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Consistent and Firm Opposition to the Death Penalty

While delivering the 35th JP Memorial Lecture on 23rd March, 2015 in Bangalore, the distinguished former civil servant and diplomat Gopal Krishna Gandhi, ringingly declared: "I would like to take this opportunity to say right at the start... that India must move determinedly forward to the abolition of the capital punishment." He alluded to the fact that Jayaprakash Narayan -- PUCL's founder -- championed causes forsaken by the majoritarian media and public, such as opposition to capital punishment. Going by popular reactions to frenzied media reports in India now of executions and of rejections of mercy petitions or appeals by those on death row, it would appear that a majority of vocal Indians favour the death penalty. But laws are not made to -- and more pertinently, courts are not expected to -- appease the majority. If that were to be so, the legislature, the executive and the judiciary could well abdicate their responsibilities as regards ensuring adherence to the rule of law and give in to mob rule and blood lust.

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PUCL National Council Meeting on 19th and 20th September, 2015

Venue:

For Meeting: Bal Bharathi School, Civil Lines, Allahabad, Uttar Pradesh

For Stay: `Sadhna Sadan', Opp St. Joseph's School, Civil Lines, Allahabad

Landmark: Sadhna Sadan is opposite St. Joseph's School, Civil Lines. It is about 3 kms from Allahabad Junction, railway station. There are two sides of this railway station, one is city side and the other is civil lines side.

Contact Persons: All delegates may send the information about the time of arrival of their train to the following persons so that necessary arrangement to receive them may be made.

- a) **O.D. Singh**, Mob. : 09335156860 E.: omduttsingh1@gmail.com.
- b) **Ms. Utpala Shukla**, Mob.: 09415828093
E-mail : utpalashukla@gmail.com
- c) **Ms. Seema Azad**, Mob.: 09506207
Email: seemaaazad@gmail.com. □

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PUCL has had a long-standing and rock-solid opposition to the death penalty. And it has been, and very much is, on the right side of history. For, as of now about 100 countries are abolitionist in law and another 40 more are abolitionist in practice (meaning that they have not carried out an execution for so long that they are deemed to have forsaken capital punishment). Smaller South Asian neighbours such as Bhutan and Nepal have set an example for others in the region to follow. India is in the recalcitrant company of China, Iran, Pakistan, Saudi Arabia and those generally regarded as democracies -- Japan and the United States -- as a retentionist state.

That the death penalty is not a deterrent to crime is evident to anyone who compares the crime statistics as between Europe (except retentionist Belarus) and the United States: And within the United States, as between the 19 abolitionist states and the 31 retentionist ones (among the latter are many who are practically abolitionist). Lack of deterrence effect is only one of numerous arguments. Even in jurisdictions such as Britain and the United States and elsewhere (where litigation is hugely expensive) there have been several instances of

people long dead or still alive being declared innocent following the reopening of cases.

Often in India, supporters of the death penalty invoke "victims' rights". Many an erudite article setting out the reasons against the death penalty in general or particular instances where due process was not adhered to - "think of the victims", comes the response. Do victims find closure through another killing or through speedy justice? In the United States, there are numerous organisations such as the Murder Victims' Families for Human Rights which sternly oppose capital punishment. Such movements need to be fostered in India.

"But terrorists need to be punished". Indeed. But with death? By executing Ajmal Kasab in 2012, India sacrificed a prime witness. And the young man might have been afforded a chance to repent and reform. Just a few months later, the Kashmiri Afzal Guru was executed in 2013 in order to satiate the "collective conscience" of society - as the Supreme Court of India infamously had it. One person's terrorist is another's freedom-fighter. Nelson Mandela was deemed a terrorist for long years by Western powers that later queued up to invite him. Kurdish leader Abdullah Ocalan would have been executed had Turkey not applied to join the

European Union. Ocalan has been talking peace to the extent that the US magazine hailed him as one of the "100 most influential people in the world" in 2013. Adolf Eichmann ought to have been spared his life to, not just repent assuming he'd have been so minded, but more importantly to dialogue with his Israeli captors (who, alas, have now adopted the genocidal and Apartheid policies vis-à-vis the Palestinians that the regime Eichmann served did towards Jews). M.K. Gandhi's sons as well as Narayan Desai, son of Gandhi's illustrious secretary Mahadev Desai, had pleaded for sparing the life of Nathuram Godse. The good judge Jyotsna Yagnik, while sentencing Maya Kodnani, Babu Bajrangji and other Hindu terrorists in the NarodaPatiya case as part of the 2002 anti-Muslim pogrom in Gujarat, eschewed the death penalty, arguing rightly that it went against "human dignity".

What is sauce for Hindutva terrorists, ought to be sauce for terrorists of other hues - or those so deemed so - unless Apartheid becomes the new world order. There are many other reasons for abjuring the death penalty. The following package of articles and notes examine the issue from various angles.

Editorial Team □

Press Statement: 27/07/2015

Justice Rajindar Sachar, former President of People's Union for Civil Liberties (PUCL) has issued the following statement a few days before the execution of Yakub Memon:

"I am of the firm belief that Capital punishment is barbaric and should be abolished in our Country, (this was also the weighty view of Gandhiji, Jayaprakash Narain, (the Socialist Leader), and Dr Ambedkar, the Architect of our Constitution). Till it is done, I also believe that no execution should take place and as such I am of the view that the President should commute all the pending and future Death sentences - this automatically would include the case of Yakub Memon. " □

Press Statement: 5th August, 2015

Yakub Memon: How Many More Executions?

Time to Abolish Death Penalty

PUCL condemns the death by hanging, of Yakub Memon, on 30th July, 2015 in Nagpur Central Jail, following the last minute rejection of his mercy petition by the President

of India the evening before, and the early morning dismissal by the Supreme Court, of his petition seeking stay of the hanging, just a few hours before his execution. The

SC petition raised issues of violation of important procedural requirements while fixing his execution date. The summary refusal by the President of the mercy

petition is especially regrettable considering that new information had surfaced recently in the form of a letter written by B. Raman, IPS, the RAW Officer directly supervising his case, who testified to Yakub's cooperation with investigating agencies which is a crucial mitigating circumstance.

PUCL has always taken a principled stand against the death sentence as being arbitrary, capricious, unreliable and an uncivilised punishment. It is our view too that DP is anti-thetical to India as the land of ahimsa and non-violence. It is on this principled ground that PUCL has opposed and condemned all executions, including the hanging of Yakub Memon.

It is in this context that we view as unfortunate that the President and the Government, as also the courts remained unresponsive to the call of many eminent citizens to stand above the demand for retribution and vengeance and to exercise the powers of showing mercy; by no stretch was the demand to free Yakub, but only to commute the death sentence.

The Government, instead chose to go ahead with the execution arguing that since the Mumbai 1993 blasts were the first major terrorist crime in India they needed to show their firmness and also so that the hanging will act as a deterrent in the future. We would like to point out that specially in terror related

crimes, death penalty is hardly a deterrent as those committing these crimes consciously and knowingly participate unmindful of consequences, including their own deaths. The risk of arrest and death sentence cannot scare or deter such persons.

We would like to point out that a PUCL and Amnesty International - India study of Supreme Court death penalty judgments between 1950-2008 unambiguously shows that there is so much arbitrariness in the application of 'rarest of rare' doctrine in death penalty cases that in the ultimate analysis, death sentence constitutes a 'lethal lottery'. A recent study of the Death Penalty Litigation Clinic of the National Law University, Delhi also shows that a predominant number of death row convicts are from poor, socially and economically backward and vulnerable communities and have not had access to good legal support. There can therefore be no justification to retaining death penalty in our law books.

In the context of the 1993 Mumbai bomb blasts, we would like to point out that Justice Srikrishna Commission has reported: "One common link between the riots of December 1992 and January 1993 and bomb blasts of 12th March 1993 appears to be that the former appear to have been a causative factor for the latter. There does appear to be a cause and effect relationship

between the two riots and the serial bomb blasts".

Justice Srikrishna further emphasised, "It is distressing that instead of being looked at as incidents of crimes, the two sets of acts got dealt with disparately depending on the communal inclinations of the state apparatus" thereby ensuring that the perpetrators of the communal violence were never prosecuted. Justice has eluded the minority community victims even 23 years after the communal riots that took numerous lives in Bombay in Dec, 1992 and January, 1993.

PUCL would like to stress that three greatest leaders of our Country Gandhiji, Jaya Prakash Narain, the Socialist leader and Dr. Ambedkar, the architect of our Constitution were for abolition of death penalty.

We firmly believe that mercy and compassion are key values of a humane society. We also hold that abolishing death penalty is not a sign of weakness of the State. Rather it is a stand which arises from a sense of moral authority and practical realism.

PUCL once again reiterates the call to abolish death penalty in India and to join the 140 other countries in the world who have abolished death penalty.

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

PUCL President's Letters:

Death by Hanging versus Death by Shooting

Dear Colleagues,
I had come to the conclusion that Death Penalty should be abolished much before I came across various arguments advanced for its abolition. My first reason was that our Criminal Justice System was (and is) partial to the rich and the influential resulting in the death sentence being awarded to the practically defenceless poor. And the second was the incidents of filing

false cases against innocent persons. In course of investigating cases of murder and mayhem perpetrated by the armed squads of the Naxals or of the landlords, I found that the locals did not recognise the attackers as they were outsiders. Additionally, they had taken care to cover their faces. All the eyewitnesses stated this fact very clearly. However, the FIR in these cases contained not only the

names of the attackers but also the details of who did what. It so happens that the victims do not recognise the attackers, but knew the organisation which was behind it. So, they falsely implicated the supporters of the concerned organisation in the case. Consequently, the persons sentenced to death in those cases were absolutely innocent persons. It is outrageous that an innocent

person should suffer any punishment for a crime he did not commit, but to see him hanged for it is unbearable.

