pratirodh Sangram Samiti (PPSS) wishes to bring the following key points from the report to the attention of the public in this

regard:

- The Odisha government and POSCO are lying when they say they have decided to reduce the project size to 2700 acres and “leave out” most of the private and forest lands in the villages of Dinkia and Govindpur. Till date their plant layout lists the plant's substation, water supply facilities, main office for phase

### **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 □

I, two gates, etc. in the land that they supposedly do not want. The committee has asked POSCO to submit a revised layout and also unambiguously state that this will not affect their expansion plans.

**The Committee notes that - eight years after signing an MoU to start the project - the government and POSCO have yet to carry out the following basic studies:**

- Assessing how much water is actually available in the area and whether this area can support such a huge plant;
- Impacts on fisheries, which support more than 20,000 people in the area;
- A plan for management of oil spills;
- Impact of dredging of material for the private port;
- Impact on marine ecology and wildlife from the plant;
- Critical long term study for captive port
- The Committee also says that therefore the project needs to submit a fresh Environment Impact Assessment report for its revised layout. Hence, the entire process effectively has to start again.
- The Committee has also clearly said that expansion of any project in the area (not just POSCO) should be considered only after a carrying capacity study.

In short, as per the findings of the Roy Paul committee, this project has never been studied properly and could - in other words - pose a serious risk to the entire area. The

committee hence confirms the finding of the NGT that "a project of this magnitude particularly in partnership with a foreign country has been dealt with casually, without there being any comprehensive scientific data regarding the possible environmental impacts. No meticulous scientific study was made on each and every aspect of the matter leaving lingering and threatening environmental and ecological doubts un-answered."

It is a different matter that the Roy Paul Committee has incorrectly limited its own mandate - looking only at "conditions" of the 2011 environment clearance rather than a full review as mandated in their Terms of Reference (ToR) as well as directions of the NGT. It also tries to claim that the revised EIA can be made and the process go ahead without a public hearing or a new environmental clearance - but this is simply illegal. None of this attempt to shield POSCO and their former colleagues changes the facts that the Committee reveals.

Three of our people have given up their lives to stop this illegal and unjust project. What the Committee report confirms is that no one - including the government that is unleashing brute force against us - has any idea how many more lives will be lost, and how much more damage caused, if this project indeed comes up. It is time that the State and Central government stopped acting on behalf of POSCO as its agent and instead take the serious social, human rights environmental and legal issues on board to reject the project in its entirety.

**Prashant Paikaray,**  
Spokesperson, POSCO Pratirodh Sangram Samiti. □

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