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## Behind Bars No Reforms

**Indian Prisons Continue To Be Administered By 1894 Law**  
Pushkar Raj

Recently an all India Conference of DG/ IG of prisons expressed deep concern over the overcrowding of prisons and resolved to impress upon the Chief Justices of High Courts to direct State governments to arrange videoconference facilities for hearing cases by courts and early release of under-trials who have been languishing in jails for years. The under trials constitute about 67 per cent of the prison population in the country which is close to four lacs. The conference, however, failed to look at the problems plaguing our prison system holistically and touched upon merely one of the many effects of a dehumanised prison system based on an antiquated 1894 British made law which feeds on the vulnerability and misery of our incarcerated fellow human beings.

Prisoners are the most ignored lot of any society and more so in the Indian case. They seem to be non-existent for the rest of the society. However, the irony is that majority of those in jails could be innocent as their guilt has not yet been proved. Perhaps they would not be there if our other parts of the criminal justice system had functioned properly. In other words most of them remain confined to the four walls of the jail because of a systemic failure and this must weigh heavily on our conscience as a part of the free individuals of the society.

Indian jails are inflicted with a number of ills that have been pointed out in several reports including that of the National Human Rights Commission. These are overcrowding (376,396 as against the official capacity of 277,304), delay in trial (majority of them are under trials) torture and ill- treatment (between 2004 - 2008, prison custody deaths increased by 70.72 per cent) neglect of health and hygiene (361 inmates died in UP in 2010 only) insubstantial food and inadequate clothing, deficiency in communication with the family members and a non-existent visitors supervision. As one of the annual reports (1994-95) of the NHRC pointed out that in jails across the country callousness prevailed, prisoners were seen in shackles, mentally disturbed inmates- regardless of whether they were criminal or otherwise- were incarcerated with others, with no real effort being made to rise above the very minimum required for the meanest survival. The report further adds that where prisoners worked, their remuneration was often a pittance, offering scant hope of savings being generated for future rehabilitation in society. In 1999-2000 report also the Commission noted that nearly 80 per cent deaths in judicial custody were a result of infestation of tuberculosis. This is noteworthy that on an average nearly one and half thousand deaths have been taking place in jails across the country for a decade and a number of these deaths can be avoided if our jails have proper sanitation, medical facilities and sensitive medical staff.

We ought to concede that criminals are first the human beings and then doer of a wrong. They must not be regarded as condemned to rot but capable of reform and emerge as good human being. As Krishna Iyer, J, pointed out in Mohd. Giasuddin v State of A.P (1977) the sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturalisation and the duty of the state is to rehabilitate rather than to avenge.

Legally too, the Universal Declaration of Human Rights UDHR), 1948 stipulates that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Article 21 of the Constitution of India recognizes that the right to life includes a right to live with human dignity and not mere animal existence, strengthens the mandate of the UDHR.

However, it is a pity that our jails continue to be managed through the archaic 1894 Prison Act which is based on century old

understanding regarding the people who commit crimes and how to deal with them. Like in the area of police reforms, the government has merely gone through the routine of constituting various committees and then forgetting about their recommendations. The Government set up an All India Committee on Jail Reforms under the chairmanship of Justice A. N. Mulla in 1980 which gave 658 recommendations on various issues of prison management. The Committee also proposed a draft National Policy on Prisons with an objective that the prisons in the country shall endeavour to reform and re-assimilate offenders in the social milieu by giving them appropriate correctional treatment. The Supreme Court in Rama Murthy v State of Karnataka (1996) also recommended that a new Prison Act should be framed. Various judgements of the Supreme Court on jail inmates prove that the very fundamental premise of the old Act are out of sync with contemporary times and it needs an absolute replacement.

It is no solace that BPR&D has prepared a Model Prison Manual and circulated to all the states/ UTs for adoption in 2004. It has also circulated a draft national policy paper on Prison Reforms and Correctional Administration in 2007. However these moves are merely putting the cart before the horse as unless Model Prison Act is drafted, debated, finalised and approved with the discussions with the state, the old prison Act will continue to be used by the States. The Model Prison Manual, howsoever improved, will not have any legal basis and the States will never be encouraged to adopt it. A new Model Prison Act is also a must to cut down variances amongst different Prison Acts of the States, though only a few of them have attempted it. By producing a new progressive Model Prison Act, we must standardise treatment to our prisoners across the country and ensure that they are dealt with humanely. After all a society's civilizational and humane index is gauged by how it treats its most invisible and the powerless! □

**Letter: 6 March 2012**

Chairman, National Human Rights Commission, New Delhi  
 Subject: **Request to Send a Fact Finding Team and ensure Medical Facilities to Soni Sodi lodged in Dantewada jail in Chhattisgarh**  
 Sir

1. Soni Sodi was arrested from Delhi and has been lodged in Dantewada jail of Chhattisgarh. PUCL has already written to the Commission on this, and the Commission is seized of the matter.
2. Recently the evidence has emerged in the public domain that she has severely been tortured in a disgraceful manner which is an insult to womanhood and humanity. The kind and extent of the torture is shocking and shameful for a civilized and rules based society and the allegations are against a senior police officer. A recent medical examination ordered by the

- Supreme Court at NRS Medical College and Hospital in Kolkatta found stones inserted in her vagina and rectum.
3. Sir, Soni Sodi, being a hapless woman with school-going children is an accused in a highly suspect environment of Chhattisgarh where it is a largely held perception that many a time people are charged falsely under the draconian laws endangering their life and liberty.
  4. A visit to the jail by some concerned citizens has revealed that the Soni Sodi is on partial hunger strike and she is deteriorating physically and psychologically. Taking note of this some of the concerned citizens and organizations have observed one day fast at the Rajghat on 29th February 2011. (photographs of it are attached with this letter).
  5. PUCL on behalf of all concerned

citizens and Women Against Sexual Violence appeals to you to send a fact finding team of the Commission to the jail and ensure all basic facilities that Soni Sodi is entitled to including medical assistance so that she continues to retain her sanity to fight for justice and ensure that all those who indulged in torturing her are brought to justice as per the ongoing cases in the Court. We understand that by sending such a team the Commission would honour the sentiments of hundreds of concerned women who have been campaigning for justice for Soni Sodi and it would be an appropriate way of commemorating the International Women's Day that is round the corner.

With thanks,  
**Pushkar Raj**, National General Secretary, PUCL □

**Press Statement:** March 10, 2012

## **Condemning Murder of Narendra Kumar IPS**

The PUCL strongly condemns the gruesome murder of an IPS probationer, SDPO Narendra Kumar Singh in Morena, MP on March 9. This murder is not an isolated incident and must be seen as a part of a series of crimes committed by the nexus of illegal mining mafia and the local corrupt police and the administration in the state against law-abiding citizens and officials. It may be noted that what was going on in Morena, is also being carried out in the Aravallis in Rajasthan, plateaus of Jharkhand, certain regions of Orissa, Chhattisgarh and Bellary, in Karnataka.

Given the lackadaisical attitude of

the government in this regard and the political clout being enjoyed by the mafia, it's a matter of serious concern that the mining mafia in MP are so emboldened that they dared to kill a high rank police officer. Under the prevailing circumstances, the plight of ordinary citizens living in and around the mining areas, at the hands of mafia could very well be gauged.

As far as the tragic case of Narendra Kumar goes, it becomes obligatory on the part of the MP Government to nab the culprits, fix responsibilities and initiate administrative and punitive action against district and state officials in the department of

mining, pollution control board, forests and environment, revenue, explosives, transport and of course the Police, without whose connivance such heinous crime could not have been committed. PUCL demands a blanket ban on illegal mining in the state of MP and elsewhere in the country which is ruining the environment endangering human and natural lives, review of all mining leases and strong regulatory and supervisory mechanism for checking the illegal mining and the crimes associated with it.

**Pushkar Raj**, General Secretary, PUCL National ☐

## **Whither Indian Politics?**

### **Criminals still in the electoral arena**

#### **Justice Rajindar Sachar**

Democracy is a basic feature of our Constitution. Parliament and Legislative Assemblies are instruments created to give effect to the democratic content of people governing themselves. Political parties are the medium through which representatives are elected. It stands to reason that after the election, the implementation of the principles and policies continue or should continue to govern the programme. That is of course textbook teaching; but how close are these sound principles to the reality of the present politics?

A mini-general election with the largest State of UP going to the polls seems an apt time to have a close look at the way our political parties treat the elections and the social and political philosophy to woo the voters.

The minimum test for a candidate should certainly be that he/she is not foul of criminal law. That is why the Supreme Court as far back as in 2002, in a writ petition filed by the

People's Union for Civil Liberties, directed that a proposed candidate should disclose whether there is a criminal charge-sheet against him at least six months before the date of election, so that the voter may try to avoid politicisation of criminals, in the sense that criminals should not be elected so as to prevent them from wielding power over the reins of the state. But alas, India continues to remain a mystery to not only the foreigners, but even to us, because we find that the political parties still continue to warmly welcome the criminal elements to their bosoms. Thus of the 337 candidates (upto the fifth phase) for the UP election, about 32 per cent belonging to the parties SP, BSP, Congress, BJP have serious criminal charges pending against them.

This notwithstanding the warning about criminal elements in our legislatures given by the Vice-President of India at the All India Whips Conference: "Exactly 23 per cent of MPs elected in 2004 had

criminal cases registered against them, over half of these cases could lead to imprisonment of five years or more. The situation is worse in the case of MLAs." Contrast it with Europe—not that I am fond of political standards in Europe. But recently the President of the German Republic resigned because he had threatened a person who was demanding loan given to the President or in England where a Cabinet Minister resigned because he made his wife take the blame for rash driving when he himself was driving the car. How ironical that all the major political parties in India are resisting to frame the law debarring persons charged with criminal offence from contesting elections! Another grim reality of the present elections in Punjab and UP is the amount of illegal money circulating and the distribution of drugs and liquor, the danger of which the present Chief Election Commissioner has highlighted, and election expenses are mentioned to have gone upto Rs 3 to 5 crores per

seat. Is it not farcical to call these elections free and fair?

