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## SL. NO. 500

<b>Annual Subscription: PUCL Bulletin (w.e.f. January 01, 2017. INDIA</b>	
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### Regarding Enrollment of Members

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

## SAMVIDHAN HATYA DIVAS: THEFT OF PEOPLES' MEMORY OF A DECLARED EMERGENCY

### Erasure of Evidence of an Undeclared Emergency

*The struggle of man against power is the struggle of memory against forgetting*  
Milan Kundera

On 12<sup>th</sup> June, 2024, the Government of India came out with a gazette notification, in which it declared 25<sup>th</sup> June as "Samvidhan Hatya Divas" (literally translated as Constitution Murder Day) to 'pay tribute to all those who suffered and fought against the gross abuse of power during the period of emergency, and to recommit the people of India to not support in any manner such gross abuse of power in future.' The Home Minister, in a twitter post noted that 'the then PM Indira Gandhi, in a brazen display of a dictatorial mindset, strangled the soul of our democracy by imposing the Emergency on the nation. Lakhs of people were thrown behind bars for no fault of their own, and the voice of the media was silenced.'

It is worth remembering that much before the announcement of the 'Samvidhan Hatya Divas', the emergency has been sought to be memorialised by civil society. The PUCL marks the occasion when emergency was lifted on 23<sup>th</sup> March, 1977 with the JP Memorial lecture. For the PUCL, the act of remembering the emergency is done not in the spirit of vengeance and retribution but rather as a continuing search for justice. We choose to remember the sometimes nameless and often faceless victims in the face of state terror and honour the courage of those who resisted by inviting speakers to reflect on what emergency means to them today.

Thus Anuradha Basin delivered the 40<sup>th</sup> JP memorial lecture, reminding us that today Kashmir is the face of the emergency, Michael Sfar delivered the 41<sup>st</sup>

JP memorial lecture, where he spoke about the struggle for justice in Palestine against the Israeli occupation. Sfar and Bhasin by speaking about the situation in Palestine and Kashmir, reminded us, of why the emergency is not about our past but also about our present.

For human rights activists, remembrance is not only about the present but is also about providing a key to a more just future. This is possibly what Tocqueville meant when he wrote that when 'the past has ceased to throw its light upon the future, the mind of man wanders in obscurity'. For human rights activists around the world, memory is the key which opens the door to justice. Justice relies upon the work of human rights activists who through remembering, cultivate hope and build a culture of resistance. That is why for the PUCL, remembering the emergency is not only about marking the day it was declared but also about memorialising the day it was lifted.

The questioning of remembering and justice found its most famous expression in the report of the Truth commission which was appointed by the civilian Argentinian government to investigate the rights violations

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committed by the military junta in Argentina from 1979-1983. The report itself was simply titled, *Nunca Mas* which translates as 'Never Again'. *Nunca Mas* tells us that one of the purposes behind remembering the horrors of the past is to ensure that what happened never happens again. Thus justice for the horrors of the past includes establishing the truth of what happened, reparation for the victims, and a guarantee that what they suffered, will not recur in human history. The Human Rights Council by appointing a Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has recognised the human rights implications of collective remembering.

How do we understand the purpose behind the sudden decision by the Modi government to remember the emergency, that too as the day of the 'murder of the Constitution'? What does it have to do with truth, justice, reparation or non-recurrence?

The banal and prosaic truth behind the Government's decision is that it has nothing to do with truth, justice, reparation or non-recurrence but everything to do with the desire of the government to destroy the claim of

the opposition that it is the defender of the Constitution, by insinuating that it is the Congress party which has assassinated the Constitution. How dare a party which murdered the Constitution today claim to defend the Constitution? This is the rationale implicit in the decision to mark *Samvidhan Hatya Divas*.

To those of us in civil society, the remembrance of the emergency should open out a path to justice as non-recurrence. While it is important to chastise the Congress for the emergency, justice demands that we are not silent in the face of the recurrence of the emergency in the form of an undeclared emergency.

Justice in the language of international law is not only about truth and reparation but also about non-recurrence. If the Modi government was serious about remembering as an act of justice, it would have pledged to eschew an emergency mode of governance. This is unfortunately not the case as can be seen by the latest manifestation of the emergency mode of governance which is the enactment of the three new criminal laws which aim to convert a de facto police regime into a de jure police state!

The history of human rights violations

during the last ten years mirrors the emergency in every way. If the emergency saw the use of MISA, the undeclared emergency sees the use of the UAPA. Both the emergency and the undeclared emergency have seen a war on dissenting writers, journalists, students and politicians. Prabir Purkayastha, who was arrested both in 1975 as well as in 2023, symbolizes the fact that the lowest points in the history of Indian democracy is the period from 1975-77 and 2014-2024. The stifling atmosphere of fear of speaking out or offending the government is common to both the emergency and the undeclared emergency. The emergency lasted nineteen months, the undeclared emergency is ten years and counting!

*Samvidhan Hatya Divas* is nothing other than an act of theft. Theft of the memory of a people's movement against the emergency by the forces which are perpetuating an undeclared emergency. The BJP Government declaring June 25 as *Samvidhan Hatya Divas* is an Orwellian conclusion by those who in the guise of saving the Constitution are killing the constitution by a thousand cuts.

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## PUCL CONDEMNS THE CONVICTION OF MEDHA PATKAR FOR DEFAMATION

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### Repeal Defamation in *Bharatiya Nyaya Sanhita (BNS)* as a Colonial Vestige

The PUCL is shocked at the conviction by a Delhi Court of Medha Patkar, one of India's most renowned social activists, for defamation u/s 499/500 IPC and sentence of five months imprisonment combined with a fine of Rs. 10 lakh rupees imposed against her. The case itself was filed in 2000 and relates to a press note, the contents of which are allegedly defamatory to V.K. Saxena who then headed the National Council for Civil Liberties of Ahmedabad and is now the Lieutenant Governor of Delhi.

The press note in English dated 25

November 2000 was titled "true face of patriot" and is extracted in the trial court judgment as below:

"V K Saxena, one who is pained by the Hawala transactions himself came to Malegaon, praised NBA and give a cheque of 40,000. Lok Samiti naively and promptly sent the receipt and the letter, which shows honesty and good record keeping then anything else. But the cheque could not be encashed and got bounced. On enquiry, the bank reported the account does not exist." The

cheque, press note, came from Lalbhai Group. What is the connection between Lalbhai Group and V K Saxena? who among them is more patriot?"

The trial court found that the above statement was a 'direct attack on the personal character' and 'loyalty' of the complainant to the 'nation'. The court was also of the opinion that, 'such allegations are particularly grave in the public sphere, where patriotism is highly valued, and questioning someone's courage and national loyalty can cause irreversible

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damage to their public image and social standing'.

Based on this finding, the trial court convicted Medha Patkar. A close reading of the judgment of the trial court indicates that there are a number of legal infirmities which will obviously be tested in the appeals court, right from the question of whether there was an 'intention to defame' the complainant on the part of Medha Patkar to questions around whether the witnesses of the complainant were interested witnesses. However, apart from the merits of the legal case, (to test which the appropriate forum is the appeals court) what is essential to appreciate is the wider context, in which this complaint on defamation was made, which can be teased out from the judgment itself.

Trial pending since 2002 against VK Saxena of assaulting Medha Patkar

The judgment indicates that V.K Saxena has had an FIR filed against him for assaulting Medha Patkar. The court has recorded that, 'the complainant in his cross admitted the proceedings of prosecution for assault as pending between him and the accused.' The court records that, Medha Patkar had stated that, 'since year 2000 the complainant has been running a campaign of spreading false and defamatory statement and advertisement. She added that he had even physically assaulted her in year 2002 and an FIR regarding the same was at the stage of evidence in the Magistrate Court, Ahmedabad, Gujarat.'

A reading of the judgment indicates that this defamation complaint is not a stand-alone complaint by an aggrieved individual but rather embedded within the larger history of the anti- dam agitation in Gujarat headed by the Narmada Bachao Andolan and the attempt by the state to suppress it using various instrumentalities.

The Narmada Bachao Andolan (NBA) is one of India's oldest peoples movements, and led by Medha Patkar, has been exposing the severe environmental impacts of big dams, especially on the Narmada river. The NBA has courageously brought to light the displacement of adivasis from their land and mobilized the people against a form of development which has done injustice to India's poorest people. In their continuing struggle the NBA has faced enormous pushback both from the state as well as corporate interests.

Prosecution of Medha Patkar: A SLAPPS Prosecution to silence and stifle rights defenders

The critical question is why was such a case of criminal defamation filed at all? The filing of the case of defamation against Medha Patkar is nothing but a weaponisation of law meant to silence, censor and intimidate viewpoints which challenge the dominant understanding of development. This phenomenon of seeking to control dissent through a heavy handed use of the law is a well-known strategy used by corporations as well as states and has been characterised as **SLAPPS**, which stands for '**Strategic Litigation Against Public Participation**'. SLAPPS suits, world-wide, have been filed against citizen defenders, rights activists, environmental defenders and others getting them caught up in a web of litigation which is time consuming, expensive and diverts attention from fighting battles for social and environmental justice.

