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Obituary:

Prof. Hassan Mansur Is No More

Professor Hassan Mansur (1930 - 2014) was the doyen of the human rights movement in Karnataka. A former Professor of English in Bangalore University and a lover of the works of James Joyce, he found his calling in the human rights movement.

Prof Mansur was an early forerunner of the human rights movement in Karnataka, and founded the Karnataka Civil Liberties Committee (KCLC) in 1984; he went on to work for the People's Union for Civil Liberties (PUCL) with which he would be associated for the rest of his exemplary life.

Prof. Mansur's career in the human rights movement however began early as young communist activist, who at the age of 19 was arrested by the Broadway Police way back in the early years of independence. Formed by this early experience with the police, Prof Mansur went on to become a tireless advocate against police violence as the face, and indeed the heart, of the People's Union for Civil Liberties in Karnataka.

Prof. Mansur was also instrumental in broad-basing the concerns of the PUCL and taking it beyond the traditional human rights issues such as civil liberties to focussing attention on the violations of socio-economic rights, including the right to housing and the right to water. Under his able leadership, PUCL also began to advocate the rights of other marginalized sections and deprived communities such as women, Dalits, adivasis, slum dwellers, sex workers and sexual minorities.

Prof. Mansur exemplified a style of leadership which nurtured others to grow into their own. To his colleagues, he embodied a form of modesty, intellectual curiosity and gentleness which gestured towards another way of being a leader. A man of tremendous achievements forged in over 40 years of public service to the field of human rights, he always understated the depth of his contribution by preferring to avoid the limelight.

In many meetings in Bangalore on human rights issues as diverse as encounter deaths, the rights of slum dwellers or the right against torture, Prof. Mansur would always be accompanied by Mrs Hasnath Mansur. The life that Mrs and Mr Mansur led in close companionship for over 40 years of togetherness consisted of laughter, poetry and politics. It was in every way an ideal relationship founded upon the deepest love. Our deepest condolences go out to Mrs Mansur in her hour of bereavement.

As comrades of Prof. Mansur, we know that he would only want one thing of us. He would want us to continue the work of the PUCL and constantly fight against forms of violence and oppression, a task to

which he was committed. We will always remember Prof Mansur's fierce commitment to the human cause, to the rights of the most marginalized, and that memory will serve as a constant inspiration to the People's Union for Civil Liberties in the journey ahead. Prof. Mansur as a lifelong student of literature would have appreciated us invoking Pablo Neruda (a revolutionary as well as a romantic poet) to remember him:

Should I die survive me with a force
so pure
That you awaken fury from the pale,
chill world,
In all directions raise your indelible
eyes,
Day in day out, sound your mouth's
guitar.
People's Union for Civil Liberties,
**State Executive Committee,
Karnataka**

Note: The whole PUCL family joins the State Executive Committee, Karnataka in paying its respectful tributes to the memory of Prof. Hassan Mansur, former President, PUCL Karnataka and a long time PUCL leader, and sends its condolences to the bereaved family of Prof. Hassan Mansur, friends and colleagues. - Mahi Pal Singh, Secretary, PUCL ☐

Press Statement: 18 February, 2014

PUCL Statement - Welcome the SC Commutation of Death sentence of Rajiv Gandhi Assassination Prisoners and setting Constitutional benchmarks on remission

PUCL welcomes the historic and landmark ruling of the Supreme Court today (18th February, 2014) commuting to life sentence the death penalties awarded to Murugan, Santhan and Perarivalan, convicted in the Rajiv Gandhi assassination case. This judgment of the Supreme Court, and the 21st January, 2014 judgment in '*Shatrugan Chauhan vs Union of India*' marks a watershed in the evolution of death penalty jurisprudence in India and restores the primacy of a constitutional vision imbued with a sense of humanity and compassion. The ruling also emphasizes an appreciation of the right to life in the context of "*[the] brooding horror haunting the prisoner in the condemned cells for years*" as a consequence of prolonged delay in deciding mercy petitions.

The unanimous ruling delivered by the Hon'ble Chief Justice of India, P. Sadasivam and Justices Ranjan Gogoi and Shiva Kirti Singh built on

the principles evolved in '*Shatrugan Chauhan vs Union of India*' saying that the unexplained, undue and inordinate delay of 11 years in rejecting the commutation petitions by the Executive would amount to torture, constituted a violation of Art. 21, the right to life, and is ground enough to commute the death sentences.

The SC also rejected the most preposterous argument of the Attorney General of India, GE Vahnavati, that there was "not a word of remorse" and that the 3 prisoners were "enjoying life, attending music concerts and were not in any sort of agony". The SC pointedly emphasized that agony did not mean physical torture and that in law, there was no requirement for the prisoners to prove suffering or to demonstrate the specific ill effects of imprisonment or agony in prison.

Continuing the trend of a visionary, path breaking judicial expansion of human rights law, the SC also held that it was open to the Tamil Nadu

Government to consider exercise of powers under sections 432 and 433 Criminal Procedure Code to grant remission to the 3 prisoners if they approached the government for premature release or remission, by following the due procedure of law. By doing so, the SC has demonstrated its ability to stand statesmanlike above the blood thirsty demands for retribution and revenge which has occupied public space and media coverage on death penalty cases in recent times.

The SC's ruling is a momentous ruling for asserting that human values and humane justice should ultimately be the cornerstones of modern, constitutional India. We hope this will mark a significant step towards eventually abolishing the death penalty altogether from our law books.

Sd/-

Prabhakar Sinha, National President, PUCL; **Dr. V. Suresh,** National General Secretary, PUCL ☐

PUCL Press Statement condemning the Chhattisgarh government for implicating noted Sociologist Prof. Nandini Sundar: 29th January 2014:

Press Statement

People's Union for Civil Liberties (PUCL) is greatly concerned and strongly condemns the attempt of the Chhattisgarh government to somehow implicate noted Sociologist Prof. Nandini Sundar, Head of Department of Sociology, Delhi School of Economics and others associated with her for

alleged links with banned Maoists in Chhattisgarh. The fact that this is yet another attempt by the Chhattisgarh government to threaten, intimidate and silence anyone raising issues of accountability by state police and government to constitutional requirements and human rights laws is evident by the incident of 28th

January, 2014, when Badri Gowde, Vice-President of the Congress party of Antagarh Block who was arrested and in the custody of the State Police was made to address the media in the presence of senior police officials and to allege that he had arranged for meeting between Prof. Sundar and Maoists. The Additional Director

General of Police (Intelligence), Mr. Mukesh Gupta, is also reported by media persons to have made unsubstantiated allegation about Prof. Nandini Sundar.

This conduct of the Chhattisgarh police is highly objectionable, totally illegal, against constitutional principles and condemnable. It is not the business of the police to arrange for media events with accused - arrested persons. This not only compromises fair and independent investigation but also highlights the biased nature of police investigation lending strength to the complaint that the police are only trying to silence voices of constitutionality and accountability. It also raises the disturbing issue of politicization of issues by the police who have a constitutional duty to enforce rule of law and not to indulge in character assassination, false implication and other similar violations of law.

This unacceptable conduct of the Chhattisgarh government and police vindictively attacking the credibility and independence of any constitutionally minded citizen raising queries about unconstitutional conduct of the Chhattisgarh government has been adversely commented upon by the Supreme Court. In the PIL filed by Prof. Nandini Sundar and others challenging the constitutionality of the *Salwa Judum*, the apex court remarked:

"The situation in Chhattisgarh is undoubtedly deeply distressing to any reasonable person. What was doubly dismaying to us was the repeated insistence, by the respondents, that the only option for the State was to rule with an iron fist, establish a social order in which every person is to be treated as suspect, and any one speaking for human rights of citizens to be deemed as suspect, and a Maoist. In this bleak, and miasmatic world view propounded by the respondents in the instant case, historian Ramchandra Guha, noted

academic Nandini Sunder, civil society leader Swami Agnivesh, and a former and well reputed bureaucrat, E.A.S. Sarma, were all to be treated as Maoists, or supporters of Maoists. We must state that we were aghast at the blindness to constitutional limitations of the State of Chhattisgarh, and some of its advocates, in claiming that any one who questions the conditions of inhumanity that are rampant in many parts of that state ought to necessarily be treated as Maoists, or their sympathizers, and yet in the same breath also claim that it needs the constitutional sanction, under our Constitution, to perpetrate its policies of ruthless violence against the people of Chhattisgarh to establish a Constitutional order". (emphasis ours)

(Nandini Sundar vs State of Chhattisgarh, 5.7.2011)

It is unfortunate that the Chhattisgarh government instead of respecting and abiding by the Supreme Court verdict asking it to respect rule of law and disband *Salwa Judum* should instead continue to threaten, harass and intimidate activists who have highlighted the brazen human rights violations committed by the state police and other groups under its patronage.

The reason why the latest attempt to silence Prof. Nandini should not be taken lightly is for the fact of the vicious actions of the government and state police in arresting numerous persons who have questioned its policies. Amongst those who have been 'prisoners of conscience' are Dr. Binayak Sen, National Vice-President of the PUCL and a vocal critic of *Salwa Judum*, and Shri. Kartam Joga, a CPI leader and an elected member of the Janpad Panchayat of the Konta area, who was also one of the Supreme Court petitioners challenging *Salwa Judum*. PUCL condemns this brazen attempt of the Chhattisgarh government to

criminalize dissent and silence critics.

The latest attempt to link Prof Sundar and others associated with her to Maoists comes in the background of proposed large-scale iron ore mining activity in the Rowghat area of Chhattisgarh, which is being actively opposed by local tribal populations. The local opposition is sought to be quelled by deployment of 22 companies of BSF and CRPF forces. Being a Fifth Schedule Area, any mining activity and all military encampments in the Rowghat hills require the approval of village level committees, the Gram Sabhas, which have not yet been obtained. Several constitutional minded citizens of India, including Prof Nandini Sundar, have been drawing attention to the failure of the state in following its own legal mechanisms of utilization of resources, and it is in the wake of such protests that the current allegations against Prof Sundar have surfaced. All this is happening despite the fact that Prof. Nandini Sundar is on record to declare her deep respect for rule of law and constitutional principles, human rights and democratic values. PUCL demands that the Chhattisgarh government and the state police upholds the civil liberties and fundamental rights enshrined in the Indian Constitution and puts an immediate end to the harassment and vindictive witch hunt of constitutionally minded citizens through such motivated, damaging, dangerous and defamatory police claims. Additionally, it is imperative that the directives of the Supreme Court are followed, local tribal communities are compensated for atrocities suffered by them during the *Salwa Judum* period, schools and hospitals are immediately vacated by security forces, and PESA rules governing scheduled areas are strictly followed.