Thus, I have never had any reservation against death penalty. But I have also been outraged by the shooting of unarmed demonstrators by the police as if they were stray dogs (in fact, even stray dogs are not shot so wantonly with impunity) with impunity. I have been politically in the fight against this injustice right from the 1950s and raised my voice against the

Janata government (though I had campaigned for it in 1977 elections) formed after the emergency for being trigger happy. I have faced the police firing in which a colleague standing next to me was shot dead, and so was a student (10 December, 1966). I had earlier watched a co-student being shot dead in 1955. But those were days, when the people listened to the cry for justice and punished the people and the party perpetrating such crime at the next election.

Today, there is shocking insensitivity

to the people dying in police firings on unarmed demonstrations. My purpose in writing 'Death by hanging versus death by shooting' is not to dampen the spirit behind the campaign for abolishing death penalty, but to arouse the same sympathy and concern for the innocent men and women being shot with impunity in police firings. The value of human life is the same for us.

Prabhakar Sinha, 09th August 2015 □

Dear Colleagues,

The campaign against death penalty is just and humane and needs to be appreciated and fully supported, but the silence on death by shooting of unarmed demonstrators is deafening and intriguing. We rightly oppose capital punishment even though it is awarded in the rarest of cases after affording all possible opportunities to the victims to defend themselves. They are also afforded the opportunity to appeal for mercy before they are eventually hanged. During this long process the society also intercedes on their behalf to prevent the noose in their necks. Capital punishment is sought to be abolished regardless of the horror of the crime the guilty might have committed.

In contrast, the crime of the victims of the firing on unarmed demonstrations might at worst be pelting of stones or throwing of soda

water bottles at the police, and at best refusal to disperse after their assembly has been declared unlawful. They have no opportunity to defend themselves. In fact, they are shot and killed without a warning, and sometimes after an excuse of a warning. The riot flag, which was always unfurled before the police opened fire and served as a real warning during the British Raj, is now history. The authorities choose the easier excuse of firing in 'self defence'. They do not have to prove before a court that killing or maiming was necessary for their 'self defence, as you and I have to do'. They cannot be prosecuted without the sanction of the government. Thus, the police have a license to kill. The number of people killed every year in such police firings (excluding in encounters real or fake) is far greater than those who are hanged.

Don't they deserve the same concern? If capital punishment is inhuman and should be abolished, should not the shooting and killing of unarmed demonstrator be made a "rarest of rare" incident? Why should we, who place great value on human life discriminate between death by hanging and death by shooting? Why should we feel less pain for the loss of life of those whose only crime might have been pelting stones on the police or disobeying the imperial (magisterial) order to disperse when we feel so strongly about the loss of life of those found guilty of grave crimes? One life is as valuable as another. We must not discriminate. Just as we campaign for abolition of Death Penalty, we must campaign for making death in police firing on unarmed demonstrations 'a rarest of rare incident.'

Prabhakar Sinha, 04.08.2015 □

In Search of Justice: Tracing the Legal Battle of Yakub Memon

Parijata, Advocate, Mumbai

The events 30th July 2015 marked a turning point in the campaign against death penalty. While the subsequent debates raised several questions; the aspect which hasn't received much attention is the working of the legal system with regard to the petitions filed by Yakub. It is precisely this aspect which I chose to discuss in this article.

Tracing Yakub's legal battle

Some offences in the Indian Penal Code and other legislations are penalized by capital punishment. The general procedure with regard to the awarding of the death penalty is a mandatory confirmation of the Trial Court's sentence by the High Court but in Yakub's case owing to the provisions of TADA the initial safeguard of the High Court was not

applicable. The only avenue of redress from the decision was the Supreme Court. Thus, Yakub started his journey of seeking redress with the handicap of limited avenues.

His challenge of the judgment was rejected by the Supreme Court on 21st March 2013 and the review was also rejected on 30th April 2013. Subsequently, his brother filed a

mercy petition. The President rejected the mercy petition on 11th April 2014 and this decision was communicated to Yakub only on 26th May 2014. By this point the jurisprudence with regard to death penalty underwent a change due to judgment of the Supreme Court in Mohd. Arif's case. The said judgment mandated that all review petitions pertaining to death penalty should be heard in open court and allowed for petitions which were previously rejected to be heard again. Yakub took recourse to this newly carved remedy. This review petition was rejected by the Supreme Court on 9th April 2015 and subsequently he filed a curative petition before the Supreme Court on 22nd May 2015.

In the mean time, on 30th April 2015, the TADA court issued an execution warrant. The law regarding the issuance of death warrant as elucidated by the Supreme Court in Shabnam's case very categorically states that the process of issuance of the death warrant should be in consonance with the principles of natural justice. The reason is simple; as a civilised nation the act of taking someone's life should never be a hasty decision. Thus, the Apex Court stated that death warrant should be executed only when the convict has exhausted all the remedies available to him/her. The other essential point stressed by the Courts with regard to the issuance of the death warrant is a clear notice to the convict in question and an immediate despatch of the warrant to him.

In Yakub's case the timeline clearly highlights the fact that he had not exhausted his remedies when the

death warrant was issued. Moreover, he was served the death warrant only on 13th July 2015. Additionally, till 13th July 2015 the curative petition had also not been decided by the Supreme Court. Hence, the issuance of the death warrants violated the safeguards laid down by the Courts.

On 21st July 2015 the Curative Petition was rejected by the Supreme Court. It was at this point that a writ was preferred to the Court citing the illegality of the death warrants and praying for them to be quashed. The bench hearing the writ gave a split verdict with Justice Dave refusing to stay the warrants and Justice Kurian Joseph noting irregularities in the process of the Curative Petition and stating that the curative petition needed to be heard afresh. This split verdict was given on 28th July 2015, a mere two days prior to the slated date of execution. The larger bench heard the matter on 29th July 2015 and rejected the petition on the same day.

During this period the letter of the ex RAW chief B. Raman admitting to the key role played by Yakub in assisting the investigation was published. This letter added credence to Yakub's stand of surrendering to the Indian authorities and was a new development which drastically altered the case. It was on the basis of this that a mercy petition was filed by Yakub himself before the Governor and the President.

The law with regard to the mercy petition is present in the Constitution and the rules drafted by the Ministry of Home Affairs. A plain reading of the same reveals that there is no

limitation to the number of petitions which may be filed and it specifically allows for petitions to be filed in the light of new information. The mercy petition filed by Yakub was rejected by the President on 29th July 2015. The uncertainty of life for a death row convict and the anguish it causes is a universally acknowledged concept. It was on this basis that the Court in Shatrughan Chauhan evolved the safeguard of a mandatory period of 14 days between the communication of the rejection of the mercy petition and the execution of the convict. This is intended to allow the convict and his family the time to make peace with the imminent death and also procure any other legal remedies available. It was to claim this right that the application was moved in the evening of 29th July 2015. While many felt that the late night application was out of the ordinary; the same is not out of the ordinary in cases of death row convicts.

Yakub's case clearly satisfied the need of the 14 day period because till a few hours before his execution, his fate remained uncertain. In such a situation how can one agree with the argument of the state that more than enough time was granted for him to prepare for the death? The key question to be asked is, what was the hurry?

The petitions and applications reveal a man who genuinely believed in the justice system and attempted to avail all the opportunities he was entitled to by law but was sadly denied the safeguards laid down by the very system he believed in. □

Pope Francis Calls for Abolishing Death Penalty and Life Imprisonment, 22nd October 2014

Note: Pope Francis, the first Pope from Latin America and known for his progressive stances on many social issues. We are carrying an article about Pope Francis's call to abolish death penalty worldwide. He has been issuing what are called 'encyclicals' which are meant to guide the Catholic church in terms of their theological positions and actions, worldwide. Recently he has issued an encyclical on climate change which is path breaking in its vision and perspective. We shall carry excerpts in a later issue.

VATICAN CITY (CNS) -- Pope Francis called for abolition of the death penalty as well as life imprisonment, and denounced what he called a "penal populism" that promises to solve society's problems by punishing crime instead of pursuing social justice. "It is impossible to imagine that states today cannot make use of another means than capital punishment to defend peoples' lives from an unjust aggressor," the pope said Oct. 23 in a meeting with representatives of the International Association of Penal Law. "All Christians and people of good will are thus called today to struggle not only for abolition of the death penalty, whether it be legal or illegal and in all its forms, but also to improve prison conditions, out of respect for the human dignity of persons deprived of their liberty. And this, I connect with life imprisonment," he said. "Life imprisonment is a hidden death penalty".

The pope noted that the Vatican recently eliminated life imprisonment from its own penal code.

According to the Catechism of the Catholic Church, cited by Pope Francis in his talk, "the traditional teaching of the church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor," but modern advances in protecting society from dangerous criminals mean that "cases in which the execution of the offender is an absolute necessity are very rare, if not practically nonexistent".

The pope said that, although a number of countries have formally abolished capital punishment, "the death penalty, illegally and to a varying extent, is applied all over the planet," because "extrajudicial executions" are often disguised as "clashes with offenders or presented as the undesired consequences of

the reasonable, necessary and proportionate use of force to apply the law".

The pope denounced the detention of prisoners without trial, who he said account for more than 50 percent of all incarcerated people in some countries. He said maximum security prisons can be a form of torture, since their "principal characteristic is none other than external isolation," which can lead to "psychic and physical sufferings such as paranoia, anxiety, depression and weight loss and significantly increase the chance of suicide".

He also rebuked unspecified governments involved in kidnapping people for "illegal transportation to detention centers in which torture is practiced".

The pope said criminal penalties should not apply to children, and should be waived or limited for the elderly, who "on the basis of their very errors can offer lessons to the rest of society. We don't learn only from the virtues of saints but also from the failings and errors of sinners".

Pope Francis said contemporary societies overuse criminal punishment, partially out of a primitive tendency to offer up "sacrificial victims, accused of the disgraces that strike the community".

The pope said some politicians and members of the media promote "violence and revenge, public and private, not only against those responsible for crimes, but also against those under suspicion, justified or not".

He denounced a growing tendency to think that the "most varied social problems can be resolved through public punishment ... that by means of that punishment we can obtain benefits that would require the implementation of another type of social policy, economic policy and policy of social inclusion".

Using techniques similar to those of

racist regimes of the past, the pope said, unspecified forces today create "stereotypical figures that sum up the characteristics that society perceives as threatening".