The conviction of one of India's most illustrious activists Medha Patkar for defamation is a timely reminder of the serious danger that the criminal law on defamation poses for human rights activists, environmental activists, anti-corruption activists and whistleblowers.

Medha Patkar is a courageous activist who has been undeterred in

her spirit which continues to fight for the dispossessed even after the verdict. In fact she sat on a fast unto death, demanding quick rehabilitation of people whose land was to be submerged, which she only lifted upon the assurance of the administrative authorities eight days later.

Medha Patkar represents not only the NBA and the National Alliance of Peoples Movements (NAPM) but also stands in for all the courageous dissenters who seek to speak truth to power. The PUCL stands in solidarity with Medha Patkar in her courageous struggle against arbitrary power.

Repeal sec. 356 BNS: Defamation Offence

The conviction of Medha Patkar was only possible because of the archaic law on defamation.

While it may be the role of the civil law to protect the reputation of an individual, to threaten people with imprisonment though the use of the criminal law for damaging reputation is an abuse of the legal process. It is a travesty that criminal defamation still exists in our statute books as this colonial anachronism has no place in a constitutional democracy.

However the framers of the Bharatiya Nyaya Sanhita, (BNS) which came into force on the 1<sup>st</sup> of July, 2024 have reproduced Section 499 of the IPC word for word as Section 356 of the BNS, confirming that the decolonial nature of the three criminal laws is nothing but an eyewash.

What is also troubling about the BNS is that if Medha Patkar were to be prosecuted today under the BNS, apart from defamation, she could also be prosecuted under Sec. 113, BNS, which criminalises a terrorist act which is defined quite broadly to include acts affecting "Economic security". Similarly sec. 152 - the new sedition law- criminalises speech about 'subversive activities' and encouraging feelings of separatist

activities' and can also be used target Medha Patkar speech and expression. So a campaign against big dams or 'destructive development' projects can be construed as an act affecting economic security or subversive and

prosecuted under section 113/152 BNS!!

We are hopeful that the constitutional courts will overturn this unjust conviction of Medha Patkar.

We also demand that the criminal

law on defamation, Section 356 of the BNS be repealed.

**Kavita Srivastava**, (President),  
**V. Suresh** (General Secretary)  
PEOPLE'S UNION FOR CIVIL LIBERTIES

## PUCL Letter to Home Minister regarding maximum length of Police Custody in BNSS

To  
Shri Amit Shah  
Hon'ble Minister of Home Affairs  
Union of India,  
North Block, New Delhi 110001.  
Email: hm@mha.gov.in

Shri Arjun Meghwal,  
Hon'ble Minister for Law and Justice,  
Government of India,  
4th Floor, 'A' Wing, Shastri Bhavan,  
New Delhi.  
Email: mljoffice@gov.in

Sub.: Police Custody: Home Minister's Clarification on maximum length of Police Custody in BNSS being 15 days—

Amend sec. 187(3) BNSS to bring it in conformity with sec. 167(2) Proviso, Criminal Procedure Code.

Ref.: Union Home Minister's Press Conference on 01<sup>st</sup> July, 2024

Dear Sirs,  
We welcome the statement made by the Hon'ble Home Minister made in a

Press Conference on 01st July, 2024, clarifying that in the changed criminal procedure code, viz., the BNSS, 2023, the maximum period of police custody under the BNSS would remain 15 days, with provision to be spread over a maximum of two months. The Indian Express [1] has quoted you as saying that:

"I want to clarify that in BNS also, the remand period is 15 days. Earlier, if an accused was sent to police remand and he got himself admitted in a hospital for 15 days, there was no interrogation as his remand period would expire. In BNS, there will be remand for a maximum 15 days, but it can be taken in parts within an upper limit of 60 days".

As the Union Home Minister, and the key architect of the 3 new laws, your clarification is very important as it helps bring clarity to the issue as to whether police custody can be extended beyond the previously provided maximum 15 days (under CrPC) to a maximum of 60 to 90 days (under the BNSS).

However it will be apposite if the

clarification is brought about in the provision of sec. 187 (3) BNSS through an amendment to sec. 187 BNSS, so that it is not left to the vagaries of interpretation by courts, the police and Public Prosecutors, in the immediate future.

In the light of your clarification we wish to point out to you that the controversy arose regarding the length of police custody because of the fact that the new sec. 187 BNSS was literally a verbatim copy of the previous sec. 167 CrPC, with the omission of 8 words, which gave a totally different interpretation to the new provision on police remand.

Omission of 8 words from Proviso to sec. 167(2) CrPC from sec. 187 BNSS

To enable us to better understand the confusion/ controversy, we are reproducing the 2 provision below, to demonstrate why the omission of 8 words from sec. 167 CrPC when formulating sec. 187 BNSS does lead to the interpretation that police custody is no longer limited to a maximum period of 15 days from the date of arrest.

Proviso to Section 167(2) (a), CrPC, 1973	Section 187(3), BNSS, 2023
<p>Provided that</p> <p>- (a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,</p> <p>(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;</p> <p>(ii) sixty days, where the investigation relates to any other offence....</p>	<p>(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding—</p> <p>(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;</p> <p>(ii) sixty days, where the investigation relates to any other offence...</p>



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Danger in Deletion of 8 words from the CrPC on Police Custody

The effect of dropping the 8 words from the CrPC, "otherwise than in the custody of the police", in the new Section 187 (3) of the BNSS, allows for the interpretation that police custody can be extended from a maximum of 15 days under the CrPC to a maximum of 60/90 days under the BNSS.

Any extension of police custody beyond 15 days is a serious incursion in the rule of law and the criminal justice system. It is well recognised that the period when the accused is kept directly in the custody of the police is the time when maximum pressure from the police is effected – including the reality of the police using extrajudicial measures like physical torture, emotional pressures and other similar measures to break the will of the arrested persons.

It is in recognition of this salutary principle that sec. 167 (2) Proviso of the CrPC provided for a maximum of 15 days of police custody from the time of arrest, after which the arrested person has to mandatorily be kept in judicial custody. This means that the accused person will have to be lodged in judicial custody in the nearest central prison once the police custody period of 15 days ends. This thereby ensures a measure of protection from the police as the accused person is technically under the oversight of the judiciary, even though they may be in prison. This provision has been recognised by the Supreme Court in several cases to be an elementary part of the rule of law and administration of criminal justice system.

A further feature of the law on the subject is that police remand under u/s 167 of the CrPC cannot be granted at the asking of the police but is a judicial decision taken by the

jurisdictional Magistrate who is required to look into the papers including the FIR and the status of investigation and to pass a judicially-reasoned order as to whether the request of the police seeking physical custody of the accused should be granted or not. In any case, the maximum period was limited to 15 days from the time of arrest.

Effect of deletion of words

This very important protection has been totally thrown out through the changes brought about in the law relating to remand, spelt out in sec. 187 of the BNSS. A careful reading of sec. 187 reveals the following:

(i) The bar of maximum of 15 days of police custody within the first 15 days from time of arrest is removed permitting the Magistrate to order police custody for a period of 15 days anytime during the initial 40-60 days of detention (sec. 187(2) BNSS).

We have already expressed our serious apprehensions and opposition to the change highlighted in point (i) above through our critique dated 24<sup>th</sup> June, 2024, as it creates an anomalous situation when an accused person who has been released on bail pursuant to being placed under judicial custody, can be apprehended again under 'police custody'. This apart, constant change in nature of police custody and judicial custody can result in violation of fundamental rights of the accused under Art. 19, 21 and 22 of the Constitution.

(ii) The bar of police custody being for a maximum of 15 days has been removed allowing police custody for a period of 60/90

days.

Clarification does not have force of law: Why the amendment to sec. 187 BNSS is crucial

We would like to point out that while your clarification through the Press Statement that the maximum period of 'Police Custody' remains 15 days is very welcome, it is however not sufficient for the following reasons.

Firstly, your clarification does not have the force of law.

Secondly, legal interpretation in courts of law will only be based on the actual words and terms used in sec. 187. As pointed out, the courts are bound to consider the fact that the Parliament has consciously omitted the 8 words " ...otherwise than in police custody" (which existed in sec. 167(2) Proviso) in new sec. 187(3) BNSS, and therefore interpret that Parliament intended to expand police custody from maximum of 15 days to 60/90 days.

In the light of your clarification that police custody will continue to remain a maximum of 15 days, it would be in the fitness of things if an amendment is carried out in sec. 187(3) BNSS, by including the terms which existed in the CrPC, "...otherwise than in police custody" which will make it explicitly clear that the police custody can be only for a maximum of 15 days. Such an amendment will make it abundantly clear that the new Parliament wanted to settle this issue and bring an end to the controversy over maximum length of police custody.

Yours sincerely,

**Kavita Srivastava** (President)  
**V. Suresh** (General Secretary)  
PEOPLE'S UNION FOR CIVIL LIBERTIES

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## PRESS RELEASE - INDEPENDENT PEOPLE'S TRIBUNAL ON MANIPUR

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8th July, 2024

On 6<sup>th</sup> & 7<sup>th</sup> July, 2024 the '**Independent People's Tribunal on Manipur**', constituted by the PUCL, met in Delhi to hear personal testimonies of survivors and victims of the ethnic violence that has engulfed Manipur for the last fifteen months since 3<sup>rd</sup> May, 2023.