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

34th JP Memorial Lecture to be held at Ahmedabad

The JP Memorial Lecture is organised in memory of Shri Jayaprakash Narayan by the PUCL every year on 23rd March, the day emergency was lifted. The 2014 lecture is scheduled to be held at Ahmedabad. Prof. Sudhir Chandra, formerly Prof. of NIAS, Simla and Jamia University, who is known for the considerable work he has done in the field of colonial and contemporary political processes, nationalism and related subjects has accepted our invitation to deliver the JP memorial Lecture on 23rd March 2014 at Ahmedabad. He will be speaking on '**Challenges to Democracy in India Today**'. The specific theme he is still to communicate. The venue is to be decided by Gautam Thaker.

For details or accommodation etc. please contact: Gautam Thaker, General Secretary, PUCL Gujarat at his Mobile 09825382556 or at E.mail <gthaker1946@gmail.com>

CFD Press Release Demanding Judicial Inquiry in Pathribal Encounter: 27th January 2014:

Judicial Inquiry Demanded In Pathribal Encounter

We are very much shocked and disappointed with the result of the Court Martial Inquiry relating to Pathribal encounter in which army claimed to have killed five terrorists in while the local villagers have claimed that the deceased were innocent. CBI inquired into the matter and had submitted before the Supreme Court that it was a cold-

blooded fake encounter. It is strange that the army has claimed that there is no evidence. This self-acquittal by the army will only aggravate the sense of alienation and resentment among the Kashmiri people.

We therefore urge upon the Government of India to set up a judicial inquiry headed by a Supreme Court judge to investigate into

allegations of fake encounter relating to killings of five persons by the army on 25th March 2000 at Pathribal in Anantnag, Jammu & Kashmir.

Kuldip Nayar, President, Citizens For Democracy (CFD); **Justice Rajindar Sachar** (Retd), Former President, PUCL; **N.D. Pancholi**, General Secretary, Citizens For Democracy (CFD) □

FORM IV

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I, Pushkar Raj, hereby declare that the particulars given above are true to the best of my knowledge and belief.
March 1, 2014

Pushkar Raj, Publisher

PUCL Delhi Demands Handing Over of Remains of Afzal Guru to His Family: 9th February, 2014

Demand for Handing Over Remains of Afzal Guru to His Family

Mohd. Afzal Guru was hanged secretly last year on this day i.e. 9th Feb. in Tihar jail. The Supreme Court of India in recent judgment, titled as Shatrughan Chauhan Vs. Union of India {Writ Petition (Criminal) No.55 of 2013} has commuted the death sentences of about 16 convicts to life imprisonment whose mercy petitions were recently rejected. Had Afzal Guru not been executed hastily in hush hush manner, he would have

also been benefitted by this judgment on the ground of 'delay' in deciding mercy petitions. Afzal was informed of rejection of his mercy petition only a couple of hours before his execution on the morning of 9th February 2013. A letter from jail in Delhi was sent by post on 7th February 2013 to his family in remote village in Kashmir in such a mischievous manner that it reached the village only after his hanging had taken place. The

Supreme Court in its judgment has emphasized and reiterated the need for adopting a fair, just and reasonable procedure in tune with article 21 of the Constitution so that convict and his family is sufficiently informed in advance about the rejection of the mercy petition, provided legal aid to approach courts again in writ petition and that there should be a gap of minimum 14 days between rejection and execution so

that the family is able to meet the convict. All such requirements of a fair procedure were violated in the case of Afzal Guru with a view to prevent him from approaching the Supreme Court like others, and Mr. Shinde, the Home Minister, prided himself openly in taking recourse to such a cunning course while Mr. R.K. Singh, the Home Secretary master minded the secret operation. It is obvious that the Home Minister was guided by narrow political consideration of electoral gains, the Home Secretary was prompt to act in order to quench the blood thirst of

his favorite political party, i.e. the BJP, which he soon joined after retirement. Afzal Guru was number 21 in the queue of death row prisoners but the queue was broken to hang him secretly. And to top the brutality, his dead body was refused to be handed over to his family, and because of this refusal, Ghalib, the 15 year old son of Afzal is under the false hope that his father is still alive hidden somewhere in Tihar Jail. Even the Pakistan government did not behave so inhumanly and promptly handed over the dead body of Sarabjit, the Indian prisoner, to his family.

Tabassum, the wife of Afzal in particular and Kashmiris in general, are confirmed in the belief that Afzal was discriminated because he was a Muslim and a Kashmiri.

The secret execution of Afzal Guru is the most shameful act of the of the Indian Govt. and a blot on Indian democracy. I therefore, on behalf of PUCL urge upon the Indian Govt. to reconsider its decision and immediately hand over the remains of Afzal Guru to his family to enable it to perform the last rites.

N.D. Pancholi, President, PUCL, Delhi □

Interviewing India's Death Row Prisoners - NLU Delhi's Death Penalty Research Project

Anup Surendranath*

National Law University, Delhi has undertaken a unique empirical project on the death penalty in India. In collaboration with the National Legal Services Authority (NALSA), researchers from NLU Delhi have been interviewing prisoners sentenced to death in addition to the families of such prisoners along and their trial court lawyers. The project aims to document the socio-economic profile of prisoners sentenced to death along with mapping their interaction with the criminal justice system at different stages.

The Structure of the Project

We have received tremendous support from NALSA in enabling our access to prisoners sentenced to death in different States. The project has adopted a state-wise approach for implementation and the first step requesting NALSA to write to the concerned State Legal Services Authority (SLSA). NALSA requests the concerned SLSA to gather information (from the Prison Department of the state government) about prisoners serving a death sentence in that state. We then follow-up with the State Legal Services Authority and the Prisons Department of the concerned state to get the relevant information. Once we receive the information, we then commence with interviews of the

prisoners, their families and lawyers. We have different questionnaires for prisoner, family and lawyer interviews and they are not administered like a form. We attempt to have a wide-ranging conversation with our interviewees and in that process gather the information we are looking for.

The Project has two faculty members (Ms. NehaSinghal and me) along with a non-permanent body of student researchers. On an average at any given point of time, we have about 30 researchers. The Project has been entirely funded by the University so far and we haven't received funds from any other sources, either internal or external.

Challenges

The first and foremost challenge is the validity of the information we receive from state authorities. It has been our experience that the only way to actually be absolutely sure about the number and details of prisoners is by visiting the prisons in which prisoners sentenced to death are lodged. This points to very elementary problems with information gathering and updating by the state authorities. It has also been extremely difficult to source trial court judgments in most states. In that context it must be said that Delhi and Maharashtra have an efficient system of uploading trial court

judgments on easy-to-use websites. In most other states, it has been a real battle to source these judgments and once again points to the enormity of the challenge that faces any attempt to do organised death penalty research in India. Despite that, we are determined to collect all the trial court judgments of prisoners currently serving a death sentence and provide free public access to them through our website (due to be launched in April 2014). Apart from those fundamental challenges, tracking families has been a task filled with multiple challenges. The student researchers have done shown tremendous commitment and patience is following leads to find families and convincing them to talk to us. With no such prior research having been done, there really wasn't anyone who could tell us what we could expect from families of prisoners sentenced to death. The reactions from families have been quite varied with some of them being outright hostile and refusing to talk to our researchers and others being extremely willing and glad to talk to us. There are a lot of dynamics at play when we do approach families of prisoners sentenced to death and we do hope to publish a longer piece on that once the Project is completed.

Preliminary Impressions

The fieldwork for the Project is ongoing and we hope to complete the fieldwork by mid-April 2014. While we have started exploring the finer details of pulling together the information we have gathered, we hope to publish our report by August 2014. In that sense, we haven't analysed the information we have gathered so far in any systematic manner. However, some issues emerge quite clearly from the work we have done so far. The alienation of the prisoners sentenced to death from the legal system is extremely stark. It is as though the prisoner was the most irrelevant person during the procedure that was followed to sentence her to death. We have found that even a large number of lawyers have never really met the prisoner or bothered to gather any details from the prisoner's side. While there is almost a fear of sarkarivakils provided free of charge, the efforts of families to hire a private lawyer for the trial also seem to be rather ineffective. For a large number

of prisoners, talking to us has been the first ever opportunity for them to narrate their version of the incident and there is hardly any reflection of that in most of the judgments. There is widespread police brutality in these cases and rampant violation of the criminal procedure. One would expect that the system would demonstrate a greater adherence to procedural safeguards before sentencing individuals to death. The trial court judgments in these cases require a lot more attention and critical analysis. The quality of the judgments and the quality of evidence being used is shocking in many instances.

One aspect I would like to stress on from our interviews so far is that the discourse on the death penalty in India needs to shift its focus away from just the Supreme Court cases. The problem with the death penalty in India cannot, in our imagination, be just about the fact of hanging. It is not really death that is the problem but rather living in anticipation of

death. There is tremendous suffering amongst the prisoners sentenced to death and our prison system only exacerbates that suffering. Any meaningful intervention on the issue of death penalty in India must have a serious preventive element to it. Significant efforts must be made to ensure that individuals are not sentenced to death in the trial courts. Towards that there needs to be thought on developing a specialised sentencing practice and getting trial courts to devote more attention and time to the phase of sentencing. To conceptualise the problem of death penalty in India as something that arises after the confirmation of the death sentence by the appellate courts or the denial of mercy, is to ignore the intense trauma and suffering of being a death row prisoner in India's prisons.

**Anup Surendranath is the Director of the Death Penalty Research Project at National Law University, Delhi. His email address is <anup.surendranath@nludelhi.ac.in> ☐*

“Of Junking the Machinery of Death The SC and Commutation of 15 Death Sentences”

On 21st January, 2013, The Supreme Court of India delivered a landmark judgment in 'Shatrughan Chauhan vs. Union of India' holding that "undue, unexplained and inordinate delay in execution due to pendency of mercy petitions" is a ground for the courts to consider the plea for commuting death penalty to life imprisonment. Very importantly, the Supreme Court also added, that the grievance of the death row convict that "the executive as well as the constitutional authorities have failed to take note of / consider the relevant aspects" of her / his case is also a ground for the court to consider the plea for commutation.

The judgment delivered by P. Sathasivam, Chief Justice of India for himself and Justices Ranjan Gogoi and Shiv Kirti Singh set at rest a raging controversy over whether delay in considering mercy petitions by the President / Governor was ground to consider petitions for commutation.

The judgment not only clarified the position unambiguously but also in one stroke granted life back to 15 prisoners whose executions were stayed literally hours before their execution. The Court pointed out that "keeping a convict in suspense while consideration of his mercy petition by the President for many years is certainly an agony for him / her. It creates adverse physical conditions and psychological stresses on the convict under sentence of death". Very significantly the SC pointed out that at the stage of considering whether there was delay or not in disposing the mercy petition by the executive, the "gravity of the crime" or the type of murders committed cannot be the basis to excuse the agonizing delay.

The judgment is significant for reiterating some key principles relating to the stage of mercy petitions. The SC authoritatively clarified once again, that the power

of the President or Governor to grant commutation under Articles 72 or 161 of the Constitution of India is a "constitutional responsibility of great significance" and it is open to the President "to scrutinise the evidence on record of the criminal case and come to a different conclusion from that recorded by the court in regard of the guilt of, and sentence imposed on, the accused".

For years anti-death penalty campaigners had been pointing out that challenging rejection of mercy petitions on the ground of prolonged delay caused not by the convict himself, should be considered a violation of right to life under Article 21, and that by considering writ petitions, the court was not being asked to review the final judgment convicting the person in the criminal case, but only to consider whether there could be judicial review of the facts of delay. The judgment clarified that by exercising the power of

commutation, the President does not amend or modify or supercede the judicial record, in so far as the final judgment upholding the conviction and death penalty is concerned. The judicial record remains intact, and undisturbed. It was pointed out that the nature of pardoning power is entirely different from the judicial power and cannot be regarded as an extension of it, "notwithstanding the practical effect of the Presidential act is to remove the stigma of guilt from the accused or to remit the sentence imposed on him".

The court re-emphasised the "concept of supervening events" pointing out that these occur after the death penalty is finally confirmed, such as delay in considering the mercy petitions or insanity or failure to consider material facts of the case, and held that these supervening events could be issues which the court could examine. It was clarified that consideration of such grounds was an element of protection of right to life under Article 21, and courts can give "substantial relief and not merely procedural protection".

The court sensitively handled the argument of whether commutation on ground of delay would impair the "right of victims of the deceased". Pointing that the situations are wholly different, the court clarified that the rights of victims of crime was the primary focus at the time of final decision of the criminal cases leading to confirmation of death sentence. This has to be distinguished from the situation when prisoners came to court under Article 21 on ground of delay or mental condition of the convict as under the changed circumstances, they were themselves, "victim of guaranteed violation of guaranteed fundamental rights" entitled to seek commutation of sentence.

Following past judgments, the SC once again refrained from specifying a specific or fixed time frame for consideration of mercy petitions by the President or Governors and left it open for Courts when approached by death row prisoners on ground of

supervening events like inordinate, unexplained delay in considering mercy petitions to examine the factual situation before deciding on whether to consider commutation to life sentence.

One of the most important aspects of the judgment is that the SC categorically set aside the ruling of the 2-judge Bench in Devinder Singh Bhullar case delivered in April, 2013. In the 2013 judgment a very problematic distinction was made between regular or ordinary crimes of murders due to personal animosity or property or personal disputes and 'terrorist crimes'; the Bench held that the ground of delay in considering mercy petitions or even mental condition of the prisoner cannot be examined by the Supreme courts in cases of convicts under anti-terrorist laws.

The 2013 ruling in Devinder Singh Bhullar case was categorically set aside by the latest ruling in Shatrughan Chauhan case (2014) by stating that unexplained delay is one of the grounds of commutation of death sentence to life imprisonment and is "applicable to all types of cases including the offences under TADA".

Other 'supervening events' like the mental condition of the convict including 'insanity, mental illness and schizophrenia' (see accompanying article by Maitreyi Misra), charges of being kept in 'solitary confinement' and 'procedural lapses' were also considered. While the court declined to interfere on grounds of solitary confinement in any of the 15 cases before it in 2014, the Court nevertheless clarified that under section 30 of the Prisons Act, every prisoner 'under sentence of death' after the sentence 'shall be confined in a cell apart from all other prisoners'. The Court clarified that this stage of "under sentence of death" is reached only after the rejection of the mercy petition and not when appeals are pending in superior courts or even pending consideration of commutation petitions. Thus keeping a prisoner under solitary confinement is

contrary to law and will amount to inflicting additional and separate punishment nor authorised by law. Since the court had decided to commute the death sentences of all 15 persons on ground of delay, no specific finding was given to the claim of most of these prisoners that they were kept in solitary confinement in; the records indicated that in the case of some of them, as for example Devinder Singh Bhullar or Sundar Singh, the sheer tension of long wait in death row had caused mental illness including mental insanity and schizophrenia.

The most important aspect of the judgment is the detailed guidelines provided in cases of death row prisoners. Since these prisoners are held to be entitled to protection of Article 21, the court mandated free legal aid support for all such prisoners to challenge rejection of their mercy petitions. All the authorities were directed to place the entirety of records from the trial court evidence and judgment to all other documents before the President or Governor for effective and full consideration of the commutation petition. The court based on the material before it, pointed out that in many instances the officials had only placed piece-meal or partial records before the President or Governor.

Since most death row prisoners are "extremely poor" and do not have copies of their court papers, including judgments, the prison authorities were directed to furnish all copies of relevant documents to the prisoners within a week of the confirmation of death sentence by the last court, so that they could send mercy petitions and also petition the courts.

All death row prisoners were directed to be regularly medically examined and necessary treatment given to them in view of them losing their mental balance on account of prolonged anxiety and suffering experienced on death row. Prison superintendents were directed to stop executions if they found the prisoners not in a physically or mentally fit condition and to produce the prisoner before a Medical Board for comprehensive evaluation with

report sent to the State government. Post mortems of executed prisoners has also been compulsorily mandated to ascertain the cause of death in view of the allegations that death is not caused instantaneously.

Communication of rejection of mercy petitions by President and Governor to the prisoner has been made mandatory as part of their "entitlement". A minimum of 14 days notice has been directed to be given before fixing date of execution in order for the prisoner to 'mentally prepare himself for execution' and "to make his peace with god, prepare his will and settle other earthly affairs" and to have a last and final meeting with his family members, especially if they are residing in remote or distant

areas.

Very significantly, the Supreme Court held, not permitting the 14 days advance intimation will thwart the prisoner's 'right to avail of judicial remedies' and that "Protection of Article 21 of the Constitution of India inheres in every person, even death row prisoners, till the very last breath of their lives".

The judgment in Shatrughan Chauhan case is certainly not the last word on death penalty jurisprudence. In fact, the judgment is very specific to the case of 15 prisoners whose mercy petitions were delayed for many years before decisions were taken. While the judgment has not disturbed the constitutionality of death penalty itself it has nevertheless

authoritatively reiterated certain key principles in death penalty jurisprudence especially asserting that the death row prisoners are entitled to protection of Article 21.

In the long struggle that still remains ahead of the anti-death penalty movement in India, the Shatrughan Chauhan judgment gives us a moment of relief and a brief respite to recoup our moral and mental strength. The anti-DP campaign in India will however need to reorganise itself to mobilise public support to outlaw death penalty from our law books. Like a US SC judge said, the challenge is to banish death penalty and "junk the machinery of death".

V. Suresh, National General Secretary, PUCL.

February 16, 2014 □

Death penalty and persons with mental illness: An analysis of Shatrughan Chauhan and Anr. v. Union of India and Ors.

Maitreyi Misra

The Supreme Court in Shatrughan Chauhan and Anr. v. Union of India and Ors provided a much needed judicial boost to the anti-death penalty movement in India by restricting instances in which the death sentence can be given or executed. The Court commuted the death sentence of 15 prisoners to life imprisonment on various grounds. In addition to ruling on grounds for commutation, the Court also lay down guidelines for protecting the rights of persons under death row.

In brief, a number of writ petitions were filed before the Supreme Court on behalf of persons under death row whose mercy petition had been rejected by the President. Two of these petitions were filed on behalf of prisoners with mental illness. The Court applied its limited power of judicial review over the manner in which the President exercised his power to pardon.

In reaching its conclusions, the Court examined the effect of supervening events on the cases under consideration. It found the legal basis of looking at supervening circumstances in the right to life, guaranteed under article 21 of the

Constitution, which must be protected at all stages. The supervening events the Court looked into were delay, insanity, solitary confinement, judgements held per incuriam and procedural lapses. The Court gave no ruling on solitary confinement or judgements held per incuriam as supervening events.

With respect to delay, the Court held that inordinate, undue and unreasonable delay in execution of death sentence attributes to torture, which is a violation of the right to life under Article 21 and entails as a ground for commutation of sentence.

The Court used this reasoning to examine the ratio laid down in *Devender Pal Singh Bhullar v. State (NCT) of Delhi*. It noted that though the Court in *Bhullar's* case recognized delay as grounds of commutation, it treated TADA cases as a class where supervening circumstances need not be considered. Such reasoning would effectively impose, in TADA cases, mandatory death penalty, which has been held unconstitutional in *Mithu Singh v. State of Punjab*. The Court, therefore, held the ratio in *Bhullar's* case as per incuriam.

When dealing with mental illness as a ground for commutation, the Court took into account international instruments, including inter alia, the International Covenant on Civil and Political Rights, the UN Resolution on Question of Death Penalty and the Report of United Nations Special Rapporteur on extra-judicial, summary or arbitrary execution. These instruments prohibit imposition and execution of death penalty on persons with mental illness. The Court also took support from the 8th amendment of the US Constitution which prohibits imposition of cruel, inhuman and unusual punishment, including torture. It relied heavily on *Blackstone's Commentaries*, which considers idiots, lunatics or mad persons to be without capacity, by reason of which such persons are exempt from being charged, arraigned, judged or executed for their acts.

