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**Kannabiran's Letter:**

**Members of the Bar**

Dear Members of the Bar,

I am currently embarking on what may superficially appear as an unpopular cause. I learn you have passed a resolution not to defend the SIMI students in courts. The decision not to defend them is our own understanding of the profession. This understanding of the profession springs out of our use of this profession as a means of livelihood, for the successful for aggrandizement for over long periods of time. We have inherited the adversarial system, which, if harnessed properly may enable us to lay bare the facts leading to the crime. But the profession believes in success and the adversarial system gets the better of us and the fight within courts has always been a fight sans values, and therefore, sans justice. We are today afraid of the monstrous professional system and the members' diabolic skills which may let loose unconvicted criminals on the society by a quixotic verdict is our collective fright. Such resolutions denying legal services express the rage of the profession at the distortions the successful members have over a century and more have introduced which unfortunately defines the character of the profession. It is like Caliban's rage looking at his image in the mirror. I think we should think out things clearly and see if we can reform the profession and our own professional attitudes- even our human attitudes towards what administration of justice means. As Sir C K Allen points out in his Aspects of Justice "When we hear of atrocity and angrily demand retribution for it, there is often at the back of our minds a fear that what has happened to the victim might happen to us or ours...We revolt from it as from something not only ugly but menacing. It is not so much indignation as terror which is spread like those of Jack the Ripper or the Radcliffe Highway murderer."

First, we must recognize the fact that ours is a plural society where minorities have also a right to live and have claims to equality of status. If you think about it a little you will realize that we have never conceded the rights of minorities to equal treatment. Not because we would not like to but we have not been told about it and we look upon them as our competitors. The incompetent management of the society has been responsible for such ugly distortions. While it may be true that some among them may be even Islamic terrorists it would be wrong to kill them for that reason or to deny them access to justice. Every citizen in this country is entitled to access to justice and a fair trial. We have been notorious for suspending Rule of Law partially. This partial functioning of Rule of Law sought against this and we as advocates should not be party to it. You may say that terrorist does not believe in Rule of Law. But we do and when such situations crop up it is our beliefs and values that are questioned and our (on page 19...)

## Copy of the Letter to Bar Council and Bar Association\*: Right to Counsel

Dear friend,

You might have noticed that of late a highly questionable practice is emerging: Bar Associations of Districts pass a resolution that the members of the Bar will not appear for the accused of such and such an Act. (For example the Bar Association of Dhar District Court in Madhya Pradesh has passed such a resolution in case of alleged activists of SIMI). Similarly some Bar Associations have passed such resolutions in UP concerning some other cases.

We are of the opinion that such resolutions of various Bar

Associations are legally untenable. Every citizen of India has a right to counsel and fair trial. How can a legal body prejudge an accused? All such Bar Associations need to be addressed that it is the judiciary that has to judge whether a person is guilty of the crime in question.

We urge you to take steps to see that people are not deprived of the right to defense. Had no lawyer come forward, Haneef would have been convicted in Australia and Geelani in India.

We have sent a letter to the Bar Association of Dhar, Madhya Pradesh in this connection. I am

attaching a copy of the same for your information also. Warm regards, Sincerely yours. – Y P Chhibbar, Ph D, General Secretary, April 15 2008 (Encl.: Kannabiran's Letter: see Editorial.)

\*1. Bar Association of India, 93, Lawyers Chamber, Supreme Court of India, New Delhi-110001

2. All India Bar Association, DS-423/424, New Rajinder Nagar, New Delhi - 110060

3. Bar Council of India, Bar Council Bhawan, 21, Rouse Avenue, Institutional Area, New Delhi 110002 ☐

## Letter to Chief Justice of India on PILs

Justice Shri K G Balakrishnan  
Chief Justice of India  
Supreme Court  
Bhagwan Das Road  
Delhi 110001.

Sir,

I have seen reports in the newspapers about PILs. Your Honour, along with Justice RV Raveendran, called for a proper study on the effects of the orders of the courts on PILs.

We would like to draw the attention of the Apex Court and others that one such study, authored by Sangeeta Ahuja: *People, law and Justice*, in 2 volumes, was published in 1997 Orient Longman. It has contributions by S P Sathe and S Murlidhar also. Shri S Murlidhar is presently a judge of the Delhi High Court. The book emerged as a response to a need to make the judicial process more accessible to the disadvantaged sections of society.

We would like to underline the need for some mechanism to see that the orders of the courts are followed / implemented. Two examples would suffice to clarify the point: The Punjab and Haryana High Court ruled in 1998 on a

petition of Punjab State PUCL that all implements of torture in police stations, CIA staff offices, Interrogation Centres, Police posts, etc., should be removed forthwith in the areas of Punjab, UT of Chandigarh, and Haryana. The Judgement was brought to the notice of the NHRC also by the under signed. Similarly the Mumbai High Court approved a detailed scheme for Health and safety of the sewerage workers on a petition by the Mumbai PUCL and another. This, again, was brought to the notice of the NHRC. There are many other judgements that should be the subject of follow up studies. This can be done better if some mechanism is put in place by the Apex Court.

PIL is essentially an integral part of poverty jurisprudence of the Supreme Court of India. It has, alas, been very effectively hijacked by vested interests to break the efforts of the suffering people to improve their conditions. The expression *judicial activism* has been coined for court forays into Executive or Legislative preserves. If PIL has to be reined in, the Court will have to define judicial activism. Every action invoking the judicial

process is a request for judicial action. Reservations were always questioned by PIL and the government was compelled to defend the policy it formulated.

We suggest that going by the original intentions the PILs should be considered an effective instrument in the following fields:

- Issues concerning socially and economically deprived sections and issues of social and economic justice;
- Issues of political justice with reference to free speech, association, and assembly;
- Matters arising under Articles 17, 23, and 24;
- Matters of collective violence against minorities, women, and *Dalits*;
- Deprivation of rights while seeking to enforce the fundamental obligations of the State;
- In respect of unremunerated categories of people who are deprived of equal opportunity and equal treatment
- Environmental issue which do not deprive rights of forest dwellers and tribes;
- Large scale dispossession and displacement (*on next page...*)

## Gujarat PUCL:

### Police Atrocities on Adivasis

The Chairman  
National Commission of  
Schedule Tribes  
New Delhi  
Camp: Ahmedabad  
Sir,

**Subject: On Police Atrocities  
on Adivasis in Atarsumba  
(Vijaynagar, Sabarkantha):  
Report of Fact finding Team**

The incident of police firing on Adivasis in Atarsumba village of Vijaynagar which resulted in death of two tribals and injury due to the police firing and the arrest of the six tribals is a matter of great concern for all of us. The People's Union for Civil Liberties (PUCL) sent a five member Fact Finding Team led by well known Social Scientist Dr **Ghanshyambhai Shah**, the team visited places like Atarsumba, Vajepur Nursery, Abhapur, Polo Forest, Mandhai, Jadi Semal Vajepur Primary School, Atarsumba Ashram Range Forest Office and Team also interviewed the Family Sanjabhai, who died in police firing, people who were arrested by the police and later released on bail, Eye witness of the incident, Local leaders etc. The other members of the team: Vipul Panday, Dimpleben Rawal, Dinker Pandya & Bhavik Raja.

Now the PUCL came out with detailed report which is enclosed herewith. It is a clear cut violation of human rights and Adivasis are under fear and shock due to police atrocities.

#### PUCL Demands

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.

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 13<sup>th</sup> 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?

3. While arresting the accused the police 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.

4. The Government should immediately pay compensation of ten lakhs to the deceased families and five lakhs to the injured.

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

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 Sanands within the next three months. All the Adivasi cultivators should also be provided simultaneously necessary inputs so that their agriculture becomes sustainable. No eviction of the Adivasi cultivators should take place. The officers responsible for harassing the tribals and violating the later and spirit of the Act should be punished:

Sir, we hope that you will consider our view point and give appropriate advice to the Government of India / Gujarat.

Thanking you, Yours Sincerely. –  
**Gautam Thaker**, General  
Secretary, PUCL Gujarat, 7 March  
2008 ☐

(from previous page...) of people on account of and in the name of development, such as major irrigation projects and arbitrary creation of special economic zones. It includes urban eviction, displacement of the urban poor in the name of developing the city.

In the end we would like to emphasise that PIL is an important instrument of opening the doors of Justice to the deprived sections. Judiciary has powers to check its misuse without partially closing its doors. With warm regards. Sincerely yours. – **Y P Chhibbar**, Ph D, General Secretary, PUCL, April 15, 2008 ☐

### 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 ☐

## T N & Puduchery PUCL:

### Violence against *Dalits* in Salarapatti Village in Coimbatore

PUCL, Tamil Nadu-Puduchery constituted a Fact Finding Team, headed by Dr N. Markandan, Former Vice Chancellor, Gandhigram University, Tamil Nadu with the following as its members, to enquire into the facts relating to incidents that occurred in Salarapatti Village, Udumalpet Taluk, Coimbatore District, recently and to release a fact based Citizen's Report about the incidents.

The members of the FFT met members of the affected communities, and all others involved and were informed about the incidents. The members also met the officials and others concerned in dealing with the situation.

The aim of the Fact Finding Team was also to bring about an objective and impartial assessment of the extent of damages, psychological and material, on either side and to come with recommendations to help avoid such incidents in future. The FFT also explored ways of addressing anxieties of different affected groups so as to bring about a lasting peace in the area.

