

Inside :

EDITORIAL : Violence Breeds Violence - Mahi Pal Singh (1)

ARTICLES, REPORTS, AND DOCUMENTS: Social Justice vs. Maoists' Violence- Rajindar Sachar (3); PUCL Chhattisgarh: Guilty Until Proven Innocent? - Sudha Bhardwaj (6); UN Report: On Violence against women (11); Cleanse Saranda forests of Adivasis and give it to corporates for mining - Stan Swamy (16); Whither Justice: Fabricated Cases and State - Ram Puniyani (17); ICLR Report: Workers in Maruti Suzuki Manesar Plant: "Justice Delayed Is Justice Denied" (18).

PRESS STATEMENTS, LETTERS AND NEWS : PUCL Press Releases: (1) Condemning Killing of Congress Party leaders (4); Chhattisgarh PUCL: Condemning the abduction and killings of Congress Party Men (5); (2) PUCL Statement: Condemning Delhi Police's intimidation of Dr. Prem Singh (8); (3) PUCL Statement on Madhuri's Imprisonment (8); Letter to the NHRC: Imprisonment of four innocent persons in false charges (15).

Annual Subscription : PUCL BULLETIN
w.e.f. March 1, 2010

	INDIA
PUCL Members	Rs. 100
Non-Members	Rs. 120
Libraries-Institutions	Rs. 150
	OVERSEAS
PUCL Members	US \$50
Non-Members	US \$100
Libraries, Institutions	US \$120

PUCL MEMBERSHIP

	INDIA
Patron	Rs. 2000
Life	Rs. 1000
Annual	Rs. 50
	FOREIGN
Annual	Indian Rs equivalent of US \$15

Violence Breeds Violence

Mahi Pal Singh

The dastardly and condemnable attack on the cavalcade of the Congress party in the Sukma district of Chhattisgarh on 25th May 2013 in which several Congress party leaders, their security guards and many other innocent people were killed was clearly an act of revenge, specially targeted against Mahendra Karma, the founder of Salva Judum, the illegal army made of Tribal youths purportedly for fighting the Maoists. While the act of violence by the Maoists has been condemned by all from the political leaders to the civil society as such acts cannot provide justice to the victims of atrocities perpetrated by the *Salva Judum* on the poor, suffering and hapless Tribal people of Chhattisgarh, it is equally true that Salva Judum's armed goons, backed by the state establishment and political leadership, had indulged in the killing of thousands of innocent tribal people of Chhattisgarh, raped their young girls and women and burnt their houses, and their acts had been even more dastardly and condemnable because they were directed at absolutely unarmed and innocent people who were unable to defend themselves or their families. This fact was recognized by the Supreme Court of India and it ordered the *Salva Judum* to be wound up. The tragedy is that many of those who vociferously condemn the 25th May attack by the Maoists have never in the past condemned the inhuman acts of the Salva Judum. That highlights the inherent bias in the minds of our political class which treats political leaders belonging to their own parties as citizens of this country and super human beings who are born to govern and rule, while it treats the poor tribals and ordinary people as second class citizens of the country and sub-human beings whose suffering and pain does not even deserve their attention. That also is the reason why huge financial compensation is immediately announced on the death of people belonging to the political class, their supporters and the elite sections of our population killed by the Maoists while no compensation has ever been announced for the survivors of the families of the innocent people killed by the *Salva Judum* activists and the police and personnel of the para-military forces.

This fact is best illustrated from the incident of the killing of seventeen innocent villagers including women and school-going minor children in a village under the Kotteguda Panchayat of district Bijapur in Bastar region on June 28-29, 2012 by the CRPF, claiming the incident to be an 'encounter' with "hardcore Naxals", as the Union Home Minister described it. His praise for the CRPF after the incident only reflects his contempt for the tribal people and their right to live a dignified life and also utter disregard for all ethics of democratic governance, what the Government of Chhattisgarh and the Union Government have been showing again and

again. Not a single tear was shed by the ruling political class at the State or Central level on their killing. They were considered un-equal citizens of the country, not worth the attention of the rich, the powerful and the ruling class of the country. Obviously their murder was not considered equal to the killing of the Congressmen on 25th May. So there was no question of compensating the survivors of those killed financially. And the question of holding the perpetrators of the grave crime accountable and prosecuting them for the cold-blooded murder of the innocent tribals did not arise, simply because they did not belong to the political class or the elite sections of our society.

The bias of the ruling political class, both at the center and the State level came out in the open again at the all-party meeting held recently at New Delhi which was called by the Prime Minister for reaching a consensus to pass a resolution regarding the steps to be taken for the resolution of the Maoist problem, (read killing them all) in the wake of the attack on the Congress cavalcade. The original draft resolution did not contain a single word regarding the injustices done to the tribals and when Basudev Acharya of the CPI (M) suggested that a paragraph should be added that would include mention of the rapes of tribal women, sometimes by the SPOs of the *Salva Judum* did not find favour. When Gurudas Dasgupta of the CPI suggested that there should at least be some mention of the fact that there had been alienation of the tribal people because of a lack of governance, and that this was creating fertile ground for breeding Maoist, Arun Jaitley of the BJP, the ruling party in Chhattisgarh, said that there was no need to rationalize violence. It was only when the two left parties threatened to vote against the resolution that the phrase 'redress any sense of alienation' was finally added in the sentence which read:

"We assure them that the governments will be sensitive to their concerns and redress any sense of alienation and the injustices of the past." However, how much sensitive they have been in the past is clear from just two examples: Conferment of the President's Police Medal for Meritorious Service to SRP Kalluri, IGP of Chhattisgarh who raped a tribal woman, Ledha Bai, when he was the SP of Sarguja District, and ordered her gangrape by his juniors and then terrorized her and her lawyer when she decided to file a complaint against him. Mr. Kalluri is notorious for the reign of terror he let loose in Sarguja district as its SP, under the pretext of fighting Maoists. During his tenure as the SP extra-judicial killings were frequent, such as the one of Narayan Khairwar, and anyone who raised a voice against this was victimized. This conferment of honour came on the heels of the award of the President's Gallantry medal to Ankit Garg, another Senior Superintendent of Police in Chhattisgarh who had sexually assaulted another tribal woman in his custody, Soni Sori, and treated in the most inhuman way.

Let any number of meetings be held and resolutions passed, the problem of Maoism cannot be solved the way the governments want to solve it. If it could be solved through brutal use of arms, the problem would not have survived, in fact turned more acute, for the last 46 years. Forcible acquisition of the land and source of sustenance of the tribal population in the name of development is the main cause which has resulted in the increase of the cadres of the Maoists. There are hundreds of examples of this. Giving an example in an article 'Repression is no solution' (The Hindu, June 8, 2012) in which he quoted what the Supreme Court of India said in the matter, Gopal Subramaniam, a former Solicitor General of India, wrote: "In the *Mahanadi Coal Fields Case* (2010), the Supreme Court took strong exception to the manner in which the

Central government and the Mahanadi Coal Fields Limited had acquired the lands of tribals in the Sundargarh district of Odisha and not compensate them even 23 years later. In fact, 20 years after dispossessing them, the government noted that the land was actually not required!

"The Supreme Court observed: "The whole issue of development appears to be so simple, logical and commonsensical. And yet, to millions of Indians, development is a dreadful and hateful word that is aimed at denying them even the source of their sustenance. It is cynically said that on the path of 'mal-development' almost every step that we take seems to give rise to insurgency and political extremism [which along with terrorism are supposed to be the three gravest threats to India's integrity and sovereignty] ... The resistance with which the state's well meaning efforts at development and economic growth are met makes one think about the reasons for such opposition to the state's endeavours for development. Why is the state's perception and vision of development at such great odds with the people it purports to develop? And why are their rights so dispensable?"

There are ways in which the problem of Maoism can be solved and the issue of development of the tribal areas can be tackled but they require the political will of the government and its goodwill towards the tribals. The tribals are a satisfied lot and are happy with whatever meager means they have. They have never demanded any development. So the first need is not to dispossess them of whatever little they have – their house, their land, their water and their forest. If at all any of them is required in '*public interest*' for the sake of development, not for the sake of handing over the vital resources to the MNCs and the big industrialists to satisfy their greed for profit, then it should be done with their full consent and they should be

made equal partners in this progress, the other partner being the government itself. Then all the false cases against the tribals be withdrawn immediately and thousands and thousands of them languishing in the jails of Chhattisgarh, Jharkhand and elsewhere be set free and adequately compensated for the sufferings thrust upon them. All those who have committed heinous crimes against the tribals, the policemen, the personnel of the paramilitary forces and the former cadres of the Salva Judum, including high officials like SRP Kalluri and Ankit Garg, should be booked for their crimes and prosecuted on fast track basis. It is then that the tribals will get a sense of justice and not feel alienated. That will remove the fear of being harassed, arrested, killed and raped from their mind. That will

pave the ground for educating them and providing them with medical and other facilities which will then surely succeed. Then the exodus of the tribals towards the Maoists, whom they see as their only sympathizers against the adversarial State today, will also stop. It will surely attract back many of those, who had turned Maoists because of the injustice they got at the hands of the State, to lay down their arms and lead a peaceful family life. It will then be possible to deal with the remaining ones through talks and negotiations, the only method through which even serious international conflicts are ultimately resolved. But that does not mean that such talks must wait till then. They can be begun any day provided the aim is to win them over and bring them back to the mainstream, and not lure them for talks and then kill them in encounter, as has happened often in the past,

one such incident being the cold-blooded murder by the police of Raj Kumar alias Azad, a leader of the Maoists, who was coming for talks to resolve the Maoist problem along with Hemchandra Pandey, a journalist, on the request of Swami Agnivesh, bringing down the credibility of the State and discouraging the Maoists to come forward for such talks. For such talks to begin hostilities from both sides have to stop, the sooner the better, so that an atmosphere of mutual confidence is built up and the State has to take the initiative in that direction. Will the Prime Minister and the leaders of all political parties show seriousness to end the Maoist problem and consider these suggestions sincerely? Or will the All-party meeting prove to be the latest of the ceremonial exercise in futility towards ending the Maoist problem? □

Social Justice vs. Maoists' Violence

Justice Rajindar Sachar (Retd)

The recent murderous attack by Maoists in Chhattisgarh resulting in death of 28 persons, including Congress leaders, their security officers and ordinary villages of area, has to be treated as a diabolical act by the self-styled leaders of the "revolutionary movement", CPI (Maoist), who delude themselves that they are struggling for bringing about a revolution of workers and peasants. One of the seriously injured persons, senior Congress leader VC Shukla, died on Wednesday. In fact, I would describe the activities of these "revolutionaries" a massive mad act which has damaged greatly the cause of tribals. It is also most foul as Maoists have tried to stop political activity they do not agree with through violent means. Their politics is as evil as those they claim to be fighting against and should be rejected outright by all those who stand for democratic norms in political struggles for peace with justice. If people expected that the two major

political parties will, realising the urgency of the situation, forget their petty public posturing, they were mistaken. While Union Home Minister Sushilkumar Shinde and Chief Minister Raman Singh issue a statement that they are going to work together, state Congress leaders have announced that they are boycotting the all-party meeting called by the Chhattisgarh Chief Minister. Even within Congress high-ups there is now a sharp division - while one Central minister, who used to take a somewhat humanitarian approach to the Maoist problem, now calls them "terrorists", a Central tribal minister has rightly warned against this approach and reproached the state government for having encouraged Salva Judum's sinful strategy, and which was also so commented adversely by the Supreme Court. Even the normally conservative Planning Commission has suddenly thought fit to suggest universal

coverage and to do away with the BPL test in 22 most backward of 82 AP districts. Did we need these murders to face the reality of the total deprivation of the tribals and their desperation which provides easy catch to Naxalite groups? Naxalite leaders have made no secret of their aim. They feel (though in my opinion they are disastrously mistaken) that by spreading terror and trying to keep some areas outside the civil authority, they would one day be able to launch a fierce onslaught to capture political power in Delhi even if they are said to have a strong presence in 185 districts out of the total 607 districts. This is because the Indian state, however weak, will never be so weak as to allow itself to be taken over by such rump groups, even if it is able to equip itself with some arms - the fire power of a modern state is too overwhelmingly superior to Maoist groups. The real reason for Maoist presence is the indefensible antipathy of the government to follow the policy of

development with justice to the tribals, which alone will make Maoist influence wither away.

