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Will Extra-Judicial Killings Ever Stop?

Mahi Pal Singh

Making a mockery of the Rule of Law, which is supposed to exist in this country because of the existence of a Constitution in accordance with which the country is supposed to be run, Surjit Singh, a police official from Taran Taran in Punjab, disclosed about a month ago that he had been involved in the killing of 83 people in faked encounters on orders from his superiors. This was during the period from 1984 to 1996, the period when militancy in the State was at its peak, when according to various investigating agencies and human rights groups, more than 25, 000 people were killed by the Punjab police while the official figures put the total number of people killed in Punjab at 15,000 though even that is not a small number. This number includes persons "missing" from their homes, killed in "encounters," cremated as "unidentified" and "escaped from police custody." It is important to mention here that during that period, police personnel, whether officers or constables were a law unto themselves and many of them were involved in merciless killing of youth by branding them as terrorists for rewards and promotions and also for settling personal scores. The bodies were silently cremated with no questions asked. In 1995, Jaswant Singh Khalra, an officer at a bank at Amritsar in Punjab, who became an activist, used government crematoria records to expose more than 6,000 secret cremations by the police in just one of the then-13 districts of the state. Mr. Khalra himself was killed in October 1995 and, 10 years later, a judge finally convicted six Punjab police officers for their role in his murder. However, given the record of political leadership in the country, it is very doubtful whether those police officers who ordered Surjit Singh to kill with impunity will ever be enquired against, held accountable if found guilty, and punished.

This is just one story of just one so-called 'encounter specialist'. There are hundreds of such encounter specialists in the country and thousands of cases of fake encounters are spread in not only the trouble torn states but also in the comparatively peaceful states. Even government figures show that 555 cases of fake encounters were registered across India during the last four years of which Uttar Pradesh had 138, Manipur 62, Assam 52, West Bengal 35, Jharkhand 30, Chhattisgarh 29, Odisha 27, Jammu and Kashmir 26, Tamil Nadu 23, and Madhya Pradesh 20 and nobody knows how many unregistered cases of fake encounters take place in the country. The very fact that these encounters were fake, even by the admission of the government machinery, it is clear that the victims were killed in cold blood by the trigger-happy uniformed personnel and no civilized society can grant them the authority to indulge in extra-judicial killing of these persons even leaving space for some of them having some kind of criminal record behind them. This is against the very concept of the rule of law and a result of the culture of impunity enjoyed by the personnel of the police, the para-military and the armed forces. But as no case is registered against any of them, no investigation takes place and

no question of ever being punished by the court arises even in cases of fake encounters. This is because of the immunity they enjoy from being booked under the law, as provided under Section 197 of the Cr.PC and Section 7 of the Armed Forces Special Powers Act 1958 where permission of the government is required for filing a case in a court of law against the delinquent officials of the police or a member of the armed forces. Every other individual would be booked for murder not get bail easily if he/she kills a person even while exercising the right to private self-defence as granted to every person under the law. Not so for the uniformed personnel.

This could have stopped and the perpetrators of the crime of 'fake encounters' would have faced prosecution and been punished had an order of a five-judge Bench of the Andhra Pradesh High Court dated February 6, 2009 which ruled that the

first information relating to the circumstances leading to every encounter death will be recorded and registered as FIR because 'on information conveyed of death(s) in a police encounter recording and registering of such information is a non-derogable executive obligation u/ Sec. 154(1) Cr. P.C,' 'a process that structurally ensures judicial oversight, control and supervision, of the integrity of the investigatorial process', 'treating the information as one relating to commission of the cognisable offence of culpable homicide amounting to murder,' and that in such cases 'an investigation mandated by Section 157 Cr.P.C. must follow', not been stayed on March 4, 2009 by a three-judge Bench of Chief Justice K.G. Balakrishnan, Justices P. Sathasivam and J.M. Panchal of the Supreme Court of India, on a Special Leave Petition (SLP) filed by the AP Police Officers Association. The

hope of ending the murderous impunity enjoyed by the lawless uniformed personnel of the police, the para-military and the armed forces awaits the final judgment of the Supreme Court of India in the case and the repeal of the laws which provide such impunity. But, as the Apex Court has not taken up the case for consideration even after more than four years, we do not know when the culture of 'impunity' will replace the culture of 'accountability' and when, if at all, maintaining the morale and confidence of the people in the justice administration system of the country will acquire equal, if not more, importance than maintaining the morale of the police force and the personnel of the armed forces and para-military forces which acts as a deterrent for governments from taking action even against the most lawless of them by providing them the protection of impunity laws. □

Politicalisation of Criminals - The Preventive Remedy

Rajindar Sachar

A recent two Judge judgment of the Supreme Court holding that Section 8(4) of Representation of the People Act 1951 which exempts from vacating the seat by a sitting legislator convicted of offences under sub section (1) and (2) (3) of Section 8 (which prohibit a person from contesting elections to the legislatures) till his appeal is decided is ultra vires. Surprisingly there is less panic and opposition to the judgment than one would have expected - evidently because the judgment exempts from its applicability the existing legislators - thus the present members of Parliament and state legislators in states going to polls this year are not really affected.

The two judge Bench side stepped a 5 judge decision in Prashbhakar case which had categorically held that the two categories, one of persons who are not legislators and the other who are legislators "is based on well established nexus with public purpose". The two situations are different - in the later course vacation of a seat affects the house.

As it is, the courts on their own have developed a universal practice of permitting the convicted member only to mark his presence to prevent his disqualification but forbidding him to take part in the proceedings or vote till his appeal is decided. So for all practical purposes a convicted MLA plays no part in the deliberations of the legislature.

This interpretation by Supreme Court would have serious consequences for opposition, human rights activist, trade unionist and political activist, who are so indiscriminately and partisanly prosecuted under various security legislations or even when holding Bandhs and demonstrations. In such a situation automatic vacation of the seat of a sitting legislator would empower the ruling party with an arbitrary uncanalized power. Consider the enormity of injustice to the elected legislator, who had no conviction at the time of getting elected, but getting convicted during his term would automatically have his seat vacated, notwithstanding that his conviction may be set aside in appeal shortly

thereafter; but by then another person would have been elected, thus causing irreparable damage to the career of the political activist.

The court recognizes the anomaly but opines that a legislator can ask for stay of conviction by the appellate court and if granted he can continue. With respect, is this not leaving to the uncertainty of different reactions by judges prompting the cynical comment in English law that what is justice is measured by the length of Chancellor's foot. I am afraid this process is so discretionary and would vary with the individual decision by different judges - hardly a satisfactory alternative to Sec. 8(4) of the Act, which had at least practical object to see that the electorate choice is not nullified by adverse decision of the trial court without giving an opportunity of it being corrected in appeal which is his statutory right. In order to avoid further delay (which is really the villain) it could be legislated that seat will stand vacated if first appeal fails - no further appeals or revision before the courts will prevent the seat being

vacated. It could also be provided that appeal by sitting convicted legislator will be mandatorily decided within 3 months. This alternative has the merit of removing criminality from elections and also prevention of irreparable harm and injustice to the elected legislator.

No, I am not underestimating the danger of criminalization of politics - personally I would call it politicalisation of criminals, because previously criminals helped candidates to win, but now criminals compete themselves to become legislators - a horrible undemocratic situation endangering clean democracy. A recent survey shows that at present 162 out of 545 Lok Sabha members and 1258 out of 4032 sitting MLA have themselves declared that criminal cases are pending against them. And this in spite of the warning given by Vice President Mr. Ansari as far back as 2004, namely;

"Exactly 23% of MPs elected in 2004 had criminal cases registered against them - over half of these cases could lead to imprisonment of five years or more. The situation is worse in the case of MLAs....," "Are we not progressing?"

My opposition to the extreme interpretation by the Supreme Court resulting in validly elected legislator losing his seat should not be

interpreted as in any way minimizing the danger of criminality in our legislatures. Rather the contrary. I feel that more satisfactory mechanism to halt politicalisation of criminals is to have a law, long advocated by the P.U.C.L. that if six months before the polling date, a person has been charge-sheeted by a court, he /she would stand debarred from contesting the forthcoming election. This time frame would give the concerned person to have the charge sheet quashed by appellate court, thus negating the doubtful defence put forth by political parties of false cases being lodged against political rivals on the eve of nomination date.

I am more disturbed by the second judgment holding valid Sec. 62(5) of Representation of the People Act 1951 which prohibits any person from voting if he is confined to prison even on a petty offence or is in the lawful custody of the police (say being a slum dweller, poor rickshaw driver, and thus unable to give bail) while permitting a rich accused, like the in Coalgate and telecom scandals accused and even when being prosecuted, and even a food hoarder if on bail, but denying the trade union workers like Maruti the right not only to contest election but even the right to vote because the anti labour state is colluding to keep them in jail -

would this not (against their better sense) provoke ordinary simpleton citizen to tend to agree with Charles Dickens favourite Character Bumble when he said; "if law supposes that - the law is an ass - a idiot", echoing in the same strain what provoked George Chapman (1559 - 1634) to say, "I am ashamed, the law is such an ass."

In the U.K. the right to vote is only denied if a person is convicted and sentenced for 12 months. In Israel even a convicted person in jail is allowed to vote.

United Nations as far back as 1955 have resolved "that unconvicted prisoners are presumed to be innocent and shall be treated as such".

Also why is it that the political parties, which are so upset at the latest Supreme Court ruling are mysteriously silent and inactive at not amending election Rules to give the voters the right of negative voting, by carrying out the unanimous recommendation of Election Commissions to the Central Government so as to provide an extra button of negative voting in the electronic voting machine. Are they afraid of facing the searing answer of the electorate in the voting machine of "None of the Above"?

Dated: 24/07/2013 □

Ten Years of Election Watch: Comprehensive Reports on Elections, Crime and Money

Summary and Highlights:

Following are the highlights that emerge from the analysis carried out by Association for Democratic Reforms (ADR) and National Election Watch (NEW):-

- Total Number of Candidates Analyzed: A total of **62847** Candidates who have contested either Parliamentary or State Assembly Elections since 2004 have been analyzed by ADR and NEW.
- Total Number of MPs/MLAs Analyzed: A total of **8790** MPs/MLAs who have either held seats since 2004 either in the

Parliament or in State Assemblies have been analyzed by ADR and NEW.

