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## Three Cheers for National Judicial Council

Rajindar Sachar

At long last National Judicial Council Bill is to be placed before Parliament. The main purpose of this Bill is to constitute a mechanism which would enquire into the acts of misbehaviour and incapacity of the judges of the Supreme Court and High Courts. In the good old days, it was assumed that the occasions for misbehaviour by the higher judiciary will be so rare or almost none that remedy of removal by impeachment by the Parliament was considered a sufficient safeguard. But unfortunately, in the changed scenario, no longer...

The judiciary, in spite of its obvious drawbacks, continues to enjoy the confidence of the public. That is a good sign, because a democracy cannot function properly if there is a lack of judicial objectivity and fairness. But it also must be recognized that it was for that very reason that it had been felt in legal and political circles that in disciplinary matters concerning the higher judiciary, the present position of the Supreme Court alone being the exclusive mechanism, is no longer satisfactory and that there was a need for a judicial council to deal with matters in a more transparent manner.

Fears have been expressed that accusations of misconduct — before they have been established as credible — would affect the independence of the judiciary. I cannot agree because judiciary like any other institution in a democratic State, necessarily should be open to receive a critical comment from the public.

The necessity of Council is based on the undisputed fact that the judges do not come from another planet — they come from the same stock as the rest of society, and subject to the same frailties. It is no secret that the antics of some of them do bring shame to judiciary. No protection is sought for them. The Supreme Court itself has emphasized that society's demand for honesty in a judge is exacting and absolute. I am of the view that the public at large has a legitimate stake in the judiciary and has a strong justification to insist that the question concerning the integrity of judiciary cannot be the preserve of the small free-masonry of the judiciary. Itself it is in that context that I feel that the Council must have one lay person as a member — he could be selected by the Prime Minister in concurrence with leaders of the opposition in both Houses of Parliament. A retired judge of the Supreme Court could be a full-time member because sitting judges may not have sufficient time.

It is being suggested that the name of the complainant should, if request is made, be not made public. This provision is totally unacceptable. A person who makes such serious allegation cannot be allowed to hide beyond anonymity — and defame the judge in an irresponsible manner.

Suggestion that the provision like the Council will interfere with the independence of judiciary in an insult to our judges who by far and large have amply demonstrated their independence even in

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extremely sensitive matters concerning the highest in the State.

I also believe that proceedings before the Council should be public unless for any special reasons recorded in writing the Council is of the opinion that the proceedings should be held in private. The whole scheme is of transparency – and sunlight is the best disinfectant.

Such like provision exist in other Commonwealth countries also. New Zealand has a Judicial Conduct Panel Act. This panel consists of two judges and a lay person. The hearings are done in public.

In Canada, the Judicial Council was established in 1971. About 66 per cent of the complaints are concluded within three months, and over 94 per cent within six months.

Similar is the position in Australia which has a Parliamentary (Judicial Misbehaviour or Incapacity Commission) Bill 2005. The Commission consists of 3 members, 2 of them to be appointed by the Senate and the Speaker of the House of Representatives on the

recommendations of the Prime Minister and one to be appointed jointly by the President of the Senate, Speaker of the House on recommendation of the Leader of the Opposition and at least one of the members is to be a Judge or a retired Judge of the Supreme Court. The Commission is to report whether in its opinion the facts amounting to proved misbehaviour exist which warrant the removal of the judge. Thereafter, the matter is then dealt with under the constitution for removal of the Judge by the Parliament by impeachment proceedings. One of the important aspects to enhance the credibility and impartiality of the Report is a provision in Section 27 of the Act to provide that the question of proof is on the balance of probability making it clear that simply because the charge of misconduct which may include bribery and others are akin to quasi criminal charges the proof will not be that of a beyond reasonable doubt rather than on a balance of probability as in civil cases. I think similar provision should be provided in our proposed legislation. This is in recognition that greater proof of integrity and honesty is to be

displayed by judges then the ordinary government servant – judges and legislators need to be judged by a greater incisive test, to satisfy the credibility test of the public.

Some people may object that the proposal to appoint the Judicial Commission will act as a deterrent for open, independent functioning of the Judges, especially where the State or the Government in power is involved. In my view, such an apprehension is an insult to judiciary who by and large has shown independence and fair dealing, unfettered by any question of prejudice or fear from the highest in the Govt. I may give some extract from Judicial Commission of New South Wales (Ireland) Annual Report which stated “In conferring a complaints function upon the Commission the Parliament struck a balance between independence and accountability. Judicial independence is not some kind of industrial benefit generously extended to judges and magistrates; it is a fundamental principle of our society’s constitutional arrangements...” □

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## Police Act Symposium K G Kannabiran

It is the saddest comment on our democratic consciousness that all these fifty years and more of Constitutional governance we never thought of restructuring almost all the institutions that are relevant to the functioning of the Constitution. Police administration is one such. All the laws now in force are colonial laws of post East India Company vintage. In these fifty years and odd years there have been outstanding policemen but none of them thought that the laws governing the police should relate to the Constitution. Nor after the Constitution brought into force, nor the President while adapting these laws he thought that we should refuse to adapt these laws.

To the present draft there are four or five preamble clauses, not one of them has any reference to the Constitution. The police force, of all the services of the State, is the one directly dealing with citizen as a citizen and a person. He alone is authorized to restrain, confine arrest and subject him to use of force and despite the crucial role he plays in the newly codified Act in the preamble to the Act no reference is made to the Constitution. A reference to the Constitution may drive the officer to know about the Constitution and its objectives and that may be the beginning of Constitutional discipline. That perhaps would make him aware that the major articulate premise of the Constitution is Rule of Law. This awareness will keep him away from politico religious politics and other political movements. Such understanding will enable him to understand how to operate in a society, which is plural in character, and composition and that he/she should play a detached role in maintaining public tranquillity, in the investigation and prosecution of crimes based on religious and caste conflict and in

preventing assault on minorities thus preventing crimes of genocide. It is very important that this Act should provide to the police person a vision of promoting a healthy plural society informed by equality in every aspect of the various communities living and forming the 'Indian Society'. That is why we insist that reference be made in the preamble to the Act. This we believe is a must.

It is true that there is a necessity for a comprehensive codification of police laws regulating discipline and conduct towards persons who happen stray within their jurisdiction and for rule governing their promotion in their official hierarchy. But this clamour for autonomy may result inter-institutional conflicts and bickering and become conflict ridden. We do not think independence is a synonym of reckless and irresponsible assertion of power. We have witnessed independence of the police. They have decided in all the recent assaults on the minorities whether the attackers should be prosecuted or not and in all the major incidents from 1984 onwards they let go the attackers scot-free. This would amount to suspension of Articles 21 and 14 and consequently the laws, which provide for enforcing these rights. Article 21 is not just a right of the accused. It is as much a right of the victim that the perpetrators should be prosecuted and their life and liberty shall be forfeited only after following the established procedure by law. All this is to say that the police force is re-structured to effectively face up to the challenges of a society where a plurality of communities and castes are claiming equal protection of laws. It is not autonomy but independence to act according prescribed law in the performance of their duties. The clamour by non-elected bodies

clamouring for autonomy will changes the character of democratic republic prescribed by the Constitution. Already there is a feeling that the judiciary by its judicial activism is eroding the salutary principles of the theory of separation of powers. We are not afraid of what Laski called "Judicial Tyranny", we are afraid of judicial anarchy that may destroy inter-institutional discipline so very necessary running the Constitutional scheme It is wrong to discredit political government who comprise of the elected representatives. Nothing prevents the police establishment from maintaining its independence in its discretionary jurisdiction from the political government. A bunch of sycophants may bring down an institution and make it subservient to a mindless political set up, but it is the aggressive competition to climb that brings the institution t this pass and for that the competition within the service needs to be regulated by providing certain amount of certainty to officers and men in their ascent in the service hierarchy. The administration should live up to the expectations of its officers and men. We would advise against needless creation of administrative structures for they may bring in litigious tendencies. It should be rule governed ensuring the expected progress in their official careers and such assurance alone will ensure presence of human dignity in the force and we are of the view that the men/women at the constabulary level needs to be looked after than at the officer level. There should be democratic debate within the police force where the constabulary's views may be very important to determine not only their service conditions but also the officers' service conditions.

We human rights activists are of the view that democratic functioning of institutions are a sine qua non of respect for human rights. Until now we have been defining human rights by their violation and the proposed Act is to reform the police set-up in the country. But we are very particular that this Act should not contain any provisions dealing with "Law and Order", "Public Tranquillity "Public Order' and Security of State". The preventive provisions of Criminal Procedure Code, the Penal Code, the various special laws creating special jurisdiction and special evidentiary rules and the various preventive detention laws with powers of externment and terrorist laws at the state and central levels regulate these. The police Act

need not and should not create any parallel jurisdiction under the Police Act. It will improve the content of Rule of Law and enrich Article 21 if enforcement, investigation and adjudication of such enforcement are kept in separate jurisdictions. If such parallel jurisdictions are created administration will break into a wilderness of arbitrariness. Chapter VI and VII or paras 6 and 7 attempt at creating parallel jurisdiction. This should be avoided.

There is yet another provision where the Act suggests complete power to administer the Arms Act be entrusted to the police. Praetorian guards should not aspire for the powers of the Praetor. It is good that the power

of enforcement and power to review the necessity to such acts in furtherance of enforcement are vested in different authorities. Once such power is extended to one enactment appropriation of such powers with reference to other enactments is sure to follow and that is sure to destroy the democratic fabric of the society in which we live. Institution building is a difficult task for we to structure a culture of respect for law, a habit of legality both in the governing and the governed and we are not running the government for the purpose of maintaining a police set up or a team of irremovable non elected judges or to maintain a bureaucracy whom Marx called a Republic of Priests. The emphasis is on "We the people". □

## Future of Communal Relations in India

### Asgar Ali Engineer

What is the future of communal relations in India? What will be the likely scenario in coming 30 years? This is an important question. Is India doomed as a secular democracy? Or does India's future lie in secular democracy? Will the Hindutva forces gain or loose? There are different answers to these questions, which is quite natural. In complex social and political problems there are no easy answers. To get some probable answers one has to get at the root of the problem.