But that requires taking on the corporate sector which is ravishingly exploiting the mineral wealth and denying to the tribals even their modest share. Why does the government not accept the suggestion of human right organizations, including the PUCL, to hold public discussions on this vital matter in the presence of tribal leaders, among others? Is the reason the presence of many mine owners belonging to the ruling party at the Centre? This charge finds support from the continued detention of Soni Sori, a social worker among tribals, on a fake charge of being a conduit for passing money to Maoists on behalf of a mining company given to her by company's contractor - inexplicably she has been denied bail, but the contractor or the owner has not been arrested. One is pained to see this strange nexus between the ruling party and the corporate sector.

Of course, I accept that the Maoist act of brutality and terrorism can never be justified, even if they be in response to equally heinous and brutal acts unleashed by the security forces, as we are seeing presently in Chhattisgarh. This situation no

doubt poses a knotty question and the Supreme Court has answered thus:

"Indeed, we recognise that the state faces many serious problems on account of Maoist/Naxalite violence. Notwithstanding the fact that there may be social and economic circumstances, and certain policies followed by the state itself, leading to the emergence of extremist violence, we cannot condone it. The state necessarily has the obligation, moral and constitutional, to combat such extremism and provide security to the people of the country.

"However the primordial problem lies deep within the socio-economic policies pursued by the state in a society that was already endemically and horrifically suffering from gross inequalities. Our Constitution provides the guidelines within which the state is to act, both to assert such authority to transgress those guidelines is to act unlawfully, to imperil the moral and legal authority of the state and the Constitution."

It is, however, very important that the revolting nature of extremist acts cannot serve as a basis or pretext for the governments to disregard their national and international obligations, the caution highlighted by the

International Council of Jurists in its Berlin Declaration on August 28, 2004, namely that "both contemporary human rights and humanitarian law allow states a reasonably wide margin of flexibility to combat terrorism without contravening human rights and humanitarian legal obligations.

A warning has been given in a report titled "Development Challenges in Extremist Affected Areas" by an expert group constituted by the Planning Commission of India in the following manner, "In the case of tribes in particular it has ended up in destroying their social organization, cultural identity, and resource base....which cumulatively makes them increasingly vulnerable to exploitation."

And yet, all that the government does is not to face the causes of the rage and despair that nurture such movements. Instead, it considers the matter as a menace, a law and order problem that is to be rooted out with the use of force. This cycle of mindless violence and counter-violence may continue unless the state honestly acts in the interest of the poor and the tribals, and does not connive with corporate mine owners in their exploitive acts.

June 14, 2013 □

PUCL Press Release: May 2013

PUCL Condemns Killings of Congress Party leaders, their PSOs and Ordinary Villagers by Maoists in Dharba Ghati of Sukma District, Chhattisgarh

The PUCL strongly condemns the ambush of a Congress party election cavalcade by the dalam of the CPI (Maoist) party at Dharba Ghati area in Sukma district of Chhattisgarh on Saturday, 25th May, 2013, resulting in the death of 28 people including Congress party leaders, their personal security officers and ordinary villagers of the area. PUCL denounces as totally unacceptable, the abduction, kidnapping and subsequent killing in cold blood of

the Congress party President of Chhattisgarh, NK Patel, and his son Dinesh. The Maoists also killed Mahendra Karma, the founder of the dreaded Salwa Judum, and his security guards.

What is particularly reprehensible is the killing of unarmed political workers of the Congress party by over 200 gun wielding members of the Maoist party which ended up killing a number of innocent bystanders also, who accidentally

happened to be in the spot. Particularly reprehensible is the fact that armed Maoists cadre also killed people who had surrendered and were in their custody.

It is the PUCL's understanding that under no circumstances can acts of brutality be justified, even if they be in response to equally heinous and brutal acts unleashed by the security forces, as we are seeing presently in Chhattisgarh, as recently as the killing of 8 innocent tribal villagers in Edasmeta village of South Bastar on

17th and 18th May, 2013; or in response to the brutalities committed by the vigilante Salwa Judum founded by the deceased Mahendra Karma.

We equally stress that whatever the circumstances, the security forces must act within the bounds of law. Our apprehension that the present incident will be used by both the Central as also State Governments to launch a brutal counter-offensive engulfing local tribal communities amidst greater state violence springs from the already grim human rights situation that prevails in the area. Complaints abound of state security forces committing with impunity, torture and cruel, inhuman or degrading treatment, secret detentions, abductions, arbitrary, prolonged and incommunicado detention, unfair trials, and enforced disappearances, and worse in the wake of Operation Greenhunt.

A Fact Finding Team of PUCL Chhattisgarh had recently, on 21st May, 2013, released its Report titled, 'Guilty until proven Innocent - A Report on Unlawful Police Activities in North Bastar, Chhattisgarh' which detailed the atrocities committed by the security forces in 2 villages in Chhattisgarh.

While PUCL firmly condemns the

violence of the Maoists and acknowledges the constitutional duty and responsibility cast on the Governments to protect the life of all people, PUCL nevertheless asserts that all counter-measures adopted by the Government should adhere strictly to the rule of law, including the core principles of criminal and constitutional law and the specific standards and obligations of international human rights law, and, where applicable, humanitarian law. It should be noted that these principles, standards and obligations, as constantly affirmed by the Supreme Court, define the boundaries of permissible and legitimate State action against extremism and terrorism. It is however very important that the revolting nature of extremist acts cannot serve as a basis or pretext for the Governments to disregard their national and international obligations, in particular in the protection of fundamental human rights. We would like to point out to the caution highlighted by the International Council of Jurists in its Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism, The Berlin Declaration, 28 August 2004

PUCL would like to point out that it

is important to strengthen civil society, not weaken it so as to effectively tackle political violence. An effective strategy to preventing the downward spiral into lives filled with violence, fear and repression is to genuinely acknowledge, respond and respect the key issues faced by tribals and local communities in Chhattisgarh; this will deny the basis for real or imagined grievances from supporting violence. The best way to strengthen democracy is by integrating human rights, equity and social justice considerations into all government policies, plans and programmes.

The spirals of violence and counter-violence in the troubled areas of Jharkhand, Chhattisgarh, Odisha and other states is grim and life threatening. The PUCL, through this appeal, is therefore giving a national call for a '**HUMANITARIAN RESPITE**' and appeals to the Central and State Governments, the security forces and also to the Maoists, to agree to an immediate ceasefire, stopping of armed engagements and engage in talks.

Sd/-

Prof. Prabhakar Sinha, National President, PUCL

Dr. V. Suresh, National General Secretary, PUCL □

Chhattisgarh PUCL Press Release:

Chhattisgarh PUCL Condemns the Abduction and Killings of Congress Party Men in Darbha Ghati in Bastar Area of the State

Calls for urgent intervention by democratic forces to end the spiral of violence in the Region Raipur, 25th May 2013

The Chhattisgarh PUCL strongly condemns the attack by suspected Maoists on the convoy of Congress Party leaders in the course of their election campaign in the forested Darbha Ghati in Sukma area in which, according to news reports till the present time, Congress leader Mahendra Karma and Uday Mudaliar have been killed and the President of the Congress Party Nand Lal Patel is suspected to have been abducted. More than 20 people have been reportedly killed with several

seriously injured and the numbers of missing, injured and fatalities are on the increase.

The PUCL has always had a principled stand opposed to violence and the politics of killings and abduction. The spiraling violence in the Bastar region in which the present killings and abduction have occurred, and only a week ago on 17th May, 8 villagers including 3 children and a jawan were killed in an operation of security forces in Village Edesmeta, district Bijapur.

For the first time, the police actually admitted that those who were attacked were innocent and instituted an enquiry. This situation requires the urgent intervention of all democratic forces in the country as also expressed in the recent strong and anguished letter issued by the Union Minister for Tribal Affairs Shri K Chandra Deo to the Governors regarding the situation in the Scheduled Areas.

Sudha Bharadwaj, General Secretary, Chhattisgarh PUCL □

Fact-finding Report on Unlawful Police Activities

A team consisting of eminent activists and lawyers went for a fact finding mission organized by PUCL-Chhattisgarh to the Edanar and Malmeta Villages of the Edanar Panchayat, Kanker District and the Anjrel Village of Khadkagaon Panchayat, Narayanpur District of North Bastar, on 18th and 19th April 2013. The purpose of the mission was to investigate and document the unlawful police activities that were exposed by Edanar villagers during a statewide camp by the National Human Rights Commission (NHRC) conducted on 12th April, 2013 in Raipur. The representation by Edanar village focuses mainly on a police rampage that happened in Edanar and Malmeta Villages in which six villagers were assaulted, two families were robbed, and one innocent man was arrested, and remains in jail till date, after being accused of aiding Naxalites.

However, the 23rd January incident is only a small part of a longer history of militarization and unlawful police activities in this region. In the Edanar Panchayat (P.S. Tadoki), security forces consisting of CRPF and BSF,

accompanied by local police and Special Police Officers (SPOs), conduct combing operations twice a month in which homes are looted and villagers are assaulted, threatened, labeled as "Naxalites", arrested, charged with very serious offences and some of them even killed. In the Khadkagaon Panchayat (P.S. Narayanpur), villagers are routinely terrorized and even evicted from their homes by local SPOs, despite the Supreme Court order declaring SPOs unconstitutional.