- **Criminal:**
- Candidates with Criminal Cases: A total of **11063** out of these **62847 (18%)** Candidates have declared criminal cases against themselves.
- Candidates with Serious Criminal Cases: **5253 (8%)** out of the **11063** Candidates analyzed have declared serious criminal cases against themselves.
- Sitting Lok Sabha MPs with Criminal Cases: **162 (30%)** out

of the **543** Lok Sabha MPs have declared criminal cases against themselves. **76** or **14%** of the current Lok Sabha MPs have declared serious criminal cases against themselves.

- Sitting Rajya Sabha MPs with Criminal Cases: **40** out of **232 (17%)** sitting MPs from Rajya Sabha have declared criminal cases against themselves. **16 (7%)** of the current Rajya Sabha MPs have declared **serious criminal cases**.
- Sitting MLAs who have declared Criminal Cases: **1258 (31%)** out of the **4032** sitting MLAs from

all state assemblies have declared criminal cases against themselves. **15%** of the current MLAs from all state assemblies have declared **serious criminal cases** against themselves.

- **MPs/MLAs with Criminal Cases: Out of the 8790 MPs/MLAs analyzed since 2004, 2575 or 29%** have declared criminal

cases against themselves and **1187 or 14%** have **serious criminal charges. INC has 8% and BJP has 13% MPs/MLAs with serious criminal charges.**

- **Financial:**
- **Average Assets of Candidates who have contested Elections: The average assets of all Candidates (62847) analyzed**

since 2004, is Rs. 1.37 Crores.

- **Average Assets of MPs/MLAs: The average assets of all MPs/MLAs (8790) analyzed since 2004 is Rs. 3.83 Crores.**

Regards,
National Election Watch/ Association for Democratic Reforms

29 July 2013 □

Press statement: 22nd July 2013

PUCL Condemns Shooting down of 4 Civilians in Ramban, Kashmir and Demands Independent Judicial Enquiry

PUCL strongly condemns the shooting down by BSF personnel of 4 unarmed civilians in Gool area of Ramban district of Kashmir on 18th July 2013. More than 40 civilians are said to have been injured, some seriously, in the BSF firing and action.

The incident allegedly occurred due to the desecration of a Muslim place of worship as also manhandling of a Muslim cleric by BSF soldiers. This led to a protest by unarmed local civilians before the BSF camp who were agitated over the desecration of religious place and demanded action against the BSF soldiers responsible for the act. To the contrary the BSF has issued a statement justifying the firing on the ground that the protestors were trying to storm the armoury and to seize arms and ammunition stored in the camp.

Amidst the claims and counter claims of locals and the BSF, there

lies the reality that the protesting civilians were unarmed. The resort to firing by the BSF forces is therefore questionable and is indicative of total failure of counter-preventive measures to quell civilian, unarmed protests. It also raises the issue of the adequacy of training given to the BSF jawans to handle such incidents of collective, unarmed civilian protests. Such situations of confrontations should reasonably be anticipated considering the long history of civilian unrest and security forces action in Kashmir valley.

The Ramban firing incident once again highlights the sordid reality of an extreme sense of alienation, disaffection and hostility of local population against the Central forces. The Central and State Governments have done little to reduce the sense of estrangement amongst the local people through concrete, meaningful measures recognising the political aspirations of the local people. To the

contrary justifying such firings only increases the sense of hostility and resentment of local people.

PUCL demands that an impartial judicial enquiry be initiated into the Ramban firings so that the truth behind the incidents can be brought to light. Internal enquiry by the BSF Special Director General, Dilip Trivedi, will hardly be sufficient to generate confidence that a fair enquiry and justice will be ensured in the firing incident.

PUCL once again reiterates that the problem of Jammu and Kashmir is a political problem and that any lasting solution can be reached only by finding political solutions agreeable to all concerned. Treating the entire issue as a problem of law and order is not only perverse and also short sighted but will only prolong the conflict timelessly.

Sd/-

Prof. Prabhakar Sinha, President;
Dr. V. Suresh, General Secretary,
PUCL National □

End of Trauma for a Muslim Family in Delhi

Nuzhat Jahan, a Pakistani national, has been living in India since 1983 after her marriage to Delhi-based Gulfam. She was sentenced to one week's imprisonment, and sent to Tihar Jail. Since then, Nuzhat has been languishing in the beggars' home at Nirmal Chhaya complex of Tihar Jail. Her case was taken up by N.D. Pancholi, advocate, President,

PUCL-Delhi on behalf of PUCL-Delhi. Here is the news story of the success in the case as published in the Indian Express dated 8th August 2013. It follows earlier success stories of the efforts of the Delhi PUCL about 2-3 years ago in which 17 Pakistani and 14 African nationals, who had been languishing in the Foreigners' Detention Camp,

Lampur in Delhi for long periods after completing their sentences or after being released by courts on being found not guilty.

The news item carrying this news, as published in the Indian Express, is being reproduced below.

Mahi Pal Singh, Secretary, PUCL National □

HC Offers Hope of Eid Reunion with Family to Pak Woman Aneesha Mathur: New Delhi, Tue Aug 06 2013

On May 3 this year, a sessions court ordered the deportation of Pakistani national Nuzhat Jahan, who has been living in India since 1983 after her marriage to Delhi-based Gulfam. She was sentenced to one week's imprisonment, and sent to Tihar Jail. Since then, Nuzhat has been languishing in the beggars' home at Nirmal Chaya, and her husband and family have only been able to meet her only a handful of times. Now, with the Delhi High Court hearing her case, there is a possibility that Nuzhat may celebrate Eid with her family.

On Monday, Nuzhat's husband Gulfam approached the high court with a petition to release her from Nirmal Chaya and return her to her family home while the citizenship application was being processed. During the hearing before the high court bench of Justices Kailash Gambhir and Indermeet Kaur, Nuzhat's lawyer N.D. Pancholi asked the court to allow her to reside with

her family after undertaking a bond under the Foreigners Act. "It is the month of Ramzan and she has been alone in the beggars' home even though she has children and grandchildren here," said Pancholi. Gulfam, who works at a card printing shop at Kala Masjid in Old Delhi, says that he has not been allowed to meet his wife for more than a few minutes at a time at the Nirmal Chhaya home.

The couple got married in 1983 when Gulfam went to meet his extended family in Pakistan. For two years, Nuzhat came to India on visits and then got her first long-term visa in 1985. She renewed her Pakistani passport in 1988, and then applied for renewal again in 1994. The Pakistan High Commission then told her to apply for Indian citizenship, which she did in 1996. Her file has remained "under process" since then.

Labelling life in the beggars' home akin to "animal existence," the plea

filed before the court seeks the court's directions to the government to expedite the process of grant of citizenship and allow her to stay with family during the pendency of her application.

During the hearing on Monday, the high court seemed to take a sympathetic view of Nuzhat's plight, asking the advocate for the government of India to explain why she was being kept at the Nirmal Chhaya home. What is happening with the citizenship application?" asked the court.

"Can she celebrate Eid with her family?" the court asked while asking the government lawyers to reply to the plea on Wednesday.

The court gave only two days to the government to formulate its reply to enable it to have time to hear the arguments in time for Nuzhat to possibly go home for Eid.

Courtesy: Indian Express: 8th August 2013, City Page □

Report on PUCL Andhra Pradesh 15th State Conference in Hyderabad on July 20, 2013:

Constitution is the Only Solution for All Ills in Society: Justice Chandra Kumar

Andhra Pradesh High Court Judge Justice B Chandra Kumar said that failure of our Constitution is leading for various problems in our society. Speaking as Chief Guest at the 15th State Conference of PUCL-Andhra Pradesh unit at Basheerbagh Press Club, Hyderabad on July 20, 2013, he deplored that as a result no one feels safe in the society.

He pointed out that though we have been formulating a number of progressive legislations for the well being of the people, we are failing in implementing them. He deplored that tribals are being left to the harassment of money lenders in tribal areas and innocent youth are being harassed branding them as 'extremists'.

Referring to abduction and rape of tribal girls raiding on their hostels and children killed due to mid-day meal,

he said that "we should feel shame of our democracy". Stating that the only solution for all problems is implementing of constitution in true spirit, he felt the need to create awareness among people on civil liberties and their rights. He appealed students and youth to take participate to promote value based society.

Renowned civil liberties activist Prof G Haragopal earlier inaugurating the conference deplored that we have been violating people's rights and resorting to destruction in the name of 'development'. He lamented that elected governments have been resorting to violence and violation of human rights due to their failure in initiating political dialogue with the groups and people who are unhappy with its policies and activities.

According to him, the 'development

mode' being followed by the government is against our constitution and anti-people. It has been increasing economic disparities. The tribals and other displaced people have been expressing their dissent after realizing the development model failing in bringing a positive change in their living.

Stating that using force never provided solution for any problem, he felt that the government should try to initiate political dialogue with the people who are protesting against its policies realizing their right to life and try to convince them.

Senior journalist and Hans India (English daily) Resident Editor Tankasala Ashok said that in a democracy friction is natural between civil liberties activists/organizations and the government. He lamented

that harassing civil liberties activists and organizations turned to be an art for the Andhra Pradesh police.

He deplored that the growing middle-class and newly educated population in the country are not having awareness on civil liberties. Why they are not attempting to resist growing human rights violations in the country, he asked.

Ashok also wondered that the ruling parties in India are always worry about GDP growth, which is limited to wellbeing of rich people, but not bothered about Human Development Index, that related to vast majority of common people in this country.

PUCL-AP President Mrs. Jaya Vindhyaala presided. In her presidential address she deplored over insensitiveness of the government in the state, particularly the police about civil liberties and adopting victimize attitude towards civil liberties activists.

Narasimha Reddy from Organization for Protection of Democratic Rights (OPDR) and Prof Chakradhar Rao, President, Forum for Right to Work also spoke. V. Prakash submitted Secretary's Report in the conference. He detailed PUCL-AP activities during last two years.

Resolutions

1. PUCL-AP State Conference expressed its deep condolence over the death of its former national president and great stalwart in the arena of civil liberties in the country K G Kannabhiran. It said that he is a fearless champion of civil

liberties, who inspired numerous activists all over the country and led restless struggles for promotion and protection of civil liberties till his last breath. It also conveyed its condolence over the death of renowned civil liberties activist and founder-president of Forum for Right to Work Prathipati Venkateswarlu. The conference also deplored over the suicides of hundreds of youth in struggle for statehood for Telangana region and condoned their death. It also condoned the suicides of number of farmers and weavers in the state.

