

A Life in Law and Activism

# SUDHA BHARADWAJ SPEAKS



People's Union for Civil Liberties (PUCL) • January 2021



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*Dedicated to all those who have been  
unjustly imprisoned for exercising their  
constitutional right to freedom of speech and expression*

*The struggle of man against power  
is the struggle of memory against forgetting.*  
— Milan Kundera



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## FOREWORD

**Ravi Kiran Jain**

*National President, PUCL*

On 25th June 2020, we marked the 45th anniversary of one of the darkest moments of Indian democracy, namely the declaration of emergency by Indira Gandhi in 1975. However, the fact that the darkness passed in a little under two years with the withdrawal of the emergency can be read as a triumph for Indian democracy. The People's Union for Civil Liberties (PUCL) attributes this development to the impassioned resistance by thousands of ordinary citizens who, despite being illegally arrested, imprisoned, and tortured, chose not to be cowed down by Indira Gandhi's police state and instead defiantly fought to reclaim the Constitution and democracy.<sup>1</sup>

There are parallels between the emergency then and our contemporary period when we are passing through a phase of what can only be described as an 'undeclared emergency'. In the use of the Unlawful Activities Prevention Act (UAPA) and the National Security Act (NSA) today to target dissent in civil society, there is a parallel to the use of the Maintenance of

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<sup>1</sup> People's Union for Civil Liberties (PUCL) (2020), *PUCL: Current situation in the country worse than what it was during Emergency*, in *GroundXero*, 26th June, available at <https://www.groundxero.in/2020/06/26/pucl-current-situation-in-the-country-worse-than-what-it-was-during-emergency/>, last seen on 9/9/2020.

Internal Security Act (MISA) to target activists and opposition politicians in the period of the emergency. It is estimated that today there are thousands of activists and ordinary people who have been imprisoned by the authorities.

In the period of the ‘undeclared emergency’, the arrests of human rights activists and dissenters have been in three big waves. The state targeting of human rights activists began with an open-ended FIR, which has been used to arrest as of now sixteen activists in a false and fabricated case with respect to violence following the Bhima Koregoan event. The state followed this with the illegal detention of all political leaders and civil society activists in Kashmir, following the unconstitutional abrogation of Article 370 of the Constitution. The latest phase has been the arrests that have followed the Delhi pogrom in which peaceful anti-CAA protesters were wrongly, and maliciously, charged with having been complicit in the Delhi pogrom.

While this development parallels the horrors of the ‘declared emergency’ in every way, what makes the ‘undeclared emergency’ so much more dangerous are the following four factors:

*Firstly*, the attack on human rights defenders as ‘urban naxals’, ‘anti-national’, and ‘anti-social’ and using that label to launch and justify both state repression and induce targeted personalised attacks and assassinations as has happened to Gowri Lankesh and others. This is part of the state-sanctioned politics of violence unleashed on all those who oppose the majoritarian agenda of the state.

*Secondly*, the power of the coercive state is further supplemented by a mob, which operates outside the rule of law. The mob’s lawless actions of murder and violence are justified and legitimised on the platform of a majoritarian nationalism

and these actions threaten the very rubric of life governed by the Constitution.

*Thirdly*, the media is awash with hate speech against minorities. The hate speech has further crystallised and unfortunately deepened the ‘communal common sense’ that Muslims are outsiders to the Indian nation and not entitled to the right to equal citizenship. This has resulted in ‘social and economic boycotts’ of Muslim businesses and small vendors and calls for the physical elimination of the Muslim community, all of which presage a dangerous phase reminiscent of Nazi Germany.

*Fourthly*, the ‘shock’ induced by the COVID-19 pandemic and the subsequent lockdown has been used to push through radical pro-corporate measures such as anti-labour reforms, dilution of social welfare legislation, land laws, farm laws, and environmental safeguards.

How do we envisage a way forward in this challenging time?

*Firstly*, we must defend the values of the Constitution. We have to defend the values of freedom in all its dimensions, the idea of substantive equality, and the importance of fraternity as ‘a mode of associated living’. Our defence of constitutional values has to be imbued with the spirit of what Ambedkar called ‘constitutional morality’.

*Secondly*, while the defence of constitutional values is important, by itself it may not be enough. We must recognise that while protests against unjust policies are vital, ‘no is not enough’. We must build a positive programme that has the ability to capture the wider public imagination.

*Thirdly*, we have to be able to inspire more and more people to break their individual silos of isolation and begin to come together to question unjust state actions. Though people are dissatisfied with the status quo, they feel that nothing will

change and so prefer to do nothing. We have to alter that feeling of helplessness and disempowerment with more solidarity actions in defence of the Constitution, and protest against unjust persecution. If people begin to come together in protest, solidarity, and resistance, that itself can ignite the demand that ‘another world is possible’.

It is in this context that we at PUCL are proud to bring out a publication that documents the life and struggle of Sudha Bharadwaj who is one of our own—an inspirational human rights lawyer and activist who has devoted her life to the struggle of the most marginalised. She has spent more than two years in jail since she was falsely arrested, under the draconian UAPA, with no end in sight.

Sudha’s arrest under the draconian UAPA only demonstrates yet again why the UAPA is at odds with the vision of a democracy founded on the basic principles of any rule of law jurisprudence: namely, that a person is presumed innocent until proven guilty, that when the liberty of the individual is at stake the trial must be conducted expeditiously, and that the state must not use the criminal justice machinery in a vindictive manner.

The struggle against the UAPA is not just for the release of the many detained but is really a struggle for the protection of the right to dissent. The protection of the right to dissent is at its heart a call to defend the values of the freedom struggle, which stand embodied in the Constitution.

This short book nourishes our constitutional imagination and we hope it will inspire young people to come out and demand the repeal of unjust laws like the UAPA that criminalise dissent and also demand the withdrawal of prosecution against all those falsely arrested.



## INTRODUCTION



# SUDHA BHARADWAJ AND THE RIGHT TO DISSENT

*Arvind Narrain*

## **Why is this book important?**

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Sudha Bharadwaj is one of the best-known human rights lawyers in India who has spent a large part of her life working with the farmers and workers of Chhattisgarh. Since August 2018, she has been imprisoned by the state under the draconian Unlawful Activities Prevention Act (UAPA) on false and fabricated charges. An important voice that amplified the concerns of the most marginalised has been forcibly silenced.

This book aims to bring back the unique voice of Sudha Bharadwaj into focus and then contextualise her work in the times that we live in. The reasons for her arrest have to be understood if we are to understand the unique challenges posed by the contemporary era. Thus, this book aims to both put forward Sudha Bharadwaj's thoughts, experiences and work with the law and then explore the legal context of her unjust incarceration. The content of this book is in four parts:

The first section of the introduction provides an overview of some of Sudha Bharadwaj's work around the law and her activism and the rest of the introduction goes on to explore the reasons for her arrest. The reasons being malicious, flimsy and fabricated, this section concludes that we need to see her arrest as an attack on

dissent and the fight for her freedom as a fight for the right to dissent which is a fundamental right in the Indian Constitution.

The second section of the book locates Sudhaji's arrest within the history of India's anti-terror laws. V. Suresh's article, 'UAPA: Law as Instrumentality of State Tyranny and Violence', traces the roots and analyses provisions of anti-terror laws from *the Terrorist Affected Areas (Special Courts) Act, (TAAA)*, to *the Terrorist and Disruptive Activities (Prevention) Act (TADA)*, to *the Prevention of Terrorism Act (POTA)*, and its final embodiment in *the Unlawful Activities Prevention Act (UAPA)*. The author argues that the *UAPA* hits at the right to dissent and must be repealed. The author also notes the importance of working simultaneously on the right to release on bail by relaxing bail conditions as noted by the Supreme Court in the *Shaheen Welfare Association v. Union of India*.<sup>2</sup>

The third section presents a background note prepared by V. Suresh and Shalini Gera of People's Union for Civil Liberties (PUCL) and meticulously documents the legal trajectory of the case against Sudha Bharadwaj and others. This article traces how, from the case's inception in a false FIR (First Information Report) against those who allegedly perpetrated the violence at the Bhima Koregaon incident in January 2018, to how it was used as a pretext, over a period of two years, to bring within its scope human rights activists from around the country. Through this, the background note reveals to us the truth in the Orwellian dictum,

*War is peace. Freedom is slavery. Ignorance is strength.*

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<sup>2</sup> *Shaheen Welfare Association v. Union Of India & Ors*, (1996), SCC (2) 616, JT 1996 (2) 719, available at <https://indiankanoon.org/doc/1208997/>, last seen on 10/9/2020.

And just like in the world of 1984, the innocent have become the accused, those working for the Constitution are accused of working against it, and the actual perpetrators of violence roam freely on the streets and occupy positions of power. The innocent are meanwhile lodged in jail indefinitely without trial.

The final section in the book comprises the interview with Sudha Bharadwaj. It covers Sudhaji's journey through activism and law for over forty years. This part of the book, based on an unpublished interview that Darshana Mitra and Santanu Chakraborty did with Sudhaji in 2012, reflects on her life and work. Although the interview was conducted over eight years ago, its content is as relevant—if not more—today. Some of the insights in the interview have been contextualized through the use of extensive footnotes. The footnotes also provide updated information on cases and incidents where required. The interview's insights are best understood if the reader engages in a reading with full attention to the footnotes.

### **From Trade Union Activism to Socio-Legal Activism**

In Section IV of this book, Sudhaji speaks about her early life in Trade Union movements and about how she came to practice law. We learn about her formative experiences in the Chhattisgarh Mukti Morcha (CMM) under the charismatic leadership of Shankar Guha Niyogi. During her work in the CMM, when she was interacting with lawyers who were (incompetently) representing workers from CMM, one of the workers told her that she had to become their lawyer. The logic the worker gave was that the lawyers that CMM had engaged to defend them were not committed to the issue and were always in danger of being bought off by the other side. Hence, it made sense to have an in-house lawyer, as it were. The importance of the law to a people's movement also became evident in the aftermath of the assassination of Shankar Guha Niyogi in 1991. There were

persistent efforts made by CMM to bring the killers to justice. Knowledge of the law and in particular, the nuances of criminal law, was central to these efforts.

The exigencies of a movement pushed Sudhaji to study law and, as she puts it, at the ‘ripe age of 40’, she became a lawyer. As a lawyer, she was associated with PUCL and formed her own organisation called Janhit. The impetus for forming Janhit lay in the demand that arose from people’s movements in Chhattisgarh. Though initially she began as a lawyer for the union she was working with, she realised that other people’s movements needed legal help as well. Therefore, as she put it, Janhit began providing,

*Legal aid to help groups and those who are struggling...  
if you support movements, then people feel powerful.*

The objective of Janhit is to strengthen organisations in struggles since this has a multiplier effect as far as social change is concerned. The range of cases Sudhaji took up is really a testament to the specific challenges of practicing law in an area that is both militarised and beholden to corporate power. The picture you get is of the newly formed Chhattisgarh state in which the judicial system is subjected to extraordinary pressures from both the state and corporate interests. At the same time, the judiciary often is the last hope of those seeking to fight both state lawlessness and corporate greed. In a powerful analogy, paraphrasing a quote by Nelson Mandela, Sudhaji said,

*Sometimes you are a black man in a white man’s court,  
sometimes you are a woman in a man’s court, sometimes  
you are a working-class person in an industrialist’s court,  
and sometimes you are a people’s movement in a state  
court. Things are loaded against you, but you can’t give  
up, you can’t give a walkover.*

The cases that Sudhaji dealt with ranged from violations of labour law, acquisition of tribal land for industries (in violation of law), arbitrary arrests, disappearances of Adivasi activists, and brutal sexual violence against Adivasi women. The heroic struggle of the team at Janhit was to ensure that the Indian state works within the four corners of the Constitution. The brave effort of Sudhaji and the Janhit team mirrored the effort of her mentor, Shankar Guha Niyogi, to 'bring the constitution to life' for the oppressed people in Chhattisgarh.

Clearly, one of the important influences on Sudhaji's work is Niyogi's work and thinking. The idea of a trade union as not limited to only economic demands but as a 24/7 union, Sudhaji says, is a central concept that is close to her. Thus, she says, the trade union of Shankar Guha Niyogi's dreams would be able to provide healthcare as well as education, as both are important aspects of a person's life. Such trade unions would not leave workers—who were targeted by their management in legal battles—to fend for themselves but would actually bear the costs of legal representation.

This background in trade union activism, of the extraordinary kind pioneered by Niyogi, meant that the work Janhit did was never purely as a legal organisation. One of the key strategies adopted by the organisation was to use law and activism as complementary strategies. This allowed Janhit to push the boundaries of the possible, because sometimes the law can only be activated through public pressure. A very moving illustration of this, which Sudhaji narrates, is the trial of the accused in the murder of Shankar Guha Niyogi. The fact that people attended the trial in large numbers was a testament to how invested they were in ensuring justice. One can hazard a guess that the Court too was moved by the faith shown by ordinary people that justice would be done.

The fact that the trial court convicted the accused is also testament to a strategy based on competent lawyering and an extraordinary mobilisation of a people's commitment to justice. The learning from this is that,

*Unless you fight on the ground, you are not going to be able to implement the good orders that you get from the court.*

Such dual strategies requires a lot of work and Sudhaji says, the only 'substitute for capital is labour, so you do lots and lots of labour'. The profile of Sudhaji that emerges in the course of the interview is of a sensitive human being who is deeply moved by the suffering around her. That innate sensitivity to suffering and the determination to do something about what she witnesses is a crucial aspect of who she is.

The work that is documented in this interview is a counter to the politics of indifference. Indifference to human suffering is the logical end position under the sway of a market ideology, which is based on maximisation of self-interest. Sudhaji embodies a counter to this value system because in her person she embodies the idea of a 'public conscience' as articulated by Babasaheb Ambedkar. As Babasaheb put it,

*Public conscience means conscience which becomes agitated at every wrong; no matter who is the sufferer and it means that everybody whether he suffers that particular wrong or not, is prepared to join him in order to get him relieved.*<sup>3</sup>

The idea of public conscience finds expression in the Indian Constitution through the Preambular ideal of Fraternity. Sudhaji embodies this commitment to fraternity, by seeking to

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3 Hari Narke, Ed., *Dr. Babasaheb Ambedkar: Writings and Speeches*, Vol-20, pp. 445-55.



address human suffering using the ideals of the Constitution. To treat this form of ‘constitutional faith’ as a subversive activity is to seek to criminalise the very attempt to realise the ideal of ‘Justice: Social, Economic, and Political’.

Even as this book is really a documentation of Sudhaji’s life, we know that Sudhaji herself may not be too comfortable with being the focus here. There is an innate modesty that runs right through the interview, and we can imagine her saying that it is not the one person but really the many that should be written about. In the interview, Sudhaji, while seeing the portraits of judges in the National Judicial Academy, reflects on the importance of having similar portraits of clients and ordinary people who persist in the face of impossible odds, whom she sees as the ‘real heroes’.

A close reading of this detailed interview also exposes the claim of the state that those arrested under the rubric of being ‘urban naxals’ endanger the safety and security of India. Instead, this book will show that lives such as that of Sudha Bharadwaj are exemplary lives. Sudhaji and the others arrested using the ‘urban naxal’ tag, work tirelessly to bring that Preambular promise of Justice: Social, Economic and Political to the most marginalised and exploited sections of the Indian population.

### **The Arrest of Sudha Bharadwaj and other Human Rights Activists**

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Ever since Darshana Mitra and Santanu Chakraborty first recorded the interview with Sudha Bharadwaj in 2012, there have been many developments. Sudhaji took up position as Visiting Faculty at the National Law University, Delhi. By all accounts, Sudha Bharadwaj was a popular teacher<sup>4</sup> who communicated

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4 ‘She invoked awe and reverence as a woman who toiled amongst the most socially turbulent parts of the country with quiet strength and navigated the corridors of power with the claims of the powerless, all while exuding

both the idealism of someone who had worked with India's poorest, as well as the practical experience of what the law meant at the grassroots. The Visiting Professorship was in addition to her continuing human rights work as the General Secretary, PUCL (Chhattisgarh), the National Secretary, PUCL, and Vice President, the Indian Association of Peoples Lawyers (IAPL).

This phase of Sudha Bharadwaj's life, which combined being a lawyer, an activist, and an academic, was interrupted by her arrest. She was detained on 28 August 2018, under provisions of the UAPA (Sections 13, 16, 17, 18, 18B, 20, 38, 39, and 40) and under Sections 153A, 505(1) (b), 117, 120(b), 121, 121A, 124A and 34 of the Indian Penal Code (IPC). She has been in custody ever since, without a trial, and has been denied bail multiple times.

As detailed in Section 3 of this book, the events that led to Sudhaji's arrest began with the protests around the attacks on Dalits who were marking the anniversary of Bhima Koregaon in December 2017. The state's arbitrary responses to the attacks and civil society's efforts to counter state action set the stage for the persecution of activists. The subsequent state response to the violent counter-protests, that followed the attack on Dalits at Bhima Koregaon, was to launch a sweeping attack on human rights and arrest human rights activists around the country. Activists countered this by mobilising legal frameworks and filing cases questioning the legality of state action both in jurisdictional High Courts and in the Supreme Court.

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an air of warmth and dignity. Her own life and work evoked reverence and inspiration among even the most cynical of us.'

yashita Gour, (2018), *Sudha Bharadwaj's student pens a heartfelt tribute to her teacher at National Law University, Delhi*, in *The Leaflet*, 1st September, available at <https://www.theleaflet.in/to-maam-with-love-sudha-bharadwajs-student-pens-a-heartfelt-tribute-to-her-teacher-at-national-law-university-delhi/>, last seen on 10/9/2020.

The hearings in the High Court, Magistrates Court, and finally in the Supreme Court were reported extensively in the media. The hearings resulted only in delaying judicial custody, and finally the Supreme Court in *Romila Thapar v. Union of India*<sup>5</sup> dismissed the prayer of eminent citizens for an independent and credible investigation monitored by the Supreme Court. The majority opinion held that,

*As presently advised, we find force in the argument of the State that the crime under investigation in FIR No.4/2018, inter alia is to investigate the allegations that a banned organization, CPI(Maoist), organises events such as referred to in FIR No.2/2018 to propagate ill-will in different classes and turn them into unconstitutional and violent activities. Further, such activities were purportedly carried out by Kabir Kala Manch, Sudhir Dhawale and other activists in different areas in the State of Maharashtra by delivering vituperative speeches and to spread false history, disputable statements and incite objectionable slogans, sing songs and road dramas and distribution of objectionable and provocative pamphlets and books also.*

However, J. Chandrachud delivered a strong dissent noting that:

*The invocation of our jurisdiction under Article 32 in this case is founded on the grievance that a group of five human rights activists is sought to be persecuted for espousing the cause of the marginalised which is considered to be ‘unpopular’. Conscious as the Court is of the public interest in the effective administration of*

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5 *Romila Thapar & Ors v. Union of India & Ors*, WP (Crl.) 260/2018, Judgment on 28/9/2018, available at [https://main.sci.gov.in/supreme-court/2018/32319/32319\\_2018\\_Judgement\\_28-Sep-2018.pdf](https://main.sci.gov.in/supreme-court/2018/32319/32319_2018_Judgement_28-Sep-2018.pdf), last seen on 10/9/20.

*criminal justice, it cannot be oblivious to the overriding constitutional concern to secure the dignity of the individual. The key to the balance between the two lies in a fair, independent and impartial investigation of crime. As a matter of principle, I am unable to agree with the views expressed by the learned Chief Justice and my learned brother Justice AM Khanwilkar.*

Following the dismissal of the petition, and the expiry of the interim directions for home arrest of those arrested, the state remanded Sudhaji into judicial custody and has since then in total, arrested 16 prominent activists from across India.

### **A false and fabricated case**

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Even a cursory perusal, of the timeline of events post Bhima Koregaon (see Section 3 for timeline) over the last two years, reveals the arbitrary nature of the police action. There is no ostensible link between the violence post the Bhima Koregaon commemoration event and the arrested human rights activists. Some of the activists arrested, including Sudha Bharadwaj, Gautam Navalakha, and Varavara Rao are not from Maharashtra and were not present in Maharashtra during the alleged events. In each of their statements, they have refuted any links to the said events. On the face of it, this entire case seems to be a sweeping exercise of state power to bring within its dragnet all those that the state finds to be a thorn in their sides, regardless of their actual involvement in the alleged violence.

While any exercise of excessive or illegal police power can be tested in the courts, the scope of testing such arbitrary exercise of police power reduces when the arrests are under draconian laws such as the UAPA. It might be worthwhile to focus on the nature of some of these provisions under which the activists are being held. Some of the key provisions of the UAPA that have

been invoked are those related to engaging in ‘unlawful activity’<sup>6</sup> and the commission of a ‘terrorist act’.<sup>7</sup> This is at the heart of what the UAPA criminalises. Further, a range of provisions such as Section 17, 18, 18B, 20, 38, 39, and 40 criminalise peripheral or associated activities such as giving support, raising funds, being a member, recruiting a person for doing a terrorist act, etc., thereby spreading the dragnet of the UAPA across a wider range of associated activity.

From the material available in the public domain, the terrorist act seems to be an alleged plot against the Prime Minister. The then Additional Director General of Police (ADG), Law and Order, Maharashtra, Param Bir Singh, specifically referenced this plot in a press conference held after the Supreme Court passed its order allowing house arrest and denying transit remand to the Maharashtra police.

Justice Chandrachud in the minority opinion references the plot and notes,

*The investigation commenced as an enquiry into the Bhima-Koregaon violence. The course of the investigation was sought to be deflected by alleging (in the course of the press briefings of the police) that there was a plot against the Prime Minister. Such an allegation is indeed of a serious order. Such allegations require responsible attention and cannot be bandied about by police officers in media briefings. However, during the course of the present hearing, no effort has been made by the ASG to submit that any such investigation is being conducted about the five individuals. On the contrary, he fairly stated that there was no basis to link the five*

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<sup>6</sup> See Appendix 1, UAPA: Section 13

<sup>7</sup> See Appendix 1, UAPA: Section 15

*arrested individuals to any such alleged plot against the Prime Minister.*<sup>8</sup>

It seems relevant to recognise that the allegations of a plot against the current Prime Minister also have an older history. A similar plot against him when he was the Gujarat Chief Minister was also alleged and investigated. From 2003 to 2006, the state of Gujarat had a series extrajudicial killings or ‘encounter’ killings where people branded as ‘criminals’ or ‘terrorists’ were shot dead in street ‘encounters’ with the police. The chargesheets in these cases invariably alleged that there was a plot to kill the then Chief Minister, Narendra Modi.<sup>9</sup> Eventually, it emerged that there was no such plot and the fraudulent cases were used to legitimise cold-blooded murders, all of which were carried out by the Anti-Terrorism Squad (ATS). Those charged and arrested for these murders and fake encounters included top police officers of the Anti-Terrorism Squad as well as the then Gujarat Home Minister, Amit Shah.<sup>10</sup>

There is a reasonable basis to suspect that the so-called ‘terrorist plot’ as well as ‘unlawful activities’ supporting the banned Communist Party of India (Maoist) have no basis in fact and are nothing other than an attempt to target human rights activists. As Justice Chandrachud concludes in his judgment,

*Upon perusing the material, I find that the allegation that each of the five individuals arrested on 28 August 2018 is found to be engaged in activities of the nature set out in*

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8 Romila Thapar (2018), *supra* 5, p. 77.

9 Krishnadas Rajagopal, (2012), *Probe all 22 fake encounters between 2002 and 2006, SC tells Gujarat Panel*, in *The Indian Express*, 26th January, available at <http://archive.indianexpress.com/news/probe-all-22-fake-encounters-between-2002-and-2006-sc-tells-gujarat-panel/904161/0>, last seen on 02/10/2020.

10 Arvind Narrain and Saumya Uma, Eds, (2015), *Passion for Justice: Mukul Sinha's pioneering work*, Friends of Mukul Sinha.

*paragraph 26 of the counter affidavit (extracted above) is taking liberties with the truth. General allegations against the philosophy of a banned organisation, its policies and the modalities followed in the execution of its unlawful activities constitute one thing. Linking this to specific activities of named individuals is a distinct matter. At this stage, it is necessary to note the submission which has been urged in regard to an undated letter of Sudha Bharadwaj to Comrade Prakash which was also allegedly distributed to the media. There is a serious bone of contention in regard to the authenticity of the letter which, besides being undated, does not contain any details including the e-mail header. A statement has been handed over the court in support of the submission that the letter is an obvious fabrication made by a Marathi speaking person because in as many as 17 places, it contains references to words scribed in Devanagari, using forms peculiar to Marathi. It has been urged that Sudha Bharadwaj who does not belong to Maharashtra and is not Marathi speaking, could not possibly have written a letter in Devanagari utilising essentially Marathi forms of grammar or address. We need not delve into these aspects at this stage, since they are matters for a fair investigation.*

As far as the government was concerned, the case against Sudha Bharadwaj and others was never just a matter of legal prosecution but involved a wider state-initiated and media-complicit campaign against human rights activists. Right from the beginning, legal prosecution went hand-in-hand with a media campaign full of leaked letters, concoctions, and unsubstantiated allegations. The key trope used to target human rights activists was the new terminology of calling them ‘urban naxals’ and using the label to generate a shrill media campaign

against them. Television media in particular participated with gusto in this exercise of demonising Sudha Bharadwaj and other human rights activists based on unverified assumptions, half-truths, and media concoctions. Television news functioned like an arm of the police and amplified the police charges without any verification. It should be noted here that the Supreme Court, through the minority opinion of J. Chandrachud, deprecated this tendency of the state,

*The use of the electronic media by the investigating arm of the State to influence public opinion during the pendency of an investigation subverts the fairness of the investigation. The police are not adjudicators nor do they pronounce upon guilt. In the present case, police briefings to the media have become a source of manipulating public opinion by besmirching the reputations of individuals involved in the process of investigation. What follows is unfortunately a trial by the media. That the police should lend themselves to this process is a matter of grave concern.*

As noted above, not least by the Supreme Court, there are serious infirmities in the case of the prosecution about the complicity of Sudha Bharadwaj in the alleged offences with which she is charged. However, in spite of it being a false and fabricated case, Sudha Bharadwaj has spent over two years in jail, raising serious questions about what the constitutional right to dissent means in contemporary India.

### **The Targeting of Human Rights Organisations for Upholding a Democratic Way of Life**

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The constitutional bounds within which Sudha Bharadwaj's work has been carried out over the course of her lifetime are apparent. As a trade union activist and a lawyer, Sudhaji advocated for the



Indian state to deliver on its constitutional promise, pushing the state to ensure that it works within constitutional parameters and deliver on the promise of the laws it enacts as well as the Directive Principles of State Policy. Nothing in Sudhaji's work militates against the Constitution; if anything, her work stands out as an embodiment of the deepest constitutional faith. As National Secretary of the PUCL, Sudhaji is sworn to also uphold the PUCL Constitution, which under Sec. 2(a) declares its aim, 'to uphold and promote by peaceful means civil liberties and the democratic way of life'. In the PUCL National Convention held in Chennai (then Madras) on 7th March 1982, a resolution was passed stating that,

*The PUCL reaffirms its faith in the democratic way of life. It appeals to all to use the utmost, the agencies, and methods available in an open society. Apart from other factors, violence even for laudable objectives will legitimise counter violence by the state and other groups.*<sup>11</sup>

PUCL has clarified its position repeatedly in its flagship publication,

*Due to persistent disinformation campaign by the governments of all hues and colours, a wrong impression has been created that the PUCL supports violence and organisations resorting to violence for achieving their political objective. The PUCL does not support resorting to violence as a means to achieve political ends or redress of grievances. It further states that it is committed to work for the rule of law. There is no room for violence under the rule of law.*<sup>12</sup>

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<sup>11</sup> Prabhakar Sinha (2016) *Understanding PUCL*, PUCL, Patna, p.69.

<sup>12</sup> *Ibid.* p.18.

It is the role of a human rights organisation to expose state lawlessness. In the course of her work as the National Secretary of the PUCL, Sudha Bharadwaj has done a scrupulous job of exposing state lawlessness in their policy of creating the Salwa Judum, carrying out countless encounter deaths, illegal arrests and detentions, illegal acquisition of lands, and utter destruction of the lives and livelihood of thousands through unchecked industrialisation. The state has responded to this task of ‘bringing the Constitution to life’ for the deprived millions by falsely targeting individuals like Sudhaji and many human rights organisations.

### **The Case for Repeal of the UAPA**

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The extraordinary law under which Sudha Bharadwaj and others are being prosecuted is the UAPA. The UAPA creates vague and overbroad offences such as the definition of ‘unlawful activity’. By definition, ‘unlawful activity’ includes activity ‘which causes or is intended to cause disaffection against India’. The other key offence of ‘terrorism’ is also overbroad in definition and encompasses a wide range of non-violent political activity including political protest. Such definitions along with other provisions that criminalise ‘associated’ activities such as raising funds, giving support, etc., targets legitimate speech and association. The draconian nature of the UAPA lies not only in its substantive criminalisation of speech and activity, which fundamentally should have constitutional protection, but also in the way its procedural provisions depart from the ordinary criminal law. One of the most dangerous such provisions in the UAPA is Section 43 D (5), which notes that,

*Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been*

*given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.*

This provision creates a presumption of guilt for terrorism offences merely based on the evidence allegedly seized and justifies the denial of bail by the Courts. In fact in denying Sudha Bharadwaj bail, the High Court of Bombay, has cited this provision.<sup>13</sup>

The current experience of prosecution under the UAPA is that release on bail during the trial is rarely granted and most accused have to wait for the entire trial to conclude and for eventual acquittal, which could take years. In addition, under the UAPA, detention without the filing of a chargesheet is allowed for a period of 180 days rather than the Criminal Procedure Code (CrPC) requirement of 90 days. These provisions create a strong presumption against bail, and anticipatory bail is excluded for offences under the UAPA. The UAPA also authorises the creation of special courts with wide discretion to hold in-camera proceedings (closed-door hearings) and allows the use of secret witnesses.

In fact, as criminal law scholars have argued, special laws like the UAPA are actually more about altering procedural provisions that provide protection to the accused against the power of the state. Thus, the fact that those charged under the UAPA languish

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<sup>13</sup> *Sudha Bharadwaj v. The State Of Maharashtra* (2019), Criminal Bail Application 428 OF 2019, available at <https://indiankanoon.org/doc/52149940/>, last seen on 10/9/2020.

for years without bail, and without trial, will not be framed as abuse of the law, but rather the use for which it was intended.<sup>14</sup>

The UAPA is fraught with unconstitutional implications and must go. It is being used to target dissent and political expression and seeks to compel Indian citizens to walk a narrow path laid out by the Government of the day. Any dissension from government opinion is liable to be targeted under the UAPA. The continued utilisation of this Act by the Executive can spell the death knell for dissent in the country.

The most compelling case for the repeal of the UAPA comes from the father of the nation, Mahatma Gandhi, who was also tried for sedition. Sedition is defined by Section 124 A, IPC, as words or actions, which ‘bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law’. In a remarkable statement read out by Gandhiji during his trial, he critiqued this provision by noting that,

*Section 124A, under which I am happily charged, is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote, or incite to violence... I have no personal ill-will against any single administrator, much less can I have any disaffection towards the King's person. But I hold it to be a virtue to be disaffected towards a Government which*

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<sup>14</sup> Kunal Ambasta (2020) *Designed for Abuse: Special Criminal Laws and Rights of the Accused*, in *NALSAR Student Law Review (NSLR)*, Vol XIV pp. 1-19, available at <https://nslr.in/wp-content/uploads/2020/07/NSLR-Volume-XIV.pdf>, last seen on 10/9/20.

*in its totality has done more harm to India than any previous system.*<sup>15</sup>

The point being made is that dissent towards the government of the day cannot and should not be tarred as ‘sedition’ as it was in Gandhi’s trial, as a ‘terrorist act’, or as ‘unlawful activity’, in the case of Sudha Bharadwaj and other activists. When dissent is expressed peacefully and within the bounds of the Constitution, it cannot be disallowed; for indeed, a democracy is built on dissent. No government should presume that a criticism of its policies is ‘anti-national’, since the ‘nation’ is more than the government of the day. It is for these reasons that we believe that the UAPA must be repealed forthwith and the prosecution of those targeted under its provisions should be withdrawn.

### **The Right to Dissent is not just about Sudha Bharadwaj but also about all of us**

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Targeting Sudha Bharadwaj as a supporter of violent activities shows no regard for the facts or any understanding of the role of human rights organisations in democratic societies. In effect, this is nothing but an attempt to delegitimise human rights activism and existing human rights organisations in the country. Justice Chandrachud noted this in his minority opinion and flagged the concern that prosecution in this case was nothing more than an attempt to stifle dissent.

*There is a serious allegation that the arrests have been motivated by an attempt to quell dissent and to persecute five individuals who have pursued the cause of persons who have suffered discrimination and human rights*

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<sup>15</sup> Tendulkar, D. G., (1951) *Statement in the Great Trial of 1922*, (Famous Speeches) *Mahatma: Life of Mohandas Karamchand Gandhi*, Vol. II. available at <http://www.gandhi-manibhavan.org/educational-resources/statement-in-the-great.html> last seen on 28/9/2020.

*violations. In approaching the present case, the Court must be mindful of the need not to thwart a criminal investigation leading to the detection of unlawful acts. Equally, the Court has to be vigilant in the exercise of its jurisdiction under Article 32 to ensure that liberty is not sacrificed at the altar of conjectures. Individuals who assert causes which may be unpopular to the echelons of power are yet entitled to the freedoms which are guaranteed by the Constitution. Dissent is a symbol of a vibrant democracy. Voices in opposition cannot be muzzled by persecuting those who take up unpopular causes.*

While Justice Chandrachud's opinion showed sensitivity to the factual matrix within which the arrests were carried out and was vigilant in signposting the deeper democratic questions underlying the arrests, it is a fact that it is still only a minority judgment. Charles Evans Hughes, Chief Justice of the US (1930-1941) refers to dissenting judgments and says,

*A dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed...*<sup>16</sup>

It is important that in a time of majoritarianism when the media tends to go along with the majority opinion, the judiciary scrupulously defend the values of the Constitution. In line with the hopes of Justice Hughes, we hope that Justice Chandrachud's

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<sup>16</sup> From *Justice K. S. Puttaswamy (Retd.) and Anr. v. Union Of India and Ors*, (Justice R. F. Nariman concurring opinion) available at [https://main.sci.gov.in/supremecourt/2012/35071/35071\\_2012\\_Judgement\\_24-Aug-2017.pdf](https://main.sci.gov.in/supremecourt/2012/35071/35071_2012_Judgement_24-Aug-2017.pdf), last seen on 28/9/2020.

dissenting opinion will become ‘the intelligence of a future day’, and become the way the majority will rule.

This case is not just about Sudha Bharadwaj; it is also about the arrests and persecution of Gautam Navalakha, Anand Teltumbde, Varavara Rao, Arun Ferreira, Vernon Gonsalves, Prof. Shoma Sen, Advocate Surendra Gadling, Rona Wilson, Mahesh Raut, Sudhir Dhawale, Hany Babu, as well as activists with the Kabir Kala Manch, Ramesh Gaichor, Sagar Gorkhe, and Jyoti Jagtap. But this case is not only about these sixteen activists but also about the defence of the broader idea of a democracy in which all citizens have the right to dissent.

The message the state and governments seek to send through the prosecution of these activists is that dissent is dangerous and that any dissension from the opinion of the ruling establishment



*Sudhaji at the Raipur Satyagraha, a weekly protest to press for release of the then-imprisoned Dr. Binayak Sen. Other activists from PUCL Chhattisgarh are seen in the background. Circa 2009. Source: PUCL, Chhattisgarh*

is a punishable offence. If we do not stand up and resist this anti-constitutional interpretation, then India will be remade in another mould altogether, which will bear greater affinity to a totalitarian state rather than a democracy. As such for all those committed to the constitutional idea of India it is imperative that we take forward a campaign against these unjust arrests and keep agitating for the withdrawal of prosecution against Sudha Bharadwaj and the other human rights activists. We strongly believe that nothing less than the idea of India as a constitutional democracy is at stake.



# ANTI-TERROR LAWS



## UAPA: LAW AS INSTRUMENTALITY OF STATE TYRANNY AND VIOLENCE

**V. Suresh**

*General Secretary, People's Union for Civil Liberties (PUCL)*

*The relationship between violence, power and the law is especially evident to those committed to democratic values. There is an overwhelming play of violence as power and power as violence, sometimes in breach of the law and sometimes as a tool for its enforcement. If violence in society is perceived as a breach of the law, the law itself is equally violent and in fact has an even more debilitating effect because of its systematic and thorough ruthlessness backed by official sanction.*

K.G. Kannabiran<sup>17</sup>

The history of anti-terror legislations in India is the story of the State empowering itself with greater powers giving it wide, unbridled, unregulated powers of arrest and incarceration without charge and denial of procedural rights like bail. Most often, these anti-terror legislations were premised on changing essential rules of evidence like the principles of adverse

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<sup>17</sup> Kannabiran, K. G., (2004), *The Wages of Impunity: Power, Justice and Human Rights*, Orient Longman; New Delhi, p. 1, from *Chapter 1: Saga of Impunity*. Extracted in Basu, Asmita, (2011), *Routinization of the Extraordinary—A Mapping of Security Laws in India*, available at <http://www.southasianrights.org/wp-content/uploads/2009/10/IND-Security-Laws-Report.pdf>, last seen on 15/09/2020.

inference or presumption of guilt, painstakingly evolved over many decades of balancing the rights of the accused as against the duty of the state to gather evidence by following the dictates of law to secure conviction.

The worst aspect of these anti-terror laws, like the repealed TADA or POTA Acts, or the currently live UAPA Act, is that it permits the state to arrest people even before any crime is committed and on the mere suspicion of the police officer, resulting in the imprisonment of hundreds, if not thousands of accused, for many years. Eventually, when the accused are acquitted after lengthy trial proceedings stretching anywhere from 5 to 10 years, the damage is done. Valuable years of a person's life are not only snatched away, but the entire family of the accused also suffers unimaginable mental, emotional, social, and financial torture while trying to cope with the fallout of being labelled as the family of a 'terrorist'.

Despite overwhelming evidence of misuse, these so-called anti-terror legislations have also had extremely poor rates of conviction—ranging from a low of 1% conviction in TADA prosecutions in 1993<sup>18</sup> to a maximum of about 33.3%<sup>19</sup> in UAPA cases in 2016<sup>20</sup>. Additionally, the stringent bail provisions in these laws make it impossible to obtain pre-trial bail.

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<sup>18</sup> Kalhan, Anil, Gerald P. Conroy, Mamta Kaushal, Sam Scott Miller and Jed S. Rakoff, (2006), *Colonial Continuities: Human Rights, Terrorism and Security Laws in India*, in *Columbia Journal of Asian Law*, Vol. 20, pp. 93-234, available at [https://www.nycbar.org/pdf/ABCNY\\_India\\_Report.pdf](https://www.nycbar.org/pdf/ABCNY_India_Report.pdf), last seen on 13/09/2020.

<sup>19</sup> It should be pointed out that though this figure of 33.3% conviction in UAPA cases (which is based on NCRB figures) itself is seen as very low, the figure itself is criticised as being excessive as it is based on a flawed methodology. Lawyers handling UAPA cases and researchers contend that the conviction rate is far, far lesser than the government claims of 33%. For a more detailed critique see Box 1.

<sup>20</sup> See NCRB Data analysed in Verma, Sanjeev (2020), *Why UAPA cases fall flat in courts*, in the *Times of India*, on 28th July, available at

## **Anti-Terror Laws: Insecurity in the Name of National Security**

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The earliest of the anti-terror special laws were formulated in the 1980s as a response to numerous incidents of armed attacks in Punjab and the north-east States of India. The *Anti-Hijacking Act* was enacted in 1982, and the more detailed *Terrorist Affected Areas (Special Courts) Act*, 1984 (referred to as TAAA), was enacted on 31st August 1984. Under this law, Special Courts were set up to ensure ‘speedy’ trials for ‘terrorist’ crimes. These were defined as ‘scheduled offences’ and essentially comprised the crimes listed under Sections 121, 121A, 122, and 123 of *the Indian Penal Code (IPC)* i.e., waging war against India, sedition, and other related offences. ‘Scheduled offences’ were those that took place in designated areas called ‘terrorist affected areas’.

The term ‘terrorist’ was defined as a person who indulges in wanton killing of persons or in violence or in disruption of services or means of communication or damaging property with a view to—

- i. putting the public or any section of them in fear; or
  - ii. affecting adversely harmony between different religious, racial, language or regional groups or castes or communities; or
  - iii. coercing or overawing the Government established by law; or
  - iv. endangering the sovereignty and integrity of India.
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<https://timesofindia.indiatimes.com/articleshow/77191240.cms>.

See also Patel, Aakar (2019), UAPA - A Tool of Repression, in Outlook Blog, on 4th August, available at <https://www.outlookindia.com/blog/story/india-news-uapa-a-tool-of-repression-the-amendment-just-makes-it-worse/4118>, last seen on 15/09/2020.

The common thread in these laws, beginning with the TAAA's inception and ending with the UAPA in current times, is in two key procedural provisions,

- i. extension of the time for remand and for submission of chargesheet—as prescribed by Sec. 167 of the CrPC—from the standard of 90 days, for heinous crimes under the IPC, to 1 year (Section 15(2)(b) TAAA); and
- ii. stringent bail provisions requiring the accused to give advance notice in order for the Public Prosecutor to oppose bail, and for the court to be satisfied that there are 'reasonable grounds for believing that he (the accused) is not guilty of such offences and that he is not likely to commit any offence while on bail' (Section 15(5) (b) TAAA).

What is interesting to note is that this law was meant to try terrorist cases occurring in 'terrorist designated areas' by special courts set up for that purpose.

### **Metamorphoses from TAAA, 1984, to TADA, 1985, and POTA Act, 2002**

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Prime Minister Indira Gandhi was assassinated on 31st October 1984 by her own security guards. The violence that followed and the subsequent string of bomb blasts (in buses and public places in Delhi, using bombs hidden in transistor radios) and other cities and towns in north India brought forward the first major change in anti-terror laws. The TAAA was replaced by *the Terrorist and Disruptive Activities [Prevention] Act* (TADA), 1985. It was subsequently modified in 1987 and renewed in 1989, 1991, and 1993, until it was allowed to lapse in May 1995.

It is important to note that this period, during which the new law was enacted was one that witnessed several major incidents involving the use of bombs and firearms by political groups

in a number of states. In these government-named ‘disturbed’ states, armed secessionist groups—such as those in Punjab, in north-eastern states like Manipur and Assam, and in Jammu and Kashmir—used extreme violence in their confrontations with local authorities. There were also armed extremist or insurgent groups like the Communist Party of India (Maoist) and Naxalite groups, in some of the tribal populated Indian states—like in the Bastar region of the then undivided Madhya Pradesh (now known as the state of Chhattisgarh), in regions of Andhra Pradesh, Orissa, and Bihar. In addition, there were also several terrorism-based incidents in Delhi, Bombay, and in a few other cities. As a result, the TADA Act, 1985, explicitly listed the intention of the law to help prevent and to cope with ‘terrorist’ and ‘disruptive’ activities, both of which were defined as different terrorist-related crimes.

The overarching theme of the TADA Act was the threat posed by armed terrorist groups to India’s sovereignty and national territorial integrity. Further, the aim and intention was meant to redress, what the majority opinion in the Supreme Court related as,

*...Extensive damage to the properties, killing of hundreds of people, the blood-curdling incidents during which the blood of the sons of the soil had been spilled over the soil of their motherland itself, the ruthless massacre of the defenseless and innocent people especially of poor as if they were all ‘marked for death’ or for ‘human sacrifice’ and the sudden outbreak of violence, mass killing of army personnel, jawans of Border Security Force, government officials, politicians, statesmen, heads of religious sects by using bombs and sophisticated lethal*

*weapons thereby injecting a sense of insecurity in the minds of the people.*<sup>21</sup>

The TADA Act invested the state—through its police and security forces—with widespread powers to arrest and to conduct searches in the homes and premises of people, accused of being ‘terrorists’, who are being investigated. Apart from the wide-ranging but imprecise definition of what constituted terrorism and disruptive acts, the TADA Act introduced major changes to procedural and evidentiary law. Among the key provisions were:

- i. Confessions to police officers were made admissible as evidence (Section 15, TADA Act, 1987), contrary to ordinary criminal law where confessions made to police officers were specifically excluded as evidence (Section 25 to 27, the Indian Evidence Act, 1872).
- ii. Remand provisions were expanded by which Section 167 of the CrPC was amended for TADA cases to allow the police not to produce the accused within 24 hours, as mandated by regular law. The provision also allowed them to extend remand from 15 days to 30 days (thereby increasing possibility of torture). In addition, the provisions extended the last date, for filing the chargesheet, from 90 days to 180 days. This was accompanied with a proviso that a further extension of 180 days could be allowed. This meant that for a full year the police were not required to file a chargesheet (Section 20(4) of TADA Act, 1987). This also meant that those who were accused in such cases could not hope to get bail for a period of one year from their arrest!

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<sup>21</sup> From *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569, para 67. Also available at <https://indiankanoon.org/doc/1813801/>, last seen on 15/09/2020. The constitutional validity of the TADA (P) Act, 1987 was upheld by a majority of 3:2 in this case.



- iii. The stringent provisions for the grant of bail, as in the earlier versions of the law (TAAA, 1984), continues in this version as well. Section 20(8) (b) TADA Act, 1987, declared that the Court can grant bail only if the Court is satisfied that there are ‘reasonable grounds for believing that he (the accused) is not guilty of such offence and that he is not likely to commit any offence while on bail’.
- iv. Major changes were also made to the law of evidence, vide Section 21 which covers ‘Presumption as to offences under Section 3, i.e., ‘terrorist’ offences.
- v. This law also allowed the use of confessions—made to police by the accused—against other co-accused, which is contrary to ordinary criminal law.

### **Legal tyranny: Lengthy Incarceration, Unending Trials vs. Abysmal 1% Conviction Rate**

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The Supreme Court Bench that validated the TADA Act had realised the potential for abuse of the law by the state, which had given itself such unbridled, arbitrary powers. The *Kartar Singh* judgment pointed out to the need for the Central and State Governments to set up a ‘Review Committee’.<sup>22</sup> This committee would review allegations made against each accused person arrested under the TADA Act and also review the invocation of TADA in the case. If TADA has been wrongly or deliberately invoked, then the committee could direct that the case be converted into a regular criminal law case and transferred to regular criminal courts.

But, these words of caution had little effect on the executive who tended to use TADA on a wide range of persons—trade unionists, social activists, people who represent marginalised groups

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<sup>22</sup> *Ibid*, para 265.

fighting for social rights like Dalit groups and farmers groups. In short, TADA was used vengefully against all those who challenged the state and questioned its actions using the democratic right of dissent to seek accountability from the executive.

The figures speak for themselves. As of August 1994, of the 67,059 undertrial prisoners waiting for trials to conclude, only 8,000 were tried and 725 were convicted. In other words, the conviction rate was 1.08%. This contrasted sharply with the conviction rate for ordinary criminal law trials (47.8%). In addition, it was only a slight increase from the conviction rate in October 1993, which was 0.81%.<sup>23</sup> According to one account, more than 25% of the TADA cases were dropped by the state, and eventually only in 1% of cases were convictions obtained.

It bears repeating that the crucial issue in all this is that by the time the tens of thousands of persons accused and implicated in TADA cases were released, they had spent anywhere between 5 years to 10 years in jail. This constitutes a major human rights violation, but unfortunately no one in civil society, the media, the state, or sadly even in the courts, are willing to acknowledge this injustice.

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### **From TADA to POTA to UAPA**

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The only redeeming feature—if it can be called that—of the TADA Act was that it needed to be renewed every 2 years with parliamentary approval for its extension. It was extended in 1989, 1991, and 1993. However, by 1995, the documented abuse of TADA both by the Central Government and by the States had become rampant and indefensible. In April 1995, the Chairperson of the National Human Rights Commission (NHRC) wrote to all the Members of Parliament (MP) in the Lok Sabha and the Rajya Sabha, pleading with them to not allow the further extension

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<sup>23</sup> *Kalhan et al* (2006), *supra* 18, p. 155.

of the TADA Act when it came up for renewal. The NHRC also pointed out that more than 76,000 undertrial prisoners were booked under TADA and imprisoned without bail.

PUCL, along with other fraternal human rights organisations like the Peoples Union for Democratic Rights (PUDR), the Andhra Pradesh Civil Liberties Committee (APCLC), the Committee for Protection of Democratic Rights (CPDR), the Association For Protection of Democratic Rights (APDR), and many others had also been engaged in a lengthy campaign with MPs to not extend the TADA Act. All this bore fruit when in May 1995, the Central Government was forced to drop the TADA Act and it died an unnatural death—unnatural in the sense that it died because of the force of public opinion, not because the state did not want such a law!

When the Bharatiya Janata Party (BJP) led National Democratic Alliance (NDA) Government came to power in 1999, among the key initiatives they launched was to ask the Law Commission of India to examine the necessity and feasibility of introducing a new anti-terrorism law. Through the 173th Report, the Law Commission recommended a new law, built on the same lines of the repealed TADA Act and called the '*Prevention of Terrorism Bill, 2000*' (POTB).

However, the rampant abuse of TADA was still fresh in the memory of many political parties and with the active campaigning of human rights groups, further movement was thwarted; until the attack on the Indian Parliament by armed terrorists in December 2001. This gave the BJP-led NDA government the opportunity to introduce once again, a new anti-terrorism law. First, they introduced the Prevention of Terrorism Ordinance, 2001. This would eventually become the law as the *Prevention of Terrorism Act* (POTA), 2002. In the first round, the Bill was defeated in the Rajya Sabha with a vote of 113 against and 98 for

the Bill. In the third sitting to pass the Bill, the NDA government led by the Prime Minister A. B. Vajpayee, convened a Joint Session of Parliament. In this specially convened Joint Session of Parliament held on 23rd March 2002, the BJP rallied enough numerical strength to make up for the earlier defeat, and POTA, 2002, was passed by 425 votes for and 296 against the new law.

POTA was constructed, by and large, on the same framework as the TADA Act, 1987. Once again, confessions to police officers were made admissible; the changed evidentiary procedures relating to presumptions were retained; rules relating to period of remand were altered and the stringent limitations as to grant of bail continued.

Once again POTA was widely abused by the BJP-led Central Government; many of the states, not to be outdone, were also misusing or abusing the law and arresting and imprisoning opposition groups, activists from social movements, trade unionists, and many others in the name of countering terror. Once again, we were in a situation where many hundreds were arrested across India. One of the most public cases was the arrest of Vaiko, the MP from Sivakasi, Tamil Nadu, on the orders of J. Jayalalithaa, the then Tamil Nadu Chief Minister (CM). Vaiko had to spend close to 1.5 years in prison before being released.

Once again, there were two redeeming features in POTA:

- i. Firstly, and importantly, POTA provided for judicial review of decisions of Special Courts—constituted to try POTA cases—before the State High Courts, unlike TADA which provided for appeals or review directly from the trial court to the Supreme Court making access to judicial review considerably difficult.
- ii. Secondly, POTA also introduced a provision for the constitution of ‘Review Committees’ at both Central and

at State Government levels, which could be approached by arrested persons with their grievances.

However, the Review Committees remained a cosmetic innovation. This was because the constitution of the Committees was not framed properly, their powers were not delineated adequately, resources were not allocated, and their decisions were not considered binding. In December 2003, further amendments were brought to POTA by way of an ordinance, in which additional provisions were made to empower the Central Review Committee. Ultimately, even this did not help, because complaints flooded in stating that the Central Review Committee only took up cases of politically important personalities (meaning political arrestees) close to the then Central Government.<sup>24</sup> In effect, the Review Committees were non-starters.

The demand to repeal POTA then became a major political issue, which the Indian National Congress (INC) used in a major way. Considering the rampant abuse of POTA against political opponents in many BJP-ruled states, most of the opposition got together to oppose the BJP-led NDA government and the Congress-led UPA came to power in May 2004. On 21st September 2004, the Congress-led UPA Government introduced a Bill in Parliament to repeal the POTA Act. The Bill passed through both houses and POTA was repealed. But by a cruel twist, the same Congress-led UPA Government, on the same day, introduced a new Bill incorporating many of the provisions of the earlier TADA and POTA Acts by introducing them as amendments to the older *Unlawful Activities (Prevention) Act, 1967*.