The team documented over 20 such incidents of unlawful activities in both panchayats. The report also examines the legal issues associated with and the overall context in which these violent attacks have occurred. It gives special importance to the broader impact of the ongoing militarization of the region including the six BSF camps which are already stationed in Kanker, and the pending construction of 22 paramilitary barracks by the Bhilai Steel Plant to protect the functioning of its Raoghat iron ore mine.

The team releases the attached

report, Guilty Until Proven Innocent: A Fact Finding Report on Unlawful Police Activities in Two Panchayats of North Bastar, Chhattisgarh with the hope that the media would highlight the situation of the people living in these areas, understand the larger political and economic context of the ongoing violence, and strike a well-educated public discourse around the issue. We strongly urge correspondents to visit the area and write firsthand accounts of the issues faced by the local villagers.

Team members include: Shishir Dikshit (Lawyer, Janhit Legal Center), Lakhan Singh (People's Union for Civil Liberties, Chhattisgarh), Somdutt Upadhyay (Lawyer, Bilaspur Social Forum), Tathagata Sengupta (People's Union for Civil Liberties, Chhattisgarh), Samantha Agarwal (Sanhati), Pinki Verma (Chhattisgarh Mukti Morcha-Mazdoor Karyakarta Samiti), and Keshav Sori (Chhattisgarh Bachao Andolan). The following report has been jointly prepared by the members of the fact-finding team.

Sudha Bharadwaj, General Secretary, PUCL-Chhattisgarh □

Guilty Until Proven Innocent?

A Fact Finding Report on Unlawful Police Activities in Two Panchayats of North Bastar, Chhattisgarh - 20 May 2013

Executive summary

A team consisting of lawyers, civil liberties and rights activists went for a fact finding mission to the panchayats of Edanar in Kanker District and Khadkagaon in Narayanpur District of North Bastar. The goal of the mission was to investigate and document the unlawful police activities that came to light through the voices of the Edanar villagers before the National Human Rights Commission (NHRC) on 12th April, 2013 in Raipur, and to examine the associated legal issues, and the overall context in

which the violence occurred.

On 18th April 2013 the team visited Edanar and Malmeta villages of Edanar Panchayat. The panchayat is located in the southernmost part of Kanker and is a Scheduled Tribe (Gondi) settlement. There are 393 families with a population of 1400, spread across eight villages (Edanar, Malmeta, Maspur, Chhote Dhosa, Bade Dhosa, Gunjinar, Padbeda, Mahurpad). A public meeting was held at Edanar which around 100 villagers attended. Subsequently the team conducted individual visits to the homes of more than 15 affected

persons of Edanar and Malmeta to speak with the victims' family members, and understand the socio-economic impact the atrocities may be having on their households.

During the course of the discussions the team had at Edanar Panchayat, the case of a small mountain village, Anjrel, in the Khadkagaon Panchayat, of Narayanpur District, at the border of Kanker District, was repeatedly brought to our attention. Situated in the Mahadevgiri Mountains of the Raoghat Hills, the panchayat contains five villages (Anjrel, Paralbhat, Supgaon,

Khadkagaon, and Kairabhat). Anjrel Village currently has 28 families all belonging to the Gondi Scheduled Tribe. At Edanar, the team was informed that it is a well known fact in this region that the police are intimidating families into leaving Anjrel and forcing them to settle in Narayanpur Town. We also heard that in the past people have been violently attacked and killed in Anjrel Village. On 19th April 2013, this team decided to travel to the village of Anjrel to confirm these allegations. Here the team engaged with over 20 villagers and recorded their stories about the unlawful police activities happening in their locality.

The incidents that are described in the representation to NHRC by the Edanar village are only some examples of what appears to be a larger history of police repression in the above villages and in the region at large. In Kanker District there are already six Border Security Forces (BSF) deployed, along with several Central Reserve Police Force (CRPF) camps. There are active plans to deploy at least four more paramilitary battalions (both BSF and CRPF) with the construction of 22 barracks between Dalli Rajahara and Raoghat Hills in Kanker to facilitate Bhilai Steel Plant's iron ore mining at Raoghat Hills. This is being justified by both Central and State governments by citing the alleged threat of Naxalite activities to the welfare of civilian population and industrial activities. While, on the one hand, there is a clear Naxalite presence in the area, it is also evident that violent acts are being disproportionately perpetrated by the police, paramilitary and Special Police Officers (SPOs).

The extent of excessive militarization is illustrated by the case of Edanar Panchayat, which falls within the jurisdiction of the Tadoki police station. Here the police station is combined with a BSF camp and there is also a CRPF camp nearby. In this Panchayat, security forces (CRPF and BSF), accompanied by local

police and SPOs, conduct regular combing operations in which homes are looted and villagers are assaulted, threatened, labeled as "Naxalites", arrested, charged with very serious offences and some of them even killed. In the Khadkagaon Panchayat, which falls under the jurisdiction of the Narayanpur police station, the CRPF-led combing operations are fewer, while the villagers are routinely terrorized by local SPOs. The team recorded over 20 of such incidents in both places. In addition to the brute force being carried out in these villages, the team observed a systematic subversion of the law and the judicial process. Reopening of old cases, use of standing warrants to arrest anyone anytime, denial of bail, false encounters, false charges, and incarceration of minors are all common place. SPOs are routinely used despite the Supreme Court judgment banning them. During court hearings the investigating officer often absents himself, for which there is no penalty imposed.

The misuse of draconian laws like the Unlawful Activities (Prevention) Act, 1967, and the Chhattisgarh Special Public Security Act, 2005; and the detention of individuals in police remand for more than 24 hours, have become usual practices in these areas.

The physical terror combined with the threat of severe legal action has created a scenario where villagers are afraid to carry out their usual livelihood activities in the forests, fields, and marketplaces. In Edanar Panchayat, villagers live in constant fear of arrest, as many have been arrested for extended periods of time, and there are "standing warrants" for the arrest of hundreds more. Meanwhile, in Anjrel Village, over the course of a few years, 17 families out of 45 families total have left this village out of fear of the police.

Women, children, and the elderly are particularly vulnerable. Women, in addition to being harassed and targeted during the raids and arrests,

are having to simultaneously earn for the entire family and maintain the household. Children are facing severe emotional trauma, particularly those who have lost a family member in the "encounter" killings conducted by the police. Both children and elders are being forced to work due to the economic crisis caused by arrests and the loss of wage earning family members. Legal expenses are adding to the financial crises of many families, which in turn has severe consequences on the health and overall wellbeing of the society.

Lastly, all of the incidents mentioned in the following report should be looked at in the context of Bhilai Steel Plant's (BSP) plans to train and deploy 4,000+ paramilitary personnel in over 22 barracks to protect its 2,028 ha Raoghat iron ore mining project. While BSP claims the project will bring jobs and economic growth to the region, the team feels that the broader impact that the long term presence of paramilitary forces will have on already marginalized adivasi population of this area must be immediately studied. It is also alarming that people of Anjrel, a village which would be completely dislocated due to BSP's mine, have virtually no information about the pending mining project and are also being strategically targeted and evicted by SPOs.

The methodology of the team was to speak to the directly affected villagers of the three aforementioned villages to document their qualitative accounts, first in large groups to get an overall picture of the abuses, and then in individual home visits. Where possible, the team engaged Sarpanches and other Panchayat representatives. In several cases of severely traumatized victims the team engaged in one-on-one discussions. On 18th April we also met with one local Antagarh lawyer, Mahesh Darro, who is handling the cases of several of the victims, and on May 7th we spoke over phone with SP Kanker, Rajendra Narain Das,

and SP Narayanpur, Amit Kamble, at 12 pm and 5 pm, respectively. For background details of the locality, the team resorted to online news reports written within the past three years.

Team members include: Shishir Dikshit (Lawyer, Janhit Legal Center), Lakhan Singh (People's Union for Civil Liberties, Chhattisgarh), Somdutt Upadhayay (Lawyer,

Bilaspur Social Forum), Tathagata Sengupta (People's Union for Civil Liberties, Chhattisgarh), Samantha Agarwal (Sanhati), Pinki Verma (Chhattisgarh Mukti Morcha-Mazdoor Karyakarta Samiti), and Keshav Sori (Chhattisgarh Bachao Andolan). The above report has been jointly prepared by the members of the fact-finding team.

Note: The report contains the actual names of people only where people granted the team permission to do so. Some of the inter-viewees were apprehensive to reveal their identities because of the prevailing state repression in their communities. In these cas-es, names were either left out entirely or changed to symbolic letters (i.e. X, Y, and Z). □

PUCL Statement: June 05, 2013

PUCL Condemns Delhi Police's Intimidation of Dr. Prem Singh, Delhi University, While at Fast at the Rajghat Demanding Restoration of Democratic Culture in DU.

The PUCL condemns the intimidation by the Daryaganj SHO and his policemen of Dr Prem Singh, General Secretary, Socialist Party of India and Former fellow, Indian Institute of Advanced Study, Shimla; former member, Academic Council, Delhi University, who began his three day (5th -7th June, 2013) fast at the Rajghat today. Dr Singh's decision to fast is to highlight the increasing anti democratic culture that is taking roots in Delhi University and the denial of a hearing to students and other scholars who have questions or are aggrieved with the forthcoming changes in the frame of the courses. Secondly, his fast is also being held as there are fears that through the FYUP the students may be pushed for Diplomas and few may end up for

a BA degree course.

A few minutes after it began, the peaceful fast was interrupted when the Daryaganj police sent two Sub Inspectors who tried to push Dr. Prem Singh out from Rajghat and threatened arrest, even though there was a good presence of people including former PUCL President and ex Chief Justice of the Delhi and Sikkim High court Justice Rajinder Sachar and PUCL Vice President, Senior Counsel Ravi Kiran Jain. It was only when Justice Sachar demanded a warrant of arrest that they went away, saying that they would come back.

The increasing attack on the democratic rights of the people by the Delhi Police on those who are

dissenting Government Policy or demanding accountability from the powers that be clearly establishes that the Indian State does not want to hear its own people and fears them that it cannot even take on the most peaceful modes of protests like fasts.

We demand from the Home Minister of India under whom the Delhi Police is that he must ensure that the police ought not to be allowed to violate people's democratic rights enshrined in the Indian Constitution particularly Article 19 and Article 21. Sd./-

V. Suresh, General Secretary, PUCL National; **Mahi Pal Singh, Kavita Srivastava**, National Secretaries, PUCL □

Press Statement: 26May2013

PUCL Takes Serious Exception to Illegal Order Directing Imprisonment of Social Activist Madhuri of Jagrit Adivasi Dalit Sanghatan and PUCL Coordinator for Madhya Pradesh

PUCL is extremely shocked and takes exception to the arbitrary, illegal, and capricious manner by which the Chief Judicial Magistrate (CJM), Barwani on 16th May, 2013 directed the imprisonment in Central Prison, Barwani of Madhuri Krishnaswamy, a well respected tribal rights activist of the Jagrit Adivasi Dalit Sanghatan (JADS) and PUCL co-ordinator for MP. PUCL also takes exception to the rejection by the CJM, Barwani of the 'Closure

Report' filed by the prosecution in a 2008 case as illegal, violative of established principles, abuse of the process of law and resulting in harassment of accused.