Coming to the Indian law on execution of persons with mental illness, the Court looked at Rules 386 and 387 of the U.P. Prison Manual. Rule 386 expressly mentions that the Jail Superintendent shall stay the

execution of a person on death row, if the person develops insanity after being sentenced. Although Rule 387 applies to prisoners who are not physically fit to receive the punishment, the Court extended the rule to include persons with mental illness.

The Court held that insanity/mental illness/schizophrenia is a supervening circumstance to be considered in commuting death sentence due to the protection guaranteed under the right to life. In effect, the Court held that the right to life prohibits imposition and execution of death penalty on a person with mental illness as it amounts to cruel, inhuman and unusual punishment, including torture.

Providing further protection to the rights of prisoners under death row, the Court lay down guidelines to be followed uniformly to prevent procedural lapses in and unjust execution of such persons. Pertinently, the guidelines mandate periodic evaluation of the mental health of persons on death row as such persons may lose their mental balance on account of prolonged anxiety and suffering experienced on death row. The Court reposed power in the Jail Superintendent to stop the

execution of a person, even after the execution warrant is issued, if he is not satisfied that the person is not physically or mentally fit to be executed.

By holding the execution of persons with mental illness as cruel and inhuman the Court provides respite to persons who may develop a mental illness due to the delay caused at the hands of the Executive in deciding their mercy petition. It protects the right of prisoners with mental illness to be free from cruel, degrading and inhuman treatment. In mandating periodic mental health evaluation, the Court has recognized the need for timely treatment of the mental illness of a person on death row. Significantly, the Court has recognized that the prisoner's mental health is vital for the execution of death sentence. Recognizing this, the Court has permitted the stay of execution on prisoners with mental illness despite the rejection of their mercy petition.

However, by repeatedly referring to "insanity" and alluding to persons with mental illness as insane people or persons who have lost their mental balance, the Court reinforces the perception of persons with mental illness as people who are incapable of cognitive functions and have, at

all times, no recognition of reality. Further, clubbing insanity, mental illness and schizophrenia as a class of people creates views all persons with mental illness as having schizophrenia and who are insane. This disregards current science and knowledge on the issue of mental health which has moved beyond this limited understanding of persons with mental illness.

The Court also refers to Blackstone's commentary which refers to persons with mental illness as idiots, lunatics, and mad persons who lack capacity permanently. It is important that such archaic language not be used as it stigmatises persons with mental illness. It would have been a welcome change to see the Court use a rights-based language when discussing the rights of persons with mental illness. This would have been a step towards prevention of discrimination against persons with mental illness.

It is without a doubt a progressive judgement on the death penalty but misses an opportunity to be progressive on mental illness.

Maitreyi Misra is a researcher with Mr. Anand Grover, the United Nations Special Rapporteur on the right to health. These are her personal views. □

An Appeal by 177 Under-Trial Prisoners on Indefinite Hunger Strike

February 1, 2014

This is an appeal to intellectuals and human rights organizations/activists about the Indefinite Hunger Strike that will be launched from Thursday 30th January 2014 by at least 177 under trial prisoners, including 7 women, who are detained in Nagpur Central Prison Nagpur, Maharashtra. The prisoners who are going to participate in the strike are all under trial prisoners who have been charged under UAPA, MCOCA, and/or murder charges under IPC).

It is a settled principle of law and a directive of the APEX COURT of this country that "BAIL is the rule and Jail is an exception".

In spite of repeated rulings of the Supreme Court that bail ought to be granted at the earliest and that the

gravity of the charges should not be the reason for not granting bail. The prison population is ever increasing and hundreds and thousands of under trial prisoners are languishing in jails because bail has been denied to them.

The under trial prisoners are thus deprived of their legal and constitutional right of getting bail, even in lingering procrastinated trials. Besides, almost all are denied their right of physical attendance in courts, fair and speedy trials and reasonably speedy Judgments.

The prisoners of Nagpur central jail, having tried all means, such as petitioning the Bombay High Court, government of Maharashtra, felt that they had no other no alternative but to launch an Indefinite Hunger Strike

till their demands are achieved.

A memorandum dated 20th January 2014 and signed by 177 under trial prisoners has been sent to the Honourable Chief Justice of Bombay High Court with copies to Principal Judge, Bombay High Court (Nagpur Bench) and other officials through the Superintendent of Nagpur Central Prison Nagpur. The memorandum includes the following demands:

1. The directives of Honorable Supreme Court that "Bail is the rule and Jail is an exception" should be implemented as a principle with regard to bail and bail should be granted in a definite and short time period;
2. Those charges with supposedly serious crimes should also be granted bail. after charge sheet is

filed, albeit with conditions if required;
3. In order to establish the right of fair and speedy trial to all Accused, after the closure of a trial, Judgment should be delivered in a relatively definite and short time period. If the trial is delayed due to some unavoidable reasons, then the under trial bail should be granted bail. More so in the cases of those under trial prisoners whose bail application/s

has/have been refused earlier.

4. The right of a fair trial cannot be established through Video Conference (V.C.) method. V.C.s should not be an option during trials and under trial prisoners must be compulsorily brought to court on their trial dates.

Friends, we are committed to sit on Indefinite Hunger Strike till our

demands are met. The success of our struggle cannot be achieved without your solidarity and active support from outside. So it is our humble and hopeful appeal to you to kindly extend your support in favour of our just demands and struggle.

With regards

Sudhir Dhawale, Diwakar Jha, Gautam Pillewan and other under trial prisoners ☐

SSSC Condemns Army Verdict on Pathribal Fake Encounter:

We Condemn the Army Verdict of Pathribal Fake Encounter & Demand its Re-Opening and Repeal of AFSPA

It is sad that in the world's democracy, that army has once again overruled the CBI and the Supreme Court. The army has closed the court martial of its officers who were found guilty of fake encounter of Pathribal, J&K by CBI after which the Supreme Court of India had asked the Army to either provide sanction of prosecution against them or to do court martial for these officers.

The army has closed the court martial on the grounds that there was no evidence against their officers, whereas the CBI had already investigated the matter and found that it was a conspiracy where these officers had picked on innocent civilians to create an impression that the militants responsible for the Chhatisinghpora killing have been neutralized.

It was one of the few cases that had managed to go up till the Supreme Court and in which the Supreme Court accepting the CBI version had directed the army to take action in 2012. But dramatically, after two years, the army closed the court

martial file on 24 Jan 2014 and therefore to an extent has overruled the CBI and even Supreme Court. It is also to be noted that how Army opposed the case and argued that no case can be registered against its officers under the veil of AFSPA as it provides impunity and that it requires prior sanction of central government to prosecute as per Section 7 of AFSPA.

Anyone who believes in justice with equality should not accept such rules and must demand to scrap AFSPA. Even in many other cases, AFSPA has proved to be a draconian law and has abetted human rights violations through fake killings, torture and rapes. With time, because of the impunity and no sanction granted by central government to prosecute an armed personal, this has become a habit and mindset of deployed security personals and consequently a danger for all those living in AFSPA-imposed areas.

We believe in truth, justice and peace for all without any discrimination. We do not support any form of violence and we believe that it is a duty of the

armed personnel that they must respect every human being and follow the path of justice and truth rather. They must know that just by donning the uniform, they do not get any authoritative command of violence or killing, rather they get a responsibility to protect people and not to harm them. We also believe that being a part of the Indian department of governance, army must respect the investigation and instructions of central agencies as well as of the judiciary.

With these sentiments, we hereby demand and hope that our demands will be heard.

Our demands:

1. Re-open the Pathribal Case & Respect Supreme Court Instruction & CBI Findings
2. Provide the sanction to prosecute the officers
3. Repeal AFSPA from J&K and the North-East

For: **Save Sharmila Solidarity Campaign (SSSC)**
(www.repealafspa.blogspot.com,
www.savesharmila.org) ☐

Jameen Adhikar Andolan - Gujarat (JAAG), Ahmedabad Press Release: 7th February 2014

Beware! Police Raj in Gujarat, Portents of An Emergency!!!

Permission denied to farmers/protestors to demonstrate against the Dholera SIR

The leaders of Jameen Adhikar Aandolan Gujarat (JAAG), in a press statement, have said that:

Gujarat has bid adieu to democracy and democratic practices. The GoG, busy in tomtoming its (illusory) record of development to the world,

is forcing its own version of 'development' down the throats of unwilling farmers. The farmers wishing to protest this forced 'development' are being prevented from doing so.

Earlier, on 15th August 2013, the

police cancelled the permission granted for the flag hoisting at the last minute to the protesting villagers in the Mandal-Bechraji SIR area. Then, on 23rd October 2013 the permission for the cattle rally from Hansalpur to Gandhinagar was

denied to the protesting Maldharis. Then again on 18th January 2014 the cattle rally by the Maldharis was stopped by the police, they were beaten with lathis and had cases registered against them.

Likewise, the protesting Adivasis in the KADA area were rounded up just prior to the Chief Minister's visit and released only after his appearance in the area was over.

Again on 18th December 2013, the police again tried to stop villagers who had gathered to share information about the SIR Act. The people assembled despite several attempts by the police to stop them. And then again on 28th December 2013 the police yet again denied permission to the youths for a motor-cycle rally on the issue of the SIR in Dholera.

The fact that the farmers are opposed to the CM's pet Dholera SIR project

and that they rather want the Narmada water for irrigating their fields was made known at the public hearing held in Dholera on 3rd January 2014. The farmers wish to hold a public meeting on 9th February 2014 at village Sandhida to reiterate the very same demands. Wishing to respect the rule of law and the codes of civil behaviour, the farmers sought police permission for the same and this has, once again, been denied to them. By doing so, they have made an unstated yet implicit admission that Gujarat today faces an undeclared Emergency, that the civil and political rights of citizens here remain suspended, and that democracy is no longer alive here.

Almost throughout the year, in most parts of Gujarat section 144 remains in force. At every public gathering of this kind, the police remains present in huge numbers as if the citizens

pose a threat to the nation. Nevertheless, the farmers are determined to gather, as declared and announced, on 9th February 2014 at 10 am at village Sandhida. They will gather there and, in a peaceful and non-violent manner, will court arrest.

This behaviour of the police, albeit working under the orders of their political masters, is unacceptable and not to be taken lightly. These are alarm bells for people and activists who have remained alert as to the rights of the people. We condemn this behaviour of the police and call upon all citizens to join us in Sandhida to resist this subversion of democracy.