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<sup>24</sup> Christopher Gagné, (2005) *POTA: Lessons Learned From India's Anti-Terror Act*, in *Boston College Third World Law Journal*, Vol. 25, Issue 1, p. 290, available at <https://lawdigitalcommons.bc.edu/twlj/vol25/iss1/9>, last seen on 05/10/2020.

## **Continuation of Sweeping Definitional Frameworks**

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Since 2004, the UAPA has been amended several times; soon after the terrorist attack on Bombay in 2008, subsequently in 2013, and most recently in 2019.

In 2004, a new Chapter IV was introduced to UAPA providing the definition of ‘Terrorist Act’ (Section 15). It defined a terrorist act as any act done with the intention to threaten or likely to threaten the unity, integrity, security, including economic security, or sovereignty of India or with the intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country. Section 17 provided for punishment for raising funds for terrorist acts, Section 19 for harbouring a terrorist, and Section 20 for being a member of a terrorist gang or organisation.

One of the most problematic offences was set out in Section 18, which punished anyone who ‘conspires or attempts to commit or advocates, abets, advises or incites, directs or knowingly facilitates the commission of a terrorist act or any act preparatory to a terrorist act.’ In effect, for invoking Section 18, no actual terrorist offence needs to have been committed. The allegation of merely having prepared for a terrorist act is sufficient to be punished under the UAPA Act. Given such sweeping definitions of terrorist acts, it is no wonder that the UAPA has been widely abused. It has been used to jail student protestors, farmers, social activists, political dissidents, and a host of others who are political opponents of the ruling parties in different states.

### **Features of the UAPA**

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The only, but nonetheless significant, difference between POTA and the newly amended UAPA was that the provision making confessions to police officers admissible as evidence was dropped. However, many of the other procedural provisions in the earlier

TADA and POTA laws relating to pre-trial detention, remand, and bail were incorporated into the new law, giving UAPA the same vicious teeth that previous anti-terror laws had.

Thus, Section 43A (introduced in 2008) states that any authorised officer (under the UAPA Act) could order the arrest of a person or the search of a building if he has reason to believe, from personal knowledge or information given by any person, about the commission of a terrorist offence. He can enter a building and search to seize its contents without prior judicial warrant. Section 43E provided for ‘Presumption as to offences under Section 15’ and stipulates that if it was proved that arms or explosives or other substances was recovered from the possession of an accused, or fingerprints or any other ‘definitive evidence’ suggesting the involvement of the accused were found at the site of the offence, then the Court ***‘shall presume, unless the contrary is shown, that the accused has committed the offence’***. Very clearly, the law itself lays the basis for its potential misuse by providing for such a presumption.

### **Bail and Remand Standards: Insurmountable Burden**

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In a manner similar to the changes in remand provisions brought about in TADA and POTA, Section 43D(2) of UAPA provides that the police remand period is extended to 30 days and that the time for submitting chargesheet can be extended beyond 90 days to another period of 90 days, totalling 180 days. The procedure for doing so is also prescribed, stipulating that the Court may grant such extension on a report of the Public Prosecutor explaining why additional time is necessary.

Similar to the bail provisions in TADA and POTA, Section 43D(5) of UAPA states that no person shall be released on bail for offences under Chapter IV and VI of the UAPA Act unless

an opportunity is given for the Public Prosecutor to be heard on the bail application. The provision also additionally stipulates that if the court, 'on perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true', then bail shall not be granted.

Taken together what this means is that the accused/arrested person cannot apply for bail until the chargesheet is filed, which in cases where UAPA is applied, can be extended to a period of 180 days. After this period, bail can be denied or rejected by the court, if the court on perusal of the case diary or report, made by the Investigating Officer, forms the opinion that there are '**reasonable grounds**' for believing that the **accusation** against such person is '**prima facie true**'.

The law is construed in such a manner that it will be impossible to obtain bail. For the first 180 days, the accused may not even know what the case is against him. Thereafter, the release of the accused on bail is dependent on the Court's subjective satisfaction that the accusation is not prima facie true. Though 'subjective satisfaction' would mean that there must be 'reasonable grounds to believe', it is still hard to define. Finally, what is required to 'deny' bail is that it is sufficient that the court is satisfied that the accusation is 'prima facie true' based on the material against the accused placed by the police in court. The difficulty for the accused, and this is an insurmountable problem, is that the veracity of the evidence placed against him in the chargesheet can only be verified or evaluated at the time of trial. Therefore, until the time of trial the 'presumption' is that the evidence placed before the court in the chargesheet is the 'truth'. Kapil Sibal, MP, explains this,

*It is the settled position in law that the accused cannot have access to the case diary. As far as the chargesheet*



*is concerned, the act of taking cognisance by the court is based on a prima facie belief that the accusations are true. At that stage, the accused is not heard by the court. This makes the law onerous and offensive, with no hope for the accused to access bail. Trials, too, take long. At the end of 2018, of the 2,008 cases, only 317 were sent to trial. Given the state of the law, an acquittal at the end of the trial means little.*<sup>25</sup>

The legal provision regarding bail places an unfair and unconscionable legal burden—a legal conundrum—on the accused persons that they can never overcome until the trial is completed. Until such time, the accused persons unlucky enough to be trapped in UAPA prosecutions will have to suffer incarceration.

**Bail Jurisprudence in Anti-Terror Laws:  
Shift from TADA/POTA to UAPA and  
Supreme Court Affirmation of Validity of the  
‘Impossibility Test’ for Bail in *Watali* Case (2019)**

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The harshest feature of all anti-terror laws of India is the provision relating to bail. These provisions are almost always written in ways that make obtaining bail incredibly difficult. This forces persons accused of such crimes to spend long years in prison before the trial is concluded. Additionally, the increasing severity of the bail provisions—beginning from the TAAA through TADA and POTA right up to UAPA—are very noticeable. They progress from simple considerations of guilt to subjective interpretation of ‘material’ presented by the investigators at the time of bail applications.

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<sup>25</sup> Sibal, Kapil (2020), *UAPA: When laws turn Oppressive*, in *Hindustan Times*, 30th June, available at <https://www.hindustantimes.com/analysis/uapa-when-laws-turn-oppressive/story-d9d7OEO5oLQjLZs3Ba5pzI.html>, last seen on 15/09/2020

The bail provisions of TADA and POTA made a departure from normal criminal laws by introducing a very difficult threshold for grant of bail by courts. The provisions of Section 20(8) of TADA<sup>26</sup> was very similar to Section 49(7) of POTA<sup>27</sup> both of which prescribed that no court shall grant bail to an accused person unless the court is satisfied that there are ‘reasonable grounds for believing’ (in TADA) or ‘grounds for believing’<sup>28</sup> (in POTA) that the accused/arrested person is not guilty of committing such offence”.

A significant change was introduced into the bail provisions in UAPA in 2008. Section 43-D(5) of UAPA provides that no court shall release any person on bail, if, after a perusal of the case diary or the report made under section 173 of the CrPC, is ‘of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true’.

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<sup>26</sup> Sec. 20(8) Of TADA, 1987:

- (8) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless, –  
the Public Prosecutor has been given an opportunity to oppose the application for such release, and  
where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

<sup>27</sup> Sec. 49(7) POTA, 2002:

- (7) Where the Public Prosecutor opposes the application of the accused to release on bail, no person accused of an offence punishable under this Act or any rule made thereunder shall be released on bail until the Court is satisfied that there are grounds for believing that he is not guilty of committing such offence:  
Provided that after the expiry of a period of one year from the date of detention of the accused for an offence under this Act, the provisions of sub-section (6) of this section shall apply.

<sup>28</sup> Note that the term “reasonable” in TADA Act was dropped in POTA Act. See definitions in footnotes 26 & 27.

The change in the bail provisions is very significant. It meant that the court was required under the TADA/POTA Act to be satisfied that there are reasonable grounds that the accused person has not committed the offence (as provided in TADA/POTA). In contrast, under UAPA it was sufficient if the court is ‘of the opinion’ (need not be satisfied, which is a higher threshold) that there are reasonable grounds for believing that the “accusation against such person is prima facie true”.

In simple terms what is required to deny bail is the existence of an (i) accusation, (ii) backed up with some reference to the accused person in the case diary or the Police Final Report (popularly called the chargesheet) (iii) which appears to be prima facie true—i.e., on the face of it, it makes out an allegation. If these ingredients are satisfied the court is barred from examining or looking into the credibility or validity of the material specified by the investigating officer, and the only option for the court is to dismiss the bail application.

The harshness of such a provision stands out in the Supreme Court judgment in *National Investigative Agency vs. Zahoor Ahmad Shah Watali*.<sup>29</sup> *The Delhi High Court had granted bail to the accused (alleged to be a hawala—money laundering—agent in Kashmir) on the grounds that there was not sufficient material placed before it to warrant his continued incarceration in prison and that the trial would take very long to conclude. The Supreme Court not only set aside the High Court order and rejected the bail application, but it rendered a judgment that starkly outlined the legal principles to be followed when considering bail applications in UAPA cases, thereby making it impossible to obtain bail until the trial is completed.*

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29 *NIA v. Zahoor Ahmad Shah Watali*, (2019) (5) SCC 1.

In its judgment, the SC pointed to the difference between interpreting bail provisions in TADA cases and those involving UAPA cases. It stated that the use of the term ‘prima facie true’ implied that the accusation against the accused in the FIR or the chargesheet must prevail, until contradicted or disproved by other evidence. If the ‘accusation’ is prima facie supported by material included as part of the FIR or case diary or investigation report, it was sufficient. The credibility or authenticity of the material collected by the police or whether it was sufficient to finally result in the person’s conviction were not factors the court could examine. The SC pointed out that,

*In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is ‘prima facie true’, as compared to the opinion of the accused ‘not guilty’ of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.<sup>30</sup>*

While allowing the appeal filed by NIA challenging the bail granted by Delhi HC, the court stressed,

*The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.<sup>31</sup>*

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<sup>30</sup> *Ibid*, para 17.

<sup>31</sup> *Ibid*, para 18.

Pointing out that Section 43D(5) UAPA applied at all stages of the criminal case—right from the beginning stage of the FIR to submission of Police Final Report to time granted for further investigation and from the stage of framing the Chargesheet and conclusion of trial. At all these stages when considering the bail application, the SC pointed out that,

*...The totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is.<sup>32</sup>*

In conclusion, the SC held that it is the settled legal position that,

*At the stage of considering the prayer for bail, it is not necessary to weigh the material, but only form opinion on the basis of the material before it on broad probabilities. The court is expected to apply its mind to ascertain whether the accusations against the accused are prima facie true.<sup>33</sup>*

In effect, the SC has barred any subordinate court from examining the sufficiency or credibility or material put forward to implicate any accused for considering grant of bail. All that was required was the recording of satisfaction whether the ‘accusation’ was ‘prima facie true’. All other factors like delayed trial, existence of numerous witnesses, which also meant lengthy trial, questioning

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<sup>32</sup> *Ibid*, para 19.

<sup>33</sup> *Ibid*, para 53.

the authenticity or sufficiency of any material put forward as evidence to substantiate the ‘accusation’ cannot be considered at the bail application stage.

It doesn’t take any experience to realise the implication of this ruling—because no police agency will ever implicate and arrest any person without documenting on paper some basis or reason to implicate the person, irrespective of whether the material is credible or believable at all. All that is required is for the court to examine is (a) whether there is an ‘accusation’ against the accused person, (b) whether there is some documentation to support the accusation, and (c) whether whatever is documented in the FIR or charge sheet or other reports appears to be “prima facie” true.

What the *Watali* ruling has now established as law for the entire country is that until the trial concludes, no court can ever consider any application seeking bail filed by any person accused of committing an UAPA offence under Chapters IV (‘Punishment for Terrorist Activities’)<sup>34</sup> and VI (‘Terrorist Organisations and Individuals’)<sup>35</sup>. Even the possibility that this process may take years cannot be a ground urged for the court to consider bail. All that is required is a charge under the UAPA and some material implicating the accused person. Thereafter, until the conclusion of the trial, the accused persons cannot even dream of obtaining bail.<sup>36</sup>

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34 Chapter IV includes sections 15 to 23, covering crimes defined to be terrorist act, punishment for raising funds, punishment for conspiracy, recruiting members and so on.

35 Chapter VI includes sections 35 to 40 covering offences of membership and support of and raising funds for terrorist organisations etc.

36 Even as this article was being edited on 30th September 2020, a 3-Judge Bench of the SC in *Aadil Ansari v. State of Rajasthan* granted bail to a UAPA accused in a case in which the Rajasthan High Court had dismissed the bail petition on the ground that a prima facie case has been made out on the statement by the Public Prosecutor (PP). The court in a very cryptic and brief order, pointed out that they had examined the FIR and

The SC ruling in the *Watali* case has been used by the Delhi courts to deny bail to many young people and student activists who were accused and arrested by the Delhi police in a series of cases related to violence and riots in north-east Delhi that occurred between 24th and 26th February 2020. Courts have consistently refused to consider arguments of accused persons—questioning their implication by the Delhi police as being baseless and without evidence—refusing to look into issues of credibility or sufficiency of material placed by the police on the grounds that the *Watali* judgment required them only to look into prima facie truth of accusations alone.

### **The Security Doctrine and the Deep State: Procedural Tyranny in UAPA**

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There is overwhelming evidence of widespread misuse (and abuse) of the sweeping, uncontrolled, and unregulated powers given to police officer in the functioning of TADA and POTA laws. Despite this, successive governments, both United Progressive Alliance (UPA) and the NDA, have not seen the necessity to dismantle the legal framework erected in the garb of protecting ‘national security’ and have instead continued to equip the police with still more and greater powers. Such is the power of the police and security establishment, that despite

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the charge sheet and noted that the accused person was not named in them, felt that the HC order relying only in the PP’s statement cannot be said to be strictly correct and therefore granted bail. However, the Court did not provide a detailed reasoning for coming to the conclusion to grant bail. Also, the court did not refer to *Watali* case or distinguish it. So the precedentiary value of the ruling will have to be seen in the future.

See *SC grants bail to accused under stringent anti-terror UAPA; says Rajasthan HC erred in relying only on public prosecutor’s statement* (2020), in *The Leaflet*, on 1st October, available at <https://www.theleaflet.in/sc-grants-bail-to-accused-under-stringent-anti-terror-uapa-says-rajasthan-hc-erred-in-relying-only-on-public-prosecutors-statement/#>, last seen on 3/10/2020.

the availability of evidence gathered from official sources itself highlighting the extent of abuse of laws by the police in terms of planting or removing evidence, implicating on flimsy grounds political opponents, dissidents, dissenters and all those the political establishment wants punished, this practice continues with impunity. Despite a 25-year history of abuse, the hold of the police establishment on the policy makers is such that no political leader of any ruling dispensation wants to bell the cat. This is the most unfortunate reality of the current situation.

In politically volatile countries like India, where there are deep divisions of caste and community, multiple inequalities, and countless disputes around languages, ethnicities, and other cultural diversities, there is always contestation and conflict between groups and also between political organisations and the state. What is lost sight of is that many of these conflicts arise from genuine grievances about the denial of rights and entitlements, the demand for development benefits, and very valid concerns of being neglected by the state. It is an unfortunate aspect of post-independent Indian history that ruling parties and governments routinely ignore people's demands, which cause them to turn violent. Issues that require political solutions are viewed instead as a law and order problem, and are dealt with by using militaristic solutions. These, obviously, do not work, as the violence engendered by state action only breeds greater resentment, anger, and fear.

The answer—to the rise of political violence—cannot be more state violence or the denial of constitutional and human rights safeguards by using legislations like TADA or POTA or UAPA. Nor can the solution emerge from dismantling the system of legal checks and balances in the criminal justice system—because the price of dismantling existing legal instruments is greater tyranny by police and security forces.



In their seminal work, a group of jurists from the United States (serving Judges, Public Prosecutors, and lawyers from the New York Bar), who visited India in 2005 to study the TADA and POTA laws and came out with an important publication called, ‘*Colonial Continuities: Human Rights, Terrorism and Security laws in India*’. They noted that,

*When responding to terrorism however, democratic governments must fully protect human rights to advance both the rule of law and long term security itself, since violation of human rights often plant the seeds for future acts of terrorist violence.*<sup>37</sup>

The former President of the Supreme Court of Israel, Aharon Barak, has written extensively on the interaction between application of the rule of law and preservation of human rights in times of war and conflict. According to Justice Barak, the argument that a nation caught in a war against terror is justified in ignoring human rights and the humanitarian principles of the rule of law does not hold. His judgments are better summarised as, ‘the war on terror should not be waged outside the law, but rather within the framework of the law and using the means that the law affords the security forces’.<sup>38</sup>

Justice Barak points out that oftentimes, a state, when caught up with fighting terrorism inside its territory, has to balance a very difficult conflict. On the one hand, it has to address the demands of elected representatives speaking on behalf of common citizenry who are worried about terrorist violence and expect the state to use all means to crush terrorism— even if this requires

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<sup>37</sup> Kalhan et al (2006) *supra* 18, p. 224.

<sup>38</sup> Jewish Virtual Library (2005), from *Introduction* on the page *Israel Supreme Court: Ruling on Fighting Terrorism Within the Law*, available at, <http://www.jewishvirtuallibrary.org/jsourc/Politics/scterror.html>, last seen on 09/05/2011.

jettisoning principles of human rights and constitutional protections of liberties of all individuals, including terrorists. On the other hand, the state has to listen to the demands of Constitutionlists and human rights movements seeking to ensure, even during the war against terror, that there can be no abrogation of the law relating to protecting liberty, right to life, and judicial remedies and that these should be available to all citizens, including those accused as terrorists. Justice Barak elaborates on these challenges of protecting democracy from terrorism and the ‘means adopted by the state’ to fight terrorism and says,

*The protection of every individual’s human rights is a much more formidable duty in times of war and terrorism than in times of peace and security. If we fail in our role in times of war and terrorism, we will be unable to fulfil our role in times of peace and security. It is a myth to think that we can maintain a sharp distinction between the status of human rights during a period of war and the status of human rights during a period of peace. It is self-deception to believe that a judicial ruling will be valid only during wartime and that things will change in peacetime. The line between war and peace is thin—what one person calls peace, another calls war. In any case, it is impossible to maintain this distinction over the long term.*<sup>39</sup>

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<sup>39</sup> Aharon Barak, (2002), *The Supreme Court and the Problem of Terrorism*, from Foreword in *A Judge on Judging: The Role of a Supreme Court in a Democracy*. *Harvard Law Review*, November, 2002, p 149, available at [https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4694&context=fss\\_papers](https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4694&context=fss_papers), last seen on 09/05/2011. Extracted in <http://www.jewishvirtuallibrary.org/jsources/Politics/setterror.html>, last seen on 09/05/2011.

The experience of anti-terror legislations in India however, is a never-ending saga of a brute state using draconian provisions of the law against all dissenters, political opponents, social and human rights activists, and anyone who raises questions about the ruling government. Unfortunately, even the constitutional courts have not been able to resist or overcome the beguiling rhetoric of the state using the argument of the ‘threat to national security’ to brazenly stifle democratic rights of citizens. In the last couple of years, this has been visible in the reluctance of the Supreme Court to question the Central Government even when there is demonstrable evidence that the claims of the Central Government are false. For example, the cases of political leaders being kept in home imprisonment in Kashmir and the continued electronic lockdown and deprivation of 4G services in Kashmir.

It is within this overpowering context of the Indian state’s unchallenged hegemony over the brazen abuse of UAPA and other security laws like NSA, anti-sedition laws like Section 124A, IPC, the Armed Forces Special Powers Act and other state security legislations, that we have to locate the challenges before the human rights movement in India in demanding accountability for misuse of the law by the state and its agencies, and the larger demand of the repeal of such draconian legislations like UAPA, Sections 121 and 124A, IPC, and other laws.

### **Unbroken Continuities: Unbridled Abuse of UAPA**

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A dramatic incident in July 2020 revealed the brazen, and actually bizarre, abuse of the UAPA Act. Early in July, the Delhi Police announced the registration of an FIR under UAPA against the environmentalist collective ‘Fridays for Future’ (FFF) and its volunteers. FFF-India is the Indian wing of the movement started by the award-winning Swedish environmental activist and school student, Greta Thunberg. Observers noted that the

‘crime’ the volunteers were committing was to operate a website informing people about changes proposed by the ruling BJP Government to the ‘Environment Impact Assessment’ (EIA) guidelines. The guidelines were going to dismantle protective provisions in the entire structure of environmental protection legislation in the country.<sup>40</sup>

The police action led to FFF-India’s website being blocked by the Government, along with the websites of two other organisations, ‘Let India Breathe’ and ‘There is No Earth B’, both of which were also in trouble in this case.<sup>41</sup> In the ensuing public criticism of the highhanded response of the Delhi police, the police clarified that a mistake had been made and fresh notices under the Information Technology Act would be issued.

The protests against the Citizenship Amendment Act (CAA, 2019) brought thousands of youngsters, students, women, and ordinary citizens on the streets in protest sites in Delhi. The Delhi Police booked many cases under UAPA against these protestors. Cases were filed against activists of the women’s collective, ‘*Pinjra Tod*’ (‘Break the Cage’), students and youth volunteers of the human rights collective ‘*United against Hate*’, India, and many others.

In the horrific violence that was unleashed in Delhi between 24th and 26th February 2020, following the anti-CAA protests, 53 people were killed (of whom 40 were Muslims). Hundreds were injured and properties worth several crores of rupees, primarily

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<sup>40</sup> Scroll staff, (2020), *Police use UAPA to block website campaigning against draft environment rules, later claim error*, in *Scroll.in*, 23rd July, available at <https://scroll.in/latest/968367/police-use-uapa-to-block-greta-thunberg-linked-website-campaigning-against-draft-environment-rules>, last seen on 15/09/2020.

<sup>41</sup> *FFF-India’s website* available at <https://www.fridaysforfutureindia.com/>; *Let India Breathe’s website* available at <https://letindiabreathe.in/>; and *There is no Earth B’s website* original at <https://thereisnoearthb.in> but now available at <https://thereisnoearthb.com/>, last seen on 05/10/2020.

in north-east Delhi, were destroyed. There were several videos (including in mainstream media) circulating earlier in the year that showed BJP leaders like Kapil Mishra, Anurag Thakur, and several others, egging on their supporters to attack those who were protesting the CAA law, calling them traitors to the country, who had to be shot.<sup>42</sup> But the Delhi police response was to file malicious, false cases under the UAPA against most of the Muslim youth and activists who were part of the anti-CAA protests. A few of the non-Muslim activists from *Pinjra Tod* and other movements also have had cases filed against them. Revealingly, no cases have been filed against the BJP leaders who riled up their supporters and demanded violence with their incendiary sloganeering. The clashes and the riots unfolded after these speeches and videos were circulated, which places the blame squarely on these leaders, but neither the state nor the Delhi police accept this.<sup>43</sup>

### Statistics about Abuse of UAPA

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The National Crime Records Bureau (NCRB)<sup>44</sup> reports recorded UAPA cases only from the year 2014 and stop at 2018. The latest figures (2019) are yet to be released. The figures in *Table 1* show

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42 Supporters of these leaders can be seen in the videos chanting '*Desh ke gaddaron ko, goli maaro saalon ko*' (Shoot the traitors of the nation).

See report by Scroll staff (2020), *Union Minister Anurag Thakur leads 'Goli maaro saalon ko' slogans at rally*, in *Scroll.in*, on 27/01/2020, available at, <https://scroll.in/video/951289/watch-anurag-thakur-minister-of-state-for-finance-lead-goli-maaro-saalon-ko-slogans-at-rally>, last seen on 05/10/2020.

43 PUCL (2020), *Memorandum to the Commissioner of Police, Delhi (to stop the motivated and malicious investigation and carry out bona fide investigation into the violence in North East Delhi in end February 2020)*, available at <http://www.pucl.org/writings/memorandum-commissioner-police-delhi>, last seen on 14/09/2020.

44 The NCRB data grossly under reports cases filed under UAPA and also the statistics regarding convictions and acquittals. See *Box 1* for a peek into the limitations of using NCRB data.

a steadily rising graph of cases prosecuted across the country under UAPA.

	2014	2015	2016	2017	2018
<b>UAPA Cases registered</b>	976	897	922	901	1,182
<b>No. of persons arrested*</b>	-	-	999	1,554	1,421
<b>Chargesheets filed</b>					
<b>Within 180 days*</b>	-	-	232 (25.16%)	272 (30.1%)	317 (26.81%)
<b>Between 1 to 2 years*</b>	-	-	-	92	52
<b>Beyond 2 years*</b>	-	-	-	31	10
<b>Total charge sheeted and percentage of filing</b>	-	-	-	385/901 43.8%	379/1,182 32.06%

**Table 1: Cases Registered and Chargesheets Filed under UAPA**

*\* Source: Reply in Rajya Sabha by  
Minister of State for Home, 16/09/2020*

### **Chargesheet Rate: Gross inefficiency of police with serious consequences to ‘Right to Life’ of accused persons**

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In a reply given in the Rajya Sabha by Shri Kishan Reddy, Minister of State for Home to a query from Mr. Binoy Viswom, the data pointed out between 2016 to 2018, only between 25.1% to 30.1% of cases were chargesheeted within the extended period of 180 days. It should be pointed out that this data is based on NCRB data (see *Box 1*), which grossly underreports the actual number of UAPA cases registered each year because of a flawed methodological basis for recording the data each year.

The data provided by the Home Ministry in the Rajya Sabha,<sup>45</sup> for the years 2017 and 2018, indicates that even after 2 years of registering the FIR, only 43.08% (2017) and 32.06% (2018) of cases had been chargesheeted. Meaning that 57% to 68% of investigations in cases from 2017 and 2018 respectively, had not yet concluded nor had chargesheets filed.

This is a totally unacceptable level of inefficiency on the part of the prosecution in pursuing UAPA cases which as a stringent law visiting serious consequences on those implicated and arrested for offences under the UAPA. It not only highlights the gross misuse and abuse of the law by the state and the police, it also highlights the brazen sense of impunity with which the Executive and the police function all over India. What is most tragic is that the

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<sup>45</sup> See Mathew, Ashlin (2020), *3,005 cases registered under UAPA in 3 years, but only 821 chargesheets filed in time: MHA in Parliament*, in the *National Herald*, on 17th September, available at <https://www.nationalheraldindia.com/india/3005-cases-registered-under-uapa-in-3-years-but-only-821-chargesheets-filed-in-time-mha-in-parliament>, last seen on 5/10/2020. See also *A total of 3005 cases registered and 3974 arrest made under UAPA between 2016 to 2018, Centre informs RS* (2020) in *The Leaflet*, on 17th September, available at <https://www.theleaflet.in/over-1000-cases-registered-close-to-1500-arrests-in-2018-alone-under-uapa-centre-informs-rs/#>, last seen on 5/10/2020.

hundreds of people accused and arrested in these cases who still have to suffer lengthy incarceration due to the indifference and apathy of the police to conclude investigations, file chargesheets and conduct trials.

### ***Box 1– Using NCRB Data: The Need for Caution***<sup>46</sup>

NCRB data is highly unreliable in UAPA cases because their surveys use a flawed classification methodology<sup>47</sup>, to calculate incidence of different crimes, called the ‘Principal Offence rule’. In this methodology, every FIR, irrespective of the number of offences charged or included in it, is counted under only one ‘principal’ offence. Principal offences are determined by the maximum sentence imposed for the offences charged or included

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<sup>46</sup> Many thanks to Shalini Gera, Secretary, PUCL-Chhattisgarh state unit, for pointing out the methodological limitations in uncritically using NCRB data. This analysis is based on Shalini’s extensive notes on NCRB unreliability that I have edited.

<sup>47</sup> Rukmini (2017) refers to the methodological flaws underlying the generation and use of NCRB data. She speaks about the importance of shifting to more accurate systems such as the Crime and Criminal Tracking Network and Systems (CCTNS) introduced by the UPA government soon after the terrorist strikes in Mumbai in 2008. However, the CCTNS system has not yet been integrated across India. There is a crying need for a more accurate database of crimes in the country. As she points out, the current NCRB database underreports, or doesn’t report, cases of communal crimes such as hate crimes or honour killings, both of which have been drastically increasing in the last 5 to 6 years.

See S., Rukmini (2017) *There’s A Fatal Flaw At The Heart Of India’s Crime Records Data That Needs Urgent Fixing*, in the *Huffington Post*, on 7th July, available at [https://www.huffingtonpost.in/2017/07/07/theres-a-fatal-flaw-at-the-heart-of-indias-crime-records-data\\_a\\_23020554/](https://www.huffingtonpost.in/2017/07/07/theres-a-fatal-flaw-at-the-heart-of-indias-crime-records-data_a_23020554/), last seen on 5/10/2020. See also S., Rukmini (2017) *Can Data Tell Us Whether Lynchings Have Gone Up Under Modi, And Should It Matter?* in the *Huffington Post*, on 3rd July, available at [https://www.huffingtonpost.in/2017/07/03/can-data-tell-us-whether-lynchings-have-gone-up-under-modi-and\\_a\\_23012788/?utm\\_hp\\_ref=in-homepage](https://www.huffingtonpost.in/2017/07/03/can-data-tell-us-whether-lynchings-have-gone-up-under-modi-and_a_23012788/?utm_hp_ref=in-homepage), last seen on 5/10/2020.



in the FIR. For example, if a crime of rape and murder is being counted by this methodology, it will be classified under murder, and not under rape, because murder has a higher sentence and is the 'principal' offence.

For special laws, like UAPA, this leads to gross undercounting. In most instances where UAPA charges are included, other crimes, such as murder, or attempt to murder etc., or other offences against the state, are also alleged in the FIR. Thus, these crimes seldom get categorised under UAPA. For instance, the Bhima Koregaon case also includes offences under section 121A (waging war against the state, which carries a death penalty). Many of the north-east Delhi riot cases includes offences under Section 302 IPC (murder). Generally, none of these cases may get classified under UAPA as per the NCRB methodology.

This methodological infirmity gets exposed when we examine cases under UAPA in Chhattisgarh state. Thus, the NCRB data for 2018, as disclosed by Prison statistics, shows 10 UAPA cases from Chhattisgarh in 2018. The fact that this is underreported data is verified when we check the figures of cases available from the e-courts website.

All UAPA cases in Chhattisgarh go to one of two courts: the NIA court in Jagdalpur or the NIA court in Bilaspur. The website for the Bastar District and Sessions Court in Jagdalpur reveals that a total of 112 cases were registered under the UAPA Act in 2018, of which 88 are still pending while 24 have been disposed. Compared to the NCRB figure of 10 UAPA cases, this reveals that there is at least a 10-fold underreporting of UAPA cases for Chhattisgarh, following the 'Principle Offence' method.

In turn, this also grossly underreports the number of people impacted. The overall statistics in the NCRB data roughly put 1-2 people arrested per UAPA crime, but in a large proportion of cases under UAPA charges in Chhattisgarh, there are routinely

between 5–10 people arrested in each UAPA case. For example in Burkapal, Chhattisgarh, 25 CRPF (Central Reserve Police Force) personnel were killed in an attack. Following the incident, 120 villagers in the surrounding villages were charged in the same FIR<sup>48</sup> under UAPA and arrested. But again, since this case also includes offence u/s 302 IPC (punishment for murder), it won't be counted as a UAPA case as per the NCRB guidelines.

Seen against this background, the NCRB data showing conviction rates to be between 25% and 30% for UAPA cases are excessively high. A compilation of all UAPA cases since 2015, when the special NIA court started, shows that a total of 203 UAPA cases have been disposed in the last five years, of which 201 resulted in acquittals and there have only been 2 convictions, making the conviction rate of around 1%.<sup>49</sup> While Chhattisgarh as an example for studying UAPA cases throughout India might not be ideal, the experience of the ground situation regarding UAPA prosecutions and convictions in Chhattisgarh alone, nevertheless, impresses the need for caution instead of completely relying only on NCRB data around UAPA. This issue is serious, because even when the MPs have specifically asked questions in the Parliament about the number of UAPA cases—the government has used only NCRB data to reply to that. This is highly misleading and presents the wrong picture to lawmakers in Parliament.

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<sup>48</sup> Mishra, Ritesh (2020) *120 tribals in jail under anti-terror law for 3 years, trial yet to begin*, in the *Hindustan Times*, on 22nd September, available at <https://www.hindustantimes.com/india-news/120-tribals-in-jail-under-anti-terror-law-for-3-years-trial-yet-to-begin/story-uRDQr8ClO5XhjXysqZJbnL.html>, last seen on 15/10/2020.

<sup>49</sup> Status of cases filed in Bastar, Chhattisgarh are available at [https://services.ecourts.gov.in/ecourtindia\\_v4\\_bilingual/cases/s\\_casetype.php?state=D&state\\_cd=18&dist\\_cd=15](https://services.ecourts.gov.in/ecourtindia_v4_bilingual/cases/s_casetype.php?state=D&state_cd=18&dist_cd=15), last seen on 5/10/2020.

## Abysmal Conviction Rates in UAPA Cases

NCRB data (see Table 2) also reveals the conviction rate in cases where UAPA offences were included:

<b>2014</b>	27.3 %
<b>2015</b>	14.5 %
<b>2016</b>	33.3 %
<b>AVERAGE</b>	<b>25.03%</b>

**Table 2:** *Conviction Rates under UAPA offences*

In effect, the poor conviction rates indicate that in almost 75% of cases the trials end in acquittals. This presents a sorry picture about the use of UAPA charges and exposes the political thrust behind the invocation of UAPA cases.<sup>50</sup> Many trial court judgments reveal that in most instances, cases end in acquittals because of shoddy, poor, and indifferent police investigations, serious lapses and mistakes in following legally prescribed and mandated procedures, weak prosecution, compromised investigations, and a host of other factors that highlight a damning indictment of the politics underlying use of such draconian laws.

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<sup>50</sup> However, as Kunal Ambasta argues, even this 25% conviction rate may owe something to the practice referred to as ‘Katti’ which is an informal system of plea bargaining or change of plea found in terror trials around the country. Ambasta notes that, ‘the accused usually changes his plea from “not guilty” claimed at the start of the trial to one of “guilty”. In many cases, this leads to the trial being concluded at this stage, and the punishment is typically awarded as being the time already served as an under-trial, or a reduced sentence, which can range to several years. In recent years, there have been several cases that have reached verdicts through the method described above, and it remains an understudied and underreported phenomenon.’ The advantage for the investigation agencies is that it pushes up their conviction rate and the reason the accused agrees is because bail is not on option under terror laws and the only other option is to resign himself to years in prison. See Ambasta (2020), *supra* 14, p. 13.

Another analysis of NCRB data reports that as of 2018, there are 5,107 cases pending under UAPA charges. A state-wise analysis of the data shows that the maximum number of cases were from the states of Manipur, Jammu and Kashmir, and Assam, that have been affected more by insurgency, Maoist, and Naxalite-related activities.<sup>51</sup>

There is no provision in the UAPA, or for that matter in any other major criminal law in India, which makes police officers accountable for false and fabricated arrests and implications in UAPA cases. The entire chain of command of the police team responsible for investigation of UAPA cases, starting from the senior most officer right down to the last police constable should be made accountable for falsely prosecuting people in such cases.

The tragedy, at least for UAPA cases, is that hundreds of accused persons suffer incarceration for long periods in jails before the trials against them conclude. As the poor conviction rates indicate, this means thousands unnecessarily suffer imprisonment for periods ranging from 5 to 10 years and in the end do not get any reparation for the gross injustice done to them by the state.

This pathetic situation cannot be allowed to continue. The human rights community will have to expose this huge abuse of the law by the police and the state executive. Thousands of undertrial prisoners have spent years in prison because of their brazen and illegal implication in these cases by policemen who are assured that their misdeeds will never be called into question by any oversight agency—the Human Rights Commissions or the courts or civil society organisations too. All concerned citizens and the

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<sup>51</sup> Dadu, Prerna, (2020), *Analysis of UAPA from NCRB Data*, on Centre for Law and Policy Research (CLPR) website, available at <https://clpr.org.in/blog/use-of-the-uapa-from-the-national-crime-reports-bureau/>, last seen on 15/09/2020.

general public of India can no longer afford to ignore this tragedy of the anti-terror legal regime.

### **What is the way Out? Relax Bail Provisions, follow the SC Judgment in *Shaheen Welfare Association***

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It is very clear that there is no place in Indian law for anti-terror legislations like the UAPA. Just as the human rights movement succeeded in ensuring that earlier versions of the current UAPA, namely TADA and POTA were repealed, the human rights movement will have to re-launch campaigns demanding repeal of the draconian, anti-human rights legislation UAPA. But, what do we do until the day when the campaign gathers momentum sufficient to force the government and parliamentarians to repeal this law?

At the height of the campaign for the repeal of TADA law, human rights movements launched an attendant campaign to demand changes in the law that would ensure that those accused could obtain bail. This was based on the belief that the harshness of a TADA imprisonment could be reduced if the accused persons were able to obtain bail. It would then be easier for the accused and their families to continue to earn a livelihood, provide emotional support to the family, and make preparations to defend themselves during trial.

In a very important ruling, the Supreme Court in *Shaheen Welfare Association v. Union of India*,<sup>52</sup> recognised the trauma of long incarceration of undertrials for years without bail, and pointed out the need to reconcile conflicting claims between individual liberty, the rights of community, the nation, and safety from terrorism. Pointing to the conflict between these two ends, the court stated,

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<sup>52</sup> *Shaheen* (1996), *supra* 2.

*The conflict is generated on account of the gross delay in the trial of such persons. This delay may contribute to absence of proper evidence at the trial so that the really guilty may have to be ultimately acquitted. It also causes irreparable damage to innocent persons who may have been wrongly accused of the crime and are ultimately acquitted, but who remain in jail for a long period pending trial because of the stringent provisions regarding bail under TADA. They suffer severe hardship and their families may be ruined.*<sup>53</sup>

The court also stated that,

*Invocation of the provisions of TADA in cases, the facts of which do not warrant its invocation, is nothing but sheer misuse and abuse of the Act by the police.*<sup>54</sup>

The Supreme Court also noted the important role played by the Review Committees set up following the Supreme Court Constitution Bench ruling in *Kartar Singh*.<sup>55</sup> The committees had helped in releasing many people who should never have been arrested under TADA law in the first place.<sup>56</sup> The Court took note of the fact that the CBI had not submitted a single case it was pursuing to the Review Committee and said,

*A more independent and objective scrutiny of these cases by a committee headed by a retired Judge is obviously necessary.*<sup>57</sup>

Considering the hardships faced by thousands of undertrial TADA prisoners who were still languishing in prison over many years,

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<sup>53</sup> *Ibid*, p 4.

<sup>54</sup> *Ibid*, p. 3.

<sup>55</sup> *Kartar Singh* (1994), *supra* 21.

<sup>56</sup> *Shaheen* (1996), *supra* 2, p. 3.

<sup>57</sup> *Ibid*, p. 3.

the SC proposed a four-fold classification of prisoners based on the specific role allegedly played by each one of them as follows:

1. hardcore undertrials whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general and to the complainant and prosecution witnesses in particular;
2. other undertrials whose overt acts or involvement directly attract Sections 3 and/or 4 of the TADA Act;
3. undertrials who are roped in, not because of any activity directly attracting Sections 3 and 4, but by virtue of Section 120B or 14, IPC, and;
4. those undertrials who were found possessing incriminating articles in notified areas and are booked under Section 5 of TADA.<sup>58</sup>

Proposing that a ‘pragmatic approach’ is required to deal with the issue of long pendency of trials and lengthy incarceration of TADA undertrial prisoners, the Court directed that, in the case of prisoners falling in categories 3 and 4 that they may be released if they had been in prison for 3 years and 2 years, respectively. In cases of undertrial prisoners, falling in category 2 if they had been in jail for over 5 years and the trial is unlikely to be completed in 6 months, they could be considered for release. Category 1 prisoners could not be released because of the roles they allegedly played, but care should be taken to conclude trials expeditiously.<sup>59</sup>

### **UAPA Prosecutions: Forming Review Committees and Creating Guidelines for Easier Grant of Bail**

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Sadly, as the saying goes, history repeats itself. Just like in TADA and POTA cases, where hundreds of undertrial prisoners

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<sup>58</sup> *Ibid*, p. 5.

<sup>59</sup> *Ibid*, p. 5.

languished in jail for many years without obtaining bail, we are once again witnessing the same in UAPA cases too. Trials are prolonged endlessly and hundreds of people are jailed for long periods without the courts granting bail. Even while we campaign for the repeal of UAPA, it is of utmost necessity to bring relief to the hundreds who are still languishing in prisons.

Human Rights groups across India demand that UAPA Review Committees be set up in each state and at the Centre. The committees should have a wide-ranging membership and can include a member of the National Human Rights Commission (NHRC) or the State Human Rights Commission (SHRC), a retired Supreme Court or High Court Judge, a representative of a human rights group (similar to the provisions in the Protection of Human Rights Act, 1993), and others. The function of such a committee will be, to help in an objective assessment of the charges laid against each person implicated in UAPA cases, and they should specifically be empowered to direct the dropping of UAPA charges in cases where it is unwarranted and continuation of cases as against other offences under ordinary criminal courts.

Just as the Supreme Court in *Shaheen Welfare Association* case (1996) evolved a graded criteria to classify undertrial prisoners in terms of the specific roles allegedly played by each individual person in the crime alleged against them, an appropriate criteria should be evolved to classify undertrial prisoners in existing UAPA cases, and to recommend consideration of their cases for grant of bail based on the criteria drawn up. This will help to reduce the severity of the incarceration and reduce the onerous load placed on individuals who have been unnecessarily implicated under UAPA charges.



**BHIMA KOREGAON**



# THE BHIMA KOREGAON- ELGAR PARISHAD CONSPIRACY CASE

## A PUCL Background Note<sup>60, 61</sup>

*Fury said to a mouse, that he met in the house,  
“Let us both go to law: I will prosecute you –  
Come, I’ll take no denial; We must have a trial:  
For really this morning I’ve nothing to do.”  
Said the mouse to the cur, “Such a trial, dear Sir,  
With no jury or judge, would be wasting our breath.”  
“I’ll be judge, I’ll be jury,” said cunning old Fury:  
“I’ll try the whole cause, and condemn you to death.”*

Lewis Carroll <sup>62</sup>

This nonsense rhyme from the children’s book *Alice’s Adventures in Wonderland*, has taken on a sinister meaning with the Bhima Koregaon-Elgar Parishad Conspiracy Case—a striking example of how criminal law is being used to stifle political dissent. Today, there are sixteen noted academics, intellectuals, lawyers,

<sup>60</sup> For further details contact Dr. V. Suresh, General Secretary, PUCL at [pucl.natgensec@gmail.com](mailto:pucl.natgensec@gmail.com)

<sup>61</sup> This article is based on a document done earlier by Mumbai Rises to Save Democracy (2019), titled *A Quest for Freedom—The True Story of Bhima Koregaon Conspiracy*.

<sup>62</sup> Carroll, Lewis (1865) *The Mouse’s Tale*, poem from *Alice’s Adventures in Wonderland*, Macmillan, London.

cultural activists, writers, and tribal rights activists in prison under this conspiracy case, of whom 9 have been incarcerated for more than 2 years.

### **The Battle of Bhima Koregaon**

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Every year on the first day of January, lakhs of people, primarily Dalit-Bahujans, gather at a 200-year-old obelisk in Bhima Koregaon, 30 kilometres from Pune city in Maharashtra. The obelisk was constructed to commemorate the historic victory of the British regiment comprising of 500 Mahar soldiers against 28,000 soldiers of the Peshwa Kingdom in 1818. Ever since the father of the Constitution, Dr. Bhim Rao Ambedkar visited the obelisk in 1927, it has become a site of self-assertion for Bahujan communities across the country.

There is, of course, a counter-narrative of this memorial celebration, one of whose principal proponents is ironically enough, Dr. Anand Teltumbde (one of the arrestees). According to Dr. Teltumbde, “it may be misleading to portray the battle as Mahars’ vengeance against the Peshwas’ Brahmanic rule” and that Dalits “simply fought as soldiers for their masters [British]”.<sup>63</sup> Be as it may, the Victory Pillar at Bhima-Koregaon has become a symbol of resilience and pride for many Dalits and Bahujans.

### **Elgar Parishad**

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To mark the bi-centenary of the battle of Bhima Koregaon, in 2018, more than 200 Dalit, Bahujan, Ambedkarite, and other organisations came together under the banner of *Bhima Koregaon Shaurya Din Prerana Abhiyan* (Bhima Koregaon Valour Day Inspiration Campaign). Former Judge of the

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<sup>63</sup> Teltumbde, Anand, (2018), *The Myth of Bhima Koregaon Reinforces the Identities It Seeks to Transcend*, in *The Wire*, on 2nd January, available at <https://thewire.in/caste/myth-bhima-koregaon-reinforces-identities-seeks-transcend>, last seen on 05/10/2020.

Supreme Court, Justice P. B. Sawant and former Judge of the Bombay High Court, Justice Kolse Patil, were conveners. The coalition organised the hugely successful and massively attended event, ‘Elgar Parishad’, on December 31, 2017 in Shaniwarwada in Pune, once the seat of Peshwai power. It is reported that tens of thousands of people turned up for this event, many of whom had come in organised foot marches from rural Maharashtra.

This event, as per the organisers, was organised to expose the *Navi Peshwai* (New Peshwa Regime)—an era of increasing repression on movements, alienation of minorities, increasing caste atrocities, anti-poor development policies, and more. The key speakers included the leader of the Maharashtra-based *Bharipa Bahujan Mahasangh*, Adv. Prakash Ambedkar; activist and mother of the deceased scholar Rohith Vemula, Radhika Vemula; youth leader Umar Khalid; independent MLA from Gujarat Jignesh Mewani; tribal activist from Chhattisgarh, Soni Sori; rural activist Ulka Mahajan; and many others. At the event, it was clearly articulated that the Hindutva movement and the RSS-BJP combine was this New Peshwai, that was creating conflict between the marginalised communities, and all the attendees took a pledge to uphold the Constitution and abjure Hindutva politics.

### **Violence at Bhima Koregaon**

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A day after the Elgar Parishad took place, on 1st January 2018, Dalit-Bahujans attending the Bhima Koregaon memorial were attacked by right-wing Hindutva goons carrying saffron flags. In the ensuing violence, shops were looted, cars broken into, and one person was killed. It was widely held that the violence was caused by a unilateral attack of the BJP-RSS backed groups (at that time, BJP was in power in Maharashtra) against the Dalits who were proceeding to Bhima Koregaon.

Massive spontaneous protests against the attack were felt across Maharashtra, followed by a call by Adv. Prakash Ambedkar and other Dalit leaders for a state-wide *bandh* on 3rd January. The *bandh* was successful and drew large-scale support from Dalits, Marathas, and Muslim communities across the state. After the *bandh*, around 3,000 young Dalits were arrested, under 622 FIRs in combing operations across Maharashtra by the police, and were charged with rioting.

### **The FIRs**

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On 2nd January 2018, Anita Salve, a Dalit woman, activist, and an eyewitness to the violence on 1st January, filed an FIR. The FIR alleged that an armed mob attacked the Dalits, and specifically named leaders of the Hindutva right-wing organisations *Shiv Pratishthan Hindustan* and *Hindu Eka Aghadi*, viz. Sambhaji Bhide and Milind Ekbote respectively as those who had masterminded the attack.

On 8th January 2018, another FIR was filed by a businessman from Pune, Tushar Damgude, who owned a small construction company and is known to be a close aide to the right-wing *Rashtriya Swayamsevak Sangh* (RSS) and is consistently anti-left as demonstrated by his writing/posting anti-left articles on his social media. In his FIR, Damgude alleged that the violence at Bhima Koregaon on 1st January was instigated by activists who had spoken at the Elgar Parishad on 31st December 2017. It was the second FIR filed in the case, i.e., the FIR filed by Tushar Damgude, which became the pretext for a cycle of persecution of human rights activists, students, and workers, which would follow soon after.

## Bhima Koregaon Arrests

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The first FIR, filed by Anita Salve on 2nd January 2018, was never investigated seriously by the police. However, multiple fact-findings conducted by civil society, including one done by the Deputy Mayor of Pune, Siddharth Dhende, concluded that the violence was pre-planned and instigated by saffron-flag waving ‘outsiders’, who belonged to groups led by Sambhaji Bhide and Milind Ekbote. Finally, Ekbote was arrested on March 14, 2018, after the Supreme Court declined him anticipatory bail and ordered his arrest. But he was released on bail after a month’s time. Sambhaji Bhide was never taken into custody.

The FIR by Tushar Damgude, however, was taken seriously by the police. Within a fortnight, the investigation was transferred to the Assistant Commissioner of Police (ACP) of Pune, and in March, charges of criminal conspiracy were added. On the morning of 17th April, even though they had no search warrant, the Pune police raided houses of Sudhir Dhawale—a senior Dalit activist and editor of the progressive Marathi magazine *Vidrohi*; activist and youth leader Harshali Potdar; and Kabir Kala Manch activists Sagar Gorkhe, Dhawala Dhengle, Ramesh Gaichor, Jyoti Jagtap and Rupali Jadhav; all organisers of the *Bhima-Koregaon Shaurya Din Prerna Abhiyan*.

Raids were also conducted in the houses of Surendra Gadling, a senior criminal lawyer from Nagpur and Rona Wilson Delhi-based rights activist, neither of whom was named in the FIR filed by Damgude originally, nor were they even present at the Elgar Parishad/Bhima Koregaon event. Their names had been added to the investigation only on March 6. During these raids, all their computer hard disks, pen drives, and mobile phones, including those of Adv. Gadling’s son and niece were seized without warrants and without following proper electronic sealing techniques. While the original FIR invoked Sections 153(A), 505

(1)(b), 117 and 34 of the Indian Penal Code (IPC), sections of the Unlawful Activities (Prevention) Act (UAPA) were added to the FIR later in May.

About two months after the raids, in the early hours of 6th June 2018, Pune police arrested three of those whose houses had been raided earlier in April. Dhawale was arrested from Mumbai, Adv. Gadling from Nagpur and Wilson from Delhi. Two more people were arrested from Nagpur, senior academic and Nagpur University professor, Dr. Shoma Sen and anti-displacement activist from Bharat Jan Andolan, also a former Prime Minister's Rural Development Fellow (PMRDF), Mahesh Raut—neither of whose houses had been raided.

Three months later, another round of arrests was carried out, again in supposed 'connection' with the violence at Bhima Koregaon. On 28th August 2018, human rights lawyer Sudha Bharadwaj was arrested by the Pune police from her Faridabad residence at around 7 am. Simultaneously, the Pune police conducted a series of raids at the homes of prominent activists, lawyers, and writers across the country in cities such as Mumbai, Delhi, Ranchi, Goa, and Hyderabad. Activist Vernon Gonsalves and lawyer Arun Ferreira were arrested from their residences in Mumbai and Thane. Telugu poet and activist, Varavara Rao was arrested from Hyderabad.

Journalist and writer, Gautam Navlakha was also arrested from his residence in New Delhi, but the Delhi High Court stayed his arrest, converting it into a house arrest, that very afternoon. The Pune police seized all electronic equipment found from their houses as well as notebooks, papers, diaries and books. The Pune police also raided the house of Goa-based academic, Anand Teltumbde, but could not arrest him as he was away on travel. A Jesuit priest and activist in Jharkhand, Stan Swamy, along with



Professor K. Satyanarayana, and journalists T. Kranti and K.V. Kurmanath in Hyderabad also had their houses raided.

### **Intervention in the Supreme Court**

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Aghast by the state's action of continuing arrest of rights activists, five prominent citizens—historian Romila Thapar, economists Devaki Jain and Prabhat Patnaik, academic Satish Deshpande and Maja Daruwala—filed an urgent Public Interest Litigation (PIL) on 29th August before the Supreme Court of India, 'to subserve larger public interests and to prevent stifling of honest dissent so as to protect democratic values and the democracy'. The prayer in the PIL was for a Special Investigation Team (SIT) to look into the violence and arson attacks against the processionists in Bhima Koregaon on 1st January and the subsequent case registered against rights activists alleging 'Maoist conspiracy'.

During the month-long hearing of this case, the SC took the unprecedented step of placing the August arrestees under house arrest. While the SC observed, 'Dissent is the safety valve of democracy', and that 'If you don't allow dissent, the pressure valve of democracy will burst', the majority judgment on 28th September 2018 dismissed the plea for an SIT inquiry into the violence against the Bhima Koregaon processionists and the plea against the arrests of rights activists.<sup>64</sup>

However, in his dissenting judgment Justice D. Y. Chandrachud discussed various points of law rigorously, striking at the heart of the matter and recognised the extraordinary circumstances of the case. He wrote,

*Our recent decisions reiterate the value of individual dignity as essential to a democratic way of life. But lofty*

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<sup>64</sup> Romila Thapar (2018) *supra* 5.

*edicts in judicial pronouncements can have no meaning to a citizen unless the constitutional quest for human liberty translates into securing justice for individuals whose freedom is under threat in specific cases.*<sup>65</sup>

After their bails were dismissed by the Pune trial court, Gonsalves and Ferreira were taken into police custody on 26th October 2018, while Sudha Bharadwaj was arrested from her residence on 27th October and Varavara Rao was arrested on 17th November.

### **Further Arrests**

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Gautam Navlakha and Anand Teltumbde both moved the Bombay High Court and subsequently, the Supreme Court, to quash the FIR against them. While the courts dismissed their appeal, they continued to provide them protection from arrest. Finally, after their applications for anticipatory bail were also dismissed by the Supreme Court, on 16th March 2020, the two were given three weeks to surrender. Meanwhile, the corona virus pandemic had struck the country and a national lockdown had been ordered. Despite advanced age (Anand Teltumbde is 70 years old and Gautam Navlakha is 67 years) and multiple health issues which would increase their susceptibility to the corona virus, the Supreme Court refused to grant them any further relief, and the two surrendered before the NIA offices in New Delhi and Bombay on 14th April 2020.

*This saga of raids and arrests did not end here.* On 12th July 2020, more than two and a half years after the violence at Bhima Koregaon, Prof. Hany Babu of Delhi University was served a summons by the NIA to appear before them as a witness in the case along with others. His house had been previously searched by the Pune police on 10th September 2019. He was interrogated

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<sup>65</sup> *Ibid*, p. 49.

for five days in the NIA office and declared arrested on 28th July, making him the twelfth arrest in the case. His wife informed the press that Hany Babu was being pressured to give false incriminating statements against other people, and was arrested because he refused to do so.

On 7th and 8th September 2020, three cultural activists who were with the Kabir Kala Manch, Sagar Gorkhe, Ramesh Gaichor, and Jyoti Jagtap, were arrested. They were all part of the organising committee of Elgar Parishad and had been named in Damgude's FIR. Their houses had been raided by the Pune police in 2018; their electronic devices confiscated and sent for forensic analysis. But after the NIA took over the case investigation, they were called for interrogation again two years after the incident. In a video statement released just before their arrest, Gaichor and Gorkhe inform the viewer that they are being pressured to confess that Elgar Parishad was indeed a Maoist event, and that they would be let go if they signed their confessional statement before a Magistrate. However, they were determined to face arrest, rather than give false statements.

A month later, on October 8, 2020, Jesuit priest, Father Stan Swamy, was taken into detention by the NIA in Ranchi and produced before the NIA court in Mumbai the next day, from where he was sent into judicial custody. At 83 years, Father Stan becomes the oldest accused in this case. Suffering from Parkinson's Disease, which is a progressively debilitating disease, Father Stan suffered from a fall within the first two days of being in jail, from where he was shifted to the jail hospital. Considering his advanced age, his frail state of health, the fact that the police did not need him for any custodial interrogation, and that he had been fully cooperating with the investigation even before his arrest, his arrest appears to be entirely punitive in nature, serving no legal or investigational purpose.

The NIA continues to interrogate more people in the context of this case—it is believed that more than 40 activists, writers, journalists from around the country, have been called by the NIA in the months of July, August, and September, including family members of those arrested.

### **Media Trial and the Paucity of Evidence**

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The police, in tandem with the mainstream right-wing media, went out of its way to conduct a media trial on this issue. Two of the prominent TV channels, The Republic and Zee TV claimed to have received ‘exclusive’ letters, which allegedly showed the links between those arrested and the Communist Party of India (Maoist), a banned organisation. The channels even claimed that they had received a letter indicating a ‘Rajiv Gandhi’ style assassination to end ‘Modi Raj’.

On 7th June 2018, the Pune Joint Commissioner of Police, Ravindra Kadam held a press conference of the most unusual nature informing the public that the letter discussing the alleged ‘assassination plot’ was found during the 17th April raids and UAPA charges were added a month later. Curiously enough, despite the grave nature of the alleged threat, the first meeting to review the Prime Minister’s security was reportedly held on June 11, almost two months after such a threatening letter allegedly came to fore, prompting questions over its authenticity. More ‘letters’ were eventually handed to the media by the Additional Director General (Law and Order) in a press conference on 31st August 2018.

A total of 13 ‘letters’ were leaked to the media houses by the Police even before this evidence, on the basis of which the entire case is built, was submitted to the courts. This deliberate attempt at carrying out a media trial by the police exposes the lack of credibility of the investigating agency. Justice Chandrachud in

his dissenting judgment chided the investigating agencies for disregarding procedure and law and also recognised that there is a ‘bone of contention’ regarding the authenticity of these letters.

### **Chargesheets and Evidence**

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The Pune police filed the first chargesheet in December 2018, against the arrestees from 6th June. In the voluminous chargesheet spanning 5,000 pages, charges levelled against the accused were vague and the evidence adduced failed to make the connection of the accused to the Bhima Koregaon incident. On 21st February 2019, the Pune police filed a supplementary chargesheet against the 28th August arrestees, which again failed to shed light on the involvement of the accused in the subject matter of the FIR. On 9th October 2020, a day after Father Swamy was picked up from Ranchi, the NIA produced its first chargesheet—the third chargesheet in this case—against all the remaining accused. At nearly 10,000 pages, this chargesheet is also clearly not the final chargesheet, as it meticulously lists out nearly 100 other witnesses from which statements still need to be taken.

Despite the voluminous nature of the chargesheets, they do not throw much light on the evidence against the 16 accused. The so-called evidence against the accused is still in the form of typed, printed out letters that were ‘leaked’ to the press in the briefing meet on 31st August 2018. The newest NIA chargesheet has some more such letters—typed letters from a few marked computers. The police story appears to be that the Elgar Parishad, which is to blame for inciting Dalits to commit violence on 1st January 2018, is a part of a larger conspiracy by the Maoists in India to overthrow the elected government. With the NIA’s latest chargesheet, the Maoist conspiracy now extends to liberation of Kashmir, forging ties with the ISI in Pakistan,

and proselytization by Christian missionaries—all familiar bogeys of the BJP government.

This conspiracy theory relies entirely on documents seized primarily from computers belonging to a few accused activists, ***which are all in the form of unsigned, unverified, uncorroborated typewritten letters. Many of these letters are undated, and from unknown people to other unknown people.*** These letters are not even originally created on the computers from where the prosecution claims to have found them. Thus, these letters can never be admitted into evidence in any trial, or marked as an exhibit. However, they are sufficient to deny bail to people accused under UAPA!

It should be recalled that some of the arrested activists and many of their close colleagues were victims of the Pegasus spyware introduced into their phones through WhatsApp, presumably by the Indian government. Such malware can possibly introduce files to anyone's computers without their knowledge.

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### **NIA takeover of the Investigation**

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The fall of the BJP government in the State of Maharashtra after the State Assembly elections in October 2019 brought with it renewed calls for revisiting the Bhima Koregaon cases. The newly formed coalition government had promised to withdraw the hundreds of FIRs lodged in the case related to rioting, and also raised questions about the investigation conducted by the Pune Police into the cases against these activists, referring to it as the 'Elgar Parishad Case' and distinguishing it from the others.

The Maharashtra Home Minister, Anil Deshmukh, announced that the state government was considering appointing a Special Investigation Team (SIT) to look into the investigation. However, the Central Government intervened and unilaterally turned the case over to the National Investigation Agency (NIA) on 24th

January 2020. This resulted in a new FIR being lodged and the charge of investigation shifting to the central agency. This move, coming after two years of investigation into this case, underlined the political importance of this case to the Centre.

In February 2020, those incarcerated since 2018 in Yerwada Jail in Pune were transferred to Taloja and Byculla Jails in Mumbai bringing them under the purview of the NIA court in Mumbai.

On 14th April 2020, Gautam Navalakha surrendered to the NIA Authorities in Delhi and Anand Teltumbde at the NIA Office in Mumbai following the SC dismissal of their pre-arrest bail petitions and related proceedings. They were remanded to custody and are both in Taloja jail in Mumbai, kept along with the other accused persons.

On 28th July 2020, Prof. Hany Babu, of the Department of English, Delhi University was arrested after 5 days of interrogation by the NIA, Mumbai, again on charges of conspiracy even though he was in no way connected with or part of any of the incidents related to the incident of Bhima Koregaon or Elgar Parishad. It should be noted that Prof. Hany Babu willingly and voluntarily appeared before the NIA whenever summoned. His house was raided on 10th September 2019, and all his electronic devices, laptops, pen drives, mobile phones etc. were seized. It is alleged that this search and seizure was conducted without a 'Search Warrant' and no copies were given to him. Two issues arise, it is possible for the police to insert any material into the devices taken from him as no authenticated copy of the electronic devices were given to him. Though the value of the evidence is suspect, it does not help in obtaining bail because of the conspiracy charge.

On 8th September, Jyoti Jagtap of Kabir Kala Manch was arrested in connection with the same case. A day before, on 7th September 2020, two other cultural activists of the Kabir Kala Manch, Sagar Tatyaram Gorkhe, and Ramesh Muralidhar

Gaichor were also arrested by the NIA on charges of conspiracy and belonging to frontal organisations of the CPI (Maoist). After several new rounds of interrogation, the 83 year old Father Stan Swamy was arrested by the NIA in Ranchi on 8th October 2020.

In the course of their investigation, the NIA conducted interrogations with a large number of intellectuals, writers, artists, activists, and family members of the accused with an implied threat of arrest hanging over their heads. This is borne out in the NIA chargesheet which lists many of these as prosecution witnesses, including Prabir Purkayastha—the founder of NewsClick.in and a co-founder of the Delhi Science Forum; Manoranjan Mohanty—a leading political scientist and distinguished faculty at the Centre for Science and Development; Professor Haragopal—a visiting professor at the National Law School in Bangalore, who was earlier with the Centre for Human Rights at the University of Hyderabad, two sons-in-law of Vara Vara Rao, Professor K. Sathyanarayanan of English and Foreign languages University (EFLU) Hyderabad and KV Kurmanath, a senior journalist in Hyderabad. This random questioning of distinguished intellectuals and their listing as prosecution witnesses, even when they add no material support to the prosecution story, is one of the various indications that the process of investigation itself is meant to unsettle, intimidate and silence, and not to reveal, expose or enlighten.

### **Brief Timeline**

<b>31st Dec 2017</b>	Elgar Parishad held in Pune.
<b>1st Jan 2018</b>	Saffron bearers attack Dalit Bahujans visiting Bhima Koregaon.



<b>2nd Jan 2018</b>	First FIR filed by Anita Salve (Dalit eye witness to attack by saffron leaders on Dalits on 1st January 2018) against Manohar Bhide, Milind Ekbote, and others for instigating violence.
<b>8th Jan 2018</b>	FIR No. 4/2018 of Vishrambaug Police Station, Pune, filed by Tushar Damgude against Sudhir Dhawale and others.
<b>17th Apr 2018</b>	Pune Police raids homes of Sudhir Dhawale, Harshali Potdar, Ramesh Gaichor, Jyoti Jagtap, Sagar Gorkhe, Rupali Jadhav, and Dhawala Dhengle. Adv. Surendra Gadling and Rona Wilson's houses searched despite their names not being in FIR.
<b>6th Jun 2018</b>	Sudhir Dhawale, Rona Wilson, Surendra Gadling, Shoma Sen, and Mahesh Raut arrested.
<b>28th Aug 2018</b>	Sudha Bharadwaj, Gautam Navalakha, Arun Ferreira, Vernon Gonsalves, and Varavara Rao arrested. Simultaneous raids also conducted at houses of Susan Abraham, Anand Teltumbde, Stan Swamy and Kranthi Tekula, Prof K. Satyanarayana, K. V. Kurmanath.
<b>29th Aug 2018</b>	Five eminent persons (Romila Thapar and ors.) file petition in Supreme Court against arrests. The Supreme Court orders Gonsalves, Ferreira, Bharadwaj, Rao, and Navlakha to be placed under 'house arrest'.
<b>28th Sep 2018</b>	Supreme Court (2:1) rejects petition, extends protection from arrests by four weeks to seek other legal remedies.

<b>27th Oct 2018</b>	Ferreira, Gonsalves, and Bharadwaj taken into custody; Navlakha and Rao get reprieve as per Delhi and Hyderabad High Courts.
<b>15th Nov 2018</b>	First Chargesheet filed (5,000+ pages) against the June arrests.
<b>17th Nov 2018</b>	Varavara Rao arrested by Pune police.
<b>21st Feb 2019</b>	Second Chargesheet (1,837 pages) filed.
<b>10th Sep 2019</b>	Hany Babu, Professor at Delhi University, house raided in Noida. The office of Stan Swamy is raided a second time.
<b>24th Jan 2020</b>	Investigation transferred to NIA by Home Ministry without consultation with State government.
<b>14th Apr 2020</b>	Navlakha and Teltumbde surrender before NIA in Delhi, Bombay after their pre-arrest bail denied by SC.
<b>28th Jul 2020</b>	Hany Babu arrested after 5 days of interrogation.
<b>7th Sep 2020</b>	Ramesh Gaichor and Sagar Gorkhe of the Kabir Kala Manch arrested
<b>8th Sep 2020</b>	Jyoti Jagtap of Kabir Kala Manch arrested.
<b>8th Oct 2020</b>	Father Stan Swamy is arrested in Ranchi.
<b>9th Oct 2020</b>	NIA submits its chargesheet against all the new arrestees.



Top row, from left: Surendra Gadling, Shoma Sen, Mahesh Raut, Rona Wilson; 2nd row, from left: Sudhir Dhawale, Sudha Bharadwaj, Vernon Gonsalves, Arun Ferreira; 3rd row, from left: Varavara Rao, Anand Teltumbde, Gautam Navlakha, Hany Babu; Bottom row, from left: Sagar Gorkhe, Ramesh Gaichor, Jyoti Jagtap, Fr. Stan Swamy.  
Source: [free-them-all.net](http://free-them-all.net)

## Who are the arrestees?

1.	<b>Sudha Bharadwaj</b>	Trade unionist, lawyer from Chhattisgarh. Associated with the Chhattisgarh Mukti Morcha (Mazdoor Karyakarta Samiti). National Secretary of the People's Union for Civil Liberties (PUCL), and Vice President of the Indian Association of People's Lawyers (IAPL).
2.	<b>Varavara Rao</b>	Poet and retired college lecturer based in Hyderabad. Former editor of a literary magazine, <i>Srujana</i> and one of the founders of <i>Virasam</i> (Revolutionary Writers' Association). Maoist ideologue, and has been jailed many times, but has been discharged or acquitted each time.
3.	<b>Anand Teltumbde</b>	A reputed author and Dalit scholar. An engineer and graduate of the Indian Institute of Management (Ahmedabad), a former professor at the Indian Institute of Technology (Kharagpur) and currently senior professor at the Goa Institute of Management.
4.	<b>Gautam Navlakha</b>	Journalist, writer, and civil-rights activist based in Delhi. Former editor of Economic & Political Weekly, and managing editor of Hindi literary magazine <i>Hans</i> .
5.	<b>Surendra Gadling</b>	A well-known Dalit activist and criminal lawyer from Nagpur, General Secretary of the Indian Association of People's Lawyers (IAPL), represented G. N. Saibaba, besides Sudhir Dhawale, Arun Ferreira, and Vernon Gonsalves, who are now his co-accused.

<b>6.</b>	<b>Sudhir Dhawale</b>	Writer and anti-caste activist from Mumbai, editor of <i>Vidrohi</i> magazine, member of the Republican Panthers Party. Had been arrested in 2011 and acquitted after 4 years in jail.
<b>7.</b>	<b>Mahesh Raut</b>	A tribal rights activist from Gadchiroli. He is associated with the Bharat Jan Andolan. He graduated from TISS in Mumbai and worked as Prime Minister's Rural Development Fellow in Gadchiroli. He is also a co-convenor of the anti-displacement platform, Visthapan Virodhi Jan Vikas Andolan (VVJVA).
<b>8.</b>	<b>Rona Wilson</b>	A champion of political prisoners from Delhi. He is the Public Relations Secretary of the Committee to Release Political Prisoners, and he also worked for the release of Prof G. N. Saibaba, and campaigned against draconian laws such as the UAPA and the NSA.
<b>9.</b>	<b>Shoma Sen</b>	A reputed academician, a Dalit and women's rights activist from Nagpur. She was the Head of the English Department at Nagpur University. She was actively involved in the Committee for the Protection of Democratic Rights (CPDR).
<b>10.</b>	<b>Arun Ferreira</b>	A writer, cartoonist, and lawyer from Thane. He was arrested in 2007 and then serially rearrested after his acquittal, due to which he spent nearly five years in jail before being acquitted in all cases. He wrote a prison diary of that period which has been published as 'Colours of the Cage'.

11.	<b>Vernon Gonsalves</b>	A writer, translator, and ex-trade unionist of unorganised labour in Chandrapur, Maharashtra. He was a gold medallist in commerce from Mumbai University who joined the trade unions after giving up a corporate job. He spent nearly six years in jail, before being acquitted in 18 cases in 2013. He was convicted in one, which is currently being appealed in the Bombay High Court, and a discharge application in another is pending before the Gujarat High Court.
12.	<b>Hany Babu</b>	An Associate Professor in the English Department of University of Delhi. He is a linguist, a scholar of caste and language, and has been active in the pro-reservation and other social justice movements within the University of Delhi.
13.	<b>Ramesh Gaichor, Sagar Gorkhe, and Jyoti Jagtap</b>	These are all poets, singers of the Kabir Kala Manch, a Dalit group with a Marxist philosophy, based in Pune. Earlier also, Gaichor and Gorkhe had been arrested in 2013 and were in jail for three years before being granted bail by the Supreme Court.
14.	<b>Father Stan Swamy</b>	Works for the rights of Adivasis and other underprivileged groups in Jharkhand since four decades. Among other issues, he works on displacement, corporate loot of resources, the condition of undertrials and PESA. Stan has been a vocal critic of the BJP government's attempts to amend land laws and the land acquisition act in Jharkhand, and a strong advocate of the Forest Rights Act, PESA, and related laws.

# SUDHA BHARADWAJ SPEAKS

*Interview by*

Darshana Mitra and  
Santanu Chakraborty





## BECOMING A LAWYER

*The following interview was conducted in 2012 by Shantanu Chakraborty and Darshana Mitra. The context has been provided through footnotes compiled by Atindriyo Chakrabarty. Extensive annotations have been provided by Shalini Gera to update the information shared in the interview.*

*Could you tell us how you became a lawyer and how you got into cause lawyering?*

Well, I had no idea that I would become a lawyer. I basically joined a trade union, Chhattisgarh Mukti Morcha (CMM).<sup>66</sup> It was led by Shankar Guha Niyogi,<sup>67</sup> the legendary trade unionist of Chhattisgarh.<sup>68</sup> I came in about the year 1986 to join the union, and in fact, originally I had come with the idea of helping in the schools,<sup>69</sup> in which the union was working. But gradually I got

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<sup>66</sup> Chattisgarh Mukti Morcha (CMM) is a Trade Union formed in 1982 under the leadership of Shankar Guha Niyogi to represent the struggling workers and peasants of Chhattisgarh, which was then a part of the state of Madhya Pradesh.

<sup>67</sup> Shankar Guha Niyogi (1943-1991), founder of CMM, mass leader, revolutionary, and social thinker who shaped the trade union struggles in Chhattisgarh.

<sup>68</sup> For details on CMM and Niyogi's work, see People's Union for Democratic Rights (PUDR) (1991), *Shankar Guha Niyogi and the Chhattisgarh Peoples Movement*, New Delhi, available at [http://sanhati.com/wp-content/uploads/2013/09/niyogi\\_pudr\\_note.pdf](http://sanhati.com/wp-content/uploads/2013/09/niyogi_pudr_note.pdf), last seen on 12/11/2014.

<sup>69</sup> The CMM, following Guha Niyogi's visions, works not only as a traditional Trade Union but also for the betterment of every aspect of the lives of

drawn into the organising of the movement itself, particularly when the movement in the 1990s shifted to Bhilai.<sup>70</sup> After that, Niyogiji was assassinated in 1991,<sup>71</sup> and there was police firing in 1992.<sup>72</sup> And after that, from the 1990s onwards, there was a huge movement of the contract labour in Bhilai.<sup>73</sup>

The union itself was very interesting—a very different kind of union. It was also quite a massive organisation of the contract workers. After the police firing, when, after the *Babri Masjid* incident (the riots following the demolition of the Babri Masjid

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the workers and peasants including health, education, and sanitation. In addition, it runs several schools for the children of labourers in slum areas. See Arundhati Roy (2006), *Ordinary Person's Guide to the Empire*, Penguin Books India, pp. 190-191.

<sup>70</sup> 'The unions affiliated to CMMS in 1989-90 began taking shape in Durg-Bhilai region. Most of the industrial units in the region are an offshoot of Bhilai Steel Plant. From Rajnandgaon at one end to the newly developed Urla industrial complex at Raipur the belt now has numerous units. The wage and working conditions in this belt are similar to those that prevailed in Dalli Rajhara in the mid-seventies. Perhaps, even worse than those. For here the units are relatively small, making organisation difficult and the owners are the new generation industrialists making the opposition more intense and violent. The Morcha affiliated unions that took root in this belt include Pragatisheel Engineering Shramik Sangh (PESS), Chattisgarh Shramik Sangh, Chattisgarh Cement Shramik Sangh and Chattisgarh Mill Mazdoor Sangh.' See PUDR (1991) *supra* 68, p. 6.

<sup>71</sup> Shankar Guha Niyogi was assassinated on 28th September 1991 in Bhilai. PUDR (1991), *supra* 68, p. 7.

<sup>72</sup> On 1st July 1992, police opened fire on protesting workers and the public of Bhilai close to the railway tracks leading to death of several workers affiliated to the CMM. For a Report on the incident, see Rakesh Diwan (1992), *Lahuluhan Nazaron Se Uthte Sawal*, (in Hindi) uploaded on *Sanhati.com*, available at <http://sanhati.com/wp-content/uploads/2013/09/SGN-Hindi4.pdf>, last seen on 12/11/2014.

<sup>73</sup> At present, the Chhattisgarh Mukti Morcha-Mazdoor Karyakarta Samiti (CMM-MKS), with its office situated at the workers' colony of ACC Cement Plant, Jamul, Bhilai, operates with several units such as the Pragatisheel Engineering Shramik Sangh, Pragatisheel Cement Shramik Sangh, Mill Mazdoor Sangh, units of the Mahila Mukti Morcha etc. continues to carry the struggle forward. PUDR (1991), *supra* 68, p. 7.

in December 1992), there was President's rule in Madhya Pradesh. We were a part of Madhya Pradesh and the Congress came to power. So, in 1993, the Congress referred all the cases on. You see, the agitation in Bhilai, which was an agitation of contract workers, was for very basic things—the right to form a union, living wage, and very basic things (like) eight hours work, minimum wages, proper documentation, gate passes, *hazari* card<sup>74</sup>, and all that kind of stuff. At that time, the movement in Bhilai covered 16 industries, and most of them belonged to five big industrial houses—Simplex Engineering and Foundry Works Pvt. Ltd., Kedia Steels, B.K., B.C., and Bhilai Wires Limited.

After this, in 1993, all these cases were referred to the Industrial Court. That is the point at which I became a sort of paralegal, because being one of the few people in the Union who could deal with lawyers and as an educated person who could document things, and so on and so forth, I was the person deputed to deal with all the lawyers for these cases. These cases went on in the Industrial Court, then there were appeals in the Indore bench, then it went up to the High Court, then LPAs.<sup>75</sup> There was a dispute even in the LPA, there was a full bench, and it came back all the way. So, we started a whole tunnel of litigation, the movement entered that tunnel.

I practically became a representative of all the workers who is dealing with all of this. And then came the experience of the workers and how difficult it was to get lawyers who would represent them with honesty! It was actually the workers who told me that you'd have to run behind the lawyers and you have to pay them fees, which you can't afford. It was a contract labour

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74 Time/Attendance Card to clock the number of hours/days worked, often used as proof of employment.

75 LPA— Letter Patents Appeal (LPA) is an appeal from a decision of a single judge to another bench of the same court.

union, a very poor union, and on top of that, we find that they are not doing the job properly. Many times, we find that they are being retained by the other side, and so on, and so forth. So they (the workers) were the ones who persuaded me to become a lawyer. That was around the time that I also adopted my daughter. So, while I was at home, I decided to do a lawyer's course and I can tell you that I did not attend more than one lecture (*Laughs*), basically just going and giving exams. In terms of studying law, I just passed. But the real study of law came afterwards. In the year 2000, I became a lawyer, at the ripe old age of 40. So, basically I became a lawyer just like that, out of necessity, and started doing the cases of the contract labourers.

Initially I was only doing our union's cases.<sup>76</sup> Then our union's cases came to the High Court and I came to the High Court. Then I realised that actually all people's movements faced the same problems as our Union faced, which was that the implementation of the laws that give people rights was very poor. They need to struggle, and struggle, and struggle for it. On the other hand, when they agitate, a lot of cases are put on them, criminal cases are put on them, and they have to defend themselves in those cases.

Actually, they don't find lawyers who understand their viewpoint, who will also not fleece them, and won't be too formal, and can also understand the exigencies of the movement. Above all, the fact is the legal strategy has to intertwine with the strategy of the movement. So, I think, that is something that I found was a more general thing, and that is how, slowly, slowly, we came to form this group called *Janhit*,<sup>77</sup> based in Bilaspur, which is

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<sup>76</sup> At the time, Sudhaji was with Chhattisgarh Mukti Morcha (CMM), which split in 2005, and Sudhaji's Union became the Chhattisgarh Mukti Morcha–Mazdoor Karyakarta Samiti (CMM–MKS) headquartered in Jamul, Bhilai in Chhattisgarh.

<sup>77</sup> Janhit Peoples' Legal Resource Centre, Bilaspur, Chhattisgarh.

the seat of the High Court. Now we handle many, many, cases of villagers who are protesting illegal acquisitions, of people who are protesting environmental public hearings, some human rights cases, cases of forest rights, and of course labour matters and PILs. So that is our, kind of, forte.<sup>78</sup>

We have seen that the official legal aid is basically legal aid to individuals, *Janhit* is actually like a group legal aid—that is the concept of *Janhit*. We believe that changes will come in society when groups get organised and then they fight. So it is actually a legal aid to help groups and to help those who are struggling... (Help) organisations that are struggling. So we take very few individual cases (and only) when they are in great need. But largely (our work) is these group cases, because that is where we hope we can make some sort of a dent. Some change can come about.



*Sudhaji speaking at a meeting held to protest sexual violence against women in the conflict zones by paramilitary forces. Raipur, 2009. Source: Janhit*

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<sup>78</sup> For more on Sudhaji's work, see Bharadwaj, Sudha (2018), *How Corporate Land Grab is Sought to be Legitimized in Chhattisgarh by Misusing Legal Framework*, in *Counterview.Org*, 15th February, available at, <https://counterview.org/2018/02/15/how-corporate-land-grab-is-sought-to-be-legitimized-in-chhattisgarh-by-misusing-legal-framework/>. Extracted from, Bharadwaj, Sudha (2018) *The Legal Face of Corporate Land Grab in Chhattisgarh*, available at <https://counterview1.files.wordpress.com/2018/02/legal-face-of-the-land-grab.pdf>, last seen on 07/10/2020.

## EARLY LIFE

*Ma'am, to go further back, can you tell us how you got involved with the Trade Union movements in the first place, what did you study, what inspired you, and how did you get here?*

Well, I was a single child living with my mother—my parents separated when I was four<sup>79</sup>—and she came from a socialist background. My mother comes from the Konkan (region across the western coastline of India), and you know that Goa was liberated far, far, after the entire country was liberated. And the socialist movement was very strong there. She had a socialist bent of mind. From my childhood, I had been seeing that and then my mother was in JNU (Jawaharlal Nehru University) where she taught economics.<sup>80</sup> So that was the kind of atmosphere in which I grew up, and at a very young age I decided, since my mother is

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79 Sudha Bharadwaj was born an American citizen since both her parents were pursuing their PhDs at Massachusetts Institute of Technology (MIT), Cambridge, Massachusetts, at the time. She moved to the UK at 4 years old, where she did her primary schooling and returned to India at age 11.

See brief bio in Mitra, Ashok (2008), *Enemies of the State - Women and Men Who Choose the Margins*, in *The Telegraph*, 23rd May, available at [www.telegraphindia.com/opinion/enemies-of-the-state-women-and-men-who-choose-the-margins/cid/587344](http://www.telegraphindia.com/opinion/enemies-of-the-state-women-and-men-who-choose-the-margins/cid/587344), last seen on 10/9/2020.

80 Krishna Bharadwaj, eminent economist, was one of the faculty-co-founders of the Centre for Economic Studies and Planning (CESP), School of Social Sciences, Jawaharlal Nehru University (JNU), Delhi. For an academic assessment of her work, see Marcuzzo, Maria Cristina (2019), *Krishna Bharadwaj, the Torchbearer of Economics*, in [ineteconomics.org](http://ineteconomics.org) (website of the Institute for New Economic Thinking), on 21st March, available at <https://www.ineteconomics.org/perspectives/blog/krishna-bharadwaj-the-torchbearer-of-economics>, last seen on 10/9/2020.

a very well-known economist, that I should never do economics, otherwise I will never get out of the shadow of my mother.

I had very strange likes, I liked maths and history, and literature. Nobody could possibly give me such an outrageous combination (*Laughs*). So like everybody else, I was pushed into the science stream and I took mathematics. I went to IIT Kanpur, where I did five years integrated M.Sc. (Masters in Science) in Maths. And, actually, when I went there, basically I was drawn into workers' organisations. Particularly, the mess workers had an organisation, they had a cultural group, and I got involved with that. Then there was also a Marxist study circle, so I got involved in reading and studying. Many incidents happened in that period, like there was a strike in Rallis India factory in Unnao...<sup>81</sup>

*Which year was that?*

Don't remember the year exactly, probably 83-84, something like that. Slowly, slowly, I was learning. Initially, I remember my naivety about the Indian countryside. I didn't understand anything about caste. Because, actually my primary schooling was basically in Cambridge, in the United Kingdom. So I came back when I was eleven years of age, and after that, I was in Delhi. So my first experience with rural India was actually when I came to Kanpur, and I had joined the NSS (the National Service Scheme, where students volunteer for community service).

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<sup>81</sup> Possibly refers to Rallis India, Unnao District, Uttar Pradesh, where, in January 1982, police opened fire at protesting factory workers who were demanding wage parity. At least two people were killed, several injured, and at least a hundred missing. Allegations of a cover-up by the Police were made at the time. See Sagar, Anand (1982), *PAC Fire upon Striking Workers of Rallis India in Uttar Pradesh, 100 Reported Missing*, in *India Today*, 15th May, available at [www.indiatoday.in/magazine/indiascope/story/19820515-pac-fire-upon-striking-workers-of-rallis-india-in-uttar-pradesh-100-reported-missing-771786-2013-10-15](http://www.indiatoday.in/magazine/indiascope/story/19820515-pac-fire-upon-striking-workers-of-rallis-india-in-uttar-pradesh-100-reported-missing-771786-2013-10-15), last seen on 10/9/2020.

One of our plans was to run a small school outside IIT Kanpur. When we went there, the *Sarpanch*<sup>82</sup> was very nice. He said, ‘Oh, why don’t you run the school here?’ So we said okay. We found that, in the middle of the village, there was a *nala* (canal), and the children from that (other) side of the *nala* would never come. So this, I am telling you about my naivety, my absolute non-understanding of caste as a concept and I couldn’t figure out why it is that the children from there don’t come. So we told them, see, maybe the children have some problem, so we are planning to put up the school there. He (the *sarpanch*) was furious and of course, we put up the school there, and a lot of children came, and then we realised that all this is because this was a *chamar basti*.<sup>83</sup>

Slowly, slowly, these things were dawning. I went [into activism] after my class 12, I completed class 12 in 1979, so from 1979 to 1984 I was in IIT Kanpur. And for our generation of activists there were two very important incidents of 1984. One was the anti-Sikh riots,<sup>84</sup> and the other was the Bhopal gas tragedy,<sup>85</sup> which I think changed a lot of people. Changed a lot of people, pushed a lot of people, and inspired a lot of people to work with the movement. And in both those, particularly in the anti-Sikh riots, I remember going to these colonies, even after the Bhopal gas incident, we

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82 Head of the village Panchayat.

83 *Chamars* are traditional tanners and leather-workers of India considered as a ‘low caste’ in the Hindu caste-system. Most of the families who are involved in this work traditionally for generations belong to Dalit or Muslim communities. *Basti* is a settlement, generally, a slum area.

84 Following the assassination of then Prime Minister Indira Gandhi by her Sikh security guards in August 1984, there was a pogrom targeted against Sikhs that resulted in the murder of thousands of Sikh people across India with its epicentre in Delhi.

85 In December 1984, gas leakage from the Union Carbide India Ltd., spread across nearby areas in Bhopal and resulted in the deaths of thousands and seriously injuring more than half a million people. It is considered one of the world’s worst industrial disasters with health and environmental effects spanning generations.



went. So basically we were that generation. And I'll say one thing, at that time, we were very fortunate that there were not so many NGOs (Non Governmental Organisations) (*Laughs*). So we had only two options—one was to make a career, and the other was to simply go and join people's movements. Actually, it is not as difficult as it looks. And I think when you are 25, there are a lot of changes that you can make and you are quite resilient. So, my involvement with trade union movement started even as I was studying in IIT, because I used to be coming up and down between Delhi and Kanpur.

Asiad<sup>86</sup> was in 1982, and it was just like the Commonwealth Games, and it meant that all these flyovers and stadia were being built and there was lots of migrant contract labour over there. I used to live in JNU (Jawaharlal Nehru University), and right outside JNU there was a huge camp, where Oriya workers (from Odisha state) and Bilaspuriya workers (from Bilaspur, Chhattisgarh) were being kept. So we had a collaboration, some students would come from AIIMS (All India Institute of Medical Sciences), and some from JNU, and we would go and teach the children, and the doctors, who had better skills, would look after their health needs, because there were a lot of epidemics in those camps, because the water was unclean.

I remember very clearly—we had gone and (the) conditions were so appalling. There was an Oriya boy with us who could talk to the workers in Oriya, and I remember, we talked to one young man who was very agitated, who said how they were in a bonded condition. 'We want to go home but we can't go home', and so on and so forth, he told us everything. The next time we went, he wasn't there, and I think that is when it dawned upon us that, this is not a joke, that organising is something very, very,

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<sup>86</sup> This refers to the 9th Asian Games, held in Delhi, India between 19/11/1982 and 4/12/1982.

serious and it can have great implications for people, because we never could locate that person. Whether he was sent away somewhere, whether... Nobody could tell me what happened to him. So, that was the time when I got very seriously involved in trade union organising.



*Clockwise from top: 1. XI-B class photo at Kendriya Vidyalaya, Colaba, 1978. Sudha at 17 years is seen standing in the third row from top, second from right. 2. Sudha, 1989 3. Sudha at 10 years, Cambridge, UK. Source: Janhit*



## SHANKAR GUHA NIYOGI: BRINGING THE CONSTITUTION TO LIFE

In 1982, Shankar Guha Niyogi had been arrested under the NSA.<sup>87</sup> And there was an agitation by the Delhi Textile Workers in his support. We went and saw that. The first time I went to Dalli Rajhara to Niyogiji's trade union was in 1983 and it was a remarkable experience. He used to say that it is not an eight-hour trade union; it is a twenty-four hour trade union.<sup>88</sup> It deals with all aspects of people's lives.

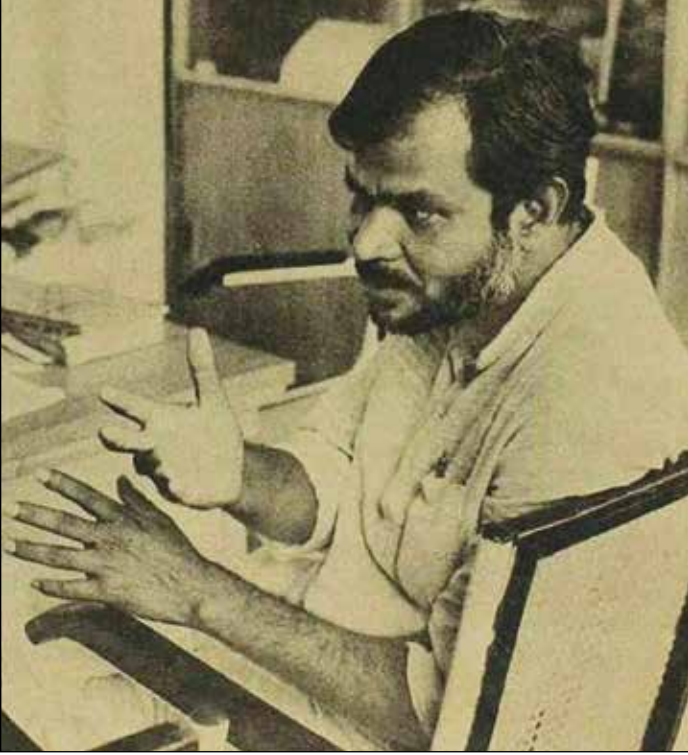
The trade union had seventeen departments—health, education, women's issues, and so on, and so forth. Of course, some of the departments were very successful, like the Shaheed Hospital.<sup>89</sup> The Health Department had developed into a huge hospital. They

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<sup>87</sup> 'As the agitation against mechanisation intensified initially in January 1981 Niyogi, Sahdev Sahu and Janaklai Thakur were served externment orders which were struck down by the courts. A fortnight later, on February 11, Guha, Niyogi, and Sahu were invited for talks by the District Collector, Durg. When they reached the office they were detained under the National Security Act (NSA).' PUDR (1991), *supra* 68, p. 4.

<sup>88</sup> A legendary quote by Comrade Niyogi often uttered by several CMM veterans.

<sup>89</sup> Shaheed Hospital is a private hospital in Dalli Rajhara, run by the Chattisgarh Mines Shramik Sangh (CMSS). Another similar health centre and hospital is the Jan Swasth Sahyog (JSS) at Ganyari, a few kilometres off the city of Bilaspur. See documentary film on the hospital by TG Ajay. TG Ajay is a Chhattisgarh-based activist and filmmaker and his film *First Cry* documents, and narrates, the development and sustenance of Shaheed Hospital. See Ajay, TG (2014) *First Cry*, Documentary film by Ajay TG, Produced by Public Service Broadcasting Trust (PSBT) and Doordarshan. For more about the film, see Gupta, Gargi (2014), *By the people, for the people*, on *DNA India*, on 14th September, available at <http://www.dnaindia.com/lifestyle/report-by-the-people-for-the-people-2018440>, last seen on 12/11/2014.



*top and bottom, Shankar Guha Niyogi at the  
CMM office in Dalli Rajhara, circa 1988-89.  
Source: <https://twitter.com/IndiaHistorypic/> and  
<https://indianlabourarchives.org>*



were running eleven schools and this whole concept of the red-green flag, worker-peasant alliance. That union office was so vibrant. The union had organised peasantry from all around. That is how Dalli Rajhara<sup>90</sup> had become symbolic of a worker's power centre. That is how the Bhilai workers went there, and in 1990, the movement started in Bhilai.

We started going in 1983, and by 1986, I had made up my mind to go and work there. I remember my mother being very worried and saying that for a woman, it is very difficult. 'You don't have an identity. Why are you quitting your studies and going?' But I was very convinced. I said, 'Whatever they want me to do, I'll do.' Maybe she would have been happy now, to see me as a lawyer. Maybe she would have thought that okay you are more useful like this. But actually, it is the workers who taught me.

All that experience of the trade union has been very, very important to lawyering. I remember, after Niyogiji's assassination, Justice Krishna Iyer had delivered the first Niyogi Memorial lecture.<sup>91</sup> It is still available somewhere, you might read it. He began the lecture by saying, 'Niyogi tried to bring the Constitution to life for the Adivasi miners of Chhattisgarh.' We have to bring the Constitution to life. That's where the lawyers and peoples' organisations have to work together. I am lucky, I have come from there. So it's natural for me.

*Your association with Shankar Guha Niyogi began when you were still in JNU?*

Yes, in 1982 or 1983.

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<sup>90</sup> Dalli Rajhara is a town and a municipality in Balod district in the state of Chhattisgarh, India. This is where Shankar Niyogi ran his trade union. It is also the site of iron-ore mines for Bhilai Steel.

<sup>91</sup> Iyer, Justice V. R. Krishna (1992), see First Shankar Guha Niyogi Memorial Lecture, on 28th September, New Delhi, organised by Bandhua Mukti Morcha (BMM). Scanned copy of the lecture available at [http://sanhati.com/wp-content/uploads/2013/09/SGN\\_English3.pdf](http://sanhati.com/wp-content/uploads/2013/09/SGN_English3.pdf), last seen on 12/11/2014.



*Your association with Dalli Rajhara began then?*

Yes, yes, I lived in Dalli Rajhara until 1990-1991. Then, for some time, when the Bhilai movement started, I shifted to Bhilai. Then, I was still one foot here and one foot there. Then finally, I totally (moved) to Bhilai and I was there until I completed my law. And then, I was one foot in Bhilai and one foot in Bilaspur. Even now, I go very frequently to the union office, but I am not involved in the day-to-day working of the union. Of course, a lot has happened since then. The union has also split up into different groups. And the group with which I am associated is based in Bhilai,<sup>92</sup> not in Dalli Rajhara.



*Hunger strike at Motibagh, Raipur to demand reinstatement of employees dismissed by Kedia distilleries in Kumhari and Bhilai. Sudha is seen sitting on the stage with her young daughter Anu (now, Maaysha) at her side, next to the framed photograph of Shankar Guha Niyogi. Chandrakala of CMM also went on hunger strike and is seen sitting on stage on the left. Circa 2000. Source: Janhit*

<sup>92</sup> Chhattisgarh Mukti Morcha-Mazdoor Karyakarta Samiti (CMM-MKS) is based out of Jamul labour colony, adjacent to the ACC Cement Factory of Bhilai. The street junction is named Niyogi Chowk in honour of Comrade Shankar Guha Niyogi. The Pragatisheel Cement Sramik Sangh (PCSS) and the Pragatisheel Engineering Shramik Sangh (PESS) are parts of this faction and so is the Kisan Sangharsh Samiti (KSS) based out of Dhamtari, Rajnandgaon, and Chhattisgarh. Unlike the Dalhi Rajhara-based faction, CMM-MKS does not participate in the electoral process.

## WORKING AT CHHATTISGARH MUKTI MORCHA (CMM)

*Can you tell us about your experience with the Chhattisgarh Mukti Morcha (CMM), the kind of work you did?*

Well, initially I was an odd jobs person. So I have done a lot of things. I have taught in the high school there. I have also taught younger children. A lot of this paralegal kind of work.

Then, not very much, but a little bit of organising of women I did in that period. And later on (also) I did much more organising of women.<sup>93</sup> So it was a variety of work I did.

One thing that Niyogiji taught us, was, that even the middle-class people who went (worked there), the relationship that they had with their working-class comrades was of subordinating them(selves) to their working-class comrades.<sup>94</sup>

It was a very important aspect of our growth. We lived there, in the *basti* and really, it is not as difficult as it looks...

Even now, right from participating in campaigns, organisational meetings, writing up *parchas* (pamphlets)... So, only a part of me is a lawyer and part of me is a trade unionist.

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93 The women's conglomerate of the CMM, i.e., the Mahila Mukti Morcha wing, has been and is still one of the most active units. The anti-liquor campaigns that were spearheaded by the CMM women's group in the early 1990s was highly successful and received significant mass attention and support.

94 That the backward classes should overtake elite sections of the civil society is one of the cornerstones of Comrade Niyogi's ideology of Leftism, often termed as the *Sangharsh aur Nirman* model, i.e., *Struggle and Create*.

## THE ASSASSINATION OF NIYOGI AND THE MURDER TRIAL

*So you were present during hearings of any kind of labour cases...*

Oh yes! As I said, that is how I decided to become a lawyer. Because at that time, first of all, the whole interface between the legal process and the union... When the agitation started, there were a lot of preventive arrests, and preventive detention. Niyogiji himself was issued an externment notice.<sup>95</sup> Then we prepared all the things for that, fought it in Jabalpur,<sup>96</sup> and then he was arrested.

Then of course, after his death, came the question of the murder case. That really opened my eyes about the way the law functions.<sup>97</sup> Because initially, when Niyogiji was murdered, the police was only investigating the union! It was really funny. And they had come up with all kinds of theories—it was a conflict between Bengalies and Chhattisgarhis, and the Chhattisgarhi faction had killed Niyogi, all kinds of rubbish...

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95 'The administration initiated externment proceedings against him under the MP Rajya Suraksha Adhiniyam, 1990 (S.5).' PUDR (1991), *supra* 68, p. 7. An externment notice orders the 'removal' (ban or exile) of an individual from a district/town/city. In this case, the *M. P. Rajya Suraksha Adhiniyam (MPRSA)*, notified in 1991, was used to frame the externment.

96 The Principal Bench of the Madhya Pradesh High Court.

97 The slipshod manner in which the investigation of Comrade Niyogi's murder was conducted has been documented. See Singh, N. K. (1991) *Shankar Guha Niyogi murder case: Police apathy raises doubt*, in *India Today*, on 15th November, available at <https://www.indiatoday.in/magazine/indiascope/story/19911115-shankar-guha-niyogi-murder-case-police-apathy-raises-doubt-815062-1991-11-15>, last seen on 14/11/2014.



Everybody knew that he was carrying on a massive agitation. Four thousand workers were out of their job. The industries had been closed for weeks together. It was obvious who had a motive in this murder and we were continuously saying so. And then they came up with a strange letter, titled '*Peoples' War Group*'; (It claimed) that the Peoples' War Group had murdered Niyogi. The obvious things were not being worked into. All kinds of stories were created by the police. So we really had a tough time, at that time. Nobody was being arrested, nothing was happening. At the most, they had picked up a few *goonda* (anti-social) elements.

The interesting thing is Niyogiji, when he had gone to jail—you see, there was a long process before he was murdered. First of all they tried to extern him but they couldn't. Then, he was in jail for about four months. All those cases—in which he had been initially exempted from appearing, because there were so many cases against him—for every single trade union agitation there was a case against him. He couldn't possibly attend all those, so most of the time he was exempted from appearing. But in all those cases, warrants were issued against him—around 40 cases. That's how he went to jail. We had to get bail in each and every one of them and all the lower courts refused. It was almost systematic. Then he finally got it from the High Court. So, all that time, and then finally, they murdered him.

Before the murder, there were increasing attacks on trade union leaders. There were massive attacks. There were attacks on individual leaders, and then there was a big attack in Raipur, Urla. You see, what had happened was that the Simplex Company—those were the people who were finally implicated in the case also—outside Simplex Urla there was a big *dharna* (agitation/protest) going on.<sup>98</sup> *Goondas* came out with *talwars* (swords)

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<sup>98</sup> 'The movement faced intense repression and violence both from the police and the hired hoodlums of the management. The focal point of the struggle in the last few months has been in the units owned by Simplex group. For

and things from inside the company and attacked the people who were at the *dharna*. Some people had their arms badly slashed. At that time, 50,000 signatures were collected from Chhattisgarh, and around 500 people went and met the President of India. Niyogiji went and met with the President.<sup>99</sup> He then came back and tried to meet Sunderlal Patwa—the Chief Minister (CM) of the BJP government at the time—but CM refused to meet him. And within two weeks of meeting the President, Niyogiji was shot.

After this, there was a huge crackdown. Immediately after his assassination, 4,000 people got out of work and were out on the streets with their families. So a whole agitation had started. Because of the pressure, initially these five industrial groups agreed to negotiate and then they did something very strange. You see, there was a nine-point demand charter on which this agitation had started. It contained very basic demands, like *hazari* card and medical leave—and the ninth demand was to take back all the workers who have been removed. I mean, obviously, they have been removed because they agitated.

They (the agitators) went to the company wearing *billas* (badges), saying, '*Udyogpatiyon, samay ki pukar ko pehchano. Samjhauta ya Sangharsh, hum taiyar hain* (Industrialists, recognise the call of the hour. Be it compromise or battle, we are ready)'.

The moment they formed the union, the gates were closed on them. There was no union earlier, in the Bhilai industrial area. The industrialists said, 'See, we agree to eight of the nine demands,

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practically over ten months the workers are on strike. A large number of workers were arrested under section 107 and section 151 CrPC, in blatant violation of law, in much the same way as these sections were used against the miners in 1977 which had eventually led to the firing incident.' PUDR (1991), *supra* 68, p. 7.

99 'In the second week of September, Niyogi led a delegation of workers to Delhi where he met among others the President of India, the Prime Minister, leaders of all major political parties.' PUDR (1991), *supra* 68, p. 7.

but the ninth demand we won't give you.' But if you don't take us in, then what is the point of having all other demands?

They tried to project the union as a really militant union, 'It is a terrorist union. It is insisting that all the demands should be fulfilled, whereas we are agreeable to eight out of nine.'

We said, 'What rubbish! We are not talking about eight out of the nine. We are saying, first take back the workers, then we will negotiate the rest with you. But first take back the workers.' So we were on the other foot.

Then, the entire 4,000 workers and their families—you can imagine what a huge group that is—started camping outside. From 25th May, we started the camp and moving from place to place in Bhilai, finally ending up right beside the railway line. Entire Bhilai would turn up to watch, these thousands of people, first in the hot sun of 47 degrees (celsius), and then in the rain, in the open, this entire lot of thousands of people. On the 1st July, we sat on the railway tracks and right from the morning, from 9 o'clock to 4.30 in the evening, nobody came to negotiate.

Only the police force went on increasing and then in the end, they claimed that they followed all the procedures—asked the leaders to come for negotiations to the control room, took them there and told them, 'Look, you better clear it, (or) we are going to remove you forcibly.'

All our demand had been at that time was, begin negotiations on taking back the workers, because already in one round (they) had agreed. They said, 'No, no, we can't take them all together, we'll take them in two batches.' They thought we wouldn't agree to it. We said, 'Okay fine. Take one batch. We will negotiate on the other batch'. Then they said, 'Wait, wait. We have to see.'

They never came back to negotiate. That was on 29th and 30th of June, and this was on the 1st of July. When they didn't come back

for negotiations, this *rail-roko Satyagraha* (protests to stop trains from operating) started. Then, there was indiscriminate firing.

Seventeen workers were killed. Most of them were killed off the tracks—some as far off as one and a half kilometres away from the track. Of course, police just pursued and killed them.<sup>100</sup> Some ordinary citizens, rickshaw-pullers, tempo drivers—they were also killed in this and then there was a clampdown, all offices were closed, shut down. So, there was this huge period of repression and then the police inquiry commission started. At that time, basically, it (the work) was running around, hundreds of people were in jail, we had to get them out. Then the inquiry commission started, we had to fill in all the affidavits/*shapath patras* for the commission, face cross-examination in that.

Meanwhile, Niyogiji's murder case was also going on. In Niyogiji's murder case, initially, as I told you, they were only after the union. But then the union had a massive agitation and it was handed over to the CBI. That is the first time that the CBI came, and it really depends so much on who are the investigators, because there were two joint-directors who came at that time. One was a gentleman called Mr. Ghosh, who came and saw the movement, and was immediately impressed by it. He took it very seriously,

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<sup>100</sup> Two documents that throw light on several aspects of the movement and on the police violence are: Lok Sahitya Parishad (LSP)(1992), *Bhilai Andolan Ke Ainey Mein Bharat Ka Janvad*, LSP-CMM, Dalli Rajhara, available at <http://sanhati.com/wp-content/uploads/2013/09/SGN-Hindi11.pdf>, last seen on 15/11/2014; and

Gun, Dr Punyabrata (1991-1993), *Updates from Bhilai/Chhattisgarh*, Issues 1-38 from 22nd February 1991 to 15th December 1993, available at <http://sanhati.com/updates-from-chhattisgarh/>, last seen on 15/11/2014. [Compiled by Dr. Punyabrata Gun. These updates report, trace, narrate, and analyse different issues of the Bhilai movement in great detail throwing light on several aspects of the movement.]

Other documentation of the movement can be found in the *Shankar Guha Niyogi Archives*, available at <http://sanhati.com/shankar-guha-niyogi-archives/>, last seen on 15/11/2014.

and started investigating. The other, who was his second-in-charge, was from Rajasthan, called M.L. Sharma. Extremely upright people. Had they been corrupt, there was no way there would have been an investigation in this case.

They actually unearthed the whole nexus of the industrialists, particularly of the Simplex group. They filed the chargesheet. In the meantime, the Simplex people ran to Delhi to get bail, the Kedias ran to Jabalpur to get bail. Then, Chandrakant Shah, who was the main accused and who had actually gone to Nepal and procured weapons, he did so many *tamashas* (drama). He ran away, got some blood, threw it on his vehicle, and showed that he had been murdered. And then surrendered somewhere ran away from the hospital somewhere—all kinds of *tamashas*.

In all this process, there was this whole interface with the legal system that the trade union was facing in this case. What happened was, when the assassin, Paltan Malla was actually caught. The CBI prosecutor at that time, in connivance <sup>101</sup> with the industrialists' lawyer, moved an application for in-camera trial. You see, until then, what used to happen was, that people used to attend the trial in large numbers and that used to make it difficult for them to do whatever they wanted. So, they started in-camera trial.

I remember when my evidence was being recorded, there were seven accused, seven lawyers, and then the CBI prosecutor. And you are all alone, the witness and all these guys would be mocking you. I remember them taking out Niyogiji's clothes, with blood, and asking, do you recognise this, do you recognise this pillow. I could deal with it, but I am sure many people would not have

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<sup>101</sup> The CBI's failure, indicative of mala fide, has been written about in the media. See Singh, N. K. (1992), *CBI makes little headway in murder of Chhatisgarh trade unionist of (sic) Shankar Guha Niyogi*, in *India Today*, on 31st January, available at <http://indiatoday.intoday.in/story/cbi-makes-little-headway-in-murder-of-chhatisgarh-trade-unionist-of-shanker-guha-niyogi/1/306107.html>, last seen on 14/11/2014.

been able to deal with it. That's the time when we made the first legal intervention to the High Court, and asked the trial to be in open court and we won that case.

Nandita Haksar argued that case. I assisted her, not as a lawyer, just as a union person. So much work we did for it. That order also gave us a right to assist the prosecution. After that, we had Nandita Haksar, Kamini Jaiswal, Indira Jaisingh, and Vrinda Grover—a lot of [people] who are today very big names—used to come and help us.

We also agitated for the change of the Special Public Prosecutor. We used to find him drinking with the industrialists' lawyers.

So a very upright, but again, a very maverick lawyer called Mr. P. P. Trivedi, from Ahmedabad—who would only have two *rotis* and a glass of milk in a day; he was very strict but he was also dead honest, he would not let these guys near him—he became the prosecutor.

It was a real struggle, because even for the witnesses it was a tremendous struggle. There were some working-class witnesses. They were being threatened all the time. There was a lot of other high-court litigation that we had to keep doing. For example, when some of these accused were let out on bail and they started threatening, again [we] had to go and try to cancel the bail. I think this is the time I started seeing that law was very necessary.

But I cannot forget one thing, which a working-class comrade told me, about the law. He said,

*'Didi, for us, law is like playing kabbaddi. It's like a kabbaddi field. Woh pala unka hain, usmey jaakey chukey aaney se accha hai, lekin usmey jaakey phasna nahin*

*(That side is theirs; we should go there touch it and leave; But we shouldn't get stuck there).'*

And I think that, beautifully represents what is our role in the courts. The court is actually theirs, not ours, from a worker's point of view.

I still remember, when I started reading, I remember reading Nelson Mandela's 'A Black Man in a White Man's Court' (where he says that he feels like 'a black man in a white man's court').

Sometimes you are a black man in a white man's court, sometimes you are a woman in a man's court, and sometimes you are a working-class person in an industrialist's court. This is the impression that you get. You are a people's movement in the State's court. Things are loaded against you, but you can't give up, you can't give it a walkover.

There are many things that Nandita Haksar taught me. For example, I used to come with her to the court, and she used to scold me, saying, 'Don't come shabbily dressed'. And she used to tell me that, 'Look, you represent the dignity of your client. Your client may be an adivasi, a working-class person, or a very poor person. But in terms of competence, we have to give it back to them. We must know all the case law, we must be prepared, we must have the best arguments—we must present that face of dignity, because there is equality before the law, and we must assert it. We have to make it equality before the law. Not just in word, but in spirit. We have to force the judges to listen to us. And you cannot do that by doing it in a slapdash way and being sloppy, and looking disrespectful'. These are the things that we started learning—going through the enquiries commissions, through the murder trials and then of course, the thirteen reference cases, coming through the labour court, the industrial court and then, the whole struggle for 65(3),<sup>102</sup> because 65(3) is the same as 17B.<sup>103</sup> We had won those cases of Bhilai in the industrial court.

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<sup>102</sup> See Appendix 2, Section 65(3) of *MPIR Act* 1960.

<sup>103</sup> See Appendix 2, Section 17(B) of *IDA*, 1947.

But people were just given compensation instead of reinstatement, and only Rs. 20,000 as compensation, and till date, nobody has gone back to work, the cases are pending in the High Court. They will continue to pend forever and ever. The really long struggle of the working-class, to just be heard, and most of the time people were dead and gone before we came to the judgement. So... I am sorry, I forgot what your question was—

*It doesn't matter! (Laughter) What we wanted to know, from Dalli Rajhara, how you came to work with the Chhattisgarh Mukti Morcha?*

So, is this sufficient?

*More than sufficient. (Laughter)*



*CMM workers blocking a rail track in protest at the formation of the state of Chhattisgarh. The CMM held that the formation of the new state was not in the interests of the workers, and that the state was formed to service the interests of the corporations. Kumhari Railway Station, circa 2000.*

Source: <https://indianlabourarchives.org>



## COURTS AND LABOUR RIGHTS: SAIL JUDGMENT AND ITS IMPACT

*You were also talking about the parallel cases that were going on, so this compensation came for retrenchment, and there was no question that you (workers) would be reinstated. Another question, sort of tangential, but related—So eighties is looked at as (a time of) pro-labour judgments, and the courts being very active—*

And the nineties is just the opposite. For us, the Bhilai movement started when it was going against the tide. Here the liberalisation tide started and here our movement started. Exactly at the same time, 1991.

It was really tough, because slowly, the precedents which started coming, regarding burden of proof, regarding proving 240 days,<sup>104</sup> regarding adverse inference<sup>105</sup>...

Everything started coming against the working-class. Even back wages, whether you could do judicial review of departmental enquiries. If an employer says that (there is) loss of faith in an

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<sup>104</sup> For any factory covered by the *Standing Orders (SO) Act* 1946, the model standing orders contain a direction to confer permanent status on a workperson who completes 240 days of service. According to Sec.25-B 9(2)-(ii) of the *Industrial Disputes Act*, a workperson who completes 240 days is deemed to be on par with any permanent workperson in matters related to retrenchment.

<sup>105</sup> This draws from the concept of presumption of evidence by the Courts under Section 114 of the *Indian Evidence Act*. Illustration (g) of this Section lays out the situation of such inference in the following terms – (the Court may presume)... ‘That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it’.

employee, then you don't have to take him back. So lot of the judgments against (workers) had started coming, and kept on coming. That was really, very, tough.

Later on, when I did the *ACC case*<sup>106</sup>—the *ACC case* was a reference for regularisation of contract workers—that case, by the time our statement of claims had come in, already the *Air India*<sup>107</sup> judgment had come, and the *SAIL*<sup>108</sup> judgment overturning it. You see, in the cement industry, there is something called

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<sup>106</sup> 'In a marathon case fought by the Pragatisheel Cement Shramik Sangh (affiliated to the Chhattisgarh Mukti Morcha), the Industrial Court had regularised 573 contract workers working for decades together in the ACC plant at Jamul (Bhilai) holding that the contracts were sham and bogus and the workmen were actually the employees of the ACC, which since 2005 is now the Swiss Cement multinational Holcim. During the pendency of the case, the management illegally dismissed and coerced workmen to take VRS by the simple and absolutely illegal device of depriving them of work and wages. All the 300 such workmen were reinstated by the lower court. So they were all eligible to obtain the "full wages last drawn". But Holcim – one of the world's largest cement multinational chose to "comply" with Section 65(3) by paying only as many days wages as the worker worked in his/her last month of service, i.e., mostly 1-5 days wages, since the company had deliberately not been giving work to these workers. The Union, whom Janhit represented, continuously protested at this interpretation. The Hon'ble Single Judge hearing the appeal also decided the issue, to our consternation, in favour of the employer.

'The aforesaid judgement will have far reaching consequences on the entire working class of Chhattisgarh because this illegal, unjust, unreasonable interpretation of "full wages last drawn" will actually encourage employers to give work for fewer days in the last month before illegally dismissing a worker so that he/she is deprived of the benefit of Section 17 B. The Janhit team, with the help of a leading labour lawyer Bennet D'Costa of Mumbai, himself an experienced trade unionist, has filed a writ appeal which would be shortly decided. This case will certainly be a landmark labour matter for Chhattisgarh.' From *Janhit Bulletin*, June 2010.

<sup>107</sup> *Air India Statutory Corporation vs. United Labour Union*, (1997) 9 SCC 377. This judgment laid down that in view of Section 10 of the *Contract Labour (Regulation and Abolition) Act, 1970* the employees of contractors stood automatically absorbed in the service of the principal employer.

<sup>108</sup> *Steel Authority of India vs. National Union Waterfront Workers* (2001) 7 SCC 1. This judgment overruled the *Air India* Judgment (1997) and held that such auto-absorption is not mandated by law.

the Cement Wage Board that has been in force since the 70s.<sup>109</sup> That says very clearly that in cement production, you cannot have contract labour.<sup>110</sup> Contract labour is prohibited in cement production except in loading and unloading of raw material, and in packaging. Even there, the workers are supposed to have the same pay scale as regular workers.

It's an agreement (in the industry), it's like an abolition (of contract labour), but coming from an industry-wide *award* (i.e., a decision made by a panel, in this case, the Cement Wage Board). It's very important, because it's the first *award* in the private (sector). You know, there are such *awards* in the steel industry (but that's) in the public sector (where the decisions are arrived at) after National Joint Consultations with the trade unions—but this is private sector. Cement was more or less in the private sector, but the Cement Wage Board had been set up.

So, initially when we took up the case, it was more as if we were saying, 'Okay, now give us the Cement Wage Board'. So that would lead to abolition of contract labour. By that time the *SAIL* judgment came and it was very clear. Even if contract labour is abolished, so what? Even then, you go out.

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<sup>109</sup> Cement Wage Board is a tripartite body with representatives of management, and workers, presided over by an independent person nominated by the Government. The Board is required to fix wages in accordance with the principles of wage fixation.

<sup>110</sup> The Cement industry employs the maximum number of contract labourers according to a study by the Labour Bureau. See Labour Bureau, Government of India (2001), *Report on the Working Condition of Contract Labour in Cement Manufacturing Industry, Cement Related Mines, Food Corporation of India and National Thermal Power Corporation*, Ministry of Labour and Employment, Government of India, Chandigarh/Shimla, 2000-01, available at <http://labourbureau.gov.in/slcrep.html>, last seen on 8/10/2020. A description of this report is also available in All India Organisation of Employers (2012) *Industrial Relations & Contract Labour In India*, New Delhi, 28th November, available at <http://www.ficci.com/spdocument/20189/Industrial-Relations-and-Contract-Labour-in-India.pdf>, last seen on 14/11/2014.

The *SAIL* judgment is such a cruel blow, such a cruel blow, to the struggle of the workers for regularisation, because you are a contract labourer. There is a notification abolishing contract labour in the work that you do. You cannot go to court. Because if you say, that I am doing work, in which contract labour has been abolished, the *SAIL* judgment says that, ‘Okay fine, you’ll be thrown out’, and they will start a recruitment process.

Because they say, ‘You have come through the back door’. But the front door is never open! So obviously, everybody is going to come through the back door, *na*? You are not doing any recruitment! This *Umadevi*<sup>111</sup> is similar. *Umadevi* and *SAIL* judgment, by using hypothetical concepts of natural justice that—suppose somebody had applied, but had not got it, but you are somebody less qualified, but you got it as an *ad hoc* appointment. So this hypothetical natural justice *ke naam par* (only in name), you are doing a huge injustice to people who have been working for decades. And those people who have been working for decades cannot now come to the court! Who will come to the court to lose their job, *yaar*? So, the only scope that remained after the *SAIL* judgment came in—I don’t know, is it too technical?

*No, no!*

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<sup>111</sup> *Secretary, State of Karnataka & Ors. v. Umadevi & Ors.*, AIR 2006 SC 1806. In this judgment, the Supreme Court laid down that any contract employee or and daily wager or temporary worker who has not been recruited through a normal general procedure, even if he completes 240 days or more, cannot seek permanency.

## PROVING A SHAM AND BOGUS CONTRACT

(So) the only scope that is remaining in the *SAIL* judgment was to prove that the contract is sham and bogus. And of course, it was sham and bogus. But that requires a hell of a lot of proving and that is the tough task as a lawyer, which I had. As I was telling you earlier, it was a task that I could not have carried out, had I not been a trade unionist, and if I was not living there, in the labour colony, next to the workers—I couldn't have proved it as sham and bogus.

Sitting far away somewhere, in a very intimidating office, the workers would not have opened up; I would have never been able to get all those extra bits of information. Because, here were workers who were working for thirty years, twenty-five years, more than that, who were being rotated in every department of ACC, who were doing all the cement production processes—they were going in the kiln, in the power plant, in the gantry, everywhere—and they had not a scrap of paper to show! They had no pass, no *hazari* card—

Earlier their PF (Provident Fund) used to be taken under the ACC account and that was one proof that they had. They used to get treatment at the ACC hospital—that was one proof that they had. They used to be given uniforms by ACC. All that, during the pendency of the reference, they changed. We protested at every juncture. They changed the PF codes, they stopped taking them in the hospital, but we were able to prove the sham and bogus nature, because workers started coming up with their own kind of proof.

The beauty of it all was, because contract labour is prohibited in the cement industry, so no contract could be given of cement production work. The only contract you could give was loading and unloading.<sup>112</sup> So, we first asked for all the documents. We got all the documents. Every contractor was shown to be doing loading and unloading. Now our difficult task was to show that, look, this guy says he's doing loading and unloading, but actually he's doing something else, he's not doing loading and unloading.

For example, workers came to me and said, 'See *didi*, this is the badge we are given when we go to the power plants'. I said, 'You are working in a power plant!' The badge had no name, only a number on it. We deposited all those badges and we thought, 'Why is the company doing this?'

The so-called contractor claims that they are doing loading-unloading, but actually they are going to the power plant. They are doing unsafe work. This is the kind of work they do. So this is the way we slowly built up the case, for a sham and bogus (contract) case. The cross-examination of the contractors would go on for days together, and we were able to, from their own documents, basically tear them to bits. But, it could not have been done if (we were) maintaining a distance from the workers.

At every stage, the witnesses were threatened. Group by group, as the case was progressing—it started with 573 workers—they were denied work, and it's surprising! We had already moved for an interim order, protecting their services. That interim order was passed in our favour. But every time, ACC would take shelter saying, 'We don't know anything (about) what the contractors are doing'. Whereas, we are saying that, 'They are sham and bogus contractors, so you are responsible'. Still, under the nose of the court, group, after group, after group, was retrenched.

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<sup>112</sup> According to the Cement Wage Board Agreement of 1970, contract labour is permissible only in loading and unloading activities.

The casual workers—that means that they were not even contract workers—were directly employed by ACC. For ten months, they were not given wages during that struggle. Living for ten months without wages is a big thing. So, about 150 of them signed so-called VRS [Voluntary Retirement Scheme].<sup>113</sup> All these groups were given VRS and the so-called representative union, the INTUC [Indian National Trade Union Congress]<sup>114</sup> union, were the ones getting all these things signed.

We have Madhya Pradesh Industrial Relations Act (MPIRA), like the Bombay Industrial Relations Act (BIRA), and there is a representative union,<sup>115</sup> which is the favourite union. We were just a registered union. But, we were the ones representing the contract labour. So, it was really tough. How do these workers survive? How does the union carry on, despite all this? And moving all these interim orders.

In the meantime, ACC is a very rich company.<sup>116</sup> It can go to the High Court, it can go to the Supreme Court, and it can go all over the world and back. Possibly, had there not been somebody like me, who is an in-house lawyer, the Union could not have afforded also, to take on the ancillary litigation that happened, '*Ki High Court mein ek daal diya, udhar ek application daal diya* (We got an interim order here and they appealed against it somewhere else)'.

How do you get somebody there, how much do you spend to do it? These are very poor workers, all having minimum wages only.

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<sup>113</sup> Voluntary Retirement Scheme (VRS) is a method used by companies to reduce surplus staff. This mode has come about in India as labour laws do not permit direct retrenchment of unionised employees.

<sup>114</sup> INTUC is the trade union wing of the Indian National Congress (INC) formed in 1947.

<sup>115</sup> Chapter III-A of the *Indian Trade Unions (Madhya Pradesh Amendment) Act, 1960* [M.P. ACT 28 OF 1960]

<sup>116</sup> ACC is a subsidiary of Holcim, the multi-billion dollar building materials company, based in Switzerland.

It was a union, where half the union is out of a job, so how do you even make contributions for the legal case? It could not even have been possible using commercial lawyers. That was a big lesson for us. Sometimes it is also frustrating, '*Ki khoda pahaar aur nikla chuha* (literal: To dig up a mountain and find only a rat, i.e., an exercise in futility). How much work do you have to do just to prove your case? Everything is loaded against you.

*This is still in the case where RTI and all are not there. So how did you manage?*

As I told you, most of the documents, we made them give it in the court itself. We asked them for all the work orders of all the contractors. We asked for all the PF forms and from their own forms, we showed that each worker had put in more than 240 days<sup>117</sup> in a year. Those documents that they gave to the labour department, which were amenable to RTI also, possibly –

*Now it is, at that time RTI wasn't there.*

Yes. So basically, it was through the court.

*Co-operation of the labour department?*

Zero! Because all these things came first through the negotiations, which failed, and that's how the references were made—and how much we had to struggle for the reference! This reference actually happened because, out of the seventeen workers who were killed in Bhilai in the firing, three of them were from ACC. That became an issue, and there was a police firing inquiry commission, which, mind you, held that the firing was not incorrect, because workers were agitating and throwing stones and all that.

But, what did help us is that they said that the basic issue is *chadma thekedari pratha* i.e., a bogus contract labour system. That was the one thing we depended on. That was one of the

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<sup>117</sup> Section 25B 2(ii) in *Industrial Disputes Act (IDA)*, 1947, *supra* 104.



documents also, that we brought to the fore. It's on that basis that the references were made on sham and bogus [contracts]. So it was a very long battle, which is still not completed. We won in the Industrial Court—573 workers to be regularised. Not only were those who were working said to be regularised, those who had been thrown out during the pendency of the reference were reinstated. Now, if they are reinstated, they should get 17B<sup>118</sup> when the employer appeals. But in the 17B, ACC played such a trick. Why did they take so-called VRS? They took VRS because actually, they had been deprived of work and wages. In the last months, they were being given just two days work, or one day's work, or zero days' work. So, ACC said, 17B, last wages drawn means the last wages in the last month. So two days' wages, one day's wage, three days' wages – this is what they were giving!

*(Interruption)*

In ACC, basically, what we had was—here was a company, [in] an industry with regard to which already an agreement existed, that contract labour basically stood abolished in the production process, and yet it was not being implemented. In order to circumvent it, the contractors would be shown to be doing loading and unloading, which was permitted work. Actually, they would be doing production! We had the tough task of proving this on merits in the court, which we succeeded in doing.

There were two problems, which were, the lack of sensitivity of the court to the fact that groups, and groups of people were being removed during the pendency, using the same sham contract, which was being challenged. When the order of reinstatement came, as I told you, the whole purpose of 17B is that workers can survive a long litigation, but the language is very clear—full wages last drawn.

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<sup>118</sup> Section 17B in *Industrial Disputes Act (IDA)*, 1947, *supra* 103.

If an industry is not going to give [wages] for a certain period, the burden is on them to show that for that many days, the person was actually gainfully employed. The burden is on the company. So, that means that every day is being counted—you cannot have this interpretation.

Unfortunately, the High Court did go in for that interpretation. Now, that is a different story for that litigation because, we went in for a division bench against that particular order. Now, a judgment of 17B is not considered an interlocutory order.<sup>119</sup> That is how the labour law is. Yet, the issue of maintainability was raised by the company and the division bench ultimately said, ‘Oh well, we won’t go in to all this, we are simply passing an order, let the High Court decide the matter expeditiously’. So, the whole purpose of 17B—which was that people should be sustained and also that companies should not prolong litigation, because they know that 17B is there— failed. We appealed that order in the Supreme Court, but tragically the Supreme Court also did the same thing. The SC basically directed that this issue of 65(3)<sup>120</sup> or 17(B)<sup>121</sup> should also be taken up. By that time, of course, the single judge had also passed an order. It was a very complicated litigation.

In the meantime, against the Industrial Court’s award, the High Court gave an order. On merits it could not budge, it had to say sham and bogus contract. But, it raised an issue, that this relief can only be given to those who have proved that they are members of the union. Now, normally when a reference has been preferred by the State government, there is a presumption that the union

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<sup>119</sup> An interim order on issues subordinate to the main one, which need to be decided while the case is ongoing. The purpose of an interlocutory order is to protect the interests of both the parties during pendency of the case.

<sup>120</sup> Section 65(3) of the *MPIR Act*, 1960, *supra* 102.

<sup>121</sup> Section 17B of the *IDA*, 1947, *supra* 103.

must be representing the workers. But, strict proof was asked by the court and here we found another scandalous thing.

The membership slips of the workers—which had been submitted before the Industrial Court—some of them were found to be missing. When all of those records were going up and down, some tampering seems to have happened. We filed a complaint against with the registrar, but I don't know what is going to happen with that. As a result, for a large number of workers, their membership slips were not on record. Whereas, it is not only membership slips, but oral evidence where people said that they came representing entire groups of workers, saying that these entire groups of workers are members of the union. So, there could have been other kinds of evidence relied upon. But basically, that is what the High Court did—despite the fact that the High Court order actually gave us less than what we wanted and the court order of course, said that a person who has taken VRS—well, it is voluntary, failing to look at the whole coercive process which took place.

So, when the litigation started there were 573 workers. Litigation means when the demand was raised, about which the reference was there. By the time the reference was made—the demand was made in 1990, the reference comes in 2000, so already 10 years have passed—the 573 has already dwindled to 350.

The reference starts in 2000, goes on until 2006, when the award comes. In the meantime, about 200 workers have been removed batch by batch. Then only 150 are remaining and then, the High Court prunes even that 150 and says that only those with membership slips. That's when we said, 'Okay, let's not go for further litigation'.

We demanded that those who have been regularised by this order must be given jobs. It is also very contradictory, because on the one hand you are saying that the contract is sham and bogus, then how will you regularise only one person? You will regularise

everybody under the contract. It is not logical to say only persons who have the membership slips.

If the contract is sham and bogus, the contract is sham and bogus! That means there is nothing now between the employer and the employee. The contractor stood in the middle and he is now out of the way. Now, there is a direct relationship. Anyway, even with all those criticisms of the High Court, we sat for *dharna* (protest) for three months, saying that, 'Implement the High Court order, because we don't want another round of litigation'. The company refused. In the meantime, many things have happened.

In 2005, ACC was taken over by Holcim, a Swiss multi-national. With Holcim coming, all management salary shot up to 1 lakh, a lakh and fifty thousand, and the kinds of profits that Holcim is making! Holcim is closing down its European plants and coming to India. It's a huge company. It has very deep pockets. The political establishment, the administration is literally eating out of their hand. This company—if you look, we've made a calculation, if you give me two minutes I will show you the calculation in difference in wages. (*Gets up*)

What does it mean for a multinational to come down here (*shows calculations*). So we've made a calculation here. They not only took over ACC, they took over Ambuja (Cements) also. Now, in Ambuja, a contract labour is paid around 100-150 rupees a day. That is below the minimum wage in many cases, that is unskilled kind of wage. In ACC at least they are given a little more than that, 180 to 190 rupees a day. According to the Cement Wage Board, what they should be getting is 450 to 650 rupees a day.

## CONTRACT LABOUR

*Does Contract Labour get paid this amount?*

No, there shouldn't be any contract labour. That's what regular workers are getting and it is dwindling—it's less than 10%. In Europe, the minimum wage per day would be 2,279 rupees at present. If you calculate what the Holcim CEO gets, he gets well, 8.8 lakh rupees per day and the top shareholder of Holcim gets 2.1 crore rupees a day. If you look at this mountain (of difference in wage), then obviously Holcim can regularise its workers. Even if it didn't regularise them, the contract workers are supposed to get the same pay scale as everybody else. Contract labour was never seen as a device to underpay workers. It is seen as a device that when there is work that is not permanent enough, perennial enough, for a short period of time, then we cannot force an establishment to take permanent workers.

But, you can say, '*Theek hai* (okay), you take contract workers for a particular job'. But this does not mean that for 30 years, 40 years, they are doing production. Then obviously you need them, they are regular workers!

Anyway, as I said, for three months there was a huge agitation. Meanwhile, of course, all kind of methods have been used by Holcim against the workers. Every agitation, there have been criminal cases. There are criminal cases against all the major office bearers. In Ambuja, you see, what had happened was that not even minimum wages were being given and there was a huge

strike. Minimum Wages Act (MWA) was finally imposed, ESI (Employees State Insurance), bonus, and several other things.

After that, they started removing members of the Union. So, about eighty to hundred workers—members of the Union—had been removed from Ambuja cement and they were agitating. There was a conciliation and the conciliation came to a point where the labour commissioner said, ‘If by the next date, you don’t take back these workers, we will think about cancelling your licenses’. So, it was really that kind of a point. You must have read in the papers, Tata Steel<sup>122</sup> where there was firing by security officers, in Jindal, security forces fired in Angul.<sup>123</sup> Now they have an Orissa Security Forces Act,<sup>124</sup> which has legitimised the use of force by security, and said that you can actually have a security force where you can absorb private security forces.

*So this is beyond CISF?*<sup>125</sup>

Yes, yes. Basically, they are going to legitimise the force that industrialists are going to have and industry is going to pay

<sup>122</sup> The Kalinganagar firings—three major instances of firing at workers by security guards of Tata Steel in tandem with the local police—in 2006, in 2012, and again in 2014. The first one was at agitating local tribal people (at least 14 dead), whereas the second, and the third were at agitating contract labourers.

<sup>123</sup> The incident happened on the eve of Republic Day in 2012. See Haque, Saiful (2012), *8 Sustain Bullet Injuries as Workers-Security Guards Clash at Tata Steel Campus*, in *India Today*, on 25th December, available at <http://indiatoday.intoday.in/story/tata-steel-workers-shot-firing-campus-clash/1/239419.html>, last seen on 17/11/2014.

<sup>124</sup> *The Odisha Industrial Security Force (OISF) Act, 2012*, Odisha Government Press, available at <http://govtpress.odisha.gov.in/pdf/2012/2034.pdf>, last seen on 15/03/2019. An act to provide for the constitution and regulation of an armed force of the state for better protection and security of industrial undertakings owned by the state Government, certain other industrial undertakings including private industrial undertakings and certain other establishments and employees of all such undertakings and establishments and for matters connected therewith and incidental thereto.

<sup>125</sup> CISF—Central Industrial Security Force.

for that force. They are going to take the police on hire—it is a privatisation of the police. Anyway, (there was) this Y. P. Singh (Security Officer at Ambuja Hoclīm), a notorious person—several FIRs had (previously) been filed against him. He took his pistol around, and threatened people. No action had been taken against him. He had an altercation in the village *bazaar* (market) with some of the workers who were also the residents of those areas.<sup>126</sup> You see, in Ambuja, the anger against the company was very raw also, because a lot of people lost lands and none of them have gotten permanent jobs. It's not only losing land, but the mining which has taken place, the way public lands have been taken over, even the canals, and ground water is taken up—so, there is whole impoverishment.

Rather than this whole idea of development (of saying) it is going to trickle down, (we should ask) but how does it trickle down? Practically it (should) trickle down through the wages of people, *na*? And that circulates in the market and creates prosperity. But, if you are going to take things away and give very little wages, then how is anything going to trickle down? It's all going to Switzerland as far as I can see (*Laughs*).

Everything is going upwards, there is nothing trickling down. So, over there, there was a lot of anger, and there was a fracas, and sure enough, he [YP Singh] was beaten up. That is true that he was beaten. The company used this opportunity to file false cases

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<sup>126</sup> For details about the situation and the subsequent police action and arrests, see *Chhattisgarh Mukti Morcha's Appeal for the release of Bhagwati Sahu* (2011), on *Dilip Simeon's Blog*, available at <https://dilipsimeon.blogspot.com/2011/11/chhattisgarh-mukti-morchas-appeal-for.html>, last seen on 8/10/2020. See also Sethi, Aman (2012), *Trapped in Concrete Woes*, in *The Hindu*, 22nd February, available at <https://www.thehindu.com/news/national/other-states/trapped-in-concrete-woes/article2919179.ece>, last seen on 8/10/2020. See also *Labor Day: Release Lakhman Sahu and 6 Other Trade Unionists #Chhattisgarh* (2014), on *India Resists*, available at <https://indiaresists.com/labor-day-release-lakhman-sahu-and-6-other-trade-unionists-chhattisgarh/>, last seen on 8/10/2020.

against all the twelve union leaders. Bhagwati Sahu, who is an elected *Janpad* [*Panchayat*/Village Council] leader, was put in jail—for thirteen months. The case on him is of looting a mobile, and of some cash, 3,500 rupees. They said that, ‘*Hum ne in jaakey uske ghar se baramat kiya, 500 rupiya*’ (We recovered five hundred rupees from his house [out of that 3,500]) (*Laughs*). I mean, it is ridiculous! He is in jail, and not given bail<sup>127</sup>—

(*Interruption*)



*Sudha addressing a memorial meeting for Shaheed Shankar Guha Niyogi organised by all the factions of CMM, coming together for the first time on the anniversary of his assassination, 28th September, 2014 at Bhilai. Leaders of other CMM factions can be seen sitting on the stage – Bhim Rao Bagde, Janaklal Thakur, Basant Sahu, Prem Narayan Verma. Source: Janhit*

<sup>127</sup> Lakhan Sahu and other Union leaders subsequently got bail from the High Court. They have all now been acquitted in the cases.



## WHITTILING DOWN LABOUR LAW PROTECTIONS

*Isn't there a protection, immunity under Section 17 of the Trade Unions Act<sup>128</sup> for trade union members and office bearers against conspiracy charges? So, how is it that criminal charges were put against the trade union leaders?*

In practice, it doesn't exist. Look at this *Manesar*<sup>129</sup> thing, *yaar*, where everybody is put inside. See, the problem is, even civil immunity (doesn't exist), they put civil cases against us. The Pragatisheel Cement Shramik Sangh (PCSS) is facing a case, where 85 lakhs is being asked, as damages for a one-day strike that happened. The first thing that we did was to move under the Trade Unions Act saying that we have immunity, but it was not considered. Because, you see, even there, the precedents have gone against us. They would say, 'Oh! If there are *tortious* acts, and if there is an act of violence...'

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<sup>128</sup> *The Trade Unions Act, 1926:*

Section 17. Criminal conspiracy in trade disputes.—

No [office-bearer] or member of a registered Trade Union shall be liable to punishment under sub-section (2) of section 120B of the Indian Penal Code (45 of 1860), in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in section 15, unless the agreement is an agreement to commit an offence.'

<sup>129</sup> The Gurgaon Manesar incident at Maruti Suzuki India Ltd was allegedly triggered by a dispute and termination of an employee (using casteist slurs), which led to violence and resulted in the burning down of a section of the factory leading to the death of an HR Manager and injuring a hundred workers. Subsequently, 147 workers were arrested and non-bailable arrest warrants issued against 66 of them. Services of 2,346 workers were terminated and police brutally lathi-charged (baton charge) the protest march held in Kaithal. A detailed account of the incident is available at <http://marutisuzukiworkersunion.wordpress.com/>, last seen on 17/11/2014.

*Exceptions have been created.*

So many exceptions have been created that it does not make any sense anymore. So, actually that entire edifice of protection to working-class, the only category of people who actually had jurisprudence, is gone now. So, in that case, you won't believe it, we tried for anticipatory bail [but] it got rejected. We tried for bail all the way up to the Supreme Court [but] it was rejected. Some way or the other, it was the power of the company because, in the High Court, it was the son of a High Court judge who was the objector to the bail. This is a power game and unfortunately, the workers have everything loaded against them. But, the very positive thing you see, there are two-three things that we have learnt from our entire legal experience in the trade union movement.

One thing was, fortunately, we never did purely legal, I mean, only have a legal strategy. The union was always active. Even in the criminal case. After we struggled and got an open-court order, people used to flock to the courts. They went all the way up to Jabalpur. They courted arrest so many times. The struggle began with getting the CBI (Central Bureau of Investigation) rather than the local police to investigate, and then taking it all the way up to the top, right up to the Supreme Court, the union (CMM) was separately represented from the state and the CBI. The CBI by itself would probably not have gone that far. We, of course, were very lucky in the High Court when we managed to persuade the CBI to appoint Mr. Kannabiran as the prosecutor. So he always used to joke with us saying, 'I am always on the defence, but this is one of the rare cases when I am on the prosecution'. And he did such a marvellous job, but the High Court acquitted everybody. So, one thing was the involvement, continuously, of the union and the people in the legal processes. Of course, ensuring that that wasn't the only strategy. This is very important.

## A SOCIO-LEGAL STRATEGY: UNIONISATION AND THE USE OF STRIKES

*After the recent Supreme Court judgment<sup>130</sup> on the legality of a strike, how has it been with respect to strikes, in terms of street strategy?*

Look, strikes have always been repressed. Earlier the law used to say that they are legal, but they were treated as illegal. Now law also says that they are illegal. But tell me, what is the choice for the worker? He makes applications (but) the applications are not heard. The Labour Commissioner's office is like a post box. Many times, the workers say that we should just put locks (on the labour office). They are incapable of even getting the other side to sit down for negotiations.

The joke is, (if) your demand was for documents, and conciliation failed, you go to court, and the court asks, 'Where are your documents?', and we respond, 'That was what we are fighting for!' This is ridiculous, it doesn't make any sense!

Ultimately, workers have to resort to strike. That is the only thing that they have in their hand, the fact that they can affect production. The problem is (more about) sustaining the union. Unions are no longer sustainable. You see unionised workforce is dwindling. It is only the permanent workers who can really be unionised. To unionise the rest of them, the contract workers, is very, very tough. The moment you unionise them, they are thrown out of their jobs. They don't have protection, they don't have documents, you can't use legal strategies to protect them

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<sup>130</sup> *TK Rangarajan v. State of Tamil Nadu* 2003 (6) SCC 581.

and there are so many waiting to take their place. Sustaining a trade union now—with the increasing stranglehold of corporates over the district administrations, the political establishment, the MPs, and MLAs, there is even less scope—is tough.

But, if these guys were sensible, they would have realised that labour laws, most of them, came in after the Russian Revolution. So, the industrialists realised that this is not going to go away and it is better to sit and work it out at a table, than have it out in the streets. It was actually a protecting measure and also to control the working-class from becoming too political, to be very frank. If they are going to undo all of that, then I am afraid they are going to see the kinds of strikes and agitations that used to be seen in the pre-labour law days. Because, there just doesn't seem to be any recognition of this fact.

*The traditional trade union model isn't sustainable simply because you don't have too many regular workers. So have you thought of what are the alternatives?*

Niyogi's model was the alternative model—that you not only organise at the workplace, you also organise at the *mohalla* (street level/grassroots), with the peasants around, you organise around the families and the womenfolk. You organise around all the issues that affect the workers. The union office then becomes a centre for people to flock to, whatever the problem—be it marital problems, some hand-pump is not working, some *jhagra* (fight), some inter-caste marriage. So, that becomes another alternative power centre.

The other thing is sustaining people through the long strikes. In Bhilai, that is one of the beautiful things that used to happen. In Shaheed Hospital, there used to be free treatment to the workers. Niyogiji's understanding was that in a strike, what really breaks down the workers? First, the legal cases, so even today, all the

legal cases are done by the union. We don't leave people to the mercy of their criminal cases. The union takes care of the cases.

The other thing he says that breaks down the people is when children stop going to school. So, he had stated, that we should have a fund for the striking workers' children and distribute uniforms, books, etc. Now, we are not strong enough to do that, because Dalli Rajhara was a very strong union, which supported that. But now, with those permanent workers also retiring and no fresh recruitment there actually; there was a time when the workers were financially stronger than the peasantry around them and they were supporting the peasantry. Now, it is the other way around, because now the workers are the poorest of the lot. You can just imagine, (with) minimum wages, it comes to around two and a half thousand rupees a month. It is very difficult for a family of four persons to survive on it.

But, we have maintained many of those traditions of Niyogi. For example, the worker-peasant alliance is very important. When the peasants fight against the company for jobs, for issues of water, for pollution, about blasting in the mines, about accidents that take place, the workers join in. Also, women are a very important part of the struggle.<sup>131</sup> Quite contrary to traditional thinking, which is that women and the families pull back the workers from

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<sup>131</sup> '...One of the inner strengths of the Dalli Rajhara miners movement has been the involvement of women. In the manual mines of Dalli Rajhara where CMSS had its original base, women constitute almost half the workforce. This is because the nature of the work makes it convenient to work in pairs (husband and wife teams are common). This is in sharp contrast with mechanised mines where skill and educational requirements have debarred women as they have debarred local Chhattisgarhi people. Right from inception women played a significant role in the struggle. Among those killed in the 1977 firing was Anasuya Baithe, popular folksinger of the union. From the first executive itself, the CMSS had women in its committee which is rare in Indian Trade Union movement. The active involvement of women has practically eliminated the sexual violation of women by contractors and their henchmen, once the scourge of Dalli Rajhara mines.' PUDR (1991), *supra* 68, p.4.

the strikes. If they pull them back that is because you have such a patriarchal relationship in the house—they can not only be with you, they can be ahead of you in this fight, if you bring them into the struggle.

Fortunately, Chhattisgarh is not as patriarchal as western Uttar Pradesh and Haryana, and women go to work, there is not much *purdah* (seclusion of women and/or covering face/head). So women in our union are very important, whether they are workers themselves or wives of workers. They are half the struggle. But that means that their issues have to be taken up. And the patriarchy within the union also has to be fought. So basically the union has to be very deeply rooted. It's only then that it can survive.

The other thing that we have realised is that the very important aspect of Niyogiji's understanding was larger solidarities. See, today, even more than the workers it is the peasants who are fighting the big corporates. Because they are fighting against displacement—the adivasis are fighting and the peasants are fighting. So, a big alliance needs to be made.

Niyogiji used to say that this is a new kind of imperialism. This form of very big financial capital coming in, every big investment and even Indian companies are as good as multinationals, Tatas, Ultratech, as good as that. Against these having this broad alliance not only of workers, also the peasants, the small shopkeepers (is) in fact, one very incredible exercise.

In Dalli Rajhara, when the union first started, everybody was pitted against the union. The permanent workers, the regular trade unions, of course the contractors, the Bhilai Steel management, the district administration—everybody. This union struggled, and it was not an easy struggle. There was police firing, people died, and many people went to jail. But, slowly the union became very strong. When mechanisation came to the Bhilai steel plant, it was

the union that spearheaded the anti-mechanisation struggle.<sup>132</sup> Shopkeepers, truck owners, truck operators, all came behind the union. Because they realised that if there was not going to be a working-class force, there is not going to be any trade, this is going to become a ghost town, and it had a population of more than a lakh.

So the working-class became the leader of a big united front, against unnecessary mechanisation. You would bring in Canadian machines paying the precious foreign exchange and it wouldn't have worked in these circumstances, it would have (affected) so many people... Niyogiji actually calculated and showed that it makes economic sense to have semi-mechanisation, which is, you mechanise the bits that are dangerous and most unhealthy, but the rest of it is actually more profitable to be done non-mechanically.

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<sup>132</sup> 'As the agitation against mechanisation intensified initially in January 1981 Niyogi, Sahdev Sahu and Janaklai Thakur were served externment orders which were struck down by the courts. A fortnight later, on February 11, Guha, Niyogi, and Sahu were invited for talks by the District Collector, Durg. When they reached the office they were detained under the National Security Act (NSA). Workers went on strike. Two months later they were released by a judicial review committee. Finally the Steel Plant management climbed down and entered into an agreement with the union in the presence of the Chief Labour Commissioner. Partial departmentalisation was agreed upon, and the threat of mechanisation was held in abeyance. Meanwhile CMSS evolved an innovative plan for semi mechanization that would have increased production and productivity without resorting to retrenchment.

'This alternative, in the context of an underdeveloped economy like ours, attracted widespread attention. In November 1983, Niyogi along with a number of fellow activists and workers attended a convention in Delhi on 'Mines, Mechanisation and People'. The meeting, an attempt to initiate a debate between academics and union activists from different parts of the country was sponsored by the People's Union for Democratic Rights. Eventually, faced with the workers resistance and the credibility gained by their alternative proposal, the Steel Plant management did not pursue its plans. Much later in 1989 the management made another attempt. This time a number of workers, especially women were surreptitiously getting retrenched. The workers went on strike for three weeks in May forcing the authorities to retreat once again'. PUDR (1991), *supra* 68, p. 4.

For example, open cast iron mining; If you have eyes, you know where to dig. The machine doesn't have eyes, it just digs up everything. You have to do additional crushing... You know, you have to use the human agency somewhere. So, actually it worked out better in every sense.<sup>133</sup>

The labour in Dalli Rajhara got the distinction of having the maximum number of fixed deposits in the state bank in the whole of the country, because the wages went up when people struggled. Of course, there was also a huge anti-liquor struggle. The moment wages increased, it started going into liquor.<sup>134</sup>

There also, Niyogiji had a very interesting strategy. It was not of looking at liquor only as a moral question. It's not a moral struggle.

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<sup>133</sup> See Sen, Ilina (1992), *Mechanization and Women*, from Basu and Sanyal ed. (1992) *Sanghrash-O-Nirman, an anthology of Shankar Guha Niyogi's writings*, edited by Purnendu Basu and Shankar Sanyal, published by Anushtup, Kolkata (Translation from original Bengali text by Maitreyee Chatterjee). A copy of the extracted article is available at: <http://sanhati.com/wp-content/uploads/2013/09/MechanizationAndWomen.pdf>, last seen 18/11/2014.

<sup>134</sup> 'In the initial years all the additional increases in wages achieved by the union were being leaked out due to widespread alcoholism among the male workers. The contractors who lost on the wage front were able to siphon off the money through the sale of liquor. According to official figures the consumption of alcohol in Dalli Rajhara increased one and a half times in 1976-1982 (20,000 to 36,000 proof litres). The license fees for the thekas went in the same period from Rs 5.5 lakhs to almost Rs 1.4 million. This kind of alcoholism among the male workers also meant the domination of a lumpen-degenerate culture in the streets and wife-beating and destitution in the homes. Often it lead to death and destruction. In a major tragedy in the nearby Mahasumund large number of workers died after consuming adulterated liquor in 1981. It was against this background that the CMSS took up an anti-liquor campaign. The campaign and its effective implementation was made possible by the participation of women workers. Initially the movement faced the wrath of liquor contractors (who were not particularly distinguishable from mining and labour contractors!) and their political patrons. There have been some cases of assault on the activists in this period. But eventually the campaign enhanced the effective income of the workers and made a visible difference to the personal and social life of the township.' PUDR (1991) *supra* 68, pp. 4-5.



He said, ‘See, what the capitalist gives you with one hand, he is taking away with another hand. Drink is the first enemy of an organisation. You can’t get organisations if you are drunk.

You are going to be squabbling with your wife, fighting with each other, beating her up, ruining her health, and there cannot be any collective effort when there is drinking’. It was taken as a political issue and it actually worked.<sup>135</sup>

Only very creative trade union organising will sustain today. It has to be very deeply rooted and very courageous because now, private industries are just out to attack.

In Raipur, for example, several efforts at unionising have not worked. Vandana Steel—there was [an] attack of goons against our union leaders. In Sunil Steel, one group of workers was arrested from the factory and while they were in jail, another group of workers was made to work. Clashes were there between them. Now, the industrialists have a much better grip between the police and the administration. So it [organising unions] has to be very courageous. People have to be there on the ground, fighting and facing all this. Trade unionising is not easy. Then again, to weave in a legal strategy, which takes a long time and there are lengthy litigations, how do you protect people during the litigation? It’s a difficult thing.

*So that is also important, because, as you mentioned, a union is not capable of financially sustaining legal litigation through the years and workers aren’t – So, how do you sustain such legal strategies, financially?*

Well, the biggest thing is that I am free (*Laughs*). I am a free lawyer so they don’t have to pay me anything. Of course, the union itself

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<sup>135</sup> See Dogra, Bharat, (1992) *Haryana Aur Chhattisgarh Ke Sharab-Virodhi Andolan (The Anti-Liquor campaign in Haryana and Chhattisgarh)*, New Delhi, available at <http://sanhati.com/wp-content/uploads/2013/09/SGN-Hindi2.pdf>, last seen on 18/11/2014.

has to still gather funds, but another thing is that I think larger solidarities are one way to help.

Because I remember, when we used to go down to Jabalpur, we had very friendly relations with the Bargi Baandh [Bargi Dam] organisation there, the Narmada Bachao Andolan (NBA).<sup>136</sup> Everybody would just go without tickets on the train and the Narmada Bachao people would welcome us and put us up—and put up with us, both (*Laughs*)— while we were there and we were doing our litigation. Otherwise, yes, if this had to be paid for at every step, it would not have been possible. The only substitute for capital is labour, so you do lots and lots of labour, lots more labour (*Laughs*).



*Sudha at the Janhit office in Bilaspur, 2014. Source: Janhit*

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<sup>136</sup> Social movement to provide legal representation and information to concerned citizens about the construction of large dams over the Narmada River that has displaced millions of people. See <http://www.narmadaandolan.org/> for more information.

## THE CHHATTISGARH MUKTI MORCHA

*Ma'am, one of the problems of coalition politics are the splits that happen, whether it be ideological splits, or strategies you don't agree with-*

Coalition politics you mean?

*By which I mean solidarity with movements, maybe Marxist, or Gandhian. So in that kind of solidarity, coalition structure, splits happen.*

They will. I am afraid they will. See, Niyogiji for example—right from Gandhians to Marxist-Leninists—a lot of people could come up and identify with him and work with the CMM.<sup>137</sup> His understanding was, at this moment we have to work with the most reactionary force, which at that time he perceived as the emerging nouveau-rich class. That pattern of crony capitalism, which we now call crony capitalism, then that was not a word, but I think he had gotten on to that. He said, 'Now, everybody

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<sup>137</sup> 'The innovative features of this militant mass movement are informed by alternative visions of developmental processes. Yet it is confined to the constitutional boundaries imposed by a ruling elite against whom it is fighting. Directive Principles of the Constitution articulated with more clarity and forthrightness are its hallmark. Enforcement of labour legislations is the arena in which the battles are being fought. The movement pursued peaceful methods with remarkable patience in a political environment where violence has become the only language which the rulers can understand. Realisation and appropriation of democratic space within the threshold of the constitution is the essence of the Chhattisgarh movement. It is this process, spread over almost three decades, that changed the life and living of the people of the region.' PUDR (1991), *supra* 68, p. 8.

has to be gathered against that'. In CMM we also see that, for example, '*Woh haathi ke alag alag hissey hain* (literally, the elephant has many parts/sides/different versions)'.<sup>138</sup> Some workers are fighting privatisation and liberalisation, peasants are fighting against displacement, somebody else is fighting against corruption in coal blocks...

*But they are fighting the same monster—*

But actually it's the same monster, different parts of the same monster. And basically, that is the entire corporate stranglehold. But then the question is, where do you get the common denominators from?

For example, here in Chhattisgarh, we have an interesting front, which is called the Chhattisgarh Bachao Andolan (CBA), which is trying to unite all the small struggles. Every village, people are fighting. Maybe they are not attached to a bigger organisation or if left to themselves they would die out, or they would be suppressed, because there is hardly an opposition here. Congress is hardly an opposition to the BJP.

Only now that the elections are coming we are hearing that it exists. That has identified certain common issues, on which, ranging from village communities to NGOs to even some political parties—left or progressive political parties or unions—everybody is coming together on certain basic issues.

Another example, implementation of *PESA*,<sup>139</sup> *Forest Rights Act*,<sup>140</sup> the way the environmental public hearings are just a

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<sup>138</sup> Alludes to the parable of the four blind men attempting to describe an elephant while touching only a small part of the entire animal and then disagreeing on what the elephant looks like based on each of their experiences.

<sup>139</sup> *The Panchayat (Extension to Scheduled Areas) Act*, 1996.

<sup>140</sup> *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act*, 2006.

farce, the issues of land acquisition, the water policies, and energy policies—so on certain things, people are coming together. Of course, it is true that as we walk along, the struggles are getting tougher and tougher. That's like putting a magnetic field, 'Splitting *hoti hain phir usmein* (splitting will happen in this)'. All the differences start coming up. That is bound to happen, because who will fight and how far is the question. There is the very classical thing, the Marxist understanding, that the working-class has nothing to lose but their chains. So they will fight till they get it. Because, socialism is the only solution as far as they are concerned.

For other people, there are many in-between solutions. For example, recently, we have a lot of unions in these sponge iron plants. Sponge iron people (companies) are going through a terrible crisis, because they have to buy iron ore from the open market and sometimes the prices go up to 5,500 rupees a ton. Whereas, from Bailadila,<sup>141</sup> Japan gets it at 400 rupees a ton. The big companies like the Tatas, the Jindals, Godavari Ispat, who have captive iron ore mines, for them it costs about 50 rupees a ton, because the royalty is only 27 rupees. These smaller guys are getting squeezed out. The situation was that if they had to close down, then a lot of workers would be out of jobs. So, we went with a proposal, from our union to the sponge iron manufacturers association to all those associations and we said, look here...

*(Interruption)*

At that time, the union gave a proposal to these sponge iron associations that you people are trying to make profit by squeezing the workers. The other thing is, they had become very unpopular in those areas, because they were not using the electrostatic

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<sup>141</sup> Iron-ore mines in the Dantewada district (erstwhile Bastar) in south Chhattisgarh.

precipitators, the ESPs.<sup>142</sup> So all around, there would be this whole cloud of black [smoke]. The villagers would agitate against them.

We told them, ‘Look, actually you are penny wise and pound foolish. You are squeezing by saving on the ESPs. You are squeezing out the workers, but your actual problem is the high rate of iron ore, for which you need to agitate, and you can’t agitate on your own, the workers will agitate with you. So we are prepared to take up this agitation, but on condition that there cannot be this twelve-hour days and lack of minimum wages and all that. The basic things, eight-hour days, minimum wages, ESI, PF, bonus, you have to give these things’.

They were in two minds and I think the administration also realised it, because very quickly then the NMDC (National Mineral Development Corporation) had a negotiation with them, and prices came down to 3,000 rupees. Their prices were lowered.

But it was also because our union was not strong enough. Had it been [like the] Dalli Rajhara situation, they would have come behind us. You see, splitting happens when you only look at your own interests. If you are willing to take along other people’s interests, and the people who will compromise least are in the leadership, then it’s a different thing.

In fact, Niyogiji’s whole notion of Chhattisgarh nationality and he used to say very clearly, that if a nationality movement is led by the middle-class, then it will become like Maharashtra Navnirman or Shiv Sena. It will be chauvinism, ‘Outsiders get out, *Assamiya ko bhagao, Bihari ko bhagao* (Throw out the Assamese, throw out the Bihari)’.

If it is led by the working-class, it is going to be based on exploitation. So it is going to be, how are the resources of the area

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<sup>142</sup> Electrostatic Precipitator (ESP) is a filtration device that removes fine particles like dust and smoke.

going to be used by the people? What is the relationship between industry and agriculture? What is going to be the relationship between what resources goes out and what resources stays here? These are going to be the issues.

[In] Chhattisgarh Mukti Morcha, I told you this, seventeen people died in a police firing. Out of those seventeen people, Ashim Das was a Bengali, Lallan Choudhary was from Bihar, Pradeep Kutty was from Kerala, Keshav Gupta was from Uttar Pradesh. These people lived and died for Chhattisgarh.

Niyogi himself was not a Chhattisgarhi, if you look at it strictly. He was a Bengali, but he lived here, he worked here, and died here. So, '*Unhonein definition diya tha, ki Chhattisgarhi kaun?*' (He gave the definition, who is a Chhattisgarhi?). Somebody who lives here, who toils here, and works for the betterment of this place is a Chhattisgarhi.

You might be a Vidya Charan Shukla<sup>143</sup> born over here, but if you are going to exploit people, then I am sorry (*Laughs*), how Chhattisgarhi are you?

So, he (Niyogiji) used to say, that there are two motors of history—one is class struggle and another is nationality struggle, national liberation struggles. These have been the motors of history for a long time. Sometimes they come together also and a nationality struggle, which is led by the working-class, will not become chauvinist. Because, they can't afford to be chauvinist and the

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<sup>143</sup> V. C. Shukla was a prominent Congress leader who was close to former Prime Minister, Indira Gandhi and alleged to have masterminded many of the draconian steps during the emergency period (1975-1977); including banning singer/actor Kishore Kumar from the All India Radio (AIR). Shukla shifted to the BJP in 2004 but returned to the Congress in 2007 with Sonia Gandhi's approval. He and several others were gunned down by the Maoists in the Jeeram-Ghati encounter, which also led to the death of Mahendra Karma (a Minister of State in Chhattisgarh, and founder of the Salwa Judum, a state supported militia meant ostensibly to target the Naxalites but impacting the lives of innocent Adivasis disproportionately.

class perspective will be very strongly there. The perspective will be of exploitation, it will not be of 'Andar aur bahar (Who is an insider and who is an outsider)'. He had very creative ideas. All those creative ideas would feed into the union movement. So, it was not an economistic model. Economic struggles were very important, very tough economic struggles were fought. But that was not the be-all and end-all of the union. That was where the union began and it progressed from there.



*Sudha at the hunger strike in Raipur against the dismissal of workers by Kedia Distilleries. From right: Sudha (sitting in front), Fulesar Bai (standing behind), Sudha's daughter Anu (now, Maaysha), Dhannu Patel, Ganga Bai (standing), Chandrakala (partially seen on the left). Circa 2000. Source: Janhit*



## DYING DECLARATION: THE NIYOGI MURDER TRIAL

*Ma'am, you also mentioned yesterday that you were a witness in that (Niyogi assassination) case. Witness in what sense?*

Well, he had actually left behind a tape, when he felt that he might be killed. I was the one who transcribed the tape. So, my transcription was used by the CBI and I had to recognise his handwriting, I had to recognise his voice. The other clue that the CBI had got was, that when he was in jail, he wrote a diary.

In the jail, he met many lumpen elements, many *goondas*, who actually told him about what was happening and how other *goondas* were being recruited to actually attack him. So, all the people who were finally found to be guilty, he had himself written about them. Gyan Prakash Mishra, Abhay Singh, Avdhesh Rai—everybody's name was in the diary and exactly what was their role. So, he foretold his (own) murder.

It was clues from his own diary, what he said and what he wrote, that leads were there for the CBI to follow up. Actually, you should read (the) T. K. Jha (judgment). That was a remarkable judgment<sup>144</sup> that he gave. Because, in that judgment, he has

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<sup>144</sup> For a detailed account and analysis of the trial, see Subramaniam, C. N. (1999), *Booking the Bourgeoisie—The Niyogi Murder Trial*, in *Revolutionary Democracy*, Vol. V, No. 1, April, 1999. Available at <http://revolutionarydemocracy.org/rdv5n1/niyogi.htm>, last seen on 18/11/2014.

For judgment from T. K. Jha, Presiding Officer, Second Additional Sessions Judge, Durg, Madhya Pradesh, see a *working draft of the English translation*, by Chhattisgarh Institute of Law (1997), *State Of M.P Through C.B.I. and Ors. v. Paltan Mallah and Ors.*, available at <https://>

actually made use of this concept that when events happen in close succession and there is a climax, which comes, then even the tape that Niyogi left behind could be considered a dying declaration. You see, normally things that are not admissible in evidence, become admissible under certain circumstances, I think under Section 9.<sup>145</sup>

*Dying declaration being one of them...*

So, this became in the nature of a dying declaration<sup>146</sup> because, there was a movement which was going on, there were continuous attacks, there were cases and he was feeling the threat. The CBI did some marvellous things, they found a document in the house of Moolchand Shah. It was called 'How to tackle Niyogi', and actually the steps that had been written down there had actually

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[indianlabourarchives.org/xmlui/handle/123456789/443](http://indianlabourarchives.org/xmlui/handle/123456789/443), last seen on 09/10/2020.

<sup>145</sup> *The Indian Evidence Act, 1872*: Section 9. Facts necessary to explain or introduce relevant facts.—

'Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

<sup>146</sup> *The Indian Evidence Act, 1872*: Section 32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.—

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:—

When it relates to cause of death. — When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question...

been used—contact all the media to spread canards about him, contact the other trade unions. They said that Dalli Rajhara funds were the main source for the Bhilai movement. So everybody is out of work. Rice used to come from Dalli Rajhara and they used to cook that rice. In Dalli Rajhara, they had organised cooperatives of miners. After sometime, after a lot of struggle, in many places the contractors had been removed and there were cooperative societies.

*‘Koi bahaney se, iska audit thik nahin hain, iska yeh thik nahin hain, woh thik nahin hain, funds rok diye cooperative societies ke* (On some pretext, that there is something wrong with the audit, there is something wrong in something else, they would block the funds of the co-operative societies)’. So actually those miners were, for ten months, not getting wages, and they were the source of funding for the Bhilai movement. That was done.

Then, Niyogi had many cases filed against him and in Moolchand’s Shah’s house, the certified copies of all those judgments were found (*Laughs*). So, it was clear that he was monitoring, keeping an eye on all this—and how to get rid of Niyogi. Though, of course, it was also written there that no hasty plan should be made to eliminate him. But maybe, finally they lost patience. Then externment, everything was tried, which was written there. Basically, right from the beginning, the strategy that they took up was each factory, one plant at a time.

The first *parcha* (pamphlet) that [the movement] took up was *‘Hazaron nadiyan milkey Mahanadi banegi* (a thousand streams will join to form a river)’. So, everybody came out to strike at once. You had this sea of workers and that is what gave this movement so much strength. A little bit of that you are now seeing in Gurgaon, (in the) solidarity around Maruti and all.<sup>147</sup> They are not letting it happen.

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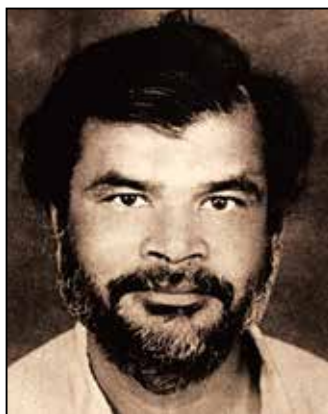
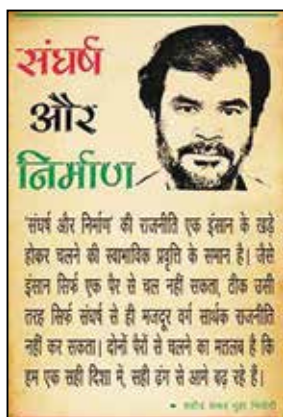
<sup>147</sup> Maruti Suzuki India Ltd (2014), *supra* 129.

Things like Maruti and all, because they are close to Delhi, they get covered up. So many students go out there to help. '*Kai cheezein hoti hain* (Many things happen)'... Otherwise sustaining a trade union struggle is really a tough job. But, we have tried to maintain those traditions of Niyogi and that is what's keeping us afloat, even though it is a very small organisation. We maintain those solidarities around us, so we develop sufficient critical mass to just exist (*Laughs*). I don't say we are able to make great headway, but we can survive.



*Shankar Guha Niyogi at Shaheed Hospital*

Source: <http://vikalpsangam.org/article/shaheed-hospital/>



*'Struggle and Create' a poster about Shankar Guha Niyogi and the motto for Chhattisgarh Mukti Morcha.*

Source: [kractivist.org](http://kractivist.org) (left) and [telegraphindia.com](http://telegraphindia.com) (right).

## BEGINNING AN ASSOCIATION WITH PUCL IN THE TIME OF SALWA JUDUM

*How did you associate yourself with PUCL?*

First of all, I wasn't a lawyer, I was a trade unionist. I became a lawyer and as I became a lawyer, then I also started relating with other people's legal struggles. I have been general secretary (of the PUCL–Chhattisgarh chapter) for two terms and even before that. But I think, I became a lawyer in 2000, so I think it must have been around that time I started becoming active in PUCL.

You see, I came to Chhattisgarh in 1986, (and) basically got involved with the trade union movement continuously. I think really until the end of the 90s, everybody knew that there was a Naxalite movement and by the eighties already, slowly it had started taking root. By about 2000, the Naxalite movement had become quite strong. At that time, the DGP (Director General of Police) said that there are about fifty-thousand *sangham* members—*sangham* members means their mass front members. There was a large area, which is true even today. Like Abujhmad, etc., where it's evident that the administration cannot enter, police cannot enter although teachers, doctors were going, ration shops were there. Basically, it was the forest department and the police, (they) were not able to enter those areas. I think that is really the beginning of this *Salwa Judum*.<sup>148</sup>

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<sup>148</sup> *Salwa Judum* (literally 'Purification Hunt' in Gondi language) was a brainchild of slain Congress leader Mahendra Karma (and died in Naxal violence, *supra* 144), and was an extremist civilian militia comprised of local tribal youth prepared for counter-insurgency operations through support and training from the Chhattisgarh state. With unlimited freedom

It also coincided with the intensification of the corporate loot in other parts of Chhattisgarh, when this whole thing, taking the shape of virtually a war, happened. I think if you even look at casualties before that and levels of militarisation before that... And then, I think, by 2005, it was the time when the big MOUs (Memorandum of Understanding) started coming in. So, June 2005, Salwa Judum started, and June 2005, Tata and Essar had the first MOUs. In fact, Essar also funded some of the first few Salwa Judum camps.<sup>149</sup> Even before that, it was not that there were no so-called *Jan Jagaran* (public awareness) movements against the Naxalites. I think there were two-three rounds of this Salwa Judum-like phenomenon—in the early 90s, and again in mid-90s.<sup>150</sup> All of them failed and failed because the state did not put its weight behind them. But I think this Salwa Judum when it started, it was very clear, that though it was given the shape of a spontaneous movement, there was a huge state force behind it. That is now very well established, it doesn't need to be established very much more.

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to commit murder, loot, and rape, it became synonymous with state-sponsored terror in the region and led to wanton loss of life and property in the region. It started in 2005. On 2011, the Supreme Court declared it illegal in the judgment of *Nandini Sundar v. State of Chhattisgarh* 2011 (7) SCC 547.

<sup>149</sup> 'According to annual report of Dantewada district collector, Essar has contributed large sums to establish the Salwa Judum relief camps as model villages. This will ensure that the villages are permanently emptied out, which can be exploited for their mineral wealth at a later date.' See Saha, Anoop, (2007) *The Myths of Salwa Judum*, in *Counter Currents*, 14th September, available at <http://www.countercurrents.org/saha140907.htm>, last seen on 18/11/2014.

<sup>150</sup> According to Nandini Sundar, '...in 1998 the government launched combing operations against the Naxalites with the help of sixteen companies of special armed police'. See Sundar, Nandini (2007) *Subalterns and Sovereigns: An Anthropological History of Bastar, 1854-2006*, Delhi, Oxford University Press, (2nd edition with afterword 2007), available at [http://southasia.berkeley.edu/sites/default/files/shared/events/2008\\_Indian\\_Democracy/Afterword\\_Subalterns\\_and\\_Sovereigns-\\_An\\_Anthropological\\_History\\_of\\_Bastar\\_.pdf](http://southasia.berkeley.edu/sites/default/files/shared/events/2008_Indian_Democracy/Afterword_Subalterns_and_Sovereigns-_An_Anthropological_History_of_Bastar_.pdf), last seen on 20/11/2014.

What was used was a very typical military strategy, which is used in all insurgencies, Vietnam onwards<sup>151</sup>.

It has been used in our own country in Mizoram, Tripura and all that... Drain the water to kill the fish.<sup>152</sup> You basically bring the people out to roadside camps,<sup>153</sup> then you go in there and finish the insurgents. That's the idea.

This coincided with similar... For example, in North Chhattisgarh in Raigarh, the way you have lands being taken away<sup>154</sup>. Jashpur, there are so many mining licenses and prospecting licenses, it is true that it hasn't started yet, and I think they are just waiting for the election. After the election, it is going to be...

And we fear and apprehend that some religious, anti-Christian movement may be utilised to do this. Because Oraons (people from the Oraon/Uraon tribe) are a strong force there and the educated Oraons are heading the anti-displacement movement, pushing the church back would be very convenient.

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<sup>151</sup> For a detailed analysis of state-sponsored counter-insurgency measures in this context see Kennedy, J.J., King, L.P. (2009). *The Sociology of Insurgency in Indigenous Communities: Moral Economy, Class Analysis, Geopolitical and Political Economy Explanations of Naxalism in Chhattisgarh, India*, from *Faculty of Politics, Psychology, Sociology and International Studies Working Paper Series*, University of Cambridge, available at <https://www.academia.edu/1601990>, last seen on 09/10/2020.

<sup>152</sup> 'The insurgency is conducted through the people or, in Mao's aphorism, the people are for insurgents what water is to fish'. *Ibid*, p. 33.

<sup>153</sup> Refers to the *Salwa Judum* camps.

<sup>154</sup> Mostly by Jindal Steel and Power Ltd—and its subsidiaries like Monnet Ispat (owned by Mr. Jindal's brother-in-law)—and the Nalwa Steel and Power Ltd, (Nalwa in Haryana is the place where the Jindals hail from) for their factories. Because Raigarh is rich in coal-deposits and almost all the coal-blocks had been allotted to JSPL for use as captive coal mines (captive coal mines are mines from where the coal extracted can only be used by the company who owns these for their own consumption, majorly for power production and for use in blast-furnaces etc). However, these allocations have been cancelled by the Supreme Court in *Manohar Lal Sharma v. The Principal Secretary and Ors*, <https://indiankanoon.org/doc/135364996/>

In this entire Raipur to Bilaspur belt, you have got cement industries. I just told you the levels of profits that are coming in. You know, Holcim, internationally its profit margins are 1.33%. In ACC–Ambuja, it's 12% to 13%. So, they cannot afford *not* to loot you. They need to loot you. That is the only way they can survive.

There are already some seven factories, five more factories are coming up. Everywhere—limestone, bauxite, steel, coal—everything is really coming up like that. Bastar could not have been afforded to be left alone. It is simple, Bastar is very, very, rich in minerals. That was the main thing.

But that strategy has been disastrous, that strategy of trying to bring the people (out of the villages into *Salwa Judum* camps). Because, you see, you must remember the area. Government figures show that 644<sup>155</sup> villages were emptied out. The population there is supposed to be about 3.5 lakhs in that area, and the calculation is that around 50,000 people came to that area, to the camps. That's a small number out of the 3.5 lakhs.

Let us say, around 50,000 ran away to Andhra Pradesh, which they did, add another 50,000, for good measure. That's one and a half lakhs. That still leaves you with two lakhs. That means two lakh people went further into the jungle. Now, these are the people you are going to hunt down as insurgents today. So you have basically labelled an entire population this way. You have taken from them all their schools, you have made them residential

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<sup>155</sup> See Bharadwaj, Sudha (Date unknown) *Peace can come to Bastar only when the State stops treating the adivasis as its enemy*, on *Open Space*, available at <http://openspace.org.in/book/export/html/882>, last seen 20/11/2014. See also *Between An Expensive Rock And The Barrel of The Gun* (2010), available at <http://moonchasing.wordpress.com/2010/02/13/between-an-expensive-rock-and-the-barrel-of-the-gun/> last seen on 20/11/2014. See also Bharadwaj, Sudha (2013) *The Bastar Land Grab: An Interview with Sudha Bharadwaj*, in *Kafila* 20th April, available at <https://kafila.online/2013/04/20/the-bastar-land-grab-an-interview-with-sudha-bharadwaj/>, last seen on 20/11/2014.



schools, separating children from parents. You have taken away all the ration shops, put them in CRPF (Central Reserve Police Force) camps [where] people have to walk for days together to get rations. The level of militarisation – there are so many battalions, some ten to twelve battalions, IRBs (Indian Reserve Battalion) are (also) there. At some point, Nagas, Mizos, they all were there. There was a huge struggle and interestingly even the Nagaland people asked for their battalion to come back, when they heard of the excesses that they had done. So that battalion has been sent back<sup>156</sup>. Also I think they couldn't survive the mosquitoes. So basically, it is an all-out war.

The issue is that these minerals cannot be afforded to be left alone, even if there are Adivasis sitting on it. What we are saying is, what generally the progressive and the human rights people are saying is that, 'Look here, you say you want development, you want to mine and all that. Then you need to persuade people that they need it, and that it's going to benefit them.' But their experience is absolutely to the contrary. First thing that has to be done is that you have to de-escalate the violence. If you want peace, then this is not the way to bring it about. The way would be to first rehabilitate people, resettle people, and bring them back to the villages. PESA Act<sup>157</sup> is your act, you have passed it in the

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<sup>156</sup> For more on the Naga Battalion, see Chakravarti, Sudeep (2018) *When Nagaland, Chhattisgarh are Joined in Horror*, on *Live Mint*, available at <https://www.livemint.com/Opinion/qJJ4oCNagNTdfoNsWz7mFJ/When-Nagaland-Chhattisgarh-are-joined-in-horror.html>, last seen on 20/11/2014. More units of Naga Battalion were being reinforced, after the BJP Government came to power in the Centre. See Sharma, Aman (2014), Government to send 2,000 para-military men of Naga unit to fight Maoists in Bastar, in the *Economic Times*, 19th August, available at <https://economictimes.indiatimes.com/news/politics-and-nation/government-to-send-2000-para-military-men-of-naga-unit-to-fight-maoists-in-bastar/articleshow/40383919.cms>, last seen 20/11/2014.

<sup>157</sup> *PESA Act*, *supra* 139.

Parliament, implement it. Forest Rights Act is your Act, you have passed it in the Parliament, implement it.

When people get their rights, and they have some faith in the administration and the state and all that, then you might be able to persuade them that this is good for them. They might be willing to give up their land or a part of their land. Or you might be able to come to some kind of compromise, but not this way. Right now, the Adivasis feel that the state is out there to take away their land, take away their village willy-nilly. You don't have to go to Maoist areas of Chhattisgarh to see what's happening. You go to Raigarh, to Koriya, to Jashpur, to Baloda Bazar, to Sarguja, and you see it.

Anyway, you were asking how did I come to PUCL. One thing that Niyogiji's movement taught us—he had a favourite quotation by Sarveshwar Dayal Saxena,

*'Yadi tumharey ghar ke kamrey mein aag lagi hain, toh kya tum doosrey kamrey mein prarthana kar saktey ho? Yadi tumharey ghar ke kamrey mein laash padi ho, toh tum doosrey kamrey mein gaana ga saktey ho? Yadi haan, toh mujhe tumse koi baat nahi karni.*

(If there is a fire in one room of your house, can you pray in another room? If there is a corpse in one room of your house, can you sing songs in another room? If yes, then I have nothing to say to you).'

*'Harda mein andolan huya, hum Harda gaye, Bhopal Gas pirit ke time mein hum wahan ek team le kar gaye, Latur mein earthquake aaya, hum wahan gaye.*

(When there was a protest in Harda, we went to Harda. When the Bhopal Gas incident happened, we took a team there. There was an earthquake in Latur, so we went to Latur).'

Even after there was a split in CMSS—Sahadev Sahoo, one of the leaders, he had split, and he had a separate Kisan (Farmers) front in Balod. Those peasants were agitating for the release of water from the Gangrel dam<sup>158</sup> and there was a huge *lathi* (baton) charge (against protestors). Niyogiji didn't think, that this fellow has broken away from me and let me not support him. Immediately, the Dalli Rajhara workers gave an ultimatum—you release those peasants unconditionally, release the water from the dam, otherwise we go on strike tomorrow—and it was done. So, that was the culture that was always there and we were always taught that injustice anywhere is a threat to justice everywhere. So, we have to speak about it. That is something that was always there and also the realisation that if 644 villages can be emptied in one part of Chhattisgarh, and we are fighting for seven villages here, and 2 villages there, and 5 villages there, how are we ever going to survive?

It was evident that the state was gearing up to deal with armed insurgency, and there is no democratic space left, we have to struggle for that space. We can't do that by being silent about such big atrocities that are happening. So, that was how I basically got involved. Also, as a lawyer, I started getting cases—*habeas corpus*<sup>159</sup>—and nobody was courageous enough to take them up in this High Court. So I had to take up some cases like this. And also, there are some things, it may be a great risk doing it, but, you can't survive not doing it also. It's a matter of your conscience. That is how I basically got involved.

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<sup>158</sup> Most of the power for the Bhilai Steel Plant is generated from the Gangrel dam. It is the biggest dam close to Bhilai.

<sup>159</sup> Literally translates to 'Where is the Body?' This is a writ under Article 32 of the Constitution that is applicable when a person has been arrested and 24 hours have passed, but the arrested person has not been produced before the Magistrate concerned.

## FIGHTING HABEAS CORPUS CASES

*As you said, habeas corpus cases were coming up. This is in the early days of ‘Operation Green Hunt’<sup>160</sup> or much before?*

No no, during the *Salwa Judum* period also, but not in a single case did we get any [relief]. I mean, *habeas corpus* cases went on for years together over here and there was never a finding against the police, against the security forces, or against the BSF.

*Can you give us an example of some of these cases?*

Yeah, yeah. I have several cases of my own. Somebody approached me and told me that his son had been picked up at a bazaar by the BSF. He was nowhere to be found and he had gone everywhere and tried to find out. We filed a *habeas corpus*. When we filed the *habeas corpus* first of all, the usual kinds of notice—four weeks, six weeks notice—were being given. They went on taking time and eventually they showed that he is in Durg jail. From Kondagaon he was brought all the way to Durg, which is a Central Jail. There were eleven cases against him. I knew that that was just to justify his detention, that they did it, because all those documents showed that they did this after we filed the *habeas corpus*. It was very clear...

*How long did it take for you to find out that he was in Durg jail?*

No, no, the statement was given by the State. But, lot of time was given to them and after that time was given to them, they said,

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<sup>160</sup> Name of the paramilitary offensive against Naxalite-Maoist insurgency that began in 2009.

‘Okay, he’s there, and he has got so many cases against him, and he is actually a Naxalite’. I was so shame-faced that I could not face the father of the boy. I said, ‘I am really so sorry, we’ve come to the court, and your son has been penalised by having eleven cases put on him’. What he said really shook me up. He said, ‘Well, thank you. He is at least alive’.

*Do you know the status –*

He is still in jail.

*How much time has it been?*

It’s been four years now.

*So, has it been sort of a trend, in habeas corpus cases, to have successive cases...*

Yes! See, all you [the police] have to say is, ‘Oh, he is a Naxalite!’, and that would be enough for the court to think [that he is one]... You know, it’s gone to the extent where I have even said, ‘My lord, the petitioner himself also feels that a case might be filed against him’, and the presiding judge says, ‘Well, if he is a Naxalite then he might be picked up’. He is coming to the court! You are refusing to protect a man who has come to the court!

There was one case, which was done by Alban (Alban Toppo of HRLN–Human Rights Law Network), which was of Veko Sinna. Veko Sinna came because he had seen his father being killed in a Salwa Judum camp and his sister had gone missing. She was among a group of women, and that group of women came back, and they said that they suspected that she had been raped and killed. So he filed a *habeas corpus*.

And after that, they (the police) went on saying that oh, he (Veko Sinna) doesn’t cooperate with us, every time we call him to the *thana* (police station), he doesn’t come to the *thana*, we go to the village, he runs away. So we had to say, look, he is damn scared.

And whatever you (police) have to say, you come and say in the court, *na*? Why are you going after him?

And then, one day when I was out, Alban phoned me, and said that Ma'am, Veko Sinna's case has come up, and he is being brought by the police. So I said, Alban, make a prayer that these people should at least go out while the matter is being heard, and that Alban might also be permitted to have a word with him. (But the) court didn't allow it. Then court said, okay, bring him in to the chamber, we will hear him in the chamber. But, they brought along some SPOs (Special Police Officers) who were doing the interpretation. Now Alban himself doesn't know the language. He is an Oraon, he doesn't know the Gondi language. And basically what Veko said was that okay, I am taking back the complaint in this case.

*That's what they said he said.*

That's what they said he said. And maybe he would have said it also. He was in such a shape that they might have picked him up and taken him away, so he may very well have said that. And then when he went away, the judge advised Alban that you have a career in front of you, it is better that you don't take up these kinds of cases.

*So in this case, when he filed the Habeas Corpus petition, whom did he name?*

That's what they say! 'You tell who are those people, which was that regiment', whatever they call it, 'from whichever *thana*'... People just say police and force, how will they know from which *thana*? You see, if the court is stern, then they will have to give the details. How can we provide those details? And then they said, it is true that we picked her up, but then she ran away...

*They said that in court?*

Yes.

*So the parties are normally the government of Chhattisgarh.*

Yes, Government of Chhattisgarh. Sometimes, if the BSF is also there, then CRPF, for BSF Union Government is also a party... I've got all those documents below.



*Sudha at a meeting in Sector 9, Bhilai, a few months before her arrest in 2018. Seen in the photograph are other activists of CMM (mks) and the Mahila Mukti Morcha. Source: Janhit*

## FIGHTING ATROCITIES CASES

*What cases of police and security force excesses have you taken up?*

Not many... We have taken up some Dalit atrocities cases. An entire *tola* (group) of Dalits were actually removed in the name of the *Jagpal Singh* judgment.<sup>161</sup> They were removed from forest land for which they had given applications for forest rights. It was not even revenue land and it was not encroachment. But in the name of *Jagpal Singh*, the entire village congregated and grazed their (the Dalits group's) standing crop. And the court refused to give us an interim order.

*The case is still going on?*

Yes. We have gone to the Supreme Court. One judge was hearing it took a slightly more strict view. He told the collector<sup>162</sup> to go to the village. So the collector went to the village, went to the school, and said, '*Accha, sab thik chal raha hain na?* (Okay, so everything's going all right, no?)'. Because in our petition we had said that they are being ostracised, they are not being given rations from the shop. There was a social boycott that was going on of those Dalits. The Dalits stood up and said, please hear us out, come and see our place, where the crops have been razed, and one of their houses was burnt. But he (the collector) didn't go, and he refused to accept their applications. And even in the report

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<sup>161</sup> *Jagpal Singh & Ors v. Union of India & Ors* 2011(2) SCALE 42. The judgment gives Gram Panchayats (Village Councils) the guardianship of community rights over common grazing grounds and ponds of the villages.

<sup>162</sup> District Magistrate and Administrator.



given by the state, in the collector's report... It said that, yes, these people said this, and those people said that, but I am convinced that there is nothing. Let bygones be bygones... And then cases were put on the Dalits<sup>163</sup>...

*Criminal cases?*

Yes

*Which is this area?*

This is Pusour, in district Raigarh. This borders with Orissa, so there are a lot of... Actually, as I told you, among the Dalits, this Satnami community still has local roots, and is larger and I'd say, more, prosperous also. Landed and so... but these Dalits who are on the Orissa border, Gandas and Ghasiyas, they are very poor, extremely poor, and they were on the fringes of every village. But now as the land grab is going on, they are being squeezed out of those little margins also. So there is a very serious backlash against Dalits in the state.

*Which year did this happen, ma'am?*

This happened very recently. See, as industrialisation is increasing, almost all communal lands are going. The government has made an amendment in the land revenue code, saying that communal lands... Earlier the exception was made for electricity system, and that meant basically a tower, or pump house, or whatever. But now they have amended that to say electricity system—they have put an explanation (that it) includes generation and distribution of electricity.

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<sup>163</sup> Refers to incident in Chhichhor Umaria village, in Raigarh district, where homes were ransacked, harvests set on fire (also burning at least one house), and standing crops on 60 acres of land ruined by cattle left loose by the dominant caste leaders in the village. The land and homes belonged to Dalit families from the Ganda-Ghasiya communities, who had lived there for around 40-50 years. The families were also socially ostracised in the village. See Sudha Bharadwaj (2018), *supra* 78.

## FILING REPEATED CASES: STATE VINDICTIVENESS

*We were talking of habeas corpus petitions. But I wanted to know one thing, for example, in Kashmir, the way the state would target a person, is that it would slap one PSA (Public Safety Act) order after the other on him, to keep that person in jail somehow or the other. So that person's legal counsel would try to extricate him out of one case after the other, but when you extricate him from one case, there would be another. And we heard incredible stories of how people would just continue to languish in jails while their lawyers tried to release them from one case after the other. So do you have similar stories?*

Yes. It is very common in Naxal areas. For example, there was this lady called Padma,<sup>164</sup> she had been lodged in Raipur jail. She had been charged in a case. She was acquitted. In fact, her mother and her lawyer were at the gate, and she came out, she was (immediately) whisked away in another jeep, taken and produced and two more cases were put on her. And the interesting thing was, here she is Padma, wife of A, and there is (another) Padma, wife of B. And that particular Padma, wife of B, has actually been killed in an encounter already. Now she is going to have to spend the rest of her life trying to prove that she is not Padma, wife of A, but Padma, wife of B.<sup>165</sup>

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<sup>164</sup> Bail Application u/s 439 of the Criminal Procedure Code numbered M.Cr.C 862 of 2014 was rejected by the Chhattisgarh High Court vide order dated 04.03.2014 though Justice Bhaduri of the Court did not provide any reason whatsoever for the rejection.

<sup>165</sup> She was acquitted in this trial also, and arrested upon release once more.

So these kinds of things are very common. There was another case I heard of in Sarguja. That was someone who had the alias name of Vikas and had thirteen cases, I mean, there were many cases on him and he appears to have been associated with Maoist movement, no doubt. But in the period in which he was in jail, some twelve cases of twelve other incidents were put on him. And a writ petition was moved for quashing of those cases, and in all those cases they were told that, no, face it at the trial. This defence should come up at the trial. And the argument that is given is that 120B is also there, so maybe they are conspiring from the jail to do it. So even if you are in jail, doesn't mean that you are not involved in this plot.



*Sudha outside the Janhit office in Bilaspur, en route to the High Court.  
Source: Janhit*

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See Subrahmanyam, Varanasi (2015), *Padma—A Perpetual Prisoner?*, in *Economic and Political Weekly*, Vol. 50, Issue No. 30, 25th July, available at <https://www.epw.in/journal/2015/30/reports-states-web-exclusives/padma-perpetual-prisoner.html>, last seen on 10/10/2020.

## THE CSPSA: DANGERS OF A DRACONIAN LAW

*Another kind of phenomena from conflict zones is the mixing of preventive detention laws and punitive charges. So you have preventive detention laws slapped on you, and punitive charges slapped against you. So, with respect to CSPSA,<sup>166</sup> and you're challenging the vires of the Act, could you tell us more about that?*

See, initially, CSPSA was not used much in Bastar Dantewada.<sup>167</sup> Now it is being used, in fact, the time at which I had filed it (the petition challenging the constitutionality of CSPSA)...

See initially when CSPSA came, PUCL ran a campaign against it, and Binayak Sen was spearheading the campaign and then he was put inside. The bill was from 2005 and it became an Act in 2006. And when he was arrested, still the advisory board had not been formed, now that is absolutely unconstitutional.

You cannot have an Act, which bans certain associations and penalises membership of those associations, without having an advisory board. So the advisory board was constituted subsequently, post Binayak Sen's arrest. That was one thing.

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<sup>166</sup> *Chhattisgarh Special Public Security Act (CSPSA) 2005*. The Constitutional vires of this Act was challenged before the High Court by PUCL-Chhattisgarh via WPC No 2163/2009 and was rejected forthwith. The matter is on appeal before the Supreme Court. Curiously, the Act does not make mens rea an essential element to impart criminality and the High Court did not find anything wrong with that.

<sup>167</sup> Section 8(5) of the Act uses the term 'specified area' but does not define it or suggest how they are to be determined.

The other thing is, we later found out that there was an *Andhra Pradesh Special Security Act*, which is similar. And it is also being used in the Chhattisgarh-Andhra borders, so it's the same set of people being picked up. But the Chhattisgarh Act is actually worse than the Andhra Act. At least in the Andhra Act, there are certain things, which only the state government can do, but that has been delegated to the collector in the Chhattisgarh Act.

Most serious thing about the Chhattisgarh act is the vagueness of the offences. *Unlawful activities* are defined in a very, very vague manner. So, actually out of the six or seven definitions which are given, there are only two which directly relate to violent act, or a terrorist act, or a banned organisation.<sup>168</sup> The other acts are all acts that can very easily be dealt with in the IPC, you know, offences against peace and tranquillity, offences against public servants- that kind of thing, very easily. So, actually the purpose of acts like CSPSA is not to go after Naxals. That anyway, you don't need this thing, you just go and shoot them, to be very frank.

*And call it an encounter...*

Yes. Well, it may be an encounter, or it may not be an encounter. Already you have got the legitimacy from society that you can go ahead and shoot. So who is it that you are targeting with the CSPSA?

Actually you are targeting those people who are not armed, who are not necessarily engaging in any violent activities or terrorist activities, who are protesting in some way or the other. And the way Sushil Shinde was saying, that why should I go and meet the children who are protesting against the gang rape. Tomorrow if Maoists come will I go meet Maoists?<sup>169</sup> (*Laughs*).

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<sup>168</sup> See Appendix 3, Problems in the Definitions Section of *Chhattisgarh Special Public Security Act (CSPSA)* 2005 (Section 2)

<sup>169</sup> In December 2012, the then Central Home Minister Sushilkumar Shinde equated the anti-rape demonstrators of Delhi (protesting the brutal rape of

But nowadays everyone is a Maoist (*Laughs*). It is shocking. In fact, DGP (Director General of Police) Vishwaranjan had given a statement that Niyogi is a Naxalite. Niyogi was the first Naxalite.<sup>170</sup> And then the union had a huge protest.

They said, look here, this has been a perfectly peaceful movement, trying to utilise the democratic space as much as possible, and if this is being a Naxalite, then we are Naxalites, what to say about it. This is a great danger.

And there are many, many, provisions... Even that classic notion that you had, of concentric circles of law and order, which is the widest one, and then you have public order, and then you have security. And here basically the widest circle has been taken as

‘Nirbhaya’) with Maoists. See Delhi gang rape: Sushilkumar Shinde equates agitators with Maoists (2012), in Times of India, 25th December, available at <http://timesofindia.indiatimes.com/india/Delhi-gang-rape-Sushilkumar-Shinde-equates-agitators-with-Maoists/articleshow/17748465.cms>, last seen on 20/11/2014.

- <sup>170</sup> See Roy, Ranjan (2012) *Chhattisgarh-ey Maobaad— Ek Bihongom DrishTi— Prothom Kisti (Maoism in Chhattisgarh—A Birds Eye View— Part 1)*, on Guru Chandali, available at <https://www.guruchandali.com/comment.php?topic=16894&page=1>, last seen on 11/10/2020. This Bengali article narrates how two Bengali employees of Bhilai Steel Plant were arrested from Jagdalpur in 1969, and was the first recorded instance of Naxalite-related arrests in Chhattisgarh. According to the article, the news was published in *The Statesman* in 1969. The two arrested youths were Jogi Ray and Dhires Guha Niyogi, who were later released. The former went back to Beerbhum, West Bengal, after release whereas the second one disavowed Maoism, took the alias of Shankar and began his Trade Union activities in Chhattisgarh.

See also Gun, Dr Punyabrata (2018) *Struggle and Create: My Days with Com. Shankar Guha Niyogi: Chapter 1— Niyogi and His Mission*, on *Countercurrents.org*, 21st January, available at <https://countercurrents.org/2018/01/STRUGGLE-CREATE-DAYS-COM-SHANKAR-GUHA-NIYOGI-CHAPTER-1-NIYOGI-MISSION/>, last seen on 11/10/2020.

See also, Harshvardhan, Prabal Saran Agarwal (2020) *The Many Legacies of Shankar Guha Niyogi*, on *Newsclick.in*, 27th September, available at <https://www.newsclick.in/The-Many-Legacies-Shankar-Guha-Niyogi>, last seen on 11/10/2020.

public security. So that in itself is very serious, because then the scope for protest and dissent will go.<sup>171</sup>

And that is why these kind of cases—like against Ajay TG,<sup>172</sup> a filmmaker; against Binayak Sen. Even the charge against him is laughable, that he went to meet a Maoist in jail.

For God's sake, you gave him permission, which is why he went! And he was meeting in front of the jail officials! How can this be an offence? You should have prevented him from meeting. And what were the jailers doing? Sitting and watching? It's perfectly legal! So you are illegitimising something that is legal. There is a lawyer,

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<sup>171</sup> Indian Jurisprudence has developed the concept of graded gravity of offences against maintenance of order, with acts that disturb 'law and order' as the mildest, those affecting 'public order' next, and those against 'security of the State' as the gravest. This is explained as concentric circles, famously in the order of J. Hidayatullah in *Ram Manohar Lohia v. State of Bihar* (AIR 1966 SC 740). 'One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.'

<sup>172</sup> Ajay TG is filmmaker and activist based out of Chhattisgarh, (*First Cry* (2014), *supra* 89). Arrested in May 2008 and released on bail in August 2008, he was finally acquitted of all charges in 2020.

For details of the situation involving the arrest of Ajay TG and the unfortunate nexus between mainstream Chhattisgarhi media and the repressive elements of the state see PUCL (2008), *Who is Ajay TG? Political Arrests and the Tightening Noose*, in *Sanhati.com*, 12th May, available at <http://sanhati.com/news/778/>, last seen on 11/10/2020.

See also, Sundar, Nandini (2006), *A Tale of Two Cameras*, in *DNA India*, 7th June, available at <http://www.dnaindia.com/analysis/comment-a-tale-of-two-cameras-1034080>, last seen on 20/11/2014.

See also, Varadarajan, Siddharth (2008), *Chhattisgarh has Lost the Plot*, in *The Hindu*, 13th May, available at <https://www.thehindu.com/todays-paper/tp-opinion/Chhattisgarh-has-lost-the-plot/article15221429.ece>, last seen on 11/10/2020.

See also, *Ajay TG granted bail, Plans to make film on Political Prisoners* (2008), in *Sahnhati.com*, 5th August, available at <http://sanhati.com/news/917/>, last seen on 11/10/2020.

he appears for Naxalites, he goes and meets them in jail. You charge him under CSPA. You are criminalising the association of being a lawyer, you are criminalising the association of being a journalist, you are criminalising the association of being a merchant who is selling something.

Recently, some people got bail, (they) were well known Sindhi owners of Naresh Bazaar,<sup>173</sup> who sold olive green cloth to somebody. Now how are they supposed to know who's a Maoist and who's not a Maoist? Everybody has security staff, and everybody purchases cloth like this. So, *mens rea* is absent.<sup>174</sup> Now this is really serious. Because when they define the offence, there is no *mens rea*. And that makes it open to a lot of abuse.

Secondly, in even the way they have defined the penalties—whether you get two years or three years or five years or seven years, is really a matter of whim and fancy... Collectors have a lot of power (in this). Collectors can declare an entire area or notify an area... They (the law) don't define that area.<sup>175</sup> It's a very badly drafted law. It is not consistent within itself. The collector can notify an area and say, that within this area, there is (Naxalite presence) and confiscate all property there.

But in the definitions, there is no definition of such a notified area and the procedure for how you are going to notify an area. So, these powers have been given right down to a collector and that is dangerous. The notification to ban an organisation, how is it to be challenged? So then they say, you cannot be represented by a lawyer in that. Now if you banned an organisation, and it can only be represented by its registered post-bearer. But being a post-bearer (of such an organisation) is an offence! How will that man go and appear before the advisory board? It has to be logical,

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<sup>173</sup> Garments shop in Bilaspur with hoardings all over the city.

<sup>174</sup> CSPA, 2005, *supra* 166.

<sup>175</sup> CSPA, 2005, *supra* 167.



na? He is not going to come out there and get arrested. It is stupid, it is quite comic.

*It seems like the Disturbed Areas Act and UAPA, rolled into some monstrous CSPA.*

And made vague on top of that. But the absence of *mens rea* is a very serious matter. Because then Adivasis who '*Khana khilana, rasta dikhana, meeting mein jaana* (Give the Maoists food, give directions, go to a meeting)'. Now did they do it willingly or did they do it knowingly... What was it? Somebody did something at gunpoint. This is not relevant for the law.

Recently there was a case. A person's vehicle was taken away by the Naxalites and they used the vehicle to go to some minister's house, and they looted the arms of the guard. The owner of the vehicle is in jail. Obviously, it has nothing to do with his willingness... But the man doesn't get bail. He is in jail. Some doctor doesn't get bail, why? In some kit bag of some Naxalite, his (the doctor's) prescription has been found. It's a prescription for Malaria, for god's sake. If it was a medico-legal case and he has not referred to the police, or he has removed some bullet, or he has performed some operation, then you can say that he knew. *Kisike maathein pein likha nahin hota* (It's not written on anybody's forehead)... Somebody comes, you treat them, and you give them Paracetamol and Chloroquin, how can you go to jail for that?

So basically you are criminalising association of any kind. And in fact, some women who have been arrested, have been arrested actually only because they are the wives of Naxalites. The CrPC makes an exception for harbouring. Harbouring doesn't include spouse. Obviously if he is your spouse, then you will harbour your spouse. How can that be made an offence? But merely being a wife is also an offence. There are people who are basically in jail because their husbands are in jail. Or their husbands are not in jail...

*So is PUCL documenting all these instances?*

See PUCL long ago had the information, which we had filed but that was several years back. Two years back, and at that time there were not too many, there were around 70-80 persons under the CSPSA. Now we hear that that number has become very large. When I filed RTIs— I filed two RTIs, one to find out the number of sedition cases, one to get all the CSPSA cases. I filed it directly with the Home Ministry. The Home Ministry sent it to the DG Police. The DG police sent it to all the SPs, and the SP has sent it to each separate *thana* (police station). So I am getting a flood of mail from all kinds of unrelated *thanas*. Some *mahila thana* (women's police station) is saying that we don't have any cases under CSPSA—obviously you don't have. And then SC-ST *thana*... It's a very smart way of... I can't appeal this, because obviously, they are doing it (replying). And their claim is that they haven't compiled this, which is foolish, because you have to give sanction, and all you have to do is to ask your collector how many sanctions have been given, and that's all. And it's already compiled *yaar*, everybody knows it's compiled. You are making me recompile it. So now they are not giving the figures properly.

*Does the National Crime Bureau have any records of this?*

I don't know, we have to try for this.

*Ma'am, you mentioned Ajay TG's case, could you elaborate?*

Ajay TG's case... He was part of a team that actually went to monitor elections... PUCL had sent a report, that Maoists have this boycott policy of the elections. Now, some polling booths were showing impossibly large turnouts in those areas. And it was very suspicious. Are there actually booths functioning in that area? And there had been a team, which had gone to observe this. And they had some interesting findings, but that's a different story. But as part of this team, Ajay TG, had gone as a cameraperson, his camera was taken away by Naxalites. And

subsequently, apparently, somebody came to him saying that we are sorry about this and we will replace the camera. You tell us how much the camera cost. So probably, he wrote on a piece of paper that okay, this is the cost of the camera, so that letter is in his handwriting. But it is (only) claimed, because the document itself is a photocopy. So really we don't know the genuineness of such a document. But this is the basis on which they are claiming that he has Maoist links. That is all there is against him, there is no other evidence against him.<sup>176</sup>

*He was charged under CSPSA?*

Yes. Not only that, it was splashed all over the newspapers, there were huge headlines.

*What happened in that case?*

Well, initially no chargesheet was filed, he was out on statutory bail. And now when he tried to go abroad, finally they have filed the chargesheet. But as far as we can understand, it has been years and years, and hardly anything more than what was there in the original few days, is there in the chargesheet, because there is nothing against him. You see, by that count, every single bus operator, every single *tendu patta*<sup>177</sup> operator, every single *sarpanch*, every single journalist should all be in jail! Whether they like it or not, they must be having some association, which is not necessarily an association. It has to be defined!

And the joke of it is, you look at the *Tata ONGC* case—the ULFA case—the Tatas were caught in the ULFA case, and it was said that the Tatas are giving protection money to the ULFAs.<sup>178</sup> But they

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<sup>176</sup> Ajay TG, *supra* 172.

<sup>177</sup> Leaves of the tendu tree used to wrap beedis, which are smaller, hand-rolled, tobacco cigarettes more popular and cheaper than regular cigarettes.

<sup>178</sup> For details of the case, see Dasgupta, Swapan (1997), *Assam govt mounts pressure on Tata Tea to come clean on its alleged funding of ULFA*, in *India Today*, 20th October, available at <https://www.indiatoday.in/magazine/>

(TATA representatives) were released on bail saying that it (the money) was not to further the cause of the ULFA! Essar people gave money to Maoists, allegedly. Their people are out on bail, and Soni Sori, the alleged conduit—who never got any money anyway, she was not found with the money, it was actually the Essar man<sup>179</sup> who was found with the money. But she and her nephew are in jail, Linga and Soni Sori are in jail.<sup>180</sup> So over there (in the case of Tatas or Essar) all this finesse, what is the motive, and all that. But that is equally applicable to Ajay TG or to many other people charged with CSPSA.

*What is the status of the Ajay TG case?*

The chargesheet has been filed, but the case has not begun.<sup>181</sup>

*And CSPSA constitutionality challenge case?*

That case was filed way back in 2008. And in August 2010 it was listed for final hearing. And since then it gets listed, after we make a lot of effort, urgent hearings and all that, and then it goes back. Again gets listed... It hasn't been heard.<sup>182</sup>

cover-story/story/19971020-assam-govt-mounts-pressure-on-tata-tea-to-come-clean-on-its-alleged-funding-of-ulfa-832785-1997-10-20, last seen on 11/10/2020.

For documentation of complete case (1997-2001) see IBS Centre for Management Research-ICMR (2002), *The Tata Tea/ULFA Story*, on *ICMR India.org*, provided as a Case Study in Business Ethics course, and available at <https://www.icmrindia.org/free%20resources/casestudies/The%20Tata%20Tea%20ULFA%20Story1.htm>, last seen on 20/11/2014.

<sup>179</sup> BK Lala, the Essar agent, and the Essar General Manager, was given bail way before Soni Sori and Linga Kodopi were granted bail. See Bharadwaj, Ashutosh (2012), *Maoist Payoff Case: Essar's Contractor to turn Approver*, in the *Indian Express*, on 9th July, available at <https://indianexpress.com/article/news-archive/web/maoist-payoff-case-essars-contractor-to-turn-approver/>, last seen on 11/10/2020.

<sup>180</sup> They have subsequently both been granted bail by the Supreme Court.

<sup>181</sup> Ajay TG has been acquitted in 2020.

<sup>182</sup> The matter was heard, and rejected, by the Chhattisgarh High Court (see *PUCL and Anr. v. The Union of India and Anr.*, WP(C) 2163 of 2009,

*It hasn't been heard.*

There's been no argument on it.

*Why do you think people like Ajay TG and Binayak Sen have the CSPSA brought against them? Is that a deliberate design?*

Of course, there is a deliberate design. Deliberate design in the sense that people who are raising uncomfortable questions, when you have a vague law, you can misuse it against them, it is as simple as that. In the emergency, basically, all the people who opposed (the ruling government) went in. And if you see the breadth, the nature of people against whom these laws can be used... See, when you define the offence so vaguely, then it is difficult. Because then they say, that organisation is a group of people known by some name—or not known—whether registered or not registered. And you don't even have to do the unlawful activity, you can just aid and abet the unlawful activity. The unlawful activity itself is so vague, and then you are aiding and abetting something that is vague, which includes a tendency to do something! The word act is not anywhere...

*You are putting an Article 19 challenge here...*

Yes, all kinds. The challenge is on various accounts. The challenge is also on equal application of laws it is also for the vagueness of the whole definition of unlawful activities, the fact that it can be abused in so many ways, it can be used to discriminate in so many ways. So, (Articles) 14, 19...

*There is something on opposition to development in the Act...*

That is in the preamble.

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available at [http://highcourt.cg.gov.in/Afr/courtJudgementandAFR/2014/April/WPC2163of2009 .pdf](http://highcourt.cg.gov.in/Afr/courtJudgementandAFR/2014/April/WPC2163of2009.pdf), last seen on 11/10/2020). This case went on appeal before the Supreme Court.

*Yes. And this is quite unprecedented. So, the sense that we get in Chhattisgarh is that the urban middle-class does not seem to be concerned with the turmoil going on in the rest of the state, at all. That is the sense that I have gotten from various people, especially urban centres like Raipur. There isn't much awareness about what is going on in the rest of the state, and there isn't much agitation or concern in the middle class, about the various forms of encroachment and displacement and the atrocities that have been committed...*

I would say that there are two-three things. One thing is a very small section has become phenomenally rich. Because obviously you can't just have industrialists, you have their managers, their contractors, their middlemen, their henchmen, their cronies of various shapes and sizes. And that is a very active section. It has a big voice, it has a big public opinion, it is dazzling all over the place. You've got the malls, you've got the PVRs, you've got the disco dances, the diamond watches, everything, the whole works. There is a section like that, and they do dominate the society. That is one part.

There is another part, which is that it is not so much about being concerned, it is about being afraid, I think. I mean, for example, these *shikshakarmis* (teachers). *Shikshakarmis* are there in every town, in every village, in every city. They are manning the government schools today, about 1.5 lakh of them, and they are all agitating. But how much of sense do you get of support or sympathy for them? You don't. There is a lot of support and sympathy for them, but the repression is just too much.

It's very difficult to build up solidarities, it's very difficult to come out in large numbers to support something. And there is a lot of fragmentation—each one is fighting their own battle. But I think, as you go closer and closer to the conflict areas, and talk to ordinary people, they perfectly understand what is happening.

Media doesn't write about it, TV will not talk about it, the so-called mainstream will not talk about it. But people know. People understand, because they face it every day. So I think that is the classical thing about fascism.

You see, the entire nation of Germany was quiet when so many people were being murdered. You see, basically, fear is something that is in the air. You don't have to actually be beaten up, or actually be put in jail to silence people. If fear can be in the air, that's enough. And I think the purpose of putting Binayak Sen (in jail) was exactly that.



*Gautam Navlakha (left) and Sudha Bharadwaj (right) addressing a meeting organised by the People's Union for Democratic Rights against the draconian act of UAPA, in Delhi on 13.07.2018. Source: <https://cjp.org.in/attempt-to-undo-gautam-navlakhas-freedom-sudha-bharadwaj-still-not-free/>*

## CIVIL SOCIETY IN CHHATTISGARH

*Strike that fear...*

Strike that fear into the middle-class—into whatever little progressive middle-class that there is—in Chhattisgarh. Because Chhattisgarh's history also, if you see, there is hardly any students' movement, no civil liberties movement. Because actually the educated, the middle-class of Chhattisgarh was really created by the public sector, the local middle-class. Before that, the Chhattisgarhi people were really a toiling people, and, really poor people. In fact, in the colleges and universities, it was really the princes of Orissa, and the princes of Jharkhand, and the elite of the other neighbouring states would come and study here. There is no students' movement here, there is no civil liberties' movement, there is no movement of intellectuals. It was in the 60s when the public sector came. Bhilai Steel Plant, NTPC (National Thermal Power Corporation), railways, BALCO (Bharat Aluminium Company)—all that was public sector. With that came the first generation of Chhattisgarhis who came out of the villages and became permanent workers. Two generations down is where you are today.

And two generations down, the recruitment has stopped also. So now it's all contract labour. It was just this little space, which allowed for the creation of the middle-class, little bit of upward mobility was there, and it stopped. And now the only places you have permanent jobs is the paramilitary, the police, and the army. Nowhere else you have permanent jobs, everything else



is on contract. So basically, there was no indigenous human rights movement. And the major politics... See, earlier, for example, in the Adivasi areas they traditionally voted Congress, *na*? And alternatives are very few. Trade union movement also, what little was there in the public sector areas, is losing out with contractualisation. So in that sense, a democratic culture is very much absent, or very weak, not absent. The other day I went to Raigarh. There is this very nice journal brought out by a 'progressive cultural group', it was a magazine. Turn over, and on the back, there is an ad by Jindal. Jindal is sponsoring it. So, their penetration is so deep, it is very difficult.

*Would you say that there is some sort of a gag law on the media, or do you think that the media is so corporatised, they don't need a gag law?*

No, see, when *Patrika* tried to break that, the *Patrika* copies were burnt by some people. *Patrika* is one of the newspapers that has been very vocal about exposing corruption in the Raman Singh government. There were actually attacks on *Patrika*... Vendors were attacked, *Patrika* was burnt. But of course, they survived it and they managed. But yeah, I suppose the carrot and the stick are both used, because journalists have complained also. And it does make a huge difference.