India, it is important to note, has been a multi-religious, multi-cultural and multi-lingual society for centuries. Forces of tolerance have always been strong in its soil. Besides others Emperors Ashoka and Akbar have been great symbols of tolerance and openness to other religions. Throughout medieval ages, one hardly finds instances of inter-communal clashes though among religious priesthood there was bigotry and sectarianism. This bigotry and sectarianism as exposed by poets like Kabir.

However, the Sufi and Bhakti movements acted as bridge builders. They effectively countered the narrow mindedness of priestly class and spread love and humanism. The Sufi and Bhakti saints were more spiritual than religious in ritualistic sense. Their whole emphasis was on love, peace and harmony. They had their roots among common people, poor and of lowly origin. They kept their distance from rulers and ruling classes.

It is important to note that it is clash of interests, which brings about unrest and communal tensions in society, not clash of religions. Religions do not clash; it is vested interests, which do. In medieval ages religious communities were not politically organised, they were distinctly different yet not hostile to each other as they did not cater to political needs.

It is with the event of colonialism on one hand, and, subsequent parliamentary democracy that led to politicisation of religion and religious

communities. Thus inter-religious clashes are in fact, inter-political clashes. Different political parties carve out their vote-banks among different religious communities and target some community, in order to emerge as champion of ones own community. In fact, they are champions of their own political interests, rather than community's interests.

In India such communal division occurred mainly due to colonial machinations. It ultimately led to division of our motherland. This political vivisection became a running sore for people of India, particularly for those of majority community as they saw Muslims as responsible for division of the country. Muslims as a community were not responsible for division but only a section of upper class Muslim elite in collaboration with British colonial power brought about this division. In fact common Muslims are really suffering today on account of this division.

The right wing Hindu politicians exploited the issue of partition to the hilt with an eye to Hindu votes

and often incited communal violence. This violence intensified during the decade of eighties in post-independence India. Most of the major riots in independent India took place during 1980 to 1992-93. There are number of reasons for this. By the time we saw dawn of eighties about 40 years had passed since India became independent. The democratic processes intensified and brought more democratic awareness among the minorities and weaker sections of India and they got better organised by then to demand their due share in power.

The upper caste Hindus felt that in coming years they will have to yield more and more share of power to minorities and low caste Hindus (dalits) and hence the Bhartiya Janata Party (BJP), mainly representing the political and economic interests of upper caste Hindu elite, raised alarm and began propaganda blast against minorities and dalits and led to heightened inter-communal and inter-caste tensions. The BJP used Ram Temple controversy as a powerful symbol to mobilise Hindu votes and ultimately rode to power in 1999 and remained in power until 2004.

The Sangh Parivar (which includes Rashtriya Seva Sangh, Vishwa Hindu Parishad and BJP) tried to weaken secularism and Hinduise Indian plot during their rule. It was during the BJP rule (both at the Centre as well as in Gujarat state) that Gujarat carnage took place in 2002, which officially 1000 and unofficially 2000 Muslims were brutally killed. Thus inter-religious violence achieved its climax during the BJP rule, which bases its politics on hatred of minority communities.

It was during the BJP rule that attacks against miniscule minority of Christians also began. An Australian Christian priest James Staines, working for lepers among tribals in a distant village of Orissa

in Eastern India was burnt to death along with his two young children. Many other Christian priests and nuns were also attacked or murdered. This was the darkest period of secular India.

But it is to be noted that people of India rejected the BJP rule because of its communal excesses and voted the UPA (United Progressive Alliance) government led by the Congress to power in the elections of 2004. Thus the people of India once again proved that they are secular and tolerant and desire communal harmony and better inter-religious relations. Though one cannot see inter-communal relations in straight line as much depends on political dynamics in the country.

However, on the whole, it can be said that common people of India are desirous of peaceful co-existence and do not appreciate communal turmoil in the country. The dark side of economic development is vast poverty-stricken underbelly of India. India is still at 137<sup>th</sup> place out of 139 countries surveyed as far as malnutrition and deaths caused by hunger are concerned. Such stark poverty cannot but have political implications.

The ruling classes use caste and communal issues to divert attention from such horrific problems. Many politicians are tempted to resort to communal-based, instead of issue-based politics. The Gujarat carnage of 2002 took place precisely when the BJP Government was signing various international trade treaties and liberalising economy benefiting handful of economic elite.

Thus in coming 30 years one cannot expect smooth inter-caste and inter-communal relations as the ruling classes would certainly tempted to employ emotional issues to catch votes of common people without solving their problems. This process of emotionalising and communalising

politics is aided and abated by the media also, as media itself is controlled by political and economic elite.

The Sangh Parivar has consolidated its base during six years of its rule and possesses disciplined cadre and thus possesses great capacity to communalise politics and provoke communal violence. But there are countervailing forces too which go in favour of more secularised democracy.

The lower castes (dalits) though at times get used by upper caste Hindus and are swept off their feet by powerful emotional propaganda but on the whole tend to be anti-Sangh Parivar force. These dalits are main victims of upper caste elite politics and their leaders try to counter communal politics in order to keep their caste flock with them. The caste awareness is increasing with spread of education among dalits and with spread of democratic awareness. Though dalits and minorities are far behind in the field of education, yet more and more are getting educated and are becoming aware of their political rights. Greater the political awareness among dalits and OBCs (Other Backward Classes), more challenging it would be for communal politicians to manipulate religious and communal sentiments.

Another factor is increasing globalisation, which in itself creates contradictory effects as far as communal situation is concerned. On one hand it intensifies urge for religious and cultural identities to face homogenising global processes and on the other, it opens up economic opportunities for educated middle classes and induces their out-migration thus reducing communal potentialities.

It is also interesting to note that today there is increased awareness among Muslims in India to make a concerted effort to

better their position through more education and better economic opportunities and avoid emotional issues which bring nothing but disaster for them. There were entangled in Ramjanambhoomi politics and suffered a great deal. Thus with few exceptions, Muslims are shedding their communal past, and preparing themselves for better future prospects.

Also, communal forces are loosing credibility among people of India. They have no achievement

to show except communal rhetoric and bloodshed. Before coming to power they claimed to be 'clean' and non-corrupt. However, now many corruption scandals are coming out in which their leaders were involved during their rule. On this count also, they have lost much ground.

Thus in coming 30 years, it appears, communal forces will find it very difficult to regain their lost ground and communal politics will be weakened. However, much will

depend on performance of secular forces also. Communal forces thrive more due to failure of secular forces than on account of their inherent strength. Communal forces gain strength only because secular forces fail to assert and perform. Communal forces, it appears, will loose ground and one will see greater urge among people for co-existence and harmonious leaving in coming thirty years. □

## **PUCL Report on Kadakola:**

# **A Report of the Fact Finding Team on Social Boycott Imposed on a Dalit Community in Karakul Village of Batavian Bighead Talk of Bijapur District**

Kadakola, a small village near Basavabagevadi in Bijapur district is in the news for the past few months for reasons not so encouraging.

Chalavadi community, a lower caste in the hierarchy is facing a social boycott from the upper caste and Madigas, also a dalit community, for having used the tank water in the village. A fact finding team comprising of Dr V Lakshminarayana and Ratirao from PUCL, Sister Celia and R.V Chandrashekar from NAPM, Srikanth Karabi from Human rights forum, Sister Anna and Gopal from Nava Sanidhya Samsthe, (a Christian forum), visited the village on 27-28<sup>th</sup> October 2006 and findings of the community is as under:

Before the formation of Karnataka state Bijapur was a part of Mumbai province and even today one can visualize the cultural, Socio-economic moorings of the erstwhile Mumbai province in this region. The Land owning pattern and the feudal system has remain unchanged since the British period and the social relations have, since the times of Peshwas the Maratha rulers, protected the Hindu caste hierarchy. Ironically the village

Kadakola is situated 30 km away from Basavana Bagevadi, the birth place of Basavanna, the 12<sup>th</sup> century social reformer, who fought against the caste system within the Hindu fold. But this region has not seen any anti caste movement nor any OBC movement and the land reforms implemented in 1970s by the Devaraj Urs government has had no effect here. There has been no effort whatsoever to disturb the socio-economic relations of the region throughout the history. And one cannot find any social or ideological tendencies here, with Dalit movement being weak and left parties having almost no support base.

But the region has a history of atrocities against the Dalits. Sasanur, a near by village was a centre of caste conflagration 1946 when more than 50 lower caste people were burnt alive. Dr B R Ambedkar had visited the place after the incident. 1979 a relative of local MLA had raped a Chalavadi girl and the incident was hushed up with a compensation of Rs.50/-. The infamous Devadasi system, once prevalent here is not found now.

### **The Recent Incidents**

It all started on 25<sup>th</sup> of July 2006 when Cahalavadi Ramanna, the president of "Forum for Protection Human Rights of Untouchables", gave a press statement that the Chalavadi dalits of Kadakola, who are being prevented from using the tank water for drinking purpose for centuries, would break the tradition on 25<sup>th</sup> of July and would directly access the water themselves, as against the system of two intermediary caste people (Vaddas and Bhajanthris), pouring water to them from a distance. The district administration immediately went into action and some dalit children were made to lift water from the tank. This incident infuriated the upper caste people and they along with Madigas, also a dalit community, imposed a social boycott on the Chalavadi community, which virtually meant not engaging them on daily wages, no access to shops and flour mills and any public services and facilities available. More than anything else the tank water was polluted to avoid Chalavadi dalits using it

On 17<sup>th</sup> of October 2006 Justice Sadashiva commission, appointed by the state to study violations in implementation of

statutory rights of SCs and STs, was camping in Bijapur and the Chalavadi dalits of Kadakola conducted a sit in demonstration in front of the commission's office, protesting against the social boycott imposed on them. Justice Sadashiva promised the protestors of intimating the same to the government for further action.

