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Justice H R Khanna

K G Kannabiran

[Justice H R Khanna was born in 1912. He joined the Bar in 1934 and was appointed a District and Session Judge in 1952. He was appointed to the Bench in Punjab High Court in 1962 and came to the Supreme Court in 1971. He expired on February 25, 2008 at the age of 95. He will be remembered for Keshavananda Bharati, ADM Jabalpur, and his commitment to freedom and liberty has reflected in these judgements. He was superseded in January 1977 when his term for appointment as Chief Justice of India came. His courage was appreciated in the legal fertility the world over. – Y P Chhibbar]

Why do we call Justice H R Khanna's dissent as a profile in courage and attach so much importance to his resignation on his supercession and not the supercession of the four judges when A N Ray was appointed the Chief Justice? When the latter were superceded it did not disturb the professional constituency as something unjust has happened. Their supercession was preceded by a country-wide debate about the judiciary in which these four figured. They were identified as belonging to Chief Justice K Subba Rao's school of thought, which represented the conservative school. None of the judges imbibed the political philosophy of the Constitution but that of the politics of very Indian democracy as projected by the political discourses of the day. In periods of crisis this kind of understanding is insufficient and the clear signal was that the court should not be preoccupied with property, business and tax evasion litigation and that the conditions of the majority should be accommodated in the deliberations of the court! When Mrs Indira Gandhi, to gain support and ascendancy to her politics, shifted the emphasis to Directive Principles of State Policy, campaigned for primacy to these instead of Part III, the response from the Bench was the Decision on Privy Purses and the championing of the right to property and business. Judges with perception, during the period immediately preceding the phase of Emergency, talked about the necessity of "barefoot doctors" and "door delivery of justice". The attempt was to shift the emphasis from giving primacy of place from rights to property and right to business.

The judge's response was the six judge's response to the issues of the day. The judgments reveal the shallowness of their political understanding and the history of politics and their understanding the thought that motivated revolutions is too simplistic. In Coelacanth's case the political understanding of the majority is set down by the leading opinion... "Indeed the Constitution is only permanent not eternal says" says Chief Justice Subba Rao and goes on to say "There is nothing to choose between destruction by amendment or revolution; the former is brought about by totalitarian rule, which cannot brook constitutional checks, and the other brought (on page 8...)

Gujarat PUCL:

Police Firing on Adivasis in Sabarkantha, Gujarat

People's Union for Civil Liberties (PUCL), Gujarat formed a committee of concerned citizens to find facts about the police firing on the Adivasis demonstration on the 13th February 2008 at Antarsuba. Vijayanagar Taluk, Sabarkantha District that killed two and injured fifteen Adivasis.

The Committee of five members went to the area on 18th February and visited the following places: Antarsuba, Vajepur Nursery, Abhapur; Polo forest, Mandhi; Jadi Semal, Vajepur Primary School, Antarsuba Range Forest office. The Committee met family members of Sanjibhai who died in the police firing, a person who was arrested by the police, few local leaders, eye witness of the incidents (participants), forest officer, and three injured. We have also interviewed journalists who reported the incident. We tried several times between 19th and 24th to contact DSP Sabarkantha to know the official version of the police firing but he did not give time. He had one or another pretext to avoid the meeting.

In the course of inquiry the committee strongly felt besides investing series of events from 1st to 13th February, a need to contextualize the incident and look into the causes of tribal unrest. It is our view that we should not look the incident in isolation as a mere law and order issue. Therefore the first part of the report is the context.

I Context

1.1 Adivasis, in the Government parlance the Scheduled Tribes constitute 14.90 percent of Gujarat population. They are concentrated in 31 Taluks from Khedbrahma in north Gujarat and Dangs in South Gujarat. These areas fall in the VI Scheduled area under the Constitution, as defined by the Government. All the Taluks are

classified as backward on the socio-economic parameters. Population of Vijayanagar Taluk is 90,766. Of them, 76 percent are Scheduled Tribes. It is not the "most backward".

1.2. A single largest group among the people living below poverty line in Gujarat is tribals. 44.41 percent of the households in Vijayanagar Taluk belong to the Below Poverty Line (BPL). Ninety five percent of the Adivasis live in rural area. Cent percent population of the Taluk is rural. Forest resources, agriculture and other labour are the sources of their livelihood.

1.3. Though land right is the central issue of the events, which began from 3rd and culminated on the 13th police firing, increasing marginalization of the Adivasis and indifference of the ruling class towards the problems of the Adivasis is the crux of the unrest. De-culturalisation of their way of life and belief system add fuel to fire. One who thinks that Adivasis are contented, gullible and docile, and get 'provoked' by a few, lives in one's dreamland. Whenever they have asserted for their rights and dignity (Constitutional Rights) the State has invariably branded them as 'terrorists' and/or 'Naxalites' as if they wage war against the State. Since the British days the State uses repressive measures to silent their voices. The clever ruling class co-opts a few of their leaders and uses them to divert their attention from day today survival problems to cultural-religious emotions.

1.4. Adivasis who are agitating to get land for survival as promised under the Scheduled Tribes and Other Forest dwellers' (Reorganisation of Forest Rights) Act 2006 have lost faith in the State. Because of the past experiences they do not trust the government machinery. They also

know well that the land titles that they may eventually get, is not enough for their sustenance. Without adequate infrastructure including leveling of land, irrigation, fertilizer etc. their poverty would not weather away. Therefore they also look for the non-farm non-forest occupations if available. However it should be emphasized that for Adivasis, *land is not merely a source of livelihood, it is also integral part of their culture, identity and existence.*

1.5. Literacy among the Adivasis has somewhat increased over the last four decades; but higher and technical education has not increased with the same space. In fact, dropout rate in Secondary School is very high. Vijayanagar Taluk has 63.23 percent literacy. On the education index it stands sixth among the ST Taluks. But on the employment scale it occupies 12th position (Hirway and others 2007). The situation in non-farm non-forest employment is poor in the Taluk. In Gujarat, unemployment of the all educated in general and Adivasis in particular has continued to rise. Several graduates and SSC passed Adivasis boys and girls have not other way but to work as manual labourers. During our visit a graduate told us that one would require to give more than Rs one lakh as donation/bribe to get a white-collar job in government and private sector. Hence their frustration and anger are very high. It may be noted that a large number of Dungari Garasiya Bhils from this region are traditionally in the police and military department. Their number in the police department during the last few years has declined, from 11049 in 2001 to 8901 in 2005.

II 'Forest Land and Adivasis' Rights

2.1 Traditionally Adivasis do not have a notion of 'ownership' of

land or asset. In the past they were cultivating land collectively for their subsistence. As many of them were engaged in shifting cultivation they hardly cultivated a particular fixed area for a long period. Historians have provided enough evidences to show that the non-tribal landed gentry continuously pushed tribals in the interior forest and/or hills. Many original tribal owners had become unrecorded tenants and/or labourers in the less fertile highlands or bonded labourers or semi-bonded labourers in the fertile lowlands or in allied occupations in the forest areas (Prabhu 2002).

2.2 The British rulers were primarily interested in timber and other income from forest. They therefore framed the laws to evict the local inhabitants from their land and habitat. The system of land settlement was introduced and the state "granted alienable title to land to individual males on the payment of tax in cash. The relationship with the land was now mediated through the state and the community 'ceased' to exist in the eyes of law and of the state and of the courts... Up to 1887, the main aim of the colonial rulers was conquest with a strong military thrust into resistance areas including the forest depths, the hill-tops. In the name of good governance, the administration opened up tribal areas to outsiders and thus contractors, civil and military officers, traders, alcohol vendors, timber contractors and merchants moved in under the protective umbrella of the British administration (Prabhu 2002)." The State policies and attitude towards the tribals have not changed in the Independent India.

2.3 The state has evicted a large number of tribals under various 'development' projects. Among those w/no have been displaced from their land and habitat under irrigation, minerals and Industrial projects, *Adivasis* constitute as many as 71 per cent

in Gujarat between 1947 and 2004 (Lobo 2008). The scale of land alienation in the last five decades far exceeds the quantum of tribal land alienation that took place in the colonial times. And more important they have not been beneficiaries of the so-called development. They never received adequate support for their rehabilitation. In the process they have been more pauperized socially, culturally and economically.