Prior to the Delhi hearings, a set of Jury Members of the Tribunal along with members of the Secretariat who are assisting the Tribunal, visited Manipur in end-May and June, 2024. The team travelled to various districts affected by the violence, including Bishnupur, Churachandpur, Imphal, Kangpokpi, Kakching, Senapati and other places, to record personal testimonies of survivors/ victims of the different communities, the various service organizations which are organising and providing relief to affected people. The Team also visited a number of Relief Camps set up in the districts to talk with survivor/inmates, school going children, women and elderly. The Team also met with various government functionaries and officials of security forces. Apart from the testimonies collected from and discussions held with diverse stakeholders, documents related to various dimensions of the ongoing violence were also placed before the Tribunal. The Tribunal also heard testimonies of internally displaced persons and representatives of the different ethnic communities -Kukis, Meiteis, Nagas, Pangals and others. The Tribunal met advocates, journalists, health professionals, scholars, academics, and activists from the different communities in Manipur.

The members of the Independent People's Tribunal are:

- (1) Shri Kurian Joseph, former judge, Supreme Court of India.
- (2) Shri. K. Kannan, former Judge, Punjab and Haryana High Court.

- (3) Dr. Anjana Prakash, former Judge, Patna High Court
- (4) Shri MG Devasahayam, IAS (retd), former Addl. Chief Secy, Haryana.
- (5) Dr. Swaraj Bir Singh, IPS (retd), former DGP, Meghalaya.
- (6) Prof. Uma Chakravarti, Feminist Historian.
- (7) Prof. Virginius Xaxa, Social Scientist and Author
- (8) Prof. Rosemary Dzuwichu, formerly from Nagaland University.
- (9) Prof. Tanweer Fazal, University of Hyderabad.
- (10) Dr. Sandeep Pandey, Peace Activist.
- (11) Ms. Manjula Pradeep, Senior human rights activist.
- (12) Dr. Navsharan Singh, Writer, researcher & Activist.
- (13) Mr. Henri Tiphagne, Advocate, Madras/ Madurai High Court.
- (14) Mr. Aakar Patel, Journalist and Author

As announced by PUCL on 15<sup>th</sup> March, 2024, the Independent People's Tribunal on Manipur was constituted in the context of prolonged state-wide violence and serious issues of constitutional governance in the state of Manipur. The situation is marked by a sense of deep distrust of the role played by the state and central government and its functionaries, controversy over the response and role played by the security forces, including the state police. The neutrality of the Central Forces including the Assam Rifles, and other central forces is questioned. The role of militant groups in this conflict, role of vigilante militia, looting of police armouries and snatching of sophisticated weapons which have not yet been fully recovered remain issues of concern. All these have created an environment of hostility which still prevails.

Considering the deep

polarization and precarious situation prevailing in Manipur, such an independent People's Tribunal will help restore a sense of confidence and trust in the constitutional order and institutions.

The objectives of the Tribunal are as follows:

- 1) Document the violations suffered by the people of Manipur with a specific attention to loss of life, sexual violence and violence suffered by children, women including pregnant women and the elderly.
- 2) Examine and analyse the performance and responsibilities of the constitutional authorities by documenting the action taken to prevent the violence, provide access to remedy and justice, investigate and prosecute crimes, and in all other ways to provide redressal of violations and make efforts to establish the rule of law.
- 3) Examine the role of all security agencies as well as government functionaries at all levels of the state and central governments in ensuring law and order and also examine the role of independent national and state based institutions in protecting human rights.
- 4) Examine existing documentation on the Manipur situation and analyse the reasons for the continuing violence
- 5) Propose recommendations to repair the torn social, cultural and political fabric of the State.

The Independent People's Tribunal on Manipur will place their findings in the form of a 'Report to the Nation' within the next few months. This Report will also contain the recommendations with a view to ensure accountability, justice and redressal for the people of Manipur.

**Kavita Srivastava**, President  
**V Suresh**, General Secretary

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## SCRAP THE MAHARASHTRA SPECIAL PUBLIC SECURITY BILL, 2024, PUCL MAHARASHTRA

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13th July 2024

PUCL Maharashtra strongly objects to the repressive and unconstitutional Maharashtra Special Public Security Bill 2024;

PUCL Maharashtra demands the proposed law be scrapped in its entirety;

People's Union for Civil Liberties (PUCL) Maharashtra strongly objects to the Maharashtra Special Public Security Bill, 2024, tabled in the Monsoon session of the Vidhan Sabha on 11th July 2024 on grounds that it is repressive, unconstitutional, overbroad, arbitrary and inherently allows for misuse.

PUCL Maharashtra is extremely concerned about the implications of the Maharashtra Special Public Security Bill for civil liberties and rights of the citizens to freedom of speech and expression, association and assembly, and the right to protest peacefully.

It has been claimed that the Bill, approved few days back by the Cabinet of the Eknath Shinde Government, was drafted on the lines of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam (2005) ("Chhattisgarh Act") and the Andhra Pradesh Special Public Security Act (1992). In the state of Chhattisgarh, and Jammu and Kashmir - where similar law being the Jammu and Kashmir Public Safety Act, 1978 was first introduced, it has received extensive criticism for being used to target journalists, lawyers, environmental defenders, citizen activists and adivasi protestors who have dissented against state action. A constitutional challenge to the

Chhattisgarh Act is pending before the Hon'ble Supreme Court.

Firstly, the draft of the Maharashtra Special Public Security Bill was not made available in the public domain nor made open to public scrutiny and objections; nor was it vetted by any body of legal experts and practitioners. The tabling of the Bill in haste in the last few days of the Monsoon Session, just two months before the State Assembly elections are to be held, is itself indicative of the opacity of the entire process and suspect motives behind its introduction at this critical time of democratic engagement.

Given that there is already in existence an extremely harsh law for unlawful activities and terrorism in the country - namely The Unlawful Activities Prevention Act, 1967 (UAPA) amended as recently as in 2019 (also draconian in nature); and a stringent State Act - The Maharashtra Control of Organised Crime Act, 1999 to tackle organised crime; the present move of the State Government and its timing seems to be aimed not at dealing with violent or terrorist activities; but in reality to suppress political opponents, public protests, people's movements, and civil society and human rights activists, journalists and lawyers.

The Statement of Objects and Reasons of the Maharashtra Special Public Security Bill of 2024, signed by the Deputy Chief Minister, Devendra Fadnavis, claims that the law is being brought in to address the menace of naxalism in urban areas and tackle frontal organisations of naxal groups by effective legal means. By using the broad and non-descript label of 'urban naxal', which has become a common

slur used for any citizen who expresses their opposition to state policy or is not aligned with right wing majoritarian views, the state government through this law, aims to legitimise the criminalisation of dissenting citizens, human rights defenders and political opponents.

The following are the detailed reasons why the provisions of the Maharashtra Special Public Security Bill, 2024 are unconstitutional, overbroad, arbitrary and inherently allow for misuse:

A) The Bill contains an unacceptably broad and vague definition of "unlawful activity" that includes any action which 'constitutes a danger or menace to public order, peace or tranquillity'; or even 'interferes or has a tendency to interfere with the maintenance of public order'; or 'interferes or tends to interfere with the administration of law, or its established institutions and personnel'. Even the time-honoured practice of Satyagraha and any non-violent act of civil disobedience would be hit by such provisions, as also peaceful protests which are in no manner associated with violence or terrorism, but are in fact a constitutional right associated with democratic expression of citizens. In any event, these activities are already provided for and could easily be dealt with under the ordinary criminal law.

B) Moreover, 'any action taken by an individual or organisation whether by committing an act or by words either spoken or written or by signs or by visible representation or otherwise', could constitute an "unlawful activity" under the Bill. Hence, it includes not just actions but any act of expression, like spoken words, online messages or

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posts, articles, artworks, demonstrations, placards, even gestures. Even an act or expression of support or solidarity provided by a person or group of persons could constitute an unlawful activity. It follows that all freedoms protected under Article 19 of the Indian Constitution can thus be curtailed - including freedom of speech and expression, association and assembly, press freedoms, academic freedoms etc. Even making a statement, lending of a book, or social media meme prepared or posted by an individual could be considered "unlawful activity" under the Bill. This is wholly dangerous, and can be potentially used against journalists, writers, filmmakers, artists and any citizen expressing their dissent or critiquing the government, in any form or manner.

C) Under the Bill, an "organisation", is again very broadly and vaguely defined as meaning 'any combination, body or group of persons, whether known by any distinctive name or not, and whether registered under any relevant law or not, and whether governed by any written constitution or not'. According to this definition, the Government can name as an "organisation" any group of people it aims to target - even if no such "organisation" per se exists, for instance a group of so-called urban naxals! This means that the government has the power to bring an entirely fictitious organisation into existence by naming a group of people as belonging to such an organisation.