Pope Francis concluded his talk by denouncing human trafficking and corruption, both crimes he said "could never be committed without the complicity, active or passive, of public authorities".

The pope spoke scathingly about the mentality of the typical corrupt person, whom he described as conceited, unable to accept criticism, and prompt to insult and even persecute those who disagree with him.

"The corrupt one does not perceive his own corruption. It is a little like what happens with bad breath: someone who has it hardly ever realizes it; other people notice and have to tell him," the pope said. "Corruption is an evil greater than sin. More than forgiveness, this evil needs to be cured."

Courtesy: Article written by Francis X. Rocca, Catholic News Service, <http://www.catholicnews.com/data/stories/cns/1404377.htm> accessed on 24th October, 2014.

Note: In March, 2013, Pope Francis sent a Message to participants of the Fifth World Congress Against the Death Penalty held in Madrid in March, 2013 in which he reiterated the Holy See's support for the abolition of the death penalty. Opposition to the death penalty is part of the Church's defense of the dignity of human life, he said, and it is **"a courageous reaffirmation of the conviction that humanity can successfully confront criminality"** without resorting to the suppression of life. (Italics ours)

In his message, which was signed by Vatican Secretary of State Cardinal Tarcisio Bertone, the Holy Father recalled that his predecessors Benedict XVI and John Paul II made similar pleas. He asked that "capital sentences be commuted to a lesser punishment

that allows for time and incentives for the reform of the offender." "Today, more than ever, it is urgent that we remember and affirm the

need for universal recognition and respect for the inalienable dignity of human life, in its immeasurable value," Cardinal Bertone wrote on behalf of Pope Francis.

Source: <http://www.ncregister.com/daily-news/papal-message-reaffirms-call-to-abolish-death-penalty/#ixzz3jbEID8RU> ▮

It Is 20 Years since A Great Anti-Death Penalty Judgement¹

N. Jayaram, General Secretary, PUCL Bengaluru

On 6th June, 1995, the newly constituted Constitutional Court of South Africa delivered an unanimous judgment declaring death penalty against right to life and unconstitutional thereby abolishing capital punishment in South Africa. The judgment is sheer poetry in the way different judges have written their opinion outlawing death penalty. We are carrying a summarised article written by Jayaram, a long time campaigner against death penalty. The full version can be accessed from the URL given at the end of the article.

Eight months after a post-Apartheid, multi-racial government elected through universal suffrage, led by Nelson Mandela, took office in May 1994, the Constitutional Court of South Africa was formally inaugurated on 14 February 1995. The very next day it began hearing the case of *The State v Makwanyane and Mchunu*. The two men at the centre of the case had been convicted of murders, attempted murder and robbery with aggravated circumstances and their appeals against the death penalty had been rejected by the Supreme Court.

President Mandela's government, through its counsel George Bizos - who had risen to prominence during the Rivonia Trial of 1963-4, in which the death penalty was perhaps narrowly avoided for Mandela and others - had made it clear that it favoured abolition, but the attorney general of Witwatersrand pressed for the death penalty for the two convicts. And thereby inadvertently did the world a great favour as it led to cascades of some of the most scintillating prose by the likes of Justices Arthur Chaskalson, Ismail Mahomed, Yvonne Mokgoro, Kate O'Regan, Albie Sachs and others. Most importantly the 11 members of the bench unanimously and conclusively established through their brilliant argumentation that the death penalty was inconsistent with the Interim Constitution of South Africa of 1993 (overtaken by the updated one of 1996).

The Constitutional Court consisted

of jurists from different races, religions and age groups - Justice O'Regan was 37 when she was appointed to the court. Many of the 11 judges were or are internationally renowned jurists.

Presiding judge Chaskalson noted, in his judgement delivered on 6 June 1995, that no executions had taken place in South Africa since 1989 and that in 1995 as many as 400 people were on death row, some of them convicted as far back as in 1988. At least half of them had been sentenced more than two years earlier. He termed it an "intolerable situation".

Arguably the most stirring words in the full judgement came from Justice Mahomed:

"The deliberate annihilation of the life of a person, systematically planned by the State, as a mode of punishment, is wholly and qualitatively different. It is not like the act of killing in self-defence, an act justifiable in the defence of the clear right of the victim to the preservation of his life. It is not performed in a state of sudden emergency, or under the extraordinary pressures which operate when insurrections are confronted or when the State defends itself during war. It is systematically planned long after - sometimes years after - the offender has committed the offence for which he is to be punished, and whilst he waits impotently in custody, for his date with the hangman. In its

obvious and awesome finality, it makes every other right, so vigorously and eloquently guaranteed by ... the Constitution, permanently impossible to enjoy. Its inherently irreversible consequence makes any reparation or correction impossible, if subsequent events establish, as they have sometimes done, the innocence of the executed or circumstances which demonstrate manifestly that he did not deserve the sentence of death."

Presiding judge Chaskalson, while reviewing death penalty jurisprudence from various parts of the world, had this astute observation about a country that retains the death penalty and yet preens itself as a great democracy, namely the United States:

"The differences that exist between rich and poor, between good and bad prosecutions, between good and bad defence, between severe and lenient judges, between judges who favour capital punishment and those who do not, and the subjective attitudes that might be brought into play by factors such as race and class, may in similar ways affect any case that comes before the courts, and is almost certainly present to some degree in all court systems. Such factors can be mitigated, but not totally avoided, by allowing convicted

persons to appeal to a higher court. Appeals are decided on the record of the case and on findings made by the trial court. If the evidence on record and the findings made have been influenced by these factors, there may be nothing that can be done about that on appeal. Imperfection inherent in criminal trials means that error cannot be excluded; it also means that persons similarly placed may not necessarily receive similar punishment. This needs to be acknowledged. What also needs to be acknowledged is that the possibility of error will be present in any system of justice and that there cannot be perfect equality as between accused persons in the conduct and outcome of criminal trials. We have to accept these differences in the ordinary criminal cases that come before the courts, even to the extent that some may go to gaol when others similarly placed may be acquitted or receive non-custodial sentences. But death is different, and the question is, whether this is acceptable when the difference is between life and death. Unjust imprisonment is a great wrong, but if it is discovered, the prisoner can be released and compensated; but the killing of an innocent person is irremediable."

Justice Chaskalson ... began demolishing the arguments of the Witwatersrand Attorney General. The latter had said what is cruel, inhuman or degrading depends on contemporary attitudes and that South African society favoured the death penalty for the extreme case of murder.

"If public opinion were to be decisive there would be no need for constitutional adjudication. The protection of rights could then be left to Parliament, which has a mandate from the public, and is answerable to the public for the way its mandate is exercised, but this would be a

return to parliamentary sovereignty, and a retreat from the new legal order established by the 1993 Constitution. By the same token the issue of the constitutionality of capital punishment cannot be referred to a referendum, in which a majority view would prevail over the wishes of any minority. The very reason for establishing the new legal order, and for vesting the power of judicial review of all legislation in the courts, was to protect the rights of minorities and others who cannot protect their rights adequately through the democratic process. Those who are entitled to claim this protection include the social outcasts and marginalised people of our society. It is only if there is a willingness to protect the worst and the weakest amongst us, that all of us can be secure that our own rights will be protected".

Justice Chaskalson forthrightly rejected the "deterrence" argument: "We would be deluding ourselves if we were to believe that the execution of the few persons sentenced to death during this period, and of a comparatively few other people each year from now onwards will provide the solution to the unacceptably high rate of crime. There will always be unstable, desperate, and pathological people for whom the risk of arrest and imprisonment provides no deterrent, but there is nothing to show that a decision to carry out the death sentence would have any impact on the behaviour of such people, or that there will be more of them if imprisonment is the only sanction".

In one of the most remarkable observations and one supported by feminists, especially in India - where they have been stressing the certainty and not the severity of justice to deter heinous crimes such as rape and murder, - Justice Chaskalson said:

"The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is presently lacking in our criminal justice system; and it is at this level and through addressing the causes of crime that the State must seek to combat lawlessness."

Justice Albie Sachs, a remarkable individual who had lost an eye and an arm thanks to a bomb placed in the Mozambican capital, Maputo, by agents of Apartheid South Africa in 1988. (In other words he was a survivor of a terrorist act and he was effectively ruling out the death penalty for everyone including those convicted of terrorism): "Our Constitution ... is different from those that expressly authorise deprivation of life if due process of law is followed, or those that prohibit the arbitrary taking of life. The unqualified statement that 'every person has the right to life' in effect outlaws capital punishment".

Justices Tholie Madala and Yvonne Mokgoro - along with other Black judges including Justice Pius Langa lending a strong African perspective to the judgement - found that the death penalty went against the grain of the indigenous philosophy of Ubuntu, which in the words of Archbishop Emeritus Desmond Tutu is defined thus:

"We believe that a person is a person through another person, that my humanity is caught up, bound up, inextricably, with yours. When I dehumanize you, I inexorably dehumanise myself."

In other words, South Africa has a judiciary that stands with the best in the world. The executive lags far behind.

It is another matter that in other nominally democratic countries such as the United States, India and Japan, the legislature, the executive and the judiciary are all dominated by conservative, corporatist and majoritarian chauvinist interests and where deeply conservative holdovers such as the death penalty remain in use.

Courtesy: Open Democracy, 5 June 2015. The full article can be accessed at <https://www.opendemocracy.net/n-jayaram/it-is-20-years-since-great-antideath-penalty-judgement>.