**The Members of the FFT:** 1. Dr N. Markandan, Former Vice Chancellor, Gandhigram University, Tamil Nadu; 2. Mr M. Mohammed Abu Backer, Advocate, Coordinator, PUCL, Coimbatore; 3. Mr Pon. Chandran, Retired Bank Manager, Joint Coordinator, PUCL, Coimbatore; 4. Mr R. Murugavel, Advocate, PUCL, Coimbatore; 5. Mr Chandra Kumar, Trade Unionist, PUCL, Coimbatore; 6. Mr Mohammed Iqbal, Entrepreneur, PUCL, Coimbatore; 7. Ms. K. Thanalakshmi, Educationist & Counselor, PUCL, Coimbatore; 8. Mr Kalaiarasan, Advocate, Coimbatore; 9. Mr Elango, Advocate, Pollachi.

**The Locale:** Salarapatti is a village about 5 km away from Udumalpet under Pappankulam *Panchayat* in the jurisdiction of Komaramalingam Police Station limit. The village has about 520 households, of which over 400 households are of Vanniars, about 80 are of Arundathiars, and the rest are of other communities like Chettiars, Pariyars, Naavidar etc. Agriculture is the primary activity of the village, and a large section of Vanniars are landless and the rest with small land holdings. The largest land owner, who owns about 20 acres is an absentee landlord and is the Principal of a local college, whereas the entire Arundadhiar community belongs to the landless labourers. The village has seven provision stores (one run by a Nadaar and the rest by Vanniars), and a ration shop in the midst of Vanniar area. The Village also has 11 tea stalls, of which two belongs to Chettiars and the rest owned by Vanniars. There is a Government primary school, situated in the Vanniar area, with 200 students. The Primary Health Centre is situated in Pappankulam village, which is 3 kms away. There are three elected ward representatives for the Panchayat (headed by P K Palanichamy Gounder from Pappankulam) from the Village. The three elected ward members are Saraswathi from Arundadhiar community and Sadayappan and Jothimani from among the Vanniars).

**Recounting of the events in the immediate past:** During the first week of February 2008, several people visited Salarapatti to attend to a funeral of an Arundadhiar (Lakshmi) in the village. A couple of them, including one Ayakudi Ramakrishnan, went to a local tea shop, owned by Ramakrishna Padayatchi, (a Vanniayar) and were seated on a wooden plank, adjacent to the

shop, while the tea was served to them. After the tea was served, when their caste identity was assumed from their conversation, the owner of the tea stall, furiously dismantled the wooden plank and disengaged it from further use by "others".

This action kindled the self respect of the *dalits* and resulted in a deliberation among themselves in the village and consequently they lodged a complaint, signed by 80 persons from the village, with the local police station on 7<sup>th</sup> Feb 2008. Consequently, a peace meeting, initiated by the DSP (Mr Easwaran) and the Tahsildar (Mr Chandrabose) was convened, attended by both the sections, and it was resolved to do away with the "two-tumbler" system forthwith.

Although the Vanniars agreed in the meeting not to show any discrimination while serving tea in their stalls, it seems that, thereafter, they collectively decided to close down their tea stalls, instead of throwing it open to the *dalits*. A Chettiar (Krishnasamy Chettiar) who dared to open his tea stall was made to close his stall forcibly.

The tea stalls remain closed ever since 7<sup>th</sup> Feb and it seems that the Vanniars also declared social boycott of *dalits* and refrained from engaging them for any job in their fields and selling anything to the *dalits* from their provision stores. This agitated the *dalits* and led to a demonstration on 18.2.2008, in the morning, by a section of Arundadhiars in the Village and a few from other area held under the banner of *Adi Thamizhar Peravai*.

The public demonstration demanded the following:

a) *To do away with the caste-apartheid "two-tumbler" system and to reopen the tea stalls immediately.*

b) *The Community Hall, (constructed under the grant from the local MP's Fund), to be made available for the use of all communities, including the Arundadhians.*

c) *To permit entry of Dalits into the Chinnandavar temple.*

d) *To withdraw the social boycott.*

The demonstrators submitted a memorandum to the Tahsildar (Mr. Chandrabose), who had agreed to convene yet another peace meeting shortly and sort out all the issues, except perhaps that of the Temple entry, as the temple was founded as a community temple, on a private land, exclusively for Vanniars. The *dalits* agreed not to insist on the temple entry, while prevailing upon the authorities to implement the other issues amicably. The demonstrators returned to the village peacefully.

Among those who had returned, two of them (Veerasamy and Murugan from Kudimangalam village) passed through the village, on their way to an adjacent village. They were intercepted by the locals near the temple and were beaten up, by using *lathis* and other lethal weapons. Following this, a mob of Vanniars of over 300 – 400 (many of them from Kiluvangad had come to attend the “ear ring” festival of Subbu Kannu assembled at the Village Community Hall) entered the *Dalit* colony and stoned the houses and the people inside. They also wielded *lathis* on the *dalits*, who were taken totally unaware and were just settling for their lunch. All these vandalism, physical assault with the intent of causing grievous injury and caste prejudices were perpetrated by the mob in the presence of the Police force, from Komaralingam Police Station, who were posted in the village for *bandobust*.

The mob had ransacked many households of the *dalits* and damaged the roof tiles of 16 houses. Two of the huts were

found burnt. Fifteen Arundadhians and two Vanniars were found assaulted and hospitalized, which included a five year old Vignesh and 73 year old lady Velammal, whose back was broken. Two of the Vanniars who were hospitalized had got discharged, when the FFT visited them in the hospital on 22.2.2008.

**Besides the affected persons on both the sides, the FFT met the following:**

1. The Local Village Officer.
2. DSP Mr Jeyapandian, who was in charge of the *bandobust*, post incident (in the village).
3. Mr Easwaran, DSP, Udumalpet.
4. Mr Chandrabose, Tahsildar.
5. Dr Niraj Mittal, District Collector.

**Our findings:**

1. Although the village was simmering with the unrest among the *dalits* against the caste apartheid perpetrated against them, particularly against the prevalence of “two-tumbler” system in the village, the revenue and police authorities blatantly deny the existence of the two-tumbler system. (Mr Easwaran, DSP and Mr Chandrabose, the Tahsildar, categorically denied the prevalence of two-tumbler system during the FFT’s interaction with them).

2. The village tea shops were practicing the use of separate glass tumblers since long. Prior to 1999 tea was served in the tea shops in two tumblers (Steel tumbler for the dominant caste and glass tumblers for the *dalits*. *Dalits* had to wash their glass tumblers after use. They were also not allowed to be seated on par with the dominant caste in the teas shops). Denial of the prevalence of such caste discrimination in the village is against the documented evidence. The then DSP of Udumalpet Mr M. Kuppasamy and the RDO of Pollachi had signed a ‘Peace Treaty’ on 10.2.1999 between the “Adi Dravidars” and

“Padayaatchi” community of Salarapatti. (A copy of which is enclosed). Subsequent to this, two tumbler system was modified by serving tea in disposable glasses for *dalits* and in steel glasses for the dominant castes. *Dalits* are not entertained even in barber shops run by local “Naavidhars”. *Dalits* are constrained to play drums in the local festivals without any fee in return. Whereas, Naadaswaram and Thavil artists hired for village festivals were paid for their services.

3. Denial of such blatant reality, by the authorities concerned, has resulted in their indifference in handling the situation effectively and for protecting the human rights.

4. The police force that was posted in the village stood as silent spectators (as they claim that they were overwhelmed by the mob). In fact it is alleged that the police, at times even lent their support to the mob fury, by allowing their *lathis* to be used by the dominant caste hooligans.

5. There is no evidence of use of any force by the police to quell the violence, which occurred in their presence. This tantamount to police abetting the dominant caste’s mob violence.

6. The allegation by the dominant caste that they were constrained to violently check the forceful entry of *dalits* into Chinna Andavar temple, breaking open the gate, is totally unfounded, and is just an alibi for their mob violence. (In fact the DSP in charge of *bandobust* now, Mr Jeyapandian clarified that it was just a rumour and it could never have been attempted in the midst of the strong police patrol posted in the village then).

7. The District Collector has ordered for opening a temporary Fair Price Shop outlet in the area of the *Dalits* to ensure distribution of provisions for *dalits*. The Collector has also ordered for employment under “Food for Work”

programme to the *dalits* in the area, who have been ostracized by the dominant caste landlords in the nearby villages. While we appreciate the steps initiated by the Collector in this regard, it only tantamount to conceding the prevalence of social ostracisation of the *dalits* in the village. During FFT's interaction with the Collector, the Collector neither denied nor conceded the prevalence of *untouchability* practiced in Salarapatti. However, he welcomed to look into the findings of the FFT, as it comes from an independent agency, and initiate appropriate action, provided our findings are objective and substantiated. He also added that *"if there was no untouchability, no PCR cases would be there; then, the question is what the District Administration or Government has done, if untouchability is reported"*. The FFT left the Collector's chambers wondering: what is the prognosis of the District Administration about the situation at Salarapatti.

8. *Dalit* students in the village are afraid of attending the school, situated in the upper caste area, owing to the threatened physical assault on them by "others". When a mob had visited the school on the fateful day and demanded release of *dalit* students, the Head Master 'persuaded' the "mob" not to create any trouble in the school and advised the mob to 'keep their activity, outside the school'. The school was later disbursed in hurry and the *dalit* children had to avoid the main thoroughfare of the village and tread through the fields and returned home late in the night. (It is heartening to note that it was one elderly Vanniar who forewarned the *dalit* students not to use the main pathway while returning to their home). Chinna Karuppusamy, working in Amaravathi Sugars, reported to the FFT that his son Sethu Harikrishnan was beaten by a dominant-caste Hindu fellow, while

returning from the school. The boy is mortally terrified and the very thought of going to school for him is nightmarish and hence refuses to go to school. Despite the Police bandobust the parents are reluctant to send their children to school, as they are not sure whether their wards will be safe in the school or while traveling through the dominant caste pathway back and forth to the school. (The DSP in charge of the bandobust conceded this and assured to engage the Head Master and other teachers in the school, along with the police personnel, to reassure the parents of the *dalit* children and to persuade them to send their children for school).