Facts of the Case: The case in which Madhuri was imprisoned on 16th May, 2013 relates to incidents that took place in November, 2008. On 11.11.2008, 21-year old Baniya Bai, wife of Iddiya, of Sukhpuri village, full term pregnant, was brought for her first delivery to Primary Health Centre

(PHC), Medimata, after a 15 km journey over bullock cart. The next day, 12.11.2008, the PHC Compounder, VK Chauhan, and nurse Ms. Nirmala, allegedly demanded a bribe of Rs.100/-. As Baniya Bai and her parents-in-law were unable to pay the bribe, she was thrown out of the PHC. Baniya Bai delivered her child, in public, on the road opposite the PHC gate. A local tribal traditional mid-wife, Jambai Nana, assisted the delivery.

Madhuri, who happened to be in the town heard about the incident and contacted the Silawad Child Health Centre, the Silawad Police Station. Senior health officials at the District HQs at Barwani arranged for a vehicle to transport Baniya Bai and the newly delivered child to Silawad Hospital for further treatment. In the meantime local people gathered and protested about the callous and inhuman treatment meted to Baniya Bai, which was routine in the area. In a bizarre manner, the Silawad police instead of taking action against the PHC compounder, Chauhan and other staff for criminal negligence endangering the life of Baniya Bai, corruption and abuse of office, registered an FIR, Crime No. 93 of 2008 dated 12.11.2008 u/s 353, 332, 147 and 427 IPC and sec. 3 and 4 of the Madhya Pradesh Chikitsak Tatha Chikitsa Seva Se Sambadh Vyaktiyon Ki Suraksha Vidheyak, 2008 at the Silawad Police Station showing PHC Compounder Chauhan as the complainant and naming Bachiya Borla, Bhurelal Borla, Basant Kumar, Kamal, Iddiya (husband of Baniya Bai) and Madhuri as accused. Iddiya was not even in Medimata on the incident day!

The offences charged included voluntarily causing hurt to deter public servant from his duty (sec. 332), assault or criminal force to deter public servant from discharge of duty (sec. 353), mischief causing damage to the amount of Rs. 50/- (sec. 427), and punishment for rioting (sec. 147). All the offences carried a maximum sentence of 2 to 3 years imprisonment. Sections 3 and 4 of the *Madhya Pradesh Chikitsak Tatha Chikitsa Seva Se Sambadh Vyaktiyon Ki Suraksha Vidheyak, 2008* provides for imprisonment for a period of 3 months or fine of Rs. 10,000/- or both for act of violence or threat to medical personnel, which is deemed to be a cognisable and non-bailable offence.

In December 2010, Bachiya and Bhurelal Borla were arrested and released on bail by the local court. Madhuri, for the first time in over 4 years, was summoned to appear before court of CJM, Barwani on 16th May, 2013.

The Closure Report filed by Prosecution and its Rejection

A full 4 years after the FIR registration, on 18.12.2012 the prosecution filed a Closure Report u/s 173 Criminal Procedure Code (Cr.PC for short) stating that at the end of investigation they did not find enough evidence to prosecute Madhuri and others and seeking the 'closure' of the criminal case. Importantly, the prosecution reported that investigation revealed and established that the incident of 12.11.2008 by which Baniya Bai, was forced to deliver her child on the road outside the PHC had indeed taken place, and that local people had got agitated over the incident but that there was no pre-meditation or plan and it was a spontaneous gathering. Further, the police, on record, concluded that there was not sufficient evidence to establish the allegations of the PHC compounder. In the meantime the case was transferred to the CJM Court, Barwani. On receiving notice, a sworn statement was recorded from the de-facto complainant, VK Chauhan. Chauhan on 5.3.2013, to the effect that the incident as narrated in the FIR did take place. On 20.4.2013, the CJM confirmed the statements of 5 witnesses. Noting that there is corroboration in the statements of all the witnesses regarding the names of the accused, the CJM held that there is no merit in closing the case and closure report cannot be accepted. The prayer for closure was therefore dismissed and cognisance taken for offences u/s 332, 353, 147, 427 and 3 & 4 of the *Madhya Pradesh Chikitsak Tatha Chikitsa Seva Se Sambadh Vyaktiyon Ki Suraksha Vidheyak, 2008*.

Importantly, the 2 accused who had obtained bail, Bhachiya and Bhurelal, were not informed about the Closure Report or the objection of the de-facto complainant and not informed that they had a right to place before the CJM's court their arguments in favour of the closure report or the de facto complainant's objections.

Why is the Rejection of Closure Report Illegal?

The Supreme Court has in numerous cases including '*Dhasmana v. CBI*' (2001(7) SCC 536), '*Bhagwant Singh*

v. Commissioner of Police', (1985(2) SCC 537), '*M/s India Carat (P) Ltd v. Karnataka*', (1989(2) SCC 132) held that the Magistrate has the powers to reject the 'closure report' filed by the prosecution and to decide to continue with the criminal case. However the court has to strictly comply with the procedures enumerated in law and clarified by the SC.

There are three critical steps: (a) De-facto complainant should be informed to file his detailed objection rebutting the prosecution decision to close the case. (b) Similarly the accused should also be given an opportunity to oppose the de-facto complainant as their interests will also be prejudiced by the order of the court; and (c) the Magistrate, after study of all relevant facts and materials before the court, should give a detailed reasoned order **recording the reasons** and explaining why the closure report is being rejected.

(i) In the present case, the judicial order of the CJM, Barwani rejecting the 'closure report' is mechanical. It would not be out of place to highlight that in the eventuality of rejection of the closure report, the CJM ought to have directed for further investigation u/s 173 (8) or 156 (3) of the CrPC directing the police to examine Baniya Bai w/o Iddiya and her in-laws, who are referred by the complainant in the FIR, the 161 Cr PC statements, to find out the truth of what happened on 11th and 12th November, 2008. By not doing so it shows a prejudiced mind of the CJM and also violates their duty under law to do "full justice". CJM also failed to take note of the remark of the closure report in which the incident of denying the PHC facilities to Baniya Bai which forced her to deliver on the roadside opposite the PHC which caused a public outcry. This selective and pick and choose method adopted by the CJM to decide on continuing with the prosecution is seriously objectionable, causes prejudice to the accused and is illegal.

(ii) The de-facto complainant did not file a 'protest petition' or in any case, in his sworn statement recorded on 5.3.2013 did not explain the grounds

as to why the prosecution's 'closure report' was bad in law and fact. Not specifying the grounds of protest has robbed the prosecution and accused an important opportunity to counter the de facto complainant's case and thus legally affects the rejection by CJM of the 'closure report'.

(iii) No opportunity was given to the accused in the case, particularly the 2 accused persons released on bail, to oppose the de-facto complainant. This constitutes a serious violation of the 'Principle of fair hearing and opportunity' to be given to the accused and thus invalidates the rejection by the CJM of the 'Closure Report'.

(iv) The SC in '**Vasanti Dubey vs State of MP**' (2012) has clearly pointed that the functions of the magistrate are different from the police and reiterated the view that "we cannot impinge upon the jurisdiction of the police by compelling them to change their opinion so as to accord with his view" and that the Magistrate "cannot direct the police to straightaway file charge sheet".

As the SC pointed out, unless the procedures were followed, the orders of the Magistrate to continue with the criminal prosecution would become illegal, and would result in an abuse of process of law resulting in vexatious proceedings and harassment of the accused.

Bar to taking Cognisance u/s 468(c) Criminal Procedure Code

We would like to point out that the CJM seems to have ignored the bar imposed by section 468 of the Criminal Procedure Code that no court shall take cognisance of an offence beyond a period of three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding 3 years. It is to be noted that all the offences charged in the present case impose a maximum sentence of three years. Hence the order of the CJM, Barwani dated 20.4.2013 taking cognisance itself is illegal as it hit by the limitation for taking cognisance imposed by section 468(c) of the Cr.PC.

It also needs to be pointed out that sec. 473 Cr.PC provides for extension of limitation in certain situations; however for invoking this

provision the CJM ought to have clearly explained and spelt out in the order dated 20.4.2013, the reasons why the CJM was satisfied that the cause of delay has been properly and satisfactorily explained or that it is necessary to condone the delay in the interests of justice. To our knowledge, the order of the CJM neither explains the reason for the delay in filing the closure report (in effect the police final report u/s 173 CrPC) nor explains the reasons for condoning the delay thereby directing taking of cognisance in the 'interests of justice'.

The provisions of sections 468 and 473 are mandatory and non-compliance with them vitiates the order of the CJM dated 20.4.2013 taking cognisance. In effect the order of the CJM taking cognisance of the case in FIR, Cr. No. 93/2008 becomes illegal. It follows that the consequent legal proceedings initiated in the case, including remanding Madhuri thereby imprisoning her, are also illegal.

Order of CJM Remanding Madhuri to Prison is Illegal

It needs to be pointed out that on 16.5.2013, Madhuri appeared voluntarily before the CJM, Barwani's court on receiving summons. This clearly establishes her to be a law abiding citizen. It is in this light that PUCL takes exception to the action of the CJM, Barwani remanding and imprisoning Madhuri as being violative of criminal laws and procedures established by the Supreme Court, as being an infringement of her fundamental right to freedoms to life and liberty under Articles 20 and 21 of the Constitution and being an egregious abuse of power by the Judicial Magistrate.

1. The Supreme Court has repeatedly stressed that imprisonment should be resorted to only as a last resort and only in the circumstance when the court feels that the accused will abscond or evade justice or threaten witnesses or tamper with evidence and this fact should be recorded. In all other circumstances, if the accused person will appear on summons, then imprisonment should be avoided.

The material on record indicates that Madhuri is a law abiding person who

appeared voluntarily, on being summoned to appear before the CJM, Barwani. Hence the order directing Madhuri's imprisonment is bad in law, abuse of power of court and an act of judicial excess violative of fundamental rights of Madhuri.

2. The key point to be noted is that there is a difference between the preliminary investigation stage when a FIR is registered to when a person has been summoned to appear and appears in compliance, at the end of investigation. The Supreme Court has said in '**Joginder Kumar v State of UP**' (1994), that even at the stage of start of investigation the power to arrest is one thing, but the justification of the arrest is another matter altogether and can be judicially reviewed. Such being the legal dictum at the start of investigation, at the stage of end of investigation, the court will necessarily have to provide sound reasons justifying the need for imprisonment. Not doing so taints the remand order with illegality and unjustness.

3. The SC has in '**M/s India Carat (P) Ltd v State of Karnataka**' (1989(2) SCC 132) and in '**Vasanthi Dubey vs State of MP**' (2012) said that in the event of a rejection by Magistrate of 'Closure Report', the CJM could only have proceeded to continue prosecution case by way of taking cognisance u/s 190(1)(c) or 200 CrPC and order issue of process to accused. In such a case where the accused appears on summons the accused is automatically entitled to bail on personal bond.