But much damage had already been done in the village. The Chalavadi were denied jobs from 25<sup>th</sup> of July itself, they had no access to any shops to buy their daily needs, and the families were starving for months. Muniyappa a 75 year old bonded labour working for a landlord for the past 25 years, for a mere 2 quintals of jowar per year, was kicked out from the job. Temples and government corridors were closed for them and the students were barred from taking part in any functions of the school. The three doctors in the village refused to attend to Chalavadi dalit patients and the government hospital was open to them from 25<sup>th</sup> October 2006.

After these incidents appeared in the press, many groups and parties visited the village. The prominent among them being Maruti Manpade of CPI-M, Dhimathi Kaladagi of KRRS, Lakshmana Banahatti of Dalit panthers. They could find out that even though more than 40 cases of atrocities have been reported in the village, the government's "Committee against atrocities on SC-ST" has never paid a visit to the place and no minister has visited the village. The above groups apprehended the fear of torching of Chalavadi colony by the upper castes and demanded for withdrawal of the boycott and providing jobs to the community people immediately. All these groups have planned for a March to DC office at Bijapur on 4<sup>th</sup> November 2006.

#### **The Findings of the Team**

In this backdrop the team visited Kadakola on 27-28<sup>th</sup>

October 2006. The village is situated on the banks of River Doni, with black soil suitable for growing cotton, Jowar and other dry crops. There are 500 houses in the village of which 86 are of Chalavadi dalits, 50 Reddy Lingayats (Veersahaivas), 50 Ganigas, 30 Talvars, 40 Madigas and 40 Muslims, as told by Mallikarjuna Chalavadi, who says that the Reddy Lingayats own majority of land holdings. Neither Madigas nor Chalavadis own any land, though 2-3 years back government had disbursed some land to 4-5 dalits. Among Chalavadis some 30 youth have studied upto 10<sup>th</sup> standard, 8 of them being girls. As the bore well water in the village is salty all dalits depend on the tank water for drinking purpose. Untouchability is being practiced in several ways here, apart from the present boycott. When the upper castes cross the river, the untouchables, i.e., Chalavadis, are supposed to carry their slippers to the other end of the river. The wages paid to the agricultural labours are Rs.30-40 for men and 12-20 for women.

After Ramanna Chalavadi gave the press statement, all the upper castes and the Madigas assembled in a temple and decided unanimously to impose social boycott on the Chalavadi dalits. "The government has paid compensation for 15 days, now we don't have any work on hand nor any government help. The DC is speaking of compromise settlement but to no avail. We are unable to fetch any provisions. Two upper caste men have been booked under atrocity case for having beaten Chayappa with slippers, and they are infuriated. But no case has been booked against those imposing boycott, for more than 3 months we are starving and surviving on assistance from relatives. The BJP MLA Shivaputra Desai is advising us to compromise, but we are not being compensated nor do we

have a penny on hand, there are no telephone facilities for us. We have all voted to these parties and candidates and Taluk panchayat member of Telgi Nyamannavar, president Srimantha Hallagi belong to our village, but his brother Ningappa Basantharappa Hallagi is the man behind the boycott, both these brothers are united against us and all these leaders belong to the Reddy Lingayat community" so narrates Smt. Chalavadi Yamunamma.

Sangappa Shivappa says "We are afraid of our houses being torched and so we keep awake throughout the nights. Madigas are also using the tank water but they have joined with the upper castes. More than 70 Muslim families in the villages have stood by us and they have saved us from attacks from upper castes. The villages is still haunted the specter of caste discrimination. On the Dipavali day a 10 year old Chalavadi boy was driven out from a cracker shop calling him an untouchable."

Muniyappa Chalavadi had more to say "We are afraid the 60 year old Sasanur incident may repeat here as the upper castes are threatening us of torching our houses. Today there are no Chalavadis in Sasanur. If we were to live happily we should be shifted to the other side of the river near Allamaprabhu temple, otherwise we should be given poison" says Muniyappa sadly.

When the team met Srimanth Allagi, the president of Taluk Pachayat, who belongs to the Reddy Lingayat community, he said "We have advised all the villagers to live in harmony" and by that time news of fire at Kadakola made him fly from the scene.

Then the team proceeded to Basavana Bagevadi and met Tahasildar Mr M R Reddy, who, after hearing us said that the administration has given job for the affected people worth one lakh rupees and 10kgs of rations is being provided to each family. We

were also told that Atrocity case has been booked against 2 persons. When questioned "Why no such case has been filed against those imposing the boycott" the Tahasildar and also the DYSP told the team that they were trying for a compromise settlement amicably.

Then the team met the DC at Bijapur and he said the administration has taken steps to give jobs for the Chalavadis and there is no dearth of funds. When questioned about filing of cases against the perpetrators of crimes, the DC said "He has not received any complaints" "When we reminded him about his authority to file case *suo motto* he was speechless. The DC was apprised of the fact that the Chalavadis are living in the grip of fear and hence they are not in a position to lodge any complaint. To the team's observation that the upper castes of Kadakola have not stood by their promise of withdrawing boycott, as assured to the DC and the district administration has not taken any steps to file a case against the perpetrators of the crime during the past three months, the DC had a ready answer "We are trying to solve the problem amicably through negotiations". In fact the DC tried to pass on the blame on outsiders, i.e., Dalit leaders from outside, for creating all the trouble. When we met the people of Kadakola village on 28<sup>th</sup> of October they were gripped by the fear of reprisal and hunger had taken away much of their enthusiasm.

### **The Findings of the Committee**

1. The Chalavadi community of Kadakola is the victims of heinous caste system which is still alive and kicking.

2. The lower castes of the village are not supposed to directly access the public water tank and some upper castes used to pour water to them. When dalits tried to break this tradition trouble arose and instead of appointing police to monitor things the administration has appointed aged dalits and they have been attacked. The government has not taken any concrete steps in this issue.

3 Even after three months the social boycott imposed on the Chalavadi dalits have not been revoked and the upper caste leaders who promise to the DC of revoking the same have violated the promise. This boycott has made life hell for the Chalavadi community and the government has not offered any help in the form wages or jobs. The Chalavadi dalits are treated worse than animals.

4. The administration has not filed atrocity cases against any of the upper castes who are responsible for imposing the boycott. Cases have been filed against 2 people for attacking the dalits. No arrests have been made and the culprits are roaming free in the village. The administration is trying to convince them for revoking the boycott. It is nothing but violation of law of the land and it is a shame on civil society for having tolerated the medieval caste suppression and oppression.

5. The government is playing dubious politics in the issue and the political parties including the left and Dalit groups are almost silent on the issue. This is frustrating development.

### **The Demands of the Fact Finding Team**

1. All the upper caste leaders responsible for imposing the boycott should be arrested forthwith under atrocities act.

2. Shifting of dalits to other place is not a viable solution, instead an atmosphere of harmony to be created in the village for the dalits to live happily.

3. Dalits of the village should be provided with jobs, health care and suitable security. The fear of reprisal from upper caste people, who had burnt 50 people in Sasanur 60 years ago, is hovering over dalit colonies and the government should initiate steps to clear the air of suspicion.

4. Deputy Commissioner, District chief of the Police, And the Tahasildar who have failed in their duty to arrest the perpetrators of the crime should be transferred forthwith.

5. Dalits allege that the upper caste people have the support of Political parties and local upper caste politicians and hence they indulge in such heinous acts. We feel that the politicians should make a self introspection and protect the constitutional, legal rights of the dalits.

**Members of the Team:** (Dr) V Lakshminarayana, Sister Celia, (Dr) E Rati Rao, R V Chandrashekhar, Srikanth Karabi, Sister Anna and Gopal □

### **PUCL Report:**

## **Custody Death in Noida - A Suburb of Delhi**

Sonu was eighteen years old, well built, healthy and full of life. He was irrigating his farmland in a village near Khurja barely fifty Km. from Delhi when he was asked to accompany plain cloth police men of Noida a suburb of Delhi. It was

six o'clock in the evening, 1st of September 2006. Sonu was dead in lock up of police station by four o'clock in morning of 2<sup>nd</sup> September. Police claimed he committed suicide inside the lock

up making loop of his worn out shirt!

### **Background of the Victim**

Sonu was the son of Dalbir Singh, a wrinkled sad looking old man of about 65 years of age who served para military forces for 37

years retiring some seven years back. He has one daughter and four sons. All except Sonu are married. Sonu was a healthy stoutly built under matric around 5 feet 6 inches tall. He assisted his father in farming. Besides he assisted one Kuwar Pal in latter's property dealing business in his free time.

#### **Sequence of the Incident**

According to the family members of Sonu, Kuwar Pal phoned them in the after noon of 1<sup>st</sup> September inquiring about Sonu whether he was at home. The family members told him that he was at home. Kuwar Pal came to the village at about 6 PM along with five others in a car. They wanted to meet Sonu. Sonu was working in the field and he came to meet them. He was wearing a worn out T-shirt and a short trouser. They went towards the one side of the village talking. After this he was asked to accompany them and in the car they came in all went away. The family members thought he must have gone near by.

But as he did not return by 10 o'clock in the night the family members got worried and phoned his friends about his where about. But no body had any clue where he was he. Finally his father and Sonu's brother went to Kuwar pal's house in Khurja, about three Km. away from the village. It was 4 o'clock in the morning. Kuwar Pal told them that Sonu was in police station of sector 20 Noida as the police wanted to make some inquiry on some case. He gave them a cell number 9868615588 that belonged to one constable named Pardeep. When they called on this number the voice from other said that Sonu was with them at the police post of sector 31, Noida. The family members planned to go to Noida in the morning and find out what was the matter.