9. The caste violence has created a sense of eternal insecurity among the *dalits* in the village (perhaps this was the intended design). Chinna Karuppusamy, who escorted and helped a Vanniar for getting medical assistance at Puttaparthi Hospital, feels terribly disillusioned and disgusted and wants to quit the village now. Many of them have left the village, hopefully temporarily, and the people available in the village are demanding for exclusive public amenities like Community hall, Ration Shop, School etc for the community. (The FFT found more than 70-80% of the *Dalit* houses locked during their visit to the village).

10. Among the injured and hospitalized 15 are *dalits*, including three women (one Velammal 73 years old) and a child of 5 yrs (Vignesh). Two are from Vanniars.

11. Three FIRs have been filed in this regard. Two (FIR 24/08, 26/08) against the dominant Caste invoking Sections 147, 148, 324, and 307 under IPC and Section 3(1)(x) under SC/ST Act. It is strange that the police have not invoked the sections under SC/ST (Prevention of Atrocities) Act, which deals with the destruction

caused to the properties with caste prejudice. No FIR has been filed in connection with the destruction to the *dalit* properties. The Police must have initiated this *suo moto*. FIR 25/08 is filed against the *Dalits*. It is also strange that the police have invoked the same clauses against both groups under IPC. A section which engineered a premeditated assault on men, women (young and old) and children and a section which has acted only in self defense.

#### **Conclusions and Recommendations:**

1. The local authorities, who were suppose to know the prevalence of caste apartheid in the village, have ignored the prevalence of untouchability, particularly the prevalence of "two-tumbler" system in the tea-shops and have behaved indifferently. Instead of addressing the core issue of untouchability, legally and socially, they have portrayed the issue as a mere law and order problem, that was caused by two "miscreants" (two "outsiders") attempting to break open the temple gate and the villagers' retaliation to their action. The authorities concerned should remove the DSP and Tahsildar from the area and initiate domestic enquiry against them for not initiating appropriate actions against those who perpetrated caste discrimination against *dalits*.

2. The authorities deny the prevalence of untouchability in the village, as *"they have not received any complaint of discrimination"*. Therefore, the state government must instruct all the authorities, particularly the PCR monitoring / implementing authorities, to advise the status of caste apartheid in the public domain, in their area of operation, and report to the State government, without any prejudice. The authorities concerned must be sacked and criminally prosecuted, if the prevalence of caste apartheid in the public domain is found, any

time after the submission of their "nil" report.

3. Departmental action should be initiated against the police authorities in charge of Komaralingam police station, particularly against the Inspector Palani Muthu, and the Sub-Inspector Chitradevi for using abusive language demeaning the *dalits* and for abetting violence by the dominant caste against the *dalits*. (At the same time, one of the victims among the *dalits*, who has suffered cut injury acknowledged that but for the timely intervention of Chitradevi it could have been fatal.)

4. The villagers must be warned against social ostracisation and criminal action must be initiated against those who have engineered it. (It is found that Eswaran S/o Palanichamy, Sundarasamy S/o Ayyasamy, and Aruchamy S/o Kandasamy Gounder are the three who mainly have alleged to have instigated the Vanniars to perpetrate the social ostracisation and were responsible for instigating violent action against *dalits*. It seems that they are at large, fearing arrest and action by the police). The authorities, *suo moto*, should file case(s) against those responsible for the above, under SC/ST (Prevention of Atrocities Act).

5. The State Government should appoint Commission of Socially Concerned individuals, men and women, representing all sections, for study of the prevalence of caste apartheid in the state as a whole, particularly in the Kongu *mandalam*, and implement their specific recommendations to eliminate untouchability, from the public domain socially and culturally.

6. The extent of damage which should include loss of material, loss of opportunities (like the loss of job etc) and the psychological damages need to be assessed by an independent authority and the compensation thereof to be

awarded at the earliest. The Police should file a case *suo moto* and initiate action against those responsible for the damages.

#### **General Recommendations:**

1. Justice must be rendered to the *dalits* by eliminating the two tumbler system and ensuring public use of the Community hall by all the communities without any discrimination or favour. The authorities should do their best with the involvement of social groups to create a conducive atmosphere for the return of all those who have deserted the village.

2. The Head Master and teachers must be strictly warned against any discrimination shown against the *dalit* children by their words or deeds. The government, particularly the Education department, should initiate steps to sensitise the teaching staff of all schools, particularly in villages against caste apartheid and eliminate the caste prejudices from the minds of the children. Government/ Education Department must initiate stringent action, including dismissal from service, against those teachers who preach or practice untouchability in schools.

3. *Dalit* colonies should be provided with separate Ration shops, wherever feasible, to preempt any move by the dominant castes to deny access to their (*dalits*) basic necessities during such crisis situations.

4. The access to Community Halls built in all villages/*panchayats* to be reviewed and it must be ensured that there is no social discrimination in using the Community Halls. Control of Community Halls must be vested with the Executive Officers/BDOs of the *Panchayats*. (In the instant case it was found that the key and the control of the Community Hall was with Vandikaran Kanagaran, a representative of the dominant caste).

5. It is said that, whenever a case under SC/ST (Prevention of Atrocities) Act is referred to the police, they register cases against "both" the parties and thus harass the *dalits* who resort to the police for redressal of their grievances. A review of such cases must be made to expel this misgiving among the general public.

6. The local authorities, with the involvement of all sections in the village, and human rights activists, should initiate a genuine peace initiative and hold a trust building meeting in the very Community Hall, and serve snacks and tea, to help to ease the tension, and facilitate socialization among all sections of the people for a lasting peace.

7. The State Government must ensure posting of police personnel from *Dalit* Community, particularly in rural areas, in proportion to the population, to obviate misuse of the police machinery against *dalits*.

8. This incident does not seem to be an isolated one. The dominant castes in the '*Kongu Mandalam*', have been resorting to booting down violently, any move by the *dalits* for self assertion and self respect. Similar incidents at Kaalapatti and Kaaracheri are not of a distant past. The 'treatment' meted out to the *dalits* by the dominant castes have a similar design. It is the mobilization of dominant caste men, women and children and unleashing a reign of terror, by methodical violence, economic sanctions and social ostracisation collectively on the entire *dalit* community. It is a sort of "**Collective Punishment**" meted out to the *dalits* by the dominant caste in the area, for being assertive. It is meant to immobilize *dalits*, as a group, psychologically and physically. (Please refer the PUCL's FFT report on Kaalapatti at <http://www.pucl.org/Topics/Dalit-tribal/2004/kalapatti-fact-findings.pdf>).

9. In this context, the movements and organizations, championing the cause of *dalits*, while continuously asserting for their rights, should in the long run, strive to nurture self dignity, self reliance and self development of *dalits*, socially and economically,

independent of the dominant castes.

10. The State Government should retrieve the "*panchami* lands" and distribute them among the *dalits*, besides implementing the scheme of distributing two acres of land to the landless, in a

rapid pace, to facilitate economic empowerment of the rural *dalits*.

**M Mohammed Abu Backer**, Adccocate Coordinator, PUCL-Coimbatore Branch; **Dr N Markandan**, Former Vice Chancellor, Gandhi Gram University, Head of the Fact Finding Team, 27.02.2008

### List of Injured Met by FFT

Name	Father's name	Age	Remarks
Murugan	Subban		Injured in the elbow due to Uruttu Kattai
Chinnan	Mayilan	43	Bruises all over the body – Uruttu Kattai
Veerasamy			<i>Dalit</i> from Kudimangalam, who participated in the demonstration.
Murugan			<i>Dalit</i> from Kudimangalam, who participated in the demonstration.
Masaani	Thiruman	27	Injured due to Uruttu Kattai, stones – Bitten at the back – bitten marks found (seven above and four below)
Anand	Chinnan	32	Injured in the forehead,
Veerasamy			Adi Thamizhar Pervai, Union Secretary. Assaulted by Velukannan, who is also Beaten up and hospitalized.
Ramasamy	Koorman	43	Was beaten by the mob, using the police <i>lathi</i> .
Velammal		73	Stone thown at her back- Back broken
Bhoopathi	Lakshmanan	30	Left hand fractured – Assaulted by Siluvangad Sathi, Sundarasamy, Aruchamy, Krishnasamy, Thirumalaisamy and Kanagaraj.

*PUCL, the largest human rights organisation in India, was founded in 1975 by Jayaprakash Narayan, Acharya Kripalani and other veteran freedom fighters. Justice Tarkunde, Chief Justice Rajindar Sachar, & Prof Rajni Kothari were former National Presidents. Mr K.G. Kannabiran, Sr. Advocate is currently National President. PUCL is one of the Advisory Committee members of the National Human Rights Commission (NHRC), New Delhi* □

## THE WAGES OF IMPUNITY

# Power, Justice, and Human Rights

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## Punished Without Trial

Shradha Baranwal<sup>1</sup>

*"Justice without force is powerless; force without justice is tyrannical."* - Blaise Pascal

It was like a movie trailer in the early eighties where one macho superstar is tied to a car or horse and dragged by the bad man. What a highly emotional situation! But this time dramatic emotions had no place, instead people were horrified. On August 28, 2007 the entire nation watched into a deep horror that three minute video on news channels; showing barbaric torture of a hapless thief in the hands of police and an unforgiving mob. Everybody was taken aback since the incident was beyond imagination of any civilized nation.