4. There was no need for the CJM to have ordered remanding Madhuri to judicial custody as there is no need for 'custodial interrogation', as the case had reached the concluding stage. There are provisions like sec. 88 of the Cr.P.C. for 'binding over' accused to appear in further hearings. Hence it was unjust on the part of the CJM to have remanded Madhuri on 16.5.2013 and the remand order is illegal.

We reiterate, **Any order which is passed without adhering to the "procedure established by law" is illegal. Further the 'procedure' must be "fair procedure"**.

In the face of such illegalities

committed by the CJM, Barwani in unjustly remanding Madhuri Krishnaswamy to judicial custody and imprisonment and the violation of procedural compliance while rejecting the 'closure report' of the prosecution, PUCL would like to place the following demands before the Madhya Pradesh Chief Minister Shri Shiv Raj Singh Chauhan:

1. The immediate release of Madhuri Krishnaswamy: The State through the Director of Prosecutions must approach the appropriate judicial forum and defend the closure report and challenge the cognizance taken by the JMFC Court of the charge sheet by placing all relevant documents before the judicial forum so that an informed and judicious decision can be taken for closing the criminal case against Madhuri and other tribal people.

2. Appropriate Criminal and Departmental Proceedings against errant PHC Staff: Appropriate criminal and departmental Proceedings must be initiated against the compounder, VK Chauhan, the nurse, Nirmala, and other staff of the PHC who denied the basic medical services to the pregnant woman, Baniya Bai on 11th November, 2008, endangering her life. The issue of limitation in initiating prosecution must be properly explained so that legally, criminal action can be launched against Chauhan and Nirmala and others responsible for endangering the life and health of Baniya Bai, even now.

3. Just and adequate

compensation: The State must pay just and adequate compensation to Baniya Bai for the severe physical harassment and mental agony she was forced to undergo in November, 2008, owing to the omissions and commissions of the Staff of PHC, Medimata.

4. Proper Pre-& Post Medical care for Expecting Mothers and Implementation of NRHM and JSY: The Government of MP must ensure that no woman, in the future, will be subjected to what Baniya Bai and others like her were subjected to, and medical services in maternal cases inter alia must not be denied and must be provided promptly and effectively. Barwani District Administration should ensure proper implementation of the Janani Suraskha Yojana as also the National Rural Health Mission.

5. Protection and Care of Human Rights Defenders: The State government must ensure the protection and care of Human Rights Defenders in the State of Madhya Pradesh from any kind of retaliation, violence, discrimination or any adverse action whatsoever from private or State actors.

We would like to point out to the State Government that there has been consistent attempts by the state administration to silence and intimidate Madhuri by 'externing' her from the district and by threatening to arrest her by dubbing her a Maoist. Such intimidatory tactics are a shame and should be immediately stopped. We are also constrained to

point out that there are similar attempts to specifically target other social activists like Medha Patkar, Dr. Sunilam and others by falsely implicating them in foisted cases. We call upon the Government of Madhya Pradesh to desist from such anti-democratic and anti-human rights and anti-constitutional practices and remind the government that voicing dissent and opposition are not part of democratic and human rights but in the end, help strengthen democracy.

We reiterate that it is a fundamental right of the citizens to be provided corruption-free, good governance, especially in the area of health services; people also have a fundamental democratic right to protest if the government and its functionaries fail to provide inclusive, equitable dignified health and other public services. The MP State Government in particular and all governments in general, also ought to recognise the democratic rights of citizens to seek accountability from state functionaries and to demand transparency, responsibility and open administration. The government ought to understand that a vigilant citizenry demanding good governance is reflective of a vibrant, strong democracy and should not treat them as 'foes or adversaries' who should be silenced and suppressed.

Sd./-

Dr. V. Suresh, National General Secretary; **Kavita Srivastava**, National Secretary, PUCL □

UN Report: On Violence against Women

Special Rapporteur on Violence against Women, Its Causes and Consequences, Finalises Country Mission to India

NEW DELHI (1 May 2013) - At the end of her official country mission to India, the UN Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, delivered the following statement:

"I have been mandated by the Human Rights Council to seek and receive information on violence against women, its causes and consequences, and to recommend

measures to eliminate all forms of violence against women.

I would like to begin by expressing my thanks to the Government of India for having invited me to visit the country from 22 April to 1 May. The invitation, which was in response to a request from my mandate, was received prior to the events that led to the death of a young woman in Delhi on 16 December 2012. The protest actions and outpouring of

sadness and anger; and the extensive coverage by the media, both local and global; has generated a huge focus on the issue of violence against women and girls in India. This mission has generated country-wide interest, and also, demands for the addressing of this systemic problem as an urgent imperative, at both the State and the non-state levels.

During my visit, I held meetings in New Delhi, Rajasthan, Gujarat,

Maharashtra and Manipur, and gathered information from other states, including Tamil Nadu. I am grateful to all my interlocutors, including Union and State authorities, National Human Rights Institutions, representatives of civil society organisations, and United Nations agencies. Most importantly, I want to thank the individual women who shared their personal experiences of violence and survival with me. The pain and anguish in the testimonies of loss, dispossession, and various human rights violations, was visceral and often difficult to deal with.

The Government of India has signed and ratified numerous international human rights instruments and has also adopted numerous progressive laws and policies at the Union and State levels. Numerous laws, including amendments to existing laws, have been enacted to address various manifestations of violence against women. Among others, these include: the Indian Penal Code which broadly includes crimes against women. This law includes the crimes of rape, kidnapping and abduction for specified purposes, homicide for dowry, torture, molestation, eve teasing, and the importation of girls, among others. More specific laws on crimes against women include: the Criminal Law Amendment Act 2013, the Sexual Harassment of Women at Workplace (Prohibition, Prevention and Redressal) Act 2013, the Protection of Women from Domestic Violence Act 2005, the Indecent Representation of Women (Prohibition) Act 1986, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, the Dowry Prohibition Act 1961, the Commission of Sati Prevention Act 1961, and the Immoral Traffic (Prevention) Act 1956 among others. Furthermore, the following Bills are currently under discussion: the Indecent Representation of Women (Prohibition) Amendment Bill 2012, the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Bill 2013, the Removal of Homelessness Bill 2013, the Prevention of Female

Infanticide Bill 2013, the Abolition of Child Labour Bill 2013, the Child Welfare Bill 2013, the Indecent or Surrogate Advertisements and Remix Songs (Prohibition) Bill 2013 and among others.

At the institutional level, the realisation of the promotion and protection of human rights broadly, and women's rights and children's rights specifically, are vested in numerous Union and state level Ministries, Departments, Commissions, Committees and Missions for the empowerment of women. Furthermore, I was informed about numerous programs and policies that have been put in place in recent years to address the issue of violence against women within a human rights and development framework. These include schemes addressing the needs of victims of rape, trafficking, domestic violence, and so on. Some of these schemes address counselling, support, skills development, access to benefits and also to shelters. Public/private partnerships have been forged within different spheres including the police sector. The laws and schemes highlighted above will be analysed and discussed fully in my mission report.

I welcome the Government of India's speedy response after the rape incident of 16 December. A judicial committee headed by the late Justice Verma was established, and new legislative measures were adopted earlier this year. While this legislative reform is to be commended, it is regrettable that the amendments do not fully reflect the Verma Committee's recommendations.

It is unfortunate that the opportunity to establish a substantive and specific equality and non-discrimination rights legislative framework for women, to address de facto inequality and discrimination, and to protect and prevent against all forms of violence against women, was lost. The speedy developments and also the adoption of a law and order approach to sexual wrongs, now includes the death penalty for certain crimes against women. This development foreclosed the opportunity to establish a holistic and

remedial framework which is underpinned by transformative norms and standards, including those relating to sexual and bodily integrity rights. Furthermore, the approach adopted fails to address the structural and root causes and consequences of violence against women.

The Protection of Women from Domestic Violence Act is a positive development in the aspirational goal of protection for victims of family violence. The discrepancy between the provisions of the laws and the effective implementation thereof, whether through the use of the police generally or the Protection Officers in particular, was a recurrent complaint which I heard. Despite provisions intended to offer legal, social and financial assistance to victims, many women are unable to register their complaints. As a result, the vulnerability of women increases, and further, they are also deprived of the benefits prescribed in the law - as proof of registration of cases is required for access to many benefits. Furthermore, prevention of violence, as a core due diligence obligation of the State, does not feature in the implementation of this law.

Despite numerous positive developments, the unfortunate reality is that the rights of many women in India continue to be violated, with impunity as the norm, according to many submissions received. Mediation and compensation measures are often used as redress mechanisms to address cases of violence against women, thus eroding accountability imperatives, and further fostering norms of impunity.

Manifestations of violence against women

Numerous experiences of violence, whether direct or indirect, in different spheres including the home, the community, and in institutions, whether perpetrated by state actors or condoned by the State, was shared with me during the mission. Violence is being experienced in situations of peace, conflict, post-conflict, and displacement among others. The denial of constitutional rights in general, and the violation of

the rights of equality, dignity, bodily integrity, life and access to justice in particular, was a theme that was common in many testimonies. Violence against women as a cause and consequence of de facto inequality and discrimination was also a common theme in numerous submissions received.

Violence against women and girls in India manifests in numerous ways and varies in prevalence and forms based on numerous factors including geographic location. Some manifestations include: sexual violence, domestic violence, caste-based discrimination and violence, dowry related deaths, crimes in the name of honour, witch-hunting, sati, sexual harassment, violence against lesbian, bisexual, and transgender people, forced and/or early marriages, deprivation of access to water and basic sanitation, violence against women with disabilities, sexual and reproductive rights violations, sex selection practices, violence in custodial settings and violence in conflict situations, among others. These manifestations of violence are rooted in multiple and intersecting forms of discrimination and inequalities faced by women, and are strongly linked to their social and economic situation. One interlocutor described violence against women and girls as functioning on a continuum that spans the life-cycle from the womb to the tomb.

During my visit, I heard numerous testimonies of many women who are survivors of domestic violence, whether at the hands of their husbands or other family members. Many of these women live in family settings with deeply entrenched norms of patriarchy and cultural practices linked to notions of male superiority and female inferiority. The lack of effective remedies, the failure of the State to protect and prevent violence against women, the economic dependence of many women on the men in their lives, and the social realities of exclusion and marginalization when speaking out, often results in women accepting violence as part of their reality. The current focus by state actors on preserving the unity of the family is

manifested in the welfare/social approach and not in the human rights based approach. It does not take into consideration the nature of relationships based on power and powerlessness; of economic and emotional dependency; and also the use of culture, tradition and religion as a defence for abusive behaviour.