Reference:

1. 15Aug2015

Important Reading Materials: Though there is a huge literature on death penalty, we suggest the following to our readers:

1. *The Judgment of the Constitutional Court of South Africa in 'The State v Makwanyane and Mchunu' can be downloaded from <http://www.saflii.org/za/cases/ZACC/1995/3.html>*
2. *PUCL and Amnesty India's study on Supreme Court judgments on death penalty in India, 1950-2006 titled, "Lethal Lottery: the Death Penalty in India - a Study of Supreme Court judgments in Death Penalty cases 1950-2006". [HTTPS://WWW.AMNESTY.ORG/](https://www.amnesty.org/)*

EN/DOCUMENTS/ASA20/007/2008/EN/

3. *An important publication on why death penalty should be abolished globally has been published by the United Nations Human Rights division titled: 'Moving away from the Death Penalty: Arguments, Trends and Perspectives'. The soft copy of the book can be downloaded from: <http://www.ohchr.org/Lists/MeetingsNY/Attachments/52/Moving-Away-from-the-Death-Penalty.pdf>*

PUCL Delhi: Press Statement: 11th August 2015

PUCL Delhi Condemns the Unwarranted Arrest of Yogendra Yadav and his Colleagues, Demands their Immediate Release, and Action Against Accused Officials of Delhi Police

PUCL strongly condemns the unwarranted arrest and detention of Yogendra Yadav and his colleagues by Delhi police on Tuesday night. Yadav and his colleagues had been leading a peaceful procession on behalf of Swaraj Abhiyan to highlight grievances of the farmers. It is shocking that the police manhandled and lathi charged the volunteers of Abhiyan on Sunday night on the pretext of taking security measures at Jantar Mantar, New Delhi. Earlier the police did not allow thousands of farmers who wanted to enter Delhi with 150 tractors to

register their protest.

Another reprehensible action on the part of the Delhi police which require severe condemnation is that Yogendra Yadav was not only detained, he was beaten up, pushed, dragged and humiliated by the police officials in the Parliament Street Police Station.

The action of the Delhi police employed against Yogendra Yadav and his colleagues is a flagrant violation of citizens' democratic right to protest peacefully. The police has no right to prevent citizens in voicing their grievances in peaceful manner

on the pretext of maintaining law and order.

PUCL deplores the lawless ways resorted to by the Delhi Police in dealing with peaceful protestors and demands immediate release of Yogendra Yadav and his colleagues from unwarranted detention. PUCL also urges upon the Lt. Governor of Delhi to initiate inquiry against the police officials who are accused of assaulting and manhandling Yogendra Yadav and his colleagues and suitably punish them.

N.D. Pancholi, President, PUCL (Delhi) □

PUCL Delhi: Press Statement: 9th August 2015

PUCL Delhi Condemns the Violent Attack on AAP MLA by Hooligans at Jamuna Bazar, Delhi Inquiry Demanded

Peoples' Union For Civil Liberties (PUCL) Delhi is shocked to learn that Ms. Alka Lamba, an MLA of the AAP party in Delhi Assembly, was violently attacked by miscreants at Jamuna Bazar, Delhi where she had gone to launch a drive against 'homelessness', on the occasion of the observance of the 'Quit India Day' i.e. the 9th August today. She, along with her colleagues, had gone there early in the morning and was talking to the crowd, mostly homeless and deprived, who had gathered in front of Hanuman Mandir, about the need for them to

avail the facilities of shelters' provided by the Delhi government. In the midst of the meeting when her colleagues were also speaking to the audience, a stone came and hit Alka Lamba brutally on left side of her face making her to bleed. It is learnt that the stone came from the direction of a shop named "Shiv Sweets" owned by a BJP MLA. It happened in the presence of the police who had already been informed of the programme.

PUCL condemns this attack and also decry the dereliction of its duty by the Delhi Police who did not take

any precautionary step to prevent any mishap which could result into such a violent incident.

PUCL demands urgent inquiry in the matter and immediate arrest of the culprits and their prosecution. PUCL also appeals to the Delhi Police not to be swayed by the political influence of the party in power at the Centre, which seems to be intent on doing everything to put hurdles in the social welfare programmes of the AAP government in Delhi.

N.D. Pancholi, President, PUCL (Delhi) □

Chhattisgarh PUCL Condemns the Abduction and Killing of Four Auxiliary Force Constables

The People's Union for Civil Liberties (PUCL) Chhattisgarh condemns in no uncertain terms the abduction and killing of four constables belonging to the Chhattisgarh Auxiliary Force (erstwhile SPOs) attached to Police Station Bedre, district Bijapur by the Maoists. As per newspaper reports, these constables were killed in a Jan Adalat on account of atrocities committed by them during the Salwa Judum campaign. Two of the constables had been travelling in public transport - a bus - and were taken down by Maoists searching the bus. The bodies of the dead constables were left on the Kutru Road by the Maoists along with pamphlets and banners. PUCL reiterates its principled stand against such politics of abduction and murder. Human rights organisations internationally have repeatedly insisted on the Geneva Conventions being complied with by all parties to armed conflict. Meanwhile three villagers picked up by Maoists from Village Rawas, district Kanker were released last evening. The incident comes in the wake of the announcement made in May by

Chavindra Karma, son of slain Salwa Judum leader Mahendra Karma, that Salwa Judum II would be launched under the banner of "Vikas Sangharsh Samiti". The Bastar IG SRP Kalluri and Chief Minister Raman Singh had supported this move. The Congress Party on the other hand had disassociated itself from such movement stating that the Supreme Court in its judgment in "Nandini Sundar & Ors" has directed disbanding of the Salwa Judum and similarly constituted armed vigilantes as unconstitutional. A rally proposed by the Vikas Sangharsh Samiti a month ago had to be cancelled owing to Maoist threats. The past few months have seen widespread agitations in Bastar region on account of various proposed industrial projects. Thousands of villagers have been protesting against the proposed Ultra Mega Steel Plant at Dilmili and the Nagarnar- Vishakhapatnam Slurry Pipeline in district Bastar, and the Polavaram Dam in district Sukma. The Chhattisgarh government must seize the

opportunity to have a dialogue with the village communities and instill confidence in them in the Rule of Law, the social welfare obligations of the State and the autonomy granted under the scheme of the Scheduled Areas. This would be much more effective in weaning the people away from violent rebellion, than mere military operations which often fail for lack of local intelligence. Today the concentration of security forces per lakh of population in Bastar region is 1773, as opposed to 139 for all-India, 169 for Chhattisgarh, and about 800 for Kashmir. Recently the DG CRPF Prakash Singh in a press conference in Koraput, Odisha had stated that if need be drones may be deployed to wipe out Naxalite camps deep in the forests of Bastar. On the other hand, of the 2,918 schools being closed down in Chhattisgarh on account of "rationalization", 782 of them lie in the Maoist conflict-affected region of Bastar.

Lakhan Singh, President; **Sudha Bharadwaj**, General Secretary, PUCL Chhattisgarh □

PUCL Gujarat: Press Note - 06 August 2015

Compulsory Voting Violates Rights of Liberty and Freedom of Expression

Taking into consideration forthcoming elections to the Local Self-Govt. bodies in Gujarat, scheduled in October 2015, Gujarat Government has enacted the law of compulsory voting. In order to ascertain impact of Compulsory Voting Act on the voters, and to deliberate on the same, a meeting of concerned citizens and representatives of the Voluntary Organizations was convened by People's Union for Civil Liberties, Gujarat.

In this meeting, while expressing his views, former Chief Minister, Sureshchandra Mehta informed that there are many technical flaws. In the ordinance that has been promulgated, so far the rules of this Act have not been framed. He also informed that it must be understood that within the liberty of voting, is also included the liberty of not voting. The senior advocate Shri Girishbhai Patel informed that during implementation of the Act, if 10 % of the voters do not cast their votes,

then it may involve penalty and punitive action against about 40 lakhs of persons, and hence this Act is impracticable and will encourage corruption. If we think of its consequences then, especially the poor people will be badly hit. It seems that intention of this compulsory voting is to establish the rule or regime of Hindu majority. This matter is contrary to the spirit of democracy. Voting is the fundamental right of the citizens and not the fundamental duty.

Gautam Thaker, General Secretary of PUCL informed that with compulsory voting, large number of people of Adivasi regions of South Gujarat and Panchmahal, who migrate to different parts of Gujarat for employment and livelihood, fishermen, shepherds, salt workers, farm laborers and migrant workers will face great hardships and they will be unnecessarily harassed. Prahladbhai Avasthi of Nagrik Sangathan informed that no law can be enacted which affects conscience of the people. This is not a battle for political issue but is for constitutional issue. Prof. Hemantkumar Shah informed that it is more important to know as to what is the intention of the Government. This Act strikes at the very fundamental right of a citizen to cast his vote. The constitution has given liberty of views and to act in accordance with the voice of one's

conscience.

Well-known Activist, Manishi Jani informed that it is indeed a matter of self-introspection as to what the intention of the Govt. is in slaying or subtracting the rights of the citizens. By framing such different types of Acts and creating an atmosphere of fear among the people, Gujarat has been reduced to an experimentation laboratory of Hinduism. **Dwarikanath Rath** of Movement for Secular Democracy exclaimed that is it that Gujarat is projected as a nation within the nation? If this is the beginning of compulsion, then what shall be the fate of other rights of the citizens in the future? Prof. **Rohitbhai Shukla** told that as of today this is the matter of elections to the local self-Govt. bodies then a question arises that if there is liberty in the country, how can there be any kind of compulsion. The Act does not at all appear to be a logical or

rational. **Pravinsinh Jadeja** talked about need to understand or comprehend BJP's pathology. Intellectuals and politicians alike will have to collectively and jointly launch the agitation. **Rajesh Bhatt** was of the opinion, as to why there is experimentation with the local self-govt. bodies of Gujarat? The issues like, only two children or that of toilets etc. are cases on which the citizens lose the right of contesting an election.

It was unanimously decided to publicize pamphlets for creating awareness among the citizens and to initiate legal steps, if found necessary. Moreover, it was emphasized that while framing rules of such new laws, views and suggestions of representatives of Voluntary Organizations should also be included or incorporated therein. **Jatin Sheth**, Secretary, PUCL, Ahmadabad Region □

To: All National Office bearers / State Office Bearers / National Council Members / Members & *Bulletin* Subscribers

Streamlining *PUCL Bulletin* - Inviting Articles from Members; Sharing Guidelines for Articles and Reports of Fact Finding Teams

Greetings! Members may have noticed that we have brought about some small changes in the PUCL Bulletin. We hope you have found the changes making a difference to the readability of the Bulletin. However any in-house publication like the Bulletin is as readable and enjoyable as we all make it!! Through this email we would like to invite members from across all the state units to write articles for the Bulletin on issues of common concern related to human rights. Actually laws, policies, programmes etc are changing so fast that it's difficult to keep tabs on what is happening especially on the issue of the implication of the changes to human rights. At the same time, the threat to human rights is becoming more serious across India that there is a great need for us to keep tabs on what is happening throughout. So an internal magazine like the Bulletin becomes important and

relevant for a variety of reasons - dissemination of news, increasing awareness about issues, sharing news about campaigns so we can also initiate adaptations of the same in our respective states and so on. We outline some of the key changes we have brought about in the Bulletin.