2.4 In 1927 British government passed the Indian Forest Act. Accordingly, the government "can constitute any forest land or waste land which is the property of Government land or waste land which is the property of Government or over which the Government has proprietary rights, a reserved forest, by issuing a notification of this effect". But the settlement of rights had not carried out and large areas have remained un-surveyed. Hence, most of the tribal cultivators who are unaware of 'modern' administrative legal complexities have remained without 'official' land titles.

2.5 The forest area is classified into [a] Reserved forest, [b] Protected forest, and [c] Unclassified. Under the reserved forest no one is allowed to use any forest product without the permission of the forest department. In Gujarat 7 per cent (19,113 km) area is under the forest. Of them 71.26 per cent (14,155 km) fall in the category of the reserved forest. *Adivasis* who have been traditionally cultivating land is considered as 'forest land' and the cultivators without formal land title are treated as 'encroachers' by the government as well as the non-tribals.

2.6 The Wildlife Protection Act, 1972 provided for creation of inviolate protected Areas and wildlife habitats whereby *Adivasis* loss access to their lands and livelihoods based on forests. Again settlement of rights has not carried

out completely. Hence all the *Adivasis* who were dependent on forest and cultivating land lost their traditional right to till land for their survival. They became 'encroachers' as and when they continued to cultivate their land, which they were tilling for generations.

2.7 Though the 1980s Forest Conservation Act acknowledged "the traditional right of the tribal people on forest land." But no efforts were made by the government to protect these rights. The forest department has continued to treat *Adivasis* as 'encroachers' and destroyed their crops. Moreover the department began plantation on the tribal land as a strategy to evict the tribals from their land.

III *Adivasis* and Land Rights in Gujarat

3.1 *Adivasis* in Gujarat resisted and occasionally violently confronted with the British administration and the non-tribal land grabbers i.e. contractors, moneylenders and landed gentry. On the eve of Independence they felt that with *Swaraj* they would get their land and forest back. Therefore there were several uprisings to oust the non-tribal cultivators on their land. Again in the sixties their anger against the government came on surface. In Vijayanagar area Parpatta *Adivasi Sewa Sangh* provided a platform to express grievances of the tribals. Incidents of sporadic protests by the tribals against the forest department's eviction have increased with the new forest bill in the 1970s. The forest department used to destroy the crop cultivated by the *Adivasis* and started plantation of trees. In the late eighties in order to assert their land rights some tribals entered the reserved forest and symbolically cut trees. Some leaders such as Vadilal Kamdar, Manoj Vadela and others were arrested and jailed for some time. Later in 1987 *Jamin Hit Suraksha*

Samit was formed under the leadership of DISHA, an NGO. Several demonstrations of *Adivasis* were organised demanding land and '*Junagle khatechya atryachar, dur karo dur karo*' i.e. end the atrocities of the forest department. Along with several organisations its major demand was to transfer land for cultivation to forest dwellers who were tilling the same land for several years (Jan 2002).

3.2 During this period, in 1990 the Ministry of Environment and Forest issued guidelines in relation with [a] 'encroachment on forest land'; [b] 'disputed claims' [c] leases/*patta* and [d] conversion of forest villages and settlement of old habitations. Moreover, the Supreme Court directed in 1991 that the competent authority must enquire into the claim even in cases where claims are not accompanied.

3.3 The State government did not implement the guidelines. *Adivasis'* struggles got intensified. In 1992 historical rally of more than 5000 *Adivasis*, under the banner of The Eastern Belt Area Development Action committee demanding land right *Adivasis* took place in Ahmedabad. Besides many organisations Ekalavya played leading role. Later in 1993 a rally and convention of the *Adivasis* were held in Vijyanagar (Jan 2002). At last, the government agreed in 1994 in principle that "no tribal would be displaced from the land he was cultivating." Relevant circulars, though with slow pace were notified. Around 67,000 *Adivasi* cultivators were promised that they would get the ownership titles for land. By 2003 after the span of nine years, less than, half (32000) got possession of an average 1.5 acre land for cultivation. In fact, after 1998, the entire pace and process of surveying land cultivated by *Adivasis*, preparing documents and providing the land

to the eligible cultivators had been 'tardy and erratic'.

3.4 Meanwhile the circular of the Central government on 2nd May 2002 to all the States/UT governments 'to evict the ineligible encroachers and all the post-1980 encroachers from forest lands in a time bound manner' came handy to the State to evict the *Adivasi* cultivators. Gujarat government took up this instruction with enthusiasm without any delay. Very large scale eviction of the tribal cultivators followed. This is not withstanding the Central government clarification on the later date that "there is no change in the policy of the Ministry with regard to regulation of pre-1980 eligible encroachments, and the commitment with reference to forest-tribal interface on the disputed settlement claims remained valid. Between May 2002 and March 2004 the department evicted 'encroachers from 152400.11 hectares from forest in all parts of the country. In Gujarat eviction took place from 13316.86 hectares. (FC Division MoEE, GOI 2007, Sec Appendix) This was the highest in country. This speaks volumes about the approach of the government towards the *Adivasis*.

3.5 Sporadic and organized protests against the harassment of and eviction by the forest department have continued in different parts of the State. Meanwhile the nation wide the campaign for Survival and Dignity asserting forest rights of the *Adivasis*, launched in the early 1990s continued. Several organizations from Gujarat such as *Adivasi Mahasabha*, *Bharat Jan Andolan*, National Front for Tribal Self-Rule. Action Research in Community, Health and Development (ARCH), Rajpipala Legal Aid Society etc. have been actively associated with the campaign. With all these efforts the parliament passed the Forest Rights Act 2006. The Act recognizes land rights:

"To land they (forest dwellers) have been cultivating prior to December 13, 2005 (Section 4 [3]). Those who are cultivating land but do not have document can claim up to 4 hectares, as long as they are cultivating the land themselves for livelihood (Sections 3[1] [a] and 4[6]). Those who have a *patta* or government lease, as long as been illegally taken by the Forest Department or whose land is the subject of a dispute between Forest and Revenue Departments, can claim those lands (Section 3[1][f] and [g])".

3.6 *Adivasis* everywhere celebrated this victory a historical legislation. They have become impatient. But the government took more than a year to notify the Rules to provide the procedure for the implementation of the Act. Needless to mention that without notification of Rules, no Act can be implemented. And normally the government takes maximum six months for notification. Meanwhile eviction of the tribal cultivators by the forest department in Gujarat continued. For instance in Umarpada forest officials and local police had destroyed 200 acres crops in the headship of DFO on 5 September 2007. Protests have also continued. In September 2007, a rally of about fifteen thousand *Adivasis* in Surat opposed their eviction by Gujarat government from their land, which is in possession since long. Their slogan was '*jangal jamin keda hai...ama hai ama hai*'. Similar rally in Rajpipala and other places demanding quick implementation of the new Act.

3.7 At the same time both the major/political parties as a part of the election campaign in November and December 2007, blamed each other for not implementing the Act. As usual, they gave lots of promises to *Adivasis* to get their votes.

IV. Incident

4.1. With the notification in early January, pro-*Adivasis'* Rights

oriented political leaders and NGOs became more active in Gujarat. They rejuvenated the campaign for the implementation of the rules. On the 1st February in Vijayanagar the local MLA and MP addressed a meeting of *Adivasis* and gave information about the Act and the rules. It was reported in the media that they told the gathering that *Adivasis* had at last had got their rights over their forest and land that they were tilling before December 2005.