Sexual violence and harassment in India is widespread, and is perpetuated in public spaces, in the family or in the workplace. There is a generalized sense of insecurity in public spaces/amenities/transport facilities in particular, and women are often victims of different forms of sexual harassment and assault.

On the issue of conflict-related sexual violence, it is crucial to acknowledge that these violations are occurring at the hands of both state and non-state actors. The Armed Forces (Special Powers) Act and the Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA) has mostly resulted in impunity for human rights violations broadly, according to information received. The law protects the armed forces from effective prosecution in non-military courts for human rights violations committed against civilian women among others, and it allows for the overriding of due process rights. Furthermore, in testimonies received, it was clear that the interpretation and implementation of this act, is eroding fundamental rights and freedoms - including freedom of movement, association and peaceful assembly, safety and security, dignity and bodily integrity rights, for women, in Jammu & Kashmir and in the North-Eastern States. Unfortunately in the interests of State security, peaceful and legitimate protests often elicit a military response, which is resulting in both a culture of fear and of resistance within these societies.

In India, women from the Dalit, Adivasi, other Scheduled castes, tribal and indigenous minorities, are often victims of a multiplicity of forms of discrimination and violence. Despite protective legislative and affirmative action laws and policies, their reality is one where they exist at the bottom of the political,

economic and social systems, and they experience some of the worst forms of discrimination and oppression - thereby perpetuating their socio-economic vulnerability across generations. They are often forced to live in displacement settings, experience forced labour practices, prostitution and trafficking, and also experience intra-community violations of rights.

In consultations in Manipur, I heard anguished stories from relatives of young women who have disappeared without trace or who were found dead shortly after going missing. The lack of response from the police is the norm in such cases, with the attitude being that these are mostly elopement cases. I am deeply concerned about other consequences of such disappearances of young women, including exposure to sexual abuse, exploitation or trafficking. More generally, many tribal and indigenous women in the region are subjected to continued abuse, ill-treatment and acts of physical and sexual violence. They are denied access to healthcare and other necessary resources, due to the frequency of curfews and blockades imposed on citizens. Moreover, the chronic underdevelopment prevalent in the region, coupled with frequent economic blockades, is having an impact on the overall cost of essential items, and is exacerbating the already vulnerable situation of women and children living in the region.

Customary and religious practices such as child marriages and dowry-related practices, sorcery, honour killings, witch-hunting of women, and communal violence perpetrated against cultural and religious minorities, were highlighted in numerous testimonies. Communal violence, inspired by religious intolerance, does manifest in some parts of India. Indiscriminate attacks by religious majorities on religious minorities, including Christian and Muslim minorities, is frequently explained away by implying that equal aggression was noted on both sides. Also, such violence is sometimes labelled as 'riots', thereby denying the lack of security for

religious and other minorities, and disregarding their right to equal citizenship. This issue is of particular concern to many, as the wounds of the past are still fresh for women who were beaten, stripped naked, burnt, raped and killed because of their religious identity, in the Gujarat massacre of 2002.

I am also concerned about the declining female sex ratio in India. The deeply entrenched patriarchal social norms, prevailing views of daughter-aversion and son-preference, the dowry-related link, and, the general sense of insecurity in light of high prevalence rates of gender-based violence, is fuelling a significant drop in female births throughout the country. The Indian Government's concern about this issue has resulted in the adoption of policies and schemes. The implementation of such interventions is resulting in the policing of pregnancies through tracking/surveillance systems and is resulting in some cases in the denial of legal abortion rights, thereby violating the sexual and reproductive rights of women.

With regard to domestic workers, I am dismayed by the prevalence of numerous violations faced by these women and girls. Many of them, often migrant and unregistered women, work in servitude and even bondage, in frequently hostile environments; performing work that is undervalued, poorly regulated and low-paid. According to testimonies, they are also denied access to essential services and resources provided by the State, as they lack proper identification, and view this as a barrier to access. They are often the victims of various acts of violence, including sexual harassment and victimization by their employers and others.

I have also been informed that women with disabilities experience numerous forms of violence, including sexual violence, forced sterilization and/or abortions and forced medication without their consent. In addition, their experience of discrimination, exclusion and marginalisation reinforces the need for greater attention and specificity.

India has embarked on a journey of aggressive economic growth and this path is viewed as the route to simultaneously addressing its human development challenges. Despite the inclusion of beneficial provisions for women and children in the Five Year Plan, the impact of economic development policies on women is resulting in forced evictions, landlessness, threats to livelihoods, environmental degradation, and the violation of bodily integrity rights, among other violations. The adverse consequence of resulting migration to urban areas is reflected in the living and work conditions of many of these women and children, for example living in slums or on the streets, engaging in scavenging activities and in sex work etc. Some women have committed suicide; others are frequently exposed to acts of harassment and violence, including sexual assault. It was strongly argued by many interlocutors that India's pursuit of neo-liberal economic growth must not be pursued at the expense of vulnerable women and children, and their right to a healthy and secure environment.

Conclusion

Numerous human rights mechanisms have addressed the violation of women's human rights in India. The substance of some relevant recommendations addresses the following issues:

- 1) There is a need for urgent measures to end the alarming decline in sex ratios (CEDAW, CRC)
- 2) The negative effect of personal status laws on the achievement of overall gender equality (CRC, CCPR, and CEDAW). Such laws need to be reformed to ensure equality in law (CEDAW).
- 3) The social and cultural patterns of discrimination against women require urgent action by the State (CEDAW).
- 4) Ensure that all victims of domestic violence are able to benefit from the legislation on domestic violence. Develop a comprehensive plan to combat all forms of violence against women (CEDAW). Domestic violence is endemic. The Protection of Women from Domestic Violence Act and Section 498-A of the Indian Penal Code must be enforced

effectively (CESCR).

5) The implementation of the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act, and the Armed Forces (Jammu & Kashmir) Special Powers Act should be repealed (HRC, SR Summary Executions), as it perpetuates impunity (HRC), and is widely used against Human Rights Defenders (SR HRD).

6) Grave concerns are noted as regards the continuing atrocities perpetrated against Dalit women. There is a culture of impunity for violations of the rights of Dalit women (CEDAW). Concerns are further expressed for the failure to properly register and investigate complaints of violations against scheduled castes and tribes, the high rate of acquittals, the low conviction rates, and the alarming backlog of cases related to such atrocities (CRC, CEDAW and CERD).

7) The practice of devadasi is of concern (HRC). The effective enforcement of relevant legislation and the Indian Constitution is required to end this practice (CERD).

8) To expeditiously enact the proposed Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 with the incorporation of: sexual and gender-based crimes, including mass crimes against women perpetrated during communal violence; a comprehensive system of reparations for victims of such crimes; and gender-sensitive victim-centred procedural and evidentiary rules, and to ensure that inaction or complicity of State officials in communal violence be urgently addressed under this legislation.

9) Grave concern is expressed about the continued existence of women and girls employed as domestic workers and their experiences of sexual abuse (CEDAW).

10) Harmful practices on women and girls, including forced marriage, dowry and dowry-related violence are of great concern (CEDAW, CRC, CERD, and HRC). Violence and social sanctions due to inter-caste relationships are also of concern (CERD).

11) The impact of mega-projects on

the rights of women should be thoroughly studied, including their impact on tribal and rural communities, and safeguards should be instituted (CEDAW).

12) Continuing disparities in literacy levels are of concern, in particular the educational status of scheduled castes, scheduled tribes and Muslim women (CEDAW). Effective measures must be adopted to reduce the drop-out rates among Dalit girls (CERD).

13) More effort is needed to end customary practices which deprive women from underprivileged classes, castes and religious minorities of their rights to human dignity and to non-discrimination (HRC).

I would like to encourage the government of India to ensure

specificity in addressing the multiple and intersecting inequalities and discrimination that women face. My mandate has consistently voiced the view that the failure in response and prevention measures stems from Government's inability and/or unwillingness to acknowledge and address the core structural causes of violence against women. Linkages should be made between violence against women and other systems of oppression and discrimination prevalent within societies. A legislative and policy approach will not bring about substantive change if it is not implemented within a holistic approach that simultaneously targets the empowerment of women, social transformation, and the provision of

remedies that ultimately address the continuum of discrimination and violence, and also the pervasive culture of impunity.

My comprehensive findings will be discussed in the report that I will present to the United Nations Human Rights Council in June 2014."

ENDS

Ms. Rashida Manjoo (South Africa) was appointed *Special Rapporteur on Violence against women, its causes and consequences in June 2009 by the UN Human Rights Council. As Special Rapporteur, she is independent from any government or organization and serves in her individual capacity. Ms. Manjoo also holds a part-time position as a Professor in the Department of Public Law of the University of Cape Town.* □

Letter: To the NHRC

Imprisonment of Four Innocent Persons in False Charges

Date: 05/06/2013

To
Mr. Satyabrata Pal,
Hon'ble Member,
The National Human Rights
Commission, Faridcourt House,
Copernicus Marg, New Delhi-1

Sub: requesting for a high level investigation and necessary legal action on a case of imprisonment of four innocent persons in a false charge of robbery.

Dear Sir,

I would like to bring your kind attention on the above said subject that four innocent persons namely Mr. Mahendra Ram, Mr. Sardar Paswan, Mr. Devki Paswan and Mr. Wali Mohamad were imprisoned in a false charge of robbery by the police of Bhawnathpur police station comes under Garhwa district of Jharkhand.

On 11th October, 2007 there was a robbery in the house of Mr. Umesh Kumar Dubey located in the area of Bhawnathpur police station. Consequently, the police had arrested Mr. Manoj Sony in the case, who had given name to the police of four persons - Mr. Mahendra Ram, Mr. Sardar Paswan, Mr. Devki Paswan and Mr. Wali Mohamad. Hence, the police arrested them and

sent to Garhwa Jail. However, they are innocent and had nothing to do with the robbery. But the facts are:

1. The police had submitted a false charge sheet against Mr. Mahendra Ram, Mr. Sardar Paswan, Mr. Devki Paswan and Mr. Wali Mohamad in the Lower Court, Garhwa, which was prepared merely on the basis of the statement of Mr. Manoj Sony and few others.

2. The police also produced false witnesses in the Court to ensure conviction of Mr. Mahendra Ram, Mr. Sardar Paswan, Mr. Devki Paswan and Mr. Wali Mohamad in the case.

3. According to Mr. Sardar Paswan, he was in duty on 11 October, 2007 where police arrived and asked him to go with them to the Court for giving witness in the case but the Police sent him to Jail.

4. The Crime Investigation Department (CID) has investigated on the matter and found that Mr. Mahendra Ram, Mr. Sardar Paswan, Mr. Devki Paswan and Mr. Wali Mohamad were not involved in the case of robbery but they are innocent.

5. The Police have failed to arrest the real culprits therefore they victimized Mr. Mahendra Ram, Mr. Sardar Paswan, Mr. Devki Paswan

and Mr. Wali Mohamad to bury their failure and inability.

Hence, it is a clear case of gross violation of the right to a dignified life of Mr. Mahendra Ram, Mr. Sardar Paswan, Mr. Devki Paswan and Mr. Wali Mohamad guaranteed by the India Constitution.

Therefore, I request the National Human Rights Commission for the following actions:

1. A high level investigation should be done on the case of imprisonment of four innocent persons - Mr. Mahendra Ram, Mr. Sardar Paswan, Mr. Devki Paswan and Mr. Wali Mohamad in false charge of robbery.

2. A case should be registered and legal action should be taken against the Police Officers of Bhawnathpur police station, who are involved in victimizing the innocent persons.

3. A compensation package of Rs. 5 lakh and government a Job should be given to each and every victim - Mr. Mahendra Ram, Mr. Sardar Paswan, Mr. Devki Paswan and Mr. Wali Mohamad.

I shall be highly obliged to you for the same.

Thanking you.

Yours sincerely,

Gladson Dungdung, General Secretary, JHRM, Ranchi. □

Cleanse Saranda forests of Adivasis and give it to Corporates for Mining

"Green Panel gives nod to mine in the Naxal affected Saranda forests of Jharkhand"
- (Urmi A Goswami, ET Bureau | 4 Jun, 2013)

Nakli: "Cleanse Saranda forests of Maoists and bring development to Adivasis"

Asli: "Cleanse Saranda forests of Adivasis and give it to corporate houses for mining"

Stan Swamy

Finally, the cat is out of the bag!

All the drama about driving out the Naxalites out of Saranda forests and bring development to Adivasis is a cheating game. The PM on several occasions had said the Maoists are the single largest security threat. He revealed his government's real concern on 18 June, 2009, when he told parliament: "If left-wing extremism continues to flourish in parts which have natural resources of minerals, the climate for investment would certainly be affected." What he really meant to say was 'the Adivasis in central India are the biggest internal security threat because they occupy land and forests full of minerals which they refuse to part with but are necessary for nation's growth'. **The Adivasis are the sacrificial lambs to be slaughtered on the altar of India's industrial growth.** This also confirms what the Home Minister said about Adivasis when UPA came back to power in 2009, namely he regretted that many intellectuals, writers, artists, professionals have begun to romanticize the Adivasi and their traditions, culture etc. He said there was a time when Adivasis lived cut off in forests and had their own distinct identity and culture. But that time has passed and it is imperative that they be brought into the national mainstream and into another age and time when industrial production is the hallmark of development and the minerals located in Adivasi territories need to be excavated. That means the indigenous people sitting on top of these mineral riches will need to be displaced and their land and forests taken away from them. They must, in other words, accept the inevitable fact of moving out of their ancestral homeland and becoming urban industrial unorganized workers. This decision of the corporates and government is unfolding itself in Jharkhand. It has already done so in Chattisgarh where 644 mostly adivasi villages were

evacuated by the infamous Salwa Judum and about three lakhs of people have been displaced. Now it is Jharkhand's turn.

History of mining-related displacement in Saranda:

The Saranda forests bordering Orissa and Jharkhand are among Asia's largest and best sal forests. An important elephant habitat, the Saranda forests area is home to tribal groups like the Ho. Uncontrolled mining, both legal and illegal, for iron ore has been destroying the forest and wildlife. The area is dotted with iron ore mining towns including Gua, Chiria, Kiriburu and Noamundi.

The 855 square kilometer area of dense sal forest had been under Maoist control for more than a decade. Between 2000 and August 2011, the area was under the administrative control of the Maoists' Kishan Karntikari Samiti and the Nari Mukti Sangh. During this period, the official Indian administrative machinery has been non-existent. The core area of Saranda Forests is home to 56 villages with a tribal population of about 36,500.

The impact on the forests has been significant. State forest reports show that between 1997 and 1999, about 3,200 hectares of forest was lost in the Singhbhum region. Between 2001 and 2003 some 7,900 hectares of dense forests were lost in the East and West Singhbhum districts. Rungta Mines which is based in West Singhbhum and which was raided by intelligence agencies for mal practices just a few months ago has also been recommended for iron ore mining in 99 hectares, of which 90 hectares is virgin forest. (Urmi A Goswami, ET Bureau | 4 Jun, 2013) **What will happen if mining companies come in . . .**

The forest panel has suggested that 99 hectares, of which 90 hectares is virgin forest, be diverted for iron ore mining. In January, the Forest Advisory Committee recommended the diversion of 1,500 hectares to

allow JSW Steel and Jindal Power and Steel mine iron ore and manganese. A month later, the statutory panel advised the ministry to permit SAIL to mine iron ore in 242 hectare of Saranda forests in the Jhillingburu division. (Urmi A Goswami, ET Bureau | 4 Jun, 2013)

Some voices within central govt against this process:

The Tribal Affairs Minister Krishna Chandra Deo has consistently taken a stand that mining in adivasi areas should be stopped forthwith since this is the main cause for the rise of Maoism. The Rural Development Minister Jairam Ramesh has taken a more conservative position that since he has launched his Integrated Action Plan in Saranda, it should not be disturbed by giving fresh mining leases at least for the time being. However he makes a subtle distinction that whereas Public Sector Units (eg. SAIL) can be given licence, private companies should be barred! These lonely voices from within the govt do not seem to make any difference.

Finally the people will decide and act:

The unfortunate thing is that some grave factors are being deliberately ignored by corporates, govt and local administration: namely, Saranda forests as part of West Singhbhum district is in Vth Schedule area where tribal land cannot be transferred to any non-tribal entity, be it the govt or private companies. Thus the Indian Constitution is being violated in an irremediable manner.

So finally the indigenous adivasi people will not only refuse to give their land and forests for mining but also by doing so will safeguard the Indian Constitution. It will be up to the rest of society who cherish justice as something worth struggling for to stand up and take sides with the indigenous adivasi people of our land. □

Whither Justice: Fabricated Cases and State

Ram Puniyani

Rihai Manch, a forum for getting justice to the falsely implicated youth in the cases of acts of terror has currently (June 2013), a protest Dharna (sit in) to demand the arrest of police and IB officials responsible for the death of Maulana Khalid Mujahid, to implement the R.D. Nimesh Commission report and to release the innocent Muslim youth implicated in acts of terror. This campaign is getting broader support from more human rights groups and affected community. This is the major effort by a civic society group to democratically protest against the insensitive and biased state machinery, to pressurize it to come to the path of justice.

The Samajvadi Party, Akhilesh Yadav Government in UP, had earlier claimed to be the major champion of the cause of Muslims, to the extent that the main leader of this party Mulayam Singh Yadav was derogatorily called Mulla Mulayam. But as he came to power last time also during his regime many a communal episodes, violence, took place under the very nose of the Government. Currently also Akhilesh Yadav's regime is marked by over 27 episodes of major riots. On the top of that this Government in its election promise had said that the innocents, implicated in the acts of terror will be released. On the contrary, the death of Maulana Khalid Mujahid in the police custody has raised sufficient doubts about the intentions of the Government. Even R.D. Nimesh Commission report was kept in the cold storage from last one year, and now when it has been released finally, the government is refraining from taking action, hiding behind the argument that it will be discussed in future Assembly session before action is taken on the report. As such Government has full prerogative to take action at Cabinet level. People fear that this commission report may also face the same fate as the other commission reports, which are

generally put on the backburner or put in the cold storage.

Ashshish Khaitan, one of the journalists with dogged determination, sensitivity and honesty, has floated a portal, Gulail (Slingshot) to highlight the investigative reports related to the framing of innocents by authorities. Many an officers have falsely implicated innocents, despite knowing the truth, to enhance their own career prospects or to due to the biases which have gripped the large sections of the law enforcement agencies. These agencies regard that only youth from one religious community are responsible for the acts of terror. Khaitan also opines that putting forward the truth of such cases is also not of much use; as in such cases reports of honest investigations are overshadowed by the biased reporting and opinions in the print, T.V. and social media. He is pinning his hopes on judiciary and the people's campaigns for getting justice. The ongoing dharna in UP is drawing the attention of the social groups and is being sustained for over two weeks by the social activists and the pained and anguished community, whose young ones' are being incarcerated and have to suffer not only the future career prospects but have also to get the blame, which ostracize them from social life. In this direction various efforts have been undertaken in the past but after temporary response and restraint the investigation agencies lapse in to their usual prejudiced actions.

Not only can this be seen in the case of UP, but overall one sees the wide gulf between the promises and actual actions of the so called 'secular parties'. While in Maharashtra the Congress coalition came to power with the promise of implementing Shrikrishna Commission report of 92-93 riots, after coming to power on this promise it put forward the usual excuses and the guilty police officers and political leadership continued to

be in their positions of power despite sufficient proof of their involvement in instigating and participating in the riots., As for as justice to the victims and action against the guilty is concerned Samajvadi Party seems to be no different. The R.D. Nimesh Commission has given the full truth based on which it can proceed to punish the guilty police officers, but that's what is being avoided. The credentials of so called secular parties are more or less similar, be it the Congress or be it the Samajvadi Party, they have very opportunistic attitude as far as the justice to minorities is concerned. While communal parties are out to do away with the rights of minorities and deny them justice through and through, these so-called secular parties have dual character. They promise and are unable to deliver as their calculations are built around the vote bank politics.

This is due to multiple factors. One is that these supposedly secular parties are also being trapped by the considerations other than the values of secularism. So, controlling of communal violence, which is possible if there is adequate determination to do so, is not being done effectively. The second reason is the communalized state machinery, the investigating agencies, police and bureaucracy. How to investigate the cases, how to frame the innocents is an easy enough job, which the authorities do and their Khaki uniform empowers them to do it with ease. It is precisely due to this that the fate of inquiry commission reports has not been significant one. Starting from Madon Commission of inquiry into Bhiwandi riots, to Shrikrishna Commission and Liberhan Commission reports, the outcome, taking action based on the report, is close to zero as the implementing authorities, political leadership is opportunist and lacks the strength to stick to principles.

So where do we go from here. While

the communal forces are out to proactively browbeat the religious minorities, the secular formations do not have the spine to ensure justice and equity. It's here, that the social activism which has prominently come up during last two decades in particular, needs to be strengthened. The activist groups have taken up these issues seriously and the initiatives by social activists are a major landmark in this direction. One wonders, why are the left parties,

which should be principally secular to the core are shunning these efforts. Their joining these efforts to get equity and justice to minorities will put pressure on the parties like Congress and Samajvadi to try to become sincere in their efforts.