D) The Bill provides that an "organisation" can be notified as 'being unlawful or having become unlawful' even before such notification is placed before an Advisory Board within 6 weeks; and

the Advisory Board can take up to three months in deciding whether there is sufficient cause for issuance of the notification. The notification that the government issues regarding declaration of unlawful organisation requires only the grounds to be stated (which is likely to be vague terms around danger to public order), but the Bill provides that the disclosure of any fact can be dispensed with by the Government in public interest, making the entire process non-transparent and making it easy for the Government to outlaw an organisation and target its members, without even providing reasons. Even if such an organisation has formally dissolved itself, it can be prosecuted. The organisation in question is granted an opportunity to make a representation to the government only within 15 days of such notification. Even personal hearing before the Advisory Board is provided only to the authorized office bearer of the organisation, who can be promptly arrested, since being a member per se is an offence under the Act. Moreover, no hearing whatsoever is provided before issuing such a notification against the organisation.

E) Meanwhile, an "unlawful organisation" is defined under the Bill as 'any organisation which indulges in or has in pursuance of its objects abets, assists or gives aid, or encourages directly or indirectly through any medium, devices or otherwise, any unlawful activity'. This basically means that any or every organisation, whether fictitious or real, whether directly or indirectly engaging in any of the broad activities defined as "unlawful activity", could be potentially declared as an "unlawful organisation". The definition of "unlawful organisation" also mischievously fails to mention

that it is required to be declared as unlawful under the Bill.

F) Owing to such broad definitions provided in the Bill, the government is only required to be of the opinion that an organisation is or has become unlawful. There is no burden of proof whatsoever that is required to be borne by the government in declaring any persons or group and their activities as unlawful. In effect, the Bill gives the government the power to go after any individual or organisation that it perceives as a threat, can declare all its activities (including non-violent activity, speech or communications) as unlawful, and restrict its activities and punish some or all the individuals associated with it. Furthermore, the government will also have the power to bring an entirely fictitious "organisation" into existence, simply on account of a common purpose or shared ideology of a group of individuals, and act against the individuals that it deems to be associated with it, even in the absence of any evidence to substantiate the claim.

G) According to the Bill, any person who is 'eligible to be appointed as a judge of the High Court' may be appointed as a member of the Advisory Board; this would include pro-government lawyers or district judges, since it is a body appointed by the government itself. An organisation can be declared unlawful for a period of one year at a time, by a publication in a local newspaper, and this notification can be extended indefinitely, a year at a time, without disclosing grounds if the government feels it is not in public interest. Thus, the oversight process under the Act is not at all efficacious.

H) The Bill has also delegated draconian powers to a District



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Magistrate or Commissioner of Police or any officer authorized by him, who can notify a particular area or a particular building which in his opinion is used for unlawful activities; and then proceed to take possession of it, seize all articles in it and evict all persons in it. No notice or opportunity of hearing is provided before issuing notification in respect of an area or building, instead sweeping powers have been given to notify, raid and take over possession of notified places without recourse to the aggrieved organisation or individuals. Discretionary powers have been given to take possession of moveable property (including moneys, security and other assets found in the notified place) and even forfeit articles in favour of the government after considering representation of the person claiming the same. Even appeal from such order of forfeiture is before the Government itself! This gives rise to a serious apprehension of mass arrests, forfeiture of property and evictions, especially in remote areas where adivasis and forest dwelling communities are protesting against forest diversion and deforestation activities, mining, or high impact, high stake developmental projects that seek to displace them. Meanwhile the Bill gives excessive powers to the Government to issue order for investigation which can act as a warrant empowering the police officer to enter into the premise of any individual and conduct searches, raising actual fear of individuals being targeted for the literature, books, writings they personally collect, keep or hold.

I) Penalties are so arbitrarily defined in the Bill that a particular act could be variously liable for imprisonment of 2, 3 or 7 years. Mere membership of an

unlawful organisation is punishable by 3 years; and even a person who is not a member, but who contributes, solicits contributions or harbours a member of an unlawful organisation would be punishable by imprisonment of 2 years. What is of great concern is that these offences are defined without any element of mens rea, i.e. intent. Even a draconian law like the UAPA has the element of mens rea included in the definition of offences, by qualifying acts with the phrase "knowingly and intentionally". The Bill is hence, draconian and grants excessive, arbitrary powers, as it empowers the state to pick up and arrest anyone who protests, writes articles, reports or speaks against the government's anti-people policies or criticises the government, even if that individual is remotely associated with an organisation it considers unlawful or to declare any group unlawful on a whim and arrest all individuals associated with it.

J) Meanwhile, the Bill contemplates the framing of Rules. However, the proposed Rules have not been made public, posing serious questions on the manner in which the proposed law will be implemented.

While the Monsoon Session of the State Assembly has come to an end yesterday without the passing of the Bill and consequently the Bill stands lapsed, in spite of the massive civil society and political objections reported in just a matter of days, no formal statement has been issued by the Maharashtra Government assuring that the Bill will not be reintroduced and will be scrapped.

The Bill cannot be allowed to silence the active citizenry and vitiate the democratic ethos of Maharashtra. There are lessons to learn from the Chhattisgarh Act, which has been used

against ordinary adivasis forced to attend a meeting, or a doctor whose prescription was found in the kit bag of a Naxalite, or a tailor who unknowingly fulfilled an order of stitching uniforms, or a security guard whose vehicle was seized at gunpoint by Naxalites. When the Act was proposed in Chhattisgarh in 2005, journalists were the first to protest, since it was clear from the language of the Act that even publishing the press release of an unlawful organisation, or reporting on the activities of such an organisation could attract punishment. Such a law if allowed in Maharashtra would only serve as a tool of abuse and repression, and will result in a chilling effect in the state.

In these circumstances, PUCL Maharashtra urges the State Government to ensure that the Maharashtra State Public Security Bill is not reintroduced in the State Assembly or pursued in any form, and is scrapped in its entirety. PUCL Maharashtra encourages all rights-minded citizens, including all political representatives, to keep vigil and oppose the Bill, to ensure that such a draconian law is not passed in Maharashtra. In any event, no such Bill should be allowed to be passed in undue haste without inviting and considering the objections/suggestions of the public, and without subjecting the same to critical review of legal experts to understand its ramifications.

PUCL Maharashtra urges the State Government to protect democratic principles, uphold constitutional values, and remove all embargo to peaceful protest and free expression in the State, with a view to ensure a healthy and vibrant democracy.

**Mihir Desai**, President

**Lara Jesani**, General Secretary

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## ORDER ON KANWAD YATRA ARE UNCONSTITUTIONAL AND CRIMINAL IN NATURE- PUCL UTTAR PRADESH

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PUCL Uttar Pradesh strongly condemns Uttar Pradesh DIG Ajay Kumar Sahani's dictat to put up the name of the owners of any hotel, shops or even stalls that are on the Kanwad Yatra route. The order passed by the administrative officer goes against the basic tenets of India and hence it is unconstitutional and criminal in nature.

Recently the DIG of UP issued orders stating that the owners of shops, stalls or hotels which are on the Kanwad Yatra route would need to put up their real names along with their workers' on their establishment. The SSP of Muzaffarnagar took cognizance of the order and issued a similar order for the concerned district. Their contention is that this is being done so that,

'Kanwadiyas won't be in any kind of confusion while buying anything on their trip.'

It is not difficult to understand what kind of 'confusion' these two prominent officers are talking about. Both the orders further communal and casteist discrimination in our society which the Indian Constitution aims to end. Article 15 of the Indian Constitution forbids discrimination on grounds of religion, race, caste, sex or place of birth but the above-mentioned order directly contradicts that. Apart from furthering social disharmony, it also encourages economic boycott of minorities and the dalit community. Because such an order came from administrative officers deputed on high posts, it is not

just criminal but also worrisome as it directly goes against the basic tenets of India.

Uttar Pradesh PUCL condemns these government orders and demands the following,

1. Uttar Pradesh government to rescind these orders immediately.
2. Take appropriate action against the concerned police officers.
3. Since it is a government order, courts should initiate suo-moto proceedings against the responsible people and punish them accordingly.
4. Government officers should be trained to imbibe the ideals of the Indian Constitution.

PUCL Uttar Pradesh Executive Committee  
**Seema Azad** (President)

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## CHALLENGES BEFORE THE CIVIL LIBERTIES MOVEMENT – CONFERENCE REPORT PUCL- DELHI

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Over 150 people including lawyers, students, professors, and survivors of state persecution

gathered for PUCL Delhi's Conference today, 13th of July, 2024 at Rajendra Bhavan, New Delhi

about the Challenges Before the Civil Liberties Movement and what can be the possible way

ahead. There was a tenor of hope and gusto throughout the meeting, and it was clear that a

feeling for action is brewing amongst people.

Much was said about the human rights violations pertaining to various arenas, be it the blatant misuse and abuse of the Unlawful Activities and Prevention Act (UAPA) and Prevention of Money Laundering Act (PMLA) or the three newly enacted criminal laws or the ethnic conflict going on in

Manipur. The increase in hate crimes, hate speeches, incidents of mob lynchings and crackdown on journalists in recent years has been an issue of grave concern for human rights organisations like ours. We see these as implications of a state which has increasingly gathered police power.