Pradhyumansinh Chudasma, Rajbha Chudasma, Sagar Rabari
Jameen Adhikar Aandolan - Gujarat (JAAG) □

Forum for Democracy and Communal Amity (FDCA) Appeal: January 28, 2014

To,
Shri Akhilesh Yadav
Honourable Chief Minister of Uttar Pradesh
Lal Bahadur Shastri Bhawan,
Lucknow, U.P. 226001

The Forum for Democracy and Communal Amity (FDCA) was established in July 1993. The main objective of the Forum is to promote harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic, regional or sectional diversities; assist in the prevention of conflicts, riots and other acts of communal violence; and help the victims of such conflicts or violence to rehabilitate themselves and seek redressal of their grievances.

2. The FDCA held a meeting in New Delhi on 30 December, 2013, to discuss, in general, the existential threat of communalism to Indian society and polity, and to consider, in particular, the possible role it can play to restore peace and harmony in the riot affected districts of Muzaffarnagar and Shamli in Uttar Pradesh. At the end of the meeting, a decision was taken to dispatch a delegation of FDCA to this area in order to study the current situation

and the needs of the riot affected people.

3. Accordingly, a 7-member team of FDCA visited the riot-affected areas for three days (on January 4th, 5th and 10th, 2014) and met victims, their families, community leaders and senior members of the local administration. The team's report, which is in the process of being prepared, will be released to the press and made available to the authorities of the Central and State Government and to other concerned as soon as it is ready. However, on the basis of the oral presentation of their findings by the team members in a meeting of the FDCA held in New Delhi on 20 January 2014, the Forum calls upon the Central and the U.P. Government to take the following measures on an urgent basis:-

Conditions must be created to enable those uprooted from their homes in the riot-affected villages to go back to the villages. They have the fundamental right under the Constitution to safe and peaceful stay at their homes and occupation of their properties. This will also be the most effective means of restoring communal harmony and amity in the riot affected areas of these two districts. Finally, it will restore

confidence among the Muslim population not only in the rest of U.P. but also in India.

4. The following steps should be taken in order to create the conditions conducive to the return of those displaced by the riots, to their hearths and homes:-

- (a) A suitable job should be given to a family member of deceased;
- (b) The State Government should forthwith withdraw the condition that those who have been provided compensation of Rs.5 lakhs will have to surrender this amount if they go back to their homes;
- (c) Those who have not been or are not qualified to receive this compensation but have fled their homes out of fear, should be provided, both as a means as well as an incentive, for returning and resettling in the homes/shelters from where they have fled out of fear of life. A sum of Rs.3 lakhs per person could be the appropriate level of such assistance;
- (d) An additional incentive should be given as temporary employment until cultivation by those who have land is resumed and the landless on return are

able to find jobs. For this, a fund of Rupees five Crores should be created urgently either by the State or the Central Government or by both of them jointly. The operation of the fund should be entrusted to a committee consisting of local representatives of affected people, social activists of the area concerned and a qualified officer of the State Government of reasonable seniority.

- (e) The State Government should deploy an appropriate number of personnel to liaise with the Gram Pradhans of the affected villages for locating and inviting those displaced to return to their villages. For this, help should be taken of the volunteers of the NGOs active in this area. The FDCA itself will be happy to designate a team for this purpose;

- (f) In spite of these measures, the displaced families may not return to their villages so long as justice is not done to them and those directly involved in perpetrating the violence are freely roaming around in the affected villages. It is, therefore, essential that most of those against whom FIRs have been lodged should be arrested without delay and those involved in violence and arrested should not be released without a court order.

(By all accounts, 540 FIRs have been registered in connection with the violence in which 6000 persons have been named. Out of this, only 208 have so far been arrested. This is hardly conducive to restoring confidence and doing justice to the riot affected people).

- (g) Immediate steps should be taken to make special

arrangements for the education of the displaced children and special examinations should be conducted, if necessary, to ensure that these students do not lose their academic year.

Signed by: **Muchkund Dubey**, President, FDCA; **Kuldip Nayar**; **Rajinder Sachar**; **N.D.Pancholi**, Life Member, FDCA; **Mohammad Salim Engineer**, Acting General Secretary, FDCA; **Nusrat Ali**, Member FDCA; **Prem Singh**, Delhi University; **K.B.Saxena**, Council for Social Development; **Imrana Qadeer**, Council for Social Develop.; **Shafi Madani**, Social Activist); **Dr. Javed Jameel** (Writer and Social Activist), **Father M.D.Thomas** (Social Activist), **Mr. Muhammad Ahmed** (Social Activist, **Ms. Rakhi Gupta**, Social Activist, **Dr. Rakesh Rana**, Bundelkhand University; **Alauddin**, Social Activist; **Ashwani Kumar**, Delhi University. □

Statement from Prashant Rahi on Imprisonment and Torture, and Appeal for Campaign Against Unlawful Activities (Prevention) Act (UAPA):

Dear friends,

Heart-felt greetings at the onset of yet another tumultuous years of struggle for civil and democratic rights, which are increasingly threatened the world over by police atrocities perpetrated here as a normal course, and there as barbaric exceptions, in a setting of the yet retained post- 9/11 anti-terror laws in India and other parts, even though the U.S. imperialists seem to be back-tracking on their aggressive invasions in Iraq and Af-Pak! We, Indian activists, remain vulnerable, with none of the Parliamentary political forces even bothering to promise to repeal the 2008 and 2004 amendments in our Unlawful Activities (Prevention) Act - UAPA of 1967, which was indeed superfluous with the colonial Indian Penal Code (IPC) already draconian enough to stifle any serious political dissent. My arrest and torture in custody, as also that of Hem Mishra, the J.N.U. student of Chinese, which so many of you have cared to express concern about, according to newspaper reports, could be just the

tip of an ugly iceberg. Even so, you might need to be apprised of the facts of our cases, and those of my ongoing Uttarakhand post-torture trial, so as to direct the raging passions in more effective ways.

It is with this view that I am putting across the following facts regarding what befell us:

1. Aheri, where our case is registered as a Criminal Case No. 3017/2013, with the charge-sheet yet to be submitted and not likely to be served until 6 months after our arrest, owing to the 2008 insertion of Section 43 (d), with its Sub-section-2, in the UAPA, is a backward and remote interior of Gadchiroli, where the state, with its heavy deployment of specialized police and paramilitary forces and helicopter squadrons, appear to have got an edge over the Maoist People's Liberation Guerilla Army, well entrenched in expansive forests of South Chhattisgarh among the adivasi (aboriginal tribes) peasants, across the Maharashtra-Chhattisgarh State border. Part of Gadchiroli district is officially notified as a Police District, whereby the

usual District Administration, Judiciary and "Development Activities" are controlled by police officials, who in turn move around in the towns and roadside villages like an occupation army, the citizens compelled to finance their pay packets, enhanced 150 percent as incentive, in addition to out of turn promotions and other allowances, and overriding powers to lord over the populace.

The "free press", even correspondents of reputed dailies, is a mere subservient tool of the security forces, eager to serve the propaganda and psychological needs of their war against "left-wing extremists", also called Naxalites or Maoists, a war wherein the people's guerillas seldom come face-to-face with the security forces, the latter victimizing the villagers, among whom the former mingle, feed and organize; compelling retired and weakened guerillas to defect (referred to, more often, as "surrender"). The funds, another largesse borne by the citizens, at the disposal of the police are enormous. Aheri, where we were

forcefully and illegally brought to by this very police force, is one of the bases of Gadchirdi's famed counter-insurgency operations, which, in the wake of our arrests, was lauded at a meeting of State Police Chiefs, chaired by the Union Minister of Home Affairs, Sushil Kumar Shinde, as a "role-model" for combat forces engaged in anti-Naxalite "area domination" tactics for the country. My arrest hardly 10 days after Hem's may appear to many as a well-scripted drama, climaxing in the conferring of that status upon Gadchiroli, after news of "Maoist supporter" from afar being implicated here had set the pace.

One would tend to believe that the Congress-led Governments of New Delhi could have found it convenient to co-ordinate tacitly with police forces in Uttarakhand and Maharashtra, both having Congress-led State Governments, as also with some coverts, or semi-coverts, within apparently friendly forces, to forcefully lead me or carry me to this part of the country, which could not have been on my itinerary at this conclusive and crucial stage of my 2007 Uttarakhand case, Criminal Case No. 3222/2007, Sessions Trial No. 83/2008, registered at Nanakmatta Police Station in Udham Singh Nagar district of that state. That too when I was awaited for the hearing of this trial on September 2, 2013, and due to head for Uttarakhand!

2. At Aheri, I was first produced in a Magistrate Court on precisely that day, the 2nd of September by the Investigating Officer (IO) of Cr. Case No. 3017/2013, Suhas Bawache, a Deputy Superintendent of Police.

3. I was shown arrested in the neighbouring Gondia district of Maharashtra State.

4. Actually, I have never been to Gondia district, nor seen the spot of arrest, as is claimed. Indeed, I had been abducted in the most innocuous circumstances, far beyond, the State of Maharashtra, well before September 2 (the claimed date of my arrest in Gondia); forcibly thrust into a dark-coloured van

bearing fake number plates and shaded glass for its windows; and forced to travel with my abductors who turned out to be employees of the Maharashtra Police. They had transgressed their specified area of jurisdiction, with orders from their superiors to facilitate my fake arrest, in gross violation of the Criminal Procedure Code (Cr. P.C.) and specific directions on procedure for arrest issued by the Supreme Court of India. I was driven over a full day and night, straight to Aheri Police Station, with no one else being arrested along with me, having crossed several district and State borders.

5. The IO, Suhas Bawache knowingly hoodwinked the Courts so that cognizance be taken of my fake arrest and his allegations against me about a criminal conspiracy (Section 120B, IPC) to commit some unlawful acts (Sec.13, UAPA), as member of a terrorist organization (Sec. 20, UAPA), eliciting support for the CPI (Maoist) (Sec. 39, UAPA).