20-year-old Salim Ilyas alias Aurangzeb was caught by a mob after allegedly snatching a gold chain from a woman. With both hands and legs tied with a rope, he kept on pleading for mercy before the ruthless crowd. Soon after two policemen came; but instead of rescuing him police joined the crowd. People egged them on as they chained Salim to their motorbike and dragged him along the ground. Within a minute chain snapped and Ilyas was unconscious.<sup>2</sup>

Later on police claimed that the victim fell off the motorbike but they failed to justify the act of forcing a thief to sit on a motorbike with his hands and legs tie<sup>3</sup>. Since the action of the police and public was aired on electronic media which has the strongest appeal, everybody reacted. Both the policemen involved in the incident were dismissed. Activists marched against the incident, but it was not the first and last incident of such kind in the year 2007 or ever before.

Earlier in the year 1994, on December 5, District Magistrate of Gopalganj (Bihar) was lynched down by a mob. Mob mistook him

as the magistrate of Muzaffarpur where the don Chottan Shukla along with his associates, was gunned down.<sup>4</sup>

Year 2007 proved to be pernicious for many suspects of petty offences. Public, in many parts of the country followed self defined standards to punish these alleged offenders. This kind of jungle justice resulted in death of a man after his eyes were plucked out and acid was poured into the eye sockets. His body was pierced with pins, and veins cut down with a sharp weapon. His offence was alleged theft of a mobile, of a fellow villager, which was not even proved and nothing was recovered from him<sup>5</sup>. The whole village remained a mute spectator as if supporting death penalty for the offence, never committed. Even in the IPC, the accused of theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.<sup>6</sup> But as everybody wants speedy disposal of cases, so no police came, no charge-sheet was filed, no formal court presided, and to top it all nobody cared for the virtues called 'Human'. In spite of all this, still we claim that justice has been delivered. Having vigilant citizens should be a matter of honour, an achievement but what an irony! Many are feeling ashamed instead of pride! No doubt that the Cases were disposed of but 'Justice' still remained a question for moot.

### **Mob Justice or Instant Justice**

'Mob justice' is a term used to disguise the impetuous act of public towards an accused. This generally results in excessive torture including beatings to death. In short 'Mob Justice' is a crude

and barbaric way to deal with criminals. It has nothing to do with 'Justice' at all as it does not follow the basic norms of justice.<sup>7</sup>

Not only in India but in other countries too cases<sup>8</sup> relating to mob brutality are often reported. Last year a 17-year-old boy from Inedwe in KwaZulu-Natal, South Africa was hospitalised after he was beaten up brutally and set on fire by the mob for stealing money. In neighbouring Botswana, police in the gold mining town of Selebi Phikwe had to rescue a man from an irate crowd threatening to deal with him.

The problem is global and multi-layered. It is not only restricted towards poor and developing nations, even countries like USA, UK have also experienced it. While sharing his experience, a person from USA mentioned one incident where a teenager due to his poor eyesight, ran into a woman. She, instead of calling police yelled "Rogue! Rogue!" Before police could have come there mob had already beaten him black and blue. It is only after the beating, people discovered that he had poor eye sight which led to the incident.<sup>9</sup>

It refers to a situation where public instead of relying on formal channels for imparting justice, for various reasons; directly deals with the alleged offender. In such cases it is very difficult to frame charges against guilty persons. It is an act which takes us back to the era of pre-civilisation where survival of the fittest was the most legitimate law, ever realised.

There are some very interesting findings so far, which have been overlooked. Till now we have been concerned only with the brutality involved in such kind of

cases. So far we have avoided venturing into some other important areas of concern like why people are desperate enough to take law in their hands, who are the victims, what kind of crimes generally motivate mob to react etc. There are various facts which would give platform to such unnoticed issues.

### **Why Mob Justice?**

Behind every action there is some motivating force. The recent trend of mob justice is an end result of many unrealised promises. Corruption in the government departments, caste and religion factor, and late disposal of cases etc. are some examples which definitely compels people to act on its own. In the recent years on various occasions, the faith of public in formal channels for justice has been lost. On March 31, 2007 around 36,78,043 cases were pending in 21 High Courts and 2,49,56,919 cases were pending in District and Subordinate Courts. Least numbers of pending cases were reported in the Supreme Court calculated as 43, 580.<sup>10</sup> Such huge pendency does not leave any scope for fresh cases. Though chief justice of India has suggested various measures for speedy disposal of cases still, it remains a dream.<sup>11</sup>

Not only the pending cases but corruption in the government departments also distresses public a lot. Very often reports of corruption grab a substantive portion of News Papers. Some of the cases in Chief Minister Nitish Kumar's 'Janata Darbar'<sup>12</sup> included – complaint against police for not lodging FIR of a rape victim, false implication in a wrong case by the police while victim went to lodge FIR, and tempering with records in a murder case by the police etc. After being aware of these facts or having experienced all these themselves, who will go to formal channels for justice?

Another reason for mob justice is silent support by the administration. In many cases police becomes a supporting hand by joining the mob or by remaining mute spectator of the whole incident. Two decades ago in Bhagalpur, police was involved in the case of blinding hard core criminals. Again in the year 2007 news channels showed torture of Salim Ilyas in the hands of police. This kind of action in a way validates the brutal act of irate crowd. This conveys the message that criminals do not deserve humanly treatment and lynching them is no violation of law.

Corruption, pendency of cases, administrative lapses etc. are the outside factors for mob action. But in many cases this happens due to the internal frustration common among the mob itself. As Dr Iftikhar Hussain of Patna college, says, *a growing sense of insecurity often results in incidents of mob violence*. He further says, *"They (mob) take the law into their own hands as they either don't trust the system or just want to vent their frustration. Most of them happen to be restless youth bereft of any opportunity."*<sup>13</sup>

There are some cases where in the guise of mob justice personal revenge was taken. In one of such cases 30-year-old Rakesh Kumar of Patahi village in Sitamarhi district, (Bihar) was assaulted and strangulated to death by the *Sarpanch* and his men, on the charges of alleged theft of temple idols. Later on victim's family claimed that the incident was the result of old enmity.<sup>14</sup> In Kolkata also a person was tortured to death for the alleged theft of a mobile.<sup>15</sup> Later on his family and friends told that it was a case of old enmity.

### **Mob Justice and the Weaker Sections of Society**

This is widely accepted fact that in most of the cases weaker section of the society falls prey to any kind of danger. In such

circumstances the fact that more than 67% of victims were of lower caste, or from tribal community, or from poor families, or minority etc. does not bring any surprise. Most of the time this section is targeted because of its vulnerability towards any kind of risk. Dr Shamshad Hussain says, *"Frustration leads to aggression. The frustration could be due to any number of factors, family, social, or economic. Discharge of aggression is invariably on weaker or neutral objects and the decision is taken on the spur of the moment."*

Though there is a Constitutional guarantee against any kind of discrimination on the grounds of caste, sex and religion etc. it still remains in practice. In many such cases state, instead of taking any action, becomes a supporting hand for the violators of law. The incident of Rajapakar village in Bihar is an apt example of administrative inaction when it comes to the protection of weaker sections of the society. On September 13 2007, ten people from Kureri community (a nomadic community, notified as Schedule Tribe) were lynched for an alleged charge of theft. In Rajapakar incident only one victim survived as villagers left, thinking him dead.<sup>16</sup>

Reports provided very convincingly that the victims could have been protected had the police been concerned enough. Rajapakar police station was barely 2.5 kms. away from the place of incident and it would have taken only five-six minutes to reach the spot. And unlike other village police stations Rajapakar police station is equipped with wireless and other technologies. The fact, that lynching was not done silently, also raises serious doubt about the administrative inaction. Later on newspapers reported that a day after the Rajapakar incident Kureris were all set to leave the place as they did

not feel safe. Some even said that they do not trust the system for their protection.<sup>17</sup>

There are many instances when a person is targeted only because he or she is from a lower caste. In Shahpur village, some *Dalit* children and their mothers were beaten up for daring to play in the premises of a temple.<sup>18</sup> Last year more than 28% cases of mob justice were reported from Bihar, and; surprisingly in more than 90% cases victims were from weaker section and succumbed to their injuries. On the other hand none of the Doctors<sup>19</sup>, Nurses<sup>20</sup>, and Teachers<sup>21</sup> died when attacked by mob.<sup>22</sup> While ten Kureris were lynched brutally, three engineering students, financially sound and from upper caste, were miraculously saved from the mob. Adding to everybody's surprise crowd agreed to hand them over to police.<sup>23</sup>

These facts show that the mob justice is not merely an act of vigilance or justice but an act of age long caste, sex, and religion based discrimination carried forward by the opportunists. If it is not so than what justifies death after rigorous torture for alleged theft of mobile<sup>24</sup>? Message is very clear either have rights or have life; both can not exist together.

#### **Offences Attracting Mob Action**

Most of the cases which attract mob's reaction involve - molestation, rape, chain snatching, theft, murder, kidnapping, dowry, excessive beating by the teacher, medical negligence, Police brutality, looting etc. In short we can say that only those offences which are visible and have immediate effect attract the wrath of people. On the other hand financial crimes, corruption at the higher level, narcotic dealings, corruption in defence dealings etc. do not attract public outrage. There could be three possible reasons for non reaction on such issues:

1. Lack of understanding.

2. No immediate effect.

3. Involvement of people with big connections.

In most of the cases these reasons move together. Mob did not care when Harshad Mehta gave market a hard shock. First of all many people did not understand, and; even if they had they would not have got a chance to deal with him as they had in the case of Salim Ilyas in Bhagalpur (Bihar).<sup>25</sup> None of the accused of 1992 Mumbai bomb blast was dealt with by the mob as it was a high profile crime with high profile people involved in it.