4.2. According to government sources the real momentum for assertion of the tribals began from 5th February. Around one hundred *Adivasis* assembled at Polo forest in Vijayanagar. They have been alleged that they had uprooted some trees planted by the forest department in the last three years. With cross checking were informed that they were mainly small plants and saplings and not big trees

4.3. Similar incident, we were told, was repeated on 7th and 8th. The villagers - males and females - assembled with bows and arrows, *dhariya*, spears etc., shouting slogans and beating drums. The forest officer went there and persuaded them to abandon their activities. But the agitated tribals did not listen to him and continued to shout slogans like "*Jay Bhim*". Some leaders of the crowd gave the booklet to the officer, published by BAMSEF (Backward and Minority Communities Employees Federation) regarding Poona Act. PSI also visited the gathering but failed to pacify. According to the eyewitness of the incident the people were demanding their constitutional rights. They were referring to Dr Ambedkar, one who made them aware about their constitutional rights to dignity. Poona pact etc. was not relevant issue for the meetings.

It may be noted that BAMSEF has publicly denied its involvement in this episode. In fact they have said that they were unnecessarily dragged in the issue. We found

that the *Mul Nivasi Sangh* (Organisation of the original inhabitants) has launched the campaign like the several other groups, for the Rights of the *Adivasis* over the forest. The organization is an offshoot of the BAMSEF, but now completely independent. A former President and the founder of Gujarat BAMSEF informs us that "...(*Mul Nivasi Sangh*) fights for the rights of the backward people, but it has never resorted to violence".

4.4. It is alleged that on the 9th at Abhapur the mob of 200-250 *Adivasis* cut the fencing and entered the forest land. The officer said that the mob put Dr Ambedkar's photograph and began destroying the trees. The officers - Mamaldar, PSI and Additional Principle Conservator - were *gheroed*. Similar programme was organized on the 10th.

4.5. The forest department filed FIR on the 9th with the police against 16 persons about the incident that took place on the 8th. It accuses about illegal assembly and obstructing "the government servant for performing their duties by preventing them from going into the plantation and also threatening to kill them."

4.6. According to the government sources, a public meeting of *Adivasis* was held at the village Zer. After the meeting 81 trees were cut and a small bamboo hut was built. In fact except a few grown trees, most of them were small plants. So called hut was a bamboo frame without covered roof and walls.

4.7. The DSP and Deputy Collector, we were informed persuaded the *Adivasis* on the 12th to stop their activities. They also told them that with the new Act they would get land if it is due to them. However, the *Adivasis* on the basis of their experiences of police and forest officers did not trust them.

The above narration indicates mobilization of tribals for their

rights. With a limited time we could not check the information. However, when the committee visited the two sites where allegedly a large number of trees were cut. We found that the department figure of fallen trees was over exaggerated. When we asked the officer that if such a large number of trees were cut within five to six days, where the limber had gone? Was they smuggled outside in the trucks? He then replied that woods were not smuggled but uses for construction of houses and fuel. We said that we had not seen the new or recently repaired houses. The statement was then modified that four thousand included few trees and many plants. We have reason not to believe the forest department figures of four thousand. He it noted that we did not observe a large number of stumps in both the place. In Vajepur all Mahuva trees are there. More important the tribals claim that in fact they were cultivating this land before few years. The forest department evicted them. We also observed that it is more farm land than forest.

Second, it may be noted that the armed and angry mob with war cry, as reported by the officer, did not hurt any officer on all these days. Even when they visited the site where *Adivasis* allegedly in a large number with arms were cutting trees. Their slogans were around their constitutional rights and their assertion that they were *Adivasis* original inhabitants - and not *Vanvasis* as the government now prefers to address them.

V Police Firing

5.1 On the request of the forest department SRP force was deployed on the 12th morning. According to the department the SRP was called to protect the forest office and the staff. We were told that SRP personnel did not go to the villages, but the villagers had a different version.

5.2 The forest department and the Police decided on the 12th to arrest those who according to them were active and against whom the complaint was filed earlier. On the 13th early morning seven persons were arrested. According to the government the number of persons arrested was five. But according to our information the number was of the seven. From them one person, Sureshbhai Bodai (son of Sanjabhai) was set free between Vajepur and Antarsuba Ashram range office. While arresting the accused were not given any reason for the arrest. According to Mr Sardar he was sleeping the police did not allow him to change the dress. He was beaten, violating Justice D K Basu's guidelines. His mother, wife and *bhabhi* told us that they were also beaten with sticks and gun when they asked why the police was arresting them. They were taken to the Forest Range Office. After two hours, five of the arrested were taken to Idar and presented before the Magistrate. Then they were taken to Himatnagar prison. After seven days they were released from the jail on bail of Rs 2 lakh. No one sitting in the government has an idea how can a poor *Adivasi* give a bail of such a large amount? And for what crime?

5.3 What happened to the sixth person - Sanjabhai - is not known to his son and also to us. His son told us, "My father and I were taken in a jeep by the police from their home on 13th early morning. No reason was given for the arrest. After sometime the jeep stopped and they asked me to get down. Then they took my father alone. Next day in the evening we were informed that my father was killed in the police firing. How can this happen?"

5.4 As a word of arrest spread in the area the people from different villages gathered at Antarsuba in the morning. They went to the Range Office to get

release their persons. The numbers of people, according to various estimates were around four to five hundred. Many in the crowd were in the traditional arms bows and arrows, spears, *lathis* - according to the official sources. They were shouting slogans and demanding the release of the arrested. According to the official version the mob broke the main gate and entered the compound and ransacked the office windows, tables. The mob also attacked the staff quarters. It is alleged that the mob terrorized the staff, molested a woman officer and injured some. Having not found the arrested persons, the mob returned back and went out of the office compound, it is surprising to note that SRP, which was deployed to protect the staff and office did not prevent the mob. We also surprise that the mob had broken the windows but not the TV set and office furniture.

5.5 Meanwhile the police with DSP arrived at the spot. Mob did not allow, according to the officer, the DSP and ambulance to enter the compound. DSP warned the mob and asked them to leave the place. Instead, the mob threw stones at the police. In response the police resorted to teargas. People began to run hither and thither. However, according to the officer that there was no effect of teargas on the crowd. Hence, the police fired at the mob, which killed two and injured 15. One had a bullet injury. Now he is recovering in the Ahmedabad Civil Hospital. One who died had a bullet on head and another person on back. Among the two dead one was a school teacher who had come to the village for personal work. He was not in the crowd. Another person was Sanjabhai of Vajepur who was as mentioned above, arrested by the police in the early morning. Surprisingly, arrows, axes, *dhariyas* or stones allegedly used by *Adivasis* have not

seriously injured any police or forest person.

5.6 On the basis of our observation of the location and discussion with the eyewitnesses and officers we strongly feel that even if the crowd was rowdy and aggressive there was no reason for the police firing at all. Teargas was more than enough to disperse the crowd which was not more than maximum of five hundred. No policeman was injured by the crowd with their arms. There was no *lathi-charge* before resorting to the teargas not speaking of firing. The bullets targeted the heads and chest, and not the lower part of body.

5.7 Another question that remains unanswered that the main gate that we saw on the 18th was intact; how could the mob enter the premise where SRP was present? This raises several doubts on police and forest department versions.

The FIR accuses ten persons for unlawful assembly, keeping dangerous weapons, attempt for committing murder, under various IPC sections 143, 187, 148, 149, 307, 323, 324, 333, 332, 436, 337, 338, 452, 354, 427, 342, 506 and BP Act section 135 and Public Property Act section 3 and 7. Surprisingly violation of any Forest Law has been applied.

VI Demands

6.1 On the basis of our inquiry we strongly believe that the police firing was an irresponsible, insensitive and unwarranted. The official version as mentioned above is full of contradictions. We demand immediate judicial inquiry headed by High Court judge on the incident. During the period of inquiry the police officer responsible for the order be suspended from the duty.

6.2 For us the death of Sanjabhai is a mystery. We learn from a reliable official source that he was arrested with his son on 13th morning. The statement of his son seems to be right. The police

department should come out with facts before the public. If he was not taken to the custody why, when and where he was he released?

6.3 While arresting the accused the police has violated the basic guidelines laid down by Justice D K Basu. Therefore, the officers responsible should be punished to set an example so that such blatant violation does not take place in future.