6. Subsequently, at the end of November, 2013, around 90 days after my arrest, Suhas Bawache submitted an interim report of his investigations to the learned Court of the Principal District and Sessions Judge at Gadchiroli, in a successful bid to seek extension by a further 90 days of the period for submitting a charge sheet against me, failing which I could be entitled automatically for release on bail under section 167, Cr. P.C. The learned Judge heard my contention that the investigation was being delayed deliberately on spurious rounds, my arguments having been given as written 'Say' filed among the case record. However, the provisions under Sec. 43(d) 2 of UAPA gave the IO the right to prolong my detention over a period of 180 days without being served a charge-sheet.

7. The IO pleaded in his interim report that it was taking long to study, and gather some incriminatory evidence against me, from the contents of a 16 GB memory card allegedly seized from Hem Mishra, and from 4 Terra Bytes of data from

the hard disc and other storage devices allegedly seized in the second week of September from the residence of Dr. G.N. Saibaba, an English Associate Professor at University of Delhi. He also sought time to apprehend some alleged "absconders", such as Dr. Saibaba; two persons alleged to have travelled, as Hem did and allegedly intended to, some months ago; one Maoist leader named as Narmada Akka to whom Hem was allegedly intending to deliver the 16 GB memory card; and the General Secretary of the CPI (Maoist), to visit whom in the Abujhmad stronghold of the Maoist, Hem and I were allegedly "sent by Saibaba", in connection with this case.

8. A similar 90 days extension had been permitted by the same Court to submit a charge-sheet against Hem Mishra and his two alleged escorts, Pandu Naroti and Mahesh Tirki, residents of a Gadchiroli village, all three having been shown arrested at Aheri Bus Stand on August 22, 2013. The interim investigation report submitted to the court by Suhas Bawache in support of this extension plea was identical, in fact a true copy of that submitted in my case a week later.

9. Thus, effectively, the IO has secured time until February to prepare his charge-sheet against us, following which, as per the only modicum of safeguards guaranteed by the UAPA, the sanctioning authorities of the Maharashtra State Government and/or the Government of India would have to conduct a review of the investigation, independent of Suhas Bawache and his superior authorities of or above the rank of Deputy Inspector-general of Police, before granting sanction in order to prosecute us. Once this procedure is completed according to the specified process, and a valid Case Diary is prepared by the IO, recording the procedure followed, even a higher court would be obliged, as per the 2008 insertion into UAPA under its Section 43 (d), Sub-section 5 to take an adverse view of our bail petitions.

10. Should bail be denied, the circumstances of trials being conducted by the Gadchiroli Sessions Court of incarcerated alleged extremists, meaning UAPA detainees, are such that the chances of a fair trial would only be slim and exceptional. This is so because of the current practice of conducting trials by video conference, whereby the accused persons do not normally get a change to interact with their defence counsel, least of all interact with her/him with the due freedom and confidentiality.

11. The prevailing system of prisoners being visited by their lawyers, relatives and friends is so full of hindrances and disturbances, far more so for UAPA detainees, that it violates the very

essence of the Maharashtra Prison Act, which provides for considerable freedom and space to interact with and receive a wide range of visitors, as would be necessary to overcome our anxieties and tensions and maintain a normal and balanced state of mind.

12. Incidentally, it would be far from the truth to state or presume that I and my co-accused were not badly tortured by the IO, Suhas Bawache. All of us accused were tortured in the most inhuman manner. Mr. Bawache personally used brute force against me and the others, violated our minds and body, abused us, tormented and harassed us all through the days and nights over several weeks of our PCR, i.e. Police Custody Remand. Hem, Pandu, Mahesh, who were actually picked up from different places at Ballarshah in Chandrapur District of Maharashtra within the railway station premises on August 20, where badly mauled during 2 days of their illegal custody prior to the stipulated 24 hour period within which accused persons are required to be presented

before a judicial court.

13. None of the accounts of our interrogation during illegal and legal custody of the police carried by the newspapers are true and complete.

We did not get any opportunity to freely and sufficiently interact with journalists. Not even The Times of India could get free and sufficient access to talk with me.

14. Apart from the Deputy Superintendent of Police, Suhas Bawache and his subordinates who physically and mentally tortured me, Hem and the others, senior officials like the Deputy Inspector-general of Police, Ravindra Kadam; and an Inspector-general who called himself Anup Kumar were directly responsible for the entire episode and for implicating me unlawfully and for showing our arrests incorrectly and falsely.

15. There is not even an iota of truth in the claim that Vijay Tirki from Kanker District of Chhattisgarh received me at Raipur in that State, and thereafter escorted me up to a certain Devri-Chichgadh T-junction in Gondia, Maharashtra, enroute to Abujhmaad.

16. The fact is that Vijay Tirki was arrested separately, somewhere in Raipur, and he had no plan to escort me, nor did I approach him to be escorted to any destination. The first time that I met a person by this name from Kanker District of Chhattisgarh was several hours after I was dumped into the Aheri Police Station around midnight of 1st/2nd September 2013, when he too was thrown inside. As has already been reported, I was engaged in professionally translating some case papers for a lawyer; after meeting another lawyer who was my source for those papers, I was to collect some more papers from him shortly after the time of my abduction, and before proceeding to return to Uttarakhand to be present at an important hearing of my ongoing trial in Udham

Singh Nagar District on September 2, 2013.

17. It was precisely on the basis of the above factual truth that I could withstand all the coercion by Suhas Bawache and his superiors to make out a fake confession about the imagined journey to Abujhmaad, as

per their will and desire.

18. I am not aware of any personal or organizational relationship between Hem Mishra and Dr. G.N. Saibaba, as is alleged. However, as far as I am concerned, there was no such relationship between the English Professor or his mass organization and me that he would "send" me somewhere, and I would agree, or that he or his comrades would depute me with couriering, or any task for that matter, and I would agree. In fact, the allegation that I saw him a couple of days before my formal arrest is absolutely baseless. I consider him and Hem mere acquaintances, not even friends of any significance that would lend credibility to any police claims.

19. With that, let me come to my Uttarakhand case, and torture in 2007. As is well-known I was living and working in Dehradun since 1991, and so was I all of the 2 or 3 months prior to my arrest in December, 07. On the 17th of December, I was picked up from a prominent street in broad daylight, close to Ara Ghar, after being attacked by several men all of a sudden, manhandled, blindfolded and carried away in a speeding car, first to a forest in the neighboring Haridwar district, beaten up with sticks all through the first night, after which I collapsed. The next day, I was shifted to a Provincial Armed Constabulary campus of the Uttarakhand Police in Haridwar in a restricted part of Roshanabad, brought to a "PAC Conference Room", where the blind-folding was first removed on the 18th night. There, I was tortured and harassed continuously till the 20th in various devious and inhuman ways, which I am omitting here to save space and for decency's sake. On the 20th morning, I was again blindfolded, put into a car and driven several hours to be brought to Udham Singh Nagar, and hidden in a room of the residential quarters within the premises of Nankmatta Police Station, some 350 km. to the east of Dehradun. There, I was tortured by a different set of police personnel, until they could make up a story to show my arrest

on the 22nd. Till the 5 days and 5 nights that elapsed after I had been picked up and illegally confined, I had not been allowed even a wink's sleep. After informing my daughter Shikha Rahi, based in Mumbai, of my arrest on the 22nd evening, I was produced at a Magistrate's Court on the 23rd. 20. The arrest story was that I was accosted in the forests near Nankmatta during a combing/search operation by a police party for a Maoist training camp, as reported in a F.I.R. lodged on the 20th, around the time I was brought to the police station premises from Haridwar, which 4 others, who were with me, fled the scene. Later, I allegedly helped recover a broken laptop, a pen drive and some printed material from the same forest (which I had never seen before, nor was I taken out there then), and the IO wrote out other cock and bull descriptions about an imagined 3-month long CPI (Maoist) military training camp, and now all the cadres and military trainers with their equally imaginary arms and ammunitions had vanished - all except me (who was already in their custody on the date of filing the FIR)!

21. A case was made out under the IPC Sections 121 (waging war or abetting the waging of war against the state), 121A (conspiring against the state), 124A (sedition), 153B (threatening the preservation of the nation's unity and sovereignty), 120B (committing the above offences as part of a criminal conspiracy), and under the UAPA Section 20 (member of a terrorist organization).

22. I could get bail only after 3 years and 8 months, that too, only because the UAPA invoked against me and my co-accused was the 2004 version, not the 2008 one. The others who were subsequently arrested from home, a court premises and one from a railway station a year or so later, were respectively, Gopal Bhatt, Dinesh Pandey and Chandrakala, all well-known social activists of Uttarakhand. 3 others were proclaimed as absconders. All the 3 who were arrested after me were

released first, and then I too was released on bail on August 21, 2011.

23. The case with Cr. Case No. 3222/2007 was taken up for trial 8 months later, as S.T. No. 83/2008, and the trial has not yet concluded. Had I not been framed up in another case, the Uttarakhand case could have ended (in acquittals) latest by the end of 2013.

24. Ever since my incarceration at Central Prison Nagpur, I have not been able to attend any of the trial hearings in Uttarakhand. The Maharashtra Police refuses to provide me the necessary escort to travel to Uttarakhand, this being one of the main reasons for the trial being held up these past 4 months. It is likely to be so for an indefinite or uncertain time period.

25. There would be calculations and speculations on the part of both the police IOs, and indeed their superiors, as to how one case could be made use of to lend weight and credibility to the other. On the basis of the above series of facts, circumstances and observations that are humbly placed before all of you, I would urge you, friends, to direct your energies and passions now at the basic causes of the above tribulations, rather than expecting the officials of the Indian state to take any serious cognizance of your appeals not to torture Hem and me, to ensure a fair trial, or to punish the officials responsible for my/our torture in Maharashtra or in Uttarakhand State. Even if the issue be primarily of the nature of civil and democratic rights, in other words, human rights, the targets, in accordance with the basic causes of such adverse occurrences, ought to be socio-political. It is the anti-people nature of the Indian state, and its various organs that ought to be brought into question. As the country goes to the polls to reconstitute its parliament, would it not be pertinent to ask as to why no vote-garnering political campaign not even that of the "common man's" Aam Aadmi Party has an agenda to demilitarize the state's operations against its own

people, and to reverse this trend of the last 8 to 10 years, which has led to the incarceration of not less than 3000 alleged Maoists, an overwhelming majority of them framed up with fabricated charges and brutally tortured and inhumanly treated in both police and judicial custody.