There are certain crimes which does not have immediate effect for masses unless they are directly involved like narcotics dealings, corruption in government dealings etc. In such cases since people does not feel crimes provocative enough and having direct impact on their life, they avoid reacting on them.

#### **Trend of Mob Justice in States**

Last year though the whole nation was baffled with the trend of mob justice still, the number of cases, reasons for mob attack, impact of it etc. varied from place to place. In the year 2007 most of the cases (more than 28%) were reported from Bihar. In Bihar cases include theft, looting, chain snatching etc. while in Orissa, the second state with the highest number of cases, mob reacted on the issues like medical negligence, molestation etc. On the other hand Delhi witnessed cases like police brutality for attracting mob action.

Victims and their survival rate also varied from place to place. In Bihar more than 90% victims were from either schedule caste or from schedule tribe and very few among them survived after attack. On the other hand in Orissa apart from reacting on a little mature issues crowd, has not crossed its limits in the majority of cases. Here also victims are beaten up but in most of the cases that does not continue

till death. In Delhi caste and social status could not be ascertained as in most cases police was the victim. From these facts an inference can be drawn that social factors and mind set of people in a society also matters a lot when it comes to mob justice.

In Bihar still casteism, religion, gender, economic status etc. matters a lot. Often those who are SC/ST or OBC are targeted. For petty offences death is a very nominal punishment. This is why 10 Kureris were killed in the broad day light and no body came for their rescue.<sup>26</sup> On the other hand in Delhi hardly few people would care about caste, religion, and gender issues before such attacks.

The non-realisation of constitutional mandate of equality has proved pernicious for these petty offenders. In Delhi there are two kind of areas either highly urban or semi urban. In both the cases nobody gets motivation to react on every small offence, be it chain snatching, looting, or theft etc. But it reacts when any government department crosses its limits or a large scale scam happens. Thus most of the cases were related to mob, launching attack on police. On the contrary, in Bihar people abstain from doing anything against police and as a result they vent their frustration through weaker section of the society.

#### **Mob Justice and Involvement of Police**

It is commonly believed that the most corrupt and inhuman department is police department. While it may be true with the issue of corruption but, as far as inhuman is concerned, there could be certain reservations. No one can be more inhuman than mob. The year 2007 witnessed deep involvement of police in many mob fury cases. In some cases police has joined the mob<sup>27</sup>, in some it preferred to be a mute spectator<sup>28</sup>

but, astoundingly, in the majority of cases police was victim.<sup>29</sup>

In rural areas very rarely police is been attacked due to the age old feudal thinking. This feudal thinking among the uneducated masses never gives them courage to launch attack on government officials. On the other hand, in places like Delhi where people belongs to either urban or semi urban background, attacks on police is very often. In more than 75% cases from Delhi, police was victim. In other places also police is been targeted but unlike Delhi attacks are not intentional.<sup>30</sup> In places like Delhi mob reacts very strongly whenever police misuses his powers or becomes brutal. Last year a violent clash between mob and police around Jamia Milia University, left, around one dozen police officers injured in which, four were reported to be critical.<sup>31</sup> In another case mob attacked the police station on the alleged charges of beating of three youths, over a parking brawl.<sup>32</sup> Mob manhandled police personnel and also damaged the government property.

Apart from being a victim in many cases police remains a mute spectator and thus provides validity to the action of mob. In a protest march in North – East last year, a woman was dragged, stripped off and was beaten severally in front of many pair of eyes. No one reacted or tried to stop attackers, including the police present there.<sup>33</sup> In another case from Bihar an alleged chain snatcher was caught by the public and was beaten up brutally though police was present there but did nothing to save the victim.<sup>34</sup>

Thus in many cases police himself is responsible for his victimization on the other hand it helps in victimisation of others. In both the cases no support to them can be termed as just.

#### **Suggestions**

In the era of terrorism and other big threats to humanity

vigilant masses is a gift for a nation. But at the same time negative vigilance can be a threat for any society. Not only developing nations with fewer facilities, but very advanced and developed nations have also witnessed this threat. Thus every state is looking for alternatives to mould this vigilance in a right direction. In order to bring awareness in the society regarding this issue, actor Daniel Radcliffe of 'Harry Potter' fame has been roped in to star in *Journey* as Daniel Eldon, a photographic journalist who was stoned to death by a mob in Mogadishu, Somalia, in 1993.<sup>35</sup> Apart from making people aware, many other possible alternatives could be there. Some of them could be as follows:

a) Before bringing change in masses, reforms should be started from the administration. Corruption at the higher level should be dealt with very strictly in order to clean lower order. This could be achieved through monthly or bi-monthly discussion cum reporting between the top orders of Government.

b) Formal channels for justice like police, courts should be made more people friendly. In most of the cases people react because there is lack of faith in police and huge pendency of cases in various courts. To ameliorate the situation government should come with new courts, effective vigilance on the working of police etc. Alternate legal modes of justice like negotiation, arbitration, mediation should be made more popular and effective.

c) Government may formulate some legal provisions regarding mob justice. These legal provisions should include punishment for offenders and compensation for the victim.

d) Though it is very difficult to identify the attackers but once they are identified they should be dealt with very strictly. Imposing fine on

the whole village or city could serve as deterrence in future.

e) Mob generally targets petty offenders. As mentioned earlier there could be many reasons for this<sup>36</sup>. In such circumstances Government should endeavour to train mob action in such manner as to be useful for the society. For this not only literacy but education is required. People should be educated enough to understand the effects of their action. Apart from being made aware of the white collar offences, people should be motivated to defeat the same. Masses should be trained to fight corruption instead of targeting petty offenders.

f) Government may seek help of NGOs in making people aware of the issue of mob justice, effect of it on society, how it could be used positively etc. Help of NGOs could also be taken in the rehabilitation of victims.

g) People from weaker section of the society should be given protection, and more affirmative actions should be taken for their benefit.

#### **Conclusion**

Mob Justice in India has brought both kinds of reactions, positive and negative. If viewed positively it connotes that masses are aware of their rights and they do not let any person to grab it off. They are self sufficient for their protection. But on the other hand many unexplored areas of concern provide that, there are something more than mere endeavour to protect one's rights.

In the guise of mob justice personal scorns are sorted out. Many people from weaker section are being targeted. Individual frustrations are satisfied with the blood of innocent victims. Thus not only the impatience, intolerance in the Indian masses is revealed but internal administrative failure has also got exposed. In a way this kind of behaviour is tarnishing the image of Indian masses which are

known worldwide for tolerance since time immemorial.

Mob justice in India gives a very clear picture of unrealised promises of development and social transformation. Casteism, religious intolerance, and the discrimination on the ground of financial status are still a common practice in the country. As a result weaker section is often targeted. It seems that we have restarted our journey from the days of feudal exploitation where different standards were fixed for different people; where everything comes before human except human himself.

But hopes are not lost since slowly and gradually the problem of mob justice is getting global attention. Not only India but other countries also are looking for alternatives. This would definitely be persuasive enough to legally address this problem, by providing legal remedies to the victims. Apart from this as suggested earlier training the masses would be a very effective step in this regard. Last but not the least with a little effort same unruly mob with vested interests can be moulded into a great force against crime in society; which is certainly the biggest requirement of present age.

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<sup>1</sup>An LL. M. student in NLSIU, did an internship with PUCL in the year 2008

<sup>2</sup>*The Indian Express*, August 29, 2007

<sup>3</sup>*Hindustan Times*, August 29, 2007

<sup>4</sup>*The Hindu*, October 4, 2007

<sup>5</sup>*The Indian Express*, October 4, 2007

<sup>6</sup>Section 379, Indian Penal Code, 1860

<sup>7</sup>Every country has formal procedure for the trial of an accused and in the absence of these formal rules principles of 'Natural Justice' is followed. It mandates two principles before coming to a conclusion i.e.

1. Hear the other side, and
2. No one should decide his own case. But in mob justice or instance justice no such requirement is fulfilled.

<sup>8</sup>Last year in Kenya, two brothers were set ablaze and killed when a lynch mob mistook them for thieves. *BBC online*

<sup>9</sup>*Martin Toe*, Liberia, Washington DC, USA, *BBC online*.

<sup>10</sup>*Hindustan Times*, September 25, 2007

<sup>11</sup>*Ibid.*,

<sup>12</sup>In Bihar, Chief Minister Nitish Kumar holds a weekly meeting for the grievances of common masses. This weekly meetings are popularly known as 'Janata Darbar'.

<sup>13</sup>*Hindustan Times*, September 14, 2007

<sup>14</sup>*The Indian Express*, September 19, 2007

<sup>15</sup>*The Indian Express*, October 4, 2007

<sup>16</sup>*The Indian Express*, September 14, 2007

<sup>17</sup>*Hindustan Times*, September 15, 2007

<sup>18</sup>*Supra* note 12

<sup>19</sup>In Orissa mob ransacked the casualty ward of the S.B.C. Medical College and hospital and assaulted some doctors for the death of a patient due to alleged negligence. *Hindustan Times*, September 25, 2007

<sup>20</sup>*Ibid.*,

<sup>21</sup>*Supra* note 9

<sup>22</sup>*Hindustan Times*, September 24, 2007; *Hindustan Times*, August 24, 2007; *Hindustan Times*, September 25, 2007.

<sup>23</sup>*Sunday Times, (Times of India)*, September 16, 2007

<sup>24</sup>*The Indian Express*, October 4, 2007

<sup>25</sup>*Supra* note 2

<sup>26</sup>*Supra* note 12

<sup>27</sup>*Supra* note 1

<sup>28</sup>*Supra* note 13

<sup>29</sup>*The Indian Express*, June, 26, 2007, *The Indian Express*, September, 18, 2007, *Sunday Times (Times of India)*, September, 23, 2007.

<sup>30</sup>In Raipur, Chattisgarh a policeman and a group of construction workers were mistakenly identified as naxalites and were severely beaten up. *The Indian Express*, September 18, 2007

<sup>31</sup>*Sunday Times (Times of India)*, September, 23, 2007

<sup>32</sup>*Hindustan Times*, June, 23, 2007

<sup>33</sup>[www.Sify.com](http://www.Sify.com)

<sup>34</sup>*Ibid.*,

<sup>35</sup>[www.ibnlive.com](http://www.ibnlive.com)

<sup>36</sup>Refer the paragraph, 'Offences attracting mob action'.

**\*\* This report is primarily based on the news paper clippings available in the PUCL reference library. □**

## Binayak Sen's Case:

**In the Court of Additional Sessions Judge-XI, F.T.C., Raipur, Chhattisgarh Sessions Case No. /07 The State of Chhattisgarh Versus Piyush Guha etc.**

(Framed today on 02.02.2008)

I, B S Saluja, Additional Sessions Judge-XI, F.T.C. Raipur, Ch.G, frame the following charge against you, the accused Dr. Binayak Sen S/o Late D P Sen, aged 57 years, address – Surya

## CHARGE-SHEET

Apartment, Katora Talab, Raipur, Chhattisgarh.

(1) On 06.05.2007 or before it, you along with accused Narayan Sanyal and Piyush Guha, hatched a conspiracy at Railway Station Road, Raipur, Chhattisgarh or Central Jail, Raipur, Chhattisgarh or Central Jail, Bilaspur, Chhattisgarh or Katora Talab, Raipur, Chhattisgarh or Hotel Mahendra Raipur or Hotel Geetanjali, Raipur for war against the Government of India or State Government or making an attempt

of war or made abetment for war, which is punishable under section 121 (a) of Indian Penal Code and cognizable under the jurisdiction of this Court.

(2) On the above said date, time and place, by using words, signals or by abetment created or made an attempt to create hatred or contempt to the government established by law in India or made or attempt to made treason; in the alternate the charge is made that you hatched the conspiracy for treason, which is punishable under

section 124 (a) or 124 (a) read with section 120-B of Indian Penal Code, which is cognizable under the jurisdiction of this Court.

(3) On the above said date, time and place, as a member of illegal organization, participated in the meetings or activities of illegal organization or received or gave funds for the purpose of illegal organization or in the alternate, the charge is that you hatched the conspiracy for above, which is punishable under section 8 (1) of Chhattisgarh Special Public Security Act, 2005 or Section 8 (1) of Chhattisgarh Special Public Security Act read with Section 120-B I.P.C., which is cognizable under the jurisdiction of this Court.

(4) On the above said date, time and place, though not as a member of an illegal organization, received or gave the funds for the illegal organization or demanded contribution or gave contribution to the so-called member of illegal organization or in the alternate the charge is that hatched conspiracy for the above, which is punishable under section 8 (2) of the Chhattisgarh Special Public Security Act, 2005 or section 8 (2) of the Chhattisgarh Special Public Security Act read with section 120-B I.P.C. and is cognizable under the jurisdiction of this Court.

(5) On the above said date, time and place, you managed the illegal organization or assisted in its management or expanded the meeting of illegal organization or its members or participated in any type of activities of the illegal organization or took any part in the activities of said illegal organization or in the alternate the charge is that hatched conspiracy for the above, which is punishable under section 8 (3) of the Chhattisgarh Special Public Security Act, 2005 or section 8 (3) of the Chhattisgarh Special Public Security Act read with section 120-B I.P.C. and is cognizable under the jurisdiction of this Court.

(6) On the above said date, time and place, you committed the above said illegal activities or made abetment to commit the said illegal activities or hatched a planning to commit the same or in the alternate hatched the conspiracy of above, which is punishable under section 8 (5) of the Chhattisgarh Special Public Security Act, 2005 or section 8 (5) of the Chhattisgarh Special Public Security Act read with section 120-B I.P.C. and is cognizable under the jurisdiction of this Court.

(7) On the above said date, time and place you remained the member of illegal organization or participated in the meetings of illegal organization or collected contributions for the use of such organization or gave or made request for such contributions or assisted in the works of said illegal organization in any other manner or in the alternate hatched the conspiracy of same, which is punishable under section 10-A of Prevention of Illegal Activities (Amendment) Act, 2004 or section 10-A of Prevention of Illegal Activities (Amendment) Act, 2004 read with section 120-B of IPC and is cognizable under the jurisdiction of this Court.

(8) On the above said date, time and place, you remained the member of Terrorist organization, which is punishable under section 20 of Prevention of Illegal Activities (Amendment) Act, 2004 and is cognizable under the jurisdiction of this Court.

(9) On the above said date, time and place, you kept the property mentioned in the charge-sheet in your possession despite having knowledge that it has been earned from terrorist activities, which is punishable under section 21 of Prevention of Illegal Activities (Amendment) Act, 2004 and is cognizable under the jurisdiction of this Court.

(10) On the above said date, time and place, you remained the member of terrorist organizations

to increase its activities, which is punishable under section 38 (2) of Prevention of Illegal Activities (Amendment) Act, 2004 and is cognizable under the jurisdiction of this Court.

(11) On the above said date, time and place, you conducted meetings to earn support for the organizations with the intention to increase the activities of terrorist organizations or addressed the meetings, which is punishable under section 39 (2) of Prevention of Illegal Activities (Amendment) Act, 2004 and is cognizable under the jurisdiction of this Court.

Therefore, I order that why this Court should not conduct trial against you for the above said charges. – B S Saluja, Additional Sessions Judge-XI, F.T.C. Raipur, Chhattisgarh.

**Plea of Accused**

Charges read over to the accused Dr. Binayak Sen, S/o Late D P Sen and he pleads that –

**Charges are baseless and denied.** – B S Saluja, Additional Sessions Judge-XI, F.T.C. Raipur, Chhattisgarh.

*(Unofficial Translation from Hindi of the Charges Framed in the Case of Dr. Binayak Sen, General Secretary, Chhattisgarh PUCL, P O Box 87, Main Post Office, Raipur-492001, Chhattisgarh. E-mail: pucl.cg@gmail.com) □*

**SELECTIONS FROM PUCL BULLETIN, VOLUME II**

**Section VI:  
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1 Article**

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Freedom of Information &  
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## **Proceedings of the J P Memorial Function**

The 28<sup>th</sup> JP Memorial Function was held at Gandhi Peace Foundation Hall, Delhi on March 23, 2008 from 5.30 p.m. The Lecture was delivered by Prof. Yogendra Yadav. Shri Surendra Mohan presided over the function.

The function started by calling the house to order by Dr Pushkar Raj. He welcomed all the guests and invited Prof Yogendra Yadav, Shri Surendra Mohan, Dr. George Mathew and Dr. Y P Chhibbar to take their seats on the dais so that the proceedings will may start.

Y P Chhibbar starting the proceedings, said that the function was held every year on March 23<sup>rd</sup> as this was the date on which the International Emergency was lifted by the then outgoing prime minister Smt. Indira Gandhi in 1977. The National Council of the PUCL was of review that Emergency was lifted because of the pressures generated by the JP led movement culminating in the formation of the Janata Party. It decided that remembering March 23<sup>rd</sup> would be the most suitable tribute to JP. The General Secretary remarked that it was the first time that five persons who had delivered this Lecture previously were present in the function: Justice Rajendra Sachar, Prof Amrik Singh, Shri Surendra Mohan, and Dr George Mathew.

Introducing Surendra Mohan he said that Surendra Mohan was with JP and was one of the founders of the PUCLDR, as the

PUCL were known at that time. He said that since Surendra Mohan was a member of a political party. He was debarred by the PUCL Constitution to hold any office in the PUCL, still he was the spirit of PUCL personified and was a source of strength to the PUCL and to him personally.

Dr. George Mathew, President of Delhi State PUCL, introduced Prof Yogendra Yadav and invited him to deliver the Lecture.

Prof Yogendra Yadav had prepared the Lecture in English but he said he would speak in Hindi whatever he had written in English.

*[Yogendra Yadav is a Senior Fellow at the Centre for the Study of Developing Societies (CSDS) and Co-Director of Lokniti, a research programme on Comparative Democracy of the CSDS. He is Founder Convenor of the Lokniti network and in 1997 became the Director of Lokniti. Professor Yadav has designed and coordinated the National Election Studies, the most comprehensive series of academic surveys of the Indian electorate, from 1996 to 2004.*

*Professor Yadav has published dozens of academic papers in various books and journals and has written over two hundred articles in newspapers and magazines. He is one of the General Editors of Lokchhintan and Lokchintak Granthamala, a series of social science anthologies in Hindi and is*

*on the International Advisory Board of the European Journal of Political Research. He has been associated with for the last fifteen years and is currently the Editor of Samayik Varta, a monthly journal published in Hindi. Since 1996 Professor Yadav has been a psephologist and political commentator on a number of television channels. His areas of interest include democratic theory, election studies, survey research, political theory, modern Indian political thought and Indian socialism.*

*Prior to joining the CSDS in 1993, Professor Yadav was Lecturer in the Department of Political Science at Punjab University, Chandigarh. He is currently a member of the Governing Board of Lokayan (since 1998) and of Gandhian Institute of Studies, Varanasi (since 2003), honorary Fellow, Indian Institute of Political Economy, Pune (since 2004). He was one of the two Chief Advisors in Political Science for the National Council of Educational Research and Training (NCERT) who supervised the writing of the new textbooks for Political Science for class IX, X, XI and XII. He was also a member of the Expert Group appointed by the Government of India in 2007 to examine the structure and functioning of an Equal Opportunity Commission. – Y P Chhibbar] □*

**28<sup>th</sup> J P Memorial Lecture: 23March 2008, Gandhi Peace Foundation, Delhi**

### **Rethinking Policy and Politics of Social Justice**

**Yogendra Yadav\***

Friends, allow me to begin by thanking the PUCL for giving me this honour of delivering this year's

JP Memorial Lecture. As I looked at the list of eminent scholars and public intellectuals who have

delivered this lecture in the past, I was acutely conscious of being something of a misfit. I have been

a keen student of Jayaprakash Narayan's intellectual biography and have been associated with many organizations, including the *Sampoorna Kranti Manch* in Haryana, which trace their political-intellectual lineage to JP, and to Lohia whose birthday falls today. It was therefore very tempting for me to speak today about JP or about the socialist movement in India and thus do some justice to this undeserved honour. But I resisted this temptation to speak about something that is of pressing contemporary significance and about which I need your feedback.

