



Human Rights Defenders Alert - India

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The Chairperson
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex, INA,
New Delhi – 110 023
Email: covdnhrc@nic.in

Sub: HRD Alert - India - Urgent Appeal for Action – Kerala: Human Rights Defenders Thushar Nirmal Sarathy and Jaison Cooper arrested under the draconian Unlawful Activities Prevention Act (UAPA)– Reg

Dear Sir,

Greetings from Human Rights Defenders Alert - India!

HRD Alert - India is a Forum of Human Rights Defenders for Human Rights Defenders. It endeavors to initiate actions on behalf of Human Rights Defenders under threat or with security concerns.

We are now writing to express our grave concern regarding the Human Rights Defenders Thushar Nirmal Sarathy and Jaison Cooper arrested under the draconian Unlawful Activities Prevention Act (UAPA) and to demand their immediate release.

Source of Information on the Incident:

- The Regional Coordinator of HRDA for the South of India
- Media reports

The Human Rights Defenders:

Thushar Nirmal Sarathy is a lawyer and the Secretary of *Janakeeya Manushayvakasa Prasthanam* (People's Human Rights Forum), a human rights organization which has fought against human rights violations by the state authorities in Kerala for almost a decade. He has, ironically, also written a book on the

draconian UAPA and also produced a short documentary film on the same subject titled U R under Arrest. Thushar, as an advocate, has also offered legal help and counsel to activists targeted by the state machinery. For instance, he stood for Sreekanth and Arun Balan who had been arrested by the police for allegedly carrying out attacks, and had no legal counsel.

Jason C Cooper, is a noted social activist of the region and an avid blogger. He has lent his voice to a variety of grassroots struggles of the marginalized and dispossessed sections of society in India and abroad.

Thushar, along with Jaison, had also played a major role in mounting a campaign in Kerala for the release Dr. Binayak Sen, when police, in the Indian state of Chhattisgarh, under the same draconian UAPA, arrested the doctor.

Both Thushar and Jaison are actively engaged with farmers' struggles against land acquisition, illegal rock quarrying, forcible evictions, and the violation of labour rights of migrant workers in Kerala, as well as in struggles against various polluting industries.

The Perpetrators:

Police Personnel of Thevara and Chemmangad Police Stations in Kerala

Date of Incident:

Arrested on 29.01.2015 and remanded to judicial custody since 30.01.2015

Place of Incident:

Thushar in Kozhikode and Jaison in Cochin, Ernakulam District, both in the Southern Indian State of Kerala

Incident detail:

According to the sources, both Thushar and Jaison were taken into custody on the 29th of January 2015 by the Kerala Police. Jaison was taken into police custody from his office without any notice or arrest warrant. The police while taking him into custody told his colleagues in the office that he would be released if any of his colleagues reach the police station. Accordingly two persons working in the same office reached the Thevara Police Station.

The police however then changed their earlier version and told them to wait for 10 minutes as the Circle Inspector of Police needed to talk to them and later told them that he will not be released. This was followed by a series of police action in different parts of Ernakulum on the same day wherein the residences of advocate Thushar Sarathy, Secretary of Janakeeya Manushyavakasa Prasthanam (People's

Human Rights Forum), advocate P.J. Manuel and artist-activist Jolly Chirayath, Convener of Sthree Koottayma, a Kochi-based feminist collective were raided without fulfilling any legal requirements.

The police have seized several files connected with the cases handled by advocate Thushar from his residence and also collected several books from his library, all of them available from any bookshop. They took several notices and pamphