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Death of an Activist

Chaman Lal

The death of Dr Yashpal Chhibbar, General Secretary, *People's Union for Civil Liberties* (PUCL), on December 2, 2008 marks the end of an eventful era of the PUCL. Over the past three decades Dr Chhibbar had become synonymous with PUCL which is widely perceived to be the most active human rights organisation enjoying an enviable reputation of credibility and integrity from its proud , connections with Jayaprakash Narayan and V M Tarkunde. Finding a replacement for the great departed activist will be a formidable challenge for the organisation. While there is no dearth of human rights activists of competence and experience, it will be difficult to find someone matching Dr Chhibbar's devotion and selflessness.

My association with Dr Chhibbar goes back to the early sixties of the last century when he was teaching Economics and I was doing my M.Sc. (Physics) in DAV College, Dehradun. Later, we become colleagues after I was appointed a Lecturer in the same college. While I used to describe our relationship mentioning the 'Guru-Shishya' connection, Dr Chhibbar would insist on introducing me as a former colleague. Though I remained in touch with him throughout my police career of thirty two years, I actually came close to him during my stint at the National Human Rights Commission as a Special Rapporteur from August 1997 to January 2008. He was an active member of the NGO Core Group consisted by the Commission of which I was the Convenor. This gave me an opportunity to know him from a new perspective which enriched our earlier relationship.

Dr Chhibbar took his membership of the NHRC's Core Group of NGOs with characteristic seriousness. He attached great importance to the Commission's obligation to 'encourage the efforts of the Non-Governmental organisations and Institutions working in the field of human rights,' stated in Section 12 (i) of the Protection of Human Rights Act, 1993. He was more concerned and vocal than other members of the Core Group about the Commission's duty to protect the defenders of human rights, an obligation the Commission has not been able to discharge effectively so far. He would never miss any meeting of the Core Group and was punctual to a fault. He was very regular in contributing agenda points for the meeting and articulated his concerns and views in an emphatic yet pleasant tone of a seasoned professor. Right from the days of DAV College I had found Dr Chhibbar to be a serious minded person who also carried a spark of humour in his communication. It may be surprising, even shocking for many in the PUCL to be told that Dr Chhibbar was one among three professors secretly admired for their proficiency in creating 'non-vegetarian jokes' which were both original and irresistible! (on page 6...)

Condolence Messages in Memory of Y P Chhibbar

Dear friends,

You must have come to know about the demise of our esteemed colleague Dr YP Chhibbar. He was a concerned and active member and citizen on the child right issues. His frequent letters and emails enabled NHRC to immediately process and give specific relief to wronged. We have lost in him a crusader of Human Rights. My condolences to his family and friends.

Regards, Yours sincerely, -Aruna Sharma, Joint Secretary, National Human Rights Commission

Colleagues at the NHRC and my fellow colleagues at the NHRC National Core Group on NGOs,

I am deeply pained to pass on to you the very sad news about the demise of Prof Chhibbar that I have just heard of from Shri KG Kannabiran, the President of the National PUCL, Prof Chhibbar has been for me someone who has doggedly worked as the General Secretary of the PUCL for many years and very recently also resigned as its Secretary General for health reasons. In addition he has also been a two term member of the NHRC's National Core Group of NGOs. His life signifies a dedication to human rights that is unmatched in this country and all of us who work in and with statutory institutions for the protection and promotion of human rights need to LEARN FROM HIS DEDICATED LIFE TO HUMAN RIGHTS PROTECTION AND PROMOTION.

For me personally, I started my association with the national PUCL as the Secretary of the Madurai PUCL in 1981 with my contact with Prof Chhibbar and later as the Secretary of the Tamil Nadu PUCL for many years and a member of the National Council of the PUCL. I owe to him

many of my early learnings in the civil liberties movement.

May his soul rest in peace. Regards and solidarity. - Henri Tiphagne, Executive Director, *People's Watch*

Paying rich tributes to Dr Y P Chhibbar, General Secretary of the People's Union for Civil Liberties, who died recently, Balraj Puri, Convenor PUCL said that his death was an irreparable loss to civil liberties movement in India. Chhibbar, according to him, was a rare personality who devoted his whole time, without any distraction to the cause.

PUCL is the leading national organization in the field of civil liberties on account of the leadership provided to it by eminent personalities like Jayaprakash Narayana, Justice V M Tarkunde and Justice Sachar who headed it, one after the other Puri added that the vital work of building the organizing, keeping contact with the state branches sister organizations in other countries running office and regular publication of PUCL Bulletin was mainly done by dedicated personality of Dr Chhibbar. - Balraj Puri, Convenor, J&K PUCL

The passing away of Yashpalji is a great personal loss - not just to me, but for all who came to know him. Such a dignified and yet unassuming personality; total dedication with disarming humility. The human rights movement will be poorer without him.

It is for such rare individuals that it is said: 'Where he met a stranger, there he left a friend'. And friends he had in thousands -each one of whom shall cherish his memory for ever.

My tributes and salutes to a dear friend. - Yogesh V Kamdar, Vice President, National PUCL

Bihar PUCL:

PUCL Bihar, at the meeting held on December 2nd, 2008 condoled the sad demise of Professor Y P Chhibbar, General Secretary PUCL. He was suffering for some time and had been hospitalized. The end came on the morning of December 2, 2008.

One of the founder members of PUCL, Prof Chhibbar, till his death, worked with utmost commitment and dedication to strengthen the movement for human rights. He was the General Secretary, PUCL, for 22 years and remained as a sheet anchor. Although his health deteriorated he continued to be at the center stage of PUCL activities.

The publication of the *PUCL Bulletin* and its continued publication was primarily because of his untiring effort and zeal.

Throughout his life he stood by the rights of the disadvantaged and highlighted issues that affected the rights of the common man.

We send our condolences to the bereaved family. - Vinay Kanth, President; **Nageshwar Prasad**, General Secretary

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Press Release: Punjab and Chandigarh PUCL

Condolence Meeting on the Sad Demise of Dr Y P Chhibbar

A meeting of the People's Union for Civil Liberties (Punjab & Chandigarh) was convened at the residence of Shri Roshan Lal Batta, President of the local unit of PUCL to express condolence on the sad demise of Dr Y P Chhibbar, General Secretary, National PUCL, Human Rights Activist and Socialist Leader.

Dr Y P Chhibbar, 78 years was suffering from brain tumor and he breathed his last at the AIIMS, New Delhi. He served as Reader in Economics at Dehi University. He joined PUCL in 1981 and became National General Secretary in 1988 and continued till his death.

Dr Y P Chhibbar brought PUCL in frontline as an organization to champion the cause of Human Rights

Movement in India. He was respected by all members of the State Units as the guide, mentor and comrade. A born rationalist he was Editor of the monthly journal, the *PUCL Bulletin*, for over three decades and diligently worked till the end of his life. He created the archive of the PUCL and successfully organized Annual Lecture Series and related publications.

While honoring the WILL of Dr Y P Chhibbar, his body was donated to the Medical Institute for Research Purposes in the presence of fraternal members of the national capital region. He gave away inspiration to all in life and death. His contribution in the field of Civil Liberties will be always remembered.

PUCL Executive Committee Members of the Punjab & Chandigarh unit lauded the services rendered by their leader and stood silently for two minutes to pay their respect and prayed for peace for the noble soul. Members conveyed their condolences and sympathies to the bereaved family.

The meeting was attended by the following members: Roshan Lal Batta, President; Ravi Kant Sharma, Rattan Singh Baghi, Rajender Mohan Kashyap, Ashok Nirdosh, Geeta Sharma, Madhu P Singh, Avtar Singh Malkeer Singh Rahi, V P Vadhera. - **Roshan Lal Batta**, President, Punjab & Chandigarh PUCL, December 12, 2008

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Press Release:

PUCL Executive Meeting

The National Executive Committee of the People's Union for Civil Liberties (PUCL) meeting on 17th January 2009 at Rajendra Bhawan, New Delhi adopted the following Resolutions/Statements:

I - Unlawful Activities Prevention Act (Amendment) 2008

The PUCL considers the 'unanimous' passage of the UAPA (Amendment) Act 2008 by the Parliament as a matter of great shame and concern. The UPA Government, with the open support of the Opposition, has succeeded in peddling and passing this Draconian Act, which was even in its earlier avatars nothing but a replica of POTA, which was scrapped by the UPA Government immediately after coming to power as part of a public promise, in the wake of strong protests against the history of its misuse against the minorities, other marginalized sections of society, people struggling against social and political injustices, working for human rights, and against the known opponents of those in power.

Only the provision for legal admissibility of a "confession" made in police custody is left out. But, an introduction of the most bizarre and anti-legal provision to treat an accused as guilty till proved otherwise and unless the court finds the accused prima facie innocent it won't grant any bail to the accused. In case of a "foreign national", bail provisions have been made much more stringent, amounting to discrimination in equality before the law. This evidently runs counter to the recent Supreme Court directive that during a trial granting of bail should be the norm, and rejection an exception. The PUCL is of the opinion that instead of helping contain terrorism, let alone eradicating, it will only further aggravate social tensions through legitimization of corrupt

highhandedness of the police force and targeting of specific segments of the society with full protections of the law.

The PUCL promises to oppose this Draconian and Anti-democratic Law at all levels, including challenging it in the Courts of Law.

The PUCL has decided to publicly protest against the UAPA 2008 on 4th of February 2009 in front of the Parliament, and submit a Memorandum to the Prime Minister of India, demanding its repeal.

II - Human Rights Violation in Chhattisgarh

The National Executive Committee of the People's Union for Civil Liberties (PUCL) is most disturbed by the continued deterioration of human rights in Chhattisgarh. Under the guise of fighting 'a war against naxalism' the Chhattisgarh Government has set in place a very repressive state apparatus. Police and Para-military forces impunity, fake encounters, arbitrary arrests and long detention of ordinary citizens under the Chhattisgarh Special Public Security Act of 2005, immense violence at the hands of *Salwa Judum* - a government sponsored campaign to counter Maoists - are the order of the day.

The PUCL is deeply disturbed at the illegal continued incarceration of its National Vice-President & State General Secretary, Dr Binayak Sen under the Chhattisgarh Special Public Security Act of 2005 since May 14, 2007. It considers the rejection of bail to a human rights defender and one of the highly proclaimed doctors winning the most prestigious Dr Jonathan Mann Award for Human Rights in 2008 as a shameful act of the justice delivery system in India. Similarly, the illegal detention of renowned film maker Ajay TG, State Executive Committee Member of

Chhattisgarh PUCL under the Act of 2005, coupled with the failure of the State to file the charge-sheet even after eight months is a clear-cut case of harassment of human rights activists by the State.

The PUCL also expresses its grave concern at the irresponsible statements of the DGP of Chhattisgarh, Sri Vishwa Ranjan branding PUCL as a "possible front organisation of the Naxalites" (as reported in Indian Express dated 14th January 2009). It clearly appears to be part and parcel of the fascist strategy to carry out a vilification campaign against human rights organisations and activists exposing gross violation of human rights and commission of crimes against citizens by the Chhattisgarh Government. PUCL demands an unconditional apology from the DGP withdrawing these falsehoods against it. Failing which, it would take legal action against the DGP.

III - Fake Encounter at Singavaram, Dantewara, Chhattisgarh

The PUCL strongly condemns the killing of 17 citizens, including four women on 8th January 2009 at Singavaram in Dantewara district of Chhattisgarh in a fake encounter by the police and *Salwa Judum* members. From all reports appearing in the press based on independent investigations, and that of various political parties, especially the CPI, Congress (I), NGOs and even the MLA from the region, Sri Kawasi Lakhma clearly point towards the complicity of *Salwa Judum* and Special Police Officers, along with the police in killing these villagers in cold-blood. PUCL considers this to be an extension of the militaristic strategy of the State by involving *Salwa Judum* in the name of 'war against naxalism'. PUCL also takes note of

the fact that in its report submitted to the Supreme Court of India, the NHRC had called for a probe and filing of FIR into several such cases of violence and crime, including the fake encounters, committed by the police forces and *Salwa Judum*. The PUCL would intervene on this issue and similar other violation of human rights in the Writ Petition before the Supreme Court of India, and demand a total ban on *Salwa Judum*, and legal action against those guilty of committing such crimes against humanity.

IV - Attack on Minorities in Kandhmaal, Orissa

The National Executive Committee of the PUCL is deeply concerned about the continued and growing violence against Christians in Orissa, and the failure of the State to provide protection to its citizens belonging to minority community which is being targeted by the Hindu Fundamentalist forces. The anti-Christian violence that has swept through the State of Orissa since December 2007 has resulted in large-scale destruction and damage to the worshiping places, schools, hospitals and homes of the Christians, even killings of priests and rape of a nun. As a result of this violence, hundreds and thousands of Christians have been uprooted from their villages and denied the right to life and livelihood. Even today some 10,000 Christians - mostly dalits and a few tribals - languish in state-run relief camps and

are afraid to return home due to continuing threats by Hindu extremists. Although Maoist militants have claimed the responsibility for the murder of Swami Lakshmananda Saraswati on August 23, 2008, the rightwing Hindu groups continue to blame Christians and, under this pretext, have attacked Christians in 14 out of 30 districts in Orissa.

PUCL demands that the State & the Central Government provide protection to the Christian citizens, Churches and its institutions Orissa, book the culprits of communal violence and crime and take immediate and appropriate legal action on about 1,800 complaints about crimes including arson, assault, murder and rape, etc. The Governments must also ensure safe return of those Christians living in relief camps and/or migrated to other districts and states due to fear, and follow the guidelines provided by the Supreme Court of India in providing adequate compensation to the victims, and rebuilding of houses and worship places destroyed in the communal violence in Orissa.

V - Human Rights Violations in Sri Lanka

The Executive Committee of People's Union for Civil Liberties (PUCL) expresses grave concern at the plight of about 250,000 Sri Lankans of Tamil Origin living in Northern & Eastern parts of Sri Lanka. The Sri Lanka Government has resorted to a large scale military

action without giving any necessary consideration to the Human Rights of the people who have been internally displaced and denied shelter, food, water, sanitation or medicines. While the PUCL is conscious of the terror and violence of Liberation Tigers of Tamil Ealam (LTTE), it would still wish to impress upon the Sri Lanka Government that it can not forget its responsibility as a civilized Government towards all citizens of Sri Lanka irrespective of their language and religion, and respect human rights norms and standards.

VI - Israel's Military Action in Gaza

The People's Union for Civil Liberties (PUCL) considers it most tragic that Israel has not only bombed large areas of Gaza, but has marched its troops inside its territories. The Israeli Army has caused a large number of deaths and has inflicted severe damages on the infrastructure of the area. The Israeli Government has closed all borders around Gaza so that no humanitarian assistance can reach the deprived and dispossessed citizens. The PUCL strongly condemns the war strategy and action adopted by the Government of Israel, and expects it to heed the advice of the World Community and the Security Council of United Nations to stop its invasion, withdraw its forces from Gaza and open the borders." - Pushkar Raj, General Secretary, January 18 2008, Delhi

PUCL ORGANISATIONAL DECISIONS AND FUTURE PROGRAMMES

A meeting of the national executive of PUCL was held at Rajendra Bhawan, New Delhi on 17 January 2008. The following attended the meeting: Rajindar Sachar; Prabhakar Sinha; Vinay Kanth; Ramashray Prasad Singh; Shashi Bhushan Pathak; D. Jagannathan; Pushkar Raj; Ajit Jha; Surendra Mohan; Manju Mohan; Kavita Srivastava; Mahipal Singh; Sanjay

Parikh; Rajendra Sail; Mohinderjeet Singh Sethi; N S Sitta; O D Singh; George Mathews.

It was decided that states should will be asked to update their membership and send their latest membership details with due subscription to the national office by 15 April 2009 so that National Council could be constituted.

It was decided that a National Convention of PUCL be convened on 21 and 22 March 2009 at New Delhi. Delhi PUCL will be in touch with the State branches and host this convention.

Those present contributed Rs. 1000/- to the organization that is facing precarious financial situation. To tide over the situation it was proposed that minimum Rs. 5000/- each should be sent by the

state branches to the national office every year.

It was put before the executive by Pushkar Raj that organization has about 1.70 lakhs in its bank account (including fixed deposit of Rs. 1 lakh). The average monthly expenses are Rs. 50 thousands; unless there is cost cutting or mobilization of funds the national office functioning will be seriously effected in time to come.

Letters from Shri Prem Kishan from Rajasthan, Ravi Kiran Jain from Uttar Pradesh and V Suresh from Tamil Nadu were read and discussed.

It was decided that after justice Sachar's reading the petition on Binayak Sen's continuing incarceration will be filed with the NHRC as soon as possible.

It was also decided that on Unlawful Activities (Prevention) Act

(UAPA), a *dhama* should be held at Delhi on 4th February and other organizations from all over the country should also be mobilized to participate in it.

In regard to *PUCL Bulletin* Shri Mahipal Singh, General Secretary of Delhi PUCL was requested to assist Pushkar Raj in all possible manners to ensure its continuous publication.
- **Pushkar Raj**, General Secretary

(from page 1...) Dr Chhibbar considered me, on behalf of the PUCL, as 'our man in the NHRC'. He used to send me demi-officially, petitions relating to serious allegations of human rights violation requiring the Commission's immediate intervention to stop the continued harassment of the victims. I could always decipher from the tone of the forwarding letter, his anguish over the plight of the complainant. I have enjoyed the rare privilege of the confidence of every Chairperson of the NHRC and most of its members earned by my wide field experience and the pro-bono nature of my engagement. This helped me sometimes in arranging early hearing of the matters received from the PUCL. I am not sure whether I could satisfy Dr Chhibbar with the final outcome of the consideration of those petitions by the Commission, but I would invariably find him pleased with my promptness in acting on his communication. I recall in this connection the petition of a junior employee of the Postal Department, Faridabad, hounded by his bosses for his determined drive against corruption in his Department, the case of an old man of meagre means running an orphanage at Sonipat to the annoyance of the district administration, the pathetic plight of a tribal girl of Bihar facing the agony of the prolonged court proceeding as a victim of sexual exploitation and the horrifying tales of woe of prisoners reported from Jharkhand by Dr Bhattacharjee of the State PUCL.

I used to admire Dr Chhibbar for his exceptional ability to keep himself totally insulated for the most fashionable affliction of our time -cynicism. I have even found some of my adorable mentors in the police service, known for

their courage, perseverance and optimism, sounding frustrated at times and cynical about things they can neither accept nor change. Dr Chhibbar was totally free from this weakness. Once, after I explained to him the hopelessness of a matter he wanted me to continue pursuing, he said he would drop the case only if I could tell him how he should convince the poor petitioner, a victim of police atrocities, that even the NHRC cannot secure him justice. Dr Chhibbar strongly believed in making a beginning in everything by doing whatever was possible in an existing situation and available means, without waiting for favourable conditions to arise.

I used to meet Dr Chhibbar almost every month at his Sahayoga Apartments flat which has been the PUCL office all these, years. Out meetings used to be short and sweet, giving us the pleasant feeling of time well spent. He would briefly narrate the current matters engaging his attention and tell me which new cases he would be referring to the NHRC. I would share with him observations of my recent field visits under directions of the NHRC. Though he never mentioned it directly, I could sense he was not happy with my decision to quit the NHRC. When I told him I would soon move to Karnataka to work with an NGO providing health care in a tribal pocket of Mysore, he kept mum indicating that he would prefer to have me around in Delhi.

I was in Karnataka when Dr Chhibbar suffered a fall and had to be hospitalized. I returned to Delhi a week after he was discharged from the hospital with promising signs of recovery. I saw him at his flat and found him cheerful and eager to resume his work. I had to leave

Delhi again for a few days. A sudden deterioration in his condition took him back to Apollo hospital. When I returned he was in the cancer wing of the All India Institute of Medical Sciences. It is a matter of some consolation to me that I could be with him from 4 to 6 p.m. every day during his last six days at AIIMS. Shri Surendra Mohan came to see him on one of those evenings. I am aware of their special relationship - a lifelong association founded on common concerns and shared ideals. In my understanding, Shri Surendra Mohan is the only person Dr Chhibbar considered infallible, someone he respected completely and wholeheartedly. I had found Shri Surendra Mohan unusually quite and sad that day. I recall he got up to leave, looked at Dr Chhibbar with eyes full of love and compassion. But instead of moving towards the door, sank into the chair lying next to the patient's bed. He grew pensive in a way that scared me. That was the first time I felt Dr Chhibbar would soon leave us on his eternal journey. Exactly a week after, he breathed his last.

Dr Chhibbar belonged to a rare species of human beings which is facing extinction. He possessed the best possible qualities of the head and the heart and led a purposeful life of a dignified rebel against injustice. The world becomes poor in a certain sense when members of his tribe pass away. The loss of such a friend, philosopher and guide in the sunset days of one's life is a hard blow to bear. That is how I feel about the death of 'Yashda,' as I called Dr Chhibbar, though he loved being called 'Abba' by his young and not-so-young admirers.

Judiciary - Need for Introspection

Rajindar Sachar

A discussion is afoot about some important aspects of judiciary. One suggestion of having regional Supreme Court Benches with main Bench at Delhi hearing only constitutional matters has been floating around for over quarter of Century. Though there has been some support from lawyers from some state head quarters there has equally been differences in view not only on basic premises but also on the location of Regional Benches amongst various states (say whether Hyderabad or Chennai for southern Region). Also there is a view that splitting the Supreme Court in regions will reduce the effectiveness of the court, there being 3 to 5 judges sitting in each state, and then also by rotation and the risk of too many variations in the enunciation of law by different benches not having a common homogeneous atmosphere of mutual discussion.

Also the question of separation of constitutional matter from other appeals many a time is difficult to unravel. So notwithstanding the tentative suggestion by

CJI the matter is rather complicated and needs more in depth study and discussion.

Frankly I am against it. As far as I know there is no country in the world where the highest court is split up at various places. U.S.A. Supreme Court, with even larger area than India has its place at Washington DC - Judges do not sit in circuits.

Regarding the increase of age of retirement of both High Court and Supreme Court judges there is almost unanimous agreement. A chairperson of an Administrative Tribunal (dealing with service matters) is a retired High Court judge and other service members - their retirement age is above 65, ironically the orders of service Tribunal are subject to the Control of High Court.

A retired judge of High Court is

appointed a Chairperson of State Consumer Commission - the other members may be non judicial - their retirement age is 67. Another anomaly - the Chairperson, and members of National and State Human Right Commission also include judges of High Court. Their retirement age is 70. Why has age then not been increased for Judges? Is it because in all other bodies, the members are from the cozy bureaucratic fold of Administrative hierarchy and the favourites of political masters that enhanced age is provided?

I see no justification to have retirement age difference of Judges of High Court and Supreme Court. The nature and stress of work is the same - many a time that of a High Court Judge is greater - he is answerable to the Supreme Court - the later have only themselves to judge - apart of course by the legal fraternity and the public - the common denominator.

A judge of High Court does not suddenly and automatically become more experienced and learned by appointment to the Supreme Court, The only difference is that though Supreme Court judge is as fallible as High Court judge, but where he scores more is that he becomes infallible only because he is final, and not necessarily that in reality he is wiser than High Court judge.

Also difference in age of retirement makes, unfortunately many High Court judges trying to be in good books of Supreme Court collegiums - the embarrassing spectacle of High Court judges sitting and waiting in the ante room of the collegiums and more embarrassingly in Law Minister's waiting Room. I have no doubt that if the retiring age of Judges of High Court and Supreme Court was the same, a great many of the High Court judges will not even think of coming to the Supreme Court

- after all who would want to leave the familiar comfort of family and original place of residence and get caught in the anonymity and rough vortex of life in the city of Delhi which one retired Chief Justice of India described to me as a lifeless and soulless city (with due apologies to those who pride being called Delhi wallahs).

I feel therefore that the age of retirement of both the High Court and Supreme Court judges be fixed at 70. Of course at the same time the Legislation on National Judicial Council and accountability of Judges, (on page 20...)

J&K PUCL: Press Statements

1

Conceding that right to vote is a fundamental democratic right, Balraj Puri, Convenor PUCL J&K State, asserted that not to vote or campaign against voting, too, was a democratic right provided it did not prevent people from exercising their right to vote.

While violence in clashes between demonstrators and the security forces could possibly have affected participation in voting, Puri said, there were voices for non-violent protest also. In this context he mentioned the role of JKLF leader Yasin Malik whose detention could, therefore, not be justified, he added.

- **Balraj Puri**, November 6, 2008

Balraj Puri, Convenor PUCL J&K State, has criticized the government for seizure of all copies of *Greater Kashmir* and *Kashmir Uzma*, the two dailies published from Srinagar and reported ban on publishing statements and advertisements in favour of election boycott.

Right to campaign against election is as democratic right as right to campaign for it and to participate in it, he said. - **Balraj Puri**, November 10, 2008

PUCL Enquiry Report on Alleged Fake Encounter by Police in Barachatti, P.S. of Gaya District

A complaint was received from one Shivratn Mandal (Bhuiyan) about the killing of his son Umesh Mandal in alleged fake encounter on April 10, 2008. In view of the suspicion raised by many local persons that the police encounter was fake, the district unit of PUCL also wanted an enquiry. However they felt that the incident needed to be enquired into by a state level team. In the weekly meeting held on April 13 it was decided to constitute an enquiry team, which consisted of State President Shri Vinay K Kantha, State Vice President & currently also the district President in Gaya Fr Jose K. and State Secretary Shri Mithilesh Kumar.

The team visited Gaya on April 17 and met a large number of persons including the complainant and the P.S. in charge of Barachatti p.s. where the incident has taken place. Local assistance was provided by Shri Vijay Manjhi for reaching the place of occurrence. On the visit to Purni Dhangain Shri Zabduddin, a local social worker and *ex-mukhiya* of a neighbouring *panchayat* also accompanied the team.

Description of the Area

Barachatti has a reputation of being a naxalite stronghold for a long time. A visit to the interior villages including the place where the alleged incident has occurred reveals at once why naxalites have a foothold in the area. Dhangain village to which the complainant belongs is at a distance of about fourteen kilometers from Sobh, which lies on the national highway, but even a sturdy jeep would take no less than an hour to reach there. A local river meanders its course which has to be crossed about ten times before arriving Dhangain. Of course the river bed is dry and only

in rains there is any water in the river and that too drains off quickly, usually within hours. Yet the river bed has neither a road, nor a bridge, and the sandy bed can be negotiated by a vehicle like jeep only. At places the vehicle has to come down riding boulders or climb steep heights. The topography is uneven and undulating almost the entire length. There are small shrubs here and there but major part is almost barren, at places rocky. Hills rise from the ground on at least two sides with some vegetation, which may become green during rains. The state of Jharkhand begins beyond the hills and hence the area is suitable for hide and seek or strike and run by the extremist groups. Barachatti has a reputation of being a stronghold of naxalites, and if the police is to be believed they run a training centre in this area.

The enquiry team entered the area from Sobh side and reportedly that was the route taken by the police force on the 10th morning. After Pataluka school and a temple on a hillock from where the path descends into the bed of Hirua river, there is a hamlet called Sunarsahi, where a large number of Majhis live. Since the boy Umesh was alleged to have been killed just after the riverbed before the beginning of the populated area, the team examined the place and spoke to many persons who immediately flocked there. There were some *khajoor* trees there and after being gunned down, his body was allegedly hidden in the bush there.

The area where the incidents occurred includes several adjoining villages like Patluka (where a school is located), Sunarsahi, Itna, Dhangain, Nawadih and Bengwatari. In the local population there is a preponderance of Bhuiyan (or

Manjhi) and Yadavas. The village Purni Dhangain where Umesh the alleged victim/naxalite and his father Shivaratan belongs is an exclusive Manjhi village.

The cluster of villages lie in the interior and access is difficult, but more importantly except some farming and cattle rearing there is not much work. Facilities for education or health care is abysmal. There is a school in Patulka but teacher absenteeism was reported by parents and there was a murmuring protest about the poor quality of education. There was a centre being run by an NGO with a shade greater concern but even that was not functioning regularly. There were only two matriculates in the village Dhangain, one of them Kailash was present during the visit of the team. He was unemployed and frequently went out to do odd jobs outside. A large number of youth from the village had gone out to take up unskilled or semiskilled jobs at various places. The victim Umesh along with many other boys from the village was working in village Dalla Saheb, in Sultanpur p.s. of Kapurthala district of Punjab.

The area presents a picture of lack of development with poverty writ large on the faces of inhabitants.

Mode of Enquiry: Site Visit & Interviews

The team visited the place of occurrence and the village Dhangain to which Umesh Majhi belonged and talked to several persons who assembled there. The place of occurrence was examined closely and versions of some of the persons were

recorded there. Among these persons were included Tetar Majhi (60 years of age, s/o Kara Bhuiyan) and Raghunandan Majhi (35 years, s/o Late Toni Majhi).

A large number of persons were interviewed in the Purni Dhangain village including the following key persons:

- i. Shivratan Majhi, father of Umesh Majhi (about 55 years)
- ii. Reshmi Devi w/o Naresh Majhi & Bhabhi of Umesh (about 22 years)
- iii. Basudevi, mother of Baliram, (Baliram had accompanied Umesh right from the point police picked them up for showing the route; about 40 years of age)
- iv. Lalan, an eight year old boy who trailed them in the last leg and claimed to see Umesh falling after receiving the gun injury.
- v. Rajendra s/o Pachchan Majhi who worked and lived with Umesh and Balram in Kapurthala and gave the mobile number of the employer Amrik Singh Contractor.

These persons were being interviewed in the open in presence of large number of male and female population of the village, apparently much of the information was shared and well-known.

Police Functionary & Records

The Enquiry team visited Barachatt police station and met the P.S. in charge **Uday** Pratap Singh who had lodged the FIR after the alleged encounter on 10th April.

A message was sent by a PUCL member to district level functionaries while the team was returning from the field in the evening, but meeting could not materialize at such short notice.

FIR was perused, (and that was the most important document as police was reluctant to say beyond the FIR) and newspaper reports were also examined before finalization of this report.

Issues under Examination

The basic issue which needs to be examined is whether the

encounter was real or fake, as being alleged. A related issue is whether the boy who was killed was a naxalite wielding weapon as alleged by the police or he was an innocent villager as being claimed the complainant. In case it is a case of false encounter then a number of concomitant issues come up seeking for enquiry and explanation.

Police Version

On April 9, that is, a day before the incident the police received a confidential information about a naxalite assembly/operation near Dhangain and consequently a major operation was planned involving different police stations including some force across the state from Chatra district of Jharkhand. The combing operation started at around 8 O'clock on 10th April. -

As the police party was returning after a search in the villages and was only two hundred meters from the vehicles in which they had come there was a sudden burst of firing. They found themselves surrounded from three sides by about one hundred and fifty armed extremists. Despite repeated warning asking them to stop firing they were advancing with an obvious intent of snatching their weapons. Finally the police had to retaliate by firing. One extremist aged about 20 years wearing pant shirt fell to the bullets whose body was recovered later. They saw the mob carrying away three or four bodies, dead or injured during the operation.

The police recovered one used bullet of .315, three live cartridges, and one misfired bullet of AK47 from the place the dead body was recovered.

Shri Uday Pratap Singh, the P.S. in charge of Barachatti himself filed the FIR no. 86/08 on the same day against 150 unknown persons and one dead person u/s 147, 148, 149, 307, 353 of IPC, 25 (I-B) A, 26 of Arms Act and 17CLAAct. People's Version Since almost all the persons

assembled at two places at which the enquiry team met and spoke to the people seemed to agree with the general picture being given by the narrator, the alternative version can justifiably be called people's version. They appeared to be talking in one voice, only some details here and there as per our questions may be provided by a particular informant.

There was much that was common in the two versions, but the differences were most disturbing and related to the basic issues raised earlier. That a strong posse of police force arrived in the villages quite early at between seven and eight is confirmed by the people. They went to different villages in the area and it took them at least four hours is again corroborated. Till the time they decided to call off the operation and go back there was no incident. Only relevant piece of information that was added regarding the pre-encounter part of operation by the people was that the police force had picked up two youth namely, Umesh and Baliram at Nawadih where they were picking *mahua* with several other persons, including Baliram's mother. The apparent purpose was to take their help for knowing the route to some of the places like, Bengwatari village. According to Baliram's mother and others they were forced to accompany the police party. Rajendra, another boy who was a friend of Umesh and Baliram was also there but he succeeded in entreaty to let him go. Villagers too reported that the two boys were made to wear police uniform (either shirt, '*chitkabra*' as Basudevi said, or bullet proof jacket as some villagers thought). Since these two youths had passed through the villages accompanying police party, a large number of villagers had seen

them, as was repeatedly confirmed by all locals.

The two versions differ sharply when the actual operation starts. Villagers at Sunarsahi reported that there was sound of firing at a distance (apparently by the naxalites), which resulted in police to resorting to firing. Some women were pleading with the police to let Umesh and Baliram go, and as confirmed by many the rear group in Patulka let them off. However when firing started they were asked to run away, and they all ran for life. Baliram took the left route by the side of the *kachcha* road which rises higher while Umesh was running along the road. Another group of force was scattered from the upper part of hillock where a temple stands, coming down up to the river bed. It seems that some policeman fired into Umesh from the riverbed and he fell on the ground. Scared by the police firing villagers fled from the scene and hid themselves wherever possible, including some huts in Sunarsahi. According to villagers naxalites were surely not in sight anywhere, nor any encounter as such had taken place.

After some rounds of firing here and there the policemen entered some houses and beat up men and women indiscriminately. Among the persons beaten up were included Raghunadan Majhi alias Kailu Bhuiyan (35 years) s/o Late Teni Majhi, Baliram s/o Tetar Majhi (25 years) and his wife Sunita devi, Krishna Bhiyan (40 years) and his wife, Nanhku Yadav, Phirodhar Yadav, Krishna Yadav (35 years) s/o Modan Yadav among others. These names were given by the villagers assembled at Sunarsahi near the place of occurrence. They reported that fifteen or sixteen persons were beaten up including women and children. One of them Tetar pathetically remarked that the police force does not behave in a humane way with them, something which was

borne out by narration of one incident after another.

According to those who were around the place of occurrence the police themselves hid the dead body of Umesh in the *khajoor* bush just by the side of the road where he fell after receiving gun shot.

Findings

1. The enquiry team came to the inescapable conclusion that there was no real encounter between the police and the naxalites. The conclusion was reached because of the following reasons

i. It is not possible to discount the version of all the villagers who in one voice said that it was a case of false encounter - or rather a shameful killing of a young innocent boy and declaring him a naxalite later.

ii. Umesh, according to the version of the villagers, was trapped between two groups of police force, one of which was behind him and his taking part in any naxal assault was thus not possible. His blood stains were still present first on the grass just by the side of the *kachcha* road, and more profusely in a small open space between *khajoor* shrubs. The space could not have accommodated more than one person. The other side of the shrub was too constricted to allow entry, and moreover it is still full of cobwebs, making it absolutely clear that neither there was firing from that place, nor into anyone hiding there. The only possible explanation for his body being found there is that the police force itself dragged it up into that space.

iii. There was no weapon recovered by the police who tried to concoct a story that this boy was part of the group firing upon the police; the supposed recovery of live cartridges could be merely handiwork of the police.

iv. Generally the area where alleged encounter took place was most inappropriate for any assault, much less for a large group to charge

an armed police party with a view to snatch their weapons. In fact there were far more suitable places along the route where the police party could have been attacked inflicting major casualties. No extremist group in its senses was likely to expose itself so much and launch an offensive on an armed posse of force on this part of the terrain.

v. Further, if at all an encounter took place on such an open terrain, and the naxalites fired more than 3000 rounds as police would have us believe. It was absolutely impossible that none of the policeman should receive any injury. Imagine more than a hundred persons, naxalites, firing upon more than a hundred strong group of police force thousands of rounds, and yet not a single policeman sustained any injury! The police claims that they saw three or four persons dead or injured, among the alleged extremists, being carried away, but ironically on the police side there was no casualty.

vi. If thousands of rounds were allegedly fired from both sides, there should have been telltale evidence on the shrubs there, which was not found even in a close examination. Moreover the police failed to collect even a few dozen used cartridges after the operation is strange and betrays the fact of concoction of the story.

vii. Finally, the whole theory of the killed boy being an 'unknown' terrorist is baseless *afa initio*, when it is proved beyond all shades of doubt that he had come to the village for his marriage, and otherwise was living in Kapurthala district of Punjab for several years.

It is difficult to say why this boy was killed. One possibility could be that the police panicked, started firing and mistakenly killed Umesh. But there is no evidence to suggest the proximity of the naxalites to the place of occurrence and hence the question of panic is improbable

and far fetched, and is hence ruled out. Another possibility is that while one party of the force released Umesh after an unsuccessful search, while another group did not know about it and killed him mistakenly. This is also not very convincing because this boy had apparently stayed with the police party for quite sometime and they all knew that he was innocent and without arms. The strongest possibility is that the police killed him out of frustration and with a view to make out a justification for a failed operation on such a large scale. In the bargain on the one hand they could have won laurels for killing naxalites in encounter and opened fresh opportunities of moneymaking as some informants suggested to us.