I wish to put forward a simple proposition before you today: policies as well as politics associated with social justice have reached a dead-end in contemporary India. Those who take the constitutional ideal and the ideology of social justice seriously need to rethink some of the common assumptions and positions taken by proponents of social justice. In the first part of what I have to say today I will speak about how and why we have reached this dead-end. In the second half, I would like to spell out what I mean by rethinking and put forward some concrete proposals.

Before I proceed further, let me spell out what I mean by 'policies of social justice' and 'politics of social justice'. I do not wish to undertake a philosophic exercise in defining these terms, but would simply like to take their popular usage as my starting point. Commonly understood, 'policies of social justice' refer to the entire gamut of affirmative action policies. Reservation of in government jobs and higher education is of course the most well known of these policy measures, and I would have something to say about this prominence of reservation in the thinking on social justice. But in principle the domain of policies of social justice includes all measures

to reduce the effect of the unjust social order on life chances of the citizens. Politics of social justice is usually identified with some political parties like the BSP, the post-*Mandal* OBC parties like the RJD, the SP or the PMK or the older manifestations of social justice movement like the DMK. Interestingly the common usage of the term 'politics of social justice' tends to exclude the communist parties representing egalitarian ideologies or the non-party political formations that are informed by an egalitarian and pro-social justice agenda. I am not here to endorse these meanings or to say that this is how these terms should be understood. But I don't wish to begin by quarrelling with the popular usage, for there is an insight to be gained by restricting one's focus to the policies and politics of what is usually referred to as social justice. I realize that there is a lot to be said for discussing these two domains of policy and politics separately, but I wish to persuade you that there is at least some merit in discussing the two together and that both these share some predicament together.

One more preliminary clarification, lest what I have to say causes unnecessary confusion. I do not speak here as a detached scholar of policies and politics of social justice. As some of the friends sitting here would know, I locate myself firmly and squarely within the social justice camp. This stems from my conviction that equality and social justice are the foundations on which our democratic order rests. I have been a vocal defender of the system of reservations for the Scheduled Castes and Scheduled Tribes and continue to believe that this is one of most successful experiments in affirmative action, something our democracy can take pride in. What I have to offer today should therefore be seen as an internal critique.

Let me begin then by defending my first proposition that the policies and politics of social justice have reached a dead-end. This might seem a curious suggestion if you look at the ubiquitous presence of forces representing social justice today. Within parliamentary democracy, politics of social justice is more 'successful' and powerful than ever before. The key partners of the Congress in the ruling UPA include parties of social justice like the RJD and the DMK; the Congress itself is desperately trying to position itself in the same slot. The BJP may not be as keen to occupy that slot but is kept in check by allies like the JD (U) and potential allies like the AIADMK who have a social justice constituency to respond to. The UNPA may or may not take off, but at its core is yet another party of social justice: the *Samajwadi* Party. Whatever be the exact outcome of the next general elections, it is certain that the next government will include parties committed to social justice agenda. In all probability either the Left or the BSP or both, formations committed to the same agenda, will emerge as the pivotal player in the next *Lok Sabha*. There is for the first time a discussion about the possibility of a *dalit* Prime Minister. You could say that politics of social justice had never had it so good.

Similarly, the policy of reservation is more secure today than it has ever appeared. The extension of reservations to the OBC in higher education may or may not pass the judicial test, but it won't stop for want of parliamentary approval. Any legislation that has to do with the SC/ST reservations is passed in the parliament instantly and with unanimity. Perhaps for the first time, some of the key positions in the Planning Commission, the UGC etc are manned by *dalits* who have taken a bold position on

social justice. There is for the first time some discussion about extending reservations to the private sector. No serious political party or government can afford to be seen as opposing reservations.

I wish to argue that this apparent ubiquity of politics and policies of social justice is actually a pointer to what I call a dead-end. If the language and legacy of social justice has a wide presence in our public life today it is because social justice has turned into a thin foil that can be used to wrap virtually any substance. If we focus on the substantive agenda of politics and policies, we would detect signs of shrinkage and stagnation. This is visible in the limited meaning these terms have acquired today. The success of politics of social justice has become limited to the accession of leaders from *dalit-bahujan* communities to governmental power. The policies of social justice are confined to effective implementation of reservations in government jobs.

The dead-end can be seen in many ways. The limits to politics of social justice are related to the requirement of our electoral system to gain plurality of votes in a localized context which leads to an imperative to create social coalitions. Thus the politics of social justice either faces containment as in the case of most regional OBC parties or emptying out as in the case of BSP. Most parties that represent social justice face both these simultaneously. They face fragmentation or co-optation. In either case their capacity to use state power to push policies of substantive social transformation is very limited. Nor do they have a vision or a language to expand beyond their core social constituency. The BSP's strategy of Brahmin-*dalit* alliance is an instance of the limits of the language of social justice. This dead-end means that politics of social justice is inherently

fragmentary: the politics of various social groups and communities such as *dalits*, *adivasis*, OBCs and Muslims is articulated in isolation, if not in opposition, to one another. Besides, the success or failure of such a politics is detached from any substantive consequences for these communities. Electoral success has become an end in itself. Rather than annihilation of the caste system, much of the politics of social justice ends up drawing upon if not reinforcing the same caste system.

The dead-end of the policies of social justice was quite visible in the *Mandal II* debate. In the face of a very aggressive media-led anti-reservation campaign, the pro-reservationists were clearly on the defensive, not just because they were outnumbered and outshouted in the elite circles, but because they did not have fresh and robust arguments. Policies of social justice are increasingly weak in the moral and ideological contestation for legitimacy. The challenge does not come merely from outside. The policies have proven particularly fragile in dealing with challenges that arise from within. The last few years have witnessed many such unanswered questions from within the camp of social justice. Let me quickly note five such questions that remain unanswered within the frame of the existing policies of social justice.

- How to deal with the 'creamy layer' within the communities that are entitled to the benefits of reservations?

- Should there be a 'sub-classification' of communities such as the SC and the OBC so as to provide for a sub-quota for those communities which are seen to have benefited least from the system of reservations?

- Is it time to review the existing lists of SC, ST, and OBC with a view to a possible exclusion of some castes from the benefits of reservations?

- How should the existing policies of reservations accommodate other forms of inequality like those of gender and class which do make a difference to equality of opportunities for jobs and education?

What should be the design of affirmative action for social justice if and when it is taken to the private sector?

I am not going today in the complex history of why and how the policies and politics of social justice reached this dead end. For my limited purpose today, I would just like to draw your attention to the three shared assumption that lie at the roots of the crisis of policies as well as the politics. First, the policies as well as the politics have been state-centred. If politics was obsessed about capture of governmental power, policies were focused exclusively on a share in opportunities provided by the state sector. Second, the policy as well as politics of social justice was premised on a one-dimensional understanding of the nature of social injustice. Much of the debates within the social justice circles were about which of the various dimensions of social inequality – caste, class, gender, etc. – was the real one, the one that subsumed all other dimensions. Third, the policy and the politics of social justice had a limited and legalist understanding of the instruments of social change. If politics was limited to elections, policies were limited to a legal guarantee through the system of reservations. It is important to bear these three limitations in mind as we begin the process of rethinking.

II

I began by promising some concrete proposals to rethink the policies and politics for social justice. If I have managed to convince some of you that politics and policy of social justice are in a poorer shape than they appear, it

follows that we need to think afresh. The three assumptions stated above provide a hint of the direction in which we need to move. Let me therefore turn to sketching the broad contours of such a rethinking. Some of these are concrete policy suggestions, the rest are perhaps no more than gestures about the direction in which we need to look.

The first and the most obvious implication of what I suggested above is that thinking about social justice must not be restricted to the arena of state. It is true that democratic state provides a sphere where the disadvantaged majority can press for action and that a lot remains to be done there, especially with regard to sectors such as the judiciary and the army. Yet we have reached a stage where politics of social justice needs to be conscious of other sites of power. Besides state power, politics of social justice needs to be aware of and encompass social institutions, institutionalized religion and market. At the time of *Mandal II*, some of my colleagues and I had carried out a rudimentary count of the social profile of the Indian media that highlighted its unrepresentative social character. It also demonstrated that the 'success' of affirmative action policies and political parties representing *dalit-bahujan* had little impact on the social character of other power centres. There is no such even rudimentary social profile of the NGOs but my hunch is that it may well be another site of power that needs to be examined. Above all, I think it is time that politics and policy of social justice focused its energies on the private sector that represents the largest arena of economic opportunities. As the state systematically withdraws from economic life and much of the higher education is handed over to private players, the gaze of social

justice must also shift to this sector.