Theme based articles and specially written articles: We are now carrying a number of articles in each issue specially or exclusively written for the Bulletin. To the extent possible, we are also focusing each issue on a specific theme - for example the August issue was on attacks on journalists, June issue was on environment (5th June is World Environment day) and so on. We are planning to focus on the next issue in Death Penalty.

The other change we have sought to bring is to ensure that an article is carried fully in the same issue and

not truncated into 2 or three issues. This is to make it more readable and accessible also. For ours is a monthly magazine and people had pointed out that by the time the 2nd or 3rd part was carried in the subsequent issues they forget what was published earlier. This requires us to limit the length of each article.

Word count: To enable us to carry more articles in each issue we have also requested people submitting articles to limit their word count to between 1000 to 1200 words for articles; those articles specially commissioned by us, we are requesting writers to limit their articles to between 1500 words or thereabouts.

As for Fact Finding Reports, we are requesting state units to limit the report to a summary with key issues, findings and recommendations between 2000 to 2500 words.

Lengthier articles in the PUCL Website: The full FFT Report will

be carried in the new website: www.pucl.net. On a selective basis as decided by the Editorial Board, longer articles can also be carried in the website.

We hope you have seen the new site. We request you to visit the site and give your suggestions. Its still at a prototype stage now and it can be improved.

Time line for submitting articles: For your information, the cut off time for receipt of articles is 18th of every month for after that day we require 2 days to edit the articles and then send it for typesetting to the printers. Babitaji from the National Office sends the Bulletin issue to the printers around 22nd and after final edits by 25th the Bulletin is readied for printing. Despatch is by last 2 days of the month and latest by 1st of every month, which is a fixed period.

Whom / where to send articles for consideration: We request you to mark all soft copies of articles / reports to puclnat@gmail.com, and also to pucl.natgensec@gmail.com.

Please copy the article to the same email and also send it as attachment.

In case you don't get verification in 2-3 days time please send a reminder to Babitaji (puclnat@gmail.com) or me, Suresh (pucl.natgensec@gmail.com).

PUCL Facebook Page: Our Facebook Page is also becoming quite well visited. We invite members to send photographs, posters and all other audio visual material which we can consider for publishing in the Facebook page.

PLEASE DO SEND PHOTOS of events each state or local unit is holding so we can share it with

others.

Increasing subscription for PUCL Bulletin: For the attention of all National / State Office bearers and National Council Members - Every month we need a minimum of 1000 copies of the Bulletin to be despatched to keep our Post Office permission of despatch on subsidised rates alive.

We need to increase the number of Bulletin Subscriptions with each state increasing new subscribers by at least about 50 to 100 in the coming few months.

We call upon all State General Secretaries to ensure that we get new subscribers for PUCL Bulletin. Please keep us informed on a monthly basis as to the progress in increased subscriptions.

With regards,

V. Suresh, for Editorial Board. □

Another Naga Accord: Now Let's Make It Work

Rajindar Sachar

The recent accord that was signed between the Centre and the largest faction of the National Socialist Council of Nagaland NSCN (IM) is welcome. The group has given up its demand for a sovereign state outside India.

A pact has been signed between Government of India and Naga faction of NSCN (I.M.). The details will be officially released in due course of time. It is a good sign, if as reported by the government that (I.M.), which is admittedly the largest Naga group, has given up its demand for a sovereign State outside India, as was originally the demand of A.Z. Phizo.

It is also a good sign that T. Muivah has agreed not to insist on including the areas inhabited by Nagas in the other states of Manipur, Assam, Arunchal Pradesh in the state of Nagaland. This demand which required cutting off areas from those states was a non-starter. No government could afford to settle on

terms which would provoke counter movements in other North-East states. Of course, it will require the Central Government to honestly abide by the spirit of Article 371A of the Constitution.

Right since 1947, the Naga question has been the unsolved knot leading to almost a war-like situation between the Nagas and the Indian government. Some respite came when the then Prime Minister I. K. Gujral, made the following announcement on July 25, 1997: "In recent talks with the Isac Muivah group of the National Socialist Council of Nagaland (NSCN), it has been mutually agreed to ceasefire with effect from 1 August, 1997 and initiate discussions at the political levels." Of course, a serious drawback was that ceasefire did not extend to other North-Eastern states that had a considerable Naga population, even when subsequent governments were so advised by some of us. So the situation

continued to remain unsettled and fluid.

I have had a fair deal of inkling of the open hostility and anger of Nagas towards India. As President of the People's Union for Civil Liberties, I had occasion to meet some of the top leaders of the Naga movement, including T Muivah and Isak Chisi Swu.

It was in 2000 that I was invited by Asia forum for a conference and also watched the proceedings in a Court at Bangkok (Thailand) where T. Muivah was being prosecuted for travelling on a fake passport. The delicate situation was because NSCN believed that the information about the movements of Muivah had been given by the Indian government - that later denied it.

I also attended the court proceeding and was able to chat with Muivah, courtesy the security guards. Later in the evening, some of us were invited by Isac Swu and his team, who were all underground, for

dinner. We were taken from our hotel in a car with dark curtains on both sides, obviously so that we could not see the route from the hotel. We understood their delicate concern, because the place was in Bangkok itself. At the meeting we suggested to Isac Swu and his colleagues that in the meanwhile talks need not be stalled and Muivah (who was in prison) could nominate a team to continue the dialogue in his absence. We even then felt that Muivah and others were genuinely in favour of a peaceful settlement, especially when Rh Raising, member, NSCN Steering Committee, openly told us that "Nagas are totally committed to solving the problem through peaceful means. They want to solve any problem through mutual discussion, understanding, respect and consent". We told them plainly that no government in India can be a party to allow Nagaland to secede from India. Of course, a degree of autonomy can be worked out mutually within the broad parameters of the Constitution. It is thereafter that talks between Nagas and the Government of India, represented by its Home Secretary.

K. Padmanabhaiah, started. Even when both Muivah and Swu came to Delhi and a meeting was held by some of us, along with V. P. Singh, at the latter's residence. V.P Singh had ceased to be the prime minister. They reiterated their desire for settlement with more autonomy, in a dignified manner. It is a pity that it has taken such a long time for the accord. One may now be hesitatingly optimistic, especially when Muivah has openly welcomed it by describing it as: "Better understanding has been arrived based on the unique history and position of Nagas". It is also a sign of practical wisdom that the Indian government has agreed to facilitate the visit of the Muivah group to travel to Myanmar to consult and bring on board the Khaplang group. One has still to be cautious because the Prime Minister has isolated the Congress chief ministers of Assam, Manipur and Arunchal Pradesh details with them because they too have a similar issue about Nagas. It's a relief that the Centre has now told those states that the deal will not affect their territories and also assured them that the details will be discussed with them before a final

accord is signed.

If it is any satisfaction, even Raj Nath the Home Minister, was excluded from the initial talks (when all the previous negotiations were held by the Home Ministry). It would seem that the Prime Minister realising the gravity of the Naga problem, was keen to find an equitable settlement when he said in his speech : "We will not only try to heal wounds and resolve problems, but also be your partner as you restore your pride and prestige and that the only path to peace and understanding can come about when we deal with each other in a spirit of equality and respect, trust and confidence; when we seek to understand concerns and try to address aspirations."

Would not the Prime Minister like to express the same sentiments and approach with respect to minorities in our country, especially to Muslims, the largest minority of 14 crore? This course is not only Raj Dharam but a practical and realistic approach that any top leader would adopt.

The writer is a former Chief Justice of the Delhi High Court.

Published in The Tribune, Tuesday, August 11, 2015 □

PUCL Tamil Nadu: Press Statement: 14th August 2015

PUCL Strongly Condemns the Growing Human Rights Violations in Tamil Nadu!

Close on the heels of the death of Gandhian Sasi Peruman while staging a protest - demanding total prohibition in Tamil Nadu, hundreds of Social democratic organisations throughout the State are staging protests in front of TASMACH shops. Instead of heeding to the just demands of the Protestors, the Govt machinery has unleashed indiscriminate attacks on the social activists and student community and has foisted false cases on them. A large number of students and social activists have been arrested under the guise of "Preventive arrest"

A Govt which is supposed to respond positively to the just and democratic demands of the people has come down heavily on the protesting community.

Prof. R. Manivannan -HOD of Political science and Public Administration at Madras University- who refused to take action against the students participated in the protest in front of Tasmach shops- has been stripped of the post of HOD.

Prof. Manivannan is an intellectual and a righteous man as well. He considers his academic career as an integral part in furthering the cause of the people. He relentlessly

and vociferously championed the cause of Sri Lankan Tamils in India and as well as International forums. His book titled "Hiding the elephant" thoroughly exposed the genocidal crimes of the then Sri Lankan Govt. He has been associating himself with many human rights and social justice organisations.

The act of the Madras University V.C at the behest of the Tamil Nadu Govt smacks of prejudice and political vendetta. PUCL, Tamil Nadu strongly condemns the action of the V.C in removing Prof. Manivannan from the post of HOD and the high handedness of the Police in

arresting and harassing the social activists and students at large. PUCL Tami Nadu urges the V.C of Madras University to reinstate Prof.

Manivannan as the HOD and the Tamil Nadu Govt to withdraw all the false cases slapped on the social activists and students!