For example, in the recent Bijapur-Sarkeguda incident,<sup>183</sup> it was basically because the media took up the issue so much that it came

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<sup>183</sup> The villagers of Sarkeguda-Chimlipenta-Korsaguda, belonging mostly to the Dorla tribe, had gathered for a meeting on the Bijnella ritual celebrations that happen every year in June-July before the onset of monsoons. The CRPF (Central Reserve Police Force) indiscriminately opened fire on the gathering leading to the death of seventeen villagers, including seven minors, none of whom had any allegation of Maoist involvement whatsoever. A Judicial Enquiry Commission, based out of Raipur and Jagdalpur, was set up. The proceedings moved at a snail's pace. Eventually, in 2019, seven years after it had been instituted, the Judicial Enquiry Commission's report was tabled in the Chhattisgarh Vidhan Sabha, which categorically

out that there were so many villagers, so many minors, and they all had legal identities, and all that. Otherwise all we would have heard would be that seventeen Maoists were killed, somewhere, in some village, and we would have believed it, that would have been the end of it. A free press is one of the essential pillars of a democracy. You really need it.

And here, *ek toh* the media itself has turned corporate. *Dainik Bhaskar* (Daily newspaper) is setting up plants, and coal blocks,<sup>184</sup> and this and that. *Hari Bhoomi* (Daily newspaper) is associated with coal beneficiation, coal mafias, and all that. So, the media itself is corporatised, And there's lots of carrots and sticks that is given to the journalists. Many journalists find it difficult to write.

*What about online news that is coming up, blog posts on Chhattisgarh, from other parts of India, like binayaksen.net...*

There is a bit of it, but as I said, locally, there has not been an active students' movement and human rights movement or cultural movement. So actually, a lot of urban Chhattisgarh is not really Chhattisgarhi, lot of outsiders, nouveau rich... That's a big problem.

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indicted the CRPF for unilateral and excessive firing, and held that all the deceased were villagers, and there was no evidence that any Naxalite had been present at the meeting.

See Bharadwaj, Ashutosh (2013) *Sarkeguda Encounter: Year Later, Three Probes but still no Report*, in the *Indian Express*, 29th July, available at <http://archive.indianexpress.com/news/sarkeguda-encounter-year-later-three-probes-but-still-no-report/1135394/>, last seen on 20/11/2014.

See Scroll Staff (2019), *Security forces indicted for killing 17 villagers, including seven minors, in Chhattisgarh in 2012*, in *Scroll.in*, on 1st December, available at <https://scroll.in/latest/945423/security-forces-indicted-for-killing-17-villagers-including-seven-minors-in-chhattisgarh-in-2012>, last seen on 20/11/2014.

<sup>184</sup> The Dainik Bhaskar Power captive coal mines of Dharamjaigarh was challenged by Janhit before the National Green Tribunal (NGT) on grounds that the Public Hearing was conducted by defrauding the residents of Dharamjaigarh, Raigarh, through misleading public notices taken out by the Dainik Bhaskar newspaper.

## A PEOPLE'S LAWYER: THE STORY OF JANHIT

*Have you ever been personally, as a lawyer or as an activist, threatened by any state agency, or asked to cease your activities?*

Not directly, no.

*But otherwise?*

Well, our phones are always tapped, our mails are always read. There is an atmosphere, which is created in the courts...

*Of intimidation?*

Yes, *yeh toh*, these are naxal lawyers, that kind of rubbish. And, so, the threat is always in the air... *(Laughs)*

*But never direct...*

Hasn't been so far. But don't know, can't say anything...

*Apart from labour disputes, criminal law, habeas corpus, you also take up land displacement and such other...*

Yeah, actually, strictly speaking, criminal cases and human rights cases are not so many. My largest number of cases that I have are relating to land, etc. Relating to illegal land acquisition, relating to violation of PESA Act, Forest Rights Act, and environmental issues. So, bulk of our cases in Janhit are of that nature.

*Ma'am, also tell us something about Janhit.*

Janhit is basically, as I told you, it's an effort at group legal aid, and to support various kinds of people's movements. Some of

them might be simple village associations, they might be NGOs, or they might be unions...

*(Interruption)*

*You were talking to us about Janhit, and explaining to us how it came about.*

See, I think one of the biggest enigmas before a human rights lawyer would be, that the people who need you the most, can't afford to pay for you. And I think this is something for which a solution needs to be found. Actually, the solution needs to be found socially or institutionally, but unfortunately, individuals are left to find for themselves a way out of this dilemma.

For example, as far as I was concerned, I was anyway a social worker, a trade unionist, and I anyway came to the profession because I wanted to work for a cause. And in that sense I did not come because law was my profession. So obviously, as far as I was concerned, I was willing to work very hard, and live very simply, try and get the best deal for my clients as possible. I did not look upon them as my clients, but more as people as I was representing in courts because I felt at one with their cause, the trade unions, the organisations.

But, thing is, there are many lawyers who are not like that, who have not come from that kind of a background. And particularly, lawyers who don't have lawyering in their family or their background otherwise, and who are not well off— such kind of people, also have to think of their bread and butter, how are they going to survive. So we have to work out some models— how are we going to solve this problem of sustaining oneself professionally, and also being able to cater to people who cannot afford payment. Now, theoretically the legal aid system was supposed to be that, that it would pay the lawyer, not very much, but some amount, and a poor person could afford. But for some reason, legal aid...

*Has not really taken off...*

Exactly. And we have to do some analysis as to why, because a lot of money comes into the legal aid services. And you have all these seminars where people are feted, and a lot of *guldastas* and *phoolmalas* (flower bouquets and garlands) and so on... And very pious speeches are given, but that is about all. Our experience has been that legal aid lawyers are not necessarily the most competent or the most committed or even the most deserving. And sometimes even very influential lawyers corner legal aid spaces. Which is very foolish, *matlab* (meaning), they don't need to do that.

Also, we have heard a lot of complaints about legal aid lawyers demanding money from clients. Saying, no, *humko toh itna hi milta hain* (We get paid so less). Second difficulty about legal aid lawyers is that they don't take cases very seriously. Because they think, anyway, they are going to be paid this much, whether they work for it or don't work for it. So, my dream has always been that institutionally, the system should be—like, whenever you go into a High Court, you find that the AG (Advocate General) office is a huge office with so many lawyers, and so many facilities and people are paid. Actually, that is what the legal aid building should be like. You should have very good, competent senior lawyers, junior lawyers, and good facilities. And that should be legal aid, that these are the guys who are going to work... Because judiciary is supposed to uphold the Constitution, so how are you supposed to do it? Anyway, that's a matter of a dream, actually it doesn't work.

So how did we do it in Janhit? Initially, when I came, I was basically lucky that I was able to learn with one of the best constitutional lawyers, Shri Kanak Tiwari. Actually I had come to brief him, we wanted him to do our cases in the High Court, and he must have spotted the spark, so he said that you have to give some time here,

and come join the chamber. So I worked very hard over there, at that time I was part-time trade union, and part-time I used to come and work in the chamber here. There was a lot to learn.

After some time, I quit to start my own practice. Of course, I respect Sir a lot, and I visit him from time to time, and consult him on so many issues. Unfortunately, his health has also not been too good, and he is not appearing so much in the court now. But after that, the challenge was now how do we manage? Initially, I had begun with our own trade union cases, but later when I found, as I told you, that other organisations face the same cases that's when the idea of Janhit came about.

Initially my collaboration was more with professional lawyers, in the sense that they were friends, they were people who had sympathy for these kind of cases, and they were willing to, say, if they gave 80% of their time to their profession, they were willing to give 20% of their time here. And they were two–three lawyers like that. And they were part-time working with me, but still we slowly started getting into a team. Because when you have a regular practice, then there are many things to learn.

You have to manage the courts, you have to manage filing, mark presence in the court. You can't just be somebody who comes in from Bhilai when your case is listed and then go back. Because then you can't maintain the continuity of your legal work. And we started taking up some very interesting cases. Environmental cases were one category of cases where we tried some novel kind of arguments and some other kinds of issues based in that. Then, land acquisition cases, large number of land acquisition cases.

*Which period was this?*

I started coming to the High Court seriously 2005 onwards. But I think more or less the notion of Janhit starts around 2007-2008.

*And when you were initially thinking of Janhit, you were thinking of...*

Janhit came up as an idea. Initially I was in Mr. Tiwari's chamber, and after I left that then came up the notion of Janhit.

*No, what I was saying is that in its stage of inception did you think of it as some sort of a institution through which referrals could be made to various lawyers, who otherwise had an independent practice? Is that how you imagined it?*

Not really, but I hoped that lawyers who had an independent practice would give time to it, I hoped that, to these kind of cases. So it would be a team, but I would be an anchor who would be a full-time person, and the other people would be part-time.

There would be certain people on your roster...

Yeah, with whom one could collaborate on PILs (Public Interest Litigations), for criminal cases, for labour cases. That was what I was looking for...

*So it is how the Legal Aid Board in a lot of states is structured.*

Yeah, possibly. So that is how it was initially. We did a lot of land acquisition cases, a lot of PILs. Attitude towards PILs is not very positive in our courts. Now, maybe, things will change a little bit. For a long time it hadn't. So that has also been an uphill task, to get a couple of PILs going. And definitely human rights cases are very, very difficult.

But I think, the original team of Janhit, as those lawyers became sort of more senior and had more independent practice of their own. The group that was collaborating with the more senior one's was a fluctuating group. Then we had to think seriously about how to set in place certain norms. I would also be a little strict, and say that no, we shouldn't charge too much from our clients, because

it was evident that those people could barely manage expenses... Sometimes they couldn't even manage expenses.

Of late we had the idea, for example, of forming a trust in the name of Janhit... So there is a Janhit trust. We don't take funding from anybody, neither government funding nor any project-based. It's basically friends, say my contemporaries, who we have talked to and told that see, this is what Janhit is about, and if you feel committed then, commit that you will give 10,000 rupees a year, each year, and we try to send them regular bulletins, appraise them about the work.

And we have found a good number of people, 20 to 25 people, who have made various kinds of contributions, so at least a skeletal office we are able to maintain. That is the basic thing. Apart from that, it is not as if people do the cases. For example, take village communities. After all, villages sometimes have given hefty fees, and have been fleeced by many, many, senior lawyers. Many of the times, the cases that we get are the cases that are almost dead. After they have gone to many lawyers, they have been given lot of false hopes, sometimes their lawyers have been subverted by the other side, or they have insisted on too much payment, which they have not been able to give.

So many times the 'patient' is virtually on the ventilator, by the time he comes to us. It's a dying case, if we can do something with it we try and do something with it. So often, when we describe these situations, village people are also able to contribute, and some of them have made generous contributions to Janhit. So, in that sense good amount can come this way also. One of the important things about working in Janhit is that we have always tried to not rely solely on legal strategies. And that is because we have always worked with organisations and movements. So, they have to sort of weave in the legal strategy with the strategy of the movement. So we unhesitatingly tell them if we feel coming to



court is not a good idea. Many times we feel that coming to court is not a good idea, when we feel that the court might actually come in the way of their agitation or...

*(Interruption)*

So, that is one thing. We don't mind, because we are more keen that this group... Because our notion is that, rather than giving individual aid, group aid is something that will make a difference, and make people feel more powerful. Also, a lot of the work is drafting representations, RTIs, telling them, going and inspecting files in the lower courts, sitting with them and discussing the powers of the *Gram Sabha* (village assembly from which the village council are elected), or helping them in drafting the resolutions. So a lot of the work is not strictly in the courts. And that work is as important, sometimes more important. If you don't do that basic ground work, then just coming on a writ, and being told that you have other alternate efficacious remedies, you have not done enough, there is not enough material for the court to take a decision, that's very unfortunate. So we try to make it as solid as possible at the bottom.

Also, a lot of the work is also in the revenue courts, in the criminal courts. So Janhit doesn't only concentrate on courts located here, we have the advantage of being located here. But many of the lawyers are doing trade union cases, many of the lawyers are doing revenue cases, and we also try to have a network of lawyers in the districts, who will not be doing only Janhit cases, but whom we can trust to do those cases, and whom we can monitor from here, and help also from here. And for that purpose if they need to be recompensed for their time, then we try to do it.

Many of the times it works both ways, because they also refer cases to the High Court, they also need High Court help. So some kind of mutual relation can be established in this way. But this paralegal bit is also very important. Particularly, getting out

documents and policies and strategies— that is very important, as important as going and arguing in the court, or drafting a petition in the court.

*One of the things that you said is the collective rights that you focus on, as Janhit. Would you say that is the prevailing ideology of this institution, Janhit?*

Yes, I would say so. Actually, collective rights *nahin* (not), I would say that, I was just telling you that why is it that Dalli Rajhara was so important— Dalli Rajhara became a place where workers felt powerful. And I think that is the analogy that I have followed, that if you support movements, then people feel powerful. You might be able to get relief to one individual, but does that make other people feel stronger, even if you are able to get some compensation, or some relief?

So when you help an organisation that creates an entire atmosphere in that village, in that company, if you are able to get something for the workers as a whole through the trade union. It makes a lot of difference. If you are able to get something for a group of villagers, it makes a lot of difference. If you are able to help them against important, powerful companies, it is a big help in that sense. It doesn't mean that we don't do individual cases, there are some individual cases...

I was just telling you that day about *Janki Sidar's* case.<sup>185</sup> It is a case that we are pursuing because it needs to be pursued to its bitter end. That is a very important case. And that is something that has been continuously abused. That is something that is very much our experience—how corporates misuse and abuse legal processes. It is really remarkable, *ek toh*, most of the time they bypass most of the things. If you try to pin them down, they are able to wriggle out of many things. And sometimes they actually

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<sup>185</sup> See Appendix 4, *Janki Sidar Case*.

use senior lawyers to gloss over many facts, to mislead the court. This kind of tactic is also very common.

I am happy that in a sense Janhit has a good reputation in this court, that be it D.B. Power,<sup>186</sup> or be it Jindal,<sup>187</sup> or be it Vedanta, or be it Holcim or be it Prakash Industries<sup>188</sup>— so many companies that we are fighting against, and usually people see that on the other side there is this huge battery of lawyers, some senior lawyers, Pinaki Mishra has come down, or somebody from Mumbai has come.

And on this side you see the Janhit lawyers fighting it out. Many people come to just see the scene. So I think that way the existence of Janhit is very important to establish the other pole, that there is another pole.

*How many lawyers do you have working permanently with Janhit?*

Now we have five lawyers. As I said, earlier that was not the situation. Now, slowly, slowly Janhit as an institution is also growing. So we have four other lawyers. And the nicest thing is, now that Janhit has taken this much of a form, many times lawyers come here for internships. So they come for a month or so, they

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<sup>186</sup> Dainik Bhaskar Power, *supra* 184.

<sup>187</sup> Both the case of *Janki Sidar* (See Appendix 4) and the case of *Dukalu Ram & Ors. v. Union of India* regarding open cast and underground coal mining by Jindal in Kosampalli village, Raigarh, at Coal Block Gare-Pelma IV/6, were cases of land transfer without the Gram Sabha's permission, without the villagers' knowledge, and without any documents showing necessary clearances. The matter is pending before the National Green Tribunal, Central Bench, Bhopal. The allotment has been cancelled by the Supreme Court in *Manohar Lal Sharma v. Principal Secretary*. In March 2020, the Principal Bench of the NGT passed a landmark order in this case, fining the Jindal Steel and Power Ltd. a sum of Rs 160 crores for the violations. (Original Application 200/2018, *Dukalu Ram & Ors. v. Union of India & Ors.*).

<sup>188</sup> See Appendix 5: *Kashiram Yadav v. Union of India*

help us with something, they watch this model, some of them like it. And I am hoping that next year, there may be two more lawyers joining us. I'm actually thinking that they will work this way, and not that it is a second option or something like that, but they want to work this way and they think it is important to work this way. So that is a good example. And it is tough, sometimes, absolutely we are down to zero resources, but we manage.

*And you said that you have a network of lawyers in the district, so how many lawyers do you think?*

See, actually, as I said, I have a number of identities. One is as a lawyer with Janhit, and now I am also the general secretary of PUCL, Chhattisgarh. Through PUCL, I have a number of contacts with many lawyers. Because many of the lawyers are associated with taking up human rights cases, etc.

So specifically with Janhit, we have people mostly doing trade union cases. So we have people doing trade union cases in Rajnandgaon, in Durg, in Raipur, in Baloda Bazaar, and in Singda— these are all places where basically the CMM unions are being helped out.<sup>189</sup> But a lot of other cases of peasants and other workers also come. So these are lawyers who are sort of part-time helping Janhit out. But Janhit also gets the benefit of other lawyers who are not associated with the institution in any sense, but with whom there is a friendly (relationship)...

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<sup>189</sup> See Appendix 6: Extract from Janhit Bulletin, October 2013.

## CHALLENGING ARBITRARY ARRESTS IN A MILITARISED ZONE

*You also told us about some documentation work, so can you tell us a little more about that? This is documentation work on behalf of PUCL or on behalf of Janhit?*

Well, this is basically, not on behalf of PUCL... It is difficult to say, actually, because it is equally a legal issue... Actually what we have been very concerned with, in a situation which is there now, where you have thousands of people languishing in jails, Adivasis languishing in jails. This came to our notice through PUCL, basically lot of persons, and criminal justice system is under a lot of pressure in these areas. I think that is true of most militarised areas, where the judiciary is under considerable pressure from the executive. You will read in the papers today, that so many Naxalites were nabbed, there was a fierce encounter, etc... Next day you will read in the papers that the villagers went and they demonstrated that no, these were ordinary villagers who were picked up and so on.

This thing is a pattern that one is seeing continuously, and I think it is cause of concern. Because if you go there and you talk to journalists and other lawyers, you find that, this is a fairly common phenomenon. And actually what happens is, let's say there is some incident which has happened, a land-mine explosion, or something. Then, after that, the security forces normally go out on combing and searching. And it appears that they actually pick up a lot of people indiscriminately. That is the sense that you get when you talk to people. And now the problem is that, since

many of these incidents are very serious incidents, they might have resulted in deaths, in abductions, in explosions, in looting of arms, men and women... All the offences are very serious. And usually the FIRs are against unknown Naxalites. And when people are brought, they are presented before the Magistrates as being the accused persons in these offences. And the most unlikely of people are presented.

Now that is where I really feel that while the primary task of the executive is obviously law and order, but the primary task of the judiciary would be also to protect the liberties of the individuals in such a circumstance. So if a sixty-year old man is brought before you, and you are told that this man is a dreaded Naxalite or something, some amount of judicial discretion has to be applied. Now how is that to be applied?

There are a few things lawyers, that we have met in this area, have repeatedly said. For example, one thing that they have said is that there is a provision in the CrPC, that if there are weapons or arms or something that can be used as a weapon has been seized, it should be deposited in the court at the earliest possible opportunity. Now, if simply the Magistrates start saying that 'You claim this is the FIR, this is the incident and you claim this has been seized—where is the material?' I think that itself would start eliminating a lot of grain from the chaff.

The second problem is that these persons are unable to communicate with the Magistrate because often the Magistrate doesn't know the Adivasi languages. So that is another serious problem. The Magistrate is actually not in a position to ask you that when were you picked up, in what circumstances were you picked up, were you threatened... So that opportunity of coming before the Magistrate is hardly there.

Now, once you send the man to jail, and he is there for a grievous offence, then after that for a long time he may not be produced

before the court, because then it will be said that it's a very serious offence, and we don't have enough guards to bring this very dangerous Naxalite to the court. So then once you are in jail, then the trial is very long and drawn out.

We have to document this, and we have to see what is the solution. Should cases be reviewed, we have to bring this to the notice of the higher courts... How do we do that? Because all this is happening very silently. They are in jail for three years, four years... Because it's a naxal offence, they have to be kept in central jails.

So people, facing trial in Kondagaon, are brought to Durg. That means even less probability of them being tried. Often families are very poor, they cannot come to the jail, won't come to the jail. Again, no opportunity for defence... Lawyers never visit them in jail, because in the Naxali offences, the mugshot of the lawyer is also taken. And he is listed in a separate register. So you are made to feel like a criminal, if you are a lawyer for a person in a Naxalite case. And I think I told you yesterday, one lawyer was detained under CSPA. And there is nothing against him, except that he used to visit the jail...

*Which he has to...*

Which, as a lawyer, he should be doing! If no family member is meeting him, then how is he supposed to know what is the defence? So this is a very serious situation. I was giving you a situation of this sixty-three year old person, he was picked up three years ago, so he was sixty years old then. What the family members tell us is that actually the security forces entered, they killed a young man, and then they picked up this old man, who was plucking chillies, took him along.

The FIR reads that there was this very serious ambush, so on and so forth, and then later on, (*quotes the FIR*),

*‘Kafi der baad ghatana sthal pe pahuchne par ek vyakti  
chipe huye bhag raha tha,*

(On reaching the incident site after a long time one person  
was hiding and running)’.

I am afraid this is the best I can translate it into (*Laughs*) and here is a sixty-year old man, from whom a bow and arrow is seized.<sup>190</sup> And now we come to know, that he is not even...

And of course, Naxalites when they run away they always say ‘Oh X and Y’, they always take names, so that is how the people (police) know that these are the persons (X and Y) who are involved in these offences. So, (in this case) the Naxalites were running away and shouting ‘Kumal, Kumal’, so they have picked up this man (whose name) is Kavasi Kumal. We realised later with shock that this man is not Kavasi Kumal. Actually his name is Kavasi Ramkumar. He is there, a sixty-year old, has been there from that time, his bail was rejected by the lower court, his bail was rejected by the High Court. It’s a very serious offence. And the trial was supposed to be expedited. In 3 years, nothing has happened, even after an order from the High Court.

And then, some of the cases are stuck, why? All the witnesses are over, but one person from the Naga Battalion has to come, who will never come. Sometimes it is all over, but the IO (investigation officer) is not appearing. And then lot of acquittals, because ultimately it is going to be very difficult. There is no evidence, it is mostly cases without evidence. But because the case in itself looks very serious, no bail is granted. In fact, in Dantewada people don’t move bail applications any more. It has become practice to not

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<sup>190</sup> Kawasi Kumal, lodged in Jagdalpur Central Jail. Bail Application before the Chhattisgarh HC numbered MCrC 3696/2011 was rejected on 1.12.2011 without any reason behind such rejection. The name-issue was not even discussed in the oral order by Justice Mishra. Eventually, he was acquitted in 2014 by the Dantewada Sessions Court, after spending nearly six years in jail.



move bail applications. Because, anyway, *kuch hota nahin hain* (nothing happens).<sup>191</sup> And since more or less that is the experience in the High Court, and people don't have the wherewithal to go to the Supreme Court, things remain at that level.

So this is the point at which we thought, okay, we understand the difficulties with which the courts are functioning. You can't do this. And this is going to result in further, and further, alienation of Adivasis from the mainstream. Their faith in the legal system is going to go down. Because what do they find? That for *habeas corpus*—nothing happens; fake encounter cases filed in the High Court, *Singavaram* case lying in the High Court for the last four years<sup>192</sup>—there has been no decision. *Gompad* case lying in the Supreme Court, there is no decision.<sup>193</sup> So many cases are lying in the NHRC, SHRC—there is no decision.

So if that is going to be the situation, so then we decided at Janhit that we would also try to document some of these cases. So you can say that it is both a Janhit and a PUCL project. So we are trying to move the bail applications all the way up, and also trying to gather information. So far we are disappointed. For example, after this collector's abduction, there was a Nirmala Buch Committee, which was supposed to review cases. Now the composition of the committee, which was formed actually makes it impossible to review cases. Because there was the home secretary, there was the IG (Inspector General) of police or the

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<sup>191</sup> Bail applications of Gadodam, Ruchi, Sanau, Kawasi, Padma, Phagnu, Soni, Vijay, et al have all been rejected by the Chhattisgarh High Court.

<sup>192</sup> See Kaiser, Ejaz (2009), 15 'Maoists' killed in Chhattisgarh, people cry foul, in *Hindustan Times*, 11th January, available at <https://www.hindustantimes.com/india/15-maoists-killed-in-chhattisgarh-people-cry-foul/story-cVHbRSL4zNkhSZcZ9iO3GI.html>, last seen on 20/11/2014.

<sup>193</sup> See Sethi, Aman (2010) *Police killed villagers, say Gompad witnesses*, in *The Hindu*, 21st February, available at <https://www.thehindu.com/news/national/Police-killed-villagers-say-Gompad-witnesses/article16815921>. ece, last seen on 20/11/2014.

DG (Director General) of police, and Madam Nirmala Buch, and probably the Chief Secretary.<sup>194</sup>

Now the difficulty is what is the manner in which you review the case? It is your department, which has given the sanction, then how can the home secretary say, no, the sanction was given wrongly. It is your police that is doing the investigation, then how can the DGP say that the investigation is flawed? It should have been a judicial review. It should have been—this was the chargesheet and this is the evidence. They are not looking at that at all. Or, it should have been fact-finding enquiry, which is that you talk to the person in jail, you talk to the family members in jail, or the *sarpanch*, and other people, and you invite people to come and give more evidence. Instead what happens is that you call out the chargesheet, then they say, oh, all of these are serious and grave offences, and that's it.

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<sup>194</sup> The committee was set up after the situation involving abduction of the Collector of Sukma arose. For details see NDTV (2012), *Sukma Collector Alex Paul Menon released by Maoists: 10 Big Developments*, in NDTV.com, 4th May, available at <https://www.ndtv.com/india-news/sukma-collector-alex-paul-menon-released-by-maoists-10-big-developments-480428>, last seen on 11/10/2020. 'The Nirmala Buch committee, which was set-up by the Chhattisgarh government to look into cases of a large number of tribals and others, who have been in jail for a long time, against whom, investigation or prosecution is pending, has also been largely ineffective. The committee, firstly, in only concerning itself with cases where prosecution is pending, and so far has not taken any action in cases of shoddy investigation— which is the main reason for incarceration of a large number of adivasis under false charges. Secondly, it has chosen to limit its mandate to only cases of those with extremely bad medical condition and really aged undertrials, as recommended to them by jail authorities without the committee members themselves going into the legal standing of these cases. Thirdly, even in these cases it limits its recommendations to non-opposition of bail applications filed by the prosecution, which has little to no bearing on the decisions of the presiding judges.' See Kaur, Guneet (2014) *Caged Justice: Supreme Court's latest order on Undertrials and its impact in Chhattisgarh*, in *IndiaResists.com*, on 25th September, available at <https://indiaresists.com/caged-justice-supreme-courts-latest-order-on-undertrials-and-its-impact-in-chhattisgarh/>, last seen on 20/11/2014.

*Have there ever been judicial enquiries, or magisterial enquiries headed by sessions judge, on fake encounter cases?*

See, magisterial enquiries are routinely done. In every encounter there has to be a magisterial enquiry. But, number one, the atmosphere is not created where villagers and families of people killed can actually come and depose. So basically the Magistrate hears the government version, and gives the magisterial report. The judicial enquiry also, you see, I am giving you the recent example of *Sarkeguda*.<sup>195</sup>

What has come out in the papers is that the villagers never appeared for the magisterial enquiry. But actually, when we talked to the villagers, first of all, no notice was given to them. Some journalists came and talked to them and said this is what your people are supposed to do, go before the SDM (Sub-Divisional Magistrate). The villagers went before the SDM, and he said, 'Who am I to take your statements' and sent them back. And then it is being said that nobody appeared before the magistrate. So that's not true.

In the north, in Sarguja, there was a case of rape and murder, well, suspected rape and murder of a young girl, minor girl, Meena Khalko.<sup>196</sup> Sixteen or seventeen. And initially, the villagers, the sarpanch— they protested a lot, gave letters to the SP. Now she is not at all a Naxalite. This young girl had probably gone to meet her boyfriend, who is one of the truck drivers who drives the bauxite truck. And probably the police party found them, and you don't know, she appears to have been shot at close quarters, and

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<sup>195</sup> Sarkeguda violence (2012), *supra* 183.

<sup>196</sup> From *Letter to National Human Rights Commission on behalf of PUCL-Chhattisgarh* dated April 12, 2013:

'...Murder of a minor girl Meena Khalkho in Sarguja by the police and security forces in July 2011, again claiming her to be a Naxalite. The Judicial Enquiry announced has not even begun, though again, the family members have been brave enough to submit their affidavits'.

then the story was that she was a Naxalite. Villagers vehemently denied, of course. Then there was a magisterial enquiry, and people deposed and everything, then the magisterial enquiry was stopped because there was a judicial enquiry. In the judicial enquiry, a judge was appointed, but there have been a lot of delays and nothing appears to have moved so far.<sup>197</sup> So, you see, it's difficult to say how people's faith in the legal system is going to be maintained in this kind of situation.



*Sudha at her office in Bilaspur. Source: Janhit*

<sup>197</sup> The report of this Judicial Commission was tabled in the Vidhan Sabha in June 2015, and held that Meena Khalko had been killed by the police, and the police claim that she was a Maoist or a sympathizer is not acceptable. See Kaiser, Ejaz (2015), *Chhattisgarh rape: Judicial probe says cops killed tribal girl*, in *Hindustan Times*, 28th July, available at <https://www.hindustantimes.com/india/chhattisgarh-rape-judicial-probe-says-cops-killed-tribal-girl/story-UhvjrIxczI49RlevUpubvN.html>, last seen on 11/10/2020.

## INTERNATIONAL HUMAN RIGHTS INTERVENTIONS

*Has there been any kind of international body, like Amnesty or Human Rights Watch kind of intervention in Chhattisgarh?*

See, actually, Amnesty has been issuing statements. For example, it issued a statement on *Kartam Joga*,<sup>198</sup> who is in jail. He is a prisoner of conscience. He is one of the petitioners in the *Salwa Judum* case. The *Salwa Judum* case is not just Nandini Sundar's case— there is Nandini Sundar's case and then there is Kartam Joga's case. That man is a petitioner, and he is in jail. Statements have been issued, but not much has come of those statements.

*Have they conducted fact-findings?*

I don't think... See, Amnesty, for that, has to seek permission. And see, the clever thing that has been done by the state, is that on the one hand you keep saying, biggest internal security threat, and therefore people feel that it is okay to deploy IRBs, CRPF, BSF, even Army, and even have unmanned helicopters and all that. But they refuse to admit that this is an internal armed conflict. You see, only when they do that, do international agencies get a place to come, and there is the whole question of Geneva Conventions being observed by all sides. So, in that sense, the government has shied away from that. There are some international agencies working here. But, since, as I said, it is not a declared zone of international conflict, they can only work as far as the district administration would let them work. There have been instances

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<sup>198</sup> Activist, member of Adivasi Mahasabha, Communist Party of India. Incarcerated for a long period. charged on 4 counts. Eventually, acquitted.

where they have been stopped by *Salwa Judum* who accuse them of helping Naxalites. And they had to complain to the Collector saying that if it's a medico-legal case, we will report it. But you can't do this, you can't prevent people from getting treatment.



*Sudha in Delhi, 2018. Source: Janhit*

## ROLE OF SHRC

*On the point of SHRC, it is interesting how in the Salwa Judum case, SHRC reports played out. So what has been your experience with SHRC?*

SHRC, I am afraid... Well... Let me first, to put the record straight, say that there was one very good job which the SHRC had done. Raid government hospitals and discover expired medicines. There was a huge racket of expired medicines. I mean that has been the major work that SHRC has done. But, in terms of human rights violations, it has a very dismal and disappointing record.

See, for example, if you take up any issue regarding BSF, or CRPF, they say that we can't deal with it, these are central forces, so go to the NHRC. If you go to the NHRC... For example, we had received from a journalist, a list of 100-135 persons who were killed in the first few months of Operation Green Hunt. That was an allegation that many of these were fake encounters. By that time, the situation was that nobody could go and visit these areas because the *Salwa Judum* and the SPOs would simply lynch you if you went there. So we were in no position to confirm. So we forwarded this to the NHRC, saying that this is the information that we have got, and we are not in a position to verify, but a considerable portion does tally with the dates that you get from newspaper reports, etc. And since there are allegations that these are fake encounters, the NHRC should investigate these... But we have not heard from them.



*When did this happen?*

This was a long time back. This was three years back.

*And they have not responded?*

No, we have not received communication in this regard. It was sent through the PUCL national.



*Sudha addressing a PUCL meeting in Balu Bhai Bhavan in Raipur, 2016.*

*Source: Janhit*



## THE IMPACT OF THE NANDINI SUNDAR JUDGMENT

*With Salwa Judum or SPOs, the arming of civilians, the arming of, in some cases children also, in Chhattisgarh. Is the trend still continuing after the Nandini Sundar judgment, has the state implemented the judgment? Has the judgment made a visible impact?*

The day the judgment came, within a week of that, very quickly, the Chhattisgarh Government declared a Chhattisgarh Auxiliary Force,<sup>199</sup> by means of which it absorbed a large portion of the SPOs. And that Act says that nothing in any judgment of any court can come in the way of doing this. So they have basically clearly said that they are not going to pay heed to the Supreme Court judgment. And in the same *Nandini Sundar* judgment... actually that was not a judgment, that was an interim order.

The case is still continuing. There was an order to the CBI to probe the arson and violence in *Morpalli Tadmetla*,<sup>200</sup> and the

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<sup>199</sup> As of 2014, a Specially Trained Force (STF) is being formed along the lines of the notorious Greyhound (anti-insurgency special forces—police unit) of Andhra.

<sup>200</sup> The *Nandini Sundar* order also had the following direction, ‘We order the CBI to immediately take over the investigation of, and taking appropriate legal actions against all individuals responsible for the incidents of violence alleged to have occurred in March 2011, in the three villages, Morpalloli, Tadmetla and Timmapuram, all located in the Dantewada District or its neighbouring areas.’ The CBI was also directed to look into the violence against Swami Agnivesh, who had tried to reach food and essential supplies to the villagers, after their granaries had been burnt down. See ET (2011) *Salwa Judum is Unconstitutional, says SC*, in *the Economic Times*, 6th July, available at <https://economictimes.indiatimes.com/news/politics-and->

CBI gave a letter to the Supreme Court saying, we were attacked by the Chhattisgarh Auxiliary Force and so we could not carry out the inquiry. This is all there on the record. So, the role is still the same, now they are official.

*With just a different name... You mentioned some international organizations like Medicines Sans Frontiers, especially in Chhattisgarh, where health issues are very important. You also mentioned the SHRC report on expired medicines. Tell us more about the situation on health.*<sup>201</sup>

See, one thing is that the Chhattisgarh government is on a real public relations spree. So they want to be number one in everything. Number one in literacy, number one in PDS...

You see, getting a good image is so important that I think there is a lot of underreporting of, for example, malaria deaths.

And there are many studies which show that the number of deaths is unbelievably low. And actually, if you follow up, private hospitals record so many cases of malaria, and at the block level there are many cases, then how can cases at the state levels be so few. So, I think actually we don't really know what is the picture.

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nation/salwa-judum-is-unconstitutional-says-sc/articleshow/9118738.cms, last seen on 20/11/2014. In October 2016, the CBI submitted its chargesheet, indicting 7 SPOs for the arson and 26 for the attack on Swami Agnivesh, while keeping the investigation on rapes and murders open. See Agnivesh, Swami and Nandini Sundar (2016), *Dantewada: Where the Lie becomes the Truth*, in *The Citizen*, 22nd October, available at <https://www.thecitizen.in/index.php/en/NewsDetail/index/2/9021/Dantewada-Where-the-Lie-Becomes-The-Truth>, last seen on 11/10/2020.

<sup>201</sup> Very recently, the sterilisation deaths of several women in Bilaspur on 10th November 2014, has raised questions about the situation of health in Chhattisgarh. See Das, Siddharth Ranjan (2014) *Eight Women Die, Dozens Critical after Sterilisation Camp in Chhattisgarh*, in NDTV, 11th November, available at <http://www.ndtv.com/article/india/eight-women-die-dozens-critical-after-sterilisation-camp-in-chhattisgarh-619112?curl=1416489108>, last seen on 20/11/2014.

And similarly a lot is feted about the 2-rupees rice, and the PDS,<sup>202</sup> and how everything is so wonderful. I don't know because I think at least the organisations that are independently trying to monitor this... Various organisations are independently trying to monitor this. The organisations that are actually monitoring district-wise, are finding the levels of malnutrition in children very high.

In a district like Raigarh, which is greatly industrialised. And where people have actually lost land, water, forest, and a lot of communal resources. And there is severe impoverishment in the rural areas there. Similarly, the *Jan Swasth Sahyog* which works in Ganiyari, they have also been recording malaria, very low body mass indices.

In fact, Binayak Sen, when he was around in Dhamtari, there were very serious cases of Falciparum Malaria. In fact, in his clinic alone, he had reported, in one year, nearly 90 cases. And they were able to save lives of many people. So I think the health situation is serious.

And when the government takes an attitude, that okay, those who are in the roadside camps are 'ours,' and those who are out there in the interior villages are 'Naxals' and then withdraws health facilities from those areas, then it is condemning a lot of people to disease. For example, I recently read in the papers the

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<sup>202</sup> Until 2014, the Chhattisgarh Government was pitching itself as a model PDS (Public Distribution Sytem) regime. Then, the ration card scam reached a peak throughout Chhattisgarh in 2014. More than 14 lakh ration cards were found to be forged and the Congress party, in the opposition, alleged a Rs. 2,300 Crore Scam. Political involvement on the same is quite clear. See Bharadwaj, Ashutosh (2014), Fake Ration Card Scam Accused is now Chhattisgarh BJP Treasurer, in the Indian Express, 4th November, available at <http://indianexpress.com/article/india/india-others/fake-ration-card-scam-accused-is-now-chhattisgarh-bjp-treasurer/>, last seen on 20/11/2014. See also, Bharadwaj, Ashutosh (2014), Fake Ration Cards Pile Up in 'Model' PDS State, in the Indian Express, 1st August, available at, <http://indianexpress.com/article/india/politics/fake-ration-cards-pile-up-in-model-pds-state/>, last seen on 20/11/2014.

big achievement of the security forces that they could intercept a vehicle carrying medicines into so-called 'Naxal areas,' all for the so-called 'Naxalites'. I don't know whether this is...

*Something to be proud of.*

Something to be proud of. I remember that when this Singavaram incident had happened, and in fact Arundhati Roy quotes this incident in her book, *Walking with Comrades*, that she had enquired that there was somebody called Sitakka, whom the district administration claimed that she was a Naxalite, or in touch with Naxalites. And whereas the villagers were saying that all these uniforms were put on the bodies later. There was a conflicting opinion. And when she asked the SP (Superintendent of Police), the SP said that she was definitely a Naxalite, because she had Dettol and Chloroquine with her. It was found on her body. So, if you have to be a Naxalite to have Dettol and Chloroquine on you, then that is a very sad state of affairs. In a malaria-endemic region, is it only Naxalites who are distributing Chloroquine? That is what the district administration is more or less saying. And I think the humanitarian crisis is not being looked at. There is a very serious humanitarian crisis.



*A protest at the Ambedkar Chowk in Raipur organised by CMM(mks) and PUCL. Sudha is seen seated, holding a poster. Source: Janhit*

## FIGHTING LAND DISPLACEMENT CASES

*You mentioned yesterday that most of your cases deal with land displacement. So can you just tell us more about that, about land displacement cases that you do?*

Yes. Actually there are three (types), if I distinguish the cases. For example, we did a case of seven villages in District Rajnandgaon. The case was called *Narsingh Yadu & others*. It was basically Indavani village. Indavani and surrounding areas, where land was being acquired for, it was called an SIZ— a Special Industrial Zone. That was a case in which... and these are very common and we have done many such cases... nobody bothered to do a Section 5A. So you had a Section 4 notification, and immediately you had the Section 6 notification.<sup>203</sup>

So that whole thing about 5A was hearing the objections and all that... That led to quashing of Section 6, and again since it was a Janhit matter, and there was agitation going on there, actually finally the government withdrew the Section 4 notification. And that could not have come just from the court. That came because really it was walking on two legs—there was a court strategy and there were villagers. And the women of that village were remarkable. Initially there was a stay. During the course of the stay, the SDM went there and the villagers were asked to gather and raise their hands, and some helicopter was taking photographs. And then everybody was called to the district headquarters in Rajnandgaon, and a huge sumptuous meal of puri and kheer was

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<sup>203</sup> See Appendix 7: *Land Acquisition Act (LAA)*, 1894. Sections 4, 5A, & 6.

given to everybody in the village, and they were told how they will be now taken to meet the chief minister, and they will be taken on a trip to all sacred places in Chhattisgarh. And all this was an exercise for them to give their consent. Because you see, once Section 6 was cancelled, they would have to do 5A again. But they were so terrified.

And the women! Because the men still said that okay, we will get this much money. The women said that these guys are going to drink it up, and we are not going to part with our lands. And that finally led to the government thinking that okay, it is too much of a hassle. And finally the Section 4 notification was also cancelled. But what we are observing in the land acquisition matters, is a lot of misuse of Section 17,<sup>204</sup> urgency provisions, for putting up power plant... For example, in the Scheduled Areas, the PESA states that the consultation of the *Gram Sabha* is prior to Section 4.<sup>205</sup> In fact we have a notification in the MP government, which equally applies to Chhattisgarh. But they don't that follow at all. Or if they follow it, people refuse. Once they refuse, then they apply urgency clause. They try to do away with 5A. We have many cases like that, which are pending or decided. But actually in land acquisition the most difficult thing is the whole issue of public purpose, the judicial review of public purpose. And the High Court refuses to put its mind to it. They say, no, no, the government has put its mind to it. Or *accha* (okay), you are saying that it is for a private purpose, but public-private partnership *hota hai aaj kal* (public-private partnership happens nowadays).

*(Interruption)*

What we find here is that the court is refusing to lift the veil. So, there have been cases in the High Court, where it is very clear, that the money is being deposited by the company, everything

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<sup>204</sup> See Appendix 7: *Land Acquisition Act (LAA)*, 1894. Section 17.

<sup>205</sup> Section 4 of the *PESA Act* makes such consultation necessary.

is being done by the company... In one of our cases, Vandana Power Plant in district Korba,<sup>206</sup> they have gone to the extent (to say) that the designated officer under Section 4(2) of the Act who is supposed to decide whether or not this is public purpose, is Vandana Power Plant! (The company) Vandana Power Plant! And they have not quashed this notification. For two years, this case has been pending, not even giving us a stay. And we hear that very influential politicians have invested their money in this power plant. So basically it never gets heard. And now it is going to be heard by a very unfortunately insensitive bench.

*How many sensitive benches are there?*

Looking for it! (*Laughs*). I will tell you when I find it! Some are sensitive for some issues. When it comes to, as I said, here the state and the corporate are both very powerful.

If you go against corporate or against the state, then you should just be glad that you haven't lost the case yet. You will eventually, never fear. (*Laughs*)

*In land acquisition cases, is it a common strategy of yours to merge ground-level activism with legal strategy?*

Yes, yes. Because, if we talk to the villagers... Actually one thing that I feel is that lawyers like us, we should actually listen more to our clients. They have done a lot of running around and they have many different kinds of information, which is very useful and very important. This story of Vandana Power plant for example, this story itself is remarkable. This is in a scheduled area, and Korba is the fifth most critically polluted town. And in this village, already

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<sup>206</sup> *Vinod Kumar Pandey v. Union of India* involving a Power Plant built by Vandana Vidyut in village Chhuri, District Korba. The matter was shifted to the National Green Tribunal, Central Bench, Bhopal where the prime issue was the construction of an Ash Dyke precariously close to the High Flood Level of river Gasdeo that flows through this district and also close to village Jhhora in the region. The matter was subsequently rejected in favour of the Company by the NGT.

there are three big ash dumps around this village. 32,000 tonnes of ash is dumped every day in these ash dumps. And these ash dumps are all 12 to 14 acres, all around... It's a group of villages, 10 or 12, some of them fall inside the Nagar Panchayat Chhurikala, some of them outside. And in the area already there have been so many disasters. One village called Ghamota was totally wiped out by breaking of an ash dump.

*When did that happen?*

That happened in 1998, I think. And recently also, one village called Dhanras, same thing happened. I think the other day I was telling you about this family that is totally cut off, because of ash all around them. There was a stay order, despite that, the ash was being dumped by the NTPC. So now in this area, three more power plants are sanctioned.

Can you imagine what that means? So, people agitated, and they have written letters to everybody. Then what happened, it's a scheduled area, and Adivasi land was bought over by one person. Well, he exists, this is not a non-existent Adivasi. By a person called Vincent M. An ordinary person, and it was shown that within a year, he purchased some 37 lakh rupees worth and sold some 53 lakh rupees worth of land, to the company. And then he was appointed as a security officer.

*(Interruption)*

Now at that time construction had not yet started. There was a huge *dharna* (protest), people were on *dharna*. First of all, they picked up people under Section 151.<sup>207</sup> Then they looked at the leaders, and many of the leaders were non-Adivasis. And on those leaders, Vincent M., put a case under SC/ST Atrocities Act. So they didn't get bail and they couldn't come out of jail.

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<sup>207</sup> Section 151 of CrPC allows preventive detention under the orders of an executive magistrate.



Meanwhile, the construction started. And legally this is a perfect case. Because there were actually notifications from the Ministry of Environment and Forests, that it is a critically polluted area, no further projects should be started here. It should never have started here.

CECB (Chhattisgarh Environment Conservation Board) has actually given them permission, closing its eyes and telling lies. They had to fill up something saying is there a river within ten kilometres. They have said no. There are two rivers and two *nalas* (canals), at three kilometres distance, one-and-a-half kilometres distance. You can't be blind and deaf and dumb!

Vandana Power Plant was supposed to be the designated authority that decided the public purpose. Then the objection they say, *ki thik hai, yeh project proponent koh bhej diya gaya, unhone kaha ki objection kuch nahin hain* (We sent this to the project proponent, and they said that there is no objection). *Arey?* Collector is supposed to... You just read that! It's quite clear.

And in that again, because the villagers said that they refuse to give the land, so they used the emergency provisions. And what is the cause for emergency provisions? Because, producing electricity is very important and giving employment is also very important. Your state is an electricity surplus state. You are planning to sell this electricity. There is no urgency of this nature that you should do away with 5A. So this is a PIL which has been pending for the last two years, not finally decided.

The other set of cases is to do with the *Gram Sabha*. For example, in SECL (South Eastern Coalfields Limited), we have a case in which the SECL has actually given a statement to the court that the PESA Act does not apply to us. And in that case, where the villagers have said, show us where is the *gram sabha*, and they have shown *farzi* (fake) *gram sabha*, and these people went and filed an FIR and all that, because people demonstrated, and for

one day the mine was closed. (So, for this) they have filed a civil suit for recovery of 35 lakhs from an Adivasi leader of the *Bharat Jan Andolan*, called Jangsay.<sup>208</sup> We are doing that case also.

Then a lot of cases are there with regard to mining. Now mining is a very interesting thing because actually mining is not acquisition, mining is a lease, and the lease is something that a person enters voluntarily. If you see the whole format, which is there when you apply for a mining lease, it says very clearly, does the applicant have surface rights? So Mr. Jindal will say, no. Then it will say, if so, then has the consent of the owner and occupier been obtained? And it should be filed in writing. So they say, will be obtained as and when required.

So what they do is, you see, this is the game that has been played. First they get the lease passed by the government. Then, unfortunately there is a little loophole in the Mines Law also. It says that the consent of the owner can be obtained after the lease but before entry into the land.<sup>209</sup> So now they have to get consent

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<sup>208</sup> 'The adivasis of Village Choura, district Sarguja under the leadership of the Bharat Jan Andolan had been protesting because, when their lands were compulsorily acquired for mining under the project Mahan-II by the South Eastern Coalfields Limited – a Public Sector Mining Enterprise, not only was the PESA Act violated in that the Gram Sabha was not consulted before such acquisition, but the SECL submitted a forged Gram Sabha resolution to obtain clearances. About 5,000 Adivasis of nearby villages decided to march to the Mines Offices to protest on 26th December 2009 (Gram Ganrajya Divas– the day the PESA Act was notified). The SECL, which has illegally begun mining and destroyed the livelihoods and environment of the Adivasi villagers that are probably not measurable in monetary terms, is suing them for the loss of production on that day! A civil suit has been filed by the South Eastern Coalfields Ltd. against 6 Adivasis for recovery of 36 lakhs with 9% interest! The defendants include Jangsay – a young adivasi leader of the Bharat Jan Andolan. Needless to say the villages are gradually organizing to see that the future expansion under Mahan III and Mahan IV cannot be carried out without compliance with PESA.' Bharadwaj, Sudha (2018), *supra* 78.

<sup>209</sup> *Mineral Concession Rules*, 1960 Chapter IV, Rule 22, Sub-Rule 3-h, Second Proviso: 'Provided further that the consent of the owner for starting mining

for entry into the land. Now what they do is, they use the Land Revenue Code. Land Revenue Code says, when land is going to be taken away for mining, the compensation has to be paid according the Land Acquisition Act, and that will be done by the SDM.<sup>210</sup> But that means the stage of compensation has come, *na*? That is not to give permission. His role is limited to computation of compensation, that's all. But what they do is, the *Tehsildar* (tax officer) brings out a notice, so and so  *khasra* (revenue document) has come (under the mines), and collect your compensation according to the Land Acquisition Act.

*Oh...okay...*

Because compensation is according to the Land Acquisition Act, so people think that our land is being acquired, it is a fait accompli, if you don't take the money now, it will go into the *khazana* (Treasury). So they sign it, and that becomes the consent.

*It's devious.*

It's devious. So the state actually steps in and obtains consent from the villagers, on behalf of the applicants. So we got a stay in one of the cases, which is going to come up for final hearing now, on 30th January. It's the case of *Karam Singh*.<sup>211</sup> And that is a

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operations in the area or part thereof may be furnished after execution of the lease deed but before entry into the said area'.

<sup>210</sup> Actually by the Collector, under Sections 9, 11 and 12 of the Land Acquisitions Act, 1894. The system has been slightly changed in 2014 ever since the Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force.

<sup>211</sup> 'Lands of the villagers of Village Kosampalli, Tehsil Tamnar, district Raigarh have already been taken away in two instalments in the last decade for mining by the Jindal Steel & Power Limited, and when they received notices for a third round, they were determined not to part with their lands. Kosampalli had already lost a large proportion of agricultural lands, its nistaari forests, ponds, its village temple and was now an island cut off from Village Dongamahua (under whose panchayat it fell), Village Kodkel and Village Lamdarha by 150 feet deep mine pits, and flanked on one side by the Kelo river. If the present takeover (erroneously always

village.<sup>212</sup> If you scan those papers you might be able to see. The village is totally surrounded on all sides. There was a road going to Donga Mangua, to Korkel... In five different directions there were roads going out of the village. Now the village is surrounded by 150-feet deep mines on all sides. On one side there is the Kelo

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referred to as acquisition by all concerned) of land took place the last and remaining road to Libra would also be cut off, turning the village into an island of landless persons. It was in these circumstances that Karam Singh and his relatives, and the relatives of another active ex-panch Kanhai Patel approached Janhit and we filed a writ petition. It was in the course of this petition that we really learnt how the state had allowed itself to be used by the company to virtually convert the legal process of negotiating a lease with a landowner after obtaining his/her consent into a situation of virtual acquisition of the land of the landowner in which he/ she is left with no other option but to give up his/ her land.

Even today the law is that the consent of the landowner, though it may be obtained after the lease is executed, is required before entry into his land. Since earlier coal mining was only carried out in the public sector, a special law called the Coal Bearing Areas Acquisition Act would come into play, which is virtually another Land Acquisition Act leaving little room for the private land owner to object. But that is not the case with a private mining company, how then has Jindal subverted the law? The application for mining lease requires that if the applicant does not have “surface rights”, then the consent of the owner and occupier should be obtained in writing. Usually the aforesaid column contains the laconic phrase, “Will be obtained as and when required” or “Surface rights will be obtained” or simply left blank. An administration, which normally ruthlessly weeds out incomplete applications, of course conveniently overlooks these omissions (in fact as per the Rules, an incomplete application is to be returned to be completed within 30 days). A lease deed is thus issued in principle by the State Government for all the lands applied for’. From *Janhit Bulletin*, October 2013.

- 212 Kosampalli, within the Gare-Palma IV/6 Coal Block that was allotted to Jindal. Though a stay order was given by the High Court, Jindal Steel & Power Limited continued their mining operations and in fact began an extension/capacity enhancement project through underground mining without obtaining the necessary clearances and without the Gram Sabha Consent. This has become a subject matter of a fresh Application before the National Green Tribunal, Bhopal cause—titled *Dukalu Ram & Ors v. Union of India & Ors*. In March 2020, the Principal Bench of the NGT passed a landmark order in this case, fining the Jindal Steel and Power Ltd. a sum of Rs 160 crores for the violations.

river, which they can't cross because there is no bridge. And there is only one road remaining. Now, one round of taking land for mining, another round for taking land for mining, and this is the third round. And the village says no, no, no, we are not going to give an inch of land now.