Secondly, it follows from what I said above that the conception of equality and inequality that underlies the existing policy and politics is debilitating. We need to think of the following changes:

- The structure of our society is marked by multiple, overlapping, cross-cutting and graded inequalities that cannot be captured by only one dimension like caste or class or gender; any attempt to change the unjust social order must begin by looking at the cumulative impact of these multiple inequalities.

- The current practice of identifying the beneficiaries of affirmative action with reference to a community or a similar identity needs to give way to an evidence based approach.

- While we must go beyond a formal equality of opportunity in the sense of banning explicit discrimination, we must also need to differentiate the case for social justice from a crude demand for an equality of outcome or proportionate distribution of all the valuable goods.

- Social justice requires detaching the access to social goods and opportunities from social circumstances and would thus complicate any understanding of 'merit' but it need not reject relevance of ability, effort and choices to life prospects.

Thirdly, policy and politics of social justice must expand its repertoire of instruments of affirmative action. Any instrument of social justice must be designed carefully to meet the objectives that it is meant to realize. Reservation in one form or another should be used as a measure of the last resort, rather than the first or the only tool of social justice. There are many other instruments that need to be explored and given teeth:

- Collection, collation and publication of information

- Putting in place systems of incentives and disincentives

- Public audits of 'equal opportunity practices'

- Computing multi-dimensional indices of disadvantage

Fourth the existing system of reservations, which remains valuable and robust, needs to be fine-tuned in the following ways:

- The 'creamy layer' should be redefined and should be made the last claimant within their relevant group for purposes of any affirmative action policy

- Multi-generational advantages of reservations should be limited to levels not reached by the previous generation beneficiaries

- A mechanism should be set up to split the SC, ST or the OBC quota, wherever indicated by evidence, so as to allow assured access to the most deprived groups and women within each category

- A comprehensive evidence-based review should be set in motion to determine if some caste-communities are no longer in need of reservations.

Fifth, we need a new institutional mechanism, something like an Equal Opportunity Commission in addition to a number of existing commissions, for evidence-based advocacy and for devising mechanisms for affirmative action.

Sixth, we need a broader and integral politics of social justice which can bridge the various divides: between political parties and social movements, between the background of leadership and its policy agenda, between abstract principles and real-life practice and among the various disadvantaged social groups and communities. I know this is an ambitious demand, but why should we settle for less on a day marked for not just the restoration of democratic order but also to remember the martyrdom of

Bhagat Singh and the birthday of Rammanohar Lohia?

*\*Professor Yogendra Yadav is a Senior Fellow and Co-director of Lokniti programme at the Centre for the Study of Developing Societies, Delhi. The ideas presented here have benefited from presentations and discussions at the Madhu Limaye Memorial Lecture, Mumbai in 2007 and the Phule Memorial Lecture at the Pune Vidyapeeth in March 2008 and from interaction with Professors D L Sheth, Suhas Palshikar and Satish Deshpande. Contact: yogendra@cstds.in*



After the Lecture Surendra Mohan spoke briefly and said that the questions that Prof Yogendra Yadav had raised about the Politics and the Policies of Reservation were apt and timely. He spoke briefly about the political seen proceeding the introduction of the concept of preservation and his personal knowledge about the Late P P Mandal and Mandal Commission. He commended that Policies and Politics of a period must be reviewed by the wisdom of the hindsight so that dynamics of society's welfare does not become static.

He commended the efforts of the PUCL to keep the practice of raising questions and discussion the alive by organising such Lectures every year.

Shri Mahipal Singh expressed thanks on behalf of the National PUCL and Delhi PUCL to Prof Yogendra Yadav, Shri Surendra Mohan and Gandhi Peace Foundation, especially Surendra Bhai, the Secretary of the GPF, Ms Mridula Sharma and Bachi Singh. He said that the PUCL was an unfunded organisation. As a matter of policy it neither sought nor accepted funds from any Indian or Foreign funding agency. Its fiancés were raised by membership fees

and by big and small donations from members and sympathisers. He invited everyone to a cup of tea. □

(from page 1...) steadfast adherence to our beliefs that will campaign our cause for sanity and peace. In this crisis what gets reinforced is our equanimity and our tolerance and our sense of justice. Unless we culturally and socially recognize that minorities are persons and not non-persons and that they really do not enjoy that equality which they are entitled to. Unless they are accorded equality, notwithstanding their status this type of violence can never disappear. What is required is the systematic effort to culturally evolve ourselves out of the caste and communal culture which define our world view. Today we may not have peace in the society in which we live. It does not follow that society should suffer such onslaughts by and against minorities until such cultural transformation takes place. Of course these crimes should be investigated and punished as quickly as possible. It can be nobody's case that that the guilty among the SIMI should go scot-free. The Criminal justice system should effectively function and demonstrate that the system is devised not only to spare proved innocence, but also to punish the guilty. Out of these twin attributes of justice the former alone finds expression for it is linked to the principle of liberty. Both aspects of the justice system are public duties and both are concerned with the principle of liberty, a rightly acquitted person and a rightly convicted person enhances the value of liberty. While in the former the value is obvious in the latter case the community collectively perceives liberty as a true value as such decisions instill a sense of security makes lives livable.

All these principles every one of the members are familiar and

yet the resolution expressing pre-emptive retribution is not understandable. The Bar Resolution stifles that right to defend him at the trial. Our right to practice this profession is part of our fundamental rights. The accused has a right under Article 21 of the Constitution. Article 22 (1) gives the right to a suspect to have a lawyer present at the time of arrest and interrogation. The lawyer's right to practice a profession or calling is directly concerned with these fundamental rights of a citizen who is an accused. Article 21 right includes the right of the accused to have lawyer for the defense. A lawyer's freedom of choice while practicing his calling has limitations. We are not here concerned with the preferences available to a lawyer for practicing his calling. We are, Respected Members, concerned here with collectively imposing a ban on lawyers making themselves available to defend a particular accused? Have the professional members such freedom to practice their calling? Can the members of the Bar negate the right of the accused available to him under Article 21? The position taken by the Resolution is not morally or constitutionally justified. An emotional response is not a moral response. Arguing for a fair trial for cannot be equated with or confused with asking to exonerate him of his crime. Emotional indignation should not degenerate into Pharisaical self-righteousness. There is no dichotomy between "morality" and the Constitution if one learns to do a moral reading of the Constitution. Let us not proceed on facile the assumption that there is no affinity between law and justice and law and morality.

I would earnestly request you to reconsider and rescind the resolution banning lawyers from appearing for the accused among SIMI. Somewhere I think the process has to be reversed and try

to repair the damage done by our attitudes and actions first so that we set a trend to making the institution useful and will become accessible to the poor as effectively as for the rich and does not merely become a playground for the rich and the lumpen. – **K G Kannabiran**, Senior Advocate, National President, PUCL □

## **Binayak Sen Receives International Award**

*(According to a message received from the Chattisgarh PUCL, Binayak Sen has been awarded the 2008 Jonathan Mann Award for Global Health and Human Rights – Y P Chhibbar)*

The Global Health Council is pleased to announce that the winner of the 2008 Jonathan Mann Award for Global Health and Human Rights is Dr. Binayak Sen of Raipur, Chhattisgarh, India.

Sen, a physician who helped establish a hospital serving poor mine workers in the region, is an officer of the Peoples Union for Civil Liberties (PUCL), a leading human rights organization in India. He has been imprisoned in Raipur for nearly a year without trial as a result of allegations that he violated state antiterrorism laws. Sen denies committing any crime.

The Global Health Council and several prominent global health organizations have issued a statement of support for Sen (See link below.), requesting that Indian authorities assure the restoration of due process, and find the means to allow the doctor to receive his award in person in Washington, DC on May 29th, 2008, at the 35th Annual International Conference on Global Health.

This 58-year-old paediatrician was selected by an international jury of public health professionals for this prestigious award because of his years of service to poor and

tribal communities in India, his effective leadership in establishing self-sustaining health care services where none existed, and his unwavering commitment to civil liberties and human rights. In addition to working with the PUCL, Sen and his wife, Dr. Iina Sen, are the founders of Rupantar, a community-based non-governmental organization that has trained, deployed and monitored the work of community health workers spread throughout 20 villages. Rupantar's activities include initiatives to counter alcohol abuse and violence against women, and to promote food security.

Dr. Sen's accomplishments speak volumes about what can be achieved in very poor areas when health practitioners are also committed community leaders, said Dr. Nils Dauilaire, president of the Global Health Council. He staffed a hospital created by and funded by impoverished mine workers, and he has spent his lifetime educating people about health practices and civil liberties -- providing information that has saved lives and improved conditions for thousands of people. His good works need to be recognized as a major contribution to India and to global health; they are certainly not a threat to state security.

Large areas of Chhattisgarh are embroiled in an armed conflict involving rebels, the state government and law enforcement, and armed civilian militias. Sen was detained on May 14, 2007, and accused of passing notes from a rebel leader he was treating in jail to someone outside the prison. Sen denies committing any crime and says his activities in the jail were supervised by prison authorities.

Many organizations and prominent persons have protested Sen's arrest and his long imprisonment without trial. He was recently released from a period of solitary confinement and has reportedly suffered health problems resulting from his nearly year-long imprisonment.

The Mann Award is presented annually at the Global Health Councils international conference to a practitioner who makes significant contributions toward practical work in the field and in difficult circumstances; highlights the linkage of health with human rights; works predominantly in developing countries and with

marginalized people; and demonstrates serious and long-term commitment.

The Global Health Council is the world's largest membership alliance dedicated to saving lives by improving health throughout the world. The Council serves and represents public health organizations and professionals working in more than 140 countries on six continents. – **Laura Barnitz**, Global Health Council □