No party is talking of real problems. Minorities are being treated as football of this small politics. An unacceptable competition of claiming to be custodians of minorities is being given by some parties by pressing the panic button of security, while on the contrary some parties are donning the artificial garb of nationalism. This is insulting the minorities. They are nobody's pawns. They are equal, proud citizens of India. Parties which behave in such a manner are ignoring the well-established code of Universal Human Rights that proclaims: "In any country the faith and the confidence of the minorities in the impartial and even functioning of the State is the acid test of being a civilised State. This is accepted wisdom." The real problems overwhelming the electorate are many and yet there is a conspiratorial silence from all the parties. A report by Save the Children (an NGO) shows that more than 100 million children in our country have not enough to eat; 24 per cent of families say their children go without food for one day—what a tragic mockery that the Central Government is resisting the PUCL petition in the Supreme

Court for the right to food for all on the specious plea of lack of funds, while merrily and proudly proclaiming its purchase of 126 Jet Fighter aircraft for thousands of crores! This perverse priority is further heightened by the admission of a Central Government Minister that India accounts for 60 per cent open defecation in the world—the reason being that building toilets requires Rs 8000 each, but under the government's norms only Rs 3000 is provided. Can there be a more sardonic double-talk? And yet no party is talking about these issues. Of course all parties are talking with their mouths wide open of giving laptops (the irony of the untruth is so stark when the fact is that 40 per cent of India is not electrified), motor cycles to students, without batting an eyelid or feeling ashamed that a large number of schools do not even have blackboards or toilets for girl students.

In 2009, 17,368 farmers killed themselves. Agriculture growth, the mainstay of the Indian economy, has remained stagnant for the last decade at 1.6 per cent and it has now slipped to 0.4 per cent. The Planning Commission Report of 2011 has had to admit the gross inequality of assets wherein the top five per

cent possess 38 per cent of the total assets and the bottom 60 per cent owning a mere 13 per cent. There is one-third high incidence of poverty amongst SCs/STs, and one-third of Muslims live below the poverty line. In spite of this stark reality, no major parties in the elections even mentioned these vital issues—this shows an attitude of contempt like that of the old feudal master towards his serfs. This contempt towards the electorate cannot be described better than what I chanced to see on my computer on blog posted by one teenager, Sunil, thus:

- "It is time for the next elections and his previous promises have not begun.

- "I am a very young child and today I have learnt that you can call politics, corruption too."

The parties should seriously heed the warning given by Babasaheb Ambedkar who on November 26, 1949 warned: "How long should we continue to deny equality in our social and economic life.... we must remove this contradiction at the earliest possible moment or else those who suffer from this inequality will blow up the structure of political democracy which this assembly has so laboriously built up." □

**TN & Puducherry PUCL: Press Release: 06 March 2012**

## **Compulsory Community Profiling by TN Police - Stop Criminalising North Indians - Condemn Apartheid - era Police Order!**

PUCL Tamil Nadu and Puducherry strongly condemns the recent actions of the Tamil Nadu Police in demanding compulsory registration with the local police of all migrant labour and students hailing from other states, in the name of combating crime. This is tantamount to 'ethnic profiling' violating the fundamental right to 'equality before law' and 'equal protection of law' guaranteed by Article 14 of the Constitution. Importantly, Article 15

of the constitution mandates that the "State shall not discriminate against citizen on grounds only of religion, race, caste, sex, place of birth or any of them". Calling for compulsory registration of persons on the sole ground that the person concerned belongs to another State is discriminatory and unconstitutional. Such actions are also violative of the fundamental right guaranteed in Art. 19(1)(d) and (e) which entitles all citizens to "move freely throughout

India" and "to reside and settle in any part of India."

The reasons put forth by the police demanding compulsory registration with the police is arbitrary, irrational and unacceptable. The directive is wholly unconstitutional, totally without any legal basis and sets up a dangerous precedent.

The unacceptable police order is based on a wholly unscientific rationale seeming to suggest that 'criminality' and 'criminal tendencies'

are inherent to those Indian citizens who come from other states. This will generate fear, resentment and suspicion about non-TN citizens.

This kind of knee jerk reaction of the Tamil Nadu Police to tackle crime is dangerous and counter productive. Recourse to racial or ethnic profiling will result in the police investigating crime on the basis of unscientific criteria rather than on the basis of facts emerging from the scene of crime. This has dangerous consequences for the rule of law and fair criminal justice delivery.

The PUCL urges the State Police to refrain from constantly bombarding the media with negative profiling of 'migrants' from other states because this can have dangerous social repercussions. It is important to point out that the crime rate in the city is escalating, creating a widespread sense of insecurity amongst Chennai residents. The increasing crime is only reflecting a total failure of effective policing. Instead of improving intelligence gathering and strengthening community relations enabling information flow, this type of racial profiling will contribute to a climate of 'hate, suspicion and intolerance' of outsiders. It is necessary to point out that just a few days after the encounter murder of 5 persons by the Chennai police, a

mentally challenged citizen was almost lynched by a mob of locals near Pallikaranai all based on a rumour and suspicion that he was a northerner and a criminal. This type of vigilante justice will only escalate with the anti-Tamil phobia and hate which will surely be the outcomes of such irrational social profiling.

Experiences from other countries where similar profiling was initiated reveals the dangers inherent in whipping up collective hysteria and fear over 'criminal others'. A few months after the 9/11 bombings resulted in media creating a hysteria about 'people of Islamic looks' in December, 2001, one Assem Bayaa, a man of Middle Eastern descent, was forced off a plane in Los Angeles because he made the other passengers "uncomfortable". An Indian Muslim was also detained at a European airport as he made other passengers 'suspicious' about his 'odd' dress and beard.

In effect, what can begin as ethnic profiling by a government agency like the police can percolate down to the ordinary individuals. This can result in creating deep discords in communities resulting in social strife on account of this irrational or unreasonable fear of migrant workers or students.

PUCL is concerned that the State

Government seems to have tacitly assented to the Tamil Nadu police to go ahead with such profiling. This is reminiscent of the British colonial rulers stigmatizing some castes as 'Criminal Tribes' and repressing them every time some crime occurred in the region.

Worse, the action of the Tamil Nadu police is similar to the APARTHEID ERA profiling by the then South African police, of people of African origin as criminals, and making them register themselves in local police station; whereas Indians and other coloured people were exempted from doing so. The Tamil Nadu police by ordering compulsory registration of non-TN people, is doing what even the Shiv Sena did not do during the height of anti-Tamil/ South Indian attacks by Shiv Sena in the 1960's. PUCL also wishes to point out that the police threat to take action against owners and others who don't register with the police as a wholly illegal exercise of law. The State Government and Police ought to inform citizens by what provision of law they are taking action.

PUCL calls upon the Tamil Nadu State Government and the State Police to immediately stop this kind of xenophobia and evolve more scientific methods to combat crime.

**V. Suresh**, National Secretary, PUCL □

**Gujarat PUCL: Letter:** 29 Feb 2012

The Chairman,  
National Human Rights Commission,  
Faridkot House, Copernicus Marg,  
New Delhi

**Subject: 10 years of Gujarat Carnage-Cancellation of Police Permission to hold demonstration in Ahmedabad**

Sir,

We would like to draw attention to the fact that People's Union for Civil Liberties and the Movement for Secular Democracy (MSD) along with Women's International League for Peace & Freedom (WILF) held a

Citizen's Convention on 26<sup>th</sup> February in Mehandi Nawaj Jung Hall, Paldi, Ahmedabad at 2 pm. This citizen's convention was part of the 'Insaf Ki Dagar Par' programme where 40 organisations had come together to remember the 10 years of Carnage in Gujarat and raise their voice for justice.

At the end of the convention it was decided to hold a public demonstration at Paldi Char Rasta. We had applied for the police permission on 21<sup>st</sup> February 2012 at 2.30 pm to the Police Commissioner

of Ahmedabad City with a copy to the Police Station of Ellis Bridge area. There was no news – message from the police. We understood that the permission had been given. On the very day of the programme, around 12 o'clock, a police inspector of Ellis Bridge called up on the mobile of our volunteer, informing that permission to hold the demonstration had been cancelled. It is understood that first permission was given & later on, on the basis of reasons best known to them only, it was cancelled at the last minute.

We got the letter of cancellation at 1.50 pm.

Later we found that there was heavy contingent of police outside the hall scaring the participants attending the Citizens' Convention. The hall was fortified by the police. Many plain-clothed policemen were inducted into the Citizens' Convention.

In a democratic set up the citizens of the country have the right of association and right to speech. The cancellation of police permission to

hold the demonstration for justice is highly undemocratic.

We would like to draw your kind attention and request you to protect our constitutional right to demonstrate peacefully and express our thoughts which are being taken away by local authorities of the state illegally by misuse of power.

On one hand the Judicial authorities like High Courts and the Supreme Court advise people to go for 'Satyagrah' in such of situations and on the other hand authorities deny

them the right to do so.

Seeking response on behalf of many human rights NGOs we would like to have the protection and intervention from the NHRC in these circumstances.

Please treat this as our petition and oblige.

Thanking you,

**Gautam Thaker**, General Secretary, PUCL Gujarat; **Dwarika Nath Rath**, Secretary, Movement for Secular Democracy (MSD) □

### Gujarat PUCL Report:

## 10 Years of Gujarat Carnage, Citizens Court arrest in Ahmedabad

**Criminals move scot-free whereas senior citizens demanding for Peace, Harmony and Justice are rounded up**

9th March-Today Movement for Secular Democracy (M.S.D.) and People's Union for Civil Liberties (PUCL) organised a very spirited demonstration at Paldi Cross Road for Peace, Harmony and Justice in the state as a part of remembering of 10 years of Gujarat Carnage-2002 and the leading citizens of Gujarat courted arrest defying the police.

You all know that Citizens' Convention was held under the presidentship of the well-known leading citizen of Gujarat Shri Prakashbhai Shah on 26th February focussing on AMAN - EKHLASH - INSAAF in Mehendi Nawaj Jung Hall. This programme was the part of Insaf ki Dagar Par. The Convention deeply felt that 10 years of carnage have passed with subversion of Democracy and in the absence of Rule of Law, Peace, Harmony and Justice.

After the convention we were to stage demonstration at Paldi Char Rasta. As you all know the police cancelled our permission at the last moment to hold the demonstration and the whole Mehendi Nawab Jung Hall of Himavan was fortified by a heavy contingent of police.