And in the first round and second round, whatever compensation they got, they tried to buy land. Landless people all ran away, they migrated. People who had land had tried to buy land nearby, but they are not being allowed to cultivate it by those villagers. Because there is a whole pressure on land. Some of them are not being allowed to build a house. And in these circumstances... That is a village with more than 43 widows. A small village, with 43 widows, and more than 30 of them have been widowed after the whole thing started. People get money, they drink, they buy a motorbike, they have an accident, and they die. The cause-effect relationship is so straightforward. And now, with all their might these people are saying that we will not give this. And it's for a private company, not even for the public sector.

*(Interruption)*

So mining is one set. Then there is a whole set regarding environmental public hearing. One is a bit of a tricky case, legally, because we have challenged the environmental public hearing *per se* in the High Court. Because what happened in that case was the company gave an affidavit, this was Dharamjaigarh<sup>213</sup> town. Mining was going to take place.

And the coal block, which was allocated, about 43% of the coal lies below the town. So the town people got agitated and said that they won't give it. So when the public hearing was to be heard, just before that, the SDM, the collector, the local MP, they called all the prominent people of Dharamjaigarh who were opposing, and

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<sup>213</sup> Dainik Bhaskar Power, *supra* 184.

the company vice-president gives an affidavit that there will be no mining in the Dharamjaigarh town. And they have a newspaper, *Dainik Bhaskar* is their newspaper. *Dainik Bhaskar* gives it all very prominently. And then a public hearing takes place, and of course, everybody opposed. In that, when the company representatives were asked that okay, have you changed your EIA report then? Are there any modifications? They don't reply to it.

Then these people find out through RTI that it has not changed. So basically the company fooled them. It is a different matter that they opposed anyway. But the company made conscious efforts to mislead, and the administration is with them on it. So we have basically filed that this public hearing must be cancelled.<sup>214</sup>

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<sup>214</sup> 'On 28th February 2011, thousands of men and women thronged the site of the public hearing to protest against the captive coal mines for the DB Power Plant. One by one they would line up in front of the mike to address the officers and company managers sitting inside a cage like structure as hundreds of police looked on. Efforts of hired goons of the company to distribute "samathan patras" failed completely. These are events that the people of Chhattisgarh are quite used to and even after vociferous protests environment clearances are still granted.

But the legal issue on which Janhit is challenging the legality of this public hearing is a peculiar one. About a month before the hearing, a Senior Vice-President of DB Power executed an affidavit that no mining would be carried out within the Dharamjaigarh Nagar Panchayat where about 47% of the coal bearing land of the project is situated. Then, a day before the hearing, all the prominent leaders in the Nagar Panchayat, were summoned by a letter of the district administration to a meeting. There, in the presence of the Collector, SP, local MP etc., this assurance was reiterated by DB Power's top management and considerable pressure was brought to bear on them.

The assurance was given wide coverage in the *Dainik Bhaskar*, which has the largest readership in the state. But there was no modification in the project proposal whatsoever, nor was there any fresh EIA report (Environment Impact Assessment Report) prepared. Thus, when the public hearing was carried out, the people at large were subject to deliberate misrepresentation and fraud with the connivance of the state authorities. The legal issue that has come up is that, since public hearing is only one of the steps in the process of grant of environmental clearance, and clearance has not yet been granted, has a cause of action arisen yet? And of course, if clearance is granted, then the appropriate forum would be the National Green Tribunal...' From *Janhit Bulletin*, August 2011.

*You filed a petition in the High Court?*<sup>215</sup>

Yes, pending. And initially, nobody came, and there was a stay granted and then the stay was modified. Every step of that battle has been very tough, because *Dainik Bhaskar* is again a very powerful group, Jindal is a very powerful group. The cases are challenging in terms of the law, challenging in terms of the facts, because the judge said that the final clearance has not been given, this is one of the intermediate processes, how can I entertain this.

Then I showed him some division bench judgments from Tamil Nadu, which have held that the public hearing not being held as according to procedure, gives rise to a cause of action. The other view is that until a clearance is granted, how do you come to the court, because this is only an intermediate step. But clearance is granted, so that means that now you have to go to NGT. Not everybody has the scope to do it.

So this is a very disturbing trend of tribunalisation, of everything going to tribunals. It also makes things very technical, rather than constitutional. All these issues of land and forest and environment are constitutional issues. And it has to be looked upon as an issue of fundamental rights violation.

*In tribunals, executive has a lot of say, in terms of decision-making, as opposed to independent judiciary. It has always been a criticism.*

Of course.

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<sup>215</sup> The High Court subsequently transferred the matter to the National Green Tribunal, Central Zone, Bhopal.

## BUILDING AN ADIVASI JURISPRUDENCE

*You gave us this picture of various authorities, and the devious manner in which they operate. So what has been the issuance of patta (Land Deed) under the Forest Rights Act? Have the authorities been delivering?*

Well, again, in theory Chhattisgarh is No. 1 (*Laughs*). But our figures tell us that only 50% people were granted *pattas* at all. And when they were granted *pattas*, (it was) only for a limited land, irrespective of how much they actually occupied. The more important thing is, the axis around which the Forest Rights Act revolves is the *gram sabha*. The *gram sabha* is the one that is supposed to verify the claims; the *gram sabha* is the one that has to make the recommendations. And there is provision there, for when people don't have documentary evidence, but what we see is that the entire functioning has been usurped by the forest department. It is the forest department that is issuing *pattas* and the *gram sabha*'s role is actually being negated. And this whole thing about people not having documentary proof has been made too much of. Obviously when forest department does it, they will do it in a bureaucratic way. The other thing is community forest rights. Almost nowhere have community forest rights been given anywhere in this state. And this is a big up-hill challenge, to make them give community forest rights. Then also the non-Adivasis, traditional forest dwellers, again, proving that you have been in occupation for over 75 years, it is very difficult to show.<sup>216</sup>

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<sup>216</sup> In September 2019, the Chhattisgarh state government filed an affidavit



*Any cases that you dealt with?*

This *Kushwaha's* case. Or *Sarguja, Benjamin Lee's* case.<sup>217</sup> And now their forest rights application has been rejected. The stay which they had got was basically that until it is decided they cannot be evicted. And now we have to make an appeal and see if the stay can continue through the appeal also. There is a provision, I think, that it will. These are the provisions. There are many more cases.

Now we are soon going to file another one, which is with regard to a primitive tribal group, the Baigas.<sup>218</sup> There, interestingly, the entire forest right procedure has happened and only the issuance of *patta* has not happened, and suddenly the forest department has come and planted a nursery on top of the crops.<sup>219</sup> Which is more or less like eviction only, they are being evicted. The other

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in the Supreme Court in the *Wildlife First & Ors v. Union of India* admitting that it did not follow due process while rejecting the claims of forest dwellers under the FRA. See Roy, Debayan (2019), *Eight states tell Supreme Court they wrongly rejected claims of tribals over forest land*, in *ThePrint.in*, on 13th September, available at <https://theprint.in/judiciary/eight-states-tell-supreme-court-they-wrongly-rejected-claims-of-tribals-over-forest-land/291041/>, last seen on 12/10/2020.

<sup>217</sup> Also the Adivasi Jan Van Adhikar Manch cases—involving villages Chitadabri, Dhamgarh, Polmi, and Sajankhar in district Kabirdham—where the villagers are mostly Baiga tribals, notified as Particularly Vulnerable Tribal Group. In all these cases, the villagers had filed claims forms for individual pattas under The Forest Dwellers (Recognition Of Forest Rights) Act, 2006, before the concerned authorities including the Collector as well as before the State and District Forest Rights Committees, but to no avail. The High Court had directed expeditious granting of such rights but even then no pattas have been granted and the concerned authorities have all been silent on the issue.

<sup>218</sup> *Janhit Bulletin* (2011), *supra* 215. Four Petitions for each of the four villages were filed in December 2013–January 2014. The High Court passed directions to the local authorities but no action was taken subsequently.

<sup>219</sup> This happened in Village Sajankhar under Gram Panchayat Polmi, Tehsil Pandariya, Distt. Kabirham. Neelgiri i.e. Eucalyptus saplings, which absorb water from underground and make cultivation and habitation difficult, were planted on the khetis (farming land) of the villagers by the Forest Department in attempt to evict them.

very disturbing thing, which we have not been able to persuade through any petition, but we have tried to help people in criminal cases, is in those areas which are not scheduled areas, and where Adivasis are in significant numbers but not a majority. There, the other *dabang* (influential) communities in the village, after the Forest Rights Act was passed and before it was notified, have tried to evict people from forest lands.

There are also unfortunate clashes between different tribal groups. For example, the Gonds are more dominant than the Baigas, the Baigas are in a weaker position.<sup>220</sup> So it becomes a conflict between Gonds and Baigas. That also we have observed in many places. Other thing is, when there is displacement, even in a reserved forest, the rule is that forest rights have to be recognised, and *pattas* have to be given, before you actually displace them. And even the rehabilitation has to be completed. That is also, most of the time violated. So these are the kinds of cases that we have been doing.

*As a matter of strategy what we have seen other lawyers doing, is that in cases of possession, where there is a threat of eviction, to prove possession they ask the evictee to get a letter or an affidavit from the Panchayat that he has been in possession of this particular site for such-and-such years or something. As a matter of evidence, how do the courts look at such kind of documentation, when there is no documentation, and you are trying to create it...*

Depends, from court to court. Some take a positive attitude, in the sense that they realise that there is no other way in which this person can prove anything except by giving an affidavit. Then basically they will ask for a counter-affidavit, or they'll say that okay, reply to this, or whatever. Some take a very negative attitude.

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<sup>220</sup> Baigas are categorised as Particularly Vulnerable Tribal Group by the Government of India.

Oh, it must be false, that is why you are giving an affidavit. But that is a very serious problem.

And as I was saying, apart from the working-class, no body of toiling people has really built up a massive jurisprudence. Working-class had built up a big jurisprudence, which is now being whittled down and demolished—so now all that is not going to work—and of course, bypassed by contractualisation.

This body (of Adivasi rights jurisprudence) has to be created still. Forest rights, PESA, and sometimes, even before it is created, precedents are not very positive. One very interesting case, which we are doing, in Premnagar village is called *Jugga Devi*.<sup>221</sup> This is a case in Surguja, which is a scheduled areas in which Premnagar is a big village. And the gram sabha was very robust in this village, so they were passing a lot of resolutions. So the IFFCO plant (IFFCO Chhattisgarh Power Plant) was to come up. Ten to twelve times they passed resolutions against it. So (*Laughs*) a diabolically clever thing was done. Their *Gram Panchayat* (Village Council) was made into a *Nagar Panchayat* (Town Council or Notified Area Council). Overnight! So they did not even know about it.

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<sup>221</sup> *Jugga Devi & 2 Ors versus State of C.G. & 5 Ors.* (W.P.(C). 6872/2011). Premnagar is a village in the Scheduled area of district Sarguja in North Chhattisgarh, where the organisation Gram Sabha Parishad is active. This village shot into prominence when despite repeated and all sided efforts by the IFFCO to set up a power plant, they failed because of the resistance of the villagers. On 14 occasions the Gram Sabha passed resolutions refusing land for the project, there was vociferous opposition in the environmental public hearing and when the village leaders were arrested—there was a massive gherao (picketing, circling of premises/person) of the thana—forcing the police to release them. The administration thereupon struck upon the diabolically clever idea of making the village a “Nagar Panchayat”, thus doing away with the Gram Sabha altogether and effectively short-circuiting the rights of adivasis in a Scheduled area! No matter that it is explicitly stated in Article 243ZC of the Constitution that nothing in the Part IXA on Municipalities is applicable to the Scheduled Areas. In the past few years, hundreds of Nagar Panchayats have been created illegally and unconstitutionally in the Scheduled Areas.

*They notified it? Or how?*

Yeah, they notified it, but very silently. The villagers came to know about it when subsequently, in the elections to be held for the nagar panchayats, the ward lists came. And they see, what is this? And they filed an RTI and found, already it had become a nagar panchayat. And a provisional body had been made. And it was a nagar panchayat. So immediately, elections had not been held, so I came, and I was not given an interim order, relief. Whereas, actually the thing is, just as you have Part IX for Panchayats, and you had in Part IX—that nothing in this part shall apply to scheduled areas.<sup>222</sup>

So that is why, when people went to the High Court, in Orissa and Andhra Pradesh, and Panchayat Elections were stayed, so by force the Central Government had to pass the *PESA Act (the Provisions of the Panchayats [Extension to the Scheduled Areas] Act, 1996)*, without that, the Panchayats could not function. The same is true of the municipalities. Unless you have a *MESA Act (the Provisions of the Municipalities [Extension to the Scheduled Areas] Bill, 2001)*, you cannot allow for the setting up of municipalities in scheduled areas. Those which existed prior to the 73rd Amendment, like Ambikapur, Ranchi, possibly Jagdalpur, these would be pre-72nd and 73rd Amendments, when there was no local government.

But once part IX and IXA have come into being, everything will be decided according to that, as per the Constitution. So, it's very clear that after the coming of IXA, until you have a MESA Act, you cannot extend a municipality to a scheduled area. It is very

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<sup>222</sup> The 73rd Amendment of the Constitution inserted Part IX titled 'The Panchayats'. Article 243M of the Constitution states that nothing in Part IX of the constitution shall apply to Scheduled Areas, but provides that 'Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law'.

simple, (as per) Article 243Z(c),<sup>223</sup> *ultra vires*. Again, the matter is lying in the court.

(Pause)

So I am afraid I feel like (the actor) Sunny Deol, saying *taarikh pe taarikh* (date after date, i.e., cases are kept pending). (Laughter) Much as I dislike him, that dialogue is absolutely correct.

*In terms of land acquisition, in Bengal we saw that coming out into the street and protesting<sup>224</sup> stalled it for some time. So, mass agitation of people protesting against land acquisition, these are street strategies. So what has been the government's response, has it worked?*

Uhm, yes, to some extent. As I told you, in that *Indavani* case, we got a stay and they were ready to violate that stay if people had not objected. Even in the *Dainik Bhaskar*, DB Power case,<sup>225</sup> Even in the mining case, and that is very interesting, *Karam Singh's* case.<sup>226</sup> In *Karam Singh's* case we got a stay on the basis that consent had not been given. So mining activities had to be

<sup>223</sup> Constitution of India, Article 243Z(c): Part not to apply to certain areas.-

- (1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244.
- (2) Nothing in this Part shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal.
- (3) Notwithstanding anything in this Constitution, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

<sup>224</sup> Refers to the Singur and Nandigram situation that led to the protest and violence against the development of a Special Economic Zone (SEZ), requiring 10,000 acres of land.

<sup>225</sup> *Dainik Bhaskar Power*, *supra* 184.

<sup>226</sup> *Karam Singh* and *Dukalu Ram* cases, *supra* 211 and 212.

stopped. But they still tried to mine. People stopped it. So there are criminal cases.

See, initially, they put preventive detention which is 106<sup>227</sup> as well as 160,<sup>228</sup> 151<sup>229</sup> cases against one of the petitioners who had got a stay order in his favour. Then they say that you are obstructing mining. But anyway, that case was over. But because the police was

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<sup>227</sup> Code of Criminal Procedure: Section 106. Security for keeping the peace on conviction.—

- (1) When a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in sub-section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding three years, as it thinks fit.
- (2) The offences referred to in sub-section (1) are-
  - (a) any offence punishable under Chapter VIII of the Indian Penal Code (45 of 1860), other than an offence punishable under section 153A or section 153B or section 154 thereof;
  - (b) any offence which consists of, or includes, assault or using criminal force or committing mischief;
  - (c) any offence of criminal intimidation;
  - (d) any other offence which caused, or was intended or known to be likely to cause, a breach of the peace.
- (3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

<sup>228</sup> Indian Penal Code, 1860: Section 160. Punishment for committing affray.— Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

<sup>229</sup> Indian Penal Code, 1860: Section 151. Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.— Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.— If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

not registering, the senior vice-president of Jindal files a private complaint after the stay order saying that they are obstructing mining on that very land. But cleverly he files it not against the petitioners, but against the *panch* and relatives of the petitioner. So we came in contempt.

We said, that look here, this shows that they mined. By putting these criminal cases, what they are trying to do is harass people. But that means that people had to object, in order to stop the mining, When they tried to do that, false cases were put against them. Then they could be arrested! And if they are arrested then that breaks down the resistance, then you start the mining, and say, well, okay, it's all done anyway, *na*? So, unless you fight on the ground, you are not going to be even able to implement the good orders that you get from the court, take it from me.

*In such long-drawn out cases, how do you usually sustain the interest of your clients? Because I am sure many of them would be willing to give it all up and take compensation and move on.*

Yaa, actually that has been the experience many a time, in the earlier stages. But now, as I have told you, in Kosampalli, this is the third acquisition. The first one they accepted compensation. The second one they were not happy but they still accepted compensation. The third one they are saying, we are finished! If this land goes away then we will just be an island with mining all around. We can't survive. So now I think it is the struggle of the desperate. So even when the compensation is much higher this time, they don't want to take it.

## CLIENTS AS HEROES

*As a matter of strategy, going to the civil courts... because tribunalisation, the way it has happened, it is very difficult to go to certain forums. You can't appeal against every order. But following a civil suit strategy of going after certain officials, under prevention of corruption act or something like that.... Does that kind of strategy figure?*

One day, we had gone to the judicial academy and had seen all the portraits of the judges put up. We thought, we should have all the portraits of our petitioners, who are very remarkable people put up. Ramesh Agrawal is one of them<sup>230</sup>—recently, there was an attack on Ramesh, but he escaped with his life fortunately.<sup>231</sup>

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<sup>230</sup> Ramesh Agrawal is a Raigarh-based environmental activist who was regularly present at Public Hearings related to mining projects in the region and protested the same. He was shot at in his internet-cafe in Raigarh town by assassins—allegedly by the Jindal group. Has had false charges pressed against him. Was arrested illegally in a non-cognisable offence without a warrant issued by the Magistrate, on a complaint by a Manager of Jindal. Charges were mostly of disrupting public order through inflammatory speeches etc. Bails were rejected by the Sessions Court on the specious ground that it had not been revealed that anticipatory bail applications were pending in the High Court. He was also handcuffed to the hospital-bed of the prison hospital. Bail applications before the High Court were rejected forthwith by Justice Sharma who did not go into the merits. Finally, bail was granted by the Supreme Court. Agrawal won the Goldman Prize 2014, regarded as one of the highest prizes in environmental activism. For more on the Goldman Prize he received, see <http://www.goldmanprize.org/recipient/ramesh-agrawal>, last seen on 20/11/2014.

<sup>231</sup> See Chakravarthy, Anupam (2015) *Chhattisgarh Activist, Ramesh Agrawal, bags Goldman Prize*, in *DowntoEarth.org*, 17th August, available at <https://www.downtoearth.org.in/news/chhattisgarh-activist-ramesh->



And this Brigadier KK Chopra, of Angun fame, has been arrested in that case.<sup>232</sup> He (Ramesh) opted for a civil suit (praying for grant of a declaration that the appellant had illegally set up industry in Raigarh, and for ordering closure of the industry).

Now, very interesting, the civil suit was blocked by Monnet as it was against Monnet Steel. Monnet Steel came up saying that no, the Water Act and the Air Act have barred the jurisdiction of civil suits, which is wrong interpretation of the jurisdiction of the Acts. They have barred civil jurisdiction for orders passed by the pollution boards. Going for environmental damages in civil suits is perfectly legal. So they actually used this, got a stay, then went somewhere else, they just mixed him up in so much litigation. But that was the strategy he was trying.

But all these situations demand that the judges stand up to the corporates. It is a very difficult task. I was invited to the National Judicial Academy to lecture the judges on labour law and I remember Prof. Mohan Gopal was the director, telling this story of this Judge Deb, who was in Bhopal, and who for the first time in history, did something against Union Carbide, and got interim compensation for the victims of Bhopal Gas.

And plane-loads of lawyers were coming from Mumbai and Delhi to argue for Union Carbide. He just stuck his ground. And he said, okay, go to the High Court. And his order was upheld right up to the Supreme Court. They used a civil court strategy and got interim damages. So (*Laughs*) he was a brave judge. He didn't last long at Bhopal. He was transferred.

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agrawal-bags-goldman-prize-44192, last seen on 04/09/2020.

<sup>232</sup> Brigadier (Retd.) KK Chopra and SN Panigrahi, both security personnel working with JSPL, were charged with attempting to murder Ramesh Agrawal. See *Attack on activist: JSPL security men in 15-day custody* (2012) in the *Indian Express*, on 27th October, available at <http://indianexpress.com/article/news-archive/web/attack-on-activist-jspl-security-men-in-15day-custody/>, last seen on 20/11/2014.

## INDEPENDENCE OF THE JUDICIARY

There is a state-isation and a corporatisation, both. Some of the judges of the High Court were district judges earlier, then became law secretaries, then became high court judges. If I am not mistaken, in Kerala there was a whole issue about the separation of the executive and the judiciary.<sup>233</sup>

And it was held that a person who has held this sort of a post with the government, should not actually be a High Court judge. But, as a fact, two judges have come directly from being associated with the executive.

One judge was an ex advocate-general for the state. Another judge was a standing counsel for the state in the Supreme Court. Now all this, I mean, you cannot draw a cause and effect, but these situations should have been avoided.

But those who come from the bar are successful lawyers which in Chhattisgarh usually means a corporate lawyer. Yes, I would say that that entire mindset is anti-PIL, pro-corporate, very anti-human rights.

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<sup>233</sup> Two Judgments of note:

*Kerala Magistrates (Judicial) Association & Ors. v. State Of Kerala & Ors.* 2001 (2) SCR 222.

*The Kerala Judicial Officer's Association v. State of Kerala and Ors.* 2007 (3) KLJ 488.

## FIGHTING FOR GENDER JUSTICE

*Do you deal with cases on women's rights? Family law, gender violence...?*

Not very much, I have done one very extreme case, rape case in Konta. But personally that is the only case that I have done. That is another strange story about private complaint being filed, and how for these women, what a struggle it was for them to go and record their statements before the Magistrate, with all those SPOs and people hovering around the courts. And after that, with a great difficulty, and after many adjournments, the offence had to be registered because they very boldly talked about what happened to them.<sup>234</sup>

*Who were the accused?*

The accused were *Salwa Judum* leaders and SPOs. Then, of course, because it was the JMFC's (Judicial Magistrate First Class) court it came to Dantewada. And in Dantewada, the police said that we can't find the accused. So permanent warrants were put out and the cases were put in deep freeze. Though those persons were all SPOs and they were all in the camps and they were in the pay of the police, there is no way that they could not have been found.<sup>235</sup>

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<sup>234</sup> Since the interview, one more rape case of a lawyer based out of Chhattisgarh has been taken up by Janhit.

<sup>235</sup> One of the accused SPOs, Kartam Surya, reported as absconding in the trial court, has been in the employment of the Dantewada police station. See Kaiser, Ejaz (2011), *Absconding, but on Duty*, in *The Hindustan Times*, 30th March, available at <https://www.hindustantimes.com/india/absconding-but-on-duty/story-C2geQNwoxSnuilZ22StxfK.html>, last seen

They were publicly known to be around. That was the last I had heard of it.

But, recently, apparently when some journalist contacted those accused, those accused had said that now we are out on bail. So, that obviously they have been shown to be surrendered, so public prosecutor would not have opposed the bail. So they got bail. But I have not heard anything about the trial. And these accused have told the journalist that now those complainants will not appear because they have realised that they made a mistake in identifying us.

(Pause)

I don't know whether that is a statement or a threat, what this is.<sup>236</sup> But otherwise, I haven't done many cases, but we have dealt with, in our union, many issues of domestic violence. And one very upsetting thing is—see, the Domestic Violence Act has a lot of scope. But it requires a very sensitive administration to implement it. First thing is the protection officers. Here, simply the woman and child development officers have been given additional charges of being protection officers. It is not even prominently displayed on their board that they are protection officers. So, there are very few domestic incidents filed. Then shelter homes are not there. Shelter home is a very important

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on 20/11/2014.

<sup>236</sup> The tribal women retracted their statements in the Dantewada court, despite having identified the accused in their statements before the magistrate in Konta. See Bagchi, Suvojit (2013), *In Chhattisgarh, tribal women retract rape charges*, in *The Hindu*, on 6th March, available at <https://www.thehindu.com/news/national/in-chhattisgarh-tribal-women-retract-rape-charges/article4479667.ece>, last seen on 20/11/2014.

For details about the harassment the women faced at the hands of the accused, See Iqbal, Javed (2010) *The Tribal 'Ruchikas' of Dantewada*, in *The New Indian Express*, 8th January, available at <https://www.newindianexpress.com/opinions/2010/jan/08/the-tribal-ruchikas-of-dantewada-119754.html>, last seen on 12/10/2020.

prong of the strategy of protecting women from domestic violence. Because at least if there are short-stay homes, then you can go there, take legal help, get some social workers to represent you, file the case, get a stay order and go back to your house. It doesn't happen. What I find is that the strategy still remains the good old strategy of maintenance, or 498A,<sup>237</sup> or the scope that was opened up by the Domestic Violence Act, that you need not go for criminal cases, but through a civil law you can protect yourself within the house. However, that isn't something that is used very much.

*So, that is also something that I wanted to know, you mentioned that the judiciary is very conservative when it comes to ruling against corporate interests. Is it also very conservative otherwise?*

Yes, I am afraid. In fact, I will relate to you the unfortunate order in the case of a 27-year-old girl. This girl had given a statement before the SDM (Sub-Divisional Magistrate) that she was not able to marry the person of her choice, and she was being confined by her father and brother. She fears a threat to her life. On that basis, the young man had filed a *habeas corpus* case. And the judgment was that she is in the proper custody of her parents. And the application was dismissed.

You see, the real *habeas corpus* cases, which are when the police picks you up, are very rarely there in this court. But a lot of *habeas corpus* cases of this kind, do come up, when a boy and girl want to get married, or they get married, and then the girls' parents come and take away the girl, so the boy comes up in a *habeas corpus* petition. These are the more common cases of *habeas corpus* here.

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<sup>237</sup> Section 498A of the *Indian Penal Code*, the criminal law provision used in cases of cruelty by the husband or his relatives to his wife.

Anyway, so this was a case where the young man had come to the court, so he said, 'Yes my lord, she's my wife'.

(Then the judge says) 'Oh, it's an Arya Samaj marriage, it must have been against the wishes of the parents?'

So he said, 'Yes, my lord'.

Then the judge asked him, 'What do you do, profession?' to which he replied, 'My Lord, I am unemployed'.

And the judge responded, 'Unemployed! And you chose to get married! And you have enough money to come and do court case also!'

The girl was originally from Uttar Pradesh... This is very conservative, very casteist, very patriarchal. They believe that the good and correct order, which has been created should not be upset by these young men and women.

Yeah, it's a very conservative court in terms of women's rights such as maintenance, divorce, etc.



*Source: Janhit*

## BEING A LAWYER AND ACTIVIST

*You have been an activist all your life and you have been a lawyer for just the last twelve years, this is quite remarkable... How has your relatively newfound career as a lawyer affected your approach towards activism? Do you find yourself to be more discerning in the cases you represent? Do you look for things that you didn't find before, in terms of whether it is a legally tenable case? Do you see that change in your perception?*

Yes... (Thinks)... I think it has helped. Because, this thing of walking on two legs, that you have the strategy of the struggle and the strategy of the paperwork. We need to develop a greater expertise in both actually. And I think, definitely, yes, being a lawyer has improved my expertise in terms of paperwork. In the sense that it is not enough if justice is on your side. It also has to be there in the documents. The perfect example of this is our interaction with regard to the Gullu dam being built in Jashpur.<sup>238</sup>

I remember interacting with them. And as a lawyer I said that look, I want to see the file of your land acquisition. They had told me the whole story, and how they had taken out many rallies to the collector. Initially, the collector had said that I don't know anything

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<sup>238</sup> The prime issue involved is displacement and violation of forest rights of the tribal inhabitants owing to a hydel-power project conceived by Chhattisgarh Hydro Power LLD in Allori Panchayat, Tehsil Manora, District Jashpur, along the Ib River that flows through this area. The affected villages are Allori, Jhargaon, Matlunga, and Gullu, all within the same Tehsil. The entire area faced the threat of being submerged because the project was in a Fifth Schedule area. Janhit has filed a petition in September 2014 before the High Court of Chhattisgarh.

about this. Several rallies had happened, several memoranda given to the collector. Something made me uncomfortable, and I said that I want to see the land acquisition file of your village. And true enough, it was written that nobody had come forward with any objections. The entire village had gone to the collector! But the collector failed in his duty to forward those objections to the land acquisition officer, he never told them, he never advised them. And the land acquisition officer never bothered...

*So he gave a report of complete consent?*

No, he said that no objections, so go ahead with Section 6. One thing that I find is that people go on representing to all sorts of people, to the Prime Minister, to the Chief Minister, to this one, to that one, and the place where this thing is slowly, slowly creeping forward, they are not able to intervene at that point. Our sensitivity to this has much improved after becoming lawyers. I realise that this is the way the thing works.

In *Janki Sidar's* case,<sup>239</sup> for example, I told you that for eleven years, a case was going on, without a signature, without a *vakalatnama*, without a memo of that non-existent Adivasi. For eleven years it was going on. Now these poor people were going on writing letters to the collector. All those letters were just put at the back of a file. But nowhere has it been recorded that an application was given by Janki Sidar, that (the Adivasi) person does not exist—that is the finding in the criminal case that this person does not exist—so kindly dismiss my case.

All because she had always written, *Prati Shriman Jiladhish* (addressed to 'the Hon'ble Collector'). She had not written *Samaksh Nyayalay Shriman Jiladhish* (addressed to 'the Court of the Hon'ble Collector'). That is, (she had written to the) collector in his administrative capacity and not in his judicial

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<sup>239</sup> *Janki Sidar*, see Appendix 4.



capacity. Now how is she supposed to know? These are the tricks they play on you.

At least, when you become a lawyer, you realise these are the tricks that happen. It is a different matter that when you get over this trick some other trick will be played. But at least you can help people. So that has been an improvement. It tends to legalise you a bit too much, sometimes. You are always thinking, that *accha*, now this will happen, now that will happen. You are looking at it from the perspective of a court.



*CMM leaders in Delhi with the President of India, K R Naryanan, to discuss the issue of contract workers during the Bhilai Movement. From left – Rajendra Sail, Megh Das, Sheikh Ansar, Anoop Singh (behind), President K R Narayanan, Janaklal Thakur, Sudha Bharadwaj, Chandrakala. Circa 1998. Source: Janhit*



*Sudha at a women's meeting in Raipur. From right: Smt. Sinduria, Rinchin, Sudha, Durga Jha. Source: thequint.com*

## ENVIRONMENTAL CASES

You see, in this state, power is the centre of power. This whole thing about power surplus. There are number of power plants that are coming up over here, the ease with which they are getting clearances, single window and all that. And all coal-based, so there is going to be mining. Now there are going to be rail corridors coming up. Chhattisgarh is selling electricity, and yet acquiring land using emergency provisions.

And recently, I told you that there was a modification of the Land Revenue Code, that even the communal lands can be used for power plants and all that. So there is an entire caucus in the political establishment and administration, which is just seeing that the power plants go through smoothly, and a lot of money is in it. And personally also many of the politicians have invested in it, there are very close connections between the industrialists who are going in for the power plants, and the politicians.

And at the moment, for example, Aman Singh is the energy secretary. He was an IRS (Indian Revenue Service) officer who resigned from his IRS job and has been taken on contract (in a post reserved for IAS—Indian Administrative Service—as Principal Secretary in the Department of Energy). But he is preserving his salary and perks, which is unheard of in bureaucracy. There are other administrative officers also who are very close to the Chief Minister, and who are all involved a lot in these power hub issues. Today the Chief Minister has written to the Centre, saying that you people are putting all of these *arrangas* (obstructions) in

clearances that are going to create a lot of problems for our state. Also, though a lot of the coal block *halla* (noise/racket) the BJP was doing at the Centre, most of those coal blocks are here. And the coal block allocation is also for the power plants. They were deeply connected with each other.

One of the main ones was this allocation to Ajay Sancheti who is reported to be close to BJP and all that. We've got the documents on that, maybe filling a PIL on that issue, where it's very clear that the Sancheti brothers never had any experience in mining, their experience was of a different nature, which was selling of mine equipment, not of mining. But they have represented (themselves) that way and they have actually got a successful bid. And, for example, Jindal cornered a large share of the coal block. Then this Prakash industries... Just a few days back the mining officer has issued a notice for the recovery of over 1 crore rupees of royalty from bauxite mining. So I think, Chhattisgarh is going to be no less a centre of all these illegal mining than Karnataka or Goa. In fact I hear that the M. B. Shah Commission<sup>240</sup> is coming shortly. And I hope these matters will come up before them.

### *Shah Commission?*

MB Shah Commission. After Karnataka and Goa they are coming here. In this case, Baijendra Kumar is also... (*Thinks*)... Chairman of the CECB (Chhattisgarh Environment Conservation Board). So this case did not succeed, the PIL, challenging the composition (of the CECB). We have persuaded Mr. Dubey that he must go to the Supreme Court with this case.

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<sup>240</sup> Shri Justice M. B. Shah Commission on Illegal Mining of Iron Ore and Manganese. For Commission Reports, see Shah Commission of Inquiry, available at <https://mines.gov.in/ViewData/index?mid=1333>, last seen on 12/10/2020. See also Chakravarthy, Anupam (2015), *Shah Commission wound up before it could probe illegal mining in Chhattisgarh*, in *DownToEarth.org*, 4th July, available at <https://www.downtoearth.org.in/news/shah-commission-wound-up-before-it-could-probe-illegal-mining-in-chhattisgarh-42670>, last seen on 12/10/2020.

### *Ajay Dubey?*

*Ajay Dubey's* case.<sup>241</sup> Then this *Ramesh Agrawal's* case<sup>242</sup> is a similar case to that. It is another environmental matter. That is a case in which actually, if you look at the EIA (Environmental Impact Assessment) notification, there is a specific role of the Member Secretary. See, the Member Secretary is supposed to decide the date and venue of the public hearing.

Actually, though it doesn't say specifically, it is implied, that after being satisfied that the EIA report is in accordance with the terms of reference. The EIA report is supposed to be strictly in accordance with the terms of reference. Who is supposed to look at that? The Member Secretary, who is supposed to be a full-time person, with all the qualifications (will look at it).

And that Member Secretary deciding the place and venue is not just a technical task, but actually what the Chhattisgarh government has done is, they have delegated this role of the Member Secretary, to the regional secretaries, and then to the collector.

So we have challenged the illegal delegation. Because Member Secretary is a technical person, and he is a full-time member of the Pollution Control Board. And basic thing is to see whether the EIA report is in accordance with the terms of reference or not. So, that is one of the issues in this.

This *Raza Ahmed's* case<sup>243</sup> is basically a case where green belt was diverted for JP Cement Plant. And actually its very interesting, because first the JP Cement Plant started construction, when the construction was complete they applied for permission for construction. It so happened...

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<sup>241</sup> *Ajay Dubey v. Ministry of Environment & Forests & Ors* (W.P.(PIL). No.41/2012) before the Chhattisgarh High Court.

<sup>242</sup> *Ramesh Agrawal*, *supra* 230.

<sup>243</sup> *Raza Ahmad v. State of Chhattisgarh & Ors* (W.P. (PIL) No. 5467/2011) before the Chhattisgarh High Court.

*They started construction in the green belt itself?*

Ya, ya. They started construction in the green belt. There was a lot of local opposition. In was in the middle of the city of Bhilai, which is very close to residential area, zoological parks, schools, parks, etc. And the public hearing which was to take place, they have deliberately classified it wrongly as B2, that it's a grinding plant, whereas they themselves admit that it is 2.5 million tones per annum cement production.

*What is the implication of that?*

Yeah, if it's B2 then you don't have to give a public hearing.<sup>244</sup> And B2 is only for enhancing existing capacity, or something like that. And this is not that. This is a new plant. A cement plant is not the enhancement of a steel plant. A cement plant is a separate thing. 2.5 million tonnes per annum, and anything more than one, it is supposed to be category A.<sup>245</sup> So *prima facie* the categorisation is wrong. So there was no public hearing. Anyway, they merrily went ahead with construction. And they have not taken permission from town and country planning, though that was in green belt. They have not taken permission from the municipal corporation, although it's a high-rise.

They were laying electric lines, that's when the residents started objecting, *ki yeh toh cross karkey ja raha hai school-ko* (This is crossing through the school). So at that time there happened to be a very upright officer as the Commissioner of the Bhilai Municipal Corporation. He also happens to be an Adivasi, Rajesh Sukumar Toppo. So he simply refused to give this sort of *post-*

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<sup>244</sup> If a project is classified under the B2 category of the Environment Impact Assessment notification, 2006, then it does not need to present an EIA report, and hence, does not need to conduct a public hearing.

<sup>245</sup> A Cement plant with production capacity over 1 Million tonnes per annum is to be classified as Category A under the EIA notification, and is required to conduct a detailed Environmental Impact Assessment, which includes a public hearing.

*facto* permission. And he said, no, we will pull down the building. So, anyway, he was transferred out.

And subsequently, the state government, vide a notification, diverted the green belt for industrial purposes. And for that the objections that were asked for were not asked from the local people, but sitting in one room in the building of the Mantralaya, the Secretariat. Still people objected. Those objections were simply rejected. And all the environmental objections were rejected on the ground that already clearance has been given, without seeing that this is a B2, and *prima facie* the clearance is wrong. And other objections were also not considered.

*This is a little mind-boggling.*

All the cases are that only.

*It is quite shocking, the number of serial violations that take place.*

And that through a notification, you are blatantly violating a scheme of law. And when you try to use the scheme of law to get back to it, there is no way in which you can do it, because the violation is accepted *prima facie*. You are simply covering up the illegality. This is being done all the time.

*This is fairly common, I am just surprised at the impunity with which it is done left, right and centre.*

*Women from Tamnar Tehsil in Raigarh, which borders the Gare-Pelma Coal mines, first owned by Jindal but now managed by SECL. Sudhaji provided legal help to these villagers to fight the powerful mining companies.*

*Source: article-14.com*



## A MOUNTAIN OF CASES

That's why I said *na*, we have to put up the portraits of our petitioners, the Ramesh Agrawals and the Raza Ahmeds. *Itna* (so much of) documents, piles, and piles, of documents he got through RTI. That is why we could prove this. Then...<sup>246</sup>

*Pragatisheel Paper Mills Shramik Sangh*<sup>247</sup> is another very interesting case, in which the trade union leaders have been illegally thrown out, and again, a notification by the Labour Commissioner (*Laughter*). See, actually they were trying to form a union, and just as the union was formed, the company applied for retrenchment, and the beauty of it is that they pretended that they are less than hundred. 25N<sup>248</sup> should have been applied, but 25F<sup>249</sup> was applied. In that, they gave false information that these are the junior-most, whereas they were not the junior-most.

They gave false information about the designation of the workers, and false reason for the retrenchment, and got permission for the retrenchment from the Labour Commissioner. So that now you can't go to the Labour Court. The Labour Secretary allowed the retrenchment of the union leaders, on totally false pretences.

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<sup>246</sup> This section of the interview involves both interviewers going through the case files of Sudhaji with her commenting on the various cases. This accounts for the jumps from issue, to issue, as it is really a conversation structured by the case files.

<sup>247</sup> *Pragatisheel Paper Mill Shramik Sangh v. State of Chhattisgarh & Ors.* (W.P.(L) No. 27/2010) before the Chhattisgarh High Court.

<sup>248</sup> See Appendix 8: Industrial Disputes Act, 1947: Section 25N.

<sup>249</sup> See Appendix 8: Industrial Disputes Act, 1947: Section 25F.

*Were the trade union leaders ever given any kind of hearing or...*

No, that's the beauty of it.

They were given notices at the address of the company and the company never gave them the notices. So, they were unrepresented at the hearing. (*Laughs*)

*Parmeshwar Kumar Rajput*<sup>250</sup> was the case of a journalist who was murdered.<sup>251</sup> It's a writ petition, criminal. And we are asking for a CBI enquiry. Fellow was murdered, and nobody was arrested. Actually, there are some very powerful people behind this, including an ex-MLA's son. And the interesting thing is, a magistrate's court... Of course, as human rights people, we are very strongly against this brain mapping<sup>252</sup> and all that, because it is really not evidence. But in this case, the magistrate had said, no, what is going on in this case? So they had said that these are the suspected accused. Right, till today nobody has been arrested. So, the suspected accused gave permission that yeah, we are okay for brain mapping. And the magistrate's court, in May that year, had said that okay, do brain mapping of these accused persons. In the meanwhile, when this journalist was murdered, there was a huge hue and cry from the journalists, among the local people, in the *Vidhan Sabha* (State Legislative Assembly). And then the

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<sup>250</sup> *Parmeshwar Kumar Rajput Vs State of Chhattisgarh & Ors.* (W.P.(Cr) No. 6452/2011).

<sup>251</sup> The murder happened very close to the Thana concerned and yet the police has not been able to trace the murderers. The deceased journalist had written about the corruption prevalent in several government schemes including the Public Health Scheme of the region. Copies of the FIR filed by his brother, and even the Registry of the FIR, has gone missing.

<sup>252</sup> Brain mapping is an investigation technique measuring brain waves/ reactions of the accused/suspect when playing/showing audio or visual stimuli of facts relevant to the case. The Supreme Court in *Selvi and Ors Vs State of Karnataka* (2010 (7) SCC 263), has held that the use of narco analysis, brain-mapping and polygraph tests on accused, suspects and witnesses without their consent, unconstitutional and violation of the 'right to privacy', judgment available at <https://indiankanoon.org/doc/338008/>



home minister said that I have put up a special investigation team for this. And then nobody was still arrested and all that, and even the magistrate said okay, do brain mapping of the accused. The brother went to everybody, the SHRC, the Chief Minister... Actually Parmeshwar is the brother and Umesh Kumar Rajput is the journalist.

*The brother asked for a CBI enquiry?*

CBI enquiry. So in this case, when we came to the court in October, and notices were issued on the 1st November, then these people were sent for brain mapping. And the report which they got back clearly says that this Rituraj Shah, and certain very powerful persons, they definitely appeared to be involved in the conspiracy. The report said, '*You have to further gather evidence*'. Now we've also filed to say that so many kinds of evidence which the family tried to bring forward, were never taken up by the police. The inside story is that one honest police officer had come at some point, but he was shunted out.

*Was there some internal report on how the investigation has proceeded?*

No. We have been asking for it all the time. We have been asking the court to peruse the investigation diary. After this, they say that nothing has come in the brain mapping. The brain mapping is very clear. So we showed it to the court, asking, what are you doing? So, they said, you file a status report. You know what status report they have filed? They have called all the accused, taken their statement, and the accused have said, no, no, we are not involved in this case. Now, if they made them accused in the first place, there must have been something against them? We didn't make them accused, *na*? The state did. That was the point at which there was some correct investigation going on. *Ab humnein keh diya ki humnein unse pooch liya, aur woh kehte hain ki humnein nahin kiya. Ab hum aur kya karey?* (Now we've

already told you that we asked them [if they killed him] and they said no. What can we do now?) (*Laughter*)

The petition is going on, and its going to be listed on 17th January, and he has asked the SDPO (*Sub Divisional Police Officer*) to be present with all the records.<sup>253</sup>

*This is for hearing for transfer of case to CBI.*

No, the relief we have asked for is a CBI enquiry. We have said that we don't have belief...

*But this petition is a protest petition against the C report?*

C report means?

*As in the report given by the police that there is nothing that we can do...*

No, actually they started doing all these things after we filed the petition. Before that they were not doing anything at all.

*There was no investigation going on?*

Literally none.

*So right now SDPO has been called with respect to this case.*

Yes

*One question, now that the Selvi<sup>254</sup> judgment has come, on the narco-analysis, will it hit the evidence? At this stage I guess it won't. In that case, the only way out suggested was voluntary consent...*

Yeah, but they have all given voluntary consent. And we are the last persons to say that you have to look for this kind of evidence.

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<sup>253</sup> The SDPO was not present in that particular hearing, and after several applications for urgent hearing, the police were able to be present only as late as in August 2014.

<sup>254</sup> *Selvi v. State Of Karnataka* (2010), *supra* 253

But you have to find corroborative evidence, *na*? The way is not to call the accused and record his statement *ki maine yeh nahin kiya* (I didn't do it).

*Dhaneswari Varma* is the case against Ambuja Cement. It is going on in the Collector's court in Baloda Bazar. This is a case in which, in the village of Bhadrapali, lot of the private lands were taken up by the company, there is very little bit of *Nistari*<sup>255</sup> land left.

And then the company started dumping. So the villagers went and protested and said, remove this encroachment. Then the company said that no, this is ours, look at this lease that we have got from the government, which includes the *khasra* number for this also.

Fortunately, they got in touch with us. Because lease is in English, and *khasra* numbers were there, it's true. But lease has conditions, *na*? The lease was made in 1982, and one of the conditions was that if you don't utilise the land within three years, the state has a right of re-entry. And obviously they had taken almost three times the land they required. And there was no boundary marking, the company was not using it. And then we looked at the records.

In the records, the land had never been transferred to the name of the *Udyog Vibhag*,<sup>256</sup> or to the name of the company. So we said, legal presumption is that state has re-entered into the land. And state has re-entered means, it is village land, communal land. So now this lease is going to be renewed, which every thirty years it has to be renewed. So they must have calculated, *ki 30 years ho raha hain* (the 30-year period is getting over), so quickly renew the lease. That's how they did it.

So we said that no, we refuse. And state has already re-entered the land. And now if you want to get this land, then you apply

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<sup>255</sup> Community land in village.

<sup>256</sup> Industries Department.

separately, and it will come to us for our recommendation. And we can't afford it, we don't have any land left. And we don't even have any land for the women to relieve themselves.

*But they might say that at the time of re-entry that there was no notice, no correspondence from the state.*

But that says in the lease deed that if you don't use it... Or otherwise you pay hundred times the rent for it. You have not paid hundred times the rent for it. So we don't need to give it. You pay hundred times rent. That was a way to ensure that people don't take more than necessary land. So anyway, you're right. We are on a sticky wicket. But all this time they have not been able to touch it.

*At the same time, from their side, they have clearly violated the lease terms. Because they have not utilised the land for the purpose for which it was leased out.*

Exactly. And on that land a road has been made using NREGA<sup>257</sup> funds, which was passed by the gram panchayat, so it is being used like ordinary village land.

*It is not that sticky a wicket.*

So it's a battle between basically Ambuja and... So until now, we have had a difficult time, because the local administration was totally sold over to the company, frankly. But now the same gentleman, Mr. Rajesh Sukumar Toppo, has been made the collector.

*Oh, nice. He makes a reappearance. (Laughter)*

He makes an appearance in several of our cases. Then this Bhusrenga land ceiling case... These cases are basically in the Dhamtari area, the Kurud area. The Chandrakar caste is very powerful there. Most of the landowners are Chandrakars. Lot of the land was taken away by Ceiling (Act) and distributed, and in almost all cases, they (landlords) are trying to take it back. And

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<sup>257</sup> National Rural Employment Guarantee Act, 2005.

I think if you closely follow, if somebody is really interested and follows each of the cases, you will find that most of the cases have actually gone back, that people no longer have land.

So, there was one village called Gobra, where the most amazing thing happened. The thing that happened was that the heirs of the original landlord filed some case.<sup>258</sup>

Now, all the time it is against the state, the person who has received the land through ceiling are never made party, and they only come to know later. Poor things are happily going and tilling the land. This case, they won once, probably at the level of the Commissioner.

Then they went to the Revenue Board, and lost. The state won against them. Then they went with a writ petition. Again, the state won. Then they went to the division bench.<sup>259</sup> Again, the state won. Then, the most remarkable thing (happened).

The SDM goes over the head of the division bench and says that no, now this land will go back to the landowners.<sup>260</sup>

*(Laughter)*

This is what the power of money is *(Laughs)*.

It exceeds judicial power.

So, these people were flabbergasted. They were coming to take away the land. So he said, where is the order by which they are taking away the land?

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<sup>258</sup> See Appendix 6: Extract from *Janhit Bulletin*, October 2013.

<sup>259</sup> The reference is to the Jabalpur High Court, which, then, was the High Court for the area because this happened at a time before the State of Chhattisgarh came into existence.

<sup>260</sup> Directly contravening the Rule of *Res Judicata*, Section 11, CPC. Ironically, even the Additional Commissioner, Land Revenue who rarely sits in open court and conducts all her hearings in the privacy of her office, has gone with the SDM's order after.

He is not giving us a copy of anything!

Then we said, *thik hai* (Okay).

So Shatrughan, who belongs to that area, managed to somehow get a photocopy of the order of the SDM. From that we got the number of the LPA, the division bench order. *Raat-o-raat* (overnight) we went to Jagdalpur, and we got a certified copy of the division bench order. And then we applied for a stay. Collector immediately gave a stay. It's still at that stage.<sup>261</sup> Then, we filed an FIR against the SDM...

Then, here's TRN Private Ltd. Again, this is in pre-litigation stage. Here there have been a lot of fraudulent transactions. So, what we have done is that since the Gram Sabhat actually has the power to restore alienated land of the Adivasis.

So, if it is in the name of a *farji* (fake) Adivasi, we discussed with them and suggested to them that application should be made to the Gram Sabha by the Adivasis, saying that it has been fraudulently taken in the name of (an Adivasi). No such person has ever come. We have come to know that our land has been transferred in the name of such and such.

There was one case of Videocon, in which the Chhattisgarh Home Minister, Nanki Ram Kanwar, he is an Adivasi, his son Sandeep Kanwar was involved in the transfer of Adivasi lands to the name of another Adivasi, who turned out to be working as a *mazdoor* (labourer) in the NREGA, in a different district. So it's a whole fraudulent transaction, the whole thing goes to Videocon company.<sup>262</sup>

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<sup>261</sup> Sadly, after the interview, in June-July 2014, on Appeal, the Additional Commissioner, Land Revenue, has overturned the Collector's order and restored the SDM's order that contravenes the doctrine of *Res Judicata*. Ramesh Agrawal, *supra* 230.

<sup>262</sup> See Sharma, Supriya (2011) *Chhattisgarh Minister's Son buys Farmland for Videocon*, in the *Times of India*, on 1st July, available at,

Videocon is the same people who pay for helicopter rides, for Salman Khan to come, and for Kareena Kapoor to come, for the Rajya Utsav and all that. So in this case, similarly, it was some other Adivasi, who nobody sees; nobody knows where he belongs to or what it is.

So, the Gram Sabha has passed resolutions, issuing notice to that person, saying who are you, and come to this Gram Sabha. And if you don't come, we will restore this land to these Adivasis.

*So when the Adivasis entered into the transaction, they spoke to these agents?*

Yeah, actually it is all these agents, and various kinds of fraud-*giri* which is done. More land than is supposed to be taken, less money is given. People don't know what they are signing, often. *Yeh sab bahut sara khel rehta hain* (This is all a lot of games being played).

But in this case, since it has been transferred in the name of an Adivasi to get rid of the 170B<sup>263</sup> problem, and he sells it to the company... You see, it's a chain. So, that person has to come before the Gram Sabha. In the Scheduled (areas) there was supposed to be a Tribal Advisory Council, *na*? In the scheduled areas...

*Has it been set up?*

It exists, but the Chief Minister presides over it, and it is not doing much to protect the tribals in the scheduled areas. Actually, the idea was that the Governor is supposed to administer the

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<https://timesofindia.indiatimes.com/india/Chhattisgarh-ministers-son-buys-farmland-for-Videocon/articleshow/8956906.cms>, last seen on 20/11/2014.

<sup>263</sup> Section 170B of the *Madhya Pradesh and Chhattisgarh Land Revenue Code* states that no tribal land can be transferred to a non-tribal except with the expressed consent of the Collector. This was the prime contention in the case of *Janki Sidar*. See Appendix 4: *Janki Sidar Case*.

scheduled areas. And he is supposed to take the advice of the Tribal Advisory Council while doing so.

*So the Governor will have some of the summary powers, to summon and call for documents? What sort of powers would the Tribal Advisory Council have in this case?*

I don't know... I am not too sure.