6.4 The government should immediately pay compensation of

ten lakhs to the deceased families and five lakhs to the injured.

6.5 The government should immediately withdraw all the cases. Let us reiterate that the *Adivasis* were demanding their constitutional rights. Their assertion for rights and against injustice is not crime or conspiracy against the State.

6.6 The process of the implementation of the Forest Rights Act, 2006 should be started with right earnest. And all the entitled persons, as per the Act,

should be handed over the *sanunds* within the next three months. All the *Adivasis* cultivators should also be provided simultaneously necessary inputs so that their agriculture become sustainable. No eviction of the *Adivasis* cultivators should take place. The officers responsible for harassing the tribals and violating the latter and spirit of the Act should be punished.

Ghanshyam Shah, Dimple Raval, Vipul Pandya, Dinkar Pandya, Bhavik Raja.

Appendix:

State-wise encroachment on Forest Lands and Eviction since May 2002

Sl. No.	Name of State/Union Territory	Encroachment on forest lands till May, 2002 (in hectare)	Encroachment evicted from forest lands since May, 2002 (in hectare)	Existing encroachment on forest lands, as on 31-03-2004 (in hectare)
1	Andhra Pradesh	295383	0	295383
2	Assam	371450	71740	299710
3	Arunachal Pradesh	4038	150.19	3887.81
4	A & N Island	4637.89	2580.4	2057.49
5	Bihar	854.181	602.313	251.869
6	Chandigarh	0	0	0
7	Chhattisgarh	150495	0	150495
8	Delhi	0	0	0
9	Daman & Diu	87.96	0	87.96
10	Dadra & Nagar Haveli	614.35	0	614.35
11	Gujarat	36556.4	14416.86	22139.54
12	Goa	1012	0	1012
13	Haryana	2147.9	873.84	1274.060
14	Himachal Pradesh	2925.999	84.124	2841.875
15	J&K	11090	1806	9284
16	Jharkhand	50177.8	1739.39	48438.41
17	Karnataka	87658	19948	67710
18	Kerala	9473	2183	7290
19	Lakshadweep	0	0	0
20	Maharashtra	93199.39	13557.66	79641.73
21	Manipur	535.99	2.75	533.24
22	Meghalaya	6584.49	0	6584.49
23	Madhya Pradesh	146182.225	8071.64	138110.585
24	Mizoram	18759.616	0	18759.616
25	Nagaland	0	0	0

26	Orissa	45068.964	2563.434	42605.53
27	Punjab	7233.573	420.767	6812.806
28	Pondicherry	0	0	0
29	Rajasthan	15073.154	8360.412	6712.742
30	Sikkim	3550.09	50.45	3499.64
31	Tamil Nadu	19253.848	1698.284	17555.564
32	Tripura	59336.15	0	59336.15
33	Uttaranchal	9948.8	280.8	9668
34	Uttar Pradesh	27576.53	361.9	27214.63
35	West Bengal	14842.432	1007.896	13834.536
	Total	1495746.732	152400.11	1343346.622

Source: FC Division MoEF, GOI, Forest & Wild statistics, India 2004

PUCL Fact Finding Team: Dr Ghanshyambhai Shah, Convener (Social Scientist); **Dinkar Pandya** (Senior Journalist); **Vipul Pandya** (Trade Unionist - Activist); **Prof Dimpleben Rawal** (Social Activist - Master in Commerce & Law); **Bhavik Raja** (Activist & Student Leader).

Co-Ordinator: Gautam Thaker, General Secretary PUCL, Gujarat, March, 2008 □

(from page 1...) about by discontentment brought about by misrule. If either happens constitution will be scrap of paper." Mr Justice Hidayatullah said: "I am apprehensive that the erosion of the right to property may be practiced against other fundamental rights" and so endorses Subba Rao C J's opinion... Setalwad, in his autobiography discusses this trend quite extensively and says: "By and large, the majority decision has been adversely received by lawyers as well as ordinary citizens, though it has been welcomed by some enthusiasts who fondly believed that it has heralded, by a millennium of unabridged fundamental rights." It was to this school of thought the four superceded judges belong and though a PIL was filed against A N Ray, the support against these supercessions gathered momentum. Their subsequent resignations passed off as a non-event.

Again, when Emergency was imposed and a series of amendments were introduced to stifle personal liberty it was challenged and when the matter went to the Supreme Court in *ADM Jabalpur* the Court let down the

people. Justice Khanna stood up to the challenge and wrote much deliberated and sincerely felt opinion and it was not one of those rhetorics on liberty. Quoting an American Chief Justice he pointed out that his dissent is addressed to the "brooding spirit of law, to the intelligence of a future" and he rendered the dissent hoping that a future court will examine and think fit to adopt it as valid law.

In *Keshavananda* Justice Khanna had said that property is not fundamental and threw his weight in favour of the majority opinion on the theory of implied limitations. There was consistency in his holding that what applies to property rights would equally apply to personal liberty as against the consistent holding, (which is neither historical nor logical) that liberty itself is the gift of the law and may by law be forfeited or abridged" (A N Ray CJ) He gave substance and meaning to the Constitutional value system when he wrote "Even in the absence of Article 21 in the Constitution the state got no power to deprive a person of his life or liberty without the authority of law... This is the essential postulate and basic assumption of Rule of law, in all civilized nations. The notion that no one shall be deprived of his life or liberty without authority of law is rooted in the consideration that life and liberty are priceless possessions which cannot be made the play thing of individual whim and caprice and that

any act which has the effect of tampering with life or liberty must receive sustenance from and sanction of the laws of the land. Article 21 incorporates an essential aspect of that principle and makes it part of the fundamental right. It does not however follow that if Article 21 had not been drafted and inserted, in that event it would have been permissible for the State to deprive a person of his life or liberty without the authority of law." He was talking about a basic norm in a normless world. In writing these lines he was not concerned with formulation of elegant sentences. He was talking about what justice means. He did not perform any semantic circus, which his colleagues on the Bench performed to tell us why they justify the forfeiture of life and liberty. He told us that courts should live up to the expectations of the people to justify their existence.

To slightly rephrase Laski's words: I have rights which are inherent in me as a member of society, and I judge the state as a fundamental instrument of society, by the manner in which it seeks to secure to me the substance of these rights The Court was constituted to help me in this task. The Court failed me but Justice Khanna alone among them stood by me in the exercise of my rights to secure my liberties and therefore will be remembered as a judge. The others are mere office holders! □

Bihar PUCL:

Alleged Attack on the Freedom of Speech and Right to Dissent of the University Teachers

Some members of the PUCL raised the issue of the suspension of Prof N K Choudhary, Head of the Department of Economics, Patna University allegedly for his criticism of the Chancellor at the meeting of the Senate of the University held on 29.12.2007. Following a discussion of the pros and cons of the question at the meeting of the organization (on 20 January, 2008), it was decided to hold an enquiry, as the matter involved the right to speech and expression of a citizen and freedom of opinion granted to the teachers of Universities. It was also noted that the University teachers of Bihar enjoyed the right to join political parties and fight election to Parliament and the State Legislature, and many of them have been and are Minister at the centre or the State. One of them even headed the government as Chief Minister. It was pointed out that a teacher member of a political party or a teacher Legislator could not be denied the freedom of opinion and expression to which the other members of the political parties were entitled unless there was a specific provision in the Act of the University which imposed restrictions on him. Attention was also drawn to the fact that autonomy of the University and freedom to its teachers were accepted to be a necessary condition for facilitating higher academic pursuit and developing Universities as centres of excellence. In fact, it was with this in view that all the Government Colleges in the state were transferred to Patna University and Bihar University in 1951. Prior to it, there was only Patna University which conducted the examinations, but had no control over the colleges which were either under the State Government or the

Governing Bodies of the affiliated colleges. The teachers and other employees of the Government colleges were Government servants and they were subject to all the restrictions applicable to the other government servants. However, it all was changed to give them the freedom considered necessary all over the world for the development of universities. The universities of Bihar were also granted autonomy and shown great respect so much so that a senior cabinet Minister gladly accepted the post of Treasurer of Patna University - a post which had to be under the Vice Chancellor.