Of course the demonstration was held with placards inside the hall and it was declared by the president of

the meeting Shri Prakashbhai Shah to stage demonstration at Paldi Char Rasta on 9th March and endorsed by all. It was declared that the police will only be informed about our demonstration and no permission will be taken for the demonstration. It was planned to stage people's protests at 4-00 o'clock on 9th March 2012 afternoon jointly by the Movement for Secular Democracy (MSD) and the People's Union for Civil Liberties (PUCL). A large battalion of police prevented the people's representatives from staging demonstrations near Paldi Cross Roads and arrested them. So as a part of the programme defying the police the demonstration was held as scheduled. Prakashbhai N. Shah, Ilaben Pathak, Prof. Rohitbhai Shukla, Dilip Chandulal, Dwarikanath Rath, Rajnibhai Dave, Saroopben Dhruv, Sarahben Baldiwala, Meenakshiben Joshi, Mahadev Vidrohi, Jayesh Patel, Dushyantbhai Trivedi, B.C. Shah, Comrade Gandhi, Ikram Mirza, Zahir, Ahmeda, Hozefa, Romil, Shakeel, Nattubhai, Iswar Dalsania, Rita Gohil, Vidya Rathod and many youths belonging to many organisations participating in the Insaf ki Gagar Par programme courted arrest.

The local administration is violating

constitutional rights of staging peaceful demonstrations and for the freedom of expressions. Government's tendency for throttling the rights of the people to stage Satyagraha and demonstrations has become clearly and visibly exposed by making arrests of these citizens. Whereas the people have the freedom of expression in a democratic system, as also the right to stage demonstration to press for justice, the police administration has taken utterly undemocratic stand in preventing this by deploying large battalion of police force and creating an atmosphere of terror and fear.

Preventing the citizens from pressing for their demand for law and order, peace, harmony and justice, by staging demonstrations in a democratic manner and even then to arrest them is indeed a glaring example of undemocratic administration.

The Insaf ki Dagar Par programme started on 26th February with the Citizens' Convention with a series of programmes which ended with the arrests while demanding AMAN-EKHLASH-INSAAF, Peace, Harmony and Justice.

**Dwarikanath Rath**, Secretary, MSD; **Gautam Thaker**, General Secretary, PUCL - Gujarat □

Press statement: 15 February 2012

## PUCL-Karnataka urges the Karnataka BJP Government to stop its saffron agenda in school textbooks

The NCERT had directed the Karnataka Government to follow the guidelines of the National textbooks committee, while preparing the social studies textbooks, especially for 5<sup>th</sup> and 8<sup>th</sup> standards for the academic year 2012. The council of ministers of the Karnataka government had agreed to follow the guidelines of the NCERT and even before the present BJP government took the reins of the Karnataka, had modified the said textbooks accordingly following the guidelines of the 'text books committee'. Meanwhile, the ruling BJP

government stealthily introduced 'saffron slant' in these modified texts, which is against the scientific temperament of the Constitution. The 'communal slant' introduced in the social studies text books for 5<sup>th</sup> & 8<sup>th</sup> standards in many ways promotes the 'Hindutva ideology' rather than the scientific temperament of inquiry. India being a secular country it is not acceptable to saffronize the textbooks. Efforts to communalize the young minds is against the principles of secularism. India being a land of different religions and culture, communalizing the school

textbooks in any form is violation of the constitutional safeguards. PUCL-K strongly opposes the 'saffron agenda' of the BJP government. These textbooks should be withdrawn immediately and should not be allowed to be introduced in school curriculum in the academic year 2012. It also calls upon the secular forces and progressive people to pressurize the government to stop its communal agenda set for the school textbooks.

**Maridandaiah Buddha**, Secretary, Mysore PUCL; **T.R. Natraj**, President, Mysore PUCL; **V. Lakshminarayana**, General Sec., Karnataka PUCL □

### AP PUCL: Letter

#### Shri E.S.L Narasimhan

His Excellency the Governor of Andhra Pradesh, Hyderabad

Subject: **Appeal to reject recommendation on appointment of Information Commissioners**

Dear Sir,

Ref: Media Reports on 3-member committee headed by Chief Minister recommending 8 (Eight) persons for the post of Information Commissioner.

We have come across newspaper reports that the 3 member committee headed by Chief Minister Sri N. Kiran Kumar Reddy and comprising of Sri N.Chandrababu Naidu (Leader of Opposition in the State Assembly) and Sri D. Raja Narasimha (Deputy Chief Minister) has recommended 8 persons to be appointed as Information Commissioners to the A.P. Information Commission.

On close scrutiny of the names, we are dismayed with the recommendations. These recommendations are ultra vires of the provisions of the RTI Act, 2005 and are also against the spirit with which this guardian of transparency

Act was enacted. Brief profiles of these eight people are as follows:

1. Madhukar Raj, IFS (retd). Served as chief conservator of forests and retired in November 2011
2. S. Prabhakar Reddy, IPS (retd). He was former Cyberabad commissioner.
3. M. Ratan, IPS, currently serving as DG for vigilance and enforcement. He is due to retire in April 2012.
4. P Vijay Babu, Journalist. Editor of Andhra Prabha newspaper
5. Imtiaz Ahmed, belongs to Chittoor district and contested the assembly elections twice against present Chief Minister Kiran Kumar Reddy in 2004 and 2009 on TDP ticket but lost on both the occasions. He joined the Congress recently. He is a retired district judge.
6. Lam Tanya Kumari, Former ZPTC member and daughter of the late Deputy Chief Minister Koneru Ranga Rao from the congress. She was ZPTC member from Kankipadu and Tiruvuru and an aspirant for the Congress party ticket for the Tiruvuru Assembly constituency.

7. M Vijaya Nirmala, contested and lost the Nuzvid Assembly seat in Krishna district on a PRP ticket in 2009. She is also a close relative of Avanti Srinivasa Rao, PRP MLA from Bheemili.
8. V Venkateswarlu, lawyer, has been described as a social activist but the fact is that he is active in NSUI and Youth Congress.

#### Grounds for Appeal:

1) Conflict of Interest and Dereliction towards RTI Act during service: It can be clearly seen that most of the above people are prohibited from holding these posts on legal and moral grounds. Mr. M. Ratan is a serving IPS officer and his appointment is in direct violation of Section 15.6 of RTI Act – "(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession." He is also probably going

to be caught in a case of conflict of interest as his wife Ms. Chaya Ratan is an IAS officer currently in AP cadre and also many of his senior colleagues still in government service.

Mr. Madhukar Raj, IFS (ret'd) & S. Prabhakar Reddy, IPS (Ret'd) are both civil servants and will have a problem with conflict of interest on adjudicating matters where their colleagues might be involved. All the above three persons have been/are heads of very important offices which have a very poor track record in implementation of RTI Act. None of their current/last posting offices has a 4.1(b) manual as is required. If these people could not respect and honour the Act as head of the office, we see very little possibility of them discharging their duties and safeguarding the provisions of the Act.

2) Political Affiliation: Violation of Section 15.6 of RTI Act The following people are directly associated/affiliated with political parties:

**AP PUCL:**

## **Fact Finding Report on Lock Up Death Occurred at Ramachandra Puram Police Station, (Near BHEL) Medak District on 14-2-2012**

On behalf of PUCL, A.P a fact-finding team consisting 6 members consisting of the following members was formed:

1) Jaya Vindhyala (State President); 2) Iqbal Khan (State Vice-President); 3) Aslam (State Joint-Secretary); 4) Saleem (Twin-Cities Vice-President); 5) Nagaraju (PUCL Activist) and 6) B.Kranthi Kiran (PUCL Activist) to visit the Lock-Up death of Katakaila Brahman S/o Vittal at Ramachandra Puram Police Station (Near BHEL) Medak District, on 15-2-2012, from 6.00 pm to 9.00 pm.

As per Police authorities' statements: 1) Superintendent of Police Sanga Reddy, Medak District, states that K. Brahman had been arrested by

Mr. Imtiaz Ahmed – Member of TDP party when contested elections in 2004 and 2009 and recently joined INC party. Ms. Lam Tanya Kumari - is a former ZPTC member and daughter of the late Deputy Chief Minister Koneru Ranga Rao from the congress. Ms. M Vijaya Nirmala - contested and lost the Nuzvid Assembly seat in Krishna district on a PRP ticket in 2009. Mr. V Venkateswarlu – Leader of NSUI and Member of INC party.

From the above information it is clear that these recommendations by the committee are in clear violation of Sec 15(5) and Sec 15(6) of the RTI act and if you proceed ahead with the appointments they will be ultra vires of the RTI Act, 2005.

We demand the following: **1.** Cancel the present set of names recommended and initiate a fresh process. **2.** The process of appointments should be transparent and there should be some laid down Guidelines. The state govt. may frame rules of the procedure for selection and appointments as per

Ramachandra Puram Police at 7.00 pm on 13-2-2012, and they showed the arrest at 10.15 pm, and further stated that K. Brahman is a Notorious Criminal and there are nearly 50 cases he is facing. He suggested to us to discuss it with Deputy Superintendent of Police (R.C.Puram) Police Station.

After this phone conversation immediately Inspector of Police (C.I) and Sub-Inspector of Police (S.I) came to us to elaborate the incident as per their norms:-

Inspector Of Police (C.I): 1) stated K. Brahman had been arrested at 10.00 pm, and as he had been afraid, he committed suicide between 3.00 am to 3.30 am in the early hours of 14-2-2012 in the lock-up cell by

Section 28.1& Section 28.2. **3.** The government should invite applications and screen the applicants based on some parameters. This process should be transparent.

Sir, we request you to treat this matter with extreme prudence given the gravity of misdemeanor committed by the 3-member selection committee. It is also important to take note of the fact that Shri. N. Chandrababu Naidu has officially given his note of dissent against these recommendations.

It is high time that you send clear and strong signals of your commitment to uphold the high values of your office towards maintaining impartiality and protecting values of democracy and protecting laws enacted by the Parliament. It can be done only by rejecting this set of recommendations, which smack of political opportunism and moral corruption besides being illegal. With warm regards,

**Ch. Narendra**, Vice President, PUCL AP ☐

hanging himself with a "piece of towel" with the support of the grill of the lock-up and further stated that he had recovered 3 Tolas of Gold, 6 Pattu Sarees, Puja Items (Silver ½ K.G), DVD Player and 1 Item Cell Phone. He further stated that K. Brahman, is a notorious criminal and there are about 27 cases he is facing. He belongs to Dugi Village, Nizambad District and he and his wife came to Hyderabad last December 2011. He came to Hyderabad for committing Dacoity, Robbery, Theft, Night House Breaking, Day House Breaking etc. He further stated that there are many criminal cases pending against him in other States of India



like Haryana, Punjab, Karnataka and Maharashtra. Sub-Inspector (S.I) further stated that he had picked up K. Brahmam at Tahsildar's (M.R.O) Office R.C.Puam at about 7.00 pm to 7.45 pm on suspicious grounds. In the interrogation of K. Brahmam the S.I came to know that a First Information Report (F.I.R) 6 of 2012 dated 3-1-2012, was pending against K. Brahmam and later on S.I recognised that K. Brahmam had committed Robbery in Kapil Dev's (Former Cricket Captain of India) in Haryana. We have kept him lock-up cell at about 10.15 PM and S.I went to sleep at his quarters. He received a phone call about suicide of K. Brahmam at 4.08 AM on 14-02-2012 and S.I immediately called C.I at 4.10 pm.

2) C.I and S.I told us that K. Brahmam has committed all crimes individually and told strongly that K. Brahmam has really committed suicide.

Deputy Superintendent of Police:-

3) he also stated that K. Brahmam is a notorious criminal; he is also well known with other names like Gopala Chary alias Srinivas alias Vasu alias Ashok alias Venu. He further stated that he knew everything from picking up of K. Brahmam till his lock-up custody, and that he has intimated the National Human Rights Commission (N.H.R.C) and the State Human Rights Commission (S.H.R.C) on 14-2-2012 at about 8.00 pm, about the lock-up death. He also stated that there are about 22 criminal cases pending against K. Brahmam.

#### **Our findings**

When we entered the R.C. Puram Police Station at 6.00 pm with our 6 member team and took permission from the sentry of the C.I., he told us to sit out side, as the C.I was busy with other work. In the mean time we visited the place of incident (Lock-Up Cell) and we enquired from a lady constable about the suicide and immediately one person in civil

dress told us that he had been killed by the police. Fortunately the S.I. came to the place of incident and enquired about us and we introduced ourselves. Among the police personnel present there one showed us the "Exhaust Window" which was used for suicide. At that time the S.I. came there and told us how he had committed suicide. We requested the C.I to let us ask a few questions about the incident but he told us that he was in no way concerned with the incident, and the Station House Officer (S.H.O) was the competent person to answer all the questions. We were made us sit in the S.I's chamber. While we were waiting for the Station House Officer we called the Superintendent of Police Sanga Reddy, Medak District and enquired about the incident. He suggested us to talk to the S.H.O and the C.I. and in reply when we told him that the S.H.O. and the C.I were not responding properly, he told us that he would be sending the D.S.P to us.

Immediately and un-expectedly the C.I and the S.H.O (S.I) both came to the S.I's chamber and while discussing the incident the S.I was playing with "paper weight ball" on his table and he was answering in a casual way and the C.I. also told us that no one in the police station was responsible for the suicide of K. Brahmam.

After meeting with the C.I and the S.I, we met the D.S.P and he also stated Supra.

Post Mortem Report: We got the information that the report doesn't disclose any thing about the cause of his death. Some samples of parts of the body like Viscera, Kidney, Liver, Brain, Heart etc had been kept for chemical analysis. But, there were MARKS ON BOTH EYES. The body was not decomposed.

#### **Observations:**

1) The police picked up Katakaila Brahmam 5 days prior to death.

2) There was no chance of

committing suicide as per the Lock-Up structure.

3) As S.I and C.I's behaviour that they were no where concerned with the incident.

4) We have got credible information that K. Brahmam had been picked up by Special Police Team (I.D Party) and he had been kept in and interrogated in the crime cell instead of general cell.

5) As per circumstances K. Brahmam has not at all committed suicide.

6) The police personnel's behaviour with the media is very unnatural and awkward, and it shows that they are hiding something. As the police personnel shifted the dead body of K. Brahmam to Sanga Reddy Hospital for Post-mortem between 4.00 am and 4.30 am in a hurry without intimating K. Brahmam's family members, Revenue authorities, Local Leaders and others like the Media etc., it smacks of foul play.

7) The Police didn't follow the mandatory procedure as laid down in the D K BASU Judgement of the Supreme Court.

#### **Demands:**

We strongly recommend that immediately a Judicial Enquiry should be instituted, as that only can reveal the facts of the case and justice will accrue to the deceased's family and the faith of the general public in the justice administration system restored.

The policemen should be prosecuted if found guilty.

A proper compensation should be provided to the deceased's family.

The Superintendent rank officer should be made accountable for gross human rights violations. The use of third degree measures in dealing with people in custody should be totally prohibited and guilty officials brought to book.

**Jaya Vindhya, Iqbal Khan, Aslam, Saleem, Nagaraj, and Kranthi □**

**Bangalore PUCL:**

## **PUCL Bangalore Call for a Nuclear Energy-Free World**

On the first anniversary of the Fukushima nuclear disaster in Japan a year ago protest rallies have been organized all over the world including in Japan, Germany and many more countries. The people of the world are realizing the dangers of the nuclear power plants to people living in the vicinity of such plants and also to the future generations. Protests are also being organized in various parts of India.

The People's Union of Civil Liberties (PUCL), Bangalore chapter also organized such a rally from the Town Hall to the Freedom Park on Sunday afternoon, 11 March 2012 calling for a nuclear-free world. Arati Chokshi, General Secretary PUCL, said they were building solidarity for the cause. "When other better sources of energy such as solar and wind energy lay untapped, why rely on nuclear energy which can prove catastrophic for human lives as is evident from the Fukushima disaster," asked Arati Chokshi. They distributed more than 4,000 pamphlets, seeking to create awareness on the issue. Referring to the staunch defence of the Koodankulam nuclear power plant they accused the Union Government of "brainwashing" the people on nuclear energy.

"Among those participating in the rally was Shankar Sharma, power

policy analyst, who said that nuclear energy did not help the global power requirement much. "We should be asking ourselves if nuclear energy is really that necessary. We have seen time and again through these disasters in Chernobyl and Fukushima that this is a dangerous path. We should look at other options to address the energy deficit," he said, adding that only 2.5% of the total power consumed in the country is supplied through nuclear energy, which is extremely hazardous," reported DNA. "We need to take the lessons from Japan, which has turned from a country that used to derive 30% of its energy needs from nuclear plants to a strong proponent against nuclear energy," he added. Commenting on the recent appointment of nuclear scientist Anil Kakodkar as the Chairman of the Solar Energy Corporation of India he said that it was a mistake on the part of the government.

"This is the biggest joke. These people won't even be open to exploring new options as they are strong proponents of nuclear energy. An ordinary citizen with no qualifications will probably end up doing a better job than Kakodkar," he quipped.

"The rally was taken out as part of 'Remembering Fukushima', a campaign that envisages a nuclear-

free world. It was organised jointly by 21 different organisations, including the People's Union for Civil Liberties (PUCL), to express solidarity with the victims of the Fukushima nuclear disaster that occurred exactly a year ago in Japan. The protesters carried placards in Kannada that read: "No to Fukushima, Hiroshima, Koodankulam, and Jaitapur", reported the Deccan Herald, Bangalore in its 13th March edition. V.T. Padmanabhan, a researcher in the health effects of radiation, said that people's opposition to the Koodankulam project was not "unfounded". "When fully constructed, the plant will have a long-lasting impact on the health of people living in its vicinity. It's deeply disturbing that the plant will get all of its fresh water through desalination," Padmanabhan is reported to have told the gathering. The pertinent question is: Who stands to gain from such nuclear projects if the people oppose their setting up, as they feel threatened because of the health, life and environmental hazards involved, except the technocrats, nuclear scientists, bureaucrats and the politicians belonging to the pro nuclear regime who, evidently, have vested interests in their setting up?

**Mahi Pal Singh** □

**Press Statement:** March 08, 2012

## **Statement against Denial of Visa to Fukushima Victim Maya Kobayashi**

The Indian Embassy in Japan has denied visa to Maya Kobayashi, a resident of Fukushima in Japan. World's first multiple reactor core-failure happened in Fukushima Daiichi Nuclear Power Plants on March 11 last year. Greenpeace India had invited Ms. Kobayashi to share her experience with Indian people, particularly the communities in areas where new reactors are being set up.

While the Government of India is planning massive expansion of nuclear energy mainly through imported reactors and international nuclear corporate giants like Areva have no problem in openly communicating with policy makers, politicians and public at large, it is ridiculous that the government is denying Indian people from understanding the other part of the

story.

We strongly oppose this undemocratic onslaught on people's right to know, organize and communicate. We demand that the visa to Ms. Maya Kobayashi be reinstated at the earliest.

For **CNDP**: Achin Vanaik, Admiral L. Ramdas, Amarjeet Kaur, N D Jayaprakash, Praful Bidwai, Sukla Sen, Anil Chaudhary □

**Bihar PUCL:**

## **PUCL Report on Custodial Death in Nawada**

The media published a report on 16-1-2012 about violent protest at Nawada following the discovery of the dead body of Manoj Yadav s/o Dayanand Yadav in a wheat field. According to the report, the protesters asserted that Manoj was killed in police custody. Bihar PUCL constituted an enquiry team consisting of Ram Ashray Prasad, Nageshwar Prasad, General Secretary of the State PUCL, Jitendra and Manish.

The team visited the place of occurrence on 20 January, met deceased's family members, policemen including accused Dy SP Sanjay Kumar Singh, Member of Parliament Bhola Prasad Singh, villagers and local social activists.

### **Version of the victim's family members**

The team met deceased's mother Shakunti Devi, 60, wife Rina Devi, 25, aunt Sudami Devi, younger brother Surajdev Yadav, and cousin Kaushal Yadav.

They told that after getting constant pressure from SHO Devendra Choudhary and Dy SP Sanjay Kumar Singh, Manoj's father Dayanand Yadav himself took Manoj to Town Police Station Nawada on 11 January 2012. Dayanand was assured that police would let off Manoj after short interrogation. But later Police refused to release Manoj. Police accused Manoj of 'stealing' a mobile from a trader Sanjay Kumar Burma who was killed on 30 September 2011 and also of being possible 'suspect' in the murder. Meanwhile the allegation was more 'verbal' and circumstantial assumptions.

Manoj Yadav, 30-year-old, was a plumber. His two daughters are Khoosboo Kumari, 6-years, Pooja, 4-years and a one year old son. He purchased a mobile in late October from a woman labourer who was working in the field where Manoj was working in as plumber.

Manoj didn't even know how to operate a mobile. He didn't even change the SIM but continued to use

it. When the Police called him on this number, Manoj revealed his identity without any hesitation. A co-villager said that the Police called him four times on his mobile.

The food for Manoj was brought by the family members daily to the police station. When Shakunti Devi reached the Police Station with food on 13 January, groaning Manoj told her about the kind of torture being inflicted on him like electric shock and other methods. He pleaded with his mother somehow to get him released. When his mother requested officers like Dy. SP and SHO, they turned down her request.

In the evening, his father and younger brother reached the PS with dinner. They didn't find Manoj inside the police lock-up. They were told by the SHO that Manoj was taken out by Dy. SP for interrogation; probably he would have already been freed, better that they search for him outside.

Meanwhile, they searched all over and not finding Manoj they returned home. Manoj didn't reach home even by next morning. His wife Rina Devi reached the PS the next morning (14 January) with lunch; SHO's questions surprised and stunned her. They asked from Rina the whereabouts of Manoj who was supposed to have been released the previous evening. When Rina Devi showed her helplessness and requested the officers to release Manoj, she was rebuked and threatened of dire consequences if she did not bring Manoj to the police station. Wailing Rina returned home. Her father-in-law spent the whole day looking for Manoj in the nearby villages and among their relatives. Manoj didn't return home that evening also.

However, in the morning of 15 January 2011, they got the news from fellow villagers that Manoj's body was found inside the field, near west of the Gaya-Kiul railway line. The family headed towards the spot where they found that a mob had gathered and was protesting against the police. The women members took

shelter inside a nearby temple. But the police didn't leave them. The police had brutally beaten up these women. The team could see scars on the body of these persons. The right hand of 70-yrs old deceased's grandmother had broken because of the *lathi* blows.

Earlier also, in the evening of 11 November 2011, Dy. SP led team including SHO reached his house, dragged him out from house, beat up their family members and took him to Police station; where he was kept for 16 days. He was released after the intervention of local political leaders and MP, Bhola Prasad. But the police dairy showed that he was kept only for 20 minutes in the police custody.

In this connection deceased's father Dayanand Yadav s/o Late Radho Yadav registered an FIR no. 29/2012 against the guilty policemen on 15 Jan 2012.

According to the FIR, Dy SP Sanjay Kumar Singh and his bodyguard, Inspector Devendra Choudhary, Sub-Inspector Rajkumar, VK Mishra and Vipin Singh alias Rajababu *daroga* and other police staff reached his home on 11 January 2012 and took his son Manoj by assuring family members that he would be freed after a short interrogation. On 12 and 13 January we met Manoj in police custody where he was groaning and crying in pain. When family members arrived at the police station on 14 January at 2 pm, Manoj was not in the police station. Some Policemen told them that Dy SP Sanjay Kumar Singh had taken Manoj for some investigation. On 15 January, the news spread like wild fire that Manoj's body was found in a wheat field behind the VIP colony. So Dayanand claimed that all the above mentioned policemen had conspired and killed his son.

### **Version of local activists**

Member of Parliament, Bhola Prasad Singh said a family member of Manoj Yadav came to him on 25 November 2011, and told him about the illegal detention of Manoj Yadav

at the Nawada town police station. Subsequently, on 26 November 2011, Mr Singh himself asked the Nawada SP, the reason for detaining Manoj Yadav behind the bars without any charges and without presenting him before a court of laws for the last 15 days. After that Manoj was released. He reiterated that Manoj was innocent.

Citizens Rights Forum's President Dinesh Kumar Akela, Social Activist Arbind Mishra, Village Head of Bhadokhara Panchayat Ashok Kumar, Editor of Window magazine Shambhu Vishkarma, Political activist Krishna Vallabh Yadav, Dr Chandrika Yadav etc were other persons who followed the incident and whom the team met.

They claimed that there were at least four more detainees along with Manoj in the custody. One of them was Shako Yadav of Mangalbigaha colony under the Town Police Station of Nawada. Presently, Shako Yadav is in Nawada district jail. The rest of the detainees were freed in haste including a juvenile of Gaya district fearing public protest.

They said that after getting information of the dead body of Manoj Yadav, a wave of shock and anger ran across the Nawada town. Thousands of people assembled where the body was, shouting slogans against the police whom they blamed for this murder. When the two young sub-inspectors Chandan Kumar Yadav and Santosh Kumar Yadav reached the spot to confiscate the body, the mob attacked them. Their bike was set on fire, revolvers with nine live cartridges snatched away; and Chandan received head injuries but Santosh escaped the fury of the mob. The whole Nawada town was turned into a battlefield. The DM imposed Section-144 across the town but the mob defied it. Soon after, the police started lathi-charge against the protesters who had also blocked the National Highway. In the meantime the women members of Manoj's family were also caught between police and protesters and took shelter in a nearby Temple. They were chased and brutally

beaten up. Manoj's grandmother's hand was broken.

Dr Chandrika Yadav himself claimed that he had talked to the SHO on 23 November 2011 for the release of Manoj. It was he who suggested to Manoj's father to seek help from the local MP. Mr Yadav reiterated that Manoj was innocent and a known face in Nawada, may be because he was plumber.

#### **Visited the spot where body was thrown**

The deceased's body was at a lonely place, behind the VIP colony, nearly 2 km of east of Nawada town police station, just 200 m away, west to the Gaya-Kiul railway line. It was the field of wheat, where a part of crop was destroyed due to the gathering of the villagers. There was a house of Suresh Prasad, a mason by profession, nearby 300-400 m away in the north from where body was found.

The male member of the house was out of station to attend a relative's funeral since 15 January. There were Sushila Devi w/o Suresh Pd and their daughter, who is a widow, Soni Devi along with two children present in the house. Both work in the field as laborers.

They said they were not aware of who threw the body there. But the police had been continuously threatening them. They barged into the house after evening, threatening to spill the beans about the killing.

A charred motorcycle, its burnt parts spread all around, was near the clay road.

#### **Post mortem report**

A post mortem was conducted after letter no. 215/Nawada dated 15-01-2012, was issued by the District Magistrate. The observers were Dr WP Singh, Dr Ashok Kumar and Executive Magistrate Mr Shaym Rao. The report doesn't mention any reason for death. Some samples of parts of the body like Viscera, brain, left lung, heart, liver, kidney, tongue, spleen and stomach with its contents were kept for chemical analysis. But at the same time the report also indicates some important facts like stiffness marks present all over the thin body, both eyes were congested

(crammed), dark bluish grey color present at back of the left shoulder, left side of chest, back and left genital. The bluish discoloration of both lips, both pinnacle of nose and tip of tongue and tip of all the fingers and toes. The body was not decomposed.

The report also states that the internal side of left knee has two abrasions. All the viscera were intact and crammed, the chambers of the hearts were empty, stomach contained blackish semi-digested food and urinary bladder was empty. The report also affirm that time elapsed since death was between 6 hr to 24 hr.

The Post Mortem report was signed by Dr Praveen Kumar Sinha, MD, Sadar Hospital, Nawada.

#### **Police Version**

The accused Dy SP Sanjay Kumar Singh said Manoj was 'possible' suspect in the murder case of goldsmith Sanjay Kr Burma last year. But he was not clear over the regular 'use' of the 'looted' SIM by Manoj and his associates or family.

The newly appointed Town Police Station Inspector, Vijay Kumar Jha couldn't divulge details but he showed documents regarding this case. He is also Investigation Officer of this case. The document revealed Manoj Yadav was called to Police Station on 11 November 2011 at 1:20 pm and he was let off at 1:40 pm. There was no entry document regarding his second arrest on 11 January 2012.

The two FIRs were lodged by the Police against the mob. FIR no. 30/012 was registered by Sub-Inspector Santosh Kumar in which he accused 300-400 unidentified people for obstructing in executing their duty and of attempt to kill policemen.

FIR no. 31/012 was registered by Sub-Inspector Smita Sinha in which she accused 300-400 unidentified people for obstructing them in executing their duty.

#### **Conclusion**

1. All the evidences available especially according to the testimonies of Manoj's family members, Manoj was taken away from his residence by the

policemen to the police station on 11 November 2011. It is also clear that he was illegally kept in police custody for more than two weeks. This statement of the family was corroborated by the fact that only political intervention of the local Member of Parliament Sri Bhola Prasad could get Manoj released from the police custody.

2. Though Manoj was again taken into the Police custody on 11 January 2012, no entry was made in the station diary. Police didn't follow the procedure as mentioned in the DK Basu judgement given by the Supreme Court.
3. The fact that till 13 January, the family members took food regularly to the police station for Manoj, indicates that Manoj was in Police custody and being tortured. This fact is corroborated by the fellow detainees of Manoj Yadav. According to the FIR, Manoj's father claims that on 14 January when he went to the police station, he was told that Manoj was taken out for questioning by the Dy SP.
4. Manoj's body was found in a wheat field by the villagers in the morning of 15 January 2012.
5. The Police also tried to mislead Manoj's family by saying that he had been released and they should look for him elsewhere.
6. Therefore, the team reached the

inevitable conclusion that Manoj was killed while in Police custody.

7. Though the post mortem report has not conclusively reached the cause of death yet primary observation as well as medical jurisprudence indicates the use of physical torture resulting in his death.
8. Not finding any clue about the murder of a Goldsmith, Sanjay Kr Burma, on 30 Sept 2011, the police gave a lot of weight to the mobile, which Manoj had in his possession. Hence it is quite logical that they picked him up hoping to solve the murder of Mr Burma. According to the versions of Dy SP, after putting the mobile number on surveillance for certain period of time no evidence was found to implicate Manoj.
9. There was no proof of Manoj's involvement, and association with the crime; he had no criminal record in any police station. Neither villagers nor the local activists had said anything negative about him.
10. It is pertinent to note that Manoj was totally ignorant about the use of mobile and its technology as clear from the fact that he didn't even replace the SIM.
11. The whole incident as handled by the police shows that Nawada police is in the habit of detaining people without any regard to legal provision such as making entry

in the police diary.

12. It is true that the mob reacted violently and went berserk. The fact that the mob had turned violent spontaneously shows that they couldn't accept Manoj as being pictured as criminal.

#### **Recommendations**

1. Even after two weeks and continuous public protest, no breakthrough has been found with regard to Manoj's killing. Hence we strongly suggest the setting up of a judicial enquiry in the interest of justice to the family of Manoj.
2. The guilty policemen should be prosecuted under Section-302.
3. A proper compensation should be provided along with a govt. job to the wife of the deceased.
4. A mechanism should be developed to prevent the misuse of station diary and other illegal practices. The Superintendent rank officer should be made accountable for any gross human rights violations. The use of third degree measures in dealing with people in custody be totally prohibited.
5. Since the practice of custodial torture is widespread, we suggest that a forum of enlightened citizens be formed at the district level to oversee and contain such practices.

**Ramashray Prasad Singh, Nageshwar Prasad, Jitendra, Manish Kumar – Bihar PUCL ☐**

**Palamu PUCL:**

## **Killing of a Deaf Mute Tribal Lucas Minj**

The tribal village Nawarnagu is a small village far away from any glimpses of development in panchayat Laat, police station Barwadih, district Latehar in Jharkhand. All the 56 families of the village are tribals, 5 families 'Oraon' and the remaining 'Kharwar'. The village is situated in the western part of the district at the border of district Garhwa and Chhattisgarh. Surrounded by dense forest of Betla, the village still dreams about the terminologies like development, equality and justice. No road

connectivity, poor oriented government schools with nearly no studies, no electricity, no sanitation, no health centre is the basic feature of this ill-fated village. The villagers are compelled to walk for nearly eight kilometers crossing the forest and a hill to reach the village. Still this innocent, honest, hardworking tribals continue their miserable life without any kind of grievances or complaint against their hopeless government and administration. Even at this the woes of the villagers do not end. The state repression is at its peak to add

to their miserable lot.

#### **Introduction to the current incident & fact-finding team**

On 13.2.2012 the local newspapers highlighted the brutal killing by police of an innocent deaf and dumb tribal villager Lucas Minj of village Nawarnagu while he was grazing his cattle. Immediately the Human Rights activists came into action and enquired about the incident from the local activists of the area. The incident had much more than it was reported by the media. They confirmed about the killing and also

reported that the deceased was picked up by the Joint Armed Forces which included the CRPF, Jharkhand Jaguar and Cobra Battalion on 31<sup>st</sup> January 2012. Sensing the importance and seriousness of the incident it was decided to conduct a fact finding to unearth the reality of the incident. A joint team of the People's Union for Civil Liberties (PUCL) Palamu, Human Rights Law Network, Jharkhand and Activists and media personnel of Latehar and Palamu consisting of 1) Shashi Bhushan Pathak, Ex. General Secretary, PUCL Jharkhand, 2) Adv. Ahmad Raza, HRLN Jharkhand, Ranchi, 3) Mithilesh Kumar, Secretary, PUCL Palamu, 4) Savir Ahmad, Member, PUCL, Palamu, 5) Jitendra Singh, member, PUCL, Palamu, 6) Arun Pradhan, Social Activist, Ranchi, 7) Manoj Vishwakarma, Reporter, Hindustan, Barwadih, 8) Kanhai Singh, Social Activist, Latehar, 9) Manish Sinha, Reporter, Aryan TV, Latehar, 10) Adv. Santosh Tiwary, Jharkhand High Court, Ranchi, 11) Selestine Lakra, Social Activist, Latehar, 12) Lix, CDRO was formed and a fact-finding inquiry was conducted on 16<sup>th</sup> February 2012. The team left from Ranchi and reached Latehar, joined the members from Latehar and Palamu, crossed Oranga River, Betla forest and then on foot crossed a mountain to reach the village Nawarnagu, where the incident had taken place. The team visited the site at the bank of Koel River where the dead body of deceased Lucas Minj

was thrown, the graveyard where the deceased was buried and later taken out for postmortem, the house and met the family members of the deceased, the villagers of Nawarnagu and the Officer-in-Charge of Barwadih Police Station.

#### **Family profile of the deceased Lucas Minj**

The family of the deceased Lucas Minj consisted of six brothers and two sisters. His father and mother had died long ago.

- 1 Amaldas Minj eldest brother, married, works as a driver in St. Francis School at Ranchi.
- 2 William Minj second brother, married, works with an NGO at Medininagar.
- 3 Prabhudas Minj third brother, married, works at fire brigade Jharkhand.
- 4 Lucas Minj, the deceased, unmarried, deaf and dumb, used to graze cattle, cultivation and helped in household works along with his sister-in-law.
- 5 Prakash Minj, fifth brother, married, works as parateacher in Upgraded Middle School.
- 6 Morris Minj, youngest brother, married, works as a constable at Itki police station.
- 7 Both the sisters are married and stay with their in laws.

**Finding of the incident as stated by the family members and villagers: William, Prakash & Ranjita Minj, wife of Prakash Minj**  
When the team enquired about Lucas they said that Lucas was deaf and dumb by birth. Needless to say he was innocent, honest and hard

working. He used to stay in the village only and worked at home, on agricultural land and grazed cattle. Since he was deaf and dumb he had nothing much to do with others. In a way he led a life of mere silence far off from the society confined only with a mute harmony with his family members. As the agricultural work was over regularly he used to go out to graze the cattle. As usual on 31<sup>st</sup> January 2012 also in the morning he went to the forest near his house to graze but in the afternoon he did not return. The family members were worried. Since operation Marx was going on no one dared to go out in the evening. Even during the daytime the villagers were not allowed to go to the forest so the family members were unable to search Lucas. On 5<sup>th</sup> the armed forces operation was over and then on 6<sup>th</sup> his brother William went to a relative staying in a nearby village to see whether Lucas was there or not. In the meantime on 7<sup>th</sup> Estdar Minj & Prakash Toppo, the two villagers saw a dead body on the bank of the river where they had gone for fishing and informed the villagers about it. The dead body was recognized to be that of Lucas. The body was rotten and they could also see a bullet injury on the head. The villagers could make out easily that Lucas was killed nearly two to three days before and the body was thrown.

**PUCL Palamu and Human Rights Law Network, Jharkhand. Report sent by Mithilesh Kumar, PUCL Palamu** □

**J.P. Memorial Lecture-2011 organised by JP Foundation, JNU:**

## **People's Participation and Human Development: Challenges of Reconstructing Indian Polity for a Better Tomorrow**

**Ravi Kiran Jain**

*(Continued from the previous issue.....)*

### **Formation of Districts as Constitutional Entity**

In Part IX as well as in Part IX-A of the Constitution which relate to **The Panchayats and The Municipalities** respectively the

word "district" has been defined in both the parts separately but the definition is the same and identical. Article 243 and Article 243 P provides as follows:

In this Part, unless the context otherwise requires "district" means **a district in a state.**

Before the insertion of Part IX and IX-A in the Constitution the word "district" was not defined. This word (district) has appeared in some of the provisions of the Constitution like Art. 233, which speak of "district judges in any state". But it was not defined. Now it has been defined.

This word having been defined in the Constitution itself makes “**district**” a creation of the Constitution. The existing revenue districts can be created by an executive action on administrative exigencies. But to achieve the objects contained in Part IX and Part IX-A of the Constitution districts have to be reorganized. Art. 243-B of the Constitution provides that there shall be constituted in every State **Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.** Art. 243C, which provides for composition of Panchayats, says: **Subject to the provisions of this Part,** the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State. “**At any level**” means “**village level**”, “**intermediate level**”, and also at “**district level**”. What would be this “**district**” for Panchayat at “**district level**” has to be determined by the criteria laid down in Art. 243-B and Art. 243-C. Reading together Arts. 243B and 243C in the context of the intention of the Constitution to constitute **Panchayats at district levels in accordance with the provisions of this part,** clearly goes to show that this “**district level**” is not the revenue district of a State. The revenue district has to be a subordinate unit of the State Govt. It is created by an executive action of the State Govt. for its administrative or similar govt. activities.

The states as they existed when we became independent or became a republic were the results of historic accidents. The states were reorganized by the States Reorganization Act, which was enacted on the recommendations of 1955 report of the States Reorganization Commission. Now every state was required to

constitute Panchayats at district levels in accordance with Part IX and IXA and for that purpose there should have been reorganization of districts. The districts as they existed before the 73<sup>rd</sup> and 74<sup>th</sup> Constitution Amendment Acts are revenue districts. Those districts cannot become criteria to constitute district panchayats as constitutional entity in as much as the composition of the panchayats (including at district level) has to be based on the criteria laid down in Article 243-C.

Art. 243G and Art. 243W of the Constitution provide the powers, authority and responsibilities of the panchayats and the municipalities and provide that the panchayats and the municipalities shall have the power to prepare **plans for economic development and social justice.** Art. 243ZD provides that **there shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.** Sub Art. (4) of this article provides that the Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State. A combined careful perusal of Art. 243G, Art. 243W and Art. 243ZD clearly goes to show that there is a constitutional entity at the district level (**District Planning Committee**), which is akin to the **Planning Commission of India.** It may also be seen here that before 73<sup>rd</sup> and 74<sup>th</sup> Constitution amendment acts there was Finance Commission of India (See Art. 280) which had the duty to make recommendations to the President as to the distribution between the Union and the States of the net proceeds of taxes etc. and the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India and similar other things. Now after these two Constitution amendment acts there

has to be a **State Finance Commission** in every state which likewise has the duty to make recommendations to the Governor as to the principles which should govern the distribution between the state, the panchayats, and the municipalities of the net proceeds of the taxes etc., and the grants-in-aid to the panchayats and municipalities from the consolidated fund of the state.

It may be seen here that the Planning Commission of India, although not called for in the Constitution, sat at the heart of the planned economy, which was dear to its Chairman, Jawahar Lal Nehru. It was established in March 1950 to assess the ‘material, capital and human resources of the country’ and how to augment them, to formulate a plan for their balanced use, and to determine ‘**the machinery for effective planning.**’ As the Planning Commission made capital development grants, it and the Finance Commission of India became the twin deities of centre-state relations. Granville Austin in “Working a Democratic Constitution” says: “Had the Finance Commission as a device not been provided in the Constitution, it would have to have been invented. Without it the distribution of revenues would have been degenerated into something close to open warfare”. In the 73<sup>rd</sup> and 74<sup>th</sup> Constitution Amendment Acts, the District Planning Committee has been made a constitutional functionary as the **machinery for effective planning** at the district level.

#### **Development: The Best Contraceptive**

*Nani A Palkiwala in the Jawahar Lal Nehru Memorial Lecture at Trinity College, Cambridge University, November 7, 1990 gave an alarm bell with the following remarks:*

“History will record that the greatest mistake of the Indian Republic in the first forty years of its existence was to make far less investment in human resources - investment in education, family planning, nutrition and public health - than in brick and

mortar, plants, land and factories. We had quantitative growth without qualitative development. Our gross national product increased, but not gross national happiness. Different parts in India still live in different centuries, so far as basic amenities and cultural awareness are concerned. The quality of life cannot improve in India so long as the population keeps on increasing at the present alarming rate. In the time I shall take to deliver this lecture, the population of India will have increased by 2,000. It has been said that **development is the best contraceptive**. But development itself would not be possible if the present increase in numbers continues. Education, particularly education of girls, is another excellent contraceptive. But we have totally failed to use education as an instrument of national development. Two-thirds of our people, and four-fifths of our females, are literally illiterate after more than forty years of independence."

It has been said that the development is the best contraceptive. The question, which arises, is: What type of development is the best contraceptive? There are basic issues of social and human development discussed in this paper, which intends to bring into the focus those wider issues of such development, which can be "the best contraceptive". The issues of population, consumption, technology, environment and sustainability are interlinked with issues of human development like health, education, family planning etc.

It is human development, which is the best contraceptive. The prefix "**Human**" before the word "**Development**" is important. A further question arises: What is **Human Development**? The answer is: "**Human Development** is development of the people, for the people, by the people. Development of the people means investing in human capabilities, whether in education or health or skills, so that they can work productively.

Development for the people means ensuring that the economic growth they generate is distributed widely and fairly. And development by the people means a decentralized system of governance where the people participate in its process - something, which was conceived by the 73<sup>rd</sup> and the 74<sup>th</sup> Constitutional Amendments, providing for governance by locally elected representatives at the urban and rural grassroots. But it has been literally rendered ineffective on account of the centralized political authority where none other than the corrupt bureaucrats set the agenda for development of the people even at the grassroots, and while they do so, they are seen now to be working more and more under the control and supervision of the World Bank and multinational corporations. In other words, the development agenda is now being imposed on the people not only from the centralized political authority at the top in India, but also from those who are at the commanding position in the West and its financial institutions who think that they alone can determine what is good for the Indian people. National Population Policy 2000 in its introduction says that "the overriding objective of economic and social development is to improve the quality of lives that people lead, to enhance their well-being, and to provide them with opportunities and choices to become productive assets in society." Para 39 of the NPP 2000 says: "The NPP 2000 is to be largely implemented and managed at Panchayat and Nagarpallika levels, in co-ordination with the concerned state/UT administrations, the specific situation in each state/UT must be kept in mind. This will require comprehensive and multi-sectoral coordination planning and implementation between health and family welfare on the one hand, along with scheme for education, nutrition, women and child development, safe drinking water, sanitation, rural roads, communications, transport, housing, for state development,

environmental protection and rural development.

Paragraph 5, 10, and 11 of the NPP 2000 speak about the population stabilization through integrated package of essential system at local level. This policy has identified 12 strategic themes, which must be simultaneously pursued in "stand alone", or inter-sectoral programmes in order to achieve the national socio demographic goals for 2010. The first and second strategic themes as contained in that policy are given below:

**“(i) Decentralised Planning and Programme Implementation**

The 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments Act, 1992, made health, family welfare and education a responsibility of village panchayats. The panchayati raj institutions are an important means of furthering decentralised planning and programme implementation in the context of the NPP 2000. However, in order to realize their potential, they need strengthening by further delegation of administrative and financial powers, including powers of resource mobilization. Further, since 33 percent of elected panchayat seats are reserved for women, representative committees of the panchayats (headed by an elected woman panchayat member) should be formed to promote a gender sensitive, multi-sectoral agenda for population stabilisation, that will "think, plan and act locally, and supported nationally". These committees may identify area specific unmet needs for reproductive health services, and prepare need-based, demand driven, socio-demographic plans at the village level, aimed at identifying and providing responsive, people-centered and integrated, basic reproductive and child health care. Panchayats demonstrating exemplary performance in the compulsory registration of births, deaths, marriages, and pregnancies, universalizing the small family norm, increasing safe deliveries, bringing about reductions in infant and maternal mortality, and promoting



compulsory education up to the age of 14, will be nationally recognized and honored.

### **(ii) Convergence of Service Delivery at Village Levels**

Efforts at population stabilisation will be effective only if we direct an integrated package of essential services at village and household levels. Below district levels, current health infrastructure includes 2,500 community health centres, 25,000 primary health centres (each covering a population of 30,000), and 1.36 lakh subcentres (each covering a population of 5,000 in the plains and 3,000 in hilly regions). Inadequacies in the existing health infrastructure have led to an unmet need of 28 percent for contraception services, and obvious gaps in coverage and outreach. Health care centres are over-burdened and struggle to provide services with limited personnel and equipment. Absence of supportive supervision, lack of training in inter-personal communication, and lack of motivation to work in rural areas, together impede citizens' access to reproductive and child health services, and contribute to poor quality of services and an apparent insensitivity to clients' needs. The last 50 years have demonstrated the unsuitability of these yardsticks for provision of health care infrastructure, particularly for remote, inaccessible, or sparsely populated regions in the country like hilly and forested areas, desert regions and tribal areas. We need to promote a more flexible approach, by extending basic reproductive and child health care through mobile clinics and counseling services. Further, recognizing that government alone cannot make up for the inadequacies in health care infrastructure and services, in order to resolve unmet needs and extend coverage, the involvement of the voluntary sector and the nongovernment sector in partnership with the government is essential."

### **Urbanisation through Development Authorities**

The process of urbanization during

the British period and even after independence upto 1970s was a slow one; migration from rural to urban areas was a process, which was going on slowly. The villages and the towns were coexisting. The village life and the city life were interdependent. There was a balance between the two. The urban development was never done at the cost of the rural development. Now the urbanization is being done very fast by the centralized system of governance. Rural areas are totally being neglected. Cities like NOIDA & Gurgaon are spreading fast by extending their geographical limits by including rural areas around them.

Vergheese Kurien on the basis of his experience and his commitment to devote a lifetime to realizing his dream-empowering the farmers of India, says in his autobiography '**I Too Had a Dream**', "If the stark imbalance between the cities and villages, between industry and agriculture in our country was to be corrected, it became necessary that farmers be organized. Keeping this in mind, it became necessary for us at Anand to erect structures that would include our people into the decision-making process. What use is democracy in Delhi if we do not have democratic institutions at the grass-root level? What is a village society if not a school where our future leaders should learn how to manage their own affairs? What is a district union if not a college where the elected representatives can get postgraduate training in management and business?"

There is nothing wrong in building flyovers in Delhi. What is not fair is when we do not also build an approach road to villages across the nation. There is nothing wrong in having fountains with coloured lights in the capital. After all, Delhi should be beautiful. But it is unjustified when we have not provided drinking water to all villages. There is nothing wrong in having a modern private hospital in Bombay, or the All India Institute of Medical Sciences in Delhi, or other large medical institutions in our big cities. But it is not justified when

we have not arranged to have two drops of a medicine put into the eyes of a farmer's newborn baby, and that baby goes blind. While this would have cost us nothing, we have preferred to spend crores of Rupees in building five-star hospitals in cities. Why does this happen? Because policy making is in our hands – in the hands of the elite – and naturally, even unconsciously perhaps, when we make policies we make policies that suit us; we usurp the resources of this land somewhat shamelessly to benefit ourselves. The most charitable interpretation of it is that we do it unconsciously. Looking back the Nehru government saw large-scale acquisitions of agricultural land for public infrastructure and public sector industry, which also set a trend of constructing big dams like Narmada Dam & Tehri Dam by displacing local people. But now with the coming into existence of the development authorities the Land Acquisition Act is being used to destroy rural economy by acquiring the agricultural and other land of the villagers indiscriminately for 'development'. An Indian village consists of many categories of persons other than land owning farmers viz. agricultural labourers, artisans and others serving the farmers' needs. If a village area is acquired and the people living there are displaced only the land owning farmers are entitled to 'compensation' but not the other categories of villagers, though their livelihoods are affected by acquisition and they may also be displaced. 80% of the people of India live in rural areas. The pattern of urban development in this manner is a major cause of economic illness. It unbalanced the rural economy as well as the National economy. It produced unemployment and under-employment by weakening the traditional subsidiary industries in villages and by attracting people to the cities in much larger numbers than could be gainfully employed there. It is time to recognize that this imbalance is doing great harm not

only to our villages but also to our cities.

For example, in U.P. in 1973 during the President's Rule, President's Act No. XI of 1973 known as U.P. Urban Planning and Development Act of 1973 was enacted. The prefatory note containing the reasons for this enactment states that the existing local bodies and other authorities have not been able to cope with the problem of Urban Development to the desired extent and in order to bring about an improvement in the said situation, Development Authorities patterned on the Delhi Development Authority be established. **Section 17 of the said Act provides that if the State Government is of the opinion that any land is required for the purpose of development under the said Act, the State Government may acquire such land under the provisions of the Land Acquisition Act, 1894.** A Development Authority consists of Members who include: i) a Chairman, to be appointed by the State Government, ii) a Vice chairman to be appointed by the state government, iii) the Secretary to the State Government Incharge of department of Urban Development, iv) the Secretary to the State Government Incharge of the department of Finance, v) the Chief Town and Country Planner, the Managing Director of the Jal Nigam, vii) the Mukhya Nagar Adhikari, viii) the District Magistrate concerned and such other Members not exceeding three as nominated by the State Government. Only four members are to be elected by the Sabhasads of the municipality from amongst themselves. Thus a Development Authority dominantly and substantially consists of bureaucrats only. A Development Authority has its own funds. Under Section 21, a Development Authority has to prepare a budget in respect of the financial year next ensuing. It prepares for every year a report of its activities during that year and submits it to the State Government. Similar enactments exist in other

states also.