2. That the boy was not a naxalite, rather a plain wage earner, who had migrated to a distant place in search of livelihood is proved beyond an iota of doubt. Umesh was working as a mason in Kapurthala district with a contractor named Amrik Singh in village Dalla Saheb under p.s. Sultanpur Lodi. Many of his friends were working there for years and he was living there with his other co-villagers and friends, namely, Baliram, Arjun, Buddal, Suresh, Birju and Rajendra. Rajendra, another young boy who was also working there gave to the enquiry team the mobile no. of Amrik Singh. Amrik confirmed on his mobile no. the fact that so many young persons including the deceased were working there for several years. The family members produced an identity card of the deceased signed by *Mukhiya* to be carried on body in an alien place to prove identity. Some used old tickets were shown to the enquiry team by some of the boys to establish that they were working in Punjab. Most of them had come to village during Holi and were planning to go back after Umesh's marriage, which was scheduled for 25th April.

Observations

1. That life of a young boy who was going to be married just a fortnight after should be sniffed out with such callousness and so unnecessarily is shocking, to say the least. Even a criminal has some purpose, howsoever unjustified, for taking a human life, but in this case there was none at all, which makes it outrageous beyond words and extremely disturbing. And if police force, which is provided weapon for the security of the people, indulges in such perversely criminal act, it is an unpardonable offence. The brutalization and collective insensitivity of the force revealed by this incident, if it is true, is alarming, and most unfortunately, we have no reason to think that the allegation is false.

2. Further the conduct of the higher officials also does not cover them with glory. It is again disappointing to note that despite the incident already becoming controversial, no senior official has thought it necessary to visit Dhangain and talk to the family of the deceased and other villagers. There is a total lack of communication between the poor people of the area and the district administration, made worse by mutual distrust, and possibly hostility. If the government is really serious about containing naxalism, state functionaries should try to act fairly and instill faith among the people. Incidents of this kind only result in further alienation of the people. This does not augur well for democracy.

3. The general lack of development in the region is by all means an underlying reason behind people's discontent with the government manifested in the spread of naxalism, but a far more serious problem is the attitude and conduct of the state machinery revealed starkly in the present case. As if the poor are disposable -and without any right to exist, much less with a claim to human dignity. A police force can

catch hold of a couple of boys and force him to serve as a guide under duress, speak abusively to the men and women around, let the boys go after repeated entreaties of some hapless women already scared to death, and kill one of the released boys without any compunction. Such behaviour is unthinkable in any civilized society, much less in a democracy. Still it does happen and the government fails to take cognizance of the grievous lapse on the part of state machinery. To think that naxalism can be contained through this kind of intimidation is living in a fool's paradise. Serious attention will have to be paid to the deeper issues whether on the developmental front or keeping the force under leash of law.

Recommendations

1. A judicial enquiry should be instituted at once, if need be, assisted by the C.B.I., to enquire into the case in depth. Local police will have to be kept out of the enquiry, lest they tamper with evidence. The enquiry should be time-bound and should not take more than a month. Members of the raiding team should be interrogated to confirm that Umesh was killed as alleged and then to know the reason behind the killing of Umesh and the person who fired upon him and the person who gave orders, if any. After enquiry case should be registered u/s 302 against the persons killing Umesh, while appropriate sections should be fastened against others who constituted the party. Case should also be registered against the in charge Barachatti P.S. for filing false FIR.

2. At least a compensation of Rupees five lakh should be paid to the next of kin of Umesh Mandal, and this sum should be recovered in full from the persons held guilty for the offence.

3. A development plan should be drawn up for the area, along with a concerted attempt to

effectively implement all the existing schemes of the government taking people into confidence like SSA, programmes of National Rural Health Mission, NREGA etc. Help of some NGOs with high level of credibility may be taken to secure involvement of local people. The plan should be implemented in a time-bound manner with some senior official made responsible for monitoring the progress.

4. The most important issue however is to reform policing in the state with a view to make it more accountable to the people and to weed out corruption as far as possible. In this context it is necessary to recall the directives of the Hon'ble Supreme Court in the Writ Petition (Civil) No. 310 of 1996 Prakash Singh & others vs. Union of India on 22 September 2006. This order directs the Central and State Governments to take action on or before 31 December 2006 on the following seven points:

- i. Establishment of State Security Commission
- ii. Set down a selection procedure for appointment of State DGP and fix a minimum tenure of office for him/her.
- iii. Fix a minimum tenure for IG of Police and other officers.
- iv. Separation of Investigation from law and order.

v. Set up a Police Establishment Board at the State level

vi. Set up a Police Complaint Authority at the State and District level

vii. Set up a National Security Commission.

Bihar is among the states that have brought a new Act according to a draft prepared by a committee. However, it is unfortunate to notice that the basic changes posited in the directive have been skirted in the new Police Act. In the specific context of the present case the most directly relevant provision will be regarding the Police Complaints Authority. Even the model bill prepared by Soli Sorabji Committee, which was by no means a sufficiently pro-people document, had suggested inclusion of judicial officers, which has been ignored in the Bihar Police Act by making the District Magistrate Head of the authority at the district level. Unless there is judicial supervision combined with association of members of civil society to oversee the working of the force their highhandedness can not be curbed. PUCL Bihar State unit has deliberated on the issues of police reforms and recommends that Police Act is suitably amended after a wide consultation with general public to remove the anomalies of the new Act.

5. If legislative changes are likely to introduce an element of compulsion, they may not be

sufficient without some change in the attitudes of higher officials. As it is, there are there are several provisions in the existing police manual for riot control, firing and many different situations, but unfortunately, they are flouted with impunity and higher officials fail to take any action in this regard. Likewise even if legislative provisions are introduced, they may not be implemented unless the higher echelons of police force are convinced of their importance, at best in a few cases public pressure may succeed in forcing action. It is common tendency among the higher officials to shield the department or else if a matter becomes too hot to sacrifice the lowest functionary. Adherence to norms and guidelines are not insisted upon, public complaints are not given proper attention and summarily disposed off widening the chasm between the government and the people. There is an urgent need to make them appreciate the need of greater transparency and accountability. Training may be necessary but right messages must come from political masters and high officials through their actions. - **Vinay K Kantha**, President; **Mithilesh Kumar**, Secretary; **Fr Jose K.**, State Vice President & District President, Gaya

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PUCL-Bihar Report on Kosi Floods 2008 and Relief Camps

In 2007 in the wake of severe floods in Bihar, PUCL had decided to undertake a study of the situation in the perspective of human rights violations as well as policy issues. In the course of enquiry teams had visited some relief camps also. The nature of floods was different this year, affecting lesser area or population, but of far more devastating impact on population. It was decided therefore to extend last

year's work and take a deeper look, particularly into the aspect of relief and rehabilitation.

A PUCL team comprising Vinay K. Kantha, President, Bihar PUCL, Daisy Narain, Vice-President, Bihar PUCL and Arvind Sinha, Executive Committee Member, PUCL, Bihar visited Purnea district to take stock of the situation in the aftermath of devastating floods in the Kosi region, specially, the situation in the relief

camps. Visit to Purnea was the first part of enquiry.

Another two member team consisting of Bfhar Chapter PUCL Vice President, Arun Kumar and General Secretary, Ramashray Prasad Singh made a pilot survey of some the Supaul and Saharsa district flood relief camps to take a bird's eye view of relief works

going on in the relief camps set up for the flood victims in these two district. The team visited these camps on September 9-10 and filed its own report.

However before reporting on the situation of relief operations it may not be out of place to outline the background of floods in the current year. Based on reports appearing in the press or discussion with some experts, the causes of the breach at Kusaha can be understood by and large.

I. Background of the Floods in 2008

After the floods of 2007 which affected large parts of north Bihar, namely Mithila and Tirhut regions, Bihar Chief Minister Nitish Kumar announced that the government will take effective measure to combat the menace of recurring floods and disaster management. For this purpose the government formed Technical Committee on Flood Problems of Bihar¹ headed by an eminent engineer N. Sanyal. Sanyal Committee submitted its final report in February 2008, after submitting interim reports in September 2007. This committee favoured the policy of embankments for flood management and gave some important and valuable suggestions. Its recommendations in this respect are as follows:

“Embankments, as a means of flood management is adopted in most of the flood affected regions in the world. This is because construction of embankment needs a relatively simple technology, which enables the use of locally available materials and labour and quickly provides direct protection against flood to the area where it is constructed.”
(*Recommendation no. 11*)

It further elaborates upon the status of the embankments as follows:

“Large number of breaches in embankments during floods of recent year is mainly on account of the

deteriorated conditions of the

embankments due to inadequate maintenance. The investment made for the needed restoration of the existing embankments would be providing much more benefit than in case the same amount of investment is made over the construction of new flood management works. Restoration of existing embankments to their proper profiles and level should, therefore, be of the top most priority for the flood sector of WRD (Water Resource Department). (*Recommendation no. 1 of Sanyal Committee*)

In spite of such clear cut and categorical recommendations of the Sanyal Committee to restore proper profiles and levels of existing embankments Bihar Govt. and its WRD totally failed to implement them due to their negligent and callous attitude. The DM of Saharsa Shri Narmadeshwar Lal had warned the state government regarding this kind of an eventuality in Kosi embankment as far back as in March 2008. Bihar government had decided to implement 413 schemes for flood protection by the end of April. One of the schemes was to build 12 meter high apron at Kusaha to protect the Eastern embankment of Kosi. But due to inefficiency and lack of concern of the government this was not even started. Out of 413 schemes of the government to be completed by April end only 4-5 schemes were completed. The work on these schemes also stated very late. Due to the laxity of WRD in implementation of these schemes the President and General Secretary of ‘Bihar Engineering Service Association’ Sri Amlendu Kumar Jha and Rajeshwar Mishra issued press statement as 6th July exposing the fact that the flood protection work (embankment repairing & maintenance work, etc.) which was to be completed by 30 April were not completed even till 6th July. The blamed the WRD high officials and

administrators for

late start of the work. They further expressed their apprehension that bunds may be breached causing floods and that the engineers should not be blamed for this. They charged WRD high officials for delay in the start of flood protection work and that they should be held responsible for any devastation caused by floods, if such a tragedy happened.

The Chief engineer at Birpur officer of WRD, who was in charge of Kosi dam and barrage in Nepal and India, Shri E. Satyanarain said in a TV interview in Star News as 3rd September 2008 that he had send SOS to the state government on 6th, 9th and 14th August 2008 regarding grave situation of the embankment then and asked for immediate steps to halt it. He requested for immediate supply of money and material. But no support came from the govt. and high mandarins sitting in this state secretariat. Rather Shri Satyanarain was transferred from there on 17th August. The bund breached at Kusaha the very next day on 18th August. Seeing the devastation Bihar Chief Minister called it a ‘*Pralaya*’, and PM Manmohan Singh a national tragedy. But nobody has been punished till date for this ‘*Pralaya*’ which destroyed the lives and economy of nearly three million people. It shows that then is no system of accountability in the administrative system here. The government has instituted a judicial probe instead.

These facts clearly reveal that there is total lack of responsibility and sensitivity in the state government and bureaucracy in so far as public interest is concerned. Had it not been the case how was such negligence possible in spite of clear recommendations of Sanyal Committee?

II. Status of Relief Camps in Purnea Reported by the First Team

The team reached Purnea on the 8th September. It collected

information regarding numbers and location of relief camps from some local people and the volunteers of CHILDLINE who were involved in relief work there with children as the target group. We came to know that altogether 24 relief camps were running in and around Purnea town. Out of these 24 relief camps only one was being run by the government. The government was in the process of setting up a mega relief camp at Maranga at the outskirts of Purnea town. Other relief camps were being run by citizens committees, some by religious organizations and some NGOs. One relief camp was run by organization of Baba Ramdeo, another by Art of Living and one by a local Madarsa. Most of the remaining relief camps were being run by the citizens committees formed by the inhabitants of different localities.

Over the two days the team visited four relief camps, three in Purnea town and one in Banmankhi. The camps inspected were Government run relief camp at Adarsh Madhya Vidyalaya (Belauri), another run by SOS village in a Uchit Sah High School just nearby, a third one run by local community along with *Mandir* Trust at *Astha Mandir* in the heart of the town and last one, a mega relief camp at Banmankhi. Observations of the team are given below.

Relief Camp Run by the Government

We decided to visit first of all the Government run relief camp. This camp was at the outskirts of the Purnea town in a Govt. School, namely Adarsh Madhya Vidyalaya, which has a sprawling campus of several acres.

Shri Rajesh Kr. Mishra was the Magistrate-in-charge of this camp. He informed us after checking the register that 3040 persons were registered in that relief camp. Out of which nearly 600 were children in the age group of 0-11 years. Delivery of

two children was also reported from that relief camp.

More marooned people were reaching there every day. Large number of persons, nearly 25% had come then from Murliganj block of Madhepura District which was badly flooded & devastated by the floods. Many persons were reported to have been swept away by the high velocity of Kosi river on the fateful night of 19-20 August in Murliganj and the adjoining areas. People were forced to leave their homes with entire families as it was announced by the government that the flood waters will stay for considerable time.

The government officials in the camp told us that two meals of rice, *daal* and vegetable were served to the people. They were also provided with breakfast. Small children were given milk twice a day. When we talked to the people living there they also confirmed the provision of two meals, one breakfast and milk for children. They complained about nonavailability of wearable clothes, lack of soap and washing soda and small number of toilets. We could see clearly for ourselves that men, women and children were moving around in dirty clothes and the toilets were really stinking badly.

The teachers of the school were also involved in running the relief camp. During the day time the teachers claimed that they gathered the children and taught them. The problem they faced was paucity of books, note-books and other study materials for different age groups of children. One student of Murliganj who was staying with his family in the camp, was worried whether he will be allowed to appear for matriculation board exam to be held in March next year.

We felt after talking to different persons in the camp and inspecting the area that the main problem there was of cleanliness, clothes, medicines and books. Though one

doctor was posted there, it was not as per the requirement.

Relief Camp Run by the SOS (an NGO)

The team went to visit a camp run by a NGO named SOS after visiting the govt. run relief camp.

Nearly 2000 persons were staying in this relief camp out of which nearly 40% were reported to be children. This was also located in a spacious schools campus. We got the information that each person was given two meals of rice, *daal* & vegetable and breakfast twice there. The children were given milk once. The children were also engaged in music and games to pass time in a positive way.

The school teachers were not involved in the management of things there, though they have been instructed by the administration for this. The government doctor visited the place once, which was not sufficient. There was lack of toilets as the school had very few of these. 8 new toilets were being built for catering to the needs of the flood affected people. There were 5 hand pumps.

Here also we found that what was lacking was sanitation, clean clothes, medicines, doctors and general cleanliness.

Astha Mandir Relief Camp

This relief camp is in the heart of the town and is run by local people. There is a committee to manage the affairs there. Altogether nearly 400 people were living there out of which around 150 were children. People living there were getting two meals and a breakfast. Children were given milk once a day. But here also there was insufficient toilet facility. No doctor or medicine was available here.

There were many citizen run relief camps in and around Purnea town. As per our information food materials were reaching there in sufficient quantity. But what was lacking was clean wearable

clothes, soaps & soda, medicines, doctors and clean toilets. Due to their situation the danger of disease and epidemic is there. Banmankhi

The team visited Banmankhi, sub-divisional headquarters on September 9, 2008. We visited the government run mega relief camp in *Krishi Bazar Samity* premises. This camp was started by the local people after flood affected people from Madhepura started reaching there for 20th August. The local people took initiative to start a camp there, arrange for provisions through community support and run the camp on their own. In fact only subsequently government stepped in, and it was given the status of mega camp only a day back with the government owning up the full responsibility.

There were 4200 persons in this camp on the day of our visit as reported by the organisers. Nearly 100 tents have been erected in which people had started living. A doctor was posted there round the clock. Only four govt. staff were there to run the camp. Local people continue to remain fully involved together with the government employees there. The number of toilets was only 10, while 30 more toilets are to be built there. Government started offering food and other eatables from 8th September in this camp.

Some flood affected persons who arrived there on 8th September were denied registration there. They complained about this to us. We requested the concerned govt. employees not to deny relief & registration to anybody coming there.

Another MEGA Camp Coming Up

A mega camp was being built in *Aam Bagh* (vke ckx) to house flood affected by the government. We saw large number of small plastic tents erected by people near JV canal which stretched up to Aam Bagh situated about a kilometer ahead on

Purnea-Saharsa NH107.

Due to the devastation caused in the villages and town in the flood affected areas a significant number of people will have to live in the tents for considerable time. Arrangements will have to be made keeping that in mind. But around Banmankhi out of 29 camps only one was being run by the govt. Govt. machinery and administration have been very slow and disorganized to tackle the emergency.

General Observations

1. It is rather disappointing to note the meager share of responsibility that the government is willing to take in respect of providing shelter or relief to the victims of floods. At the same time it is most heartening to witness how ordinary people come forward during a period of crisis, with whatever little support they can provide.

2. In Purnia town area till three days before our visit on 8-9 October there was just one government camp running in *Adarsh Madhya Vidyalaya*, while on the Railway platform food was being provided to those who had taken shelter there, which may be deemed to be a facility provided by the state system. Otherwise a very large number of camps or facilities for providing at least food that spontaneously came up in the wake of the spate of people coming from the flooded areas. Local community took upon itself the responsibility of feeding the hungry, and providing them a place to sleep if that could be managed. Of course most of these arrangements folded up after some days and weeks, unless there was an organised group behind them like an NGO or a religious group or local committee in an organised form. This spirit of support among the people is the real strength that the state should duly respect and recognize and integrate with whatever policy framework it designs for disaster management or similar interventions.

3. A very large number of persons seem to be staying outside the camps, on the roadside or on embankments or in groves. Usually they have borrowed bamboos from local villagers, got plastic or polythene sheets from social workers or even bought it from the local market and set up small roofs overhead. Sometimes some philanthropic groups would arrive in their midst and distribute some food leaving them to fend for themselves otherwise. Government agencies seem to ignore their existence, while they constitute the most vulnerable groups among the persons hit by the floods. No government relief material reaches them. Such a large concentration was witnessed on JVC canal between Banmankhi and Murliganj on NH 107. A large mega camp was coming up at a little distance from the canal in a mango grove as seen on 9th September, but locals pointed out that already at least ten thousand persons had taken shelter there. Apparently they will have to be removed and subsequently rehabilitated in the tents being put up. -

4. Facilities in Camps: Place for sleep are generally available in the regular camps but at many other places there is no proper arrangement made. There are many centres where food is provided twice a day. These are run usually by groups like *Maarwari Yuva Manch* which deserves special mention, or by political parties like RJD or LJP or some other political persons. In the regular camps also provisions of dari or mattress are meagre or non-existent.