Following the decision, an Enquiry Committee consisting of Dr Prabhakar Sinha, National Vice President, Shri Nageshwar Prasad, State General Secretary, Shri Rarnchandra Lat Das, former President and member of the executive and Dr Arvind Kumar Sinha, member of the executive committee was constituted. The committee examined the show cause Letter issued to Prof Choudhary, his explanation and the Letter of his suspension. The committee also met Prof Choudhary and contacted the Registrar of the University to obtain their versions of the development. However, the Registrar expressed his inability to say anything on the issue and suggested that we should meet the Vice Chancellor instead. The suggestion seemed meaningless because the Vice Chancellor, who had ordered the suspension of Prof Choudhary, had been forced to resign by the Chancellor and had left the state. His successor had come from Rajasthan and had just joined and was not expected to have personal knowledge of what had actually transpired at the

meeting of the Senate on 29 December, 2007.

It was decided by the Committee to examine the following:

A. Whether the suspension order was a *bona fide* exercise of power on administrative grounds not involving infringement of the teachers' civil Liberties and right as a teacher.

B. If the case is not covered under A. above and the suspension order has been passed for any speech made by the teacher concerned, then to be fair to all concerned the following points would be examined in the Light of the Law of the University:

1. Whether the Chancellor enjoys immunity from criticism by the teachers of the University.

2. Whether the rule of the Senate prohibits discussion of the role of the Chancellor and/or Vice Chancellor or critical remarks against his functioning by a teacher Senator.

3. Whether the provision regarding the code of conduct of teachers prohibits them from criticizing the Chancellor/Vice Chancellor.

4. Whether his speech was confined to discussing the role of the Chancellor and/or was about matters not related to his duty as Chancellor.

5. Whether Prof Choudhary's speech transgressed the limits of morality and for decency.

6. Whether the order of suspension is an attack on the right to speech and expression and/or inconsistent with the academic freedom enjoyed by the teachers of the universities.

7. The power and responsibility of the Chancellor *vis a vis* the Vice Chancellor and the teachers.

Facts and Circumstances Leading to Suspension

According to Prof N K Choudhary, he participated in a seminar on higher education on 25 June 2007, where the Chancellor was the Chief Guest. He was critical of the manner in which the university was being run which was not appreciated by the Chancellor. On June 26 2007 he was summoned to the Raj Bhavan where the Chancellor allegedly charged him 'with crossing all Limits at a public meeting'. He told the Chancellor that as the main speaker on the occasion he had only expressed his views with candour and had not said or done anything improper. He also claims to have stated that both as a citizen and a teacher he enjoyed the right to free speech and expression and had only exercised that right for the benefit of the university. The Chancellor, according to him, was displeased with him for asserting that he had the right to express his views at the seminar.

On 29.12.2007, a meeting of the Senate of the Patna University was held. Prof Choudhary stated at the meeting that the Chancellor should have presided over the meeting as he is the President of the Senate. He also claims to have stated the following:

Relevant parts of Speech of Prof N K Choudhary in the meeting of the Patna University Senate held on 29.12.2007:

"...under the P.U. Act, Hon'ble Chancellor has to preside over the Senate. What are the reasons for his absence? I have great respect for the Chancellor; but I have greater respect for the P.U. Act. Has he come, it would have added dignity to the House. But I have more substantive reasons to demand his presence. It seems that the Hon'ble Chancellor has decided to run the affairs of the Universities directly which is not in consonance of the spirit of the Act. The President of India is the supreme Commander of the Armed forces. But if the Chancellor

has decided to run the affairs of the Universities directly, then he must be responsible to this House and one of his responsibilities is to preside over the Senate. Any power without responsibility / accountability is illegitimate, undesirable and even dangerous.

"...For expressing some of these views in a seminar on Higher Education: Challenges in the Planetarium Auditorium in Patna I was called to Raj Bhawan the next day and my voice was tried to be silenced by the Chancellor in the presence of the Hon'ble Minister, Education, Shui Brisin Patel and Late Dr M M Jha, Education Commissioner. I have some rights and privileges as a Senator. I have some rights and freedom as a Teacher, I have some rights and freedom as a citizen of this country and I have some rights and freedom as a human being. ALL these rights give me freedom of speech. This has been violated who wilt protect my rights other than this Senate?

About Vice Chancellor

"...Sir, ...you are an autocrat by temperament and dictatorial in style of functioning. Circumstances have forced you to moderate. I am aware you have achieved some good results, things are now better. But you can achieve still better results through democratic means. See what is happening in Pakistan. Democracy atone can produce results. Respect the dignity of teachers and strengthen democratic institutions.

"...you take 16 - 18 hours of work from some of the employees which is not correct. The working class has suffered much to achieve an eight hour work schedule. Some of them even laid down their lives for this. Please improve their productivity rather than prolonging hours of work. Give them promotions and democratic rights.

"...Give democratic rights and Students' Union to Students.

"...Sir, you (VC) have lowered down the dignity of the high office of the Vice Chancellor. You are not only Y C Simhadri, you are the Vice Chancellor of Patna University. You are the collective conscience of the Patna University. I wish I could have brought the Newspaper which published your photograph which showed you in the company of some Vice Chancellors in a meeting presided over by a petty official of Raj Bhawan. How could you do it. My History Professor once told me that there was a king in England who decided to marry a girl who did not come from a Royal family. The Parliament/P.M. protested. Then the King said the King of England should have the right to choose his wife... 'On this the PM/Parliament said if the King of England should have the right to choose his wife then the people of England should have the right to choose their King. Mr V.C., I hope you get the message. We cannot morally, ethically accept a Vice Chancellor who Surrender his position to such a level.

A few days later on 12th January, 2008, he was served with a show cause notice, which reads as follows:

Patna University (Confidential), No.332/R, To, Dr N K Chaudhary, Head of the Dept. of Economics, Patna University.

Subject: Derogatory and defamatory remarks against His Excellency the Chancellor in the meeting of the Senate of the Patna University dated 29.12.2007

Sir,

In the meeting of the Senate of the Patna University held on 29.12.2007, you had made ironical, derogatory and defamatory statement against His Excellency, the Chancellor and his high office and you went to the extent of imputing personal remarks against His Excellency, the Chancellor and also the Vice-Chancellor, who was the

chairperson of the Senates meeting. You had leveled personal allegations against His Excellency, the Chancellor and his high office by using derogatory words which was not only false, but far from the truth which were spoken by you with ulterior motives, when His Excellency was not present in the meeting.

You violated the norms and rules when you did not stop making such derogatory and defamatory remarks in spite of repeated objections by the chairperson, the Vice-Chancellor. You failed to pay heed even to the chairperson who tried to stop you several times from making such derogatory and false statements.

As a teacher and also Head of the Department of Economics of the University you are liable for serious disciplinary actions for defamatory and derogatory statements against the Chancellor. Your action was also prejudice to the interest of the University.

I am therefore, directed to give this show cause notice as to why action be not taken against you. You are called up to submit your reply positively within a week from the receipt of this notice, but if your reply is not received within the aforesaid period, it may be presumed that you have nothing to say in your defense and suitable actions may be taken against you. Yours faithfully, **Vibhash Kumar Yadav**, Registrar, Patna University, 12.1.08

He submitted his reply on 17th January, 2008, which is reproduced below:

To, The Registrar, Patna University, Patna.

Subject: Explanation to the Show Cause Notice contained in Letter No.332/R dated 12th January 2008.

Sir,

I am in receipt of your aforesaid letter asking me to explain the charges leveled

against me as a Member of the Patna University Senate.

At the outset, I am constrained to state that the charges/allegations leveled against me are not only vague, in specific and sketchy but also appear to be vindictive. It is, therefore, very difficult to reply such allegations which are not factual, but the final conclusions.