With these concerns, it would serve a larger cause if the thousands who have reportedly expressed moral support to me and Hem Mishra would bombard the powers-that-be in New Delhi, Mumbai, Dehradun, Raipur, Ranchi, Patna, Kolkata, Lucknow, Chandigarh, Bhopal, Ahmedabad, Hyderabad, Bangalore, Bhubhaneshwar, Chennai, Thiruvananthapuram and Guwahati with millions of letters and slogans to:

1. Repeal the U.A.P.A. or at least withdraw its 2008 and 2004 amendments.
2. Withdraw the ban on organizations which are attempting to lend a voice to the impoverished and deprived lot, irrespective of whether they resort to counter-violence against state repression.
3. Redefine terrorism! Get out of the nomenclature imposed on the world by the likes of Bush and Obama, and Putin and Angela, and Manmohan Singh and Narendra Modi! Do not equate revolutionary violence with terrorism!
4. Release all the alleged Maoist prisoners incarcerated as a result of the draconian laws and amendments, and all other innocents framed up for political reasons and as part of the conspiracies of intelligence agencies, the bosses of ATS', IBs and the NIA!
5. Stop forthwith government sanctioning of all prosecution of persons accused under UAPA, especially those not active in combatant roles and common villagers, adivasis and dalits, and ordinary women.
6. Ensure speedy trials for all UAPA accused. Summon prosecution witnesses without delay.
7. Ensure production of all UAPA accused in their cases pending in

courts of various States and districts. Stop using "security reasons" as the excuse to delay and deny trials.

8. Accord political prisoner status in all States on the lines of the West Bengal Correctional Services Act.

9. Amend Jail Manuals in all States on the lines of the West Bengal Correctional Services Act.

10. Do not adopt video conferencing as the means to conduct court trials.

Stop the practice forthwith, wherever in force.

11. Stop erecting barriers in the form of wire meshes, glass panes, etc. in visitors' enclosures in prisons in the name of security. Let jail interviews be held in a humane manner. Allow UAPA accused the right to access the Press.

12. Implement forthwith the provisions

of the International Covenants on Civil and Political Rights, on Prisoners' Right, and on Detention Centres.

Let this be an open-ended campaign, and do keep me informed, please.

In Solidarity,

Prashant Rahi, Under Trial Section, Barrack No. 8, Central Prison, Nagpur-40020

January 29, 2014 □

Press Statement: Maruti Suzuki Workers Union -IMT Manesar, Gurgaon: 31/1/2014

Jan Jagaran Yatra Reaches Delhi on 17th Day in A Mass Protest Demonstration

Sixteen days across cities, towns, villages of Haryana and through Gurgaon and Delhi, marching with our bare but united voice of anger and struggle against injustice, we organized a Protest Demonstration in Jantar Mantar today 31st January 2014. We marched from in front of the Parliament House, Delhi, also sloganeering in front of Haryana Chief Minister Bhupinder Hooda's residence before reaching Jantar Mantar. Today's show of solidarity with our struggle enthused us, as all Trade Unions of Gurgaon, Delhi-NCR and a number of student-youth, women's and mass democratic and political organisations, as well as prominent intellectuals came together. We submitted a memorandum supported by all organisations to the President of India.

Workers, workers organisations and Trade Unions were present in full solidarity. Suzuki Powertrain India Employees Union, Maruti Udyog Kamgar Union, Suzuki Motorcycles India Employees Union, RICO Employees Union, FCC Rico Employees Union, Nerolac Employees Union- Rewari, Venus Workers Union-Faridabad, Subros Employees Union, Bajaj Motors Employees Union spoke in solidarity. National Trade Union federations like AITUC, AICCTU, AIUTUC, CITU, HMS, ICTU, IFTU, AIFTU(New), NTUI and others were present. Among those present were also AITUC's national president Amrajeet Kaur and

CITU's national leader Tapan Sen. Yogendra Yadav as well as Arundhati Roy also expressed solidarity with the struggle. Mass democratic organisations like Jan Sangharsh Manch Haryana, Inqlabi Mazdoor Kendra, Shramik Sangram Committee, Krantikari Naujawan Sabha, Mazdoor Patrika, Sangharsrat Mehnatkash patrika, Mazdoor Ekta Committee, PUDR, Samtamulak Mahila Sagathan were present who mobilized many democratic loving people. Solidarity greetings from across the country and even abroad came with participation and solidarity messages from a number of worker organisations like CMM- Mazdoor Karyakarta Committee, Inqlabi Jan Awaz patrika from Punjab, Hyundai Motors Employees Union and CITU Tamil Nadu, Toyota Employees Union Chennai, and countless others. Trade Union Solidarity Committee-Mumbai also organized campaign and fund collection through postcards made with working class murals. We also received solidarity greetings from Thai Suzuki Workers Union from Thailand. Support from student community also energized the meeting. Other than JNUSU, organisations like AISA, DSF, DSU, Nauroj, Pratihwani, SFI, TNM, VSM, VYS and many others were present. The struggle on the streets as well as the legal battle is alive with the spirit of workers and pro-worker masses strengthened.

The Jan Jagaran Yatra, foot-march

against injustice, which started on 15th January 2014 from Kaithal, Haryana and walked through 300km across Kaithal, Jind, Rohtak, Jhajjar, Gurgaon in Haryana before reaching Delhi. All the terminated workers and a number of our families of both arrested and terminated workers participated with vigour in the march. 2500 families who have been reduced to penury, joblessness and face continuous harassment and repression from the police-administration and delay in justice, hence a denying of justice by the courts till date, have thus shown the indomitable spirit of struggle even almost 2 years into this difficult road. We have received tremendous support, solidarity and encouragement from ordinary workers, peasants, students and individuals in all the villages, towns of the state of Haryana and nearby areas that we have walked through. These ordinary mehnatkash toilers tell us during the season of electoral calculations, that our struggle is a just struggle against exploitation and injustice wrought about the combined might of the government-administration-police serving capitalists like Maruti Suzuki management. Our bail plea of arrested 148 workers has been earlier rejected in the lower court and HC on the absurd ground of 'hampering foreign investment' make a mockery of the system of justice. The appeal against this rejection is pending in the Supreme Court, with

a hearing that happened today postponed again to 3rd February 2014. Representing the State of Haryana on a payroll of Rs. 11.25 lakh per hearing, Adv. KTS Tulsi presented his papers of objection to the bail plea while our counsel Adv. Vrinda Grover argued the delaying and denying of justice to workers who have been made part of conspiracy by the Maruti Suzuki management. Cases against 100 workers and trial on 11 workers and activists in Kaithal are also going on. The labour cases are also pending where we are arguing against the complete illegality of the move of Maruti Suzuki management to have terminated workers without any domestic enquiry on speculative flimsy grounds.

We marched through Delhi yesterday. While in Gurgaon, hundreds of workers and all Trade Unions came in our support making the struggle the indicator of common struggle of workers in the entire

industrial belt of Gurgaon-Manear-Dharuhera-Bawal, in the rousing welcome and solidarity meetings in various towns and villages of Haryana and in Delhi, we saw another possibility of forging a mass solidarity with the struggle of workers. Day before, after our protest demonstration in front of the Maruti Suzuki factory in Gurgaon along with workers and Union from the plant, we walked to the Maruti Suzuki All-India Head Quarters in Vasant Kunj, New Delhi, where we organized another protest demonstration with slogans of 'Release the Arrested Workers' and 'Stop Repression through slapping false cases and continued Harassment of worker families', 'Bring the conspiratorial anti-worker management to book'. Our demand of an impartial investigation into the incident which has also been denied us, point to the way in which we have been targeted by the anti-worker management and the anti-worker

government.

WE reiterate our demands of release of 148 arrested workers who have been denied bail for the last 18 month, reinstatement of all terminated workers, and an impartial investigation into the incident of 18th July 2012. In the last three years, our struggle has seen a long road. We have seen the pro-corporate, anti-worker, anti-people faces of the company management, labour and other administrative departments, the police and courts, and if our demands are not met, we shall intensify our struggle in the coming days. We appeal to all workers, trade unions, student-youth and women's organisations, and mass and democratic organizations and individuals to join us in spreading the struggle.

Inquilab Zindabad!

Ramniwas, Mahabir, Rajpal, Katar, Yogesh, Provisional Working Committee, Maruti Suzuki Workers Union ☐

Statement on the Arrest of Adivasi Youth at Nagrakata, Jalpaiguri: Jan 28 2014

We strongly condemn the arrest of Kiran Kalindi, Baijnath Naik, Azad Ansari & Wilson Guria from Nagrakata, Jalpaiguri on January 27, 2014. The four persons were peacefully campaigning for a bandh condemning the gruesome sexual torture and rape of the Adivasi girl at Labhpur, Birbhum.

The police have arrested them with charges under Sections 353, 143,341,332,422,506 of IPC, and Section 25 of the Arms Act. 3 false cases were filed against them by the police itself - all for incidents on the 27th itself.

The arrested are trade-union leaders of the tea workers of North Bengal. The four persons from the Adivasi community were arrested from a peaceful demonstration in support of the *bandh*. Different Adivasi organisations have strongly reacted against the gruesome incident of Labhpur, Birbhum and had decided

to voice their dissent through the bandh. Many others have also expressed their solidarity in support of the bandh. They feel that this incident is against the culture of the Adivasi society and are concerned that this incident is being used to condemn their culture as a whole. They have demanded a proper probe into the incident and action thereof. It is clearly evident from the arrests and the false charges levied upon the above four at Nagrakata that the police and the administration have acted vindictively to stifle the voices of protest and dissent in the society.

The following organisations demand:

- ☐ Immediate release of Kiran Kalindi, Baijnath Naik, Azad Ansari & Wilson Guria.
- ☐ Withdrawal of all false charges against the above.
- ☐ A fair and proper probe into the Labhpur incident.
- ☐ A proper trial and the punishment

of the accused in the Labhpur incident.