At all the places hand pumps are the source of drinking water, though shortage is reported from many places.

Toilet however is the biggest problem in the camps. Only at a couple of places regular toilets

were found in some numbers, otherwise temporary arrangements are made in small enclosures. Arrangement for cleaning is very poor, and at most places, there is strong foul smell as one reaches near the toilets. Considering the large numbers of persons taking shelter in the camps, this facility, so essential though, is grossly inadequate and unclean. Unless large immediate action is taken on this front there is chance of spread of diseases because of bad hygienic conditions prevailing especially in the large camps.

Another major area of concern is lack of medical facilities or supply of medicines. After all most of the refugees have no money with them and are as such wholly dependent on the organizers of the camp, government or nongovernment for everything including medicare. In the government camps doctors come and ANMs are also deputed, but in other camps except some occasional support by IMA or private team of doctors nothing much is being done by the government. Lack of medical care facility was reported from 15 camps out of 23. as for supply of medicines only in two camps it was reported to be adequate, otherwise at best there was only some supply at 15 places and none in the remaining camps.

For purposes of delivery only in one camp an arrangement was noticeable, otherwise only some quick improvisation has to be made when a woman is in labour.

Relatively speaking arrangement for light was not altogether unsatisfactory. There was electricity in 17 camps and at some places with generator back up. In other camps also lanterns or candles were by and large available.

Facilities for keeping cattle was desirable considering that many people fled from their villages only with their cattle, but out of 24 camps in Pune only in three there was a

facility in camps or in close proximity.

5. Behaviour of the Keepers and Staff Managing the Camps: One redeeming feature of the camps was the general behaviour of the persons managing the camps which was assessed as cooperative by the inmates of the camp. If there were occasional complaints and outbursts, it was either due to lack of essential facilities, or the mental state of inmates. They have faced a traumatic experience and are often in a state of shock. However, there is no thought spared anywhere to help them at this level.

By and large those managing camps are few in numbers considering the large number of people they have to look after, and are under tremendous strain, many of them working overtime. While shortage of even essential items and the need to mobilize them almost on a daily basis puts a large burden on the community run camps, government camps have adequate resources at their command and problems are different.

6. While it is quite noticeable that in the camp run by the government there is no dearth of resources, and better record keeping, though not enough. In fact the intent behind record keeping is accounts related, rather than providing appropriate kind of help to the inmates, yet it is much better than found in the community run camps. At both places however, there are obvious signs of lack of proper management in varying degrees. Whichever camp one enters, he is likely to witness disorder, if not chaos. One can see people loitering aimlessly, women lying here and there, children scampering with nothing much to do. Should some group come with relief material quite often there is a scramble for claiming it before others, leaving the weak or sick or aged at the margins. Human dignity is compromised with no thought spared for the same. From the looks of the inmates one can

make out that most of them are needy or destitute, coming from poor families. By and large the better off section of society has found shelter somewhere else, may be with some relatives or in hired accommodations, and those who are here in these camps are not entitled to the dignity at the same level.

7. Issue of Preparedness: Floods are the commonest natural disaster hitting a state like Bihar recurring almost year after year in one or the other part of state. As such the state and its machinery is supposed to remain in a state of preparedness in this regard during the monsoon months, in addition to whatever that is required to be done for the upkeep and maintenance of embankments. The state government in Bihar has been found singularly lacking and unprepared. If lack of proper maintenance is said to be the first and primary reason of breach in the afflux *bandh* at Kusaha, the official machinery was ill prepared to respond to the disaster when it occurred. After the Disaster Management Act 2005 there are more specific guidelines and expectations laid down for the government. While tall claims were galore, the actual preparation seems to be altogether missing, as borne out by the inordinate, rather unpardonable delay, in mounting proper evacuation, rescue and relief operation. The rescue operation started tentatively at a scale not commensurate with the magnitude of the disaster, continued at a slow pace for many days. The army men also reported a sluggishness of response on the part of state machinery even after their belated arrival. Likewise for many days there was no relief operation undertaken by the officials. Thanks to people's initiatives for several days and sometimes even till a month after flood victims got food and some

kind of shelter. Mega camps came up only after two weeks or more. Promptness of response is necessary and very important in times of disaster and it seems that official machinery is getting increasingly sluggish in its responses.

II. Report of the Second Team on Flood Relief in Madhepura and Saharsa Campus (Filed by Shri Arun K. Singh & Shri Ramashraya Prasad Singh) At Babhangama Middle School in Triveniganj Block of Supaul district the team found a state government run relief camp which apparently gave a look of smoothly run relief camps - canvas tents, relative cleanliness and some sort of orderliness in a relief camp. However, when visited inside the camp, the flood victims interviewed by us gave an entirely different picture. It was mostly about the lack of systematic Medicare. The relief camp sheltered a total 688 flood victims having inadequate toilets. To meet the requirement of these flood victims this camp had just 6 toilets - 3 permanent toilets and the rest temporary.

A government employee Sheoshankar Prasad, a *tehsildar* while talking to the team members said that more temporary toilets could not be arranged as there was a substantial rise in ground water level in the locality which made it technically difficult.

As and when the PUCL inquiry team members reached inside the camp a large number of flood victims surrounded the visiting members. They were more concerned about absence of Medicare inside the camp. These were complaints about accommodation of the flood victims there and also shortage of hand pumps. To meet the requirements of water of the flood victims taking shelter in this camp - there were only 5 hand pumps.

Flood victims like Ashok Ram of Chatapur, a relatively old member of the camp complained that no doctor

used to visit the camp. A good number of flood victims like Ghoolam Rasool of Korla Patti Khunt village (Triveniganj Block) who had reached at the camp along with 18 other flood victims displaced co-villagers. They were all not given a place to settle. Similar complaints were also made by Saeed Akhtar of Korla Patti Khoont village, Dinesh Yadav - a resident of Kusraha (Triveniganj Block), Bindeshwari Yadav of Chatgaon and numerous others. They all said that they were not provided a place to settle inside the camp.

When contacted Sheoshankar Prasad (Tehsildar) representing the district administration at the camp site candidly admitted that there was no frequent visit of medical doctors at the camp site. However, he said that medical team used to visit the camp time to time. He informed Dr Surendra Das was in charge of the medical camp in this relief camp.

Talking about the flood victims' non-accommodation the Tehsildar said that because of space constraints there flood victims could not be accommodated here in huge number as it would lead to further mismanagement at the camp site. He said that a good number of flood victims are not ready to go to relief camps to nearby Shura and Gambhirpur relief camps in spite of their being provided government transportation facilities.

The team was at a loss to understand as to why in spite of availability of space for accommodation in nearby Bhura and Gambhirpur government run camps - the flood victims of nearby villages were reluctant to move there.

No one either from the flood victims or the government employees manning the camp were ready to speak anything on this count. After much prodding, a local villager of Babhangama - Ramesh Choudhary revealed the secret about insistence of flood victims to stay at

Babhangama relief camps in site of all odds and their not being ready to move to yet another nearby relief camps. Revelation was shocking for the PUCL team members. It threw a light on a darker aspect of the social life in Bihar's country side. There was no love even at the time of flood crisis. Choudhary explained that Babhangama being a Brahmin dominated village - the flood victims - Muslims, extremely backwards (EBCs) and the others which surprisingly also included the poor Yadavs felt that the camp was safe for them as a shelter here and not to move to other two nearby camps - Bhura and Gambhirpur - two Yadav dominated villages.

Interestingly when Choudhary disclosed the reason behind the flood victims' insistence on their not being sheltered at the two nearby relief camps almost all admitted in unison. They said that they felt safe here. They felt that the honour of their womenfolk was safe here. They said that they were apprehensive that honour of their womenfolk would not be safe in the nearby relief camps. They also expressed their apprehension that their belongings too would be looted there. The PUCL team members were aghast on this disclosure.

One more striking discrepancy was noticed in almost all the camps the team visited in these two districts. There was no special arrangement for the physically challenged, old, invalid and ailing flood victims. It was found the same both in the government run camps and the camps run by the NGO partners of the funding agencies. The diabetic patients had no option than to consume rice - normally not prescribed for the sugar patients. Physically challenged victims were cursed to face further problems in their day to day routine life because of their

handicap. Old, invalid and ailing people had their own problems.

Interestingly with the advent of the flood - Babhangama Camp was initially set up by an International Funding Agency -Action aid - through its partner NGO - *Bihar Gram Vikas Parishad*, Satamarhi on August 28. Later on the district administration took over the command of this camp. The Actionaid NGO partner was left with no option than to move to the nearby village, Lal Patti, at Satsang Bhawan.

A large number of food victims from nearby villages - Sheonagar, Chatgaon, Laharni Lagunia, Parahi, Lakshminia, Gadha Rampur, Sakaha, Barkurwa, Nazurwa, Kushaha, Bhagwanpur, Harhar Patti, Tilathi, Tengraha of Supaul and Madhepura districts were taking shelter in make-shift polythene covered tents at Bagla river embankment braving scorching sun. 18 physically challenged - Blind, lame and polio-stricken were also among those taking shelter in these camps.