Relating to the allegations that I made ironical, derogatory and defamatory statement against H.E. the Chancellor, I state that the same is absolutely untrue, baseless and have no connection or relevance to my statements in the Senate on 29.12.2007. Moreover, you have not placed the relevant facts in my statement in question which can be said to be ironical, derogatory and defamatory in any way and this assertion of mine can be verified from the text of my speech in the Senate in the capacity of a Senator of Patna University - the Supreme Governing Body of the University under the Patna University Act. It is further submitted that the entire text of my speech concerns the administration and functioning of the University and was well within the Limits of Right of Exercise of Freedom of Speech available to a Senator of the Patna University. I further submit that a fair and reasonable criticism of any authority under the Patna University Act based on admitted facts by no imagination can be termed as derogatory and defamatory. I reiterate that all along in my speech I was extremely respectful to the H.E. the Chancellor and the Vice-Chancellor who was the Chairperson of the meeting of the Senate on 29.12.2007. I respectfully put you to the rule of strict proof to prove the allegations connecting my speech to exact factual aspects.

I state it specifically that I have not made any personal remarks or made personal allegations against

H.E. the Chancellor or the Vice-Chancellor in my speech. ALL the references in my speech to the authorities were relating to the style of functioning of their offices in general and were not at all personal which can lawfully be made a basis for proceeding against me, rather against a Member of the Patna University Senate.

I make it very clear that I had no ulterior motives against any authority, much less, H.E. the Chancellor and the Vice-Chancellor, while making the speech in question. I submit that the welfare and the majesty of Higher Education in Patna University was the only motive behind the speech in question and nothing else motivated me.

With regard to the allegation that as a teacher and Head of the Department of Economics of Patna University I am liable to serious disciplinary action, have to state that I have not violated any code of conduct laid down for teachers and HODs and I further state that the speech in question was made by me in the capacity of a Senator of Patna University and being a Member of the Supreme Authority of Patna University. I was competent and duty bound to make such a speech concerning the state of affairs in the University and specially the role of individual authorities. This Show Cause itself gives rise to a further question as to whether you have the competence to question and disapprove the proceedings of the Senate and, thus, unreasonably control activities of the Senate to the point of restricting the freedom of speech available to a Senator.

With regard to the allegation that in the meeting I did not pay heed to the objections raised by the Chairperson, I have to say that the same is incorrect and as such I deny it. The objections, if any, by the Chairperson in the meeting were in a routine manner to limit the time frame and not with regard

to any specific fact or submission. In fact, the whole Senate listened to my speech in rapt attention and appreciated my speech which is the clear proof of the approval of my speech by the Senate. Many members of the Senate even went to the extent of applauding my speech and congratulating me for my speech.

Far from being derogatory the words used in my speech were decent, respectful, gentle, and factually, admittedly absolutely, true.

In so far as the allegation that my action was prejudicial to the interest of the University, I have to say that my speech was, contrary to allegations, in complete interest and welfare of the University. I have carefully thought over my speech and I fail to find out a single word which is in any way detrimental to the interest of the University and is factually incorrect.

In view of the aforesaid explanations and submissions, I hope, I have successfully allayed the misunderstanding arising out of my speech and I further earnestly request that your good self will after considering my sincere explanation drop the proceeding initiated against me.

Thanking you, Yours faithfully, **N K Chaudhary**, Head Department of Economics, Patna University, Patna - 800 005, 17 January 2008

On 19.1.2008, he was placed under suspension. The suspension letter is reproduced below:

Patna University (Office Order)

After finding the explanations unsatisfactory, Dr N K Choudhary, Head of the Department of Economics, Patna University is put under suspension with immediate effect for going to the extent of imputing personal remarks against His Excellency, the Chancellor and also the Vice-Chancellor in the meeting of the Senate held on the 29th of December, 2007.

During the period of suspension of Dr N K Choudhary, the senior most Professor of the Department of Economics Dr B.P. Singh will act as Head of the Department of Economics, Patna University.

Dr J.P. Sharma, Principal, Patna Training College, will enquire and submit report.

By order of the Vice-Chancellor, **Vibhash Kumar Yadav**, Registrar, Patna University, 19.1.08

Memo No. 334/R Patna, 19 January, 2008

Copy forwarded to (1) Heads of the Departments, Patna University (2) Principals of Colleges, P.U. (3) Directors of Institutes, P.U. (4) all Officers of the University (5) all Section Officers of Patna University (6) Dr N K Choudhary, Head of the Department of Economics, P.U. (7) Dr B P Singh, University Professor of Economics, P.U. and (8) Dr J P Sharma, Principal, Patna Training College, Patna for information and necessary action. **Vibhash Kumar Yadav**, Registrar, Patna University, 19.1.08

Prof Choudhary showed us a photocopy of the reported order of the outgoing Vice Chancellor dated 20.1.2008 revoking the order of suspension, which read as follows:

"Registrar,

In supercession of my previous orders regarding the suspension of Dr N K Choudhary, Head of the Department of Economics, Patna University, I hereby revoke his suspension. – **Y C Simhadri**, Vice-Chancellor", 20.1.2008

The Legal Position

1. Patna University is governed by the Patna University Act, 1976 which provides that the Governor shall be the Chancellor of the University. Under the Act, the Chancellor is listed as, an officer of the university and enjoys enormous power which includes the power to appoint and remove

the Vice Chancellor, inspect or get inspected the university or its colleges, annul any decision of the university, transfer any teacher or officer and preside over the meeting of the Senate etc. However, he does not enjoy immunity from criticism by a teacher.

2. It is logical and understandable that an officer exercising such vast powers without accountability is not protected against criticism of his acts. Since the Governor is also the Chancellor there can be no appeal against him to the State Government, and since he is not elected but is appointed by the President, he is not answerable or accountable to the people of the state. In view of this fact, his act must be open to free discussion by all concerned, specifically the teachers at different university. It is pertinent to note that the judiciary also makes a distinction between the Governor and the Chancellor. Whereas it does not entertain petition against the Governor, it not only does entertain contempt petitions against the Chancellor, but also subjects him to severe strictures. The only limitation on its power is circumstantial. It cannot send him to jail for committing contempt of court as the Chancellor and the Governor are the same person.

3. There is no provision in the University Act, Statutes, Rules and Regulation prohibiting criticism of the Chancellor by a teacher in general or a teacher Senator at the meeting of the Senate.

The Patna University Act under Section 65 prescribes a code of conduct for the employees of the University. It does not include a prohibition against criticism of the Chancellor by an employee which means that even a member of the non-teaching staff is not prohibited against criticizing the Chancellor.

The Factual Position:

4. The letter of explanation reproduced above, charges Prof

Choudhary with making 'ironical, derogatory and defamatory statement against His Excellency the Chancellor and his high office' and also with going 'to the extent of imputing personal remarks against His Excellency the Chancellor and also the Vice Chancellor'. He has been charged with 'levelling personal allegation against His Excellency the Chancellor and his high office by using derogatory words which was not only false, but far from the truth which were spoken by you with an ulterior motive'.

The subject of the letter is mentioned as "derogatory and defamatory remarks against His Excellency the Chancellor in the meeting of the Senate of Patna University dated 29.12.2007".

Prof Choudhary has denied the allegation and stated in his letter dated 17.01.2008 that the entire text of his 'speech concerns the administration and functioning of the University'. But most importantly, he has stated, "you have not placed the relevant facts in my statement in question which can be said to be ironical, derogatory and defamatory in any way and this assertion of mine can be verified from the text of my speech in the Senate in the capacity of a Senator of Patna University - the Supreme Governing Body of the University under Patna University Act".

It is pertinent to note that neither in the letter of explanation nor in the suspension order on the ground of "finding the explanation unsatisfactory" the authorities have mentioned a single word, phrase or sentence uttered by Prof Choudhary to support the allegations made against him. It is particularly curious because the speeches made in the Senate are recorded. It has been claimed that the proceedings of the meeting of 29th December, 2007 was also videographed.

Two other points are also crucial. The Registrar's refusal to

corroborate the allegations made in the letter of explanation and the Vice Chancellor's order of revocation of the suspension orders before his forced resignation. It is to be noted that the suspension was ordered on 19.01.2008 and was revoked on 20.01.2008 but has not been notified; and Prof Choudhary continues to remain under suspension.