*But also, the Gram Sabha would have similar powers...*

No, Gram Sabha has the real powers. See, Governor's powers are generally for the application of law in the scheduled areas, application or non-application, whether they are state or central laws. He has the power to ensure that happens, on the advice of the Tribal Advisory Council. So he is not bound by the Council of Ministers or anything. He has got an independent role. And Vahnavati has given that opinion regarding the role of the Governor in scheduled areas.<sup>264</sup> And actually that would be a good role at this point of time, when there is so much of unrest in the scheduled areas...

*In this case what are you planning to do?*

Now, at this stage we have to see what we can do.

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<sup>264</sup> 'The submission of the state government contradicted the opinion expressed by former Attorney General of India, who had said the governor does have discretionary powers under the Fifth Schedule of the Constitution of India. Then Attorney General G E Vahanvati gave this opinion on April 21, 2010, based on nine judgements of the Supreme Court; he cited other references as well.' See Jitendra (2015) *Chhattisgarh Sticks To Its Stand That Governors Have No Discretionary Powers In Tribal Matters*, in *DownToEarth.org*, on 4th June, available at <http://www.downtoearth.org.in/content/chhattisgarh-sticks-its-stand-governors-have-no-discretionary-powers-tribal-matters>, last seen on 12/10/2020. A detailed encapsulation of Vahanavati's opinion, vis-a-vis the stance of the state Government of Chhattisgarh can be found in Jitendra (2015) *Centre Reverses Stand On Governor's Powers Under Fifth Schedule*, in *DownToEarth.org*, on 4th July, available at <http://www.downtoearth.org.in/content/centre-reverses-stand-governors-powers-under-fifth-schedule>, last seen on 12/10/2020.



*Summons has been issued? And no answer so far?*

No answer so far.

*But right now who is in possession of the land?*

In some cases the people and in some cases the company. They have fenced it, some parts.

*Are there any habeas corpus cases here?*

Yes, there are some. (*Going through case files*) *Sanau Kadiyam*<sup>265</sup> is a police protection one. Again, false cases were put on him. There is also a CSPSA and sedition case, *Ruchi Verma*.<sup>266</sup>

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<sup>265</sup> *Sanau Kadiyam versus State of Chhattisgarh & Ors.* (WP No. 6061/2010). Petitioner had a ration shop in village Irapgutta, Tehsil Pakhanjur, Distt. Kanker. He was tortured in custody by the Border Security Force, Respondent No. 3 in the matter, so much so that he fell unconscious. Charges of Naxalite involvement were pressed against him. Disposed by Justice Sharma of the CG High Court on 7/08/2012 without any orders to inquire into the custodial torture of the Petitioner and without any specific directives to ensure security of the Petitioner despite his vulnerable position.

<sup>266</sup> 'For nearly 2 years after she, her trade unionist husband and infant son were arrested, Ruchi Verma @ Sunita had not been given a copy of the seditious documents on the basis of which she was charged under Section 124A. It was after a long legal battle that these could be obtained. To our surprise most of the ostensibly seized documents were absolutely legal ranging from copies of CDs on Nandigram or an award winning film Azadi, to legal leftist literature and none of them were countersigned by either the seizure witnesses or Ruchi's husband Bhola Bagh in whose presence the search is supposed to have taken place. The sole illegal literature was a magazine "Chingari" of the PWG group dated several years earlier. Several sheets bearing various visibly different handwritings are also part of the evidence. Most of the content is regarding working-class struggles. A large number of pamphlets of the Chhattisgarh Mukti Morcha, a popular working class organisation in Bhilai, which are distributed publicly on the streets are also items on the seizure list. Apart from the Chingari magazine, which seems evidently planted, the only other evidence against Ruchi Verma was a sentence on an A4 size paper written in Bhola Bagh's hand saying "Sunita ka kya karna chahiye". She has been refused bail by the High Court, though she was not even present during the seizure. Evidently, she is being punished for being married to a "member of a banned organisation". It appears that Bhola Bagh had a number of cases related to trade union activities pending against him when he was working in Ultratech Cement.

I went to argue the charge in this matter. I am not sure if all the documents will be there. I am sure the chargesheet will be there.

*Fagnu Vecco*<sup>267</sup> was a PIL, it was *suo moto* taken up by the Chief Justice. People had written saying that health facilities and all had been taken away from tribal areas. A postcard had been written to the Chief Justice.

Chief Justice *suo moto* took it up as a PIL, appointed an *amicus*, and then the state responded by saying that all these people who are complaining are Naxalites, making a whole list of naxal cases against them. Then, it was disposed of, saying that a similar case is pending in the Supreme Court, so this is disposed of. By that they meant *Nandini Sundar* I think, but they didn't even bother to find if the relief in this is similar to the relief in that...

*So the subject matter was health?*

It was regarding health and educational facilities, that the villagers were deprived of when they were taken away from the villages and brought to the camps. They were not getting any of these facilities.

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He married Ruchi Verma in an inter-caste marriage, which was not looked favourably on, and therefore, he left. He had been working in the Bhilai Steel Plant as a contract worker under a false name and license. He has been accused of harbouring a Naxalite woman for 15 days, a fact in support of which there is absolutely nothing in the chargesheet except a letter of the SP Sarguja to the SP Durg. Her bail application under Section 439 of the CrPC in matter no. MCrC 535/2010 was rejected forthwith by Justice Srivastava of the CG High Court citing, *inter alia*, 'seriousness of the allegation against the applicant'. From *Janhit Bulletin*, August 2011.

<sup>267</sup> *Phagnu Vecco & Ors. versus State of Chhattisgarh & Ors.* (WP (PIL) No. 3939/2007). Dismissed by Division Bench of the Chhattisgarh High Court vide order dated 28/02/2008 on grounds that a similar petition, WP(C) No. 250/2007, (the *Nandini Sundar* matter) was pending before the Supreme Court.

*Monet Ispat versus Ramesh Agarwal*<sup>268</sup>... You were asking about civil suits? This is a civil suit.

*There was another lawsuit filed by this Ramesh Agrawal gentleman? This is the same gentleman?*

Yes, same.

*His picture should definitely be up (Laughter)*

Then, *Sukhranjan Usendi*<sup>269</sup> is a CPM worker. *Iska bhi kuch...* It's a general kind of, because he was thrown out of some house... It's a case of eviction without notice.

Bhuvneshwar Singh Manker is the jailor who was dismissed and then reinstated in service. (He was) the Dantewada jailor during the jailbreak.

*Avdesh Gautam* is the case in which Shishir has filed a bail petition. It is a typical case. It is the case in which there was a naxal attack

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<sup>268</sup> Ramesh Agrawal, *supra* 230.

<sup>269</sup> 'It is not only the "naxali samarthaks" [Naxal Supporters] that the State harasses in Chhattisgarh, even the "naxali peedit" [Those victimised/affected by Naxal violence] are not spared. Sukhranjan Usendi is a young adivasi CPM karyakarta (worker) and he fought Lok Sabha elections in 2004, coming 3rd after Congress and BJP, with a few thousand votes. He is a well-to-do person with about 45 acres of land and in 2003, Naxalites had looted his home taking away 3 trucks full of rice and household belongings. He has not returned to his village since. Sukhranjan was staying in a rundown government quarter in Pakhanjur on the verbal assurance of the then Collector and SP. A case carried out for 3 years for him to get an unencumbered plot land in Pakhanjur (as per the rehabilitation scheme for the naxal-affected) resulted in closure because now Pakhanjur is a Nagar Panchayat. But Sukhranjan has also earned the wrath of the administration by organising repeated agitations for health facilities, for teachers in the local school etc. So, his house has been sealed, and when he filed a writ petition, adding insult to injury, a recovery notice of Rs. 87,000 for illegal occupancy was foisted. His criminal antecedents—as glorious as Bhagwati Sahu's—were being waved around in court. "My lord", said the Additional Advocate General, in a highly dramatic tone, "he belongs to the Communist Party of India" (sic) Fortunately, for Sukhranjan, in this particular Court, the Judge presiding retorted..."Is that a banned organisation, Mr Murthy?" From *Janhit Bulletin*, August 2011.

on a Congress worker's house. And all kinds of people<sup>270</sup> have been implicated in that because of political reasons. CPI activists, Congress activists, and that case went on and on. Avdesh Gautam didn't turn up for almost one and a half years, and after some pressure was there, then he came and deposed.

*Ambuja Cement versus Bhagwati Sahu*,<sup>271</sup> these are the trade union cases, in which Bhagwati Sahu was jailed. There are a number of cases against Bhagwati Sahu. There is a civil suit also. Because they had blocked the gate at some point, saying that local people should be there. And then there is a criminal case also.

*Ramesh Agrawal's* criminal case... A criminal case was put through private complaint by the Jindals, saying that he's demanded 5 lakh rupees as extortion... They put an extortion case on him.

Then, *Ultratech Cement versus Nakul Sahu*... We were talking about that civil jurisdiction issue. This is a case in which they had

<sup>270</sup> Including Soni Sori and Linga Kodopi.

<sup>271</sup> Subsequently granted bail. *Bhagwati Sahu* (2011), *supra* 126.

'Bhagwati Sahu, a popular leader of contract workers of Ambuja Cement (now Swiss multinational Holcim) and of peasants displaced by the plant, and an elected Janpad Panchayat member has been falsely implicated in a dacoity case by the Ambuja Cement through a Security Officer and has been in jail now for 3 months. His bail was rejected by the High Court mainly on the ground of "criminal antecedents". The prosecution gave a list of 18 cases, which actually turned out to be 9 cases (the same cases were repeated several times over), out of which Bhagwati is implicated only in 5 cases. Out of these 5 cases, 3 are under Sections 107/116 of the Cr.P.C. for preventive detention and do not amount to any offence. The other 2 are under Section 341 (chhakka jam). All the cases relate to trade union activities. Now the charge sheet has been filed showing only a minor injury to the complainant. The allegation is supported only by the statements of security officers— all employees of Ambuja, whereas shopkeepers at the site of the incident have testified only to a fracas situation. It is pertinent that the company hired the son of a recently elevated High Court judge as an "objector" in the bail application'. From *Janhit Bulletin*, August 2011.

filed a civil suit, and we filed an objection on the barring of civil suits on trade unions, but it was not accepted.

Then, this is of course (points at case number), the case of demolition of Himanshu Kumar's ashram.<sup>272</sup> They said that suddenly it is *chotey jhaar ka jungle* (jungle of small shrubs), whereas the villagers had actually passed a resolution saying that they wanted to give it for his ashram. But despite that they demolished his ashram.

This *Garo Ram and Masaram Kodopi*.<sup>273</sup> Masaram Kodopi is basically Lingaram Kodopi's brother. We had filed a *habeas corpus*... Lingaram Kodopi was being forcibly made into an SPO, and that was the case in which he was let free, *thik hai* (That's okay), he does not want to be an SPO. But basically, the fact is that he was forcibly kept, then *habeas corpus* had to be filed, then he was produced... Court doesn't say anything. And then the same Lingaram then went to Delhi, became a journalist, came back and started writing about this *Morpalli, Tadmetla*<sup>274</sup> and all, and today he is in jail. Lingaram Kodopi is Soni Sori's nephew.

*Gadaram Potabi*<sup>275</sup> is this *habeas corpus* case I was telling you about, in which eleven cases have been put on this boy, and he is in Durg jail now. All our cases, each of them has such an angle.

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<sup>272</sup> Vanvasi Chetna Ashram, Dantewada. For details about the destruction, See Fact Finding Team (2009), *Attack on Vanvasi Chetna Ashram in Chhattisgarh*, in *CounterCurrents.org*, on 11th June, available at <http://www.countercurrents.org/dobhal110609.htm>, last seen on 21/11/2014.

<sup>273</sup> *Masaram Kodopi v. State of Chhattisgarh and 5 Ors. Habeas Corpus* case WP (Habeas) No: 5469/2009. Lingaram was finally produced before the Court by DSP, Dantewada. He stated that he was commissioned to be an SPO with a monthly salary of Rs. 2,150 with effect from 28/08/2009. Matter was dismissed by the HC of Chhattisgarh vide order dated 6/10/2009.

<sup>274</sup> Violence in Dantewada (2011), *supra* 200.

<sup>275</sup> *Gadaram v. State of Chhattisgarh & 2 Ors. Habeas Corpus* case WP (Habeas) No: 6965/2008. Dismissed by Division Judge Bench of Chhattisgarh High Court vide order dated 12/01/2009 without going into the merits.

*Kashiram Yadav* is a very interesting case<sup>276</sup> from the point of view of labour law. This is a case where about seven hundred people were doing loading-unloading for Prakash Industries. There was no PF cover, and a person came in with a writ petition. And then they made some payment. See, initially there was no contractor also. So obviously, it was only the Prakash Industries, which was responsible at that time. Because it was only after a particular point of time that the contractor's license was there. *Uske pehle toh contractor ka koi license hi nahin tha* (Before this the contractor did not have a license). So obviously, Prakash Industries is responsible for that period. So, these people, Kashiram Yadav had come to the court, and for whatever reason, the counsel withdrew the case. So, then they came to me, and I said, now what to do, the counsel has withdrawn the case. But, fortunately, it said that if any grievance subsists, then go to the PF Commissioner. Little bit of a crack was there, so we went there. Prakash Industries said, oh, all our records are burnt. They are always burnt.

So, we had a very interesting strategy in that case. We got out how much loading-unloading had happened, how many railway rakes, and we also got the information that there was exclusive use of that siding by Prakash Industries only, and these were the number of rakes. And how many people would be required for loading and unloading, and how many man-hours would be required. And as per the minimum wage at that time, what would be the PF contribution which had to be made by the company. We calculated it, and we said, see, we are saying that you people never gave us any documentary proof of this thing. You say yours is burnt, you don't give us anything, we don't have anything. So, how is it to be decided?

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<sup>276</sup> See Appendix 5: *Kashiram Yadav v. Union of India*.

There are two things that we are going to do. *Ek toh* we will give affidavits. Some people are still working, they all gave affidavits. So, out of that whole six-seven hundred, we gave two hundred-odd affidavits. And we said that see, everybody knows that these people were there, and they were working. It's the same supervisors, the same contractors. So, be graceful, and accept it. Then we can even come to some compromise regarding some part of it. But accept, we want you to accept that PF was not covered. They refused.

Then we said, okay, don't give a single paisa of money. *Woh toh koi bhoot toh loading-unloading nahi kar raha tha na? Aadmi hi kar raha tha, na? Aap jitna banta hai, woh PF office mein jama kar do. Humko nahin chahiye. Kisi worker-ke kaam aayega* (Ghosts weren't doing the loading-unloading, were they? They were human beings, weren't they? You deposit as much as possible in the PF office. We don't want the money. It will benefit some worker somewhere). Now the interesting thing is, the PF Commissioner, they don't know what to do with this case. They are an enforcement agency. Don't give it to us, because we can't prove that we are the claimants. But we can prove that there is a violation. It's there on your record. Address it. And they are just going on and on...

*So for how long this has been going on?*

See, first it came in the writ petition, and we had gone there. Then it came for final arguments. Then they said, *nahi nahi, thik hai* (No, No, it's okay), we will only give it to the claimants, we will cross-examine the claimants. I said, okay, cross-examine the claimants. *Cross-examination karna shuru kiya* (They started cross-examination). And how horribly they cross-examine you know. *Itna complicated karke* (they make it so complicated). They examined twelve people... And we said, let's now be frank about this, *is mein kiskey upar objection hain aapka? Thik hai,*

*hum baara logo ko cross-examine karenge. Un bara mein se, ek-doh ko toh kuch bhi samajh mein nahin aaya ki woh kya keh rahey the.* (Out of these twelve, who do you have an objection to? They said, fine, we'll cross-examine all twelve. Out of these twelve, a couple couldn't even understand what was going on). Now, how much you have to train people to understand this legal language that is thrown at you suddenly.

*(Pretending to be cross-examiner) Ha, toh aapka aisa hain, aur daawey ka waisa hain, toh hai na?* (So your application is like this, the claim is like that, and the other, right?).

Person is bewildered ! *(Laughs)*

But anyway, to their shock and surprise, eight out of the twelve people didn't give in. They were all sticking to what they were saying.

*(As witness) Aap kya bol rahen ho humko samaj nahin aa raha, hum yeh keh rahey hain ki hum itne saalon se aisa kaam kar rahey they, aisa, aisa, humko koi paisa nahin deta, PF nahin deta.*

(We can't understand a word of what you are saying. All we know is that we worked for these many years, and nobody pays us, we don't get any PF).

*(As cross-examiner) Nahin, mera sawal ka jawab di jiye* (No, answer our question).

*(As witness) Mujhe aapka sawal hi nahin samajh mein aaya* (I can't even understand your question).

*Phir unsey sawal poocha* (They asked him again).

*(As witness) Nahin, aapka sawal mujhe samajh mein nahin aaya, lekin mein itney saalon se kaam kar raha hoon* (No, I can't understand your question, but I have been working for these many years) *(Laughter)*.



So sometimes even the PF Commissioner would be like, *thik hai yaar*. Some people, you just couldn't budge them. Now, they don't know what to do.

*So you have proved that there is a violation. There is no dispute anymore.*<sup>277</sup>

Yes.

*So enforcement agency has the power...but they are not doing it.*  
(Laughter)

This is *Kashiram Yadav. Comedy hain is mein* (This is comedy). Now this PIL<sup>278</sup> is a disposed PIL, which we had done. In the Right to Food case, there were many interim orders. One of those orders was to do with family pension. When the only breadwinner of BPL (Below Poverty Line) family dies, then the pension is to be paid to the widow... We found that that had not been paid for years together. And we did it in one block. First we had a very positive attitude of the judge. We said that as soon as we have come here in PIL, now they are going house-to-house and paying the pension. So, we would like you to ask them to give the figures of the entire state. So, they gave the figures. And in some places, zero. Not a single beneficiary has been identified in an entire year, of BPL families in which the only bread-earner has died. They are saying, no claimants. This is a family benefit scheme, which was declared under the Right to Food case, and there is an interim order for that.

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<sup>277</sup> Despite that, the PF Commissioner was silent on the matter and refused to pass any order.

<sup>278</sup> The case of *Gramodar Seva Samiti* (WP(PIL) 1359/2009).

*How is the monitoring for the Right to Food case being done in Chhattisgarh? Like, every state has its State Advisor... How efficiently is the monitoring being done? And also, the implementation of the orders...*

Yeah, I think they are not taking up the very serious cases. Like, I was telling you about this whole food situation in Dantewada and all, for example

*In the papers it is like, Chhattisgarh is the first to come up with a Food Security Bill...*

Yeah, *unka PR exercise bahut accha hain* (their PR exercise is very good). So, in this case, even we pointed out that some are zero and all that, and that there should be strict implementation, the court then said that no, we are satisfied of whatever is going on, and disposed of the application.

*What was the case name?*

*Gramodar Seva Samiti*. Then another interesting case, *V. Dharma Rao versus State of Chhattisgarh*.<sup>279</sup> This is a case in which... See, Jindal always claims *na*, that he is a great one for national flag and all that. There was a case where national flag was there on the premises of the Jindal Power Plant, and it was not taken down after sunset. And the journalist saw it and made a complaint. There was a private complaint. And then that was merged with the criminal case. And, at that time, an FIR was actually lodged, under the Insults to National Honour Act. First of all, responsibility was placed on the security guard of Jindal Power Plant, that he (V. Dharma Rao, the security guard) should have taken down the flag. They came rushing to the court, and totally suppressing the information on record, they got a stay. They manipulated a lot of things, and got a stay. And they did not inform about the stay. And the stay got vacated, because they

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<sup>279</sup> WPC 3412/2012.

did not pay the PF to the other party. Stay got vacated, then we came, and this is another remarkable case in which all sorts of manipulation (happened). And finally it boiled down to this, that is the violation of the Flag Code, is it an offence or is it not. So, Flag Code is not law. So violating the Flag Code, is it an insult to the national honour, or is it not. Our argument was, you see, (the definition of) insult has deliberately been left very wide...

*(Interruption)*

*The question is whether it was an offence or not. But what was the stay on?*

The stay was on criminal proceedings, in which this gentleman and one manager was accused.

*So the manager was made vicariously liable.<sup>280</sup>*

Actually, it was the manager. The employee was just stuffed into the case. And the case went through lots of ups and downs. The stay had been vacated, and they struggled and struggled and got the stay back. And whereas we had gotten all the information, how they didn't come with clean hands, they manipulated the court. By that time already FIR had been registered, and the trial was on, and they gave the impression...you see, what had happened in that case, in 2008 there was a complaint. And the Magistrate gave an order to file the chargesheet. Of course, he can't give an order to file the chargesheet. But the FIR had been lodged, and all that had been done, and they (Jindal) suppressed that part of it. They suppressed that the trial has begun, and they only confined themselves to the point that the Magistrate has given this order. They got a stay on the proceedings. Actually, they got a stay on the proceedings of the complaint court, not the criminal court. But

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<sup>280</sup> 'Vicarious liability' is the liability of the employer for acts committed by his/her employee for all acts committed in the course and scope of the employment.

they managed to stay that also, by suppressing information. So anyway, we came, and we objected. The whole thing boiled down to this violation of Flag Code business. So, basically the court held that it is not an offence to violate the Flag Code.

*It's not a criminal offence. It's civil, is it?*

That's not the point. Basically everyone isn't allowed to hoist the national flag, is it? And it's between sunrise and sunset. Jindal managed to get somebody from the home ministry to say that no, no, it's okay, it's not applicable to private institutions, it is only applicable to public institutions. The whole thing was bizarre.

The petition was finally disposed of, and the criminal proceedings were quashed. Then Jindal went all out, saying that court has given the people the right to hoist the flag, day and night. This is the way he interpreted the judgment. That this right has been given by Mr. Jindal. The whole thing is mind boggling.

Then there is another case, *Sheikh Ansar versus State of Chhattisgarh*.<sup>281</sup> There were people in a *jhuggi bustee* (slum colony), they were having their electoral identity cards, they were voting in the elections. And suddenly their names were struck off the rolls. We came in a PIL. It was dismissed.

*On what grounds was it dismissed?*

You are a trade union. So how are you concerned with the elections? We said that we are concerned with all the rights of the working-class, including their right to vote.

(The Court said) No, no, you have some other remedy. We said, we have already gone for that other remedy, and now we can't do anything, because there is a notification, by means of which, the area in which we are, has been excluded from the Nagar Panchayat. But human beings exist there. So are they not going to have any

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<sup>281</sup> WP 4503/2004.

voting rights? How can a voting right be taken away? See, they made it an industrial area, they took it from the residential area.

*But there are people living there.*

Yes. So, how can my electoral right go away? Go for other alternative remedy. We said, we can't go for other alternative remedy. We have to come against the state. They are quoting the state notification. I quoted another case of PUCL, where Bangladeshis had been removed from electoral roles. The erstwhile chief justice told me, you are quoting Supreme Court? Go there. (*Pause and Laughter*) We have more cases of dismissals than successes.

*Any opportunity of making representations to the election commission, removal of electorates from the role?*

We did all of that! That's how we found out, that vide a notification, that entire area had been removed from the Nagar Panchayat. So fine, we've been removed, and we do not fall under this Nagar Panchayat. But you cannot take away our electoral rights, na? How will we vote in the Lok Sabha. Okay, you say we are not part of this Nagar Panchayat. But we must be somewhere! And there also the law is very clear. It says, until an alternative area has not been created, you will continue to live in that earlier area. It says, if there is a delimitation of constituencies, then (we continue in earlier area) until we are represented somewhere else. And that's only logical.

*They need representation somewhere.*

Ya! And first time I had come, it was a different Chief Justice. He said, 'What is this, Mr. AG? Do they belong to Pakistan? Where have you removed them? Where are they going to be? Are they in the air?' He issued notice. The other Chief Justice said, alternative efficacious remedy.

*They accepted the locus?*

*Haan* (Yes), but after making many disparaging comments.

*Must be so much fun practicing here (Laughter)*

Very frustrating, *yaar*. Then this *Bhogilal Chauhan*'s case was very interesting, of Dalit eviction. I think I had told you about this case. Verbally the sarpanch and the SDM came and said that these applications are not available with us. This is the case where only the Dalits were removed from the forest land.

*Yes, you mentioned.*

The file is unfortunately not with us. It's gone to the Supreme Court. This is a very interesting case, *Udal Ram Verma*<sup>282</sup>. This is a case again where without consent they have been trying to mine.

This concerns Ambuja Cement, and it is now before the collector. So, all those arguments that I was giving you about how the SDM is only for computation, all that is there in that case. And there are two cases in which, apart from challenging Section 6,<sup>283</sup> we are challenging Section 4.<sup>284</sup>

One is *Agamati*,<sup>285</sup> and one is *Chandrabhan and Others*. In *Agamati*, it's very interesting. These lands earlier were acquired for making an irrigation canal. So, some were acquired, and some were going to be the beneficiary of irrigation.

And not even one year has passed, and they have taken money from the Centre under the accelerated irrigation benefit scheme to make that canal.

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<sup>282</sup> *Udal Ram Verma and Others v. Grasim Cement*.

<sup>283</sup> See Appendix 7: *The Land Acquisition Act*, 1894, Section 6.

<sup>284</sup> See Appendix 7: *The Land Acquisition Act*, 1894, Section 4.

<sup>285</sup> *Agammati & Other v. State of Chhattisgarh & Others* (W.P.(C)-2030/12).

Barely one year after that, they fill up that canal, and (*Laughs*) re-acquire those lands for a middle-class township, for Raigarh—Atal Behari Yojana.<sup>286</sup>

And we say, what is this? This is not public purpose. And how can you be so fickle that your public purpose changes?

*So they built the canal, they filled up the canal, and they re-acquire the land, in one year?*

Ya. So, we are challenging Section 4, that it's not a public purpose, when you had already decided that irrigation is a public purpose. And you have already spent crores of money, you have taken money from the centre also for it, and now you are filling up that canal. That canal is coming out of Kelo dam. So, that means, Kelo dam is not for the farmers, Kelo dam is for the Jindals. Kelo dam you acquired for irrigation, for public purpose. So, first you take the land, then you make the canal, then you fill up the canal.

Similarly, this *Chandrabhan Singh*, this is a case where the land was first allotted to the CMDC, the Chhattisgarh Mines Development Corporation. And once it is allotted to them, there was a bar on sale, purchase, diversion, or construction of permanent nature, because it's taken for mining. And now Jindal has encroached upon that land and made a plant. And now a road is being made... That is the one I told you, I argued but we didn't get a stay, public-private participation. So, that land is being made for a road, whereas a road already exists. There is no need for a road. There is no Gram Sabha consultation.

Under 5A<sup>287</sup> nothing has been done. Finally, the Section 6 notification doesn't even have any public purpose written, what

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<sup>286</sup> Recently, another announcement was made to the tune that the land is to be used to make an airstrip for flights in Raigarh. Thus, land taken for irrigation is, perceptively, being used for an airstrip.

<sup>287</sup> See Appendix 7: *The Land Acquisition Act, 1894*, Section 5A.

is the public purpose. And the whole thing is for Jindal. Jindal has entered into an agreement with the Executive Engineer. The Executive Engineer writes to the Land Acquisition Officer, to acquire the land. It is the state, which is supposed to do it, not the Executive Engineer.

Then he also writes to the Collector. The Collector writes back to the Executive Engineer, okay, but have you got the government permission for it?

And this entire cost is being given by Jindal—construction, maintenance, everything. So that gives you a cross-section of the difficult times we have been having in the Janhit office.

*(Laughs)*

*Sudha with young daughters of friends, Ragini (left) and Ketaki (right) in Delhi, circa 1994. Source: Janhit*





## MOTIVATION FOR CONTINUING IN A BLEAK SITUATION

*So I actually want to ask you that. How is it that you, forget sustaining the interest of your petitioner, how do you sustain your own interest? With dismissal after dismissal... It sounds quite terrible having to deal with a judiciary that is patriarchal, it is oppressive, it is conservative, it is bought over by the corporates... What else? (Laughter)*

Well, I think that is one thing the trade union struggle teaches you. Everybody is pitted against you, and yet you cannot give up. *Wohi hain, kabbaddi ka maidan hain, chukey aa saktey ho toh chukey aa jao* (As I said earlier, it's a game of kabaddi, if you can, go touch the other side and come back). Little bit of space, which is created, that is one part. And the other part is that, each such case is... I sometimes tell my friends, that if you see this situation, it looks like nothing is moving. But if this hand wasn't there, then this situation would be much worse. So, basically we are pushing the parameters forwards as far as possible. It's more of a defensive battle, it's not like we are going to get anything. We are just trying to hang on to what is remaining.

And the other thing is, I think our reward is more in that in the course of this struggle, if the people are able to be strong... I think, if I was just doing it for individuals, and facing failure after failure, I would have been really depressed. But, you see, whole communities have to cope with this, *na?* Entire *bustee* (locality), which was removed from the electoral rolls... How do they cope with it? They cope with it. And they also struggled,

and did something, and took out so many *morchas* and *juloos* (demonstration and rallies), and finally they got it. So, maybe the remedy didn't lie in the court.

You know, you just asked me a very important question, that how does being a lawyer impinge on the activism. There was a matter, which we were fighting in the Labour Court. Actually at that time, I had come to the High Court, and I was not able to give time to the labour matters, we had requested another lawyer to look after it, and I think he was basically influenced. So, though we had all the documents to support the claim of the workers, he never filed any of them. And it came to a turn that it was almost at the stage of evidence, he didn't exhibit any of the documents. He didn't file any documents. And it was the stage of arguments. And I had come down thinking that I would argue the matter, and I saw, what is this, there is nothing. I asked him, what have you done? Then looking at his demeanour it was very clear that he was in connivance with them.

I moved an application. I said, I just want one adjournment, the documents are here with me. They are very essential for deciding this case, and they may be taken on record. Okay, *thik hai*, they won't be exhibited, but at least they would be on record. Up until then so many adjournments had been given. They did not give me the opportunity to... I had written down why the documents were important. He refused. And of course, dismissed, for want of evidence. Both the orders were passed on the same day. I came out, and the workers said that anyway, we know, because we saw our company manager, he only brought the judge today in his car. And then I was thinking, and they were thinking. And after some time, I said something and they said something, and we did it almost simultaneously. So I said, no I will file an appeal in the High Court. And they said, see, anyway we know that we will lose. But we will stand outside this court and give slogans that this judge is a corrupt man.

And this is what happens when you become a lawyer. You take away the initiative from the people, and give it to one more judge, and one more judge. And what they said, is we don't mind that we have lost. We understand perfectly well that we have lost. But we want people to know that this judge is a corrupt man. Actually they took it in a much broader and larger way than I took it. I took it as a case, which has to be appealed. They realised that it's a system, they are working with it every day. They know what it's all about, that it's loaded against us. But they wanted to make a point of it. So I think, in this case, their solution was better than mine. Because, after all that, probably the same thing would have happened in the higher court. Because it is not a question of how justified or how right you are. It is a question of the system. The system is not listening to you. That is the most important thing. The law may be on your side, so what? (*Laughs*) that is the situation.

*So did you file an appeal in this case?*

No.

*And did they shout slogans outside the court?*

Yes (*Laughter*) so, that's the way it happens.

*Sudha with her daughter Anu (now, Maaysha) in Dalli Rajhara, circa 1999.*

*Source: Janhit*





## APPENDICES



## APPENDIX 1

### ***Unlawful Activities (Prevention) Act (UAPA)***

#### **Section 13. Punishment for unlawful activities.—**

- (1) Whoever—
  - (a) takes part in or commits, or
  - (b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

#### **Section 2. Definitions.—**

Subsection (o) “unlawful activity”, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—

- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession;
- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
- (iii) which causes or is intended to cause disaffection against India;

## **Section 15. Terrorist act. —**

Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

- (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—
  - (i) death of, or injuries to, any person or persons; or
  - (ii) loss of, or damage to, or destruction of, property; or
  - (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
  - (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or
- (b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or
- (c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act,  
commits a terrorist act.



*Explanation.* —For the purpose of this section, public functionary means the constitutional authorities and any other functionary notified in the Official Gazette by the Central Government as a public functionary.]

## APPENDIX 2

Section 65(3) of the *Madhya Pradesh Industrial Relations (MPIR) Act* 1960 and Section 17(B) of the *Industrial Disputes Act (IDA)* 1947 outline the need for employers to pay wages to workmen while the judicial process is ongoing.

### **Section 65(3). *Madhya Pradesh Industrial Relations (MPIR) Act, 1960.***

#### **Appeal —**

Where an appeal is filed by an employer under sub-section (1) against order of a Labour Court setting aside the termination of service of an employee, the employer shall, in case he has not reinstated the employee in compliance with the Order of the Labour Court, pay to the employee a subsistence allowance at the rate of seventy five percent of the average pay of the employee, till the appeal is finally disposed of by the Industrial Court.

*Explanation:* In this section, the expression ‘average pay’ shall have the meaning assigned to it in clause (aa) of Section 2 of the Industrial Disputes Act, 1947 (XIV of 1947).

### **Section 17B. *Industrial Disputes Act (IDA), 1947—***

#### **Payment of full wages to workman pending proceedings in higher courts —**

Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High

Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court: Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.

## APPENDIX 3

### **Problems in the Definitions Section of *Chhattisgarh Special Public Security Act (CSPSA), 2005, (Section 2)***

Section 2(e) of the Act defines ‘unlawful activity’. It is an inclusive definition, comprising of points (i) to (vii).

1. Point (i) says ‘... An act or by words either spoken or written or by signs or by visible representation or otherwise... [which] constitute danger or menace to public order, peace and tranquillity’. It is pertinent to note that the terms ‘danger’ and ‘menace’ are broad and vague, and this leaves ample scope of determination in the hands of those responsible of enforcement of this Act. These terms have not been defined anywhere else in the Act.
2. Likewise, point (ii) refers to ‘public order’, another term that is left open for wide interpretation. Point (ii) also uses the term ‘tends to interfere’, which, once again, is vague, broad, and amenable to be misused by the State at the cost of Articles 19 and 21 of the Constitution. Both Articles, besides being Fundamental Rights, also fall within the ‘Basic Structure’ of the Constitution, as elucidated by Justice Khanna in the Supreme Court Judgment of *Keshavananda Bharati v. State of Kerala* (AIR 1973 SC 1461). Further, it is to be noted that it uses the term ‘otherwise’, which happens to be a very broad term and can include innumerable things, thereby giving wide powers to the State. Such wide powers vested in the State, in a law which seeks to curb certain Article

19(1) Freedoms—such as those of Free Speech, Expression, Peaceful Assembly, Forming Organisations and Trade—for purposes of public order by invoking the ‘reasonable restrictions’ clause under Article 19(2) of the Constitution can lead to several instances of imposition of restrictions which go beyond the scope of ‘reasonableness’ and thus be contrary to the vires of Article 19 of the Constitution.

3. Again, Section 2(e)(v) uses the term ‘terrorism’, but this term has not been defined anywhere in the Act. Thus, any Act, including those involving legitimate protest against the State can be labelled ‘terrorism’ by the police, thereby leading to stringent restrictions being put to exercise of several Fundamental Rights, especially that of Freedom of Speech, Expression, Assembly and Formation of Unions and Associations. This again violates the freedoms under Article 19(1), and goes beyond the limits of ‘reasonable restrictions’ as envisaged in Article 19(2).
4. Section 2(e)(vi) of the Act criminalises, *inter alia* ‘encouraging or preaching disobedience to established law and its institutions’. Thus, even forms of non-violent and civil disobedience has been brought within the folds of criminality by virtue of this Section. The Hon’ble Supreme Court, in the matter of P. Rathinam v. Union of India (AIR 1994 SC 1844) commented on the legality of civil disobedience and affirmed the legality of the same in para. 83, citing the ideologies of MK Gandhi, Socrates, and also the philosophical groundwork laid by the French Declaration of Rights of Men and American Bill of Rights. This blanket ban on civil disobedience, as envisaged by this portion, also stands in direct conflict with the Supreme Court pronouncement in the matter of Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia (AIR 1960 SC 633), in which the legality of civil disobedience was upheld by the Hon’ble Apex Court,

in light of Article 19(1) of the Constitution. Besides, Part IV of the Constitution, which deals with Directive Principles of State Policy, enjoins the responsibility on the State to keep Gandhian Principles in mind while framing its laws, and civil disobedience is a distinct part of Gandhian ideology. Though this Part is not enforceable in Court of Law, the States are under responsibility to follow these while exercising their lawmaking power.

5. Section 2(f) defines 'Unlawful Organization' as 'any institution which indulges in or has for its objects, abets or assists or gives aid, succour or encouragement directly or indirectly, through any medium, device or otherwise to any unlawful activity.' The term 'indirectly' used in this provision goes against the Judicial pronouncements of the Supreme Court. See following judgments:

- *Arup Bhuyan v. State of Assam* (available at <http://indiankanoon.org/doc/792920/>);
- *State of Kerala v. Raneef* (available at <http://www.indiankanoon.org/doc/542273/>);
- *Indra Das v. State of Assam* (available at <http://indiankanoon.org/doc/1525571/>);
- the judgment of the High Court of Maharashtra in *Ms. Jyoti Babasaheb Chorge v. State Of Maharashtra* (available at <http://indiankanoon.org/doc/32876501/>); and
- US Supreme Court Judgments in the matters of *Brandenburg v. Ohio* 395 U.S. 444 (1969), *Scales v. United States* (367 U.S. 203 (1961)), and *Elfbrandt v. Russell* (384 U.S. 11 (1966)).

In all these Judgments, it has been categorically stated that mere membership of any banned political outfit and other groups

professing any extremist/seditious ideology which are deemed as terrorist groups and are banned in India is not sufficient to establish guilt of the accused, in absence of any direct involvement in the activities of the same.

## APPENDIX 4

### ***Janki Sidar Case***

Janki Sidar had two pieces of land in her name that were fraudulently registered in the name of Monnet Ispat (headed by the Sandeep Jajodia, brother-in-law of steel tycoon Naveen Jindal) by having another woman pose as ‘Janki Sidar’ and registering the land in the name of a non-existent adivasi called Amar Singh.

When Janki filed an FIR for fraud, she was fortunate that the City Superintendent of Police (CSP) was not a ‘company man’, so a Manager of the Monnet Steel—Shubendu Dey and sundry ‘*zameen dalals*’ (*land brokers/agents*) were sent to jail for about 3 months before they got bail. The CSP was suitably ‘rewarded’ for this, by being transferred to Bastar.

The Revision application filed by the non-existent adivasi against the case filed by the State under Section 170B (non-alienation of adivasi land) had no signature on the application, no *vakalatnama* (power of attorney), no appearance in court for 7 years, although the case was represented by top-notch lawyers in Raigarh! The case was pending in the court despite repeated pleas on Janki’s part for it to be dismissed, all because the record had been summoned by the Revenue Board and was lost. Eventually, the case was dismissed at the Collectors’ Court after eleven long years of continuance without *vakalatnama*.

The High Court redirected the Sub-divisional Judicial Magistrate (SDJM), Gharghoda, Raigarh to reconstruct the matter including



the files lost by the Revenue Board. It was there that the Company lawyers claimed that Amar Singh had died and presented his claimed widow.

However, the SDJM, after a site-inspection of the land, in early 2014, declared the disputed land in village Milupara, Tehsil Tamnar, Sub-divison Gharghoda, Distt. Raigarh to be Janki's and directed the company to pay compensation for the road they have built along a sizable tract of her land.

The company appealed in the Collectors' Court, where once again, Janki's right to the land was upheld, in August 2014. Janki has seen many officers—from *Patwaris* (officials who keep land ownership records) to Collectors make a pretty buck in the course of her case, not to mention at least 7 lawyers who she engaged from time to time only to be cheated. She talks about her village on the Orissa border where many liquor shops have been set up and it is common knowledge that in a certain Pushpa Lodge at 12 midnight, land registries are made. The *Patwari* of her village, while updating her Land Record in the *Rin Pustika* (book with land ownership details) actually made one of her land plots vanish.



*Janki Sidar of Raigarh, who fought the fraudulent acquisition of Adivasi land by Monnet Energy with Sudhaji's help. Source: article-14.com*

## APPENDIX 5

### ***Kashiram Yadav v. Union of India***

In this case, the Petitioner and his colleagues were employed for loading and unloading raw materials including coal from railway wagons for Prakash Industries (Respondent Company, being Respondent Number 2 in the instant writ) around Bardwar from 1993. They were being denied PF-deductions and thus they protested.

There are total 247 claimants, 8 of them were working from 1995, the rest from 1993. The PF deductions are to be made for the period 1996-2003 and the estimated total dues payable was INR 27,94,671. To quell the protest, the Company entered into a contract with Messrs. Tapasi Baba Traders (being Respondent 3 in the writ) in 2003.

The company then drew up a scheme by which the petitioners, on paper, were shown as contract labourers engaged by Messrs. Tapasi Baba Traders although they were employed much before the contractors were roped in. The Petitioners brought WP No. 477/2006 before the High Court and then withdrew it to continue with the dispute before the Regional Provident Fund Commissioner (being Respondent No. 7 in the instant writ), as directed. The Respondent Company falsely stated several reasons so as to absolve themselves of their liability to make PF Deductions from the Petitioner and his colleagues from 1996 to 2003 as they are legally entitled to under the Employees' Provident Fund Act.

The reasons provided were:

- a) the Petitioner and his colleagues were employed by the railways;
- b) they were contract labourers; and
- c) being *hamaals*, i.e., people entrusted with loading and unloading, they were not entitled to PF.

The Learned Regional PF Commissioner, Raipur, vide order dated 09/12/2011 ordered the Respondent Company to submit their final written argument before the Commission, failing which, as the order stated, the matter would be disposed off without further notice. The Company had failed to submit its reply by the specified date and yet no final disposal of the matter has been done by the Learned PF Commission.

The last order was passed by the Learned Regional PF Commissioner, Employees Provident Fund Organization Chhattisgarh, dated 11.02.2013 by which matter was put up to the successor of the outgoing Regional Provident Fund Commissioner, Chhattisgarh, for finality. The Commission has remained silent on this issue ever since despite repeated requests by the Petitioner workers.

## APPENDIX 6

### **Extract from *Janhit Bulletin*, October 2013**

In Village Gobra, Tehsil Kurud, District Dhamtari, an area dominated by the wealthy landowning middle caste of Chandrakars who also wield political clout through ex-Minister Ajay Chandrakar, notorious for his musclemen and stranglehold over local administration, 30 landless peasants had been granted *pattas* (deeds) for 1 to 1.5 acres under the 20 point programme under the *Ceiling Act* in the early 70s.

While these peasants toiled away (and of course invested in irrigation) to transform the predictably barren land holdings into viable fertile fields, the heirs of the erstwhile landlord filed civil cases against the State Government, in which these peasants were never made a party. Fortunately they could only get one verdict in their favour, and for the following 30 years or so, behind the backs of the patta holders, the State won repeated appeals before the Land Revenue Board, a Single Bench of the High Court and even a Division Bench of the High Court of Madhya Pradesh. Then in a truly remarkable illegal Order, a mere Sub Divisional Officer (sadly a lady), actually went over the head of a Division Bench, to direct the lands to be returned to the heirs of the erstwhile landlord. The villagers of Gobra approached us in panic.

An efficient obtaining of the Division Bench Judgment from Jabalpur and timely representation before the Collector, Dhamtari by Janhit resulted in a stay order and the peasants are continuing on their lands. Later these peasants began contacting

similarly situated peasants in neighbouring villages of Bhusrenga, Jarwaidih etc. In Bhusrenga, the Tehsildar had surprisingly, without jurisdiction, directed the mutation of the lands allotted under the *Ceiling Act* back in the names of the heirs of the erstwhile landlord. Again this patently illegal act could be stayed with the help of Janhit.

In the case of Jarwaidih, the peasants had been illegally evicted from the lands allotted to them, in fact while their crops were standing, by the simple device of an order of the Sub Divisional Magistrate postponing the “date of declaration” by some 10-12 years, thus making minor heirs into majors at the time of computation of surplus land. In another village, the allottees have never been given possession of lands, though they hold pattas which have not been revoked and neither has the ceiling order been successfully appealed. Three disturbing facts came to light.

Firstly, that the Revenue Officers seemed to have been passing patently illegal orders, most likely on monetary consideration. Secondly, that the original records of the ceiling cases were almost always “unavailable”/ “missing”. Thirdly, that the lawyers engaged by the villagers appeared through their omissions and commissions to have not acted diligently to protect their rights. One can only imagine what the combination can lead to.

Today the villagers of Gobra, Bhusrenga and about 10 villages around them have formed a Kisan Sangharsh Samiti to air their grievances and have begun by filing an FIR against the corrupt SDM Padmini Bhoi, who in the meanwhile has been transferred to Raipur, and to our horror has been given the task of enquiry into a custodial death.

The story of the landless of Village Kansi, Tehsil Dabra, district Janjgir Champa is even more distressing. Aghori Das and another 11-12 peasant families of the Painka caste (classified as OBCs but socially treated as dalits) were allotted small parcels of land

somewhere around the year 1976 and these were submerged in construction of the Ghatoi Dam in the early 1980's. Since then has begun their struggle to obtain compensation, which has not yet ended after 33 years. The peasants made the usual applications and when despite all the formalities being completed payment was not forthcoming, followed it up by a rally and demonstration at the SDM's Office that ended in a lathi-charge, a fracas, serious offences against them and arrests.

After being released on bail, while the process of computation of compensation began, so did a civil suit by the heirs of the landlords. The computation was repeatedly done faultily—sometimes in not taking the value of the land at the point when the Section 4 Notification was issued, sometimes in failing to compute interest payable in compulsory acquisition, sometimes in not calculating interest on compensation from the date of submergence...

Each time meant another set of applications and arguments. On the other hand, the Revenue authorities failed to provide documents to prove the case of these peasants in the civil litigation. The "Ceiling Order" was said to be "misplaced" and several RTI appeals and writ petitions later at least the possession certificates could be obtained. All this would have been impossible if not for the tenacious and committed Advocate AP Josy (Pastor turned Advocate). Just when some light was beginning to show at the end of the tunnel, the criminal case of the "marpeet" at the SDM Office was decided, and ... All these peasants now in their 50's and 60's and some in their 70's were sentenced to 7 years of imprisonment.

## APPENDIX 7

### **Land Acquisition Act (LAA), 1894.**

#### **Section 4. Publication of preliminary notification and powers of officers thereupon.—**

- (1) Whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purpose [or for a company] a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification)].
- (2) Thereupon it shall be lawful for any officer, either, generally or specially authorised by such Government in this behalf, and for his servants and workmen,— to enter upon and survey and take levels of any land in such locality; to dig or bore in the sub-soil; to do all other acts necessary to ascertain whether the land is adapted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; to mark such levels, boundaries and line by placing marks and cutting trenches; and, where otherwise the survey cannot be completed and the levels taken and the

boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

### **Section 5A. Hearing of objections.—**

- (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, [within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be.
- (2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard 18 [in person or by any person authorised by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, 19 [either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the 20 [appropriate Government] on the objections shall be final.
- (3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.]



## **Section 6. Declaration that land is required for a public purpose.—**

(1) Subject to the provisions of Part VII of this Act, [when the [appropriate Government] is satisfied after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders [, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2)]: [[Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),—

- (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967) but before the commencement of the Land Acquisition (Amendment) Act, 1984 68 of 1984) shall be made after the expiry of three years from the date of the publication of the notification; or
- (ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:]

[Provided further that] no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

[Explanation 1.—In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded. Explanation 2.—Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues].

- (2) [Every declaration] shall be published in the Official Gazette, [and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.
- (3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration the [appropriate Government] may acquire the land in a manner hereinafter appearing.

### **Section 17. Special powers in cases of urgency. —**

- (1) In cases of urgency, whenever the [appropriate Government] so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the

publication of the notice mentioned in section 9, sub-section (1), [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the [Government]], free from all encumbrances.

- (2) Whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, [or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity,] the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the [appropriate Government], enter upon and take possession of such land, which shall thereupon [vest absolutely in the [Government]] free from all encumbrances: Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.
- (3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested, compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not

accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

[(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),—

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),

and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3B) The amount paid or deposited under sub-section (3A), shall be taken into account for determining the amount of compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.]

(4) In the case of any land to which, in the opinion of the [appropriate Government], the provisions of sub-section (1) or sub-section (2) are applicable, the [appropriate

Government] may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time [after the date of the publication of the notification] under section 4, sub-section (1).]

*Rally taken out on the first anniversary of Sudha's arrest, 28 August 2019, by Chhattisgarh Mukti Morcha (mazdoor karyakarta samiti) and PUCL Chhattisgarh in Raipur. Source: free-them-all.net*



## APPENDIX 8

### ***Industrial Disputes Act, 1947.***

#### **Section 25N. Conditions precedent to retrenchment of workmen.—**

- (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—
  - (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.
- (2) An application for permission under sub- section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub- section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks

fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

- (4) Where an application for permission has been made under sub- section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.
- (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub- section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.
- (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub- section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub- section, it shall pass an award within a period of thirty days from the date of such reference.

- (7) Where no application for permission under sub- section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.
- (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub- section (1) shall not apply in relation to such establishment for such period as may be specified in the order.
- (9) Where permission for retrenchment has been granted under sub- section (3) or where permission for retrenchment is deemed to be granted under sub- section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

### **Section 25F. Conditions precedent to retrenchment of workmen.-**

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of



notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government 3 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].'

*Protest against Sudha's arrest on 28 August 2019 in Raipur, organised by CMM (mks) and PUCL. Source: free-them-all.net*





*Sudha addressing the workers of ACC Jamul at the plant gate at the time of signing the historic agreement between the ACC-Holcim company and the Pragatisheel Cement Shramik Sangh. Source: free-them-all.net*

## 'Maa chose to serve her people. Is that anti-national?'

Daughter pens heartfelt note as Sudha Bharadwaj completes two years in prison

SONAM SAIGAL  
MUMBAI

Noted human rights lawyer Sudha Bharadwaj was arrested by the Pune police from her residence in Faridabad in August 2018 in connection with the Bhima-Koregaon violence case.

With the activist completing two years in prison, her 23-year-old daughter Maaysha has penned a letter reflecting on life spent away from her. In her letter, Ms. Bharadwaj says, "Today, two years ago, maa got arrested. Things were different when she was under house arrest,



Sudha Bharadwaj and daughter Maaysha • FILE PHOTO

I could see her, touch her, talk to her. But after she was taken to jail, I feel like my heart has been torn apart and ripped out. I am having an enormously difficult time handling myself. I cried for months after her arrest."

Ms. Bharadwaj, who lives alone in Faridabad, writes,

"When the COVID-19 pandemic broke out and prisoners were allowed to call their families, I would wait every day for her call but to no

avail. Finally, on June 1, I heard her voice after five months, it made me very happy and emotional," Bharadwaj writes.

She says, "My mother gave up her American citizenship to live in India and serve people here. But the government is saying she gave up her citizenship to use poor people and manipulate them against the government. So, I would like to ask, 'Is there any person who has given up luxury and a good life in America just to serve the people of this country? And then to be labelled an anti-national?' My grandmother [Krishna Bharadwaj], who was a well-known economist, wanted my mother to be like her. But my mother chose her own path; she chose to serve her people. Is that anti-national?"



## PEOPLES UNION OF CIVIL LIBERTIES (PUCL)

Veteran leader Jaya Prakash Narayan (JP) founded the People's Union for Civil Liberties and Democratic Rights (PUCLDR), in 1976. The founding conference, held in November 1980, drafted and adopted the Constitution of the PUCL and made it a membership based organisation, aiming to have branches all over the country.

This founding conference elected V M Tarkunde as its President and Arun Shourie as the General Secretary. Later, Y P Chhibbar was appointed as Executive Secretary. V M Tarkunde was named Advisor in 1986.

Those elected as President and General secretary(ies) in the following year(s) were:

President:	V M Tarkunde (1982 to 1984); Rajni Kothari (1984 to 1986); Rajindar Sachar (1986 to 1995); Kannabiran (1995 - 2010); Prof. Prabhakar Sinha (2010 - 2017); Ravikiran Jain (2017 - continuing).
General Secretary:	Arun Shourie (1982 to 1986); Rajni Kothari (1982 to 1984); Prof. Y P Chibber (1984 to 2009); Pushkar Raj, (2009 to 2012); Dr. V. Suresh, (2012 - continuing).

Some of the key PUCL cases include the telephone tapping case, encounters case, election reform including NOTA (None of the Above) and mandatory filing of election affidavit by all candidates disclosing their criminal and financial antecedents, and the striking down of Section 66A of IT Act.

The PUCL also publishes a monthly journal, the PUCL Bulletin, in English. It is the only journal of its kind in the country and is read all over the world in the human rights circles. The PUCL also organises a *JP Memorial Lecture* on March 23rd every year. This is the date on which the Emergency was lifted.