The house noted with concern the gross misuse of central law enforcing agencies like the

Enforcement Directorate (ED), CBI, Income Tax Department, who have been armed with

draconian powers which are being used to harass the political and ideological opponents of the current regime. Numerous political leaders and activists are languishing in jails under such practice without timely and fair hearing. This has created an atmosphere of anxiety and fear.

The declining conditions of public educational institutions, public health, and the environment were discussed within the ambit of protecting and securing human rights and civil liberties. The compromised independence of the election commission of India, and the need for electoral reforms constituted an area of discussion as well.

The house has resolved to continue this dialogue via similar events with more groups and

participants from the civil society and also students and workers organizations spread across

the Delhi NCR region. Actionable ideas have been proposed, such as the formation of a fund for lawyers to strengthen the response to human rights violations and the protection of activists and human rights defenders. Consistent discussions will be needed

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to concretise these ideas.

Further, it was decided that a proposal for a national movement against the draconian UAPA

and PMLA laws, along with the repeal of the three new criminal laws, is very much in order.

Given the spirited discussion of the conference, there is much reason to be hopeful for.

However the resolutions made through the discussions in the conference's three panels will require consistent planning and

struggle. It is hoped that various human rights organizations will rise up against the current atmosphere of repression.

**N.D. Pancholi**, President

**Tajinder Singh Ahuja**,  
General Secretary, PUCL, Delhi

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## REMEMBERING FR. STAN SWAMY IN TODAY'S CHALLENGING REALITY, PUCL- GUJARAT

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People's Union for Civil Liberties (PUCL) Gujarat organised an event in Ahmedabad entitled "Remembering Fr. Stan Swamy in today's Challenging Reality" on Sunday, July 21, 2024 in memory of Fr. Stan Swamy on his third death anniversary. The event included a discussion of the new criminal laws enforced since July 1, 2024.

At the start of the event Fr. Cedric Prakash spoke about Fr. Stan Swamy, a fearless defender of tribal rights in Jharkhand, who was arrested by the NIA in 2018 in the context of the Bhima Koregaon case. Human rights defenders and members of political parties across the nation had protested the arrest of the then 81-year-old activist who had worked tirelessly with Adivasis to defend their rights. He passed away on July 5, 2021 at the Holy Family Hospital, Mumbai due to complications related to COVID while still under arrest.

Advocate Lara Jesani of the Bombay High Court delivered the keynote address and discussed the BNS, BNSS, and BSA which have replaced the IPC, CrPC, and Indian Evidence Act, respectively and their implications for citizens' rights. She expressed serious concern regarding the manner in which the Law Commission was bypassed, views of public and experts not considered in the process of overhauling the criminal jurisprudence of the country, by just entrusting the task to a 5 member committee.

It was strange that when 80-85% of the BNS, BNSS and BSA was taken verbatim from the erstwhile CRPC, IPC and the Indian Evidence Act and just reorganised, rather than "decolonised" as claimed, that the laws were replaced when the limited changes could have been brought through amendments as was being done from time to time.

While examining the new criminal laws, Lara Jesani expounded on the issues they throw up, some key ones being : (i) the discretion given to the police to conduct a preliminary investigation before deciding whether an FIR should be filed (ii) the vagueness in the number of days of police custody that could be granted which could result in a situation where the earlier provision limiting to the first 15 days could be now extended to 60 or 90 days, and thereby almost pre-closing the possibility of bail during this entire period (iii) the introduction of provisions from anti-terror law UAPA into the BNS, the introduction of the controversial sedition- like law in a graver and more dangerous form (iv) criminalisation of hunger strike by protestors, (v) the admissibility of electronic evidence without any safeguards for privacy and data protection or procedures for seizure of devices and integrity of device and data, and other provisions which give arbitrary and sweeping powers to the police. Ms. Jesani said that not only would these ill-conceived changes

brought about through the new criminal laws lead to chaos in court and increased litigations in an already stressed legal system, but they are regressive and contradict the law laid down in several landmark Supreme Court Judgements like in the case of D.K Basu, Joseph Shine and Lalita Kumari, and are violative of fundamental rights enshrined in the Indian Constitution.

Adv. Govind Parmar, the President of PUCL Gujarat, said that the manner in which Fr. Stan Swamy was incarcerated under draconian laws were an indication of how the new criminal laws could be used to snatch away civil liberties and fundamental freedoms of citizens. He was apprehensive that the changes in procedural law as envisaged in the new criminal laws could have serious implications on laws like the SC&ST (Prevention of Atrocities) Act. Activist Nirjhari Sinha spoke on how these laws could be used to curtail the freedom of speech, especially of independent media and fact-checkers. The window of 15 days given to the police to investigate and ascertain prima facie the commission of an offence would have far-reaching implications on ensuring justice in cases of sexual violence. Advocate Amrish Patel emphasized how the procedural law in the earlier criminal jurisprudence flowed from Article 21, which has been overturned by the new laws.

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Advocate Shamsad Pathan said that the struggle of the minorities to make their voices heard in the context of the spread of hate speech and targeted violence would be seriously affected as a result of the sweeping powers given to the police in the new criminal laws. Gova Rathod, General Secretary, PUCL Gujarat observed that these new laws would be instrumental in suppressing the on-going struggles of the Dalit and Adivasi communities for

justice.

Kishor Chaudhury said that the impact of the new laws was already being felt in the

Adivasi community. The police already cited the new laws when the Adivasi organizations informed them about the Indigenous Day celebrations on 9th August;

and that Adivasis should limit to their 'cultural programmes' on this day and not

any political demonstrations.

Ashim Roy was positive that the various stakeholders, especially the legal

fraternity and civil society activists would stand up against the new criminal laws

and spearhead a collective, democratic and transparent process that would

compel the government to withdraw the new criminal laws.

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## REMEMBERING FR STAN SWAMY, PUCL – JHARKHAND

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### *Addressing the Adivasi Question: Brief Summary of Prof Xaxa's speech at the Memorial*

On the occasion Fr Stan Swamy's death, PUCL Jharkhand hosted its annual memorial lecture. This was the 3<sup>rd</sup> memorial lecture, which was chaired by Prof Jean Dreze with Prof Virginus Xaxa as the key note speaker. When people are asked the question of what is politics, they often share it is party politics, about the Government of India Act (1935). They talk about the Constitution and how it gave rights to Dalits. Especially on the question of political representation, it is recognized that after this point in time tribals were seen as getting representation in the national and state politics.

Another practice of politics is that it arises from resistance and movements. In these spaces the struggle is for the power that has been snatched from us by British and thereafter the state. It wasn't party politics but it was this struggle to assert and access the power that was stolen from Adivasis. The Birsa Munda movement is a kind of politics. Here the central issue was how do we get back the power that was snatched from us. It was not party politics; it was the politics to reclaim and regain power. For this claim to power there were a range of revolts and insurrections by the Adivasis and this was a way of practicing politics. This

question of electoral politics for the Adivasis came much later than the politics that drove these revolts and movements. Despite the huge numbers of Adivasis in states such as Chhattisgarh, Orissa and Jharkhand, it is my understanding that their rights have still not been secure. A question we must ask ourselves is that through electoral politics what is it in terms of rights and dignity that we have gotten. The work that is done by the States/Parties has only been symbolic to have not gotten a law against Adivasis. The question remains what have they done positively for the rights of the Adivasi people. The crux of the reality is that the national party, state party and interests of Adivasi people can never align because the national interest/state interest is not that of Adivasi people. This pattern is clear everywhere – what is TMC? What is TDP? Why are there these regional parties? These parties have come to secure interest of regional people and the varying identities that come with it. What is happening in Jharkhand is that there is a national party, there is a regional party and then there is the Adivasi political question. Within these the contradictions are so many that there is no way to reconcile them. And thus, we must address and secure the rights

of the Adivasi people at this regional, this local level. It is not that there is no identity of regional and local politics, it is actually a form of sub national identity. For example, the Oriya identity. We can imagine a similar sub national identity of Adivasis in Jharkhand. But Adivasis in Jharkhand have tried to accommodate so much that somewhere this identity got left behind. As the Adivasis in Jharkhand, we must deliberate that in this scheme of national and regional politics what is the place made for us. And most crucially, how can we reclaim our space?

The other practice of politics is that of movements. The struggle against mining, for forest rights, against dams, for irrigation is all continuing forms of politics. In my understanding, if one were to look at the Adivasis situation then, colonialism is still continuing. This means that there is still outside control on our resources in the forest. Our forest resources are not allowed to be used for the benefit of the Adivasi people but instead are being depleted in the name of development. This colonialism is common to Jharkhand, Orissa and Chhattisgarh. We have not been able to dislodge this colonialism.