The intensification of efforts through judiciary and popular protests has to be intensified. The rot set in our democratic polity due to the infiltration of communalism through different mechanisms has been a

very dangerous one to the values of our Constitution. It is time that we as a nation introspect and get over the biases and prejudiced behaviors towards weaker sections of our society. The path to social progress is paved through amity and justice. Professional attitude in investigation of acts of violence, communal amity and justice for all are the prerequisites of social progress, progress of society in the real sense. □

ICLR Report:

Workers in Maruti Suzuki Manesar Plant: "Justice Delayed is Justice Denied"

31 May 2013, New Delhi: The International Commission for Labor Rights (ICLR) constituted a team of lawyers and trade unionists from France, Japan, South Africa, the USA and India to investigate the incidents that led to the summary dismissal of over 500 permanent workers and over 1800 contract workers at the Manesar plant of Maruti Suzuki India Limited (MSIL) in August 2012. The team was constituted to bring international law and policy perspectives to bear on a situation that has festered for almost a year, with – at a minimum – 147 workers in jail over that period. The Commission reminds the Government of India that, under well-recognised international and domestic principles, "justice delayed is justice denied."

The group also brings important comparative perspectives on the current or proposed role of this company in the global economy. MSIL has a parent company in Japan, substantial exports to Africa and Europe, a proposed assembly plant in South Africa, and an investor base in the United States – understanding the company's practices in India is an imperative for those committed to corporate accountability and sustainable development jurisdictions outside India.

From May 25 to 31, the team has

been in India studying the situation at the Manesar plant of Maruti Suzuki. The work of the Commission has included:

- meetings with members of the Provisional Committee of the Maruti Suzuki Workers Union (MSWU) and other terminated workers of the Manesar plant as well as their families
- visit with the individuals currently in jail in Kaithal
- discussions with the leadership of national trade union centres AITUC, CITU and HMS, and plant-level unions in Gurgaon-Manesar-Dharuhera industrial areas, and with the representative of the global union federation, IndustriALL
- consultations with MSWU's advocates and legal counsels
- interviews with the administration of the state of Haryana, including Director General of Police, the Commissioner of Police (Gurgaon) and the Joint Labour Commissioner
- meeting with the Haryana State Human Rights Commission
- attended court hearings
- meeting with representatives of the CII and ASSOCHAM, particularly since the management of Maruti-Suzuki India Limited refused to meet the delegation in spite of an extensive exchange of faxes and emails.
- perusal of documents, tripartite agreements, court records and

police reports of the dispute between MSIL and the workers at its Manesar plant.

Maruti-Suzuki began operations in Manesar in 2006, employing trainees for up to three years and contract workers who performed the same tasks as permanent workers in core areas of manufacturing activity. Media reports that remain unchallenged by management and the testimonies we received from workers of the Manesar plant record an experience of extremely high work intensity, with unpaid forced overtime work, wage deductions even for planned leave and overbearing and abusive supervision and invasive surveillance.

**The key findings of the team are:
1. The management of Maruti Suzuki India Limited at its Manesar plant:**

1.1 Since sometime in 2011 but certainly from early June 2011, coerced workers to join the Maruti Udyog Kamgar Union, an organization that management had been instrumental in constituting in the Company's Gurgaon plant, in violation of ILO Convention 87 which stipulates that employers refrain from interference in workers' trade union activity. The management further violated this principle by interfering with workers' right to forming and joining a union of their own choice, over the course of many months.

1.2 Following the registration of the Maruti Suzuki Workers Union (MSWU) on 1 March 2012, and the submission of the Charter of Demands by the union on 18 April 2012, Maruti Suzuki management violated core principles of bargaining in good faith, as set forth in ILO Convention 98. Of particular concern is the allegation that Maruti Suzuki refused to negotiate on a core issue related to terms and conditions of work – the use and treatment of contract workers. This further vitiated industrial peace, and created an industrial dispute.

1.3 On 18 July 2011, it is alleged that a supervisor addressed a worker with a caste slur. Maruti Suzuki's failure to address this promptly, through an impartial internal inquiry, is a violation of other Conventions of the ILO, particularly those relating to workplace discrimination. This has a bearing not only on the rights of individual workers, but on the possibility of enduring industrial peace.

1.4 If indeed the management was effectively managing the Manesar plant under the rules it had created for itself, including the Employment Standing Orders, it is difficult to understand how workers could have been responsible for the alleged acts of violence and arson of 18 July 2012, since workers were required to be thoroughly frisked every day before they entered the plant.

1.5 In August 2012, the management summarily and without following due process of law dismissed 546 permanent workers, and terminated the services of over 1800 contract workers. The termination of these workers, who were known to be leaders, members or sympathizers of the Maruti Suzuki Workers' Union, constitutes impermissible retaliation

against those exercising their right to form and join a union of their choice.

2. Role of Labour Department

2.1 The dispute at the Manesar plant arose since the Registrar of Trade Unions refused to register the trade union of the workers' choice in June 2011, in violation of the principle, in ILO Convention 87, that the state may not require "previous authorization" of a union. Under the Convention, registration must remain a formality, with no role for the authorities to exercise inappropriate discretion.

2.2 Following the events of June 2011, the Labour Department failed to act to protect the workers' right to association.

2.3 The Labour department failed to serve as an appropriate administrative and adjudicative body of labour matters, especially those connected to industrial relations, as required by ILO Conventions. In particular, on multiple occasions, it did not act on available information that a significant industrial dispute was underway, and to ensure effective conciliation proceedings. Most importantly, it utterly abdicated its responsibility to address the dispute regarding the summary dismissal of 547 permanent workmen in August 2012.

3. Role of the Police:

3.1 The involvement of police including the admitted use of police intelligence branch in maintenance of industrial peace amounted to inappropriate interference by the state with workers' rights of assembly and association. ILO Convention 87 recognizes the centrality of civil liberties to the free exercise of trade union rights.

3.2 The police deployed a large detachment at the factory gate and

inside the plant based on complaints and calls from the management of Maruti Suzuki without adequate cause of action or enquiry or investigation, thereby serving as coercive pressure on peaceful worker protest,

3.3 The police failed to act to protect citizens, including their right to life, and remained a silent observer to the events of 18 July, admittedly at the request of the Maruti Suzuki management, at the Manesar factory gate on 18 July,

3.4 Workers were arbitrarily arrested after the 18 July incident based on one FIR lodged by the Security Manager of the Company, again in violation of the guarantees of Convention 87. Families were harassed and illegally detained to coerce workers to surrender in gross violation of their human rights.

3.5 The workers were arrested and kept in police custody for several days and subjected to severe torture. Independent medical examination sought by the workers' counsel and directed by court order was delayed by a month and even then it revealed deep injuries.

3.6 The police opposed bail of workers not even named in the Maruti Suzuki FIR of 18 July despite the inability of police investigation to produce proof of involvement.

3.7 The Government of Haryana constituted a Special Investigation Team (SIT) to investigate the incidence of violence at the Manesar plant. The entire Report of the SIT has not been made available to the workers' counsel to protect the identity of unnamed witnesses in the Report. This is in violation of International Standards of witness protection and collaboration with justice.

3.8 Subsequently police have

Regarding Enrollment of Members

PUCL National office gets a large number of requests for membership. This should please be noted that the PUCL National office does not enroll any member directly except at the instance of the National President/General Secretary as an exception. Prospective members are advised to contact their respective state or district unit for being enrolled as members of the organisation.

launched a consistent attack on the workers right to democratic dissent by refusing to allow peaceful protests both in Gurgaon and in Kaithal. The arbitrary arrest of one member of the Provisional committee not named in the FIR or by any eye witness before a press meet and the enforcement of IPC Section 144 in Kaithal and the arrest of 95 workers from their sit-in protest site the night before their planned protest on 19 May 2013 and the subsequent lathi charge on the peaceful sit in on 19 May and the arrests thereafter only creates an atmosphere of terror. Again, this has taken place in violation of the understanding promoted by ILO Convention 87 that the right of association and the right of peaceful assembly and protest are closely interlinked.

Based on these key findings the ICLR notes that (1) the management of Maruti Suzuki has engaged in significant violations of law with respect to the right to freedom of association, the right to collective bargaining and the right to equal pay for equal work, (2) the Labour Department has been ineffective in ensuring the rule of law and (3) the Police has transgressed its powers amounting to interference in industrial disputes and yet failed to act when it should have.

In view of foregoing the ICLR team recommends:

1. Grant of bail to the 147 workers of the Manesar plant of Maruti Suzuki in Bhondsi Jail since 19 July 2012 and for 11 workers at the Kaithal Jail arrested on 19 May 2013 and refrain from the threat of arbitrary arrests to terrorise workers and their families,
2. Immediate constitution of independent impartial inquiry to investigate the circumstances from 4 June 2011 that led up to the

incident of 18 July 2012, including into the custodial torture of the workers.

3. The immediate reinstatement of all workers on the rolls of Maruti Suzuki as on 17 July 2012,

4. The Labour Department must ensure through the tripartite machinery that the management of Maruti Suzuki negotiates with the union of the workers choice in good faith,

Furthermore, the ICLR team urges Government to:

5. Create an industrial relations machinery that enables an adequate firewall between the state's labour department and its police force

6. Seek technical assistance from the ILO to bring its labour administration and adjudication processes into compliance with international standards, in terms of a) the framework for union registration, recognition, and collective bargaining and b) protections for workers' right to form and join a union of their choice that are in consonance with ILO conventions 87 and 98.

Ashwini Sukthankar, N Vasudevan

The ICLR team members are: 1. Ashwini Sukthankar, International Commission for Labour Rights; 2. Masuo Kato, National Confederation of Trade Unions - Zenroren, Japan; 3. Yasuhisa Ota, National Confederation of Trade Unions - Zenroren, Japan; 4. Suzanne Adely, United Autoworkers, USA; 5. Immanuel Ness, City University, New York, USA; 6. Franceline Lepany, Labour Lawyer, France; 7. Cherie Monaisa, COSATU, South Africa; 8. N Vasudevan, New Trade Union Initiative, India □

Regd. Office :
270-A, Patparganj
Opp. Anandlok Apartments
Mayur Vihar-I, Delhi-110091
Tel.: 22750014
Fax:(PP) 42151459
E-mail : puclnat@gmail.com
puclnat@yahoo.com
Website : www.pucl.org

**PEOPLE'S UNION FOR
CIVIL LIBERTIES**

Founder : Jaya Prakash Narayan
President : Prabhakar Sinha
General Secretary : V. Suresh
Treasurer : Ritu Priya (Ms)
Vice Presidents : Binayak Sen;
P.B.D'Sa, Ravi Kiran Jain;
Sanjay Parikh
Secretaries: Chittaranjan Singh;
Kavita Srivastava, Mahi Pal Singh.

PUCL BULLETIN

Chief Editor : V. Suresh
Editor : Mahi Pal Singh
Editorial Board : Rajni Kothari,
Rajindar Sachar, R.M. Pal
Chief Editor, Editor.
Assistance : Babita Garg

Printed and Published by:
Pushkar Raj, General Secretary, PUCL,
270-A, Patparganj, Opp. Anandlok
Apartments, Mayur Vihar-I, Delhi-110091
for *People's Union for Civil Liberties*
Printed at: Dixit Printers, 108, Basement
Patparganj Indl. Area, Delhi-110092