At 9 o'clock in the morning of 2<sup>nd</sup> September one constable from

Khurja Dehat police station came to the house of Dalbir Singh. He told them that Sonu has committed suicide by hanging in the police lock up. He asked them to accompany him to the local police station where the officer in charge will tell them the details of the case. Shell shocked the family members went to the said police station, from where the police arranged for them to go to Noida. The police brought them to the sector 49 police station instead of sector 20 where Sonu had reportedly committed suicide. The police in fact did not let them go to the said police station.

According to the father and brother of the victim they were asked to go the mortuary. They saw his body in the mortuary. They saw the blue marks on the back of the victim, burn mark on the back of one of his ear, his right arm was broken and swollen, there were blood stains all over upper part just above the back of his neck. There were no marks around his neck at all that might indicate any sign of death by hanging.

#### **The Police Version**

The police maintain that Sonu was arrested in connection with a theft in sector 41 in Noida about a fortnight prior to the day he was picked up. The police said that they wanted to investigate the matter in which some other boys were also involved. Police said that they traced Sonu by the SIM card that he was using of the cell phone stolen from the house in sector 41. They registered his arrest in their record at 2:30. By 4: 30 according to the police he died making loop of his shirt.

#### **Postmortem Report**

The postmortem report procured by PUCL shows as many as six major injuries on different part of the body of the victim. But strangely in conclusion it states that the death is due to asphyxiation even though there is no mark on neck of the victim.

#### **Conclusion**

The above summary of events points to certain conclusions:

- The police version that Sonu committed suicide does not hold any water for there are no marks around his neck even the post-mortem report does not mention any injury around the neck. Apart from this there were none of the other invariable sign accompanying a suicide death.

- A healthy stoutly young man weighing about 65 Kg can not hang with a worn out shirt. He will be able to do it by a window is entirely unimaginable.

- Moreover a man full of life, irrigating his farms at 6 in the evening brought to the police station at 9, arrested at 2 o'clock would commit suicide by 4 o'clock is inconceivable from commonsensical and psychological point of view.

- Sonu was picked up on the basis of suspicion on someone's behest, brutally tortured and he died of police torture. **(See the photographs accompanying the report that clearly bring out the police brutality)**. His arrest was shown only when he was dead. And after some time he was removed to the hospital where he was declared brought dead.

#### **Recommendation**

It is reported that six policemen have been suspended who were involved in the case.

- A case of murder should be registered against them.

- It is generally seen that departmental inquiries in the cases like this result into acquittal of accused. The police while investigating against their colleagues leaves enough loopholes in the case that help the accused to get away with the crime in the court. A case in point is Jammee Khan's son and three other teenager boys' death in police custody three years back in the same region of Dadri, Noida. The main accused in the case after being suspended and charged with murder has got acquitted and is back on police duty. In this light it is pertinent that a magisterial inquiry be instituted that gives its finding within a specific time period and a charge sheet accordingly is filed in the court of the law.

- Sonu was an able bodied unmarried young man who was a main support to his old father. The other brothers have their respective businesses and families elsewhere. It is highly recommended that the

victim's father be awarded adequate compensation and ideally that should come from the part of the salary of the

police men who have been charged with his death. – **Pushkar Raj**, National Secretary ☐

## **Bihar PUCL Report:**

# **Killing of Three Persons in Fake Encounter at Nawada Ben, Bhojpur**

*(Reports appeared in the media that the police had killed three criminals in an encounter at the village Nawada Ben, Bhojpur on August 25, 2006. It was followed by reports of the protest including blocking of the highway and movement of trains by the people alleging that the three persons were brothers and were killed by the police in cold blood after arresting them from their house. A few members of the PUCL from Ara, the district headquarters of Bhojpur, also approached the State PUCL for an enquiry into the killing of the three brothers. It was decided to constitute a committee consisting of Dr Prabhakar Sinha, National Vice President, Ramchandralal Das, former President, Bihar PUCL and Nageshwar Prasad, State General Secretary. The committee visited Nawada Ben on 10.9.2006 and met a large number of villagers and the members of the family of the three slain brothers including the devastated widows. The police officers concerned were not available, as they were busy with the visit of some high official, who reached the village when we were leaving it. However, the version of the police was available in the F.I.R. of the incident filed by the Dy. S.P. Shambhu Sharan Thakur, who had initiated and led the operation).*

## **Nawada Ben: A Specimen of Jungle Raj**

The village is situated at a distance of 10 to 12 Kilometers from Ara and 1 to ½ km to the North of Karisath railway station on Delhi-Howrah main line. In short, it is not situated in a remote area not easily accessible to the police or the civil administration. Its population is said to be about ten thousand. The houses in the village are not very close to one another and are in small clusters of a few together. Around the village, there are vast fields of fertile land, which has paddy crop at present. Controlling crime at the village should be very easy, yet in short span of time there have been as many as 17 murders there. The story of the family of late Jagarnath Singh, whose three sons had been killed by the police on August 25(2006) is blood chilling. Late Jaganarth Singh, who was the Mukhiya of his Panchayat, was killed in December,1982, his son Hare Krishna Singh was murdered in April,2001 at his village, another son Hare Ram Singh was abducted never to be found, his grandson Narain Singh (12) was abducted and strangulated to death in September 2001, and finally his three sons, namely, Ramji Singh, Laxman Singh and Bharat Singh were shot dead by

the police on 25 August,2006.Of his six sons the youngest, Shatrughna Singh, who was only six months old when his father was murdered, remains alive because, as he says, he was not at home on the fateful day. According to Shatrughna Singh and corroborated by other villagers, their close associate, a retired school teacher Md. Ali and their labourer Jitan Mahto were also murdered in 2006 and 2002 respectively. The others of the village murdered include Paras Singh and Atam Singh in 1983/84, Daroga Yadav in 1999, Ramdeo Yadav in 1998, Guduk Dusadh in 1999, Suresh Singh in 2001, Ram Vilas Mahto in 2002, Bhuar Singh in 2006 and Sabha Yadav in 2006. A few names may be even missing. Thus, the administration had been allowing the villagers to kill one another and settle scores with complete difference.

## **The Version of the Police**

The village is under Udwan Nagar Police station and Gajrajganj O.P. The Dy. S.P. states in the F.I.R. that following the information at 1 pm that the absconders Ramji Singh, Laxman Singh and Bharat Singh (in cases involving murder and offences under Arms Act) were hiding with their gang at Nawada Ben, he informed the S.A P and then

organized 5 teams. He also claims to have learnt that they had been planning to commit some cognizable offence along with their 8 to 10 gangmen. The 5 police teams surrounded the village from all sides. The Dy. S.P. moved from the North side. The police team also included the men from SAF, a force consisting of retired persons from the Armed Forces. The officer claims to have asked the alleged criminals to surrender, but they began indiscriminate firing from the arms that they had. They began to flee towards the (paddy) field in the south (i.e. of their house where they were sitting).The police also opened fire at them. They also fired at the police from the fields in the south. From that place, few criminals continued to flee towards the south, and the police also kept on chasing them and firing at them in self defence. All the criminals succeeded in running away, but one Lal Babu Pasi was arrested. The criminals fired about 100 rounds (at the police party).After the firing came to an end, two criminals were found dead in the paddy field in the south at a distance of ½ km (from their house) and one was found at a distance of 1/2 km to the south west (of the house).It is stated that arms of various description

(mentioned in the F.I.R.) were also found near their dead bodies.

Note: All the three alleged criminals killed were three brothers, namely, Ramji Singh, Laxman Singh and Bharat Singh sons of late Jagarnath Singh, Mukhiya.

According to the F.I.R. SAF fired 94 rounds, Chhote Narain 5 rounds from his carbine, Suresh Choudhary 4 rounds from his rifle, Ram Naresh Pd Singh 5 rounds from his service revolver, Ranjit Kumar 5 rounds from his service pistol and R.B Choudhary 5 rounds from his service pistol. Thus, in all, 113 rounds were fired by the police.

### **The Version of the People**

Most of the villagers said that the police descended on their village from all sides at 1 pm and asked them to go inside and close their doors and windows. Consequently, they could only hear the sound of firing but could not see anything. However, 76 year old Shatrughan Singh, a retired engineer from Jamshedpur said that he heard incessant firing and thought that it was directed at his toilet. He went on the roof of his house. Then, a commando (I thought him to be a commando because he had a ribbon around his head) said, "*Utar Jao, Baba.* (Climb down Baba.) I came down, but could hear voices. Someone was saying, '*Sach Sach batao, Hathiyar Kahan Hai*" (Tell me truthfully, where are the arms?). Laxman said, "*Hathiyar Mere Pas Nahi Hai*" (I have no weapon). But the police continued to repeat the question. Then I could see that the police jumped into the compound of Thakur Singh. Later, I saw that they had killed Laxman. Then I saw that they had killed Ramji also. I did not see them being killed though. I had also heard a police man saying, "Sir, *Aapasi Jhagra Hai. Pakar Kar Le chala Jay.* (Sir, it is a case of mutual quarrel, we should take them in custody.). The other man said, "ee

*Na Lachhumanwa hai.* (He is the one who is Lachhumanawan). Everything was over by 2.30 p.m. or so.

Manoj Kumar Singh, a farmer from the village said, "I was sitting at my Dalan (outer portion of the house or a place for farmer's chore where womenfolk do not live). Two of the brothers were sitting at their Darwaza (outer verandah of the house). The police were scolding even women and not letting anyone out of the house. The police said, "*Maro, Maro, Sale Ko*". They dragged the two (i.e. Ramji Singh and Bharat Singh) towards the 'Nahar' (canal) and killed them; and they killed Laxman also after 15-20 minutes." The police were hiding everywhere. They (i.e. the deceased) were unarmed. They killed Ramji and Bharatji very soon.