Now how do we dislodge this



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colonialism - Fr Stan Swamy taught us ways of thinking about this resistance and of self-preservation. He also emphasized through his life's work on the constitutional provisions for the protections of the Adivasis such as the Fifth Schedule. The Fifth Schedule gives the right to Adivasis that whatever law the Parliament may pass; if it is not in the interest of the Adivasis then it can be amended or even repealed by the Governor. In all these years, which State's governor has done this? This was the dream of Fr Stan Swamy. He used to speak about land acquisitions and how the unlawful ways in which lands were being grabbed, how can it be diluted. He was leading the initiative in Jharkhand to amend that law. During the British Rule the East India Company was supported by the State. After India attained independence, we were imagining a socialist society and even in this so-called socialist society, Adivasis have been the most displaced. After 1991, when liberalization came in, we see that the corporate and the State are collaborating on a large scale. At least before that the State was forced to give something in return to the displaced Adivasis. This was not the case for the corporates. In fact, the State creates a big show of how it is giving jobs through affirmative action to Adivasis. But the truth of the matter is that the State is taking away a lot from the Adivasi people. Affirmative

Action was imagined as a tool to uplift the Dalit and Adivasis. But now there is a system where the claim is that we are giving something to the Adivasi people (affirmative action) but they are taking away Jal, Jungle, Zameen and effectively leaving us worse off.

The biggest problem of the Adivasis is that they are taken for granted. They have limited the understanding of the Adivasi question to an ST certificate and what the law says. We – the Adivasis are much more than this ST certificate. We are a sub national identity especially considering the question of the language of the Adivasis. Who are we if don't know the different Adivasi dialects? These questions of language have not been the focus of the Tribal community. There has been a claim by the Hindu religions over the Adivasi identity. It is like asking the question of whether Bengalis are Muslims or Hindus? And what relationship does language have to religion? There is also a tendency within the Adivasis to exclude other Adivasis on differences in language.

Keeping all this in mind, what is the future of the Adivasis? We have a responsibility to foster the feeling of pride and assert our tribal identity. Colonialism is persisting and it will continue to persist and the relationship of the market and State will become intertwined. For the State, this market has become more important than its people. What we were seeing the changes after 1991,

we will see the situation on the ground exacerbate. At such a critical stage, we need to reflect on the work of Fr Stan Swamy and his ideas on the Constitution. The legal provision of Fifth Schedule is our weapon of defense. Keeping in mind Fr Stan, why don't we mobilise ourselves? Why don't we collectivize on the demands of fifth Schedule?

This is the future of our work. Similarly, we have such common experiences of the displacement and the violence of the State that we survive. Across States and villages, we have to build a broader alliance of Adivasis while navigating the question of regional politics. We have to be able to be in solidarity with each other. We have to start a thinking circle to be able to reflect on these issues and questions related to the Adivasi identity. The middle class has become completely detached from the Adivasis; it is like they are dead from inside. It is through thinking and reflecting together within the Adivasis that we have to carve out our future and secure our rights. There is need for larger civil society organizations to especially collaborate on fighting police violence, thinking about laws and amendments based on the needs articulated by the Adivasis. A lot of the significant legal changes for the Adivasi society have come because of the civil society initiative, for example: PESA, Forest Rights Act.

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## KILLING OF THREE DALIT YOUTHS AND OTHER ATROCITIES AGAINST THEIR FAMILIES IN SAGAR DISTRICT (MP)

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**An Edited fact-finding report by concerned citizens of Madhya Pradesh, July 2024**

In August 2023, there were widespread media reports of the lynching of an 18-year-old Dalit youth named Nitin Ahirwar by members of

the village elite in Baraudiya Naunagir village of Sagar district, Madhya Pradesh. His mother, who tried to save him, was also severely beaten up and stripped, and their home was looted and smashed. Subsequently, Nitin's sister Anjana made strenuous efforts

to secure justice for her family. Suddenly, at the end of May 2024, it was reported that Nitin's uncle, Rajendra Ahirwar, had also been murdered, and that Anjana, who was accompanying his body, had died after "falling" from the hearse. Shocked by

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the persistent violence and the suspicious death of a brave young woman like Anjana, many concerned citizens formed a small team to conduct a detailed citizens' investigation of this case. The team visited the village and interacted with the victims' families, police and administrative officials, journalists, lawyers and several others, and examined relevant documents and media reports, to prepare this report. The team members were Advocate Mohan Dixit, Rohit (Independent Journalist), Advocate Aditya Rawat, Neelu (Eka Collective), Sadaf Khan (Independent Journalist), Madhuri (PUCL-People's Union for Civil Liberties), Anjali (ALIFA - All India Feminist Alliance- NAPM), and Nitin (Jagrit Adivasi Dalit Sangathan).

#### **About Baraudiya Naunagir**

Baraudiya Naunagir is a village in Khurai tehsil of Sagar district in the Bundelkhand region of Madhya Pradesh. The village is about 150 km from the capital Bhopal on the Rahatgarh-Bina Road. Sagar, one of the most populous districts in Madhya Pradesh, is also an important centre of political power in the state; three prominent BJP leaders and former ministers, Shri Gopal Bhargava, Shri Bhupendra Singh, and Shri Govind Singh Rajput, hail from this district. The population of Baraudiya Naunagir is about 3500, of which Scheduled Castes are 23.11% and Scheduled Tribes are 11.14%. Most people here depend on farming and daily wage labour. People from many communities live here, including Ahirwar, Kori, Patel, Adivasi, Muslim and Thakur.

We were told that the village Thakurs are hereditary "lambardars" or village elites, and have a major role in all affairs of the village. Villagers depend

on them for intervening in governmental matters and resolving various village level issues.. Although they have only 20-25 houses in the village, they reportedly own over 1000 bighas of land. We were also told that the Thakurs are in possession of most of the land of marginal farmers, after paying them a small amount as "rent". Most villagers work as labourers, and are often coerced into working for the Thakurs even though the wages they are paid are lower than what workers receive elsewhere.

The victims' family also primarily depends on labour. Anjana's father, Raghuvir Ahirwar, worked as a guard in a factory in Indore but is now back in the village after Nitin's murder. Among their four children, Rohit (age 26), Vishnu (age 24), Anjana (age 20) and Nitin (age 18), only Rohit and Vishnu now survive. 20-year-old Anjana Ahirwar was a second-year undergraduate student in a college in Sagar. The other affected family is that of the deceased Rajendra Ahirwar (age 26), who was their "uncle" in village kinship terms. Rajendra's family, also primarily dependent on wage labour, includes his father, mother, grandmother, one brother, and two sisters.

#### **A detailed description of the events**

On January 26, 2019, Anjana was criminally assaulted and molested by Azad Thakur, Pushpendra Thakur, Chotu Raikwar, and Vishal Thakur, the "lambardars" of the Thakur family of the village. Based on Anjana's complaint, on 26.01.2019, FIR no. 27/2019 was registered against them, only with great difficulty. According to Anjana's family, sections related to beating and intimidation (IPC 294, 323, 506, 34) and the Atrocities Act (Section 3(1)(r)(s) and 3 (2)(va)) were applied in the FIR, but sections related

to child sexual abuse were not applied, despite the complaint of molestation made by the 15 year old Anjana.

The family faced increased hostility from the Thakurs after Anjana's FIR. According to them, the fact that a family of poor Dalit labourers like theirs had managed to file a case against them angered the Thakurs. The family was repeatedly threatened to withdraw their complaint. On 23/08/2023, the police took Vishnu and Rajendra to the police station, claiming that 'it was for their safety as their lives were in danger'. The very next day, Nitin was murdered.

Badi Bahu Ahirwar, Nitin (Lalu) Ahirwar's mother, recalled: "On the evening of 24/08/2023, Nitin had gone to the market. It had gotten quite late, so I went to check on him. I heard loud screaming and saw lambardars and their men beating Lalu near Golu Soni's shop." She somehow rescued Nitin from the mob and brought him to Vinod Kori's shop. But the assailants soon surrounded them, dragged him onto the road and started beating him brutally. This continued for almost an hour. According to Badi Bahu Ahirwar, Lalu was beaten to death by Komal Singh Thakur, Vikram Thakur, Azad Thakur, Ankit Singh Thakur, Vijay Thakur, Golu Soni, Lalu Khan, Anees, Wahid, and their men.

Badi Bahu Ahirwar tried very hard to protect Lalu from the beatings, but in trying to do so her right hand was broken, and the other hand was also injured while trying to save him. The assailants also forcibly removed her saree. The police eventually arrived at the spot, by which time Lalu had already lost consciousness. The police took Lalu to the hospital, where he died shortly after.

When we met the family, we were shown a video of about 20 minutes, of the beginning of the assault on Nitin as

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captured by a nearby CCTV camera. It bears out all the facts of Babi Bahu Ahirwar's testimony. Significantly, this CCTV footage is not part of the chargesheet in Nitin's murder case. The family received the CCTV footage from a camera that appears to be from across the road from Vinod Kori's shop 3-4 months after the incident. The family says they gave the video to the police, but the police had already submitted the chargesheet by then and refused to take cognizance of the video.

An FIR was filed after Nitin's murder, but the police left out several facts about the assault that Anjana had filed in her complaint. Her complaint mentioned Badi Bahu being disrobed, and this was subsequently cited in media reports as well, but this fact was omitted.

#### **Events following Nitin's Murder**

The day after Nitin's murder, Anjana submitted a further complaint to the Collector and Superintendent of Police, asking them to add the name of Ankit Singh Thakur in the FIR, as he was one of the main perpetrators. The complaint also asked the police to secure the CCTV footage near the spot where Nitin was murdered. In the complaint, Anjana also expressed fear for her safety and that of her family. She also complained of threats being made against her family by the relatives of the accused, who were pressuring them to reach a "compromise". However, no cognizance was taken and no action was taken on these complaints.