Tarun Sanyal (Shilpi Sanskritik Karmi, Buddhjeebi Mancha); **Sunanda Sanyal** (Democratic Citizen's Forum); **Dilip Chakrabarty** (Saptaha); **Sujato Bhadra** (Manabadhikar Sanghati); **Meher Engineer** (TASAM); **Arun Pal & Debjit Dutta** (NAPM); **Murad Hossain** (Hawkers Sangram Committee); **Choton Das** (Bandimukti Committee); **Anuradha Talwar** (Paschim Banga Khet Majoor Samity); **Kunal Deb** (Uthnau); **Dr. Debal Deb** (Centre for Interdisciplinary Studies); **Rabin Soren** (Birbhum Adivasi Gaonta); **Gautam Bandopadhyay** (Nadi Ghati Morcha, Chattisgarh); **Madhuri** (Jagrut Adivasi Dalit Sangathana, Madhya Pradesh); **Somanth Ghosh** (Hosiery Workers Unity Centre); **Shiladitya Mondal** (Liquor Shop Employees Union); **Bela Adak** (Paschim Banga

Swarojgari Radhuni Union); **Sushovan Dhar** (IndianOil Petronas Contractors Shramik Union); **Bodhisatwa Ray** (Haldia Dock Complex Contractors Shramik

Union); **Uttam Burman** (Uttar Dinajpur Sericulture Workers Union); **Suktara Khatun** (Paschim Banga Chatra Yuba Sangrami Mancha); **Pratip Nag** (Sundarban Banadhikar Sangram Committee); **Namita**

Gayen (Sramajibi Mahila Samity); **Sajal Biswas** (Service Doctors' Forum); **Dr Swapan Jana** (Health Services Association - HSA); **Satish Kar** [Paschim Banga Telecom Tower (USO) Union] □

Proceedings of National Council Meeting, 14-15th September, 2013

The 2-day meeting was chaired by Prof. Prabhakar Sinha, National President, PUCL.

Amongst the National Office-bearers, Ravikiran Jain, Binayak Sen and P B D'sa (National Vice-presidents), Kavita Srivastava, (National Secretary) and V. Suresh (General Secretary) were present. Apart from them, National Council members from state units of AP, Bihar, Karnataka, Maharashtra, Tamil Nadu, Jharkhand and West Bengal also attended the 2-day National Council meeting. Sacharji had expressed his inability to attend the meeting as did the other national level office bearers.

At the outset, it should be mentioned that this 2-day NC meeting was planned differently from previous meetings in that it was decided to dispense with routine reporting of activities initiated in / engaged in by different state units and instead initiating a detailed discussion amongst all NC members about their critical thoughts, ideas and suggestions on a future vision of how PUCL should grow or expand and the issues that PUCL should be taking up at the national level with the aim of 'Mobilising Public Support - Towards a Common National Programme of Action - Strategies and Plans'.

The following is a record of the proceedings / discussions of the National Council meeting.

Note about the discussion

The discussion was free flowing and all members were encouraged to speak their minds and share their thoughts and critical analysis of the current state of PUCL's functioning as also on measures to broaden

or expand PUCL keeping in mind future challenges. Apart from ensuring time management so that everyone could speak, there was no particular order in which members spoke. This was both challenging as also refreshing. Challenging in the sense, that many members spoke across subjects or themes, sometimes different and disconnected with previous speakers; refreshing in that it allowed spontaneous, unhindered and unstructured sharing of thoughts and critique's.

The idea also was to enable free and analytical discussion on critical issues impacting on current functioning and future growth possibilities of PUCL without the compulsion of having to arrive at a conclusion on specific issues. There were two reasons for this:

- Firstly, issues raised, concerns flagged and positions advocated needed to be discussed democratically across all state / district units, the reports of state discussion shared with other states and a final round of discussions at the national before a stated position on key issues was formally concluded.
- Secondly, the participation in the NC meeting was rather poor with many states not having representation in the NC meeting. Therefore from the point of view of representativeness also, it was felt that it would not be proper to arrive at any declared conclusion and it

would be more appropriate to share widely and continue the discussions and work towards arriving at a broad stated position by the next National Council meeting in 2014.

This record of proceedings' is shared with all members and well wishers to:

- (i) Inform about the views and discussions in the NC meeting;
- (ii) To request that the issues raised be further discussed at length in the state units and, wherever they exist, in district units. The State units are requested to send the report of the discussions so that they can be shared at the national level.

Once all the state units send their reports of discussions, the National Office will thereafter put together all the discussions thematically with a view to evolving a broad 'position paper' explaining PUCL's position and stand on different issues (both internal, organisational matters as also about PUCL's work in the human rights field). In turn this will be circulated to the state units for a final round of discussion to be finalised at the time of the next National Council meeting in August/ September, 2014.

Further note about the structure of the record of proceedings

The following record of proceedings has been put together around broad thematic headings suggested by the nature of discussions; the attempt is to put succinctly and in summary form the discussion and it is quite natural that some simplification / distortion may have crept in the process of summarisation. The

indulgence of members is sought for any mistakes made. The responsibility for any errors is purely mine.

Some amount of arbitrariness may also exist in the way some discussions have been clubbed; it is quite possible that members spoke on issues cutting across thematic areas which may not be fully reflected in the proceedings. We have tried to minimise these possibilities, but there might be some errors in documenting. Once again, we seek the understanding support of members.

Thematic Structuring of Discussions

The following are the key thematic subjects around which most members spoke:

1. How to make PUCL more appealing to ordinary citizens.
2. Broadbasing PUCL - What is the mandate of PUCL?
Should PUCL confine itself to (a) what is stated in the PUCL constitution; and (b) to civil liberties issues alone?
Can PUCL also take up broader development, governance and other issues through an expanded understanding of human rights as including social, economic, cultural rights?
Can PUCL take up issues related to the 'Directive Principles of State Policy' in the Indian Constitution?
3. Broadbasing PUCL - What should be the scope of PUCL's activities?
Distinction between PUCL as an issue based human rights organisation vs a mass organisation?
4. Internal organisational structure and style of functioning of PUCL.

5. Expanding PUCL - How?
6. Expanding PUCL - relations with other human rights organisations and movements.
7. New Initiatives - using the context of General election, 2014 to widen human rights discourse.

Discussions

1. How to make PUCL more appealing to ordinary citizens.

Prabhakarji: In the opening speech which was circulated to all the participants, Prabhakarji, national president, pointed out that any human rights movement, to grow and continue to be relevant must address the common citizen's problems and support them in their struggle to claim their fundamental rights. He pointed out to the need to make PUCL more appealing to ordinary citizens. Thus while PUCL should continue to take up serious human rights violations, we should also consider how we can be more common citizens identify with PUCL and the human rights movement in general. In this connection he pointed out to the need to take up daily HR violations occurring all over the country and the importance of assisting ordinary citizens who cannot afford to approach the courts for justice. He pointed out the importance of exposing how there are more draconian (black) laws in independent India, than in British India and raising debate on why this is so. He pointed out to the crisis of democracy in India, better described as an 'emaciated democracy' and said if PUCL could help ensure dignity and equality of all persons, irrespective of social status, wealth or position, then PUCL would be welcomed by ordinary people. (For full paper see soft copy).

Suresh: *State of 'Reimagining PUCL' process:* Outlining the experience of visiting 10 states units of PUCL to have a discussion of the functioning of the state units as also

their response to the 'Reimagining PUCL' process initiated during the NC, 2012 meeting, Suresh pointed out to the highly uneven type of functioning of PUCL across India. While PUCL has emerged as the largest national level human rights body in India, its internal strength and functioning was a matter of concern. While some state units were regular and active, having regular elections and kept national office informed of activities, many other state units were functioning in an ad hoc manner. No attempt was made to expand PUCL's membership amongst youth, women (the numbers of women members in PUCL is very low), socially marginalised sections, working class sections and so on. Considering the serious human rights challenges looming ahead, PUCL will not be able to effectively respond to future issues unless PUCL, as an organisation, drastically reorganised itself, brought more organisational discipline and coordination, addressed not just extreme cases of human rights violations, but also ordinary, daily incidents of rights denial, PUCL's strength will ebb. Many state units had not conducted elections within the mandated 2-year period. In some states, the same people had been office bearers without elections, enrolling new members and were also resisting new people showing interest to join PUCL. PUCL state units were doing very important work which few people inside their state unit as also at national level knowing. There was no cross-fertilisation of ideas and insights, little formal sharing of experiences and pooling of resources even though many PUCL members themselves were accomplished professionals. The process of 'Reimagining PUCL' ought to be continued both to strengthen PUCL organisationally as also to broadbase PUCL to attract new people to join.

The visit to so many state units has

given an unique insight into our strengths and weaknesses. Arising from all this is one key message: we need to reach out to new sections not just to increase membership but also to bring in new ideas, energy, activities and perspectives. PUCL has to become relevant to ordinary people while also offering human rights support to victims of human rights violations.

These two sharings set the basis for a more detailed discussion on the rest of the issues outlined.

2. Broadbasing PUCL - What is the mandate of PUCL?

- Should PUCL confine itself to (a) what is stated in the PUCL constitution; and (b) to civil liberties issues alone?
- Can PUCL also take up broader development, governance and other issues through an expanded understanding of human rights as including social, economic, cultural rights?
- Can PUCL take up issues related to the 'Directive Principles of State Policy' in the Indian Constitution?

Ravikiran Jain, Vice-President, National PUCL (UP): First time PUCL is talking of broad basing its mandate and work. We need to have introspection and understand human rights in the wider context of the system of governance and development; the understanding of human rights has to be expanded from working on violations of civil liberties alone, as many contemporary human rights issues

are essentially linked to the current nature of development process underway. The neo-liberal growth and development path is pushing larger numbers and sections of the people into poverty and impoverishment; evictions, displacements, appropriation of common resources like coal and minerals, and many other issues, have become the site of human rights struggles. We need to question the nature of development policy from the context of the Directive Principles (DP) of State Policy and expand definition of human rights to cover the concerns expressed in the DP as well.

(Note: Ravikiranji requested that the 2 notes authored by him be circulated and read by all members. Ravikiranji had also raised, in the National Executive Committee discussion in May, 2013 in Delhi, that PUCL should not limit itself to the limited agenda of civil liberties as outlined in the PUCL Constitution and must adopt an expansive definition of human rights).

Response to Nishant: Talking of Part 4, DP is not political ideology and not just the mandate of a political party. It is part of the constitutional schema and many of PUCL's activities have been based on addressing part 4; Kannabiran often used to expand on Part 4 to explain PUCL's stand on human rights issues. The issue is one of a political choice by the Indian governments and should be a part of PUCL's broader understanding of human rights. PUCL's memorandum to the NHRC is based on this position.

to be continued in the next issue...

▫

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

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