2. The PUCL-AP State Conference strongly condemned victimized attitude of state and central governments against rights activists and also civil liberties organizations. It particularly condemned jail sentence to PUCL national vice president Dr. Binayak Sen by a lower court on the charges of "Sedition" and arrest of PUCL-AP President Mrs. Jaya Vindhyaala for posting her fact finding report on Facebook. The Conference demanded for abolition of "Sedition" provisions from the provisions of IPC. It demanded the Government of Andhra Pradesh to take disciplinary action against police officers who acted hasty in making arrest of Mrs. Jaya Vindhyaala.

3. PUCL-AP State Conference deplored over continuing lock up

deaths and torture in custody in Andhra Pradesh. It also expressed concern that the police are acting to please their political bosses more than come to the rescue of scheduled castes, scheduled tribes and other weaker and marginalized sections of population, when they became victims of violation of their rights. It urged the all the rights activists and civil liberties activists in the state to come together to fight against such tendencies unitedly.

PUCL AP Committee: New Executive: The following new executive was elected at the conference.

President: Jaya Vindhyaala; **Vice-Presidents:** Ch. Narendra, Prof Chakradhar Rao & Abraham; **General Secretary:** Iqbal Khan; **Secretaries:** V Prakash, Aslam & Balu Akkisa; **Treasurer:** Dasarath; **Members:** Hanumanth Naik, P Nagaraju, D Vijaya Sunder, B Shivakumar, Ch. Vishnu Vardhan Reddy, Masaiah, Ms. Sujatha and SK. Subhani.

PUCL- Greater Hyderabad Committee

President: P Vittal Rao, **Vice-Presidents:** Saleem, Raghu, **General Secretary:** Riazuddin; **Secretaries:** P Damodar Reddy, Y Rajendra Prasad and Md. Khaja, **Treasurer :** D Vijendar Reddy; **Members:** Jafkar Khan, Ms. Krishna Veni, Yakubhin, Masood, Ms. Chandra Kala and Firoze Khan. □

PUCL-AP Secretary's Report

Lock-up deaths: It is unfortunate that in spite of National Human Rights Commission's monitoring custodial deaths are continuing in Andhra Pradesh. We conducted fact-finding reports visiting respective police stations, submitted reports to the higher police and government authorities, besides media releases in couple of incidents. They include death of sports person Rami Reddy, hails from Nellore in Miyapur Police Station of Hyderabad; death of rickshaw worker Subramanyam in

Ramachandrapuram police station of Medak district; death of Lingaiah in Sivarampalli police station and a farmer Venkata Reddy in Tadepalligudem police station of West Godavari district.

Visiting police stations: PUCL-AP teams visited couple of police stations to find out implementations of D K Basu guidelines. The police stations are Malakpet, Narayanaguda, Chikkadapalli, Mogulpura, Dabirpura, Meerchowk and Hussani Alam police stations in

Hyderabad; Sivarampalli, Miyapur, Raidurga and Alwal in Ranga Reddy district; Nagarampalem, Arundalpet, Lalapet and Nallapadu police stations in Guntur district. But nowhere police are following D K Basu guidelines in true spirits. Only station house officers in Dabilpura and Nallapadu seem to be having knowledge of D K Basu guidelines. A detailed report submitted to the state government.

Police high-handedness: PUCL-AP responding towards news reports

related to police high-handed behavior. Responded to news reports stating a children and criminal were together kept with hand-cups.

Women harassment: Several times responded to incidents of women harassment like domestic violence and sexual violence at work place. In Hyderabad, come to the rescue of a women employee who was harassed by her own family members and a fact finding report submitted to higher authorities on detention and rape committed against a girl in Dachepalli of Guntur district.

In Old City of Hyderabad, when local police forcing a married women Fatima Begum, to vacate her house to facilitate for a known criminal to stay there, a fact finding report submitted to higher authorities. As a result local police officer was transferred and protection was provided to that women.

Illegal Mining: Even before arrest of GaliJanardhana Reddy by CBI, a fact finding report prepared on allegations of illegal mining by benami companies of GaliJanardhana Reddy in K Samudrammandal of Warangal district. Reports were submitted to state and central government, resulting suspension of illegal mining.

Repression in Old City: The police practically remaining as silent spectators to the high handed attitude of a particular local political party and the government also seems to be surrendered to that party. PUCL-AP took up cases of several victims in this regard.

A Fact Finding Report was prepared on the allegations of involvement of local MLA AkbaruddinOvasi in the murder of the brother son of his

political opponent Mohammad Phailwan. On the complaint of PUCL-AP, NHRC took up the case. Also a case was filed in the AP High Court, on behalf of the victim's family members. On the directions from the High Court, AkbaruddinOvasi's name was included in the charge sheet with regard to murder.

PUCL-AP also took up cases of opening roudee sheets against opponents on Old City alleging their involvement in communal clashes. A student by name Akhil resorted to commit suicide with a feeling of insult for opening roudee sheet due to political pressures by the police. This was complained to NHRC.

A report was submitted to the government on frequent communal clashes in and around Charminar, demanding opening of roudee sheets against those responsible for such clashes. This was results in opening of roudee sheets against some Municipal corporators.

A complaint was submitted to NHRC against suicide by a person Wazi, a milk dairy worker in Dabirpura, due to harassment by moneylenders. A report was also prepared on the harassment of moneylenders in the Old City.

Home Guards: A report was submitted to AP State Human Rights Commissions on miserable living conditions of Home Guards, who are under-paid without job guarantee. PUCL-AP demanded the state government to revoke the G O No 315, which prohibits youth named in various criminal cases from applying for police jobs. PUCL-AP felt it would be injustice to disqualify such youth without completion of investigation into such cases.

Chirala MLA's atrocities: A detailed fact finding report was prepared into various atrocities being committed by Chirala MLA Amanchi Krishna Mohan in Prakasam district and his involvement into various illegal activities like land encroachments, illegal sand mining, involvement in high-tech prostitution. The report was submitted to state and central governments demanding CBI probe into those allegations.

Surprisingly, the local police registered false cases against PUCL activists for preparing such report under the provisions of IPC 120 B (conspiracy), 354 (assault of women) and other sections. A case was registered against state president Mrs. Jaya Vindhya under cyber crime, 66A of I T Act and arrested her on a Sunday in Hyderabad. This has caught national attention. Prakasam district Convener Vijay Sunder was also arrested under IPC 354.

Signature Campaign: Signature campaign was taken protesting against pro-longed detention of PUCL activist Ms. Seema Azad and conviction to PUCL national vice-president Dr Binayak Sen on the charges of 'sedition', demanding unconditional release of these two activists. A candle light rally was conducted on December 10, 2012, at Charminar, demanding revoking 'sedition' provision from the IPC. A dharna and candlelight rally was conducted near Indira Park in January 2013, demanding removal of Armed Forces Special Powers Act, 1957 and also expressing solidarity to Ms. Sharmila Irom, who is on indefinite fast since 11years.

Ch. Narendra, Vice President, PUCL-AP □

Organisational Queries

We receive from time to time queries/requests from new members regarding the PUCL identity card and also regarding the privileges of the **Life** members and **Patron** members as compared to **Annual** members. The three types of membership, *i.e.*, **Yearly**, **Life**, and **Patron**, do not represent a hierarchy of membership. All members are equal. Life membership and Patron membership simply afford an opportunity to those who desire to contribute some extra money to the PUCL to strengthen its financial position. No membership carries any privilege. All members shoulder the burden of fulfilling the aims and objects of the PUCL. The PUCL does not issue any identity cards to its members as they are not supposed to take initiative independently.

V. Suresh, National General Secretary, PUCL □

Fact Finding Report on the Bihar Mid-Day Meal Tragedy

By State Advisor, PUCL vs. UoI [WP (c) 196/2001] and his Team

21 July 2013

Mr. Rupesh, the State Advisor of the Honorable Supreme Court's Commissioner, Mr. Sanjay Kumar, senior researcher and Mr. Naim, a school teacher visited Dharmasati Gandaman, Saran on July 18, 2013, after the death of 23 school children and hospitalization of more than fifty school children due to consumption of mid day meal on July 16, 2013.

On the morning of 18th July, the team departed from the office of the Advisor at 7.30 and reached the place of incident at 10.30. The team began with the visit of the Dharmasati Gandaman primary school, where school children have died owing to the consumption of MDM. The school located at the beginning of the village main road and is being run in a small 200 square feet one room community hall. A 100 square feet verandah is also built alongside the room, which is in a dilapidated and unclean condition. It opens in to a ground outside the school building. When the team reached there, a crowd was assembled around the school.

After interaction with the crowd, it was learnt that most of them were not from this village. The team was introduced to one elderly villager namely, Rameshwar Mahto by Manoj Tiwari and Jitendra Kumar of Khajoori and Bahuar villages respectively. Rameshwar Mahto has lost his three grand children (Arti Kumari 8 years, Shanti Kumari 6 years and Vikas Kumar 4 years) in the said incident.

He informed that the attendance of children were relatively higher on the day of the incident since the principal of the school had announced about the distribution of books last day. Soon after eating mid day meal children have started vomiting. He ran to the school on hearing the outcry of the villagers and saw children vomiting and falling unconscious. They rushed immediately to the government hospital at Mashrakh, where Dr. Ansari advised to go to private hospital on the pretext of lack of adequate facility in the hospital but the raging crowd forced him to admit them. Later, he along with some of villagers took their children on ambulance and carried them to

Sadar Hospital (district hospital), where their children declared dead. When asked, Rameshwar Mahto described the social and economic condition of the village. He informed us that the village has around four hundred families comprising 150 scheduled caste families, around 125 *Nonia* (castes traditionally engaged in digging land / soil but presently do agriculture), twenty Brahmin, ten Muslim, 25 Yadav, ten Gond (scheduled tribe) and fifty families belonging to other caste groups. The village has around one thousand *bighas* agriculture land, which is largely with Brahmins and Yadavas. Others have small pieces of agriculture land between five canals to two *bighas*. Members of scheduled caste and *Nonia* communities migrate to Punjab, Haryana, Delhi, Gujarat and Mumbai in search of work. Sharecropping and agriculture labour are the main livelihood options for them.

