

Inside :

EDITORIAL : Informatin Technology (Amendment) Act 2008 and Civil Liberties - Pushkar Raj (1)

ARTICLES, REPORTS & DOCUMENTS : Section 377 of the IPC, 1860 - K.G. Kannabiran (2); Reservation for Dalits in Private Sector - Rajindar Sachar (3); The U.P. Statues Case - Mahi Pal Singh (5); Delhi PUCL : Anti Emergency Day Meeting (6); Dr. Binayak Sen's Message (7); Begusarai PUCL : World Anti Torture Day Meeting (7); Karnataka PUCL : Report on the Custodial Torture on Tejaswiraj (8); Tarkunde Memorial Lecture : Constitutions and the Challenge of Social and Economic Change : Quest for Freedom and Justice - Dr. Kamal Hossain (11); Crossed and Crucified : Parivar's War against Minorities in Orissa (18).

PRESS STATEMENTS, LETTERS AND NEWS : Letter to PM - K.G. Kannabiran (9); PPress Release Chattisgarh : PUCL Deplores Deaths of Policemen in Maoist Attach at Rajnangaon (17).

Annual Subscription : PUCL BULLETIN

	INDIA
PUCL Members	Rs. 50
Non-Members	Rs. 70
Libraries-Institutions	Rs. 80
	OVERSEAS
PUCL Members	US \$25
Non-Members	US \$50
Libraries, Institutions	US \$60

PUCL MEMBERSHIP

	INDIA
Patron	Rs. 2000
Life	Rs. 1000
Annual	Rs. 50
Students and Low Income Groups	Rs. 10
	FOREIGN
Annual	Indian Rs equivalent of US \$15

Encounter Killing on Camera

Pushkar Raj

Recently a news magazine carried twelve chilling photographs depicting a young man carried through a by-lane calmly in a busy market by police and delivered back dead just after half an hour. Earlier the police will choose a secluded place but now they seem to have been emboldened to the extent that they have begun to kill in broad day light. Clearly the immunity that security forces enjoy is one of the major causes for it. There is no punishment for the heinous crime. If there was they would not kill on camera!

All over the country encounters have become a favorite with the police. In insurgency effected areas of central, North- East and Kashmir it passes as normal causality in battle between security forces and insurgents. Alleged encounters are a daily routine here without proper inquiry as mandated by law or by the guidelines of National Human Rights Commission. After every encounter police would file cases against the killed men and close the investigation summarily. And there is incentive in form of reward to policemen carrying out encounters. According to one report in Andhra Pradesh the government put a total of 16 crores on the head of over one thousand insurgents ranging from 20,000 to 12 laks each.

Uttar Pradesh that is extremist activity free reported 201 cases of alleged encounter killings in 2006 - 7. Uttarakhand reported 23 and 10 encounter killings in 2006 and 2007 respectively. Pathetically in police record some of the killed exist as `unknown robber', `unknown kidnapper'. Clearly after killing police does not know who they killed but they know they were robbers or kidnappers! Recent killing of a young man in the state demonstrates how easy it has become to kill and get away if one represents the state wearing police uniform.

In normal circumstances the internal accountability mechanism of police should be able to take care of these aberrations, point out lacunas in procedural operations and punish the guilty to set an example for others. However there is a lack of impartial and credible internal mechanism of investigation in alleged cases of fake encounters. Without proper inquiry, there is little hope of prosecuting and convicting the perpetrators of crime. The NHRC as an oversight institutional mechanism to bring the guilty to book has over the period proved to be ineffective. It is a sad story of a very important institution failing in its statutory

(cont. on page 3)

Prof Ruddar Datt passed away last March. He was a well-known author of Economics and life long friend of PUCL. PUCL offers its belated homage to the memory of Prof. Datt with the following piece that was published in the Mainstream.

TRIBUTE: RUDDAR DATT

Kamal Nayan Kabra

It is sad news for the readers of Mainstream that Prof Ruddar Datt, a regular contributor who used to enlighten them on a wide range of current economic affairs, is no more. Indeed, it is sad news for a large number of students of economics spread all over the country who used to benefit a great deal from one of the most popular books on the Indian economy authored and regularly revised and updated by Prof Ruddar Datt. I have come across many Ph.D theses whose authors cited the popular book of Prof Datt as the source of many important facts. His was indeed a book that used to be replete with the latest on nearly all the recent developments, facts and controversies on the vexed issues concerning the changes and challenges confronting the Indian economy. How to combine a popular and highly intelligible presentation with an insight into the working of the Indian economy was really his forte.

Many may not know that he was equally versatile in writing in Hindi as well. In fact, he authored many books in Hindi and a dictionary of technical terms in Hindi is a valuable contribution. What is said above is an aspect of a varied and fruitful life and contribution of

Prof Datt that is perhaps too well known. What is equally important is that he was a keen researcher in various facets of the Indian economy and conducted many studies. He remained very active after superannuating from Delhi University where as an able educational administrator, he completed his tenure as the Principal of the School of Correspondence Courses, a college that was among the pioneers in distance education in India. He was also for a while made in-charge of the administration of Ramjas College when it had to be rescued from a troubled period of its existence. After his term in Delhi University he was associated with the Institute of Human Development and continued his research work there.

Thus Prof Datt was a well-known and respected teacher, researcher, author and publicist whose voice could always be heard articulating the needs, aspirations and interests of the common person. This was in keeping with his role as an active leader of the movements of the university and college teachers—a role that he carried out with distinction as the President of the Delhi University Teachers Association, better known

as DUTA. In fact, he was very popular among his peers as can be seen from the fact that he was elected President of two professional organisations of teachers and researchers, the Indian Economic Association and the Indian Society of Labour Economics, in the same year (1991)! An author and editor of many books on economic problems in both Hindi and English, he was associated with many magazines and journals.

What would always remain with many like me as an enduring memory is his soft and gentle behaviour and unassuming personality. He always remained a warm-hearted friend who was easily considered as one who had malice toward none and good wishes for everyone. I know how serious would be his loss to the profession and friends. His son is a noted economist whose researches on the question of poverty are well known. Similarly his daughter is a well-known teacher and an ardent researcher in the field of gender studies.

A prominent economist, Dr Kabra is a former Professor (now retired), Indian Institute of Public Administration, New Delhi. □

Petition to the National Human Rights Commission : Regarding the Detention of Dr. Binayak Sen and the Rights of the Human Rights Defenders

(Mr. K.G. Kannabiran, National President of PUCL, sent a petition to the National Human Rights Commission on 5th May 2008 regarding the detention of Dr. Binayak Sen, Vice President, PUCL. The petition was disposed off

summarily by the National Human Rights Commission with the observation that no relief could be granted as the matter related to the detention to Dr Binayak Sen was pending in the court. In fact the questions raised in the petition of Mr.

Kannabiran were much larger and wide and of great public importance. The main question raised in the petition was: "If the state identifies civil liberty activities as extremist activities, how would one enforce human rights?" This question was

(from page 1)

obligations. What could be more regrettable that it often finds it self without a chairman as at present. If the commission had just concentrated on a very few areas including police and security forces related alleged crimes it would have done a great service to the nation.

The situation is worsened due to existence of section 132 and 197 of the criminal procedure code that requires prior sanction of the central or state government to prosecute public servants. The government sanction is neither easy nor prompt thereby entrenching a

culture of unwritten impunity to officers who allegedly commit murder in the name of encounters. Even if the sanction of government comes forth the next stumbling block to punishing the offender comes in form of long drawn judicial battle that might last for years. By the time judgment comes the alleged perpetrator of crime have either gained multiple promotions, retired from service or in some cases are dead.

In its eighth report, the National Police Commission recommended "protection available to police officers should be

withdrawn under section 132 and 197 of the Code of Criminal Procedure, which provide protection to various categories of public servants from prosecution for acts they commit in the course of performing their duties. Recently Andhra High Court in its judgment on encounter killing directed that after every encounter an FIR should be registered. The matter is pending before the Supreme Court and one hopes that while delivering its final judgment judiciary takes a serious view of unabated encounter killings that are going on in the country. □

raised in the context of the State sponsored vigilante movement in Chhattisgarh called Salwa Judum and the Maoist Movement in the States of Chattisgarh and Andhra Pradesh.

Thereafter, a petition was filed by PUCL to supplement the aforesaid petition of Mr. K.G. Kannabiran, in which the following prayer was made:

- The Commission should ensure with the GOI and State Governments that respect for human rights and human rights defenders becomes an integral part of the criminal justice system.
- Human Rights should be seen in the manner as envisaged by the National Human Rights Commission, in its 1996-97 report, in the light of the 1993 Vienna Declaration and Programme of Action, did, by observing that civil and political, economic, social and cultural rights as "Universal, indivisible, inter-dependent and inter-related", meaning thereby that the civil and political rights contained in Part III of the Constitution, and social, economic and cultural rights contained in Part IV thereof, are indivisible, inter-dependent and inter-related.
- All the cases presented in the memorandum be investigated by

the NHRC and the civil liberties of these activists and journalists be restored.

(Human Rights activists are requested to spare time to go through the text of the petition carefully, which will be published in the PUCL Bulletin in parts, because of the importance of the questions raised in the petition. The comprehensive draft was assiduously prepared by Mr. Ravi Kiran Jain, Vice President, PUCL with the assistance of Ms. Kavita Srivastava, Secretary, PUCL. Mr. Ravi Kiran will appear for arguments when the petition comes up for hearing before the NHRC. The petition has so many Annexures, which, for reasons of space, cannot be published in the 'Bulletin. Following is the first part of the petition. - Editor)

30th January 2009

The Chairperson
NHRC

Faridkot House, Copernicus Road,
New Delhi

Subject : Action on PUCL petition to evolve a Jurisprudence for Human Rights Defenders in the Country.

Dear Sir,

Through the petition enclosed we would like to request the

Commission under your leadership to evolve a Jurisprudence for Human Rights defenders. Today more than a hundred civil liberties and human rights activists as well as intellectuals and journalists find themselves in the various jails of the country. The State has been repeatedly identifying activities relating to civil liberties and human rights as extremist and criminal activity. If this be the case then how would one enforce Human Rights in the Country? It is with this concern that we are sending a detailed petition with several illustrations of State's impunity resulting in the incarceration and harassment of several activists.

WE hope that you will act upon our petition and issue appropriate directions to the State and Central Government ensuring that respect for human rights and human rights defenders becomes an integral part of the criminal justice system.

We also hope that the Commission will set up a committee to look into all such cases in the country where activists have been arrested, and prevent further miscarriage of justice.

With regards,

Kavita Srivastava **Pushkar Raj**
(Secretary) (General Secretary)

PETITION

1. The People's Union for Civil Liberties (PUCL) is a prestigious democratic and civil liberties organization of the country which was formed to protect the civil liberties and Human Rights of the people guaranteed by the Indian Constitution. The PUCL believes in peaceful, non-violent, transparent, constitutional and democratic means to achieve its goals. It upholds the Indian Constitution and the rule of law.
2. The PUCL was founded by Jai Prakash Narayan in 1976 to protect civil liberties and human rights, which had been suspended during the emergency. The founding conference elected V.M. Tarkunde, renowned jurist and eminent citizen of this country, as President and Arun Shourie as General Secretary. Later, Y.P. Chhibbar was appointed as Executive Secretary. Those elected President and General Secretary in the following years were President V.M. Tarkunde (1982-1984); Rajni Kothari (1984-1986); Rajindar Sachar (1986-1995); K.G. Kannabiran (1995), continuing. General Secretary Arun Shourie (1982-1986); Rajni Kothari (1982-1984); Y.P. Chhibbar (1984-2008); Dilip S. Swami (1986-1990). V.M. Tarkunde was named advisor in 1986.
3. The PUCL has a three-tier structure. The base is the General Body, known as the National Convention. Then there is a National Council and a National Executive Committee. Elections of the office bearers, the National Council and the National Executive Committee are held in accordance with the Constitution of the organization. The office bearers implement the policies and programmes laid down by the National Council and the Executive Committee.
4. The National PUCL facilitates the formation of State Branches. The structure of a State Branch follows the same pattern as at the National level. The State Branches, through their office bearers, co-ordinate the working of the organisation in the State concerned. The State Branches are responsible for establishing local branches in various Districts, towns and cities of the State.
5. In our underdeveloped and poor country most often it is the poor, the disadvantaged and the vulnerable groups, including dalits, adivasis, minorities, women, children, prisoners etc. whose rights and liberties are frequently violated by the State and the hegemonic Non State Actors. The PUCL is concerned about the disparities of income, class, caste, gender and religion in our society. It believes poverty to be the greatest violation of human rights and is concerned about the increasing pauperisation of the poorest sections of the people. The PUCL considers the security of livelihood as a Human Right and raises its voice whenever it is threatened by Corporate and State policies.
6. As a Human Rights organisation the PUCL it is opposed to any abridgement of civil liberties and human rights under the pretext of special laws, preventive detention and anti terror methods. The PUCL believes that the IPC and the CrPC are sufficient to tackle the variety of crimes that occur in present times, howsoever grave. The PUCL believes in fair trial for all accused and is opposed to branding anybody as criminal before he or she is proven guilty in a fair and judicious trial that follows the due process of law.
7. The PUCL also believes in the freedom of speech and expression as guaranteed by the Constitution, which also includes the freedom of the Press and the Media. The PUCL is committed towards the independence of the judiciary.
8. PUCL has published a booklet: "KNOW PUCL". A copy of booklet is enclosed as Annexure - 1.
9. It may be relevant, for the purpose of this petition, to invite the attention of the Commission to Pages 57 to 59 of the aforesaid Booklet wherein Resolution of the National Convention of the PUCL held on March 7, 1982, at Madras (now Chennai) and the statement adopted at the National Convention, held at Pune on May 26 and 27, 1990, regarding use of violent methods by Groups are contained. Taking recourse to violent methods to achieve even laudable objects is not approved by the PUCL. In its opinion, any persistent indulgence in violence is a threat to the integrity of the Country, to its nascent democratic polity, and to the very survival of civil liberties and human rights.
10. Respected Sirs, Mr. K.G. Kannabiran the National President of People's Union for Civil Liberties (PUCL) sent a Petition to the NHRC by e-mail on 5th May 2008. For convenient perusal a true copy of that Petition is enclosed herewith as Annexure - 2.
11. The petition of Mr. K.G. Kannabiran has been disposed off by the NHRC with an observation that no relief could be granted as the matter relating to the detention of Dr. Binayak Sen was pending in the court. A perusal of the petition shows that the question raised in the petition was; "If the State identifies civil liberty activities as extremist activities, how would one enforce human rights?" This question was raised in the context of the State sponsored vigilante movement in Chhattisgarh called Salwa Judum and the Maoist Movement

in the States of Chattisgarh and Andhra Pradesh.

12. It was also stated in the petition that Human Rights issues in India came to the fore during the 1975 Emergency. The embarrassing record of Human Rights violations by the State led the Government of India to pass the Protection of Human Rights Act, 1993 and the creation of an independent Human Rights Commission to address cases and issues of Human Rights violation in the country. The Commission's first Chairperson enquired into cases of fake encounters in Andhra Pradesh. Mr. Kannabiran has frequently been a mediator between the Government and the armed struggle groups. He, along with other eminent citizens, has initiated a series of dialogues between the Government and the Maoists. It was in the midst of one of these talks that the police mapped out their hideouts and later broke the possibility of peace talks and resumed their policy of physical liquidation.

13. It was in this backdrop of the recent happenings in Chattisgarh and the continuing Human Rights violations since after the Emergency that Mr. Kannabiran wanted to assist this Commission in "the creating of a Jurisprudence of Human Rights" which has been of a "growing interest to the Commission." The relevant part of the petition of Sri K.G. Kannabiran (Annexure No.1) is quoted in the next paragraph.

"Sirs, the question is if the State identifies civil liberties activities as extremist activity, how would one enforce Human Rights? The center signs the Covenant, which has for some time enjoyed the status of customary law and now has statutory recognition, how is one to enforce them? Sirs, Human Rights and criminal justice are inter-twined. How does one effectively bring about an integration between the two?

None of the Judges, to my knowledge, perceived this problem by deliberating on this issue. It is in the process of crime detection, investigation and apprehension and production of the accused that the Human Rights violations take place. Should a Human Rights activist intervene, he is implicated and jailed. How does this Commission, set up for guaranteeing the protection of Human Rights, discharge its obligations? How does this Commission ensure that the International Covenants, which are now statutory, are respected and by what principles are they to be integrated with the criminal justice system? We are not interrogating you. We are fully aware of the difficulties to unload a lot of baggage inherited from our indigenous authoritarian tradition and the colonial legacy we have been faithfully carrying. This Commission is not intended to carry this baggage. It is only on account of this that we are raising these issues."

Elaborating on the above point in his article written for the Rediff blog "The saga of State Impunity: Binayak Sen, Ajay TG, who's next?" he states that "It is in the process of crime detection and intelligence gathering, investigation and apprehension of the accused that human rights violations take place. The accused may be held in illegal custody for long periods, subjected to torture, coerced to confess to planted recoveries—none of which is permitted by the Constitution. These are the areas in which the Human Rights activists operate. And when we operate in these areas, the law enforcement agencies see us as an impediment to be put out of the way. With a view to silence criticism and produce results (it is the productivity ethic that governs) the police very often end up framing persons on suspicion. When the Government employs the police

to control political dissent, it trains the police force into a political force. When Hindu Communalism came to the fore in Delhi, Mumbai and Gujarat, the ideologically trained police force bared its anti-minority claws and fangs. In Chhattisgarh, we are witnessing its vindictiveness against the left extremist politics as well."

14. The present petition is to supplement the aforesaid Petition and is in continuation of the Petition sent by Shri Kannabiran on behalf of People's Union for Civil Liberties (PUCL).
15. In the Petition dated 5th May 2008, it has been stated that the Maoist movement in Chhattisgarh area "believes in overthrowing the exploitative order which is dominating every aspect of the country's life. Such movements arise because there has been no constitutional governance in the country. Formal structures listed in the Constitution are there but they have nothing to do with equality, justice in all its facets, with no possibility of social transformation leading to the improvement of the living conditions of eighty percent of the population. The growth rate advertised has nothing to do with the living conditions of the poor. Under these conditions movements of varied sorts arise..... The State treats this as a law and order problem and entrusts it to the Police and its intelligence wing, to whom it has sanctioned enormous impunity."
16. That the aforesaid assertion in the petition dated 5th May, 2008 finds support from the perception of the NHRC. In its annual report, on the completion of 50 years of independence, the NHRC undertook a brief review of the challenges the country has faced, its responses to those challenges, and its concerns for the period ahead. This has been in Chapter II of the Annual Report under the Heading INDIA AT FIFTY: (REDEEMING THE

PLEDGE. Paragraph 2.1 to 2.16 of Chapter II of that report). It may also be appropriate to invite the attention of this Commission to Chapter I of that report (1996-97) under the heading of INTRODUCTION. A true copy of these two parts (Part I and Part II) of the 1996-97 report is attached as Annexure - 3

17. That NHRC put a question to itself in paragraph 2.2 of the aforesaid report as follows: "Have we, fifty years after Independence, done enough to redeem that pledge in terms of the human rights of our compatriots? Has our pledge to the people of India, that their rights to life, liberty, equality and the dignity of the individual, as guaranteed by our Constitution and underwritten by our treaty commitments, been redeemed if 'not wholly'; then 'very substantially?'"
18. Then the NHRC proceeded to answer the aforesaid questions by observing that: "the answer to these question is complex and it can scarcely be the purpose of this annual report to provide a commentary on fifty years of Independence. Yet the contours of the answer need to be delineated, if only to relate the Commission's functions with the realities of our nation as they are today, half a century after Independence. What the contours reveal?"
19. In paragraph 2.7 of the aforesaid report, it has been observed that many factors "inhibit the enjoyment of human rights" in this country. Many of these factors relate to the question of Good Governance, the maintenance and the health of the principal institutions of our Constitution. Then in paragraph

2.9 the NHRC observes: "In recent years there has been growing concern in the country that the processes of the governance have, on occasion, been corroded by a nexus between criminals, less than scrupulous political elements and members of the Executive lacking in integrity. It has been further observed in the aforesaid report (In para 2.10): Good Governance has other attributes too. True democracy is built on restraint, on the exercise of moderation, both by the majority and the minority groups".

20. Then in paragraph 2.11 of the same report it was observed: "At a deeper, societal level, the Commission has noted the tenacity of long standing social attitudes inimical to a proper respect of the rights of all the people of this country." Then taking note of the 1993 Vienna Declaration and Programme of Action, it has been noted in paragraph 2.12 as follows: "With each succeeding year, the Commission has grown stronger in its conviction that all human rights, whether civil and political, economic, social or cultural, must be viewed, as the 1993 Vienna Declaration and Programme of Action did, as 'Universal, indivisible, inter-dependent and inter-related.' In earlier passages of this report, comments have been made on the nature of our democracy and the vigour with which civil and political rights have been exercised. Can the same be said for the exercise of economic and social rights? The pledge, in this respect, is less than adequately fulfilled."
21. Finally, noticing the deprivation of millions of people of this country of the basic human needs, the

Commission concluded: "the purpose is, indeed, to remind ourselves that the pledge of Independence is far from being redeemed for many in this country, when it comes to the exercise of their economic and social rights. This short-coming diminishes us as a nation, and inhibits the capacity of our compatriots to exercise their civil and political rights with the freedom and clarity that is their due."

22. Again in the Annual Report of 1997-98, after the NHRC completed five years since its establishment, a brief review by the Commission, of challenges it has faced, its responses to those challenges, and its concerns for the period immediately and, would be appropriate at this stage. Under the heading: LOOKING BACK AND FORGING AHEAD, the NHRC observed about the persistence of "cruel and interlocking disparities"; in income and wealth distribution between individuals; between urban and rural areas; regional inequalities and group inequalities, and the inequalities and atrocities inflicted on Dalits and Schedule Tribes. In paragraph 2.13 of that report the NHRC observed: "a look at the map of India points unquestionably to player and evident conclusion where the social development indicators are looked, the violation of human rights are high" and then paragraph 2.15 it observed: "if there is a co-relation between the human development index and respect for human rights, so there is an infallible co-relation between the quality of governance and the promotion and protection of such life." □

PART - 2 :

15. Finally in Chapter II of the 1997-98 report the Commission observed in paragraphs 2.17 and 2.18: "the Commission is itself an institution of good governance",

and: "the creating of a jurisprudence of human rights has also been of growing interest to the Commission." For convenient perusal a true copy

of Chapter II of the 1997-98 report of the NHRC is enclosed herewith as Annexure - 4. It is these types of perceptions of the National Human Rights

Commission (as mentioned above), which inspire the PUCL to make this petition.

16. The expression 'Good Governance' used by the NHRC in its aforesaid two Annual Reports has to be understood in the light of the concept of 'Good governance' under the Constitutional Scheme.
17. The word "governance" finds place in Part IV of the Constitution, which provides for the Directive Principles. Article 37, which falls in this Part, provides, "The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws" It is quite evident that these Directive Principles were designed by the members of the Constituent Assembly to be the Chief Instruments in bringing about social revolution. The essence of the Directive Principles lies in Article 38, which, echoing the Preamble, reads: "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."
18. To foster this goal, the other provisions of the Directive Principles exhort the State to ensure that citizens have an adequate means of livelihood; the operation of the economic system and the ownership and control of material resources of the Country sub-serve the common good; the health of workers and the tender age of children is not abused. Workers, both agricultural and industrial, are to have standards of living that allow them to enjoy leisure and social and cultural opportunities. Among the primary duties of the State is the raising of the level of nutrition and the

general standard of living of the people. The Principles expressed the hope that within 10 years of the adoption of the Constitution, there will be compulsory primary education for all the children until they complete the age of 14 years. The other provisions of the Principles seek equally to secure the renovation of Indian society by improving the techniques of agriculture, animal husbandry, cottage industry, etc.

19. What is good governance? The question in the context of social revolution which had to start after we achieved Independence and then became a Republic, is answered in the Constitution itself, when it says, in Article 37, as stated above, that the Principles contained in Part IV are fundamental in the governance of the country. "We the People of India" had resolved to constitute India into a "sovereign, socialist, democratic Republic". Sovereignty, according to the resolution, contained in the Preamble of the Constitution, lies in "We, the People of India," who have to be governed on the Principles enumerated above.
20. In *Minerva Mills case* (1980) 3 SCC Page 625 a Constitution Bench of the Supreme Court found that the Core of the commitment to the social revolution envisaged under our Constitution lies in Part - III and Part - IV. These are the conscience of the Constitution. Para 47, 48, 60, 61 and 62 of the said Judgment may be usefully quoted, which are as follows:
"47. There is no doubt that though the courts have always attached very great importance to the preservation of human liberties, no less importance has been attached to some of the directive principles of State policy enunciated in Part IV. In the words of Granville Austin, (THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION, P.50) the Indian Constitution is

first and foremost a social document and the majority of its provisions are aimed at furthering the goals of social revolution by establishing the conditions necessary for its achievement. Therefore, the directive principles of State policy are fundamental in the governance of the country and the Attorney General is right that there is no sphere of public life where delay can defeat justice with more telling effect than the one in which the common man seeks the realization of his aspirations. The promise of a better tomorrow must be fulfilled today; day after tomorrow it runs the risk of being conveniently forgotten. Indeed, so many tomorrows have come and gone without a leaf turning and today there is a lurking danger that people will work out their destiny through the compelled cult of their own "dirty hands". Words bandied about in marbled halls say much but fail to achieve as much.

"48. But there is another competing constitutional interest, which occupies an equally important place in that scheme. That interest is reflected in the provisions of Part III, which confer fundamental rights, some on citizens as Articles 15, 16 and 19 do and some on all persons alike as Articles 14, 20, 21 and 22 do. As Granville Austin says:

The core of the commitment to the social revolution lies in Parts III and IV.....These are the conscience of the Constitution."

"60. Fundamental Rights occupy a unique place in the lives of civilized societies and have been variously described in our Judgements as "transcendental", "inalienable" and "primordial". For us, it has been said in *Kesavananda Bharti* (AIR 1973, SC 1461) that they constitute the ark of the Constitution.

"61. The significance of the perception that Parts III and IV together constitute the core commitment to social revolution

is that they, together, are the conscience of the Constitution. Granville Austin's observation brings out the true position that Parts III and IV are like two wheels of a chariot, one no less important than the other. You snap one and the other will lose its efficacy. They are like a twin formula for achieving the social revolution, which is the ideal, which the visionary founders of the constitution set before themselves. In other words, the Indian Constitution is founded on the bedrock of the balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between Fundamental Rights and Directive Principles is an essential feature of the basic structure of the Constitution.

"62. This is not mere semantics. The edifice of our Constitution is built upon the concepts crystallized in the Preamble. We resolved to constitute ourselves into a Socialist State, which carried with it the obligation to secure to our people justice-social, economic and political. We, therefore, put Part IV into our Constitution containing Directive Principles of State Policy, which specify the social goal to be achieved. We promised to our people a democratic polity which carries with it the obligations of securing to the people liberty of thought, expression, belief, faith & worship; equality of status and of opportunity and the assurance that the dignity of the individual will at all costs be preserved. We, therefore, put Part III in our Constitution conferring those rights on the people. Those rights are not an end in themselves but are the means to an end. The end is specified in Part IV. Therefore, the rights conferred by Part III are subject to reasonable restrictions and the Constitution provides that enforcement of some of them may, in stated uncommon circumstances, be suspended.

But just as the rights conferred by Part III would be without a radar and a compass if they were not geared to an ideal, in the same manner the attainment of the ideals set out in Part IV would become a pretence or tyranny if the price to be paid for achieving that ideal is human freedoms. One of the faiths of our founding fathers was the purity of means. Indeed, under our law, even a dacoit who has committed a murder cannot be put to death in the exercise of right of self-defence after he has made good his escape. So great is the insistence of civilized laws on the purity of means. The goals set out in Part IV have, therefore, to be achieved without the abrogation of the means provided for by Part III. It is in this sense that Parts III and IV together constitute the core of our Constitution and combine to form its conscience. Anything that destroys the balance between the two parts will ipso facto destroy an essential element of the basic structure of our Constitution."

21. That what has been said in Vienna Convention in 1993 by the U.N. about the Civil, Political, Social, Economic & Cultural Rights as being interdependent, interconnected, interrelated etc., the S.C. had said more elaborately in Minerva Mills' case. After it is held that the Civil & Political Rights contained in Part III of the Constitution of India, and the Social, Economic & Cultural Rights contained in Part IV of the Constitution are the two wheels of the same chariot, the Supreme Court said that the core of the commitment to the social revolution lies in Parts III & IV..... These are the conscience of the Constitution. Under our Constitution Good Governance is the governance in accordance with the Fundamental Principles contained in Part IV.
22. Article 37 provides: "The provisions of this part shall not be enforceable by any court" Although the Principles laid down

in that part "are nevertheless fundamental in the governance of the country, and it shall be the duty of the state to apply these principles in making laws". How this Constitutional duty of the State "to apply these principles" can be enforced when these are not "enforceable by any court". This is the question on which the people of India require the guidance of NHRC.

23. That to foster the goals of Part IV, the directive principles, "exhort the State to ensure that citizens have an adequate means of livelihood; the operations of the economic system and the ownership and control of material resources of the country sub-serve the common good so that the health of workers and the tender age of children is not abused. Workers, both agricultural and industrial are to have standards of living that allow them to enjoy leisure and social and cultural opportunities. Among the primary duties of the State is that of raising of the level of nutrition and the general standard of the living of the people. The principles express the hope that within ten years of the adoption of the Constitution, there will be compulsory primary education for all the children up to the age of 14 years. The other provisions of the principles seek equally to secure the renovation of the Indian society by improving the techniques of agriculture, animal husbandry, cottage industry etc."
24. The movement for Human Rights is a struggle against misrule and unconstitutional governance. It is a movement to enforce Part IV with the help of Part III of the Constitution of India. According to the Constitutional Scheme the Civil & Political rights in Part III are enforceable through the courts. The Social, Economic & Cultural Rights in Part IV have to be enforced only through Human Rights Movement. But if the two sets of Rights, Civil & Political Rights in Part III on one hand &

Social, Economic & Cultural Rights in Part IV on the other hand, are interdependent, interconnected & interrelated etc., and cannot exist independent of each other, how can it be said that if by misrule and governance against the Fundamental Principles contained in Part IV, even those Human Rights, which are said to be enforceable through the court, are also not violated.

25. Hon'ble Mr. Justice J.S. Verma, former Chairperson of the NHRC has noted that the 21st century agenda consists of distributive justice, constitutional governance, inclusive democracy, gender justice, poverty eradication, sustainable development & human resource development. Keeping these and other concerns in view, the NHRC, in the sixth year of its existence, brought out the need for further empowerment of the organization. Its recommendations are still under consideration by the Government of India.
26. The concept of Human Rights is central to global debates on governance and development. In India, enactment of the Protection of Human Rights Act, 1993, and setting up of the NHRC marked the recognition of the importance of the Human Rights discourse.
27. The poor in India have to fight pitched battles to secure their minimum Human, Social and Legal Rights under the Constitution. Development related struggles for land, minimum wages, social justice & dignity by the poor, along with their demand for the fair implementation of the limited rural development projects and schemes by the government, often bring them into conflict with the police and the administrative machinery, which, frequently, in collusion with the rural power structure, inflict enormous State Violence against the poor and

commit large scale Human Rights violations.

28. The administrative, police and judicial structures of postcolonial India have remained the same as they were during the colonial rule. It is not surprising that despite rhetorical noises, the militancy of the Naxalite movement during 1967-72 came to be met by State repression. This movement, which originated from legitimate concerns of the rural poor, was, however, ineffective in preventing the misuse of police powers to suppress the so-called Naxalites. The Central government did not advise the State Government concerned to deal with the socio economic issues underlying the movement and address the ideological issues politically. The issue became one of 'Law and Order'. Mr. K.G. Kannabiran, President of PUCL, in a book "The Wages of Impunity" (Power Justice and Human Rights) authored by him says, "Radical social movements, for instance, are seen initially as disrupters of public order and later as a threat to state security. The state has the power to invoke criminal laws for the arrest and prosecution of persons it charges of treason and conspiracy to overthrow a lawfully established government. It can also accuse them of waging war, which divides itself into various ancillary offences like attempt to wage war, concealment of a design to wage war, etc. Now, waging war normally means carrying arms, ammunition or explosive substances. After charging the suspect compendiously for waging war, the accused will then also be charged under the Arms & Explosive Substances Act on the same set of facts. The violence these prosecutions engender has to be seen to be believed. From the time of arrest to the time of trial the person suspected of these offences are put through covert and overt forms of violence. Between arrest and productions before the court

there is custody with the police..... The principal function of the criminal justice system then appears to be the power to use the judicial process to break an opposing political movement and discredit it, with the executive and the judiciary working in tandem. All the repressive laws used by the British against the freedom struggle have been retained in independent India, despite constitutional provisions mandating scrutiny."

29. The Law Commission of India in its 41st report dated 24th September 1969, in the context of the necessity of introducing a provision in the CrPC for the grant of anticipatory bail, observed in para 39.9 of its report (Vol-I), "The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase." It may be noticed that the tendency of false implication of political rivals was found to be on the increase, way back in 1969. Much water has flown since then. In recent years there is a tendency now to disgrace and falsely implicate the leading Human Rights activists of this country by various governments in power.
30. The Supreme Court, in D.K. Basu versus State of WB., AIR 1997 SC 610, has observed: Experience shows that worst violation of Human Rights takes place during the course of investigation, when the police with a view to secure evidence or confession often resorts to 3rd degree methods, including torture, and adopts techniques of screening arrests by either not recording the arrest or describing the deprivation of liberty mainly as a prolonged interrogation..... The increasing incidence of

torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the Rule of Law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder.

31. The Planning Commission set up an Expert Group on "Development Issues to deal with the causes of Discontent, Unrest and Extremism" in May 2006. It had 16 Members. The Terms of Reference included, inter alia, identification of processes and causes contributing to continued tensions and alienation in the areas of unrest and discontent, such as widespread displacement, forest issues, insecure tenancies and other forms of exploitation like usury, land alienation, etc. The issues placed before the Group were highly sensitive and even contentious. Eminent persons who constituted the Group had their own views on most of the items based on their experience and scholarship. But they understood the need to come out with a consensus report which would reflect the various points of view and could give the authorities, the civil society and public at large, an analysis of the situation and a package of programmes to tackle the issue of rural violence, which has been continuing in the rural areas of India for nearly four decades. It speaks highly of their social commitment and spirit of public service that they submerged their personal views to get at a consensus report, which gives a good analysis of the situation culminating into a set of actionable points, which are reflected in the recommendations.
32. According to the Expert Group report, "Widespread discontent among the people has plagued the Indian polity for sometime now. It has often led to unrest, sometimes of a violent nature. Over the years, statutory

enactments and institutional mechanisms for addressing the various aspects of deprivation have been brought into being. But the experience has been that the discontent and unrest continue to surface notwithstanding such measures. For a large section of the population, basic survival is the problem..... The Constitution intended the process of governance to lead to a progressive decrease in social and economic inequalities. The Constitutional and statutory agencies entrusted with the task of safeguarding the entitlements of all marginalised groups have failed to provide adequate support. Equal status and equal dignity is not merely a Constitutional right but also a basic human right. Inherited institutions of caste, gender and unequal property have traditionally deprived the majority of society of this right. Widespread practice of social discrimination, untouchability, domestic violence, and atrocities against the weaker sections is an index of the failure of the promises made to the oppressed people of this country."

33. Chapter III of the Expert Group report, which deals with "Investigating the People's Discontent and Support For Extremists", says, "The analysis of roots of discontent, unrest and extremism rely upon extensive discussions based on official reports in the past, publications from the extremist groups, reports of human rights groups, books by observers of such developments, and media coverage in the background of field insight and interaction of members of the Expert Group. This has revealed that the causes are varied depending on characteristics of an area; social, economic and cultural background; a history of not working out solutions to lingering structural problems; and ineffective application of

ameliorative steps undertaken since Independence, and more so since the mid-sixties of the last century. Dissent movements, including the extremist Naxalite movement, are not confined to difficult hilly and forested areas but cover large contiguous tracts in the plains. They are not limited to dry land areas of recurring crop failures but extend to irrigated commands of major irrigation systems, as in the State of Bihar. The causes are, therefore, complex. The intensity of unrest resulting in extremist methods and effort to resolve issues through violent means as a challenge to state authority is in response to the gathering of unresolved social and economic issues for long durations. It creates the impression that policymaking and administration responds to extreme means. The more recent development is in the emergence of CPI (Maoist) after the merger and consolidation two powerful naxalite streams in September 2004. This new formation, since its inception, is defining the official understanding of the extremist phenomenon of the level of the state as well as the Union Government. This has appeared in the public perception as a simplistic law-and-order face-off between the official coercive machinery and this more radical extremist political formation. The social consequence results, then, in undermining instruments of social and economic amelioration as well as processes of democratic exchange to resolve persisting issues. This is the crux of the problem."

34. In many places local inhabitants formed resistance groups when the Naxalites severely interfered with their traditional life style. However these resistance groups were converted into vigilante groups sponsored by the authorities over a period of time. In Chhattisgarh, the group is called Salwa Judum. Some

members of this group are appointed as Special Police Officers (SPOs). Some of them are given arms training and are provided with fire arms. According to official reports there are more than 3200 SPOs. Often these vigilante groups fight with armed Naxalite groups making the tribals fight the tribals. As a principle of good governance such a situation is not desirable.

35. Dealing with the response of the State regarding the strategy to arm civil society groups to curb Maoist Movements, the Expert Group report observes, "Encouragement of vigilante groups such as Salwa Judum and herding of hapless tribals in make-shift camps with dismal living conditions, removed from their habitat and deprived of livelihood as a strategy to counter the influence of the radical left is not desirable. It delegitimizes politics, dehumanizes people, degenerates those engaged in their 'security', and above all represents abdication of the State itself. It should be undone immediately and be replaced by a strategy which positions an empowered task force of specially picked up responsive officials to execute all protection and development programmes for their benefit and redress people's grievances. This is the best strategy to eliminate the influence of radical left groups. Authorities should encourage civil society groups, having knowledge of, and sympathy with, local tribals in assisting this task force for wider participation of people in implementation of the strategy outlined above. There are reports of civil society groups on the numerous human rights violations by authorities. The government should take cognizance of these reports, and enquiries into these episodes should be constituted so as to inspire confidence in victims and faith of the public in the rule of law. It is not desirable to insulate the area and people from civil

society groups, media, and political organizations and penalize those who seek to establish contact with affected people to gather information about the action of Naxalites and state agencies, and speak or write about their observations. Besides being undemocratic, it is counter-productive as well. Reverse this trend. Rather, seek cooperation of civil society organizations with good track record in providing credible information on the impact of the movement and of state action on the affected people, which may help in critical appraisal of the policy pursued by the state." The Xerox copy of the report is Annexure-5 to this representation.

36. Recent events in the Chhattisgarh show that the State can go to any extent to harass human rights activists who challenge it? There are more than 192 people who are languishing in the Chhattisgarh Jail under the draconian Chhattisgarh Public Security Act, 2005 and they include Human Rights Activists, Social workers, Film Makers, Journalists, intellectuals and ordinary people like traders, farmers and students.
37. The PUCL Vice President, Dr. Binayak Sen, was arrested on 14.5.2007 by the Chhattisgarh Police under trumped up charges of Waging War Against the State, Conspiracy, Sedition and under sections of the two draconian laws called the Chhattisgarh Public Security Act, 2005 and the Unlawful Activities (Prevention) Act, 1967 (amended 2004) for assisting banned organizations. By profession Binayak Sen is a Doctor with a distinguished academic record and a dedication to serve the rural people in Tribes in Chhattisgarh. He passed out of the prestigious Vellore Medical College and has been practicing in Chhattisgarh for around 25 years. He was a part of a team led by Shankar

Guha Niyogi who was killed for his unrelenting work among the unorganised workers of the Chhattisgarh area. Dr. Binayak Sen, along with other Human Rights activists of that area, established a workers' hospital at Village Dalli-Rajahara. He was providing to the ailing poor what is not available to in the public health system - humanity and human dignity. The PUCL Vice President Dr. Binayak Sen has been in jail for almost twenty months now. On the 3rd of December 2008 the Chhattisgarh police filed a second charge sheet with 47 more witnesses. It is clear that the State of Chhattisgarh wishes to keep Dr. Sen in jail indefinitely. It is important to add here that, even though incarcerated, he has not lost sight of the mindless killing fields of South Bastar. In a recent opinion piece published in the Hindu on 21st October, called An Appeal for Peace in South Bastar, presented by Dr. Ilna Sen, enclosed as Annexure -6, he talks of certain proposals that can help build ordinary people's stake in Peace in the South Bastar.

38. On the 5th of May 2008 PUCL state executive member Ajay TG of Bhilai, was arrested under Sec. 124 (a) of the IPC and 3, 4 and 8 (1) and (3) of the Chhattisgarh Public Security Act, 2005. Ajay is a researcher, a filmmaker and runs a small school for girls in a slum of Bhilai. Ajay faced the ire of the state Police as he was an active member of the PUCL and stood in solidarity with Dr. Binayak Sen at the time of his arrest, and in the court, and also made a film on Dr Sen's work after his incarceration. The police alleged that he had financial transactions with the Maoists. They tried to fix him on the basis of a letter, which they claimed, was written by Ajay, and they had found in the house search of the Maoist spokesperson Gudsa Husendi. They concluded that Ajay had contacts with the

Maoists. Ajay got statutory bail on August 5th since the police failed to file a charge sheet in the stipulated time period.

The Chhattisgarh DG police in a seminar at the University of California, Berkley campus on the 26th - 27th of September stated that the arrest of Ajay TG may have been a technical mistake. Enclosed herewith as Annexure-7, the article "Chhattisgarh DGP defends Human Rights violations of Human Rights" published in Combat Law, volume 7 issue 5, September-October 2008. Despite conceding to this, they have not withdrawn the cases against him.

39. Sai Reddy, 46, a journalist and a resident of Basaguda in Naxalite-hit Bijapur district, was arrested on March 1, 2008. Police say he was detained after an arrested Naxalite revealed that he had "connections" with him, and that Naxals took their ration from a shop run by his wife. Like many journalists in Bastar, Reddy earns his living selling grain and minor forest produce while contributing to local newspapers. His writings on Naxal violence in the region earned him the wrath of both Maoists and security forces. In fact, three years ago, Maoists had threatened to kill him and his family if he didn't leave Chhattisgarh. The rebels blew up his house, forcing him to flee to Cherlapal in neighbouring Andhra Pradesh. Reddy's friends say that his family had to apologise to the Maoists before he could return home. The police and the Naxals are not the only ones Reddy appears to have rubbed the wrong way. Leaders of the Salwa Judum, the movement launched to counter Naxals, too were apparently angered by Reddy's refusal to openly support them. He was arrested as he opposed Salwa Judum and in Chhattisgarh, if you oppose Salwa Judum, then, you are branded a Naxalite sympathiser.

48. The situation of imprisonment and harassment of Human Rights Workers and journalists is not unique to just Chhattisgarh. It can be observed for all States in India today. As an illustration we are presenting a few cases from the rest of the country too. In the State of Uttarakhand the police has been carrying out indiscriminate arrests of activists, journalists and other movement people. Shocking details of which have been brought out in the PUDR factfinding report on State Repression in Uttarakhand (Forth Coming Title). A few case studies from the report show the extent to which ordinary people, who are agricultural labourers, are being implicated in false cases and have been picked up by the police, and are now languishing in jail.

49. Gopal Bhatt from Bindu Khatta, Uttarakhand, is an activist of Mazdoor Kisan Sangharsh Samiti, a local organization working on land rights of the Tharu's, a poor tribal community of the hills. He was picked up along with his brother Keshav, on the 28th of December 2007. They were detained for one night and one day. Their home was searched by the police on the evening of 29th December. One of the men present was heard by the family members telling someone on the phone that nothing had been found in the house and Gopal ought to be released. The same night Gopal returned home. Exactly two months later, on the 29th of February 2008, close to 3:30 a.m., 6-7 policemen came to their house in a jeep to take Gopal away in order to help 'clear some confusion.' His wife was taken with him and interrogated. She was set free soon thereafter. Gopal, however, was not released. He was sent to Khatima on 5 days' police remand. On the 5th day of remand Gopal was brought home ostensibly to meet his ailing father (who was bedridden at the time and

continues to be very unwell). The police forced their way into one of the rooms in the house, began searching things. When Gopal's mother asked them what they were doing, they shoved her away and she fell unconscious. There were no independent witnesses, nor were the persons, who ostensibly carried out the search, frisked before they conducted the search. The family was not shown the alleged recoveries made from their house.

The next morning papers announced that Gopal had "voluntarily" shown the police the wooden almirah where he had hidden subversive literature and weapons in his house. Gopal later told his family members that he had been tortured and made to sign blank pages and warned that failure to obey their instructions could result in his "encounter". The police also warned his neighbours not to come out in public in favour of Gopal and took down their names. Three cases have been registered against Gopal (3150/05 under Sec. 121A, 124A, 153B, 120B, and the 7th Criminal Act; 491/08 under Sec. 121A, 124A, 153B, 120B, and 10/20 UAPA; and 492/08 under Sec. 121, 121A, 124, 120B).

50. Dinesh Pandey an intellectual and writer of Ram Nagar, Uttarakhand was picked up from the office of a local advocate but officially police claimed that they had arrested him on the 28th of February 2008, from the forests of Dhyampur. According to them, local papers reported on the 19th and 20th of February 2008, that the police were on the lookout for Dinesh Pandey, who, it was claimed, was absconding. Four days later, Station Officer in charge of Nanakmatta thana came with an inspector, searched Dinesh's house and found nothing. On their way out they instructed the family to produce Dinesh to the authorities within the coming week. On 27th

February his family informed the court that they wanted to surrender Dinesh before the court and filed an application. On 28 February four advocates (including his brother and uncle, who too are lawyers) accompanied him to the court at Khatima. While they were waiting there, the police arrived and persuaded the family to allow them to take Dinesh for questioning, assuring them that he would be brought to the court next day, and they would not demand his remand. Taken in by their assurance his family members gave their consent. However, the very next day, the SO of Nankmatta presented Dinesh before the Court and claimed that Dinesh had been picked up after police laid siege in Dhyampur forest and it was from there that he was taken into custody on 28th February.

51. Neelu Ballabh from Gadarpur in Uttarakhand, also a grass root activist of the MKSS (Mazdoor Kisan Sangharsh Samiti), was released on bail after two years of being arrested. This also shows the arbitrariness of the police. In his case, he was arrested on September 25th in 2005 from Gadarpur but the police showed his arrest as having taken place in Radhakantpur three days later (28th September) where an alleged encounter had taken place between a gang of seven "extremists" and the police. He was brutally tortured by the police. It took him two years to get bail and more than a year to fulfill bail formalities because the police threatened those who came forward to offer bail bond as well his family and neighbours from persisting with their efforts to furnish bond/sureties. Finally, after 37 months of incarceration he was bailed out on October 25, 2008. Neelu was in tears as he showed us the hands of his 15 years old son who together with his wife had to work in the farms to earn money to run the house,

whereas he had dreamt of getting him education, something which he himself never got. He was active, prior to his arrest, with a local organization protecting people's land rights. And their struggle was over enforcing ceiling laws in order to distribute land to the landless as well as for operationalisation of the chakbandi system of land assessment instead of the bandobast system. A nexus of patwaris and big farmers has worked to consistently deprive the landless of their right to land. Despite raising issues under the law and within his constitutional rights, he was punished for raising his voice against injustice.

52. Prashant Rahi, a well known senior journalist and former correspondent of the Statesman from Dehradun, was picked up from Dehradun on 17th December 2007 but shown as arrested five days later on 22nd from near Haspur Khatta. When he was arrested he was told that his name was Ram Singh who was being sought for a case of robbery. He protested and gave his name. They placed a mask on his face, dumped him in a car and took him to some undisclosed place where senior officials, including someone, he said, whose name was south Indian and was obviously a ranking officer because other police officers addressed him as "Sir", interrogated him. He too was tortured. He told us that during his interrogation he was asked about Maoist activities and asked to provide names of others who were involved. To him it appeared that the police were fishing for information rather than asking him about anything specific. He is in his fifties and there has been complete disregard for his health by the State Authorities.

53. The other two journalists Jeevan Chand and Anil Chaudakoti, freelancing with Nainital Samachar, a leading paper of the State, have been under arrest

since 2004. When it appeared that Anil Chaudakoti would get bail in one of the cases, he was implicated in two other cases and was shown as being a "zonal commander" of the Maoists. He too was subjected to torture. He is lodged in the Haridwar jail. Although he got bail in the 2005 case, and likely to get bail in the Rudrapur case, the police were doing everything possible to delay him getting bail.

54. State repression in Orissa: The State of Orissa is increasingly using police to suppress any dissenting voice and curtailing freedom of expression, guaranteed by the Constitution. Abhay Sahoo was arrested in October 2008. He was leading a movement, for the past three years, of the people of Dhinkia, Gobindapur, and Nuagaon panchayats in the Kujang Tehsil of Jagatsinghpur district in Orissa, under the banner of the PPSS (POSCO Pratirodh Sangram Samiti). The group had been relentlessly resisting the take-over of their resources for the establishment of a 12-million-tonne mega steel plant by POSCO, the second largest steel-making company of the world. The project, being touted as the largest ever FDI in the history of India, with an investment of Rs 51,000 crores, will have large-scale, irreversible socio-economic and environmental impacts not only on the areas under the threat of immediate acquisition but also over vast numbers of the State's people, and huge tracts of its forests and other lands. POSCO's assertion that its project will lead to the creation of 45,000 jobs, directly or indirectly, is meaningless in the face of the fact that the proposed steel plant, port, and mines will directly dispossess several lakh people, apart from having very deleterious effects on the lives of many more. The movement has been led by Sri Abhaya Sahoo, President, Posco Pratirodh

Sangram Samiti. Mr Sahoo was apprehended by police on October 12th. According to the police, as many as 25 cases are lodged against the anti POSCO leader. Cases have been registered under sections of 506, 436, 427, 395, 349, 323, 307, 149, 148 and 147 of Indian Penal Code and 25 and 27 of Indian Arms Act. He was hospitalised on 3rd December after his blood sugar levels shot up. But he was not given a bed and was illegally chained to the leg of a bed for a few days as if he were a dangerous criminal. He has been sent back to the Jail.

55. Lenin Kumar, editor of Nishan, was arrested on 7th December and sent to jail on charges of writing provocative literature, which would disturb communal peace and harmony. The police have also arrested two employees of Sovan Press, Bhubaneswar, after conducting a raid on it for printing the book 'Dharma naanre Kandhamalre Raktara Nadi' published by Lenin Kumar. On 07-12-2008 around 1-1.30 p.m. he was picked up by the plain-clothes policemen who had come allegedly by a numberless Bolero van. Initially it was stated that he would be released within one hour or so but he has been in jail since. According to the local police, Lenin Kumar and two others were 'detained' under suspicion of Maoist links and the said book was alleged to be 'Maoist literature'. But, when Lenin Kumar was produced in the court the only allegation brought by police was under Section 153-A and 295-A of IPC, which relate to 'publishing provocative literature, which can disturb communal peace and harmony'. The specific section of the book - pages 38 to 41 - (which has been cited by the police) relates to a letter allegedly written by the RSS to its members for anti dalit, anti minority activities. It is worthwhile to mention that the same material has already been published in various journals/ magazines in the past, both in Orissa and outside Orissa. Thus, the so called 'Maoist connection' has been made as Lenin Kumar, as editor of Nishan, an Oriya quarterly, has been consistently raising voice of dissent for the last one year or so in the pages of the journal. In the month of August (2008), Nishan was labeled as a maoist organ by the Jagatsinghpur SP and the editor had protested this allegation. In the present instance too the booklet under controversy has taken a critical tone towards the govt. role in Kandhamal violence.
56. A few months ago, Rabindra Prasad Panda, a prominent Oriya writer, was sent to jail by the Orissa government for writing a book on Huzrat Muhammad, using similar Sections of the IPC. Similarly Pratima Das was arrested from Jajpur on August 13th 2008 for having Maoists links. She was denied bail and is still languishing in jail.
57. The Arrest of Muni Hasda of Ulugulan Manch, Jharkhand on 26th November, 2008 is another case reflecting the arrests of dissenting activists in the State of Jharkhand. She, along with other leaders of the Ulugulan Manch, Charan Kumar Rai, Raj Charan Murmu and Hopanna Baski were arrested as they were actively opposing the acquisition of about 264 acres of land in two villages of Aamgachi and Pokhariya for a thermal power plant by CESC-RPG group of companies. The police tried to portray the movement as being linked to "Maoists". This was mischievously and systematically spread by the official machinery, which seemed to be serving the commercial interests against the people's welfare. Five criminal cases had been filed against Muni Hansda and others prior to her illegal detention on 26th November 2008, but no arrest was made. However, she was later picked up in a case relating to a motor/cycle which warrants only action under The Motor Vehicles Act, but the authorities later invoked sections 147/ 149 / 524/ 120 (b), 325 of the IPC & 1B (A) /27 & sec 17 (c) of the Arms Act and under various sections of the UAPA after the police firing which took place on the peaceful protestors on 6th December, 2008.
58. Whether it is the arrest of Dr Binayak Sen or some of the others, as we have shown, under the charge of helping the Maoists or having Maoists links, is a clear case of how guilt is sought to be established against human rights activists, social activists, health workers and journalists merely by their association with certain people in the course of their professional duties. The premise of the arrest of all has become "guilt by association".
59. Appeals for Dr. Sen's release have been pouring in from various quarters including an unprecedented move by 22 Noble Laureates in Science and Economics writing to the Indian President, Prime Minister and other officials requesting that he be allowed to go to Washington on 29.05.2008 to receive the 2008 Jonathan Mann Award. Dr. Sen is the first South Asian to win the prestigious Award given by the Global Health Council, the World's largest membership alliance of Public Health Organizations and professionals. The true copy of the Appeal jointly made by the 22 Nobel Laureates dated May 9, 2008 is enclosed herewith as Annexure - 8. According to this joint appeal ; "Dr. Sen appears to be incarcerated solely for peacefully exercising his fundamental human rights in contravention of Article 19 (freedom of opinion and expression) and 22 (freedom of association) of the International Covenant on Civil and Political Rights - to which India is a state party". This appeal of 22 Noble Laureates was widely publicised in the Newspapers in India. One of the

extracts of the News item that appeared in "The Hindu" of 13.5.2008 is annexed as Annexure -9 and extracts of the News item that appeared in the Hindustan Times on 14.5.2008 are annexed as Annexure - 10. In all the leading English dailies and those of other languages, editorials have been published against the detention of Dr. Binayak Sen. All the leading News Papers and Magazines have also published Articles and comments of leading columnists during the last few months affirming Binayak's innocence.

Enclosed as Annexure are the articles.

In the light of the above we pray that the :

- Commission should ensure with the GOI and State Governments that respect for human rights and human rights defenders becomes an integral part of the criminal justice system.
- Human Rights should be seen in the manner as envisaged by the National Human Rights Commission, in its 1996-97 report, in the light of the 1993 Vienna Declaration and Program

of Action, did, by observing that civil and political, economic, social and cultural rights as "Universal, indivisible, inter-dependent and inter-related", meaning thereby that the civil and political rights contained in Part III of the Constitution, and social, economic and cultural rights contained in Part IV thereof, are indivisible, inter dependent and inter-related.

All the cases presented in the memorandum be investigated by the NHRC and the civil liberties of these activists and journalists be restored. □

LETTER :

Prabhakar Sinha reminds Bihar C.M. of his pledge of good governance

Date: 24.7.09

Shri Nitish Kumar,

Chief Minister, Bihar

Subject: The touchstone of good governance: a people friendly administration

Dear Mukhyamantriji,

The most important and attractive plank of your election campaign was the promise of 'Sushasan' (good governance). The people who were sick of the rule of your predecessors generously voted in your favour and offered you the opportunity to serve them by keeping your promises. You have not forgotten your pledge of 'Sushasan' as is apparent from the frequent claim made that it has been achieved. However, whereas the people accept that there is a change for the better, they do feel that the change is quantitative and not qualitative. I hope you would agree that an improvement on a deplorable governance is not 'good governance (Sushasan). I would refrain from passing a judgment on the governance in the state and would like to suggest objective criteria, which you may apply and judge yourself the quality of the governance your government has given to the people of the state.

Please ask yourself if your administration is people friendly and there is the rule of law in the state. The actual position may be ascertained by seeking honest answers to the following question:

1. Is a law abiding citizen visiting a police station treated with courtesy due to him?
2. Does a law abiding citizen requiring the help of the police feel fear and trepidation in going to a police station or feels happy and secure?
3. Can a person get an F.I.R. recorded as a matter of course or has to resort to bribery or 'Pairvi'?
4. Do the police investigate a crime honestly and sincerely or are influenced by bribery and /or 'Pairvi' in the investigation?
5. Are the allegations of killings in the police custody investigated impartially or effort is made to shield the guilty ?

6. Do the judicial officers enquiring into the custodial deaths receive sincere cooperation of the police department or the department attempts to protect its men/women?

7. Are allegations of fake encounters investigated/enquired into with impartiality or attempt is made to shield the guilty ?

8. Have measures been taken to make police firings a rarity or the police are free to fire and kill unarmed people claiming to have fired in self defence and get away with the murder on this untenable and illegal ground?

9. Have the police been told that human life is precious and must be destroyed only as a last resort? Have the government taken measures to ascertain that the claim by the police to have fired and killed in self defence is authentic by providing that it must be proved before a court of law as has to be

done by citizens in similar cases(since the police exercise the same right of self defence as any other person?

10 Have measures been taken to curb the rampant misuse of the power of the police to arrest without warrant, which is the greatest source of 'Polce Zulum' on the poor?

11. The power to arrest without warrant (u/s 41 of Cr.P.C.) is to enable the police to curb crime by using it when necessary and is not discretionary .Has the question of regulating the use of this power to save the people from unnecessary arrest ever been examined ?

12. Have steps been taken to curb corruption rampant among Public Prosecutors since it is an open secret that they act to get those criminals who can afford to pay them acquitted?

Coming to the question of the rule of law you have to find the answer to only one question. Do the people get from the administration what is their due as a matter of right? Can a person demand what is his right or has to a approach even a lowly functionary of the government as a supplicant?

'Sushasan, in a democracy, means to be free from the fear of the police and administration , to be treated with due courtesy(by the administration) and get what is one's right as a matter of course without being forced to resort to demeaning means.

I would request you to find the answers to these questions and judge for yourself whether there is 'Sushasan' in Bihar or not. If you find that you have not been able to achieve your objective (of Sushasan) and have the intention to work for it ,take the steps which

are possible to be taken immediately and form another Administrative Reform Commission/Committee to study reform from the people's perspective which could recommend measures to ensure that the people get their due as a matter of right and do not have to depend on the mercy of the administration. If you ensure this, the public servants will be divested of the unbridled power they use (like the gun by the goons) for extortion from the people, and the people would be so empowered that the battle against corruption will be substantially won.

Yours faithfully,

Sd./-

(PRABHAKAR SINHA)

Note: I would be glad if the letter is acknowledged now, and I hear from you on the subject later.

Sarabjit Singh

K.G. Kannabiran

It was in the year 1983/1984, I think, that I argued a writ petition for premature release of life convicts according to The GO issued by the Government and the petition was allowed. On account of the court verdict quite a large number of prisoners were released all over the State and among them were quite a few Naxalite convicts. Some of those who were in Chenchal Guda Central Prison came in a procession to my house in Hyderguda. One among them was Jinkala Ramudu, whom I had cited as an instance to support my argument as to why the death sentences imposed should not be commuted to life. I cited him as a precedent because I heard that he was found guilty of thirteen murders and yet was not awarded the death sentence. When he introduced himself as Jinkala Ramudu I was stunned that this diminutive and undernourished man could kill

thirteen persons. And after he told me his life in brief after my questioning I felt sorry that I used him as a precedent in my arguments In that vast faction -ridden Rayala Seema area that has a long time crime history associational offences like unlawful assembly and rioting was very common and in these attacks on two of the opposite faction invariably were killed. The young living in and around these areas were drawn into the one or the other of these factions. That became their way of life and their right to living and life. Thus crime became a Constitutional Right. There was nothing voluntary about this employment. They become the foot soldiers of the faction leaders some of whom have grown to be successful politicians. The faction leaders look after their family welfare if any of these foot soldiers get convicted and sentenced. The faction leaders' life proceeds on an

even keel, despite this criminal background. He has a team of lawyers to defend his foot soldiers Able lawyers appear if the leader is implicated. Quite a few of them become renowned politicians and have hectored us on non-violence! Like Jinkala Ramudu so many young and middle aged men would have been employed in varied assortments of crimes in Macaulay's Code and this is how the many secure their right to live and livelihood. .Lawyers, jurists' crime fiction writers, forensic and ballistic experts are fed on the activity of these people who operate outside the pale of law. The lives as they led was miserable but their lives, whether in prose or poems, made more money than they did while living.

Sarabjit Singh and many police officers of his grade are engaged to commit crimes both

inside and out side the country. Inside to quell internal revolts by citizens with the sanction to act with impunity. In other words they are given licence to kill.. This goes by the name of "intelligence" which would mean information gathered covertly for the purpose of formulation of a county's policy. The lay person understands "intelligence" to mean espionage skullduggery cloak and dagger exploits like that of the heroes of detective fiction. In real life these risky and totally unwholesome tasks are entrusted to the anonymous like Sarabjit Singh along with others who occupy these positions to destabilize a foreign country. It is always the General who retires to live and write his war memoirs! We have Ian Fleming and James Bond who wrote about these activities. He was a favorite writer of John Foster Dulles. In fact history has it that such systematic activity brought about the collapse of Soviet Union. Some of them wrote biographies about their work. The Spy catcher was one such. Recently Philip Larkin wrote about how US with the aid of economic hit men planted in several

countries destroyed their economies. This activity can also be characterized as war, a very low profile affair to maintain one country's hegemony over the other.

No insider of Raw has yet written a book on the activities of RAW,

This Sarabjit Singh was just a cog in this wheel of a-moral statecraft and what he did was for the state and must have done this job with clinical detachment like any lawyer appearing for a criminal, tax evader, real-estate mafia, or a rapist or a doctor who treats well or ill with a clinical detachment. He was an Indian spy who was accused of being responsible for bomb blasts which caused the death of around fourteen persons. For Pakistan what Sarabjit Singh did was unpardonable crime and so should be hanged. I do not know whether their media and visible members of the public in Pakistan were as belligerent and as hysterical as our electronic media and our public men were about Kasab and Afzal.

All countries have always been in a state of unstable

equilibrium and that does reflect in the attitude and policies of governance of all these countries. Politics more so international politics has always been adversarial within and internationally as well. Such situations help provide the governments a source of diversion to their people from more important issues and the saber rattling is always good for keeping alive our patriotic sentiments. Sarabjit Singh tells us that India is not wholly moral to look down on Pakistan as immoral and that both are playing the a-moral game for maintaining themselves in power. Whether it be a private crime or "public crime - a crime which the state initiates as a matter of its policy making- the agents are punished and the principals are not. This is one of the reasons why crime control is ineffective. This has also been a factor which has influenced our campaign against death penalty. These prosecutions satisfy the productivity ethic which the government so requires to justify its existence without in any way disturbing the status quo.

**PUCL Auditors' Report:
Assessment year: 2007-2008**

PEOPLE'S UNION FOR CIVIL LIBERTIES

270-A, Patpar Ganj, Opposite Anand Lok Apartments, Mayur Vihar - I, Delhi-110091

Balance Sheet as on 31.03.08 & 31.03.07					
	31.03.08		31.03.07		
Sources of Funds	Rs.	Rs.	Rs.	Rs.	Rs.
Corpus Fund	193292.29		217673.35		
Add/(Less):Income/(Deficit) for the year	134442.11	327734.40	(24381.06)		193292.29
Silver Jubilee Fund			19400.00		
Less: Utilised			19400.00		0.00
Provision for Audit Fees		13787.50			
Total		341521.90			193292.29
Application of Funds					
Cash-in-hand		26643.35			15997.85
Forex-in-hand					
Cash-at-bank		208154.58			72984.52
Loans & Advances		5000.00			
Investment in FD		100000.00			100000.00

Fixed Assets:				
Gross Block	25730.00		25730.00	
Less: Depreciation Allowance	24006.03	1723.97	21420.08	4309.92
Net Block				
Prepaid Expenses				
Total		341521.90		193292.29

Verified and Certified true and Correct as per books of accounts and other relevant records/documents produced before us.