Prof. V. Saraswathi (Ms.), President; **S. Balamurugan,** General Secretary, Tamil Nadu & Puducherry ☐

PUCL Odisha: Report - 16th July, 2015

Sipasarubali: A Story of Denial, Aspiration and Struggle for Land & Forest

Introduction

On June 5, 2015 when the World Environment Day was being observed all over the World, the district administration in the coastal district of Puri, Odisha, chose the occasion to clear forest in Sipasarubali Mouza, with the help of police force. The Mouza has been earmarked by the Government of Odisha for development of Shamuka Beach Project, part of a Special Tourism Area along the coast of Puri district. The IDCO (Industrial Infrastructure Development Corporation of Odisha) has been entrusted with the job of developing infrastructural facilities in the area which will then be handed over to the corporate houses. But it is an ecologically sensitive area. For the last four years local population, particularly, dalit and landless people, under the 'Upakuliya Jami O' Jangal Surakshya Samiti' have protected the area from forest and sand mafias. For this, they have paid a heavy price too. There has also been a demand for distribution of land to the landless. On 6th June, as the administration continued its tree cutting operation, the Samiti protested. The administration responded by a lathi charge upon the protesting people and by arresting 27 of them, including 23 women. The present incident is the latest in an environment, where every democratic assertion of people over land has been met with force and incarceration. We have seen it in Kshipur, Kalinganagar, Narayanpatna, Jagatsingpur and many other places in Odisha. Everywhere, the interests of people, particularly of the poor and the marginalised, have been overlooked to serve the interests of big corporates/industries.

Upon request from the Samiti, a PUCL team visited the area to understand the issues related to land, local communities' struggle for it and the response of the administration

and police. During the course of the visit, the team met the affected communities in five villages, activists of local organisation spearheading the land struggle, the IIC of Puri Sadar Thana, the Sub-Collector, Puri, Advocate Sri Ashok Das, appearing for the arrested villagers and activists, and Sri Jagannath Bastia, a local environmentalist and a member of Coastal Zone Management Authority. The team also went through various official documents and newspaper reports. Based on these, this report is prepared.

The Area and the People:

The Sipasarubali Mouza is situated nearly 10-12 kilometres from the District Headquarters of Puri along the coast of Bay of Bengal. The area is marked with a large number of sand dunes, and a large tract of forest that has mostly casuarinas and cashew-nut trees. However, the area is not considered as a forest land in the official records. Interestingly, the master plan prepared for the proposed Shamuka Beach Project notes, "A strip of forests approximately 1200 m wide starts from middle of the site and extends beyond its limits. Apart from this huge chunk of dense plantation there are smaller groups of trees scattered all over the site. The trees are mainly of casuarinas and kikar". Referring to the land use map of ORSAC (Odisha Remote Sensing Application Centre) it notes, "Forest/ coastal plantation covers 28% area of the project site." For the surrounding villages (approximately 25 including hamlets), the area is treated as forest for all practical purposes. It is not only a source of livelihood for the poor people of these villages but also a source of fuel-wood for all. Local people, the Team has met, have unequivocally stated that the sand dunes and the forest have saved them a lot from the ravages of the cyclonic storms like Phailin and Hudhud.

Seen from the demographic composition, Khandayats form the single largest community in these villages accounting for roughly 70-75% of population and dalits around 15-20%. (See the percentage of Scheduled Castes population given in Annexure-1). Agriculture is the predominant occupation of people. Besides paddy, people grow vegetables on their land both in winter and summer seasons. Though Khandayats are known to be a land-owning community, a sizeable portion of them are landless in this area. For example, Khandayats of Balipadia and Girol villages. Their main source of livelihood is share-cropping. On the other hand, dalits are by and large landless and work as agricultural labourers. The dalit women collect dry fuel-wood, mushrooms, various leaves and berries from the jungle and sell these in the Puri market to supplement the family income. Of the total workforce in the area 21.67% are marginal workers, who get less than 6 months' wage work in a year. While 59.13% of the total workforce is engaged in agricultural activities, agricultural labourers and marginal agricultural labourers, taken together, form 24.93% of the total work force. (Annexure-2)

As regards the land-ownership issue people say that most of the land of this area belonged to various religious institutions like Maths and temples. These religious institutions had settled them on those lands for expansion of agriculture thereby the growth in revenue earning. For example, people of Girola village were settled by the Nanguli Math, Barajanga by Radhakanta Math and Sandhapur by Jagannathballava Math. The settled population worked as tenants and agricultural labourers on those lands. After the introduction of Estate Abolition Act, some earlier tenants managed to be owner of the land in some villages, as in Barajanga. Now people have record of rights over

theses lands. On the other hand, the villagers of Sandhapur (a dalit dominated village, locally known as 'Bauri' caste) are landless and even today none of them have record of rights over the homestead land. Same is the fate of many families in Girola. Against this general socio-economic backdrop, the land history of Sipasarubali needs to be seen to appreciate the struggle for land in the area.

Land History of Sipasarubali

According to the 1928 Land Settlement, out of the total 5211.84 acres of land of the Sipasarubali Mouza 3418.62 acres was Anabadi. After the introduction of Estate Abolition Act, 1951 and amended in 1956, a process was initiated to bring the land under Anabadi Khata to Government record by giving compensation to the erstwhile Jagirdars. But such was the process that huge amount of Anabadi land went to the hands of 66 private persons. Some notable examples are: Pusalaka family of Puri got hold of 1368 acres, Mohanta Gobinda Das of Radhakanta Math 515 acres, Chandra Sekhar Samantray family of Parlakhemundi 122.26 acres, and Raghunandan Parichha 63.45 acres. In the 1977 Settlement, it was found that only 501.86 acres remained under Anabadi Khata. The government of Odisha introduced Orissa Land Reforms Act in 1960. After amendments, it came into force on 02-10-1973. In the early 80s the government instituted ceiling cases against all of the above mentioned persons to get the ceiling surplus land. But all these got caught up in the quagmire of litigation.

However, in the year 1984, the government declared 34.26 acres of land of the Samantray family as ceiling surplus and distributed one acre each to the landless families of Sandhapur and Balipadia village. With the help of a local NGO, Jana Mangala Mahila Samiti, people planted casuarinas and cashew nut trees on it. The government collected land revenue from these people till 1989. People were happy to have a piece of land of their own. But because of court cases, initiated by the landlord, whose ceiling surplus land was distributed among the landless families, the government

stopped collecting land rent from these 34 families after 1989. The people though were, and still are, in physical possession of the land. Similar has been the fate of landless people of Gorual Panchayats who were to be settled with the ceiling surplus land of Kapoor family and others. In 1983, out of 506 acres of land of the Kapoor family and others, 371 acres of land were declared ceiling surplus and applications were invited for its redistribution. 213 persons deposited salami (fee) to get this land. But they were not allotted land due to litigation. Undone, they approached the High Court. Finally, on 05-01-1994, the High Court directed the government to distribute the land to 213 persons belonging to Gorual Panchayat and to complete the process within three months. It also directed the government to consider the case of other applicants who have not approached the court. But this order has not yet been implemented by the government and further legal proceedings are rolling on and on for years.

When all these legal proceedings are going on in various legal forums in its own pace as to the real ownership of land and landless people are being deprived of their legal entitlement to these lands, the government in the year 1996 began the process of land acquisition for Special Tourism Area Project in the Sipasarubali Mouza. Interestingly, at the same period, the Odia newspapers published reports highlighting the Sipasarubali land scam and unauthorized construction within the Coastal Regulatory Zone. The High Court of Odisha took suo motu notice of it and set up an enquiry commission headed by advocate Subir Palit. The Commission submitted its report in 1997. Giving a detailed account of frauds committed at various stages from 1956-57 to 1989 the Commission in its report observes, "it is clear that these 2823.53 acres of land in the Anabadi Khata which belongs to the state Government have been illegally settled in favour of private persons with the connivance and collusion of the then Government officials."

As regards land acquisition, the Commission observes, "That it is even more strange that land acquisition proceedings have been

launched over the said area and Section 4(1) Notification under the Land Acquisition Act has been issued in 1996." It has also raised a legal question for the determination of the High Court, "whether the Land Acquisition proceedings can be started on Government lands and if so, what would be the legal validity of such proceedings?" Unfortunately, nothing is publicly known of the fate of the case initiated by the High Court itself.

Despite Commission raising objection to Land Acquisition, the government has gone ahead with it. Officially, it has been stated that land for the STA in Sipasarubali Mouza has been acquired in three phases: in 1997 364.85 acres, in 2001 410.50 acres and in 2006 621.69 acres. But the compensation money has been deposited in Civil Court as the ownership of the land has not been finalised.

Towards November 2011, the government of Odisha declared that 1306 acres of land in Sipasarubali Mouza have been brought to the government possession in compliance with the verdict of the Land Consolidation Court, Puri. Revenue officials accompanied with police force put up red flags on the land marking the area as government land. This declaration of the government generated hopes amongst the landless population of Gorual, Ambapada and Samanga panchayats that they would now be allotted land. Immediately after this, a delegation of the landless and dalit people went to meet the Collector, Puri and submitted a memorandum appealing for distribution of these lands. However, as there was already a plan afoot to hand over this land to Special Tourism Project, the Government did not pay any heed to the appeal of the landless population. It merrily forgot its own commitment of providing land to landless people made in early 1980s for the love of private investors of Shamuka Project. Even people who had deposited salami with the hope of getting ceiling surplus land and those who had already been allotted land and issued revenue receipts for some years were totally abandoned. In such a situation, people had no option but to struggle for land.

The Land Struggle

Though the 1306 acres of land area went to government possession on paper, the earlier occupants of land (what the local people and media call 'land mafia', officially the land grabbers) continued to enjoy it as earlier; needless to say, with the active connivance and collusion of the district administration and local police. It is important to note here that during last 30-40 years the 'land mafia' had planted huge numbers of cashew nut trees and casuarinas over these sandy lands and were earning lakhs of rupees. They were also running illicit business of sand mining. Therefore, they were not easily ready to leave the land. On the other hand, the government did not take any step to evict them. At this juncture, 20-25 villages adjacent to the area formed Upakuliya Jami O Jangal Surakshya Samiti at the initiative of Chasi Mulia Sangha, Odisha to protect that land from land grabbers. Especially, landless dalits and marginal farmers who have been deprived of legal entitlements to land due to litigation and government apathy took the initiative. Other sections of people in the area also took interest in it as the forested area and the sand dunes in it worked as protection against the cyclonic storms. On being undone by the apathy of the government, the Samiti now took the initiative on its own to drive out the land-grabbers and the sand-mafias to protect forest and sand dunes. Thus began the saga of violent attacks on the activists of the Samiti by those who had vested interests.