Finding of the Committee

1. In view of the fact that the University made many allegations against Prof Choudhary but produced no proof to support them by mentioning the words, phrases and sentences uttered by him, specially, when he categorically denied them, leads to the inescapable conclusion that the allegations against him were baseless. Since the proceedings of the Senate are recorded, it was very easy to call the part of his speech which was derogatory, defamatory or personal and mentioned them in the order of suspension on the ground of his explanation being 'unsatisfactory'. The Registrar's expressing his inability to say anything in support of the allegation completely demolishes the case of the University.

2. It appears as a case of giving a bad name to a dog before shooting him i.e. the suspension order had been passed with an ulterior motive.

3. The curious fact that the suspension order was passed on 19.01.2008 and revoked on 20.01.2008 by the Vice Chancellor before he was made to resign lends credence to the widely held belief that the Vice Chancellor suspended him to placate the angry Chancellor who, for some reason, held him responsible for Prof Choudhary's speech. However, when the Chancellor was not placated and the Vice Chancellor was forced to resign and the purpose of the suspension defeated, he decided to undo the

injustice done to save his job and revoked the suspension.

4. Since the Chancellor or Vice Chancellor enjoy, no immunity from criticism by a teacher, nor is there any provision in the Patna University Act to prohibit a teacher Senator from criticizing the functioning of the Chancellor or Vice Chancellor, Prof Choudhary's speech was not in violation of the laws of the Patna University.

5. Prof Choudhary's speech reproduced here and not contested by the University is confined to the functioning of the Chancellor and the Vice Chancellor and in no way violates the code of conduct of the teachers or transgress the limits of morality or decency. As for the truth or otherwise and the other aspects of Prof Choudhary's speech, we express no opinion, as it was not an issue under our consideration.

6. The Chancellor acted in violation of the law in summoning Prof Choudhary to the Raj Bhawan to express his displeasure with him for his speech at the Seminar held on 25.6.2007. His act of calling the HRD Minister and the Secretary, HRD to witness his reprimanding, a university teacher, as alleged, was highly improper and undignified.

7. The Chancellor's act of summoning the teacher, concerned to express his displeasure was an act of intimidation, attack on the right of Free Speech and expression of a citizen, and a teacher, and also an assault on the autonomy of the University.

The conduct of the Vice Chancellor in suspending Prof Choudhary to save his skin is contemptible and condemnable.

Some observation on the mode of functioning of the Chancellor based on known and undisputed facts:

- It is an undeniable fact that higher education in the state is in a shambles. The system has collapsed both in the academic

and administrative spheres. It is quite natural for a Chancellor feel shocked at the state of affairs in the universities and if a Chancellor chooses to exercise his power for improvement a fault can be found with it. However, he has to realize that problems created by systemic failure are complex and difficult to tackle and can be done only by introducing necessary changes in the system itself which requires study of the problem by experts and their recommendations for improvement. Problems of such magnitude and complexities do not permit short cuts or quick fixes.

- The present Chancellor does not seem to realize this and seems to believe that by deputing a personal appointee to raid colleges undermining the prestige of teachers and Vice Chancellors and creating an atmosphere of terror the health of higher education can be restored. This approach may be effective in private institutions run as business where the head of the Organization is free to hire and fire and to be a law unto himself, but is not permissible in dealing with the universities which have to be managed according to the Act/Acts governing them. Private institutions are like a business Organisation established for the Limited goal of producing employable young men after charging high fees and making as much profit as possible. Universities nowhere share this limited goal and cannot and should not be run like a business.

- Adopting the approach prevalent in private institutions run for profit as business, the Chancellor has appointed one Shri Krishna Kumar as an Officer On Special Duty (OSD) who conducts sudden raids on the Colleges, calls Vice Chancellors and other officers directly and recommends action. It has created an atmosphere of fear, and bred resentment and anger born of humiliation in the teaching community. However, what is most objectionable is the utter contempt shown by the Chancellor for the

Law governing the universities of the state. The Chancellor has no power under the Patna University Act, 1976/The Bihar Universities Act, 1976 to appoint an OSD, an OSD is not an officer of the University as it (i.e. OSD) does not figure in the list of the officers mentioned in the Acts and the Chancellor has no power to send an outsider (that the OSD is) to conduct surprise inspection (i.e. raids) of the colleges and directly interact with the teachers of the university. Shri Krishna Kumar surprise inspection to the colleges are not justified because the Act specifically provides that 'the Chancellor shall, in every case, inform the Vice Chancellor of his intention to inspect or inquire or to get the inspection or inquiry conducted and the University shall be entitled to represent there at. The Act further provides that "the Chancellor may send the results of such inspection or enquiry to the Vice Chancellor and the Vice Chancellor shall communicate the views of the Chancellor to the Syndicate and the Academic Council". It is clear that the inspecting officer even if lawfully appointed by the Chancellor, has to submit his report to the Chancellor and has no right to communicate directly with the Vice Chancellor, the teachers or anyone else of the university.

- Under the Act, the Vice Chancellor is the chief executive officer of the University and has the responsibility to run the university. The Chancellor has no power to interfere with the day to day working of the University. There is no diarchy.

- The Chancellor has been playing havoc with the laws of the universities and has caused immeasurable damage to the system in his zeal to set things right. He has been administering medicines more harmful than the disease itself. Since there is no remedy against the Chancellor, the teachers and many others in the

universities have been seething helplessly with impotent anger which has found expression through occasional outbursts. Prof N K Choudhary has dared and has been made to pay for it.

Recommendation

1. The suspension order against Prof N K Choudhary should be revoked and notified immediately.

2. Under the Patna University Act, the Vice Chancellor is the chief executive officer and the Chancellor the appellate authority. The Chancellor has no power to intervene in the day to day administration of the University and he should not act like the Big Brother watching and avoid dragging the high office of the Chancellor into unsavory controversy.

3. The Chancellor should stop the OSD from interacting with the officers, teachers and other employees of the University.

4. In view of the enormity of the problem plaguing the universities, the State Government should constitute a body of experts to recommend measures to restore the health of the universities. The body should elicit the opinion of all concerned with universities.

5. The atmosphere of fear should be replaced by atmosphere of freedom with due accountability.

Dr Prabhakar Sinha, National Vice President, PUCL; Nageshwar Prasad, State General Secretary, PUCL; Ramchandra Lal Das, Former President, PUCL; Dr Arvind Kumar Sinha, Member of the Executive, PUCL

Foot Note

The Chancellor called scores of candidates for interview for selection for the post of Vice Chancellor. By this single act he has betrayed his gross ignorance of the principle and practice followed by Universities and also of awareness of the prestige of the office of the Vice Chancellor. The Vice Chancellors have been appointed following an interview, and the prestigious office of the Vice Chancellor has been further degraded.

□

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Press Release:

Violent Clashes between Political Groups Regretted

“Newspaper reports about violence at the CPM Headquarters in Delhi involving the members of the CPM and RSS and the BJP activists on March 9 are disturbing. It is said to be the spill over of the ongoing violent clashes between these two groups in Kerala. The

seriousness lies in the fact that in the clash in Delhi national level leaders were also on the scene on both sides. Whereas the facts of the case are under investigation, what matters more is that the clash should not spread to more cities and towns.