Noida has been constituted under the U.P. Industrial Area Development Act, 1976. The Authority consists only of the bureaucrats.

The people have no control over these authorities. There is no transparency and/or accountability in their functioning. The bureaucrats who constitute these authorities have uncontrolled powers. Of late at least since 1980's these bureaucrats create a co-ordination between the land mafias, the builders, the black marketers and political leaders. This co-ordination creates vested interest in these classes.

The colonial city of Allahabad stands on the site of 8 villages, which the British razed to the ground after the Mutiny of 1857. According to one British Officer who was the part of the operation.

'One trip I enjoyed amazingly; we got on board a steamer with a gun, while the Sikhs and the fusiliers marched up to the city. We steamed up throwing shots right and left till we got up to the bad places, when we went on the shore and peppered away with our guns, my own old double-barrel bringing down several niggers.'

The Britishers did it before the enactment of the Land Acquisition Act, 1894. From 1894 till 1947, the Britishers do not appear to have invoked the provisions of the Land Acquisition Act to build or develop some urban area by acquiring the land of the agriculturists or that of other people of the rural areas. It is now being done on a very large scale with impunity. What the Britishers did in the case of the colonial city of Allahabad with the help of the gun throwing shots, the State is doing it now "in accordance with law" under the provisions of land acquisition act, silently and ruthlessly .

The law setting up these Development Authorities consisting purely of bureaucrats is obnoxious and offending to the Constitutional scheme. Not only the decision-making powers but also the execution of decisions unfortunately lies in the hands of partisan and

corrupt bureaucracy. Little is known to the people about the functioning of these authorities, how they develop cities, how they get land, how they are governed, how their infrastructure is financed and so on. It is most unfortunate that no one is opposing it. The reason is that after the fall of the Janata govt., which gave rise to the re-emergence of Indira Gandhi, the governance slipped into the hands of an elite of which the leading component was an urban educated middle-class, which dominated the administration besides planning the policy of the states. The bureaucrats manning these authorities have absolute power not only to acquire land, but also thereafter to allot or sell it at any price. The Vice Chairman of a development authority is more powerful than the Prime Minister of Singapore.

As the urbanization through the bureaucratic authorities is not being challenged, the nexus of the bureaucrats with the land mafias, builders and such other vested interests has virtually rendered these authorities as their handmaid. Now the Development Authorities have started allotting hundreds of acres of land to builders at one go to develop full-fledged cities within their areas like Shipra Sun City in Ghaziabad, Express City in NOIDA etc. There are a few well-known builders in the field. It is a matter of common knowledge that Shipra Estate Limited was given about 50 acres of agricultural land for only Rs. 50 Crores in 1998 to build Shipra Sun City and to avoid payment of Stamp duty it was shown to be a joint venture with the Ghaziabad Development Authority (G.D.A). M/s Unitech High-tech Developers, a private builder of New Delhi has been allotted land to the tune of 13,74,000 Sq. Mts. in sectors 96, 97 and 98 of NOIDA in 2006 at the rate of Rs. 11,520.00 per Sq. Mtr., the market value of which at that time was Rs. 25,000.00 per Sq. Mtr. The clever device of allotting this land to this developer was by laying down conditions in the advertisement to

invite tenders on which no ordinary builder could compete in the process. For the development of the large and gigantic area of 13,74,000 Sq. Mts. the earnest money to be paid by a prospective bidder was Rs. 25 Crores under the terms and conditions for Express City, the developers would be free to undertake plotted residential development or Group Housing or both with no restriction on the size of plots and apartments and, besides the residential areas, he would also develop roads, public parking places, recreational places, institutional buildings etc. This amounts to abdication of the statutory powers of the Development Authority to a private builder. On the development of the city the builder can transfer plots or built-up areas at his own price. Thus the developers have virtually taken over these statutory authorities. The Development Authorities are doing the work only of getting the land of the agriculturist acquired and handing over the lands to big builders by allotting it to them, who are often land mafia.

#### **Need of electoral reforms after the 73rd and 74th Amendments**

It is really unfortunate that the political activity in this country ignores the insertion of Part IX and IX-A in the Constitution of India. Many debates take place on issues like corruption and criminalization of politics. There is no debate on the core issue of "Governance" on the Fundamental Principles contained in Part IV. The issues like corruption and criminalization of politics are the outcome of centralized system of governance with a strong bureaucracy, which works as a coordinator between the various evil forces. The debates of administrative reforms and electoral reforms etc. remain confined to the centralized politics. Now after the 73rd and 74th Constitution Amendment acts there are State Election Commissions in every state. Like the Election Commission of India under Article 324 is constituted for the purpose of "superintendence,

direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to" the Parliament and for the State legislature of every state, State Election Commissions are constituted under Article 243-K and Article 243-ZA for the purpose of "superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to" panchayats and the municipalities.

Elections have always been a large-scale event in India. Even by these standards the panchayat and nagarpalika elections, following the 73rd and 74th Amendments to the Constitution, have been an exercise on an unprecedented scale. According to the Ministry of Rural Development, there are 2,26,188 village panchayats in the country with 31,98,554 members. That works out to an average of about fifteen members per panchayat. At the intermediate level, which in some States is referred to as the Taluk, Mandal or Block panchayat, there are 5,736 such panchayats with 1,51,412 members. Additionally, there are 467 district panchayats with 17,935 members. Compared to this the number of urban local bodies and their elected representatives is rather limited. In 1998, there were 95 Municipal Corporations, 1436 Municipal Councils and 2,055 Nagar Panchayats.

The Supreme Court in *Mohinder Singh vs. Chief Election Commission* AIR 1978 SC 851 noticed the Constitutional schemes of elections to the Parliament and State assemblies in the following words: "Before we proceed further, we had better have a full glimpse of the Constitutional scheme of elections in our system and the legislative follow-up regulating the process of election. Shri Justice Mathew in *Indira Nehru Gandhi*, (1976) 2 SCR 347: (AIR 1975 SC 2299) summarized, in skeletal fashion, this scheme following the pattern adopted by Fazal Ali, J. in *Ponnuswami*, 1952 SCR 218: (AIR 1952 SC 64). He explained:

"The concept of democracy as visualized by the Constitution presupposes the representation of the people in Parliament and State legislatures by the method of election. And, before an election machinery can be brought into operation, there are three requisites which require to be attended to, namely, (1) there should be a set of laws and rules making provisions with respect to all matters relating to, or in connection with, elections, and it should be decided as to how these laws and rules are to be made; (2) there should be an executive charged with the duty of securing the due conduct of elections; and (3) there should be a judicial tribunal to deal with disputes arising out of or in connection with elections. Arts. 327 and 328 deal with the first of these requisites, Art. 324 with the second and Article 329 with the third requisite (see *N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency*, 1952 SCR 218, 229): (AIR 1952 SC 64) (at p.68). Art. 329 (b) envisages the challenge to an election by a petition to be presented to such authority as the Parliament may, by law, prescribe. A law relating to election should contain the requisite qualifications for candidates, the method of voting, definition of corrupt practices by the candidates and their election agents, the forum for adjudication of election disputes and other cognate matters. It is on the basis of this law that the question whether there has been a valid election has to be determined by the authority to which the petition is presented. And, when a dispute is raised as regards the validity of the election of a particular candidate the authority entrusted with the task of resolving the dispute must necessarily exercise a judicial function, for the process consists of ascertaining the facts relating to the election and applying the law to the facts so ascertained." *Smt. Indira Gandhi v. Raj Narain*, 1976-2 SCR 347, (at pages 504-505), (AIR 1975 SC 2299 at pp. 2372,2373). In exercise of the power under entry 72 of list 1 of the seventh schedule

of the Constitution the Parliament has enacted The Representation of the People Act 1950 and The Representation of the People Act 1951. The Act of 1950 is to provide the allocation of seats in and the delimitation of constituencies for the purpose of election to the house of the people and legislatures of the states, the qualifications of voters at such elections, the preparation of electoral rolls, and matters connected therewith. The 1951 Act is an Act to provide for the conduct of elections to the house of Parliament, or house of legislature of each state, qualifications and disqualifications for membership of those houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections. The Conduct of Election Rules 1961, providing exhaustively regarding ballot papers, voting facilities, counting of votes and declaration of results etc., have of course been enacted under the subordinate legislative authority. It has to be noticed here that the Constitutional scheme relating to the elections to the Panchayats and the Municipalities after the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment Acts is absolutely similar to the Constitutional scheme of elections in our system relating to the Parliament and the State assemblies as noticed by the Supreme Court in Mohinder Singh Gill's case. The Supreme Court has noticed Article 324, 327, 328 and 329 as the provisions for holding such a Constitutional scheme. We may refer to Article 243-K, Article 243-ZA, Article 243-O and Article 243-ZG to see this similarity of the Constitutional scheme. There is however one difference in the provisions of the Constitution so far as the legislative powers of making "set of laws and rules making provisions with respect to all matters relating to, or in connection with

election and to decide as to how these laws and rules are to be made", between the matters relating to the elections of Parliament and the State legislatures on the one hand and the elections to the panchayats and municipalities on the other hand. Article 246 of the Constitution entitled 'Subject-matter of laws made by Parliament and by the Legislatures of States' states: "Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the 'Union List')," and enumerating such a matter there is a specific entry in List 1 of Schedule 7 namely Entry 72. Entry 72 reads as follows, "Elections to Parliament, to the legislatures of states and to the offices of the President and the Vice President, the Election Commission." The formation or Constitution of the panchayats and the municipalities is a State subject. The State legislature has the power to make law regarding the panchayats and municipalities even after the 73<sup>rd</sup> and 74<sup>th</sup> Constitution Amendment Acts. There has not been made any specific corresponding entry in the State list regarding the power to make law relating to elections to panchayats and the municipalities like entry 72 in list 1 about the elections to Parliament and to the legislatures of States but the absence of such an entry does not make any difference in as much as entry 5 of the State list (list 2) gives powers to the State legislature to make laws for the 'Local government, that is to say, the constitution and powers of municipal corporations, ... district boards, and other local authorities for the purpose of local self-government or village administration,' which would also include the powers to make law for elections to the local self-government.

*(To be continued in the next issue)*

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