Sushil Kumar, a Gond from the village took the team to *Nonia tola*, where the team saw a group of women sitting under a tree. Akhilesh Prasad, whose in laws live in this village, works as a tailor in Mumbai, informed the team about his two children, who are admitted in Patna Medical College and Hospital. He added that since some children have given the poisoned food to their goats and cows and from then they are not using the milk. The team found both the cow and goat in healthy condition and observed that the animals are being milked by the villagers.

After some time, more women joined the team. They called one child namely Sujit Mahto (s/o Chander Mahto). He told that he threw food soon after he tasted the food and came running to his home and informed his parent that something

bad is mixed in the food but the head mistress is insisting on eating food. Another villager Jayram Mishra recalls that when children were falling unconscious, he called Arjun Rai, husband of Head Mistress, who announced that he would bear all the expenses for children's medication and care. However, they fled from the village soon after the death of first child.

Devmani Kunwar, a villager from *Nonia tola* described to the team that when children fell sick they carried them children to the sub divisional hospital, where they have not been given proper attention. They had to resort to force to pressurize the Medical officer, Dr. Ansari and in the meanwhile called another doctor from outside hospital to treat sick children in the hospital itself. Even that did not help and condition further deteriorated. They pressurized driver of government ambulance and carried some children to Chhapra Sadar Hospital and rest of the children were taken to the hospital on their own by the parents. No assistance was provided by government during the entire episode. The Chhapra Sadar Hospital referred 31 admitted children to PMCH, Patna. Four children died on the way to Patna.

Devrati Kunwar, an elderly widow from the crowd explained that 20 kg of food grain is given to every BPL families once in three months on payment of Rs. 150. Even old age pension is not given to old aged destitute women like her. Her contention was supported by every woman present during the discussions.

Thereafter, the team went to meet and interact with other families of deceased children. Sushil Kumar guided the team to the house of Bali

Mahto, who has lost his five year old son Ashok Kumar, a student of grade one, in this unfortunate incident. He expressed that his son too have died due to lack of timely and adequate medical attention because initial 3-4 hours, after the poisoning, have been lost just in reaching to sub-divisional hospital and Chhapra Sadar Hospital and in the meantime children have died.

Then the team met Akhik Mishra, father of Ashish Kumar, a five-year-old student, who lost his life after consuming poisonous mid day meal. He told that his son was going to the school for last one month only. He further narrated that on the day of incident he ate soybeans. He ran to the school when he heard about sickness of his son. He carried him to government hospital on his motorcycle, where no facility was in place. Then he went to the clinic of a local medical practitioner Dr. Sitaram Pandey, who expressed his helplessness and declined to treat. His son died while being treated in Sadar Hospital. He demanded for CBI enquiry in the incident. He questioned government's announcement of two-lakh compensation and expressed his anguish that will this money bring his son back? Others added that the whole village is in deep grief and no one has cooked last three days. They informed that one Sikh officer came to the village along with some policemen. He told villagers that he is a central government official and urged everyone to speak in the same things as they are have narrated to him. They further added that *"iske alawa pichhle 3 dino me Bihar Sarkar ki chaprasi se lekar koi padadhikari ya mantri hamari sudh lene abhi tak nahi aaya hai"* (Except this, no one, including any peon, officer or minister, has come from the Bihar government, from last three days to see us). Nandlal Mahto, who has buried eight children, including three children buried opposite to the school premise, was called by the villagers to meet the team.

Then father of Akhil Mishra guided the team to the families who have lost their children in this incident. The team reached house of Baliram Mishra, whose son Roshan Mishra, aged 10, has died and daughter is being treated at PMCH. Baliram Mishra elaborated that on hearing about the incident in the school, he took his children to PHC but due to inept treatment at the PHC, he rushed to Sadar Hospital where his son was declared dead. Another villager present on the spot namely Raju Sahu, reported about his son Shiv Kumar, who had died after consuming poisoned mid day meal. He told that on reaching the sub-divisional hospital (PHC), there was no provision of medicines and treatment. Neither there was any proper ambulance facility to transfer the children to Chhapra Sadar Hospital nor there was any administrative support made available for them. Due to this delay in treatment to his son, he lost his life. Harendra Mishra, an agriculture laborer, has ten children, lost his two children in this incident.

The team went to Dalit *basti* of the village, where they met Shankar Thakur. He has three children and lost his seven-year-old daughter, Baby Kumari, a grade two student. He recalled that at the time when he heard about the mishap, he was at his shop. He ran towards the school and somehow managed to carry his daughter to the hospital. She had her last breath on the way to the hospital. Nagendra Mahto, a casual laborer, lost his eight-year-old daughter Soni Kumari. She died during her treatment at Chhapra Sadar Hospital. Krishna Mahto, who lives about fifty meters away from Nagendra Mahto's house, was lying distressed outside his mud house and was not in a position to talk. Nagendra Mahto informed the team that he is an ice cream vendor in Delhi and live there for about 7-8 months in a year. He has come to the village after hearing about death his five-year-old daughter Nirah Mahto.

After leaving Krishna Mahto's house, the team met Nanhak Mahto, alongwith another woman near a tree, where they were talking to a third person, who was a former MLA from their constituency. The woman was telling to him that 4-5 days back, when pesticides were being sprayed in the sugar cane field, a lot of fishes died and children were asking to bring fishes to home but were stopped by parents from doing so. Nanhak Mahto and others had also acknowledged it.

Nanhak Mahto told the team that his seven-year-old daughter Rita died in Chhapra Sadar Hospital.

Rahul Kumar, an eight-year-old son of Satyendra Ram has also died in the same MDM incident. His wife is very serious due to this loss.

After meeting the families in Dalit *basti*, the team went to Yadav *toila*. The team met Ramanand Yadav, a relative of Meena Kumari (School Principal). He informed team that Priyanka Kumari, aged seven years, daughter of his niece Kajal Kumari and his neighbor Bhageru Rai, died in Sadar Hospital. He further added that three children of the MDM cook (wife of late Abhishek Kumar Yadav), namely Adeet (aged 7 years), Abhishek (aged 4 years) and Khushi (aged 1 year) have been admitted to PMCH. Panna Devi, assistant to the Cook, has also lost her two children, Rohit Kumar and Suman Kumari in the above incident. Upendra Rai, a relative of the school principal, has lost his son Anshu Kumar in the MDM mishap.

The representative of Advisor to Commissioner, Supreme Court of India in the matter PUCL vs. Union of India [WP (c) 196/2001] made a visit to PMCH and met children, cook, superintendent and HOD and tried to know about the incident.

After talking to children the team came to know that all children felt the taste of MDM very bad while eating but the head mistress compelled them to consume the same bad food. The team spoke with Kanti Kumari (uncle Chnadrama

Mahto), Prince Kumar s/o Uma Shankar Mishra, Savita s/o Surendra Prasad Yadav, Pinki d/o Chandrama Yadav, Priti Kumari d/o Lal Dev Mahto, and Kajal Kuari d/o Sanju Devi.

While talking to the cook she admitted that there was some problem with the cooking oil, as it turned black on being heated. She also informed about this to the principal but principal insisted on cooking in the same oil. She recalled that the principal said *"tel theek hai, bachche roz-roz achcha khana hi khayenge? Tum chupchap khana banao"* (Oil is good, is it necessary that children will eat good food daily? You better do your job quietly).

The team observed that children were given drip and they were complaining about stomach ache and nausea. The team also observed that all children are not being given adequate treatment.

The Dr. Sujata Rai, HOD, Pediatrics, informed that 31 children have been last night and out of which four are brought dead. He added that they have vacated beds to treat these 27 sick children, for that they have to remove other patients. Medicines and saline/glucose are arranged adequately. The hospital has started treatment with the given facilities at the hospital. She also said that these children will be discharged within two days. Hospital Superintendent also supported the contentions of HOD.

Key Facts

Infrastructure and Management

- The new school was initiated without adequate infrastructure despite a middle school was already functioning in the village;
- Whether any order was issued in respect of the above by the state government or district administration?
- Why an alternative teacher has not been provided to the school in the wake of maternity leave of one out of two lady teachers?
- Can one teacher alone perform functions such as teaching,

daily purchase and transport of mid day meals, management of mid day meals and care of children?

- Whether it is possible for an untrained Para-Teacher, who is paid meager Rs. 6300 monthly salary, to teach children up to grade five?
- Why such a building was chosen to open a school, where building has no doors, windows, facility for cooking mid day meals, floor is completely broken and neither there is any space for storing cooking materials? The only hand pump gives hard water, which was not even used by the head mistress. There is all likelihood of occurrence of such mishap.

Monitoring

- The state, district and block monitoring authorities-Directorate, Mid-Day Meals, ADM, Mid Day Meals, District Education Officer, Block Education Officer and Block Resource Person have never visited this school for monitoring;
- No efforts have ever been made to activate Village Management Committee;

Health Services and Management

- PHCs are not equipped to deal with such situation. Dr. Ansari, Medical Officer of PHC expressed his helplessness and inability to tackle the situation. There were no facilities, such as specialists, bed, medicine, syringe, injection, saline or glucose, provided at the PHC.
- There was no transport facility available at the PHC for transporting patients to the Sadar Hospital, therefore it took around four hours to reach there. However even in Sadar Hospital, facilities were grossly inadequate and needed medical attention was not provided.

Responsibility and Accountability

- Since 2005, cooked mid day meals have been served in

schools in Bihar. So far only 55-60% of allocated money has been utilized.

- So far only 50% allocated money for kitchen facilities has been utilized.
- The ruling as well as the opposition parties never make mid day meals their political or poll agenda.
- Political representatives do not play any constructive role in appropriate management and improvement of any welfare schemes though they take political mileage and advantage of such issues.
- Responsibility and accountability has not been imposed and ensured on political representatives from assembly to local bodies, and administrative bodies.

Recommendations

- To order investigation in the matter by a sitting judge of the Hon'ble Supreme Court;
- To implement the Supreme Court's directions on Mid Day Meals and educational institutions in letter and spirit;
- To implement the Right of Children to Free and Compulsory Education Act (RTE Act) in the state of Bihar;
- To equip all schools in the state with proper infrastructure such as safe and all weather school building, kitchen, store, utensils, dish, safe drinking water, safe and hygienic toilets etc. within next six months;
- To promote and encourage community monitoring system and social audit;
- To ensure teacher-student ratio of 25:1;
- To relieve teachers of the responsibility of mid day meals in schools and to provide for a new and separate system based on community participation;
- To provide proper and periodic training to cook, assistant and other staff;
- To prepare and execute

- Standard Operational Plan (SOP) for quality control in mid day meals;
- To ensure strict implementation of the provision of tasting food by the principal before serving food to students;
 - To ensure cleanliness of the place of cooking, storage and dining and also hand washing before cooking, serving and dining;
 - To provide for a well-equipped hospital at the Panchayat level;
 - To provided for compulsory monthly health checkups to every students;
 - To establish a body / institution to regulate use of hazardous chemicals and pesticides for agriculture;

- To address and minimize the issue of problems in co-ordination between state and center and to prepare monthly plan to streamline and check delays in allocation and utilization of funds for the scheme;
- To ensure payment salary to the cook and helpers at the existing minimum wage rates and in no case less than the same;
- To make political representatives from assembly to local bodies, and administrative bodies, responsible and accountable.

Hence, in view of the above incident the Chief Minister, Education Minister, Chief Secretary, Principal Secretary, Director- Mid Day Meal

Scheme and District and Block Level Officers must respond and act.

We are: **Rupesh** (State Advisor, Commissioners to Supreme Court in the matter WP (c) 196/2001), **Arti** (PACS), **Neelu** (Bihar Women's Network), **Arshad Ajmal** (Right to Food Campaign, Bihar) **Sanjay Kumar Singh** (Lok Parishad), **Tanveer Akhtar** (IPTA), **Vinod Kumar, Prakash Gardia** and **Pravind Kumar Praveen** (OXFAM India), **Sujit Verma** (The Hunger Project), **Ravindra Kumar Rai** (Right to Food Campaign, Bihar), **Danison, Dr. Shakeel** (Jan Swasthya Abhiyan), **Ramesh Pankaj** (Muzaffarpur Vikas Mandal) **Vinod Kumar Ranjan, Prof. Vinay Kumar Kanth** (Patna University and National Council Member, PUCL), **Sanjay Kumar** (PGVS) and Others.

Translated from Hindi to English by Nadim Nikhat

Courtesy: Countercurrents.org ☐

Amnesty International Press Release: 7 August 2013

Release Prisoners of Conscience Soni Sori and Lingaram Kodopi

Authorities in the state of Chhattisgarh must drop all charges against Adivasi activists Soni Sori and Lingaram Kodopi, and release them immediately and unconditionally, Amnesty International India said today.

The organization considers Soni Sori and Lingaram Kodopi to be Prisoners of Conscience, who have been arrested on false charges solely because they criticized human rights violations by security forces in Chhattisgarh.

Soni Sori has been in detention since October 2011 and Lingaram Kodopi since September 2011. Soni Sori's husband, Anil Futane, died on 2 August 2013. But she was denied temporary release on bail to perform his last rites.

"Soni Sori and Lingaram Kodopi's continued detention is a matter of shame for India," said Shashikumar Velath, Director of Programmes at Amnesty International India. "Their cases show just how far authorities in Chhattisgarh can go to silence their critics."

"The government of Chhattisgarh needs to stop filing politically motivated charges against Adivasis,

and start listening to what they have to say."

Soni Sori has been acquitted in five cases filed against her, and has been granted bail in another case. Lingaram Kodopi has been acquitted in one of two cases filed against him. One of the pending cases against both involves charges that they had acted as couriers and transferred funds of 1.5 million Indian rupees (US \$246,000) from a corporate mining firm, Essar, to armed Maoists as "protection money" in September 2011, to ensure its operations could be carried out unhindered.

On 7 July 2013, the Chhattisgarh High Court denied bail to Soni Sori and Lingaram Kodopi on the grounds of the "nature of allegation, quality of evidence and the seriousness of the offence."

A general manager at an Essar steel plant and a contractor for Essar who were also arrested in the case and face the same charges were released on bail in January 2012 and February 2012 respectively.

Soni Sori has alleged that she was tortured while she was in police custody on 8 and 9 October 2011. In letters written to India's Supreme

Court, she said that police officials had stripped and sexually assaulted her and given her electric shocks.

By the time of her appearance in court on 10 October 2011, Soni Sori was unable to walk. On 29 October, a government hospital examined her under court order, and reported that two stones had been inserted in her vagina and one in her rectum, and that she had annular tears in her spine.

A senior police official who Soni Sori said had ordered and supervised her torture was conferred a gallantry award by the President of India in January 2012.

"Instead of continuing to keep these Prisoners of Conscience in detention, authorities in Chhattisgarh must drop all charges, release them, and investigate all allegations of torture promptly and independently," said Shashikumar Velath.

Background Information

Since 2005, Chhattisgarh has witnessed an escalation of violence between government forces and the armed Maoists who claim to be fighting on behalf of Adivasis against India's established political order. The confrontation has seen routine

killings, taking of hostages and other attacks against the civilian population. More than 30,000 Adivasis remain forcibly displaced. Soni Sori, a 36-year-old schoolteacher and her nephew Lingaram Kodopi, a 26-year old journalist, were critical of human rights violations committed both by security forces and armed Maoists in Chhattisgarh.

In April 2010, at a public hearing in Delhi, Lingaram Kodopi detailed violations committed by security forces against Adivasis in Chhattisgarh, following which the state police announced that he was the prime suspect in an armed Maoist attack on a local Congress party leader's residence.

In March 2011, Lingaram Kodopi also highlighted the killing of three Adivasis by security forces during a confrontation in three villages. During the attack, two persons went missing and at least five women were sexually assaulted. Lingaram Kodopi was eventually arrested in September 2011 on false charges of aiding armed Maoists. Soni Sori's husband,

Anil Futane, was arrested in 2011 for allegedly planning and executing an attack on a local Congress party leader. He was acquitted on 1 May 2013, after spending three years in jail, during which time he was allegedly tortured. He died on 2 August 2013.

Soni Sori has been acquitted in five cases against her, and Lingaram Kodopi in one of the two cases against him.

In 2012, Sori was acquitted in two cases in which she was accused of attacking a police station in Kuakonda and blowing up a government office in Kuakonda in 2010.

In February 2013, a trial court acquitted her of being involved in an attack on a police team near an Essar plant in Kirandul, and of being part of a Maoist armed group team which attempted to blow up trucks belonging to Essar.

In early May 2013, a trial court acquitted Soni Sori, Lingaram Kodopi and 15 other persons accused of conspiring and participating in the attack against a local Congress

party leader at Nakulnar in Chhattisgarh in July 2010.

In late May, another court granted Soni Sori bail in a case in which police claim she had participated in the torching of vehicles in Nerli Ghat in September 2010.

A number of social and political activists and human rights defenders in Chhattisgarh have faced false charges and imprisonment for highlighting the human rights situation in the state. Among them are Binayak Sen of the People's Union for Civil Liberties, and Kartam Joga, an Adivasi leader of the Communist Party of India, both declared as Prisoners of Conscience by Amnesty International.

Binayak Sen spent more than two years in prison and was released on bail by India's Supreme Court in April 2011 after he was convicted of sedition and sentenced to life imprisonment by a lower court. Kartam Joga was acquitted of all charges and released in January 2013 after spending over two years in prison. □

Racial Tagging and the Mysterious Death of Reingamphi Awungshi

Notwithstanding extreme summer heat, many from the Northeast residing in Delhi had taken onto the street, and spent at least 24 hours at the Malvia Nagar Police Station protesting 'racial tagging' after death of a migrant 'worker' Miss Reingamphi Awungshi and demanding justice.

Miss Reingamphi Awungshi (26) (15-07-1987 to 29-05-2013), daughter of AS Chihanpam of Chuithui village, Ukhrul district (Manipur), who had worked in a spa company was found death under mysterious condition on 29th May 2013 at her rented room, 424, ground B-Block, Chirag Delhi. Reingamphi was found lying dead on a pool of blood with multiple injuries; while her nose was bitten off and her leg bore big cut mark, her eyelids scratched, and eyes bleeding. The police had taken over the body, her mobile phone, photo albums, cloths and mattress and etc into their custody.

Many were infuriated by the suicide theory of the police. What about the wounds? Police concluded they were posthumous and caused by rodents. They had not even lodged an FIR 24 hours after. The suicide theory restricted the scope of post mortem in the AIIMS. It had also caused tampering of evidences to be found on the body. The suicide version was widely circulated by the media. The police had also tampered evidences in the room. The police apathy was coupled with racial prejudice as pointed out by Binalakshmi Nepram "We have been told by the SHO, Vijay Pal, that these girls from northeast work in SPA and that's why these incidents take place."

Relatives and friends of Reingamphi suspected rape and murder but the police were covering up crime. They suspected the brother-in-law of the landlord who had made frequent approach to waive off rent and

intimation with Reingamphi to gain her acquaintance despite her disapproval. The landlord had first noticed Reingamphi lying suspiciously when he had peeped through the ventilator above the door. He had alarmed the police who subsequently broke open the front door. Though the room was locked from the front door, the backdoor of the room was found to be opened. Anyone could have gained entry from the backdoor of the room of the Reingamphi that was connected to the adjacent room of the landlord. The room was also vertically connected to the rooms on the first floor. These rooms are accessible to one another by scaling the iron-grilled wall.

It was this cumulative police apathy that brought hundreds of northeast students and others for a protest on the day after the incident - first at the AIIMS, where the post mortem was conducted and the victim's

relatives refused to receive the body, and later the Malviya Nagar police station where they asked police to lodge an FIR under section 302 (murder) of the Indian Penal Code (IPC). They spent the night there and on 31st May afternoon. But the police lodged an FIR under Section IPC 306 (abetment of suicide). The FIR was in complete disregard of the preliminary post-mortem report, which did not mention the cause of her death. Protest continued till the evening of 1st June when ACP SS Gill conveyed that an FIR No 253/13 PS Malviya Nagar was lodged with added section of IPC 302. Re-post mortem and handling of the case to CBI, if required was ensured. On 3rd

and 4th many had waited for post mortem report only to be informed again that the causes of death had not been fully established. In the meanwhile threat warnings by the locals such as "if any of the local boys were investigated/picked up by the police then those from the North East living in that area would face consequences" were intimidated to those who took part in the candle light vigil on 1st protestors. Finally the mortal remain of Reingamphi was flown to Imphal on 6th June.