“The PUCL appeals to the cadres and members of both sides not to resort to violence. The democratic way of respecting the civil liberties of all should be practised.” – **Y P Chhibbar**, Ph D, General Secretary, March 10, 2008 □

Jharkhand PUCL:

PUCL Team attacked by Nagrik Suraksha Samiti

The fascist act of the private army named as *Nagrik Suraksha Samiti* (NSS), supported by the police administration has raised its shameful face once again by attacking the PUCL investigation team on February 17, 2008 at Duria Block, East Singhbhum. The 13 member PUCL team along with 7 media person was moving to village Bhitir Amda to investigate a case of killing of 7 Maoists on 14-16 February, 2008. on the way a handful person (36 to be exact), led by the NSS and Dhanai Kisku and Shankar Hembrum along with their bodyguards in uniform, and with the support from the local police, obstructed the advancement of the team at Dumuria at about 12.30 pm. They were shouting slogans like “PUCL *Murdabad, Manav Adhikaar Murdabad, Thaaneedar* Manoj Gupta *Zindabad*, etc. The team

went to the nearby Dumuria PS about 200 meters away, to report this pre-planned and illegal restraining of the PUCL team. When it was found that the local police were hesitating to take any action, the team leader Shri S Bhattacharjee, President Jharkhand State PUCL, reported the matter to the Superintendent of Police Shri Navin Kumar Singh on phone. He directed the local police to provide protection force to the team, only then the team could visit the village. However, in the meantime the 3 vehicles of the team that had remained unattended, were damaged and their tyres flattened by the hooligans of the NSS accompanied by Dhanai Kisku and Shankar Hembrum. They also forcibly snatched away the digital camera of a PUCL member of the team, Shri Kailash Kumar Shaw,

and badly beat him up causing serious injury, in the presence of the local police personal. They also stole a car-stereo from a Maruti van. The PUCL team arranged for the treatment of Shri Shaw, prepared an injury report on the spot, and lodged and FIR against the NSS, Dhanai Kisku, Shankar Hembrum, and Kaliash Chandra Hembrum.

It is to be mentioned here that no independent enquiry against killings in fake encounters by the police and private army, promoted by the police administration, is possible if a large number of police personal are present on the spot.

The PUCL condemns this barbarous act of violence against the investigating team and the acts of theft and obstruction. It was an ill-conceived design to prevent the PUCL team from investigating the truth of the killings. – **S R Nag**, General Secretary, PUCL Jamshedpur. □

Gujarat PUCL:

To, Shri Narendrabhai Modi, Chief Minister, Gujarat State Sachivalaya, Gandhinagar, Shri Narendrabhai.

Namaskar.

The incident of Patan Women's PTC College is a matter of big shame for us. We expect that the victim girl of Patan gets Justice, the culprits be given exemplary punishments and a permanent security be established in all educational institutes. PUCL, Gujarat put forward the following demands to ensure justice to the victim:

J&K PUCL:

Copy of the Letter

• Inquiry of the entire incident be handed over to CBI

• “Sexual Harassment Monitoring Committee” be formed in all colleges and public institutes according to the Supreme Court Judgement. Activate State Human Rights Commission by doing required recruitments.

It is the total responsibility of the government to create an atmosphere so that the victims lead a graceful life. Ensure everybody that the State government's policy is to protect girl students from sexual exploitation. It is

also the responsibility of the state government to ensure an atmosphere of social security to the victims. It is necessary that the government obeys *Rajdharm* instead of politics and behave like civil society.

We hope that you will take immediate and proper decision. – Thanking You, **J S Bandukwala**, President; **Prakash N Shah**, Working President; **Gautam Thaker**, General Secretary, PUCL, Gujarat Branch, February 14, 2008 □

Press Statements

1

Balraj Puri, Convenor PUCL J&K State, has condemned the IED blast in Jahangir Chowk, Srinagar in which 22 civilians have been injured. He appealed to the militants to avoid such blast in crowded areas and avoid killing unarmed and innocent civilians.

He also urged the government to hold enquiry into allegation of members of Kashmir Bar Association that they were attacked by a civilian crowd outside Kot Bhalwal jail.
– **Balraj Puri**

2

Balraj Puri, Convenor People's Union for Civil Liberties J&K State, has been informed by the State Human Rights Commission that his concern over continued detention of foreign nationals who inadvertently crossed the border and had completed their term of detention, was well founded and was on humanitarian grounds. The Commission has directed the Chief Secretary to get the list of such detainees examined and comply with the rule of law. They should be released or deported, it added. For, it held that detaining a person without following a due procedure

of law would offend the Article 21 of the constitution.

Puri had made this representation vide his letter dated 28.1.2005 which has now been disposed off. As a part of his campaign for deporting detainees, who innocently crossed the border on either side, he was in touch with Human Rights activists in Pakistan and had also raised the issue with Indian authorities at political level. In this context, he welcomed release of Kashmir Singh after spending 35 years in a Pakistani jail and hoped that clemency to Sarbjit and his return to India would follow. – **Balraj Puri**, 20.03.2008 □

How to use Right to Information Act?

Prabhakar Sinha

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Organisational Queries

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

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

the aims and objects of the PUCL. The PUCL does not issue any identity cards to its members as they are not supposed to take initiative independently. – Y P Chhibbar, General Secretary □

Prabhakar Sinha Writes to Bihar Chief Minister:

Pension for Incarceration during JP Led Movements in Bihar

Dear *Mukhya Mantriji*,

The news regarding your government's proposal to give pension to those who suffered incarceration during JP led Bihar movement and the emergency has pleased the few who went to jail, but has wounded the feelings of the multitude who were not arrested but without whose active and vigorous participation the movement would have failed. It has also angered a few like me (who were detained under MISA and D.I.R. and would benefit from the scheme) who consider the whole thing a cynical exercise to create a band of supporters at the cost of national interest. Though the scheme of pension for the freedom fighters was introduced by Smt. Indira Gandhi purely for political gain, the freedom fighters at least had the distinction of fighting for the country's independence which was the common shared goal of almost all Indians. The 1974 Bihar movement, despite its lofty goal, was partisan as it by its very nature had to exclude the Congress – the ruling party. No government in Gujarat thought of such a scheme for the participants in the *Nav Nirman* movement, which was, to a great extent, responsible for inspiring the movement in Bihar.

By implementing this scheme, you would be responsible for creating precedence for all political

parties to squander public money to reward their followers who had gone to jail in course of some agitation and to recruit mercenary agitators by dangling before them the prospect of the undeserved pension. And some other benefit.

Though opposing the Emergency was different in so far as it was a national cause and those who fought against it deserve respect, giving them a pension is dishonouring their commitment to the nation and the spirit of self sacrifice which inspired their laudable action. In fact, those who struggled for restoration of democracy without self interest felt deeply humiliated to watch all of you hoisting V. P. Singh (a staunch supporter of the Emergency and a Sanjay Gandhi courtier) on your shoulders to capture power at the centre. How can the people who have been courting the confirmed enemies of democracy talk of honouring those who fought for the restoration of democracy? In Europe, even 63 years after the fall of the Nazis in Germany, a person with a Nazi background is not acceptable nor is one allowed to deny the holocaust. I am not suggesting a vendetta against anyone, but do hang my head in shame when reminded of the marriage of convenience between V P Singh & Co and politicians born of JP movement. With such an unsavoury past your government's

decision to reward anyone for opposing the emergency would be like adding insult to injury.

Besides, our constitution guarantees equality before law and equal protection of law to every citizen and prohibits discrimination against him for political belief or action. Indira Gandhi could succeed punishing her opponents because she had suspended the fundamental rights including the right to move the appropriate Court for their enforcement. Fortunately, the people are not helpless against the cynical move today, as they were against Indira Gandhi's sinister design in 1975. I take the move as an insult to our patriotism, which inspired us to oppose the emergency regardless of personal consequences, and would certainly fight to stop the sinister move to create two classes of citizens as was done by the authoritarian Indira Gandhi. She punished those who dared to oppose her to perpetuate her power; you are trying to reward a few of them for the same reason.

Please drop this anti-democratic move in the national interest. The heart of the people should be won by good work. Yours sincerely. – **Prabhakar Sinha**, Nepali Kothi, Club Road, Muzaffarpur, Bihar – 842002; Email: prabhakar1938@yahoo.co.in, January 27, 2008 □

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The recipients of the Award include Swami Agnivesh, Ms Teesta Setalvad, Mr Harsh Mander, Dr H Sudarshan, Justice V M Tarkunde, Ms Medha Patkar, Justice V R Krishna Iyer, Mr Ravi Nair, Smt Malladi Subbamma, Mr Balraj Puri, Dr C T Kurien and *People's Union for Civil Liberties*.

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