Rekha Kuanr, the wife of late Ramji Singh (who is an Up Mukhiya of the Panchayat) said, "My husband, Bharatji and one of my 'Bhaginas' (my husband's sister's son) were sitting at their 'Dooar' (outer verandah). It was at about 12 or 1 noon. Laxmanji was lying in his room. We womenfolk were in the 'Angana' (inner portion of the house where women live). We heard the sound of firing coming from the North. The police were shouting "*Maro, Maro, Pakaro, Pakaro*". We rushed out and saw that my husband and Bharatji had raised their hands and surrendered. I said, 'Sir, please do not fire now that my husband and 'Devar' (husband's younger brother) have surrendered. Please arrest them and take them."

According to her, 20 to 25 policemen entered their house and dragged Laxmanji from his room. The police tied the hands and feet of all the three. The Dy S P Thakur talked to someone on the mobile phone." We tried to follow them when they began to drag them away, but they beat all of us (womenfolk of the family). So, we could not follow them. Later, they

killed all the three", she said. According to them they were killed near the 'Bel tree' (wood-apple).

Usha Kuanar, widow of Hare Ram Singh, Anita Kuanr, widow of Hare Krishna Singh, Rita Kuanar, widow of Laxman Singh and Sita Kuanr the mother of the deceased corroborated.

Shatrughan Singh, the youngest of the brothers and the only one of the six to survive, is about 26 years of age and is an elected member of the Panchayat Samiti. He had gone to the Block Development Office on the day, and believes that he is alive solely on that account. The family believes that had he been present he would also have been shot dead. Explaining the cause of the police hostility, he said that the police had been acting at the behest of the M.L.A. of Jagdishpur constituency, who is very hostile to them due to their enmity with the family of his brother's 'Samadhi' (father-in-law of his brother's daughter), who hails from Nawada Ben. He (Shatrughan Singh) along with the others is accused of involvement in the murder of the father of his brother's 'Samadhi'. He alleges that the police take no action against those who have been victimizing them. As a proof, he alleges that no arrest was made when his brother Hare Krishna Singh was killed by his villagers, no action was taken against the named accused when his nephew was murdered, similarly, no action was taken when his brother was shot at and injured in July 2002, complaint could be filed only at the behest of the court in 2004 against those who had abducted his brother Hare Ram Singh in November 2002, no action was taken when a dacoity was committed in their house in 2003 etc. According to him, no action was taken against their enemies though they (i.e. Shatrughan Singh and his brothers) had been arrested on being accused of murder and attempt to murder. He

is convinced that the police have been playing a partisan and hostile role due to the influence of the M L A from Jagdishpur named Bhagwan Singh Kushwaha. Since Shatrughan Singh was not present at the village at the time of the raid by the police, his statement is on the incident is not being recorded here.

Note: We are not expressing any opinion on either his allegation that the police never took any action against their enemies or the allegation that the police have been acting at the behest of the M.L.A. of Jagdishpur, as we have not verified them.

#### **Evaluation of Evidence**

*Prima facie*, it may appear that there is no clinching evidence to prove that the police caught the three brothers and shot them dead since no eyewitness has claimed to see them being shot. Even the members of the family have stated that they were not allowed to follow the police when they were dragging the three brothers away with them. Even the outraged villagers who have been blocking highways and railway against what they believe a cold-blooded murder have not claimed to have witnessed the killing. However, it is this aspect of the evidence, which gives it the maximum credence. Giving false evidence even under oath is a common practice in our society so much so that no stigma attaches to a person for telling a lie in a court of law. Even so, neither the members of the family of the deceased nor their numerous supporters gave false evidence that they had seen the police killing the three brothers though they could have easily done so. They appeared so definite about the crime committed by the police that they did not try to resort to lies. But, their sense of outrage writ large upon their faces appeared as very credible evidence. However, that cannot be taken as conclusive proof of the guilt of the police and any conclusion may be arrived at

only after analyzing the version of the police, which is recorded in their F.I.R. in the case No 154/2006 dated 25.8.2006.

#### **The Place of Occurrence According to the Police**

According to the F.I.R., the so called criminals were sitting and talking at the 'Baithaka' (a place where only men meet and sit in the villages) and had kept 4 to 5 rifles resting on the wall (*Diwar Se Sata Kar Rakha Gaya Hai*). The said 'Baithaka' is a brick construction facing North and is adjacent to the house of the deceased in the West. There are only three to four other houses nearby, and none is very close to one another. These few houses are surrounded by low paddy fields stretching to several kilometers on all side. The houses including the 'Baithaka' is on a higher piece of land and faces the North.

The truth of the version of the police would depend on the credible answer to the following questions:

1. Is it possible for the criminals to succeed in fleeing when they were admittedly (by the police) surrounded by the 5 teams of the police including the SAF in abroad day light at 2 p.m. specially, when there were no trees or tall plants to give them a cover ?

2. Is it possible for anyone of them to escape the 113 rounds of bullets fired at them when they were allegedly fleeing through the open fields and being chased by the police continuously firing at them? (According to the F.I.R. several criminals ran away safely).

3. According to the F.I.R., they were fleeing through the open paddy fields making themselves sitting ducks for the police instead of lying down in the paddy fields to escape being shot dead. Is it a natural response to bullets and a believable scenario?

4. Is it possible that in a gun battle (as recorded in the F.I.R.) taking place in an open area in

which 100 rounds were fired at the police, no policeman sustained any injury? (the F.I.R. does not mention any injury to any policeman).

5. Is it credible that when 113 rounds were fired at the alleged criminals, nobody survived with any injury and all who were hit were fatally injured (i.e. shot dead)?

6. Is it credible that the bullets fired by the police should choose to kill only the three brothers and spare the rest?

7. Is it possible to accept the killing of the three brothers only as a mere coincidence, specially in view of the fact that 4 other members of the family have been killed earlier?

8. Is it possible that after a gun battle in which altogether 213 rounds were fired by both the sides, there were no marks of gun shot on the buildings except a few in the front of the 'Baithaka', facing North, which could have been made only by the police party which admittedly approached from the North ?

9. Is it possible that there would be no mark of bullet on the Southern side of the building if the fleeing criminal (as alleged) fired at the police from the South?

#### **The Finding of the Committee**

In the F.I.R. the three deceased have been described as criminals involved in various crimes including murder, attempt to murder and 'Rangdari' (extortion), but no details have been mentioned. However, the family confirmed that they were accused of murder and attempt to murder in the incidents that had taken place at their village. The only surviving brother of the deceased alleged a nexus between the M.L.A. of Jagdishpur and the police, which was responsible for the murder of his three brothers as well as the earlier acts hostile to them. In fact, statements were made also

against some officers for their role at the time of the raid and subsequently. However, no opinion is being expressed by the committee on those allegations, as they have not been investigated by it.

On the question of the encounter leading to the death of the three brothers, the committee is of the opinion that the answers to the 9 questions raised above, lead to the inescapable conclusion that there was no encounter and the three brothers were shot dead in cold blood. No person surrounded from all sides by five teams of fully armed police could escape in broad day light through open paddy fields, which could not give them any cover. Besides, it would be suicidal for anyone to fire at the police when so completely overwhelmed by their number and fire power in a situation in which the possibility of escape was nil. It is also unbelievable that when hundred rounds were fired at the police, no policeman sustained any injury, specially when they claim to be chasing the fleeing criminals for a distance of almost ½ km through open fields exposing themselves to the bullets fired at them. No less believable is the fact that in a real encounter in which 10 criminals engaged the police in a gun battle, the bullets hit and killed only the three brothers and spared the rest. The claim of the police that the criminals were planning to commit some 'cognizable offence' at high noon (1 p.m.) is also prima facie false and appears to have been made to lend credence to their story of a gun battle between the police and the alleged criminals.

**The truth appears to be that there was no encounter and the three brothers were killed in cold blood.**

1. A thorough enquiry by an independent and impartial agency should be made to find out the reason for the administration, specially the police, to allow the 'Jungle Raj' to prevail at the village for years because but for the connivance and/or complicity of the police the ding dong battle between the villagers leading to so many murders over the years at a small village could not have been possible. The reason for the killing of the three brothers by the police and the truth about the nexus between some of the villagers of Nawada Ben, a politician related to him and the police leading to the prevalent 'Jungle Raj' cannot be known without such an enquiry.

2. According to the F.I.R. one Lal Babu Pasi was arrested on the spot on 25.8.2006 at 2 p.m. He was examined by a doctor at 5 p.m. on 26.8.2006 i.e. 27 hours after his arrest. The medical report shows that he had several simple injuries on different parts of his body, which were made within six hours from the time of the medical examination. The inescapable conclusion is that the injuries were caused while he was in the police custody i.e. he was subjected to the third degree method. This method is often used to extract some statement from a person to support the version of the police.

#### **Recommendations**

1. Murder case u/s 302 should be instituted against the police.

2. The case should be entrusted to the C.B.I. to ensure that the guilty are punished.

3. The C.B.I. should also be entrusted to investigate the role of the administration in allowing the 'Jungle Raj' for years and permitting it even till date.

4. A sum of Rs 3 lakh each should be paid to the wives of the deceased.

#### **Observation**

The police have claimed in the F.I.R. that they opened fire in self defence. The right to private self defence is available to every person, and the police are no exception. However, when causing death or injuries is justified by any person on the ground of self defence, he has to prove before a court of law that the circumstances warranted not only the use of force, but also the extent of force used (i.e. causing death or serious injury as the case may be). The accused has to prove that causing death or grievous injury was necessary for his self defence. Our police simply make a statement that they fired and killed in self defence (Atma Raksharth), and no further question is asked. Thus, the plea of self defence in practice has become a license to kill, which is responsible for scores of murder by the police. The police should be required to justify the use of force causing death or grievous injury before a court of law to prevent wanton killings and establish the rule of law. – **Prabhakar Sinha**, National Vice President; **Ram Chandra Lal Das**, Former State President; **Nageshwar Prasad**, State General Secretary, 17.09.06  
□

## **UP PUCL State Conference**

The UP State Conference was held on October 08, 2006, at Varanasi, in which around 50 delegate from various Districts participated.