The incident and the protest once again reignited memories of humiliation over the mysterious deaths of Richard Loitam, Dana Sangma and the racial assaults that

led to the mass exodus from Bangalore in 2012. It also increased the apprehension about racial vulnerability of the vast chunk of the Northeast migrant students and 'workers', particularly women, who are clubbed in various rented pockets in the NCT. It is also apparent from this case that the May 10, 2012 home ministry advisory on racial discrimination and profiling of the northeast peoples in the metros seems to have been ignored by the law enforcing agencies at the ground level. The MPs from Manipur and the Government of Manipur seems to feign ignorance about the issue and they chose to remain silent.

Malem Ningthouja, CDRO

(Forwarded by Sudha Bhardwaj) □

Court issues notice to State of Haryana in PIL Filed by PUCL, Punjab and Chandigarh challenging constitutionality of the Act barring prisoners termed "Hardcore prisoners" from Temporary release (Furlough and parole) from prison

The Hon'ble High Court of Punjab and Haryana today issued notice to the State of Haryana in a PIL filed by the human rights and civil rights organization People's Union of Civil Liberties (PUCL) Punjab and Chandigarh Chapter, challenging the constitutionality of the "Haryana Prisoners Good Conduct Amendment Act, 2012" which created a category of "hardcore prisoners" as per the newly inserted Section 2(aa). This definition of hardcore prisoner has been challenged to be arbitrary as it bars prisoners who had been convicted of dacoity, robbery, kidnapping, for ransom, murder with rape, serial killing, contract killing, murder or attempt to murder for ransom or extortion, causing grievous hurt, death, or waging or attempting to war against Government of India, buying or selling minor for purposes of prostitution or rape with a woman below sixteen years of age; from being released temporarily on parole or furlough merely on the basis of the offence committed by such prisoners. The Act inserted a very

arbitrary definition of hardcore prisoner which included a person found using a/or possession of a SIM or mobile phone while in prison

The PUCL petition states that "there ought to be a solitary objective behind grant of furlough namely the unification of the prisoner with his family members, friends and society and that purpose which would be defeated in case the prisoner is denied furlough altogether and is to suffer long incarceration by serving entire sentence before he is in a position to come out of the prison. Therefore, good conduct in the prison should be the only relevant criteria while granting furlough/temporary release. "

PUCL has argued that barring prisoners from even being considered for temporary release, which is essential for reformation of a person into a law abiding citizen and for his/her adjustment post release from prison, merely on the basis of the offence committed by them is arbitrary and hence unconstitutional. The PUCL is relying on a judgment of Delhi High Court of 2012 (Dinesh

Kumar v. State of Delhi) where the Hon'ble Court had held unconstitutional, similar provisions regarding furlough and temporary release pertaining to Delhi, as they barred prisoners merely on the ground that they had committed certain offences, terming it as unfair and going against Article 14 of the Constitution.

PUCL challenged the Amendment Act on the basis that the goal of the prison system is to reform a person and one cannot be condemned to years of punishment, without having an opportunity for being temporarily released merely because of the offence committed by that person, while that is a criteria that could be taken into consideration while considering the person's application for temporary release. Terming a person "hardcore prisoner" on basis of a definition which is clearly arbitrary would be unfair and unconstitutional.

The next date of hearing has been scheduled for 16th August, 2013 when the Haryana Government has to respond to PUCL's contentions. □

Governance by Denial: Forced Eviction and Demolition of Homes in Ejipura/ Koramangala, Bangalore

Report of a Fact-finding Mission (Summary)

I Introduction

The *Bruhat Bangalore Mahanagara Palike* (BBMP) is responsible for providing infrastructure and services in the metropolitan area. From January 18 to 21, 2013, it bulldozed 1,512 homes (42 blocks) and evicted more than 5,000 people living in tin sheds in the economically weaker section (EWS) quarters in Ejipura/ Koramangala, Bangalore. The demolition affected around 1,200 women and 2,000 children. It made thousands homeless.

On the morning of 18 January, BBMP officials along with bulldozers, a demolition crew and a large police force reached the EWS settlement. Residents started protesting, as the forced eviction and demolition of their homes commenced. BBMP officials claimed the protestors were preventing them from carrying out the demolition. Police arrested 21 women who stood between their homes and the bulldozers. The police dragged the women into their vans, some by their hair. The women were taken to two police stations, implicated in false charges and detained overnight.

Residents pleaded with the demolition crew saying the BBMP Commissioner had assured them that evictions would not begin until the end of the school year (April 2013). Residents asked the BBMP officials for documentation that authorised the demolition. None was provided. Instead, the residents were asked to file a Right to Information (RTI) appeal if they wanted a copy of the demolition order.

On 19 January, the BBMP Commissioner said there was authorisation to demolish only 'unoccupied sheds'. But the forced eviction and demolitions of all homes continued with BBMP engineers looking on. Police were present as

demolitions continued into the night. The evicted people and activists say the police were not averse to using force. By the evening of 19 January, more than 1,000 houses were demolished. The demolition continued the next day. By 21 January, no homes were left standing. The demolition was complete.

Residents had to fend for themselves on the street with no shelter. Most of them suffered extensive loss of property. Women refused to eat or drink, as it would mean they would have to leave their salvaged belongings on the road and walk to the pay-and-use public toilet (which reportedly had also raised rates after the demolition). Many people faced violence and injuries during the demolition process. After the forced eviction and demolition, women lost jobs, children's education was disrupted and the community's economic condition deteriorated. Residents reported daily harassment from the police, political representatives and criminals.

Many people's health suffered. Civil society organisations and activist groups supplied food and medicines. Some evictees were forced to take shelter with relatives or friends in other parts of Bangalore. Many evictees continue to live on the pavements near their former homes. They live in tiny tents built over drains, in dismal conditions, without basic services, including water.

II Fact-Finding Mission

The *People's Union for Civil Liberties* (PUCL - Karnataka) and *Housing and Land Rights Network* (HLRN- Delhi) undertook a fact-finding investigation into the eviction on 21 and 22 February, 2013).

The aims of the mission were to:

- a) Ascertain if human rights violations occurred before, during

and after the eviction;

- b) Understand the socio-political economy of Bangalore's urbanisation process and development; and,

- c) Assess the response of the state and civil society.

The fact-finding team consisted of Ramdas Rao (PUCL – Karnataka), Ms Shivani Chaudhry (Associate Director, HLRN, Delhi), Dr. (Fr.) Ambrose Pinto SJ (Former Director of Indian Social Institute, New Delhi, former Principal of St. Joseph's College, Bangalore, and present Director of St Joseph's Evening College, Bangalore), Aditya (PUCL – Karnataka), and Eshwarappa Madivali, a documentary film-maker and photographer.

The team interviewed women, men and children from Ejipura/ Koramangala, including those living under plastic sheets at the demolition site and families awaiting rehabilitation at Kudlu. The team also spoke to a number of municipal and state government officials, among others.

III. Ejipura Evictions: Direct Result of Rise of Bangalore as the 'Global City'

In Bangalore, in the last 20 years, public land in use for multiple purposes (small-scale residential, trade and industrial, manufacturing use) is being increasingly handed over to the private sector for a narrow set of commercial projects (car parks, shopping malls, HIG housing, office complexes and transport infrastructure). Under this 'development' project, land for these schemes needs to be first cleared of 'encroachers' and 'illegal settlements.'

The history of Bangalore (like that of many other Indian cities) is filled with stories of migrant and other workers 'reclaiming' and developing

inhospitable environments (marshy lands, garbage dumps, river beds) slowly but gradually into habitable areas. Prior to 1996, the Ejipura/ Koramangala slum was part of a garbage dump extending over 15 acres in the then Koramangala village, which was developed over the years by the EWS residents (mainly migrant workers from Tamil Nadu) and made habitable.

These residents are now labelled as 'illegal squatters' on their own land, as the state discovers a commercial value for the land.

IV History of the EWS Colony at Ejipura/ Koramangala

To cater to the housing needs of the economically weaker sections (EWS), the Government of Karnataka and BBMP decided in the 1980s to establish housing quarters for them at subsidised rates. In 1983-84, BBMP with help from the Housing and Urban Development Corporation (HUDCO), formulated a scheme to build 1,512 EWS flats in 42 blocks (each block having 36 tenements). The housing was, however, of very poor quality. Shortly after moving in, residents noticed cracks on the walls and plaster falling from the ceilings. Many residents continued to live in those poor conditions. Some rented their quarters out to others who were in a worse off position than them. Several original allottees sold their flats to third parties. Thus, except for a few original allottees, most of the residents of the 1,512 flats were tenants. A majority were Dalits and religious minorities.

As a result of the poor quality of construction, Block Number 13 of the EWS settlement collapsed on 9 November 2003, resulting in several injuries and loss of possessions to the 36 families living there. In subsequent years, three more blocks collapsed, causing the deaths of 5 children and injuries to several others. In 2004, BBMP demolished seven blocks and built temporary tin sheds on a part of the land to

accommodate the families, with the promise that new permanent housing would be built for them. These tin sheds were 10 feet by 12 feet in size and built in a contiguous block without any windows.

Residents said the tin structures were unbearably hot in the summer. During the monsoons, they got flooded and when it was windy, the roofs would often fly off. There were no attached toilets. People had to pay two rupees per visit to use the 30 public toilets built on the site for 5,000 residents.

According to a survey conducted in 2003 by BBMP, 248 original allottees and 1,101 tenants lived in the EWS settlement, and 163 houses were locked.

Around 2004, BBMP decided unilaterally, and without consulting the present residents, to develop the area on which the EWS quarters stood and build residential and commercial structures through a Private Public Participation (PPP) scheme.

In June and July 2005, the BBMP Council passed a resolution to the effect that everyone living in the area, irrespective of whether they were original allottees or not, would be provided permanent housing. In 2006, BBMP issued guritinacheetis (beneficiary identity cards) to the residents. However, the families continued to live in the tin sheds in grossly inadequate conditions. It is these families who were evicted from the site between 18 and 21 January 2013.

V. Legal Intervention

In 2008, some of the original allottees had approached the Karnataka High Court for permanent housing, through a Writ Petition. While the matter was pending, BBMP and Maverick executed a PPP agreement in January 2012. The High Court passed an interim order in July 2012 holding that the Division Bench in the 2008 Writ Petition did not permit BBMP to enter into any contract with third parties for the reconstruction of

flats. After this, a settlement was arrived at between some of the petitioners in the 2011 Writ Petition, BBMP and Maverick Holdings, and it is on this basis that the High Court in August 2012 directed the clearing of the EWS settlement land. The Court directed that only the 1,512 original allottees would be entitled to the new houses, and that all occupants should be evicted from the present site after 8 October 2012. BBMP has used this court order to defend the act of demolishing the tin sheds.

Although these proceedings affected the rights of the tenants who were the actual residents of the tin sheds, they were not made party to these proceedings, and were not heard before the passing of the order. BBMP suppressed this fact and the numerous Council resolutions in their favour. It failed to bring to the attention of the High Court that the majority of those in the tin sheds were tenants, and further that BBMP itself decided to provide houses to all those families in the area. Thus the High Court order of eviction was passed without consideration of the rights of actual residents of the demolished tin sheds, and on the basis of a wrong assumption of the situation, caused by the suppression of facts by BBMP.

VI. Response of Civil Society after the Eviction

In the absence of any relief efforts from the government and in response to the humanitarian crisis created by the demolition, a number of support groups formed a team to provide relief to beleaguered residents. Contributions poured in and eventually nearly Rs 10 lakh was raised.

A relief team stayed there morning to night.

The police continued to threaten residents to leave the site. The relief team had to be constantly present to support the residents. Volunteers distributed blankets and sweaters. BBMP had demolished all public

water sources in the area (mini-water supply, public taps) during the eviction. The relief team had to arrange for drinking water. Doctors visited the site daily since the health of the people suffered due to the lack of shelter. Medicines were also provided.

A month after the relief operations at the demolition site, it was decided to start a community kitchen. The relief team procured supplies while the local residents took care of preparation and distribution of food. A temporary study centre was also set-up for the students.

The civil society support team then turned its attention to arranging alternative accommodation. The families reached a consensus as to who were the most needy. This promoted a feeling of community and solidarity, a sense of shared suffering and readiness to help each other out. Non-profit organizations and individuals came arranged for advances for new rental houses for the evictees. They promised to pay each family Rs 10,000 towards house advance. Hundreds of people queued up and around 700 families were given this amount. However, this worked in favour of the builder, since the site started getting cleared for him. Nevertheless, around 200 families did not take money and remained on the site.

The police and the local MLA, N.A. Harris (Congress) continued to threaten the few remaining families to vacate the site. Newspapers said he visited the area and threatened dire action against several volunteers organizing relief. He promised to pay people a measly Rs. 2,000 - 4,000 if they moved out. His men led some families to believe they would get houses in Karnataka Slum Board Housing scheme in another resettlement colony in Kudlu, a distant suburb. About 50 evicted families were shifted there. After arriving, many families were tricked by nearby vandals who, broke locks of empty houses, moved the families in, took advances, and vanished.

When the real owners arrived, the families were evicted, and we homeless again. Relief efforts were directed towards them too.

The relief team consisting of NGOs and individuals has been an important source of moral support to the community as they face a long battle to regain their land and struggle to live in a dignified manner. The callous and indifferent government has only worked to prevent relief.

XI Conclusions of the Fact-Finding Team

1. The forced eviction, demolition of homes and related actions against the people of Ejjipura/Koramangala, constitute a gross violation of their human rights to life, security of the person and home, health, work/livelihood, education, food, water, and adequate housing, which is the right of all women, men and children to gain and sustain a secure place to live in peace and dignity.

2. The eviction operation violates India's national and international legal obligations and commitments. The government and its agencies have violated the Constitution, national laws and policies related to housing and resettlement, and several judgements of the Supreme Court.

The Government of Karnataka breached several international laws, including the International Covenant on Economic, Social and Cultural Rights; the *International Covenant on Civil and Political Rights*; the *Convention on the Elimination of All Forms of Discrimination against Women*, the *Convention on the Rights of the Child*, and the *International Convention on the Elimination of All Forms of Racial Discrimination*.

3. The Ejjipura/Koramangala eviction was carried out in contravention of the UN Basic Principles and Guidelines on Development-based Evictions and Displacement. The government did not provide any notice to the slum-dwellers. During the

evictions, there was heavy presence of police and use of force and violence against the residents, including women.

4. At the time of preparation of this report, the cleared site at Ejjipura/Koramangala is still lying vacant. The state's unseemly hurry in evicting the residents forthwith appears to have had only one goal: facilitating conversion of public land for private gain.

5. BBMP and other state agencies flouted international norms and guidelines by failing to include the participation of the residents in the planning process. No consultations or public hearings were held. No efforts were made to seek alternatives or to provide adequate and timely information.

6. The violations of the human rights of women, children, and minorities are especially acute. Women were targeted, beaten, arbitrarily arrested, implicated in false charges and detained. The use of force and violence against women and children by the police and other actors is unacceptable.

7. Public land has been converted and misused for private gain. The PPP agreement is illegal as land designated for 'public purpose' has been given to a private entity for commercial use. The agreement presages further encroachment of public land, and another round of evictions of neighbouring slums. Given the acute housing and land shortage for the urban poor, including in Bangalore, the handing over of public land to Maverick is unconscionable.

8. The PPP agreement confers undue benefits to Maverick including exemptions from various taxes, and protects the company in respect of violations of bye-laws and other illegalities that occur.

9. The current urban development policy (at least in theory) dictates that the government strive to provide adequate housing for EWS and the homeless. This eviction is a complete reversal of the policy and contravenes

several judgements of the Supreme Court. Despite the acute housing shortage for EWS, residents were evicted and made homeless overnight. This act violates the *National Urban Housing and Habitat Policy 2007* and state laws.

10. BBMP flouted its own resolutions of 2005, which recognised the rights of the residents to permanent housing on the site and assured them of in-situ resettlement and permanent housing.

11. The claim that the evictees were 'illegal squatters' is false, as they have documents establishing their right to their homes. In 2003, BBMP had undertaken a survey which recognised the current evictees as legitimate residents.

12. It is wrong of the state agencies to claim that they were compelled by the judgement of the High Court to evict the residents with the aid of police action. BBMP misled the High Court by not placing before it its own resolutions on the subject.

13. All *Basic Services for the Urban Poor* (BSUP) projects that BBMP undertakes mandate inclusion of 'transit housing' as part of the eviction and relocation process. Land for transit housing has to be identified by BBMP and the affected persons shifted to the transit accommodation before being evicted. In the case of Ejipura/Koramangala, there has been no effort to provide alternative housing.

15. The serious issue of the collapse of the original EWS quarters remains forgotten. No investigation has been carried out to determine why the houses collapsed.

XII Fact-Finding Team's Demands
The fact-finding team demands that the Government of Karnataka:

1. Recognise the 'right to the city' of the urban poor—who contribute to its

development—as their inalienable right. This includes the human rights to adequate housing, work/livelihood, education, health, food, water, social security, public transport, participation, information, as well as a right to a share of the benefits of the city, including its cultural development.

2. Implement India's national and international legal obligations and uphold judgements of the Supreme Court of India related to the protection of the right to housing.

3. Adopt and implement the *UN Basic Principles and Guidelines on Development-based Evictions and Displacement* in all cases of eviction and relocation.

4. Provide immediate and adequate rehabilitation and compensation to all the evictees, be they original allottees or tenants. This must include adequate housing, water, food and security at the same site or at least in the same area.

5. Conduct a judicial enquiry into the PPP project and into the evictions and demolition process.

6. Investigate and take action against all BBMP and police officials responsible for the violence and attacks on residents and activists during the process of the eviction.

7. Grant immediate compensation to all victims for injuries caused to them and for loss and damage to their personal property and possessions/belongings.

8. Provide compensation to students, including free uniforms, school books and other educational material destroyed during the eviction.

9. Provide adequate compensation to Rosemary's family for her death.

10. Dissolve the Public Private Partnership between BBMP and Maverick Holdings and ensure that the entire area is used for EWS

housing as per the 2005 BBMP resolutions.

Conclusion:

Towards A 'Right To The City'

The paradigm of urban development in Bangalore and other cities across India is one of exclusion and profiteering, with the state relegating its welfare function to private actors and reneging from its legal obligation of protecting the rights of its people. People's movements across the world, challenging the persistent discrimination and denial of rights to the urban poor, have initiated new politics of resistance.

The urban poor have an original claim in the founding of the city by making large areas of it habitable. Their contribution in building the city and in sustaining and supporting it on a daily basis is the foundation of their claim to a right to the city.

Under the neo-liberal economic paradigm of development and urbanisation, the market and property rights have assumed pre-eminence over normative human rights, and cities have become exclusionary and polarised spaces. The *right to the city* is not a new legalistic right, but an articulation to consolidate the demand for the realisation of multiple human rights within city spaces.

The right to the city is the right to a more inclusive city where migrants, marginalised groups and communities, and the urban poor in general will be able to control and influence the shaping of their lives and their cities. It is towards this right that we must struggle and work.

(Note: *The complete report will be uploaded on the PUCL national website shortly.*)

Ramdass Rao, Member, PUCL, Bangalore unit ☐

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.

Press Release: 17 July 2013

Letter No. 3. RBS/Encounter/3/2013
dated 15-07-2013

To,

Shri Pranab Mukherjee, Hon.
President of India, Rashtrapati
Bhawan, New Delhi 110001

**Subject: An Appeal to Remedy
Elitist Lobbyism against the Rule
of Law**

Respected Rashtrapatiiji,

I am a former DGP of Gujarat State
and I retired from service on 28-02-
2007. I have submitted a lot of
evidence (9 Affidavits – 663 pages
and other documents) to judicial
bodies probing into 2002 anti-
minority riots, on the genesis, course
and aftermath of communal violence
in Gujarat, subversion of Criminal
Justice System (CJS) to deny, delay
and derail justice delivery to riot
victim survivors and fake encounters
by Gujarat Police. Now I am
engaged in assisting the riot affected
and NGOs, as an Advocate, fighting
for justice.

2. Recent investigation by CBI into
extra judicial killings of Ishrat Jahan
and 3 others, had reportedly brought
out substantial evidence on the
culpable guilt of a few Central IB
officials, in planning and execution
of this fake encounter, by teaming
up with Gujarat police. The Sangh
Parivar, Modi Government, self-
appointed supporters and resource
persons of IB have, of late, launched
a vigorous campaign to get the
accused IB officials immunized from
arrest and prosecution. Media
reported various grounds advanced
by these saviors of IB to pressurize
and cajole the Union Executive – The
Prime Minister and MHA – for
restraining CBI from performing its
duty of investigating Ishrat
Jahan case, as per the stipulations
of the Criminal Procedure Code
(CRPC), without fear or favor. Reports
also indicate that MHA officials had
summoned the CBI Director and
asked him to take care of

sensibilities of IB in this matter.