What the government says and what it does

"With a view to improve the economic condition of the weaker sections of the society and boost the agricultural production, Government waste land up to the extent of one standard acre is being allotted free of salami to the landless families of the State since 1974-75... Out of total landless families of 1,73,056 in the state as on 31.03.2012 identified through a survey, only 35,760 number of landless families have been distributed with Government waste land for agricultural purpose as on 31.12.2014... all District Collectors have been directed to provide Government waste land on priority basis to the

identified Scheduled Caste and Scheduled Tribe landless families pertaining to their districts and thus achieve cent per cent target in this regard."

Annual Report (2014-15) of the Revenue Department, Govt. of Odisha

"Yes, it is a policy of the government to provide land to the landless families. But it doesn't mean they will be given land at a place of their choice. We will provide them land wherever we think is right. At the moment we have no exact data to say the extent of landlessness in the district.

There is no genuineness in people's demand for land in the Sipasarubali Mouza. No ceiling surplus land is falling within the 973 acres earmarked for the Shamuka Beach Project. We have examined the High Court order of 1994 and found that there is no genuineness in it. If the administration has failed in implementing the Court Order why haven't the petitioners gone back to the Court to file contempt case? Puri is an International Tourist centre. We need land for the expansion of the city and land in Sipasarubali Mouza is the only land available for expansion. If Puri is developed as a tourist centre, not just Odisha, whole India will be benefitted. We are not in favour of settling this land in favour of the landless families. This is the most suitable area for the Tourism project as the land is government land; no human habitation is located within this area, so there is no headache for compensation and resettlement.

Sub-Collector, Puri, Interview with PUCL Team

On 11th March 2012, people went to the land and declared their rights over it and drove away the caretaker of the land-grabber from the area. The Samiti formed an 80-member council to organise the protection of the land and arranged round the clock vigil over it by rotation. On 3rd May, the armed goons of the land-grabbers attacked people who were then guarding the forest and severely injured more than a dozen of them. In protest, about 2500 people held a rally in Puri town and submitted a memorandum to the district Collector to distribute the land and to take actions against the attackers. But

nothing was done. The inaction of the administration encouraged the land-grabbers and on 23rd May, 2012 they once again tried to re-occupy the land. Once again they retreated due to stiff resistance put up by the people. And people harvested cashew nuts from these lands for the first time. Each family from each village got some benefit. The Samiti estimates that each family got at least Rs.10000/- to Rs.20000/- out of this harvest. People also contributed some amount of cashew nuts for running the organisation.

Besides protecting the cashew plantation, people also did not allow the land-grabbers to cut casuarinas from the jungle and also stopped clandestine transportation of sand from the area. This further enraged the vested interest groups. But not being able to face the organised resistance, goons set by land-grabbers began to attack individual activists of the Samiti whenever they were found on the road, coming from market or work places. Some were even picked up while going to meetings. This form of attack continued throughout 2013. The Samiti lodged written complaints after each incident in the police station. But the local police, in many of the cases, did not register it; even when registered, did not take any action against the culprits. On the other hand, when the Samiti organised protest sit-ins against police inaction, its members were slapped with cases and proceeded on. The Samiti brought all these incidents and the partisan attitude of the local police to the notice of the Director General of Police. That also did not change the situation.

When the Samiti was locked in a life and death battle with the mafias, the district administration also tried to physically acquire the land to hand over it to the developers of STA project. It was a sort of pincers attack on the Samiti. For continuous five days, from 7th to 11th July 2012, all the top revenue officials of the district along with massive police force tried to fence off that area. The Samiti peacefully organised sit-ins and did not allow the administration to enter. Hundreds of women including children participated in it.

After this, the government did not take

any step to acquire the land. People had a sigh of relief. They, especially women, had the feeling that the forest land where they were once subjects of some landlords now belong to them. They were relaxed and assured of their possession over land and were not aware of the designs of the Government. On the other hand, the government perhaps waited for the energy of the people to wear out fighting the mafias and also for an opportune time for a decisive assault. That was 5th June 2015.

When protection of Land and Forest means batons and incarceration

On 5th June 2015, the district administration began tree-felling operation with massive police arrangement. According to the IIC Puri, 13 platoons of police force, including one platoon of lady-police, were mobilised that day. There were two Additional SPs, three DSPs, and one Deputy Commandant in the force. The Sub-Collector was present at the site along with five executive magistrates, mobilised from the adjacent Tahsils. Five JCB machines and three tractors were engaged in the clearing work for construction of a boundary wall (around the area that people have been protecting) and police forces were placed on duty at each work points. As mentioned earlier, the boundary wall is being constructed by the IDCO, which has been entrusted with the job of developing infrastructures for the proposed tourism project.

On the other hand, the Samiti had a meeting on the same day near Gandamunda-Harchandi to observe the World Environment Day. It was in the meeting that they got the information that IDCO was felling trees from the area protected by them. They decided that next day they would meet again, join in more numbers and move to the spot where trees were being felled and protest this, as they had done earlier. Having got this information, the police personnel visited a number of villages in the evening of 5th June and warned people not to attend any meeting on the 6th. People were told if they participated in the meeting they would face the consequences.

On 6th June morning the police staged flag marches at certain points.

Police forces were placed in groups at various entry points to the area to stop people from coming. Out of fear, only about 150 men and women assembled at the meeting point decided earlier. At around 12.30 noon they got the information that Gopal Pradhan, who used to live right inside the forest, was taken away by the police. People rushed to look for him. Not finding him, they moved to the site shouting slogans and demanded to stop tree felling. But the administration told them to go back and not to obstruct the clearing operation. It also announced that if people didn't move there would be lathi charge. But people stood their ground.

The police began lathi charge upon the protesting people. As people raised slogans against the police and the administration some policemen caught hold of Sri Batakrushna Swain, one of the leaders of the movement, and beat him up. And as they began to drag him to the vehicle standing nearby the women protesters stood around Sri Swain trying to protect him from police beating and dragging. The police began to beat the women with their batons. Undeterred, the women held on to Batakrushna and the police took them all and put in the police vehicles. But the police in its FIR allege that people had come armed with swords and other weapons. They hurled two bombs at the police, pelted stones and attacked machines. Interestingly, the police admit in the same FIR that no one was injured, rather, they surrounded the people and caught hold of 31 of them. Of them, four were minor girls. These girls were dropped near their village on the night of 6th by the police while the remaining 27 - 23 women and 4 men - were arrested, produced in the court and sent to jail. The police have slapped cases under sections 147/148/332/353/307/294/506/427/448 and 149 of the IPC (rioting, armed with deadly weapons, causing hurt to deter public servant from his duty, attempt to murder, criminal intimidation, trespassing, unlawful assembly); section 25/27 of the Arms Act; section 3 of the Explosive Substance Act and section 3 of Prevention of Damage to Public Property Act against the arrested people. Apart from all these cases,

police has booked Sri Batakrushna Swain under the National Security Act (NSA)

It needs to be noted that although police claim that people had come with arms and ammunitions, such as bhujali, swords and country-made guns, not a single item has been seized from the agitating people as stated by the defence lawyer, Shri Ashok Das.

The following night, June 7, police raided some houses in Kapileswar village and arrested Sri Basudev Das, one of the activists of the movement. Basudev was not present at the protest site on the 6th. Same night, police also searched the house of Srikant Mohanty, another leader of the movement, but couldn't find him.

A couple of days later, the police imposed Section - 144 in the area, prohibiting people to assemble. Section-144 was initially imposed for one month and then has been extended for one more month. The villagers told the team that police forces were doing the rounds in the villages regularly and threatening them of further arrests if they enter the forest or participate in sangha activities. People seemed to be living in constant fear of the police.

After the arrests

On 11th June about 500 people from the area took out a rally in Puri town and demonstrated in front of the district collector's office against the police action. They also reiterated their demand for distribution of land to the landless families and cancellation of the Shamuka Beach Project.

On 13th June, children of Sandhapur village demonstrated standing on the Puri-Bramhagiri road with placards in their hands protesting the arrest of their mothers. They demanded the release of their mothers and their tuition sir (Batakrushna Swain). Some of the slogans raised by the children that day are: 'Why have you unjustly arrested our mothers, police you answer us'; 'No food being cooked in our house, why? Police, you answer us'; 'You arrested our mothers and kept us hungry, Police, shame on you'.

The arrested women were granted bail on 19th June for the case registered against them for the incident of 6th June. But they were

not released since the police invoked another old case against them. Finally they were granted bail on 26th June. The men are still in jail as their bail applications have been rejected by the lower court.

Shamuka Beach Project: A model of Pro-poor Inclusive Growth of Tourism Industry

The Shamuka Beach Project is part of the Special Tourism Area being developed along the coast of the Puri district from Astarang to Satpada. For the last several years, the government of Odisha has been aggressively pushing tourism and port projects along the entire sea coast of Odisha. And it has become another theatre of 'war of development' on the vulnerable sections of Odisha after mining and industry in the hinterland. However, the government of Odisha's Tourism Policy (2013) document declares, "Tourism is a major growth engine for economic development, creation of employment and eradication of poverty. It has a major role to play in promoting faster, sustainable and inclusive economic growth of the State. It has better prospects for promoting pro-poor growth than many other sectors..."

Let us see what the master plan says about the Shamuka Beach Project. In the year 2008, the government of Odisha commissioned two agencies - CEPT, Ahmedabad and SKDAS Associated Architects, Delhi - to prepare a master plan for the Shamuka Beach area 'with a vision to provide new tourism products that attract high spending domestic and international tourists. The project would be high-end, exclusive Leisure cum Business destination aimed at providing a one-stop rejuvenation facility for the mind and body.