As our report of even date
for JRA & ASSOCIATES
Chartered Accountants

for **PEOPLE'S UNION FOR CIVIL LIBERTIES**

Pushkar Raj
General Secretary

D. Jagannathan
Treasurer

D. Ranganathan
Partner
Membership No:83605

Place : New Delhi

Date :

Income & Expenditure Account for the Year Ended as on 31st March 2008		
	Y.E.31.03.08 (Rs.)	Y.E.31.03.07 (Rs.)
INCOME		
PUCL subscription received		
In INR	622329.00	391510.00
In Foreign Currency		
Bulletin Subscription Received		
In INR	23785.00	18871.00
In Foreign Currency		
Silver Jubilee Fund Balance Recognised as income		19400.00
Interest income from SB A/c	2701.31	3942.32
Total	648815.31	433723.32
EXPENDITURE		
Honorarium Paid	246472.00	209581.00
Bulletin Press	99760.00	96330.00
Office Expenses	52990.00	42272.00
Conveyance	21646.00	20183.00
Telephone Expenses	24173.00	26351.00
Postage Expenses	10423.50	8363.50
Research & Publication		
Travelling Expenses		
Computer & Internet Expenses	36120.00	36316.00
Misc. Expenses		0.00
Bank Charges	6415.25	509.00
Audit Fee	13787.50	11734.00
Depreciation for the year	2585.95	6464.88
Excess of Income over Expenditure	134442.11	-24381.06
Total	648815.31	433723.32

Verified and Certified true and Correct as per books of accounts and other relevant records/documents produced before us.

As our report of even date
for JRA & ASSOCIATES
Chartered Accountants

for **PEOPLE'S UNION FOR CIVIL LIBERTIES**

Pushkar Raj
General Secretary

D. Jagannathan
Treasurer

D. Ranganathan
Partner
Membership No:83605

Place : New Delhi
Date :

Receipt & Payments Account for the period 01.04.07 - 31.03.08				
	2007-08		2006-07	
RECEIPT	Bank (Rs.)	Cash (Rs.)	Bank (Rs.)	Cash (Rs.)
Opening Balance (01.04.07)/(01.04.06)	72984.52	15997.85	205659.20	23889.35
Advance to Jitendra Kapoor			20000.00	
Cash withdrawn from Bank		325000.00		265000.00
Cash deposited into Bank			22896.00	
PUCL subscription received				
In INR	622329.00		378846.00	12664.00
In Foreign Currency				
Bulletin Subscription Received				
In INR	23785.00		8639.00	10232.00
In Foreign Currency				
Interest income from SB A/c	2701.31		3942.32	
Total	721799.83	340997.85	639982.52	311785.35
PAYMENT				
Cash withdrawn from Bank	325000.00		265000.00	
Advance to Jitendra Kapoor	5000.00		20000.00	
Cash deposited into Bank				22896.00
Honorarium Paid		246472.00		209581.00
Bulletin Press	99760.00		96330.00	
Office Expenses	22047.00	30943.00	9358.00	32914.00
Conveyance		21646.00		20183.00
Telephone Expenses	24173.00		26351.00	
Postage Expenses		10423.50		8363.50
Research & Publication				
Travelling Expenses				
Investment in FD			100000.00	
Computer Upgradation & Internet Exp.	31250.00	4870.00	27716.00	1850.00
Computer AMC				
Loans & Advances				
Bank Charges	6415.25		509.00	
Audit Fees			21734.00	
Closing Balance	208154.58	26643.35	72984.52	15997.85
Total	721799.83	340997.85	639982.52	311785.35

Verified and Certified true and Correct as per books of accounts and other relevant records/documents produced before us.

As our report of even date
for JRA & ASSOCIATES
Chartered Accountants

for PEOPLE'S UNION FOR CIVIL LIBERTIES

Pushkar Raj
General Secretary

D. Jagannathan
Treasurer

D. Ranganathan
Partner
Membership No:83605

Place : New Delhi
Date :

Gujarat PUCL :

To,
Shri Naval Kishore Sharma
Governor of Gujarat,
Gandhinagar

Subject : Hooch Tragedy in Ahmedabad and prohibition

Honorable Sir,

We on the behalf of PUCL (Peoples' Union for Civil Liberties) would like to draw your kind attention to the heart throbbing Hooch tragedy, which took place recently in the City of Ahmedabad. In this tragic incident, more than 156 people have lost their life.

As we all are well aware of the prohibition policy is in force in the State of Gujarat since 1923 (erstwhile Mumbai State) and we are proud of it. The people of Gujarat had demanded the strict implementation of the Prohibition Policy from the beginning \$ People of the State are always ready to sacrifice the loss of money \$ always paid high rate of taxes to save the State from the menace of Liquor. The present anguish of the people more so of women of Gujarat reflects the mood which demands total prohibition.

We also would like to draw your kind attention to the fact that some dubious campaign is released, taking the advantage of leniency on the part of the Govt. and administration, more so of Police bootlegger nexus, and the excuse of this hooch tragedy, to lift the ban on Liquor. The infamous statement of Mr. Vijay Mallya has not only humiliated the people \$ more particularly women of Gujarat, but also insulted the directive principles of Our Constitution and a deliberate attack on Gandhian values.

We would like to recall that we had drawn your Excellency's attention when present BJP government declared some relaxations I the prohibition policy for SEZ and in the mane of promoting Tourism. A massive protest demonstration was held in Ahmedabad in 2007 against the relaxation in Prohibition policy of the Govt. and its evil design in the name of development.

The present hooch tragedy again exposed the failure of the Govt. to maintain Law and order in the state. The prohibition policy is only in paper. Now the proposed change in the prohibition policy with a clause awarding death sentence to bootlegger will be futile exercise without a political will of the Govt. to implement the prohibition policy strictly, which is of paramount importance.

The nexus between the police and the bootlegger is a matter of serious concern. More over disallowing the debate on Hooch tragedy on the floor of the Assembly, when it was in session by the Speaker of the House is deplorable and undemocratic.

So, we would like to demand before your Excellency on behalf of the people of Gujarat that:

- Strict implementation of the prohibition Policy in the State, no relaxation in the name of SEZ & Tourism.

- The proposed amendment in the prohibition Act of 1949 should also include the provision of stringent punishment for the Country liquor &IMFL producers-both.

- Stringent punishment to the culprits of Hooch tragedy.

- Action Taken Report from the State government for all the previous committees \$ Commission in the reference of Hooch Tragedies of the past taken place in the State.

- Directives to D.I.G, Police for the strict implementation of prohibition Policy by the police force of the state.

We expect that your Excellency would exercise the constitutional authority to save the people of Gujarat from the menace of Liquor.

Thanking you,

Yours truly,

Sd./- (Gautam Thaker, Secretary, Gujarat PUCL; Ashwin Karia, Vice-President, Gujarat PUCL; Dwarika Nath Rath, Secretary, Movement for Secular Democracy; Meenakshi Joshi, Secretary, All India Mahila Sanskritik Sangathan Gujarat; Bhikhabhai Amin, Rationalist Association, Gandhinagar).

REGISTERED
Postal Regn. No.:
DL-(E)-01/5151/2009-2011
Posting : 1-2 of same month
at New Delhi PSO
RNI No.: 39352/82
Date of Pub.: Sept. 1, 2009
Office : 270-A, Patparganj
Opp. Anandlok Apartments
Mayur Vihar-I, Delhi-110091
Tel.: 22750014. **Fax:**(PP) 42151459
E-Mail : puclnat@yahoo.com
Website : www.pucl.org

PEOPLE'S UNION FOR CIVIL LIBERTIES
Founder : J.P. NARAYAN
President : K.G. KANNABIRAN
General Secretary : PUSHKAR RAJ
Vice Presidents : Binayak Sen; Mathew Manakattu; Prabhakar Sinha; Ravi Kiran Jain; Sudha Ramalingam (Ms.); Yogesh V. Kamdar
Treasurers : D. Jagannathan; S.A.A. Pinto
Secretaries : Ajit Jha; Kavita Srivastava (Ms.)
Organising Secretaries: Chittaranjan Singh; Gautam Thaker; Himanshu Bourai (Ms.); Nishant Akhilesh; P.B. D'sa

PUCL BULLETIN
Chief Editor : Pushkar Raj
Editor : R.M. Pal
Editorial Board : Rajni Kothari, Rajindar Sachar, Amrik Singh, R.B. Mehrotra, Chief Editor, Editor.
Assistance : Babita Garg

Printed and Published by: Pushkar Raj, General Secretary, PUCL, 270-A, Patparganj, Opp. Anandlok Apartments, Mayur Vihar-I, Delhi-110091 for People's Union for Civil Liberties
Printed at: Jagdamba Offset Printers, H-28, Jagat Puri, Delhi-110051