3. A few former Directors of CBI, IB
and Governor of Andhra Pradesh,
Shri ESL Narasimhan (former IB
Director) had argued that arrest of IB
officials, irrespective of availability of
sufficient evidence against them,
could jeopardize IB operations for
internal security, besides affecting
morale of IB personnel. They
emphatically asserted that “the
Government should have filed an
Affidavit in the Apex Court stating
that IB should not have been dragged
into the matter”. The thrust of this
argument is against the foundational
principals of the Constitution of India,
the canons of the Rule of Law and
inviolable universal human rights and
does amount to insulate IB
functionaries from the discipline of
legality, even though IB functions
without any legal empowerment
through enacted law.

4. In the legal perspective, if any
functionary from political and
administrative bureaucracy of the
Union Executive – The Prime
Minister to Union Home Secretary –
being pressurized by protagonists of
IB, does influence or instruct the CBI
to take a particular direction in Ishrat
Jahan case investigation, bypassing
the truth and substantial
evidence emerging in the
investigation, they would be liable for
an offence under section 186 IPC
“Obstructing public servant in
discharge of public functions”. The
Central Government, being part of the
Executive has only administrative
authority over CBI and investigation
of cases by CBI is done on behalf
and under the direction of relevant
judicial authorities. As per section 36
of CRPC, only hierarchically superior
police officers of the Investigating
Officer (IO), viz. SHO has authority
to supervise investigations.

5. Let us hope that nobody from the
Central Govt. will venture to do the
misadventure of intervening and

meddling with the CBI investigation
in Ishrat Jahan encounter case.
Moreover, on the basis of evidence
or reasonable suspicion or reliable
information, or on a petition u/s 319
CRPC, if Court brings IB officials
under the clutches of law, the
authorities who influenced CBI
investigation would be put in an
indefensible situation.

6. The argument that arrest of IB
officials would demoralize IB
personnel and damage IB operations
sounds like tail (IB) wagging the head
(Government) and IB leadership
indulging in soft blackmailing of its
bosses. IB's charter is for collection
of information, through human and
material resources, on threat to
internal security of India and any
operation with this objective is
acceptable and laudatory. In the
case of the premeditated murder of
Ishrat Jahan and four others and
Sadik Jamal, in a different encounter,
a few IB officials, particularly a Joint
Director, in-charge of Gujarat State
(posted in Ahmedabad from 2001 –
2005) and his staff, had gone beyond
their call of duty and became abettors
and collaborators, with a mafia of
Gujarat police officers, for carrying
out the hidden agenda of Modi Govt.
to eliminate Muslim youth for
enhancing the image of the CM
Narendra Modi.

7. These extra judicial killings were
carried out by a selected group of
Gujarat police officers (most of them
are in jail since 2007 – four IPS
officers – for their guilt in multiple fake
encounters), who had direct extra
hierarchical constant accessibility to
the CM Narendra Modi and Minister
Amit Shah, (arrested for the murder
of Sohrabuddin
Sheikh and released on bail). It is
relevant to note that Joint Director
IB, Ahmedabad who succeeded the
controversial Joint Director, Rajendra
Kumar, is not facing any allegation
for involvement in any such crimes,

though the “encounter specialists” of Gujarat police continued to eliminate the so called “Muslim militants, planning to assassinate Narendra Modi” till their arrest in February 2007. Strangely Jihadi groups DID NOT send anybody to attack Narendra Modi and other Hindu leaders after the imprisonment of policemen accused of fake encounters!!!

8. Evidence before Justice Nanavati Commission (JNC) available in the public domain, revealed the professional lapses of IB unit of Ahmedabad in failing to provide real time actionable, specific, pin pointed preventive advance intelligence about 1) the timing of return of Gujarat contingent of Kar Sevaks from Ayodhya on 27-02-2002 (this would have facilitated Gujarat police to keep special bandobast in Godhra Railway station), 2) the actual causes and course of Godhra train fire incident killing 59 Hindus – though IB agents reportedly traveled with Gujarat Kar Sevaks on their onward and return journey from Ayodhya, 3) location of extensive planned attack on Muslim settlements after Godhra incident by armed Hindu mobs 4) subversion of CJS by Modi Govt. against the riot victims and witnesses resulting in the Apex Court ordering a) constitution of Special Investigation Team (SIT) to probe into 9 major carnage cases, b) transfer of trial of cases to Maharashtra, c) reinvestigation of 2000 odd riot cases closed by Gujarat police, d) forming a special task force under Justice Bedi to probe into 17 encounter cases, e) investigation of a major mass rape case and encounter cases by CBI, observing that Gujarat police acted like modern Neros during riots and so on. Besides, Joint Director Rajendra Kumar persuaded DGP K. Chakravarti on 27-02-2002 forenoon to investigate Godhra train fire incident as an outcome of international conspiracy, without any

valid evidence (to mobilize Hindu ire against Muslim community for political advantage and electoral dividends for BJP). The conspirators have been acquitted by the Court in this case, invalidating the conspiracy theory. Further, this IB officer had also advised Gujarat State Intelligence branch to fabricate false reports against a political party. 9. It is widely felt that a set of officers close to CM Narendra Modi in Gujarat police had carried out many fake encounters with the objective to 1) Enhance the image of Narendra Modi, the self-proclaimed Hindu Hridaya Samrat, as a person constantly targeted by the Jihadi groups, 2) Generate a sympathy wave among Hindus for Narendra Modi, 3) silence critics of Modi in BJP and Sangh Parivar, 4) Project Gujarat police as an extra vigilant force successful in pre-empting any threat to VIP security and eliminating the cause of it in time, and 5) Generate a fear psychosis among the minorities.

10. All these facts would establish that IB officials interrogated by CBI for Ishrat Jahan case had certainly not confined themselves to their ambit of duties and prescribed code of conduct. They had absolutely no authority under law to arrest or detain any person, on the pretext of interrogation also even if they were activists of *Lashkar-e-Toiba*. Even if the people killed in encounters were condemned prisoners by the court, Gujarat police and IB had no legal powers to eliminate them in cold blooded murders. After all, success of Maharashtra police to arrest and secure Ajmal Kasab of 9/11 attacks on Mumbai, only had helped India to conclusively prove Pakistan’s involvement in this devilish assault on our country.

11. Everybody knows that only armed forces are exempted from arrest and prosecution for their operations in areas where special laws are

enforced i.e. Jammu and Kashmir and North Eastern states. Therefore, the deviant acts of IB officials in joining Gujarat police in planning and execution of fake encounters should be viewed seriously and any laxity would be exploited by enemies of India, propagating that minorities are not getting proper justice. This would help internationally organized Islamic Jihadis to get recruits for anti-Indian nefarious activities. Should we create a favorable ambience for such elements, within and outside India, for the mirage of IB personnel’s morale? Is the morale of IB functionaries more meritorious and valuable than the lives of Indian citizens?

12. The Governor of Andhra Pradesh, as a former Director of IB is an interested party in this matter and so he should not have intervened with a letter to the Prime Minister, aiming at neutralization of any action by lawful authority of CBI against IB officials. The Governor had violated the constitutional constraints and legal framework within which he had to function and particularly the letter and spirit of Article 51(A) of the Constitution of India. In fact anybody including Director IB endeavoring to protect the accused IB officials, allegedly involved in extra judicial killings, should approach relevant judicial

bodies instead of exerting pressure on Union Government – an Executive Authority having no powers over CBI under law, to guide and influence the course of any investigation. If CBI buckles down under such pressure tactics and de-professionalize the investigation for helping the accused, this agency would be committing an offence under section 217 IPC - “Public servant disobeying direction of law with intent to save person from punishment”.

13. Repeated electoral victories had arrogated and energized BJP and Narendra Modi to continue with blatant violation of structured

scheme of Law and its due process. The latest instance is the case of an IPS officer – ADGP Crime, P. P. Pandey, declared by the Court as a proclaimed offender, in Ishrat Jahan case, remaining untraced since 5th May, 2013, and not being suspended by Modi Government, as per the legal requirements of Gujarat Police Manual and All India Service Rules. 14. The IB's guilty role in fake encounters in Gujarat is, perhaps, the only instance, in 125 years long history of this organization, of its misuse by a State Government, presumably with the consent of NDA Government in the years 2002 – 2004. This is a dangerous trend, injurious to federalism, unity and integrity of India. The role of IB headquarters and MHA in this unholy affair should be probed deeper and remedial measures ought to be streamlined.

15. The President of India is the senior-most servant, soldier, protector and Dharma Yodha of the Constitution of India. Therefore, I, humbly appeal to you to initiate appropriate steps to prevent and neutralize any move from Government or non-governmental groups or persons, from impeding CBI investigation in Ishrat Jahan encounter case and other fake encounter cases in Gujarat. Any

action to anoint IB officials, accused of collaboration in fake encounters, with the oil of innocence, violating the procedure established by law and through illegal extraneous pressure, would result in IB degenerating into India's Inter Services Intelligence (ISI).

The pivotal scripture of Hinduism – The Bhagwat Gita - emphasizes the primacy of law (Shastras) in Chapter 16, Sloka 24:-

“Law alone determines what is to be done or not and so one should become aware of what is prescribed in law and perform duties accordingly.”

*Tasmac chastram pramanam te karyakarya-vyavasthitam |
Jnatva sastra-vidhanoktam karma kartum iharhasi ||*

With profound regards,
Yours faithfully,

R. B. Sreekumar

“Sreelekshmidheepam” Plot No. 193, Sector-8, Gandhinagar – 382008, Gujarat.

Tel (R.) 079-23247876, Mobile: 09428016117, Noida Tel. No. 0120-4284799; Email: <rbsreekumar71@yahoo.com>

Copy with compliments to: Shri Manmohan Singh, Hon' Prime Minister of India, 152, South Block, Delhi 110001 □

Please note the New address of the NHRC:

National Human Rights Commission, C Block, GPO Complex, I.N.A., New Delhi 110023 011-24663324

Old address:

National Human Rights Commission, Faridkot House, Copernicus Marg, New Delhi 110001

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