According to her family, around three months after Nitin's murder, former minister, former MP and senior BJP leader, Shri Bhupendra Singh summoned them to tell them to stop pursuing this case any further, and to announce to the media that they were getting complete support from the

minister and were satisfied with the administrations' actions. Anjana was even handed a typed copy of the statement to be made by her before the media; however Anjana refused to give such a statement. A few months later, another attempt was made on behalf of Shri Bhupendra Singh to engineer a "compromise," but Anjana and her family refused.

#### **Rajendra's Murder**

26-year-old Rajendra Ahirwar was a key witness in Nitin's murder case. He was attacked with lathis and axes at the house of Pappu Rajak, and had to be taken to Khurai Community Health Center, then to Sagar District Hospital, and then was referred to Bhopal. He died on the way to Bhopal. Family members repeatedly told us that there was a lot of delay in referring Rajendra to Bhopal. The family suspects that the delay was intentional and that he was deliberately denied proper treatment in Sagar.

The post-mortem report states the cause of Rajendra's death as "multiple injuries sustained to the body and its complications". Based on the *Dehati Nalsi* report of 8:45 pm on 25.05.25, FIR No. 197/24 was registered on 9:03 am on 26.05.24 under sections 307, 147, 148, 149 (IPC) and sections 3(2)(v), 3(2)(va) of the Prevention of Atrocities Act. An FIR under sections 307, 458, 294, 34 of the IPC has been registered against Amir and Faizal who have been arrested.

Pappu Rajak, at whose house Rajendra was attacked, has filed a counter-FIR in the matter of the attack on Rajendra. According to the FIR, Rajendra, Amir, and Faizal came to Pappu Rajak's house and started beating him to demand a compromise in some previous incident. In this case, FIR No. 198/24 was registered at 5:42pm on 26.05.24, the day after the incident

and several hours after Rajendra and Anjana's death. We were told that Pappu Rajak works for the lambardars and is close to them.

#### **Anjana's Death under extremely suspicious circumstances**

After Rajendra's post-mortem in Sagar, Anjana was bringing Rajendra's body back to the village accompanied by the police. It was then that she died under extremely suspicious circumstances on Khurai bypass road. The police claim that Anjana died due to "either falling or jumping" out of the vehicle but that the matter is "still under investigation". The police are calling this an accident, and a case of Unnatural Death has been registered at Khurai City Police Station. However, Anjana's family believes that her death was not an accident but murder. Rajendra's family also believes that it was the Thakurs who had Anjana killed.

#### **Discussions with District officials and role of the Administration**

District Collector of Sagar, Shri Deepak Arya, believed the root of these incidents to be societal, stating that "this Dalit family had feelings of anger and rebellion against exploitation of the elites, and were wanting to escape their pressure and influence. However, they were manipulated to commit crimes by a faction opposed to the village elites (lambardars) who had their own ulterior motives."

Nitin was only 18 years old when he was murdered. While refusing to provide us with any detailed information about criminal cases against Nitin, police officers stated 7 FIRs were filed against him between 2021 and 2023. The fact that so many cases were registered against a minor from a rural Dalit family of daily wage labourers raises many questions, and

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also strengthens his family's allegation that their children were being implicated in false cases because of Anjana's complaint against the Thakurs. Collector Deepak Arya informed us that after Nitin's murder, the victim's family was given a total assistance of Rs. 21,46,724, under various heads, including the Chief Minister's Discretionary Fund, Red Cross Society, and compensation under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

#### **Political Intervention**

After Nitin's murder, former Chief Minister and Congress leader Mr. Digvijay Singh met the family and said - If the police had taken action in time, Nitin's murder would not have happened. He asked the officials why the main accused's name was not registered in the FIR, why is BJP Youth Front's Ankit Thakur's not being named as an accused, is the government administration trying to protect him?

On the other hand, Khurai MLA and former minister Shri Bhupendra Singh gave a statement to the media that this was not an atrocity but merely the fallout of a long-standing dispute between the two parties. The fight happened because of the dispute, due to mutual disagreement.

Shri Jitu Patwari said that murders are happening one after another, and now a daughter has died under suspicious circumstances. He said that if the government does not agree, they will approach the court for a CBI investigation.

After Anjana's death, Madhya Pradesh Chief Minister Dr. Mohan Yadav also reached the village with Shri Bhupendra Singh. Expressing sorrow over the incident, he said that the cause of the matter is merely a village dispute. Upon learning about such

incidents happening repeatedly in the village, he directed the police administration to open a police outpost, to ensure that such incidents do not happen again.

#### **Conclusions**

1. Bundelkhand, is known for its history of deep feudalism and to this day, the dominance of the "lambardars" persists. The Thakur family of Baraudia Naunagir have been the village "lambardars" for generations and they own most of the land in the village. They dominate the village, control the panchayat and play a role in all major village affairs. No one dares go against them. The defiance and rebellion of these Dalit youths against feudal oppression and exploitation by the Thakurs were undoubtedly seen as an affront and challenge to their authority. The violence was in reaction to this defiance.
2. The lynching of 18-year-old Nitin for over an hour in the middle of the market by lambardars and their men, the fact that no one except his mother and sister even attempted to save them, the assault on his mother in which her hand was broken and her sari stripped off followed by the assault on Anjana, the smashing and looting of their homes, and the glaring tardiness of the police in arrival - all of this was possible only because the victims were a Dalit family of labourers and the assailants were historically

dominant elites.

3. The circumstances of Anjana's death point towards a conspiracy. Anjana was educated and was central to the family's struggle for justice especially in the murders of Nitin and Rajendra. She was the one who communicated with the administration and politicians on behalf of her family. At the age of 15, she had managed to get an FIR registered against the village lambardars and further still, refused to "compromise" even when faced with threats from the lambardars.
4. The village lambardars are reportedly close to Khurai MLA and former cabinet minister, veteran BJP leader Mr. Bhupendra Singh, and politically connected to him. The three main accused in Nitin's murder are BJP workers. Since Nitin's brutal murder, Mr. Bhupendra Singh has been quick to reduce this atrocity which has claimed three young lives to 'a mere dispute between two parties'. Regrettably, the police and administration echo his words - thus, as things stand, chances of the Ahirwar family getting justice seem very slim.

It is possible that in an attempt to defy the suffocating dominance of the lambardar Thakurs, these Dalit youths may have accepted support from some persons opposed to the lambardars who had their own ulterior motives. Nevertheless, attempts by



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the police and the administration to justify and rationalize these atrocities on this basis is absolutely reprehensible.

#### **Recommendations**

1. Police's competence and objectivity both suspect: Anjana's death and, in fact, all the matters require CBI investigation

The tragic events of Baraudiya Naunagir prove that the socio-political structures that have enabled historical inequality and exploitation are very

much alive today. It is clear that political pressures and administrative bias will not allow proper investigation or action in these matters. In such a situation, neither is the police equipped to handle these case - nor can they be trusted to objectively do so.

For these reasons, we strongly urge that Anjana's death as well as all the other matters described above be thoroughly investigated by the CBI and in a transparent manner.

2. M a d h y a P r a d e s h Government must take

#### responsibility for the safety of the victim families

The Collector must be made responsible for ensuring the safety of the families of Nitin-Anjana and Rajendra Ahirwar. Despite Nitin's murder receiving a lot of attention in both the media and from all political parties, Rajendra was murdered and Anjana died. Now, even the Chief Minister of Madhya Pradesh, Dr. Mohan Yadav has met the family and is cognisant of the situation - yet justice remains a far cry for the families.

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## **PRESS NOTE : PUCL CONDEMNS THE ILLEGAL DETENTION AND HOUSE SEARCH OF PUCL NATIONAL COUNCIL AND CHHATTISGARH UNIT OFFICE BEARER, KALADAS DEHARIYA ON 25<sup>TH</sup> JULY, 2024. DEMANDS DROPPING OF FABRICATED AND FALSE UAPA PROCEEDINGS IMMEDIATELY!!**

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Delhi & Raipur  
25<sup>th</sup> July, 2024

The PUCL National and Chhattisgarh State branch, strongly condemns the early morning raid today, 25<sup>th</sup> July, 2024, by the NIA of the house of Kaladas Dehariya, popular cultural activist, respected trade unionist, a PUCL national council member and Vice-President of PUCL Chhattisgarh state unit in Bhilai. The NIA showed their disregard for the law and constitutional protections by not disclosing the reasons why they were searching his house, not permitting his lawyers to meet him, not showing the search warrant and not providing the hash value of the electronic items. After 4 hours of searching his modest house, the NIA left with his phone, a long dead laptop, and a pen drive which had a collection of pamphlets used for different programs.