For this purpose, the Government has already allotted 3000 acres near Puri. This strip of land largely falls under the Sipasarubali Mouza. The entire land area of 3000 acres is being planned to be developed in three phases. Officially, it is stated that 920.04 acres land has been acquired for the first phase. The plan outlay for the first phase envisages, among other things, a Golf Course (27 hole fairways) covering 221 acres of land area and four luxury hotels covering 230 acres. The other activities envisaged are a Convention Centre,

Performing Arts centre, Art and Craft Museum, Golf Villas, Residential Apartments, High Street bazaar, Hospitality Institute, Condominiums and Villas.

Though the master plan admits of forest in the project site (govt. officials deny it), it willfully forgets that for hundreds of local people, especially the poor, landless families, the forested area is a great source of livelihood. They will be rendered poorer by this pro-poor tourism policy of the government. One gets an impression of this from the village Bhagbatpatna.

Bhagbatpatna - waiting to be sacrificed for the high-spending tourists

Bhagbatpatna, largely a dalit village, is located right at the edge of the road running to Shamuka Beach Project. It has about 70-80 households. About 15 households are completely landless. In 1988 about 50 households had got the ceiling surplus land which is located in the area now entrusted to the IDCO for the Shamuka Beach Project. People used to depend on the nearby forest - the project site - for their livelihood in various ways. They used to collect fuel-wood, cashew nuts, various leaves, tooth sticks and mushrooms which they used for own consumption as well as sold in the market in Puri. Some families in the village earn their livelihood by catching fish from the Mangala river, which flows by the village. But from 6th June, their life has gone topsy-turvy. A police camp is set up right at the entrance of the village. Now people are from entering into the land which they used to think as their own. Not only this, now the villagers are required to show their voter ID to the police when moving in and out of the village.

Now with the project coming, they are worried that they not have access to all these resources and their economic condition will worsen. They are also equally worried about the future of their own settlement - whether they will continue to live there or be uprooted. Till now no government official has explained to them what would happen to their village.

Coastal Regulatory Zones (CRZ) and Environmental Concerns in the Shamuka Beach Project

The site selected for the Shamuka Beach Project is an ecologically sensitive area. The area is falling under the CRZ III category. Under the CRZ notification, 2011 of the government of India, clearances must be obtained from the concerned authorities before undertaking any project in areas falling under the CRZ. However, although land acquisition has begun since 1996 and a master plan been prepared since 2008, the government of Odisha has not yet obtained the CRZ clearance for the Shamuka Beach Project. It needs to be noted that the State Level Expert Appraisal Committee, (the body which gives its recommendation to the State Environmental Impact Assessment Authority for certain category of projects) in its meeting of 17th October, 2012 had asked the project proponent (The consultant, M/s. Ramky Enviro Engineers Limited., Hyderabad) to explain its position on a number of issues. It specifically asked to obtain the necessary permission under CRZ notification and an undertaking with respect to natural sand dunes that it shall not be disturbed due to project activity. The Committee again, on 27th August, 2013 issued a reminder to the agency to furnish the required information. What happened after that is not available in public domain. As mentioned earlier, a substantial part of the proposed area for the Shamuka Beach Project has a dense forest cover consisting of casuarinas and cashew nut plantation. Forest/ coastal plantation covers 28% area of the project site, according to the ORSAC land use map. Official documents of the district administration show that back in 2008, in a review meeting of the Shamuka Beach Project chaired by the district Collector, Puri, a resolution was passed unanimously to the effect that 'the project should be implemented without reducing the total number of trees or plants existing at the site'. In this meeting, among others, the local D.F.O., Tahsildar and Secretary of the PKDA (Puri-Konark Development Authority) were present. Ignoring all these concerns, the administration has gone ahead with the construction of boundary wall and hundreds of trees are being felled for this purpose.

Conclusion

1. A genuine democratic struggle for land is underway by the poor, landless dalits, marginal farmers and agricultural labourers in the area surrounding the Sipasarubali Mouza. The struggle is a reponse to the apathy of the government in addressing the issues related to land reforms, particularly, redistribution of ceiling surplus land among the landless. Even though there is a stated policy of the Government for redistribution of land among the poor landless, it has never been given serious considerations. Rather, one can see a mockery of it in the Sipasarubali case.
2. In the 1980s, some families in the area were given ceiling surplus land. Some families had applied for land and had deposited salami for it. These people have been approaching the administration for settlement of land, which they think is their due, in their names. The administration never took it seriously. They have approached the High Court and the Court has ordered for the restoration of ceiling surplus land to those who had got the land and those who had applied for it. The administration never implemented it. On the other hand, when it recovered 1306 acres of land in November 2011, from the illegal occupants, instead of distributing it among the landless families, the government is planning to hand it over to big private investors in the name of promotion of tourism. It surely goes against the principles of social justice and against the Constitutional directive to reduce economic disparity.
3. The people's struggle under the Upakuliya Jami O Jungle Surakhya Samiti, has been emphasising both on land redistribution and environmental protection. Since 2012, it has played an important role in protecting the forest and sand dunes from the hands of the local goons. It also has evolved a system to share the benefits of

forest produce among the samiti members. The administration, instead of strengthening these efforts, is determined to crush the people's movement by force. The women and men arrested on 6th June belong to the most marginalised section of our society - landless dalits.

4. What is most shocking is the application of draconian NSA to detain one of the leaders of the movement and imposition of Section-144 in the area for a prolonged period. Surely, Batakrushna Swain is not a threat to the national security; there is no criminal antecedent against him. Besides, when the police have already arrested him under several sections of the IPC, Arms Act and ES Act, where was the need to detain him under the NSA? Similarly, imposition of section-147 in the area is to ensure that people will not be able to hold any meetings and keep the people in constant fear of police, thus suppress any opposition to the project.
5. Government officials claim that the land area of Sipasarubali Mouza is not forest land according to official documents. However, the master plan for the Shamuka Beach Project notes that the area has a dense forest. Local people strongly feel that the cashew-casuarinas forest and the sand-dunes have given them protection from cyclonic storms like Phailin and Hudhud. It is sad that instead of being sensitive to a subject such as environment, it is being seen mechanically by the government machinery.
6. The government has gone ahead with the Shamuka Beach Project, without paying attention to the mandatory legal requirements of obtaining environmental clearances. The construction of an approach road, establishment of electrical structures and now construction of a boundary wall around the allotted land - all these are done for which no environmental and CRZ clearances have been obtained so far. This clearly means, for the government, the environmental requirements are

mere formalities which may be fulfilled half way into the project.

7. According to the government's own declaration tourism industry has better prospects for promoting pro-poor and inclusive growth than many other sectors. However, for the poor living in and around the Shamuka Project area it is designed to take away their livelihood. That is the reason they are opposing it. The government on its part is not willing to see this paradox. Instead, it is trying to forcefully implement the project by deploying massive police force and even making use of draconian law like the National Security Act. PUCL believes that not just the affected people of the project area, but the people of the state have a right to know as to what is going to happen in the name of tourism industry - its impact on the economy, society, environment and culture.

Demands & Appeal

In the last decade, several people's movements have emerged in different parts of Odisha, particularly, in the mining-rich Adivasi areas. People have been agitating to defend their sources of livelihood such as land, water and forest and refusing to be uprooted from their habitats. Now the government is eyeing the coastal Odisha. It is inviting national/ International companies and planning to hand over thousands of acres of land to these companies for expansion of ports and tourism industry on the state's long coastline. A land bank has been set up for this purpose. The keen interest shown by the government to hand over land to the private companies is matched with the apathy to address the concerns of the landless people. For this reason, we are seeing people' protests and resistance centred on land issues. We are seeing the same in case of Shamuka Beach Project in Sipasarubali. Here too, instead of addressing the issue of landlessness, the government is applying force and sending people to the jail. In such a situation, PUCL demands that the government, in the name of promoting tourism, stop promoting project which would destroy the coastal ecology, and favour the

corporate interests at a huge cost to the local people. The plan of the government to hand over valuable natural resources would surely deprive the ordinary people whose lives and livelihood are dependent on these. PUCL also demands that all police cases against the protesting people be withdrawn and their

demand for land be addressed. We, in PUCL, also urge upon the civil society bodies, democratic forces and all concerned people to put pressure on the government for dialogue and debate on the issue of land, forest and environment in Sipasarubali area and the Shamuka Beach Project. □

Annexure-1

Demographic profile of some of the villages surrounding Sipasarubali Mouza

Sl. No.	Name of the Village	No. of households	Total Population	Scheduled Caste population
1	Keskera	173	790	70
2	Sandhapur	90	473	338
3	Bandala	104	461	18
4	Barudi	244	1107	85
5	Bandalo	104	461	18
6	Barjanga	70	393	0
7	Gorual	565	2869	392
8	Girol	156	788	148
9	Shankarpur	81	344	45
10	Kashijagannathpur	145	759	161
11	Alipada	89	461	6
12	Sipasarubili	293	1167	302
13	Ambapada	214	921	178
			10533	1243 (16.54% of the total population)

Source: Census of India-2011

Annexure-2

Profile of workforce in some villages surrounding Sipasarubali Mouza

Sl. No.	Name of the Village	Total workers	Main workers	Marginal workers	Culti-vators	Marginal farmers	Agril. labourers	Marginal agri. labourers
1	Keskera	247	237	10	177	0	6	1
2	Ambapada	408	388	20	178	0	106	12
3	Barjanga	113	101	12	86	11	0	1
4	Sipasarubili	433	323	96	2	5	4	1
5	Sandhapur	204	142	62	19	2	55	39
6	Barudi	305	291	14	117	4	132	1
7	Bandala	146	129	18	110	12	2	4
8	Goruala	880	602	278	209	60	212	135
9	Alipada	175	173	02	70	1	6	0
10	Girola	349	178	121	63	0	29	63
11	Shankarpur	115	16	99	0	0	0	4
12	Kasijaganathpur	246	243	3	103	0	87	3
Total		3622	2837	785*	1144	95	639	264

Source: Census of India-2011

*Marginal workers constitute 21.67% of the total workforce

Regd. Office :
270-A, Patparganj
Opp. Anandlok Apartments
Mayur Vihar-I, Delhi-110091
Tel.: 22750014
Fax:(PP) 42151459
E-mail : puclnat@gmail.com
pucl.natgensec@gmail.com
Website : www.pucl.org

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