In the start of the conference, lamp was lit by Justice R B Mehrotra, Ravi Kiran Jain,

Chitranjan Singh, and K K Roy. A welcome song was sung by local cultural unit.

The inaugural session was presided over by Justice R B Mehrotra (Retd.) and the President of the State branch Ravi Kiran Jain was the Chief Guest. As per the

programme schedule, Dr K N Bhatt of the G B Pant Institute of Social Science, Jhansi, Allahabad gave a detailed lecture on decentralization and development as Human Right. He also presented a paper which was distributed to all the delegates. He discussed the

various development models and gave example of State of Kerala in implementing the decentralised mode which gave amassing results.

Speaking on the Human Rights situation UP, Chittranjan Singh lamented the functioning of the State Human Rights Commission and said that the entire State machinery has become anti Human and brutal and there is a need of forging larger unity for fighting Human Rights abuses by the State machinery.

Kanchana Singh of Varanasi gave a vivid picture of fake encounters going on in Varanasi and Uttar Pradesh. She said that in the name of controlling criminals, the police is killing persons in cold blood which is a serious challenge for Human Rights organizations.

K K Roy spoke on the challenge which the organisation is faced in the last years. He gave example of many broad and bold initiative taken by the various District branches and said that if the organisation has to grow faster, the State leadership must have a close relationship with all the branches.

Ravi Kiran Jain gave a detailed description of various provisions of law and Constitution and said that if democracy has to survive and the people have to have control over resources, a decentralised planning has to come, who from with the active participation of people at large. He said that in the past, the PUCL has done some important intervention on various issues but we have to make some concrete plan and choose some specific areas where the concept of decentralisation for development kind be implemented.

Ram Bhushan Mehrotra speaking as the President – elect thanked the local organiser for holding a successful conference. He said that the PUCL should try to use the various *fora* where Human Rights issues can be raised. He also said about the functioning and some limitation of the State Human Rights Commissions. Justice Mehrotra warned that in future, the PUCL has to faces bigger challenges as the State machinery is becoming brutal day by day and there is no respect for democratic values in the ruling class.

Tanveer Ahmed Siddiqui (Banaras), Sunit Singh (Allahabad), Akhilesh Sinha (Ballia) gave reports of the activities of their District branches.

Lastly the panel of the office bearer PUCL decided in the last executive meeting was placed before the delegates which was unanimously accepted which is being given below:

**President:** Justice Ram Bhushan Mehrotra, (Retd); **Advisor:** Ravi Kiran Jain; **Vice-Presidents:** Chittranjan Singh, Junaid Ajaz, K N Bhatt, Dr Pradeep Kumar, Ruchi Mittal, S Ali Manzar, Tanveer Ahmed Siddiqui; **General Secretary:** Om Dutt Singh; **Joint Secretary:** Ravi Shukla, **Organizing Secretaries:** K K Roy, Gurinder Singh.

The session of the conference was conducted by Shri Gurinder Singh. In the last, Justice R.B. Mehrotra again thanked the delegate and participate for the achievement got in this conference. – **Om Dutt Singh**, General Secretary □

## Karnataka PUCL Statement:

### Boycott and Ostracising of Dalits in Kadkol Village

The shocking boycott and ostracism of hundreds of Dalits in Kadkol village (Basavanna Bagewadi Taluk of Bijapur District) by “upper caste” people since 25 July 2006 has been reported in the media recently. The reason for the boycott is their having drawn water from the village tank.

In the 21st Century, as India develops High technology and plans to send a human to the moon, society still practices untouchability even though this is a violation of the Constitution and laws of the land. Worse, even after 3 months, government authorities stand by and do nothing to punish those who have carried out this boycott. The Kadkol incident is

only the most recent visible example of anti-Dalit action by “upper caste” people with the tacit support of government officials.

We strongly condemn the boycott and ostracism of the Dalits on constitutional and humanitarian grounds and demand that the Government of Karnataka to: Immediately provide water, food, cash and medical relief to the affected families. Ensure free and total access to water sources in the village to Dalit families. Immediately arrest the ring leaders of the boycott and take immediate action to ensure that boycott ends. Those who instigated the boycott should be charged under the Atrocities Act, and fast-track legal

action be taken against them. Punish the owner of the PDS outlet, who has denied food to Dalits by canceling his licence, and enable and empower Dalit families to cooperatively operate a PDS outlet in the village.

Promulgate the actions taken (including punishments awarded) so that similar incidents do not recur anywhere in Karnataka or indeed, anywhere else in the country.

Appoint a permanent Dalit Watch Commission to monitor the rehabilitation of the Dalit community of Kadkol and also keep watch over conditions of Dalits in Karnataka to prevent their social ostracism. – **Dr V**

## Letter to the Editor:

### An Appeal to the President of India to Commute the Capital Sentence against Afzal Guru and Similar Other Cases Pending Before Him

Sir,

As a Rationalist and Humanist I am for abolition of death penalty in all countries, and for commutation of such sentences where the law permits the same for the following reasons amongst others:

1) No State has a right to take the life of a human being, it being against the Right to Life, a basic Human Right. In the world 87 countries have abolished the death penalty and 38 countries have in practice done away with it.

2) Today the trend in criminology is to reform the convict and not to be vindictive. An eye for eye is no solution to any human problem

3) No human being however high, even the Judges of the Highest Court in a country are infallible. Evidence may be found out later for reversing the conviction and by that time it would be too late as death sentence already carried out is irreversible. Several such cases have occurred in history. The Jewish Officer Alfred Dreyfuss in the French Army

who was convicted for alleged treason, was saved by the efforts of the indomitable novelist Emile Zola with his famous writings "I accuse".

4) Even if the Judges may be right in convicting the accused on the evidence presented before them, the prosecuting agencies might have been flawed in collecting the adverse evidence, due to incompetence, negligence or bias.

5) There are no statistics that in the countries where the extreme penalty is abolished, there is an increase in commission of heinous crimes, or to support that in countries where the death sentence is retained, there is no repetition of similar cruel crimes.

6) Even if the Courts are justified in awarding the death sentence on the ground that it is "the rarest of the rare cases" as per the test laid down by our Supreme Court, it is still a subjective and not an objective test.

7) Even if the Supreme Court in a country confirms such an

extreme sentence, under our Constitution it is the prerogative of the Executive to commute the death penalty to life imprisonment, for existing exigencies that are not relevant before the Court. Of course the act of the Executive is subject to judicial review, order to prevent selective acts on the part of the Executive.

Now that the execution of the death sentence against Afzal Guru is postponed and nearly 20 petitions of other convicts for commutation are pending before the President and a villager from Rajasthan who was sentenced to death for killing his wife, his two children and his brother-in-law is saved from the hangman's noose, though the Supreme Court described it as "the most cruel act", there is no reason why the President should not commute the death penalty against Afzal Guru to life imprisonment. Yours faithfully. – **M A Rane**, Advocate & President, *The Indian Radical Humanist Association* and of the *PUCL*, Mumbai Branch, October 20, 2006 □

## Open Letter:

### Post-mortem of Afzal Guru Case

If the proceedings of the Trial of Afzal and three others before the Designated Judge under POTA were to be video-graphed one would have understood the trivialization of Rule of law in this country. The case itself was a highly publicized affair, the Investigation parading the accused before the print and electronic media in what can be described as a trial before committal stage; the screaming headlines and the news reporting in both the media

prevents any disinterested endeavour to understand the case and assess the evidence for and against the accused. The media attention the case received foreclosed any possibility of a just conduct of the case, and in such a case conformity to procedure is the only visible guarantee of justice. The attack on the parliament generated such hostility all around that nobody was willing to appear for the accused in the first instance Advocate Alam was appointed as

*Amicus*, who is a practitioner in the courts in Patiala House and the proceedings date 10/1/01 show that the said counsel was to be informed. Obviously he did not respond. Ms Seema Gulati, a regular experienced lawyer appearing in criminal courts was appointed as *Amicus*. Afzal requested for the discharge of Seema Gulati as *Amicus*. On a written application she states that she has neither taken her instruction nor had discussed the

case with the accused Afzal. She also applied for discharging her from the *Amicus* brief as the other accused Geelani in the same case engaged her. In her place a raw junior Mr Niraj Bansal was appointed as *Amicus* by order on 1/7/02. The trial commenced on the 8<sup>th</sup> July. On that day Afzal petitions the Court as follows:

Hon'ble Sir,

Respectfully I am not satisfied with state council (Counsel) appointed by the court. That I need a Competent Senior Advocate as *Amicus Curiae* to meet the ends of justice from this court. The way the Court is treating me I could not get justice. It is there fore requested to appoint one of the following lawyers: 1. Ashok Agarwal; 2. Pandit R K Naseem; 3. R K Dham; 4. Mr Taufil.

On 12/7/02 the court passed the following order: After recording 20 prosecution witnesses and after protest again by Afzal the learned judge passed the following order:

"Afzal states that he does not want the *amicus curiae* Niraj Bansal to represent him. He had earlier given the list of four advocates namely, R M Tuffail, Dham, Ashok Agarwal, R K Naseem. This Court had enquired from R M Tuffail and Pt R K Naseem who appeared in was of the view his case was entirely different from the case of the rest of the accused. Hence, his insistence with reference to R M Tuffail and Pandit R K Naseem the court records that the judge ascertained their willingness to appear as *amicus* for Afzal when they happened to appear before him in another case, but both of them expressed their inability to become *amicus curiae* in this case. Ashok Agarwal had earlier appeared in this case on behalf of one of the accused and argued the bail application. Thereafter he did not appear" The court further observed that "I consider that if accused wants a lawyer of his choice, he is free to engage

himself the lawyer of his choice, but if he has not engaged a lawyer of his choice and has asked the court to appoint *amicus curiae*, the court can appoint *amicus curiae* out of panel available with it or out of the willing advocates. Afzal has been given the liberty to cross-examine the witnesses. Neeraj Bansal has requested for withdrawal from this case, but he is requested to assist the court during trial" Mr Bansal cannot act, as court *Amicus*, even purport to act for Afzal.