**Persecuting by prosecuting: Shocking conduct of NIA Officials: Neighbours houses were locked, No Lawyer Allowed, No Hash value given**

The way the NIA conducted the search is totally illegal as the NIA and other police officials did not follow any of the prescribed procedures during search operations. The raid was also actuated by malice – not only to drive fear in the minds and hearts of Kaladas, his family and associates but also to intimidate and drive fear amongst other rights defenders, trade unionists and social activists,

It is important to know the manner by which the raid was conducted. Early in the morning of 25<sup>th</sup> July, 2024, at about 530 am, Kaladas Bhai, and his wife, Neera, were woken by loud banging on their doors. When they opened them, they found a large police force outside, of 15-16 people, who had come in 4 vans. A few of them were from the Durg district police (as Bhilai comes under this district).

The rest identified themselves as coming from NIA Ranchi. They didn't inform Kaladas Bhai of which particular case they were investigating but told him right in the beginning that they had 'information' that he is

engaged in "*Bharat virodhi gatividhiyan*" (anti-national activities). The police then engaged in a thorough search of the entire house, rifling through the entire Shankar Niyogi book collection, shaking down the mattresses, unfolding all of Neera behan's sarees, scouring all the various posters and banners collected over various protest programs. Kaladas Bhai owns 5 pen drives, 4 of which are full of folk songs and one has a collection of various pamphlets and announcements picked up from various programs, which was seized. The NIA also picked up Kaladas Bhai's phone after removing the SIM card, and also a non-working laptop used by Kaladas Dehariya's daughter, who is a student in media studies at Wardha and had last used it for her assignments when it was functioning. As if Kaldas Bhai would run away or people would attack the police, in the four hours that the raid happened, several police officers were stationed outside in their narrow street, preventing and prohibiting any

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resident of the locality from stepping into the street. They even locked some doors from the outside, rebuked people from opening their windows and even stopped people from stepping out to fill drinking water which is only available for limited time in the morning at the municipal taps. The police even stopped a lawyer from the neighbourhood from visiting Kaladas bhai to ensure that the raid was being conducted as per law.

Even a complaint to SP Durg did not help, as he stoutly defended the NIA team, saying that lawyers are not allowed during raids and interrogation, **which is a direct violation of the criminal code and several SC directives.**

The Supreme Court in *Nandini Satpathy v. P.L. Dani* (1978) unequivocally held "*Lawyer's presence is a constitutional claim in some cases*". Furthermore, it held that the police may permit the advocate of the accused to be present at the time of interrogation. The Court believed that right against self-incrimination (Article 20(3)) and the right to consult a lawyer (Article 22(1)), would be furthered if the advocate were allowed to be present during the examination. This has been reiterated in the *DK Basu guidelines and in the Selvi v. State of Karnataka* (2010).

The PUCL is extremely outraged that the NIA gave no hash values or agreed to make clone copies of the electronic devices which they seized from Kaladas bhai. The PUCL is of the opinion that this entire search and seizure is illegal.

It was only when the NIA team handed over a Memo requiring Kaladas to present himself before the NIA Ranchi, in Jharkhand **on 1st August, 2024**, that he came to know that the search was conducted in connection with a **NIA case of 2023, (case number RC-03/2023 / NIA/RNC, dt. 23/08/2023), u/s 10 & 13 of the UAPA Act, 17 of CLA Act. as a witness.** It is not clear from

these papers what is the connection between Kaladas bhai and this case in Jharkhand.

#### **The PUCL demands**

- ***That the NIA explain, how it is investigating the above case, when the FIR is only under u/s 10 & 13 of the UAPA, which relates to unlawful activities and not terror activity?***

#### **WHY TARGET KALADAS DEHARIYA?**

##### **About Kaladas ji**

Kaladasji, as he is popularly called, is a resident of the labour camp Jamul, (adjoining the ACC plant), in Bhilai. Chhattisgarh. He is a PUCL national council member and a Vice President of PUCL Chhattisgarh. An extremely versatile personality, he is well known for his cultural activism, and commitment to constitutional values and defense of the constitutional order. The platform Relaa, put together by him has travelled all over the country, singing resistance songs, doing street theatre expressing people's sufferings and their dreams. Since the 90s he has been associated with the trade union movement and with the Chhattisgarh Mukti Morcha, (Mazdoor Karyakarta Samiti). strictly adhering to the ideology of struggle and constructive work, when working with the poor, as laid down by the renowned thinker and trade-unionist Shanker Guha Niyogi. He is also a national coordinator of NAPM, and associated with Chhattisgarh Bachao Andolan and the Jan Sangharsh Morcha, an alliance of many organisations to save natural resources and the people.

For the PUCL it has once again become clear that this attack of the Indian State on a renowned cultural, trade union and human rights activist, like Kaladas Bhai, **has only one purpose: to criminalise everyday activism and cause a larger chilling effect, by causing intimidation of the workers, so that they don't struggle even for a decent wage.** It is also well known that

that Kaladas bhai had been a part of the larger protest against the proposed tree felling of the pristine forest of Hansdeo Aranya, by corporate interests, so he had sent off yet another memorandum to the state government, signed by scores of people. He had also been organising people and written to the Government several times against the implementation of the four labour codes.

He along with others had also taken up the issue of indiscriminate extra judicial killings in the villagers in Bastar, apart from the ongoing struggle with the cement wage board in ACC. It is thus clear that Kaladas was a threat to both the Chhattisgarh state Government as also the Government of India, as an important dissenter against corporate projects which threatens environmental and livelihood security of Adivasis, workers' rights to fair wages and good standard of life and violations of constitutional values.

#### **PUCL demands**

- ***that the NIA does not drag him any further in the investigation of the above UAPA case.***
- ***returns the electronic devices seized from him and scrupulously follow the rule of law and the constitutional order.***
- ***Stop Criminalising everyday activism and dissent against Government Policy of struggling people..***

**Kavita Srivastava (President)**

**Degree Prasad Chauhan, President, PUCL CG,**

**V. Suresh (General Secretary)**

**Ashish Beck, General Secretary, PUCL CG.**

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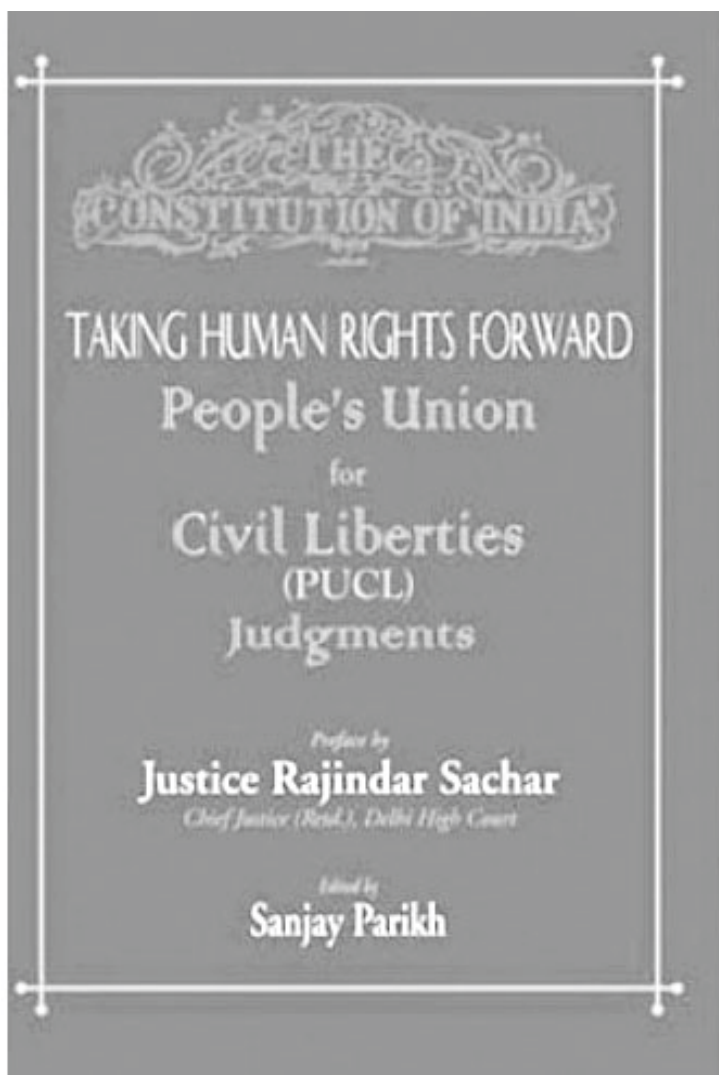
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#### Printed and Published by:

**V. Suresh**, General Secretary, PUCL,  
on behalf of **People's Union for Civil  
Liberties**; **Printed at**: Royal Offset,  
489, Patparganj Indl. Area, Delhi-92;  
**Published at**: 332, Ground Floor,  
Patpar Ganj, Opp. Anand Lok Apptt.,  
Mayur Vihar-I, Delhi 110091;  
**Editor**: **V. Suresh**.

#### Regd. Office :

332, Ground Floor, Patparganj  
Opp. Anandlok Apartments  
Mayur Vihar-I, Delhi-110091  
**E-mail** : puclnat@gmail.com  
pucl.natgensec@gmail.com  
**Website** : www.pucl.org

#### PUCL BULLETIN

**Editor**: V. Suresh

**Editorial Board**: Anant Bhatnagar,  
Arvind Narrain, Bhanwar  
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