At one of the relief camps run by a NGO partner of an international funding agency those living there complained that they were just being served breakfast of flattened rice (*chura*) in the morning and evening and cooked rice in lunch. They were not being given dinner in the evening. Members of the visiting PUCL team kept receiving phone calls from flood victims of this camp even after their coming back from their trip. The flood victims complained that even after their making a complaint before the PUCL team, the situation has not improved there.

According to a district administration document dated September 3 there were 7 district administration run relief camps, giving shelter to flood victims in Supaul district. These were - High School Triveniganj (2000), Balika High School Triveniganj (150), Marwari Dharmshala Triveniganj (400-520),

Babhangama Middle School (500-700), Primary School Bhura (100-200), Middle School Bhura (400) and Primary School Gamhirpur (50-100).

Interestingly when the visiting PUCL team reached at the Government High School Triveniganj relief camp it found that the camp was being run by Marwari Yuva Manch and not by the district administration as claimed in the district administration run document.

When pointed out toward this state president of Marwari Yuva Manch, Sarita Bajaj - resident of Khagaria a middle aged lady manning the camp there informed us that the issue was now decided and the camp was categorized as a full fledged Marwari Yuva Manch run relief camp even by the district administration.

She said that earlier for few days Manch had received some rice and cooking gas cylinders and generator facility from the Supaul district administration it was listed as district administration run government camp. Now the Manch has stopped receiving any help from the district administration the distraction has also agreed to strike off the name of this camp from the list of government run relief camp. Speaking on behalf of Supaul district administration, a Oy. S.P., Manish Kumar Sinha also confirmed the fact.

The team was happy to note that the relief camp run by the Marwari Yuva Manch there was better managed. In spite of the fact that because of a space crunch in the camp it could not accommodate maximum number of flood victims for shelter but it was open to all for food - even for those not staying in Manch relief camp. They used to go for announcement through the public address system inviting all for lunch, dinner and breakfast.

At Government run Lal it Narayan Laxmi Narayan Balika Project High School Triveniganj camp there was rooms available for the flood victims

to take shelter, but there was not at all any arrangement for their food. The medicare facility was available at this camp as the visiting PUCL team found two auxiliary nurse midwife (ANMs) namely Aruna Kumari and Meena Kumari attending the medicare camp inside the camp with their stock of few medicines there was no doctor available at this camp. These two ANMs could not even recall the name of the medical doctor - in charge of the medical camp here. This fact spoke voluminously about the state of medicare in this camp. There were 2 toilets and 1 hand-pump in this camp. All the government run relief camps in Supaul town had the same mismanagement.

Visiting PUCL inquiry team members were disgusted to know that the NGO functionaries of a NGO partner of the Actionaid -Muzaffarpur Vikas Mandal namely Jagdish Yadav, Basudeo Thakur and Mukesh Thakur were thrashed black and blue by Yadav strongmen in the locality when they refused to abide by their dictates of not running community food camp for local dalit flood victims in the Champanagar *Panchayat* under Raghapur Block of the district.

Mismanagement galore was noticed at all the relief camps visited by the PUCL team which included - Simrahi Dharmshala, Inter College Raghapur, Satyadeo High School Pipra. However contrary to it the condition of Mega Camp set up by the district administration in High School Simrahi was found to be in some order. Though for 5825 flood victims taking shelter there was 28 toilets and 26 hand-pumps. The camp has also a generation set.

At Raghapur Referral Hospital there was an anarchic situation prevailing when the visiting team reached there along with diarrhoea patients - one old and a teenager

boy from Dharmshala Relief Camp. The patients were sent to the hospital by a hand drawn cart and when they reached there a lady doctor manning the camp asked them to be shifted to a place without attending them. She was about to move outside but when she noticed that the PUCL team members accompanied by a lensman she returned to her table. Accordingly thereafter the said lady doctor asked the patients to be kept in the hospital where they were given a place on the floor along with the other diarrhoea patients. They were administered saline and were given medicines.

The team also visited roadside relief camps falling under Saharsa district. These camps were in Sonebarsa locality of the district. At Patanjali Baarh Rahat Shivir Mahavir Sthan Soha Nahar Chowk Sonebarsa the arrangement was found to be satisfactory. Here it was found that the relief volunteers used to carry foods to the flood victims inside inundated villagers by boat.

IV. Recommendations

1. In view of the apparent failures of the government commencing from a lack of maintenance of embankments to the ineptitude and slackness in rescue and relief operations it is imperative that the whole episode is investigated thoroughly and without delay. The decision of instituting judicial probe to go into causes of breach is welcome, provided it is reinforced by civil society representation and assisted by experts, completely within a short time period and action taken against persons found guilty. After all, the breach was a fact and by all estimates it was on account of human failure. If such grave offences go unpunished, then the government has no right to build dams and embankments or for that matter, even rule the state.

2. A separate enquiry needs to be undertaken to look into all aspects of post breach rescue and relief

operations, particularly at the field level. This will have any credibility only when eminent citizens outside the government, from within the state as well as outside, are involved. However a senior level government functionary may be provided to the Committee or the Commission, which may be constituted for the purpose to facilitate its functioning. The primary responsibility of this Committee/Commission should be to identify the gaps and lapses, fix responsibility for the same and make recommendations both on punishments and procedures to be adopted to prevent their recurrence in future.

3. It seems highly desirable that civil society and village community has a role in all stages of decision making and implementation of flood control measures. They should be involved in the maintenance and upkeep of the embankments and other structures, so that a greater social vigil is institutionalized. PRIs may also be kept in the loop without granting them direct authority as such, because larger civil society has greater stakes in whatever that is done for protection from floods or even water management at the local level. Such infrastructure facilities have to be created well in advance on a permanent basis in as dispersed a manner as resources permit.

4. It is imperative for the government of Bihar to implement the provisions of Disaster Management Act in full faithfully. It is true that through a couple of circulars in June 2008 District Disaster Management Authority and State Executive Committee in this regard have been notified to function under the chairmanship of District Magistrates and Chief Secretary respectively, but it has no meaning until it is made functional. A disaster can not be tackled in the files or on paper, and further, it can not be faced without the involvement of people. It is in fact

necessary that people are involved fully in any arrangements of disaster management. This year too, much like last year, almost everywhere the affected persons were initially helped by the common people, rather than the official machinery. Government stepped in much later, seldom adequately or with any sense of dedication, sensitivity and urgency, so badly needed by people in distress. In the light of this year's experience it seems imperative that while some facilities like boats etc should be kept in readiness in adequate quantity at the state level, locally also there should be availability of safe raised platforms and structures to protect affected population, should a disaster strike.

5. Not that maintenance of records or accounts are unimportant, rather these are the strength of the government and should not be sacrificed, but much more is needed. Greater openness and transparency, an attitude displaying a sense of duty and responsibility rather than show of authority and arrogance, and a willingness to collaborate with individuals and groups which come forward to help the victims of a disaster should be the guiding principles for the state apparatus. Resources both in terms of men and materials at the command of the government are enormous and much larger than what individuals or even nongovernmental organizations can collectively mobilize, but the spirit and the style of functioning needs to change.

6. The state government should rise to the occasion and should go for streamlining its disaster management department. It was noticed that the government machinery took undue time to streamline its machinery to help the disaster victims. A permanent trained disaster machinery should

be set up which could be pressed into service in the time of disaster like - floods, earth quakes, epidemic, fire and similar other situations. Government employees as well as local volunteers should be trained especially to handle in a disaster like situation so that they could develop sympathetic attitude towards the disaster victims. Medical personnel should also be trained to tackle disaster like situation and for it infrastructural facilities be made available at each and every district of the state. NGOs should also be asked to train its personnel to work in a disaster like condition. - Vinay K Kantha, President; Daisy Narain, Vice President; Arun Kumar Vice President; Ramashray Prasad Singh, General Secretary; Arvind Sinha, Member, Executive Committee, Bihar PUCL

(from page 7...J must be brought on the Statute book to keep balance of privilege and accountability intact.

There is another matter which is causing more and more pain to those who revere judiciary i.e. whether children of sitting judges of High Courts should be .permitted to practice in the same court. Frankly I have always resisted the idea in the confidence that Judges and their children would themselves so act as not to occasion any scope for criticism. In the not too distant past, no one even raised the question - judges' integrity was taken for granted -their wards equally understood the sensitivity of the situation. But then if morality is taking back seat in public life, how long could judiciary remain immune? It is not that judges play any active part. But unfortunately the litigating public has become so cynical that it assumes that children lawyers of the Judges will be able to get them relief even in bad cases. I was told by a senior lawyer that his client for the last decade and whose cases fortunately he has always won told him apologetically while

reiterating his confidence in him that as the rival party had engaged a lawyer son of sitting judge, he was also going to engage another sitting judge's son, (instead of him, apparently in an attempt to neutralize the rival party) - just think of the fall in the estimation of average litigant who seems convinced that efficiency, seniority of lawyers is not the criteria, but the closeness of relationship to the judge is the requirement. Such assessment gets boosted when the young lawyers gives no thought as to how it will harm their own family reputation and make it worse by charging exorbitant fee -even in excess of seniors' fee.

This is a dilemma for those of us who are committed to the clean face of judiciary. I can only hope that judiciary itself will appreciate the delicacy of the situation and act in an appropriate manner if it wishes to avoid the indignation of the public and prevent the executive from stealthily interfering with the judicial independence. After all this issue concerns a small number and could and must be resolved within the judiciary, if the clamor of the Bar for mass scale transfers is to be avoided.

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