After performing this ritualistic exercise according to his understanding of Rule of law, the judge, very much like the Procurator of Judea, washed his hands off the case! The result was Afzal was undefended through out and that does vitiate the conviction and sentence. He understood the seriousness of the charge he is facing and so wanted the services of an experienced lawyer. Two lawyers refused to appear and he did not ask the other two. After young Mr Bansal was discharged of his right to represent Afzal there has been no other advocate defending him. No doubt there were advocates engaged to defend the other three accused. But they had no brief to defend Afzal for he did not consent to such a course as is evident from the representations made to the court. In these circumstances it is impossible either to presume or infer that cross-examination was common. The designated judge sentenced to death the three accused did not order the forfeiture of life of the wife of Shoukat. Her newborn child was with her in prison.

These death sentences have to be confirmed by Bench of two judges under the provisions of the Code of Criminal Procedure. It is again a detailed re-trial on the basis of recorded evidence with wide powers for courts to do justice. Every aspect of the case has to be and can be brought

under scrutiny. In the Final submissions filed on behalf of Afzal this aspect of the case is brought to sharp focus. Articles 14, 21, 22, and 39A ensure that the accused will be tried according to procedure established by law, where procedure means not any procedure but a fair and just procedure including access to justice. The court giving Afzal the liberty to cross-examine is a vacuous liberty where such liberty implies a comprehensive understanding of the Evidence Act and the Criminal Procedure. This freedom given by the court without discharging its Constitutional obligation is itself a total denial of his Constitutional Right to defend himself effectively.

The High Court in the Referred Case, record these facts in Para 133 of its judgment, and the court goes on to record that Accused Afzal has in fact cross examined eighty prosecution witnesses. The High Court held, "Mohd Afzal continued the trial without any objection or grievance." This conclusion is not supported by the proceedings of the trial court. Afzal had more than once requested for Counsel to be appointed by the court. But the court at the trial stage gave Afzal a Hobson's choice. Either accept the lawyer appointed by the court or cross examine the witnesses yourself was what the court had told the accused. The gravity of the case is writ large and such a case cannot be disposed of in the manner it was done both at the Designated Judge's level and the High Court. This issue was not raised before the Supreme Court. When one waives the right to counsel it should be informed by competence and intelligence. The failure to appoint by the designated judge was on account of the self imposed limitation that he cannot traverse beyond the panel of lawyers available to the court. It is not that lawyers were not available, but lawyers were

avoiding handling Afzal's brief. *Non-availability* and *declined to appear* are two different categories. The latter is outright denial of equal opportunity before law. This would amount to refusal of access to justice.

The position taken by the High Court appears to be wholly untenable. The Right to be defended by a Lawyer is not only a Fundamental Right but a right guaranteed under the International Covenant on Civil and Political Rights which have become mandatory thanks to their recognition by the Protection of Human Rights Act, 1993. Article 8 gives a person a right to an effective remedy for the enforcement of the fundamental rights recognized by the Constitution or by law and Article 14(c) which guarantees the right to the accused to be tried in his presence and to be defended by a competent lawyer. The Supreme Court has read these clauses in the Covenant along with the clauses dealing with equality and equal protection of laws (Article 14) Right to be tried according to procedure established by law (Article 21) Right to be assisted by counsel from the time of arrest and during the trial (22 (1&2) and 39A which deals with equal justice and frees legal aid. According to the Court Article 39A is interpretative of Article 21 and pointed out that courts cannot be inert in the face of these Articles. In one of the decisions cited by the Counsel the Supreme Court approvingly quoted the opinion of Judge Douglas of the US Supreme Court in *Raymond vs Hamlin* The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He

is unfamiliar with rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and the knowledge adequately to prepare his defence, even though he has a perfect one. He requires a guiding hand of counsel at every step in the proceeding against him. ...If that be true of men of intelligence how much more true of is it of the ignoring and illiterate or those of feeble intellect." After quoting this passage there is no discussion of this decision and its applicability to the facts of this case. Reference to the passage relied upon by the counsel is not considering the ratio of the case. Without deciding the denial of the right to be assisted and defended by the lawyer the Court proceeds to the issue of the performance of a counsel and points out the difficulties of lawyers in performing this task. While being mechanical in dealing with the fundamental obligation of the Court to provide lawyer assistance for defending the accused, the Court proceeds on a short dilation into the competence of defending counsel who was not there and that was the major complaint It would be very unfair to conclude that permitting Afzal to cross examine the witnesses would be compliance with Art 21, 22, and 39A of the Constitution and the related international covenants.

The great debate that took place in the decades of the seventies of the last century one issue, which had the consensus of all the contending groups and intellectuals, was that Rule of Law should inform our understanding the Constitution and Governance. Yet within a matter of two decades Rule of Law stands discredited as never before, not even in the dark days of '75 Emergency. Political prejudices are parading as juridical principles and communal

prejudices have entered the decision-making processes of the justice system sometimes as judicial activism. The failure of the criminal justice to the victims Sikh massacre in 1984, the indifference to the crimes perpetrated by the majority community in the Mumbai riots in Mumbai in 1992 leading to the appointment of Sri Krishna Commission and the attention Rule of law to the sequel by the violence of minority community in the Mumbai blasts, the Riots in Coimbatore where crores worth of property was consigned to flames and around two scores of Muslims killed went unnoticed while the sequential blasts a few days thereafter led to arrest and pre trial incarceration of around one hundred seventy five for around a decade and prosecution, the Gujarat riots where the killings led to no accountability, the Best Bakery case and the reopening of investigations that have been closed, by legal proceedings are the index of major failures of the criminal justice system by partial suspension of Rule of Law. in those cases. At the same time we have the strident assertion of partial justice in the death sentences on Kehar Singh and Afzal. These two are instances of the operation of Rule of Law in its paranoid state. One became a victim of substantive injustice and the other the victim of *processual* injustice.

In India law has never been logic, justifying Justice Holmes and the replacement to logic he offered, namely,; "the felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed and unconscious even prejudices judges share with their fellow men... The decision will depend upon a more subtle than any articulate major premise.' in its unexpurgated sense applies to this country now. This is a major reason why the human rights activists campaign against death

penalty In a death penalty case in 1994 (Collins vs. Collins) justice Blackmun's dissent is to the point. "The problem is that the inevitability of factual, legal and moral error gives us a system that we know must wrongly kill some defendants. Blackmun acknowledges error to be inevitable and injustice unavoidable ...it seems that a

decision whether a human being should live or die is so inherently subjective, rife with all of life's understandings, experiences, prejudices and passions, that it inevitably defies the rationality and consistency required by the Constitution".

Wherever and whenever courts overlook the importance of political justice, as a head of the Sovereign

Democratic Republic, Mr President, Sir, should intervene to make amends in this regard and maintain democracy. Mr President, Sir in this case political justice failed and therefore calls for your intervention and commute the sentence of death into one of life. – **K G Kannabiran, 14/11/06** □

## A Report: New York City Bar Association

### Recommendations of the Committee on International Human Rights

India should aggressively build upon the initial steps it recently has taken to limit the use of draconian antiterrorism laws and to begin to transform its British colonial-era police and criminal justice institutions, the **Committee on International Human Rights of the New York City Bar Association** said in a report released today. The 135-page report analyzes human rights concerns arising from India's antiterrorism and security laws and the ways in which some of those concerns derive from lingering, colonial-era practices and institutions.

The report also welcomes the Indian government's decision — following the bomb blasts over the summer in Mumbai — not to enact new antiterrorism legislation but instead to focus on upgrading its intelligence and investigative capacity to prevent acts of terrorism and to hold perpetrators accountable.

"Respect for human rights when combating terrorism is a strategic imperative," said Anil Kalhan, chair of the Committee's India project. "As the Supreme Court of India has recognized, terrorism often is designed 'to provoke an overreaction' and therefore 'thrives where human rights are violated.' In this context, draconian laws often provide terrorists exactly the response they hope for and, in the process, plant

the seeds for future violence. That is an important lesson for all countries facing the threat of terrorism."

#### Background

In 2004, the government of India took an important step forward for human rights by repealing many of the provisions in the Prevention of Terrorism Act of 2002 ("POTA"), the most recent in a series of laws, some dating from the colonial era, that confer the government with sweeping power to combat terrorism and other security threats largely outside the normal rules of the criminal justice system. Despite these laws, terrorism has persisted, and few actual terrorists have successfully been prosecuted. At the same time, like similar laws in other countries, aspects of India's antiterrorism and security laws have raised numerous human rights concerns, including:

- Overly broad, ambiguous, and malleable definitions of terrorism;
- Pre trial investigation and detention procedures which infringe upon due process, personal liberty, and limits on the length of pre trial detention;
- The use of "special courts" and procedural rules that infringe upon judicial independence and the right to a fair trial;
- Lack of sufficient oversight of police and prosecutorial decision-making to prevent arbitrary,

discriminatory, and disuniform application; and

- Broad immunities from prosecution for government officials that obstruct victim's right to effective remedies.

Enforcement of these laws has varied widely across the country, facilitating human rights violations that include:

- Arbitrary and selective enforcement against Dalit (so-called "untouchables"), other lower caste, tribal and religious minority communities;
- Prolonged detention without charge or trial;
- Violations of protected speech and associational activities, particularly of political opponents and journalists;
- Prosecution of ordinary crimes as terrorism-related offences; and
- Severe police misconduct and abuse, including torture.

#### Recommendations

While POTA's partial repeal eliminated several of the law's most troubling features, the report analyzes a number of human rights concerns that have remained, especially since POTA continues to apply retroactively to many individuals notwithstanding its formal repeal. The report also urges India to develop mechanisms to provide for greater administrative and judicial oversight of investigative and prosecutorial decision-making, and

transparency in that decision-making, to ensure nationwide uniformity and respect for fundamental rights. Mechanisms for citizens to seek redress and hold government officials accountable for abuses should be improved. As the Association also has urged the U.S. government with respect to its antiterrorism laws and policies since 2001, the Association similarly urges the Indian government to take a number of steps to cooperate more fully with UN and other international institutions responsible for monitoring India's compliance with human rights standards.

The report also discusses the need to reform India's police and criminal justice institutions more

#### **Letter:**

### **Priyadarshani Mattoo Judgement**

Priyadarshani Mattoo was 23, with dreams to be a lawyer. She was raped and murdered in her house by one of her senior in law campus Delhi, son of a senior police officer serving in the capital, who was stalking her for more than two years.

Mattoo case judgement has come. Though ten years of delay is no ordinary in a supposedly 'alive' society, we have been spared the worst: the case being lost in the maze of millions of cases that drag like a snail on never ending path. Many die before hearing the last word on their fight for justice. Chaman Lal Mattoo, the father of Priyadarshani Mattoo, has been fortunate.

While delivering the judgement the high court has observed, 'you have killed her'. This 'You' is Delhi Police. Priyadarshani Mattoo approached as many as four police stations of the capital with complaint of being stalked. None of the officer in charge had the spine to register a case against the man who was stalking her

generally and the human rights concerns arising from the UN Security Council's efforts to enforce Resolution 1373, which was adopted after the September 11, 2001 terrorist attacks and has played a significant role in the public debate over antiterrorism laws in India.

#### **The New York City Bar Association**

The Association's report draws extensively from information learned during a two-week visit to India in 2005 by several of its members. The Association has previously conducted several similar projects examining the same range of issues in other countries, including Northern Ireland, Hong Kong, and Indonesia. These visits also have

fearlessly like a nephew of a king in a medieval kingdom. A disgusting reflection indeed on the kind of people who are entrusted with the task of protection of our life, liberty and property! Isn't One reminded of Clowns in a third rate king's court. It would be in the fitness of things of all those officers who are identified and charged with abetment to murder.

If only these police officers, nay clowns, had acted! Ms Mattoo would be alive today. They did not. Is there no punishment for dereliction of duty that leads to a life snuffed out in its prime!

The high court observed that the convict's father influenced the investigation. One wonders what kind of leadership the convict's father was providing to the Delhi police force of which he was a senior officer. He did not check his son prior to the crime as he was stalking the woman; he defended him after the heinous act. May we require psychological profiling at the time of recruitment and periodic moral grading of officers manning responsible positions.

In the intervening period of five years as the appeal against the accused was pending before the

helped inform the Association's extensive work examining the human rights issues arising from antiterrorism initiatives by the United States since 2001.

As with its previous human rights reports, the Association will share its report with government officials, lawyers and bar associations, and human rights advocates in India as part of its efforts to promote mutual respect for the rule of law and human rights and ongoing dialogue about antiterrorism and security laws in India, the United States, and other countries. The Association also will share its report with officials from entities including the US State Department, Congress, and the United Nations. – **Dr V Suresh**, New York, 25.9.06 □

high court, someone married him and dreamed of a happy future. This points to another deep rooted perception among the people that if you are moneyed, well connected and morally derailed you can get away with all imaginable crimes in the contemporary India. This perception, to a large extent being non-erroneous, should make all the sane heads in the society sit up, think and act collectively. Or else we shall be carrying on our back a biting anarchy in near future in place of illusory order of the present. – **Pushkar Raj** □

#### **News:**

### **Sri Lankan Tamil Refugees**

K G Kannabiran, the President of the PUCL addressed a press meet on August 24, 2006 at Chennai. He urged the State government to give remission to prisoners undergoing life imprisonment in the State and who have been languishing in jails from 12 to 15 years. He also called upon the government to treat Sri Lankan Tamil refugees humanely.

The practice of granting remissions was stopped by the former Tamil Nadu Chief Minister, Jayalalitha during the past four years. The PUCL and other Rights groups were continuously demanding the restoration of the system. Responding to the forceful submission of Shri Kannabiran, the present Tamil Nadu government announced on September 1, 2006 remissions to life prisoners who had already served more than 10 year's sentence, released 472 life prisoners from various jails of Tamil Nadu on September 15, 2006, the day of late Annadurai. – **S Balamurugan**, General Secretary PUCL Tamil Nadu & Pondicherry □

### **Chhattisgarh PUCL: Salva Judum Campaign in Dantewada**

The Director General of Police, Chhattisgarh, Shri O P Rathore, has made a crude attempt to drag the name of Naga people in the ongoing *Salva Judum* campaign in Dantewada district of Chhattisgarh. He has

After going through the text of the letter of the Director General of Police (DGP), Chhattisgarh Sri O P Rathor addressed to the Nagaland counterpart, the PUCL unit of Chhattisgarh would like to state that it stands by its Report (along with other Human Rights Organisations) on violation of people's rights during the *Salva Judum* campaign in Dantewada District of Chhattisgarh (based on a visit of 14-member Team in November 2005).

The PUCL Chhattisgarh would also like to state that the PUCL Reports on human rights violations in Chhattisgarh during the last 30 years have never been found to be false and baseless. This is true not only in Chhattisgarh, but all over the country. These reports and record of the PUCL have stood the

test of times, and also the scrutiny of the courts in the country. In fact, various courts, including the Supreme Court of India, have acted on the PUCL reports and recommendations, and passed landmark judgments upholding the findings of the PUCL.

Only recently on 20th July, 2006, the Chhattisgarh High Court passed a landmark judgment in the case of Custodial Death of a Tribal, Ram Kumar Dhruv, and ordered the Central Bureau of Investigation (CBI) to thoroughly investigate the cause of death of Ram Kumar Dhruv. As a result, four police personnel of Suhela Police Station, Raipur, have been charged with murder u/s 302 Cr. P. C. along with two government doctors who conducted false autopsy (*Please see, Writ Petition No. 2653 of 2004: Forum of Fact Finding Documentation And Advocacy, Raipur, CG Versus State of Chhattisgarh. in the Chhattisgarh High Court, Bilaspur*).

As to the credibility of the Police Department that Mr O P Rathor heads, the Chhattisgarh High Court had to make the following observations:

*"It appears to us that by paying a meagre sum of Rs. 5,00,000/- and offering some land to the widow of the deceased, a curtain has been attempted to be drawn to cover up the very grave and apparent human right violations committed by the very custodians of human persons and their liberties. It we may say so, the story of suicide by Ramkumar Dhruv by hanging himself in the toilet enacted by the police appears to us to be a concocted story and a desperate attempt to avoid responsibility for the acts committed by A.S.I. Subhash Kumar Pradhan and 4 other officials while Ramkumar was in custody."*

The above observation has been made by no less than the Hon'ble Chief Justice S R Nayak and Hon'ble Justice D R

Deshmukh. The Hon'ble High Court was compelled to observe further about the police department of Chhattisgarh headed by Sri O P Rathor that

***"It appears that they have attempted to pull the wool over the eyes of this Court"***.

So much so for the credibility of police department headed by Sri O P Rathor.

Referring to the statement of Sri O P Rathor, DGP that "there was 'absolutely' no basis nor hard facts to these ambiguous allegations", the Chhattisgarh PUCL challenges the DGP to follow the democratic tradition and appoint a High Court Judge to conduct a Judicial Enquiry

in to the human rights violations by the Jalwa Judum/Security Forces/ NAGA IRB, including the extra-judicial killings, rape and lootings etc.

The Chhattisgarh PUCL would also like to remind the Chhattisgarh DGP that the most reasonable demands raised by the All India Team (consisting of creditable representatives from PUCL, PUDR, APDR, IAPL), and also by the Independent Citizen's Initiative (consisting of prominent citizens) in their respective reports have received wide support, but the Chhattisgarh Government is failing to adhere to any form of democratic process to find a peaceful solution to the "civil war-like situation" in Dantewada District of Chhattisgarh. These demands are:

1. That the government stop using people as a shield and creating armed Village Defence Committees as part of its anti-naxal operations;

2. That paramilitary forces be withdrawn from the area and the civil administration be resorted;

3. That all killings by the state, the *Salva Judum* and the Maoists be stopped;

4. That sincere dialogue with the Maoists be initiated, and a

political resolution to the situation  
be found;

6. That the government and the CPI (Maoists) ensure that people return to their homes in peace and security;

7. That people be assisted in regaining their livelihoods in their villages and camps be dismantled.

Lastly, the Chhattisgarh PUCL would like to add that the Reports of the All India Team and the

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### **PUCL Awardee Appointed to *Hindustan Times***

**Chaitanya Kalbagh**, who was awarded the second India Today – PUCL ‘*Journalism for Human Rights*’ Award for 1982 at Bombay on March 23, 1983, has been appointed the Editor-in-Chief of all the editions of the *Hindustan Times*. The PUCL wishes him well and hopes that the *Hindustan Times* will devote special attention to issues concerning civil liberties and human rights. –  
**General Secretary** □

5. That FIRs be registered for *Judum* and security forces and the all crimes committed by *Salva* culprits be prosecuted;

Independent Citizen's Initiative have also been translated into Hindi and widely appreciated and well received by the democratic and peace-loving citizens in Chhattisgarh. – **Rajendra K Sail**, President, People's Union for Civil Liberties (PUCL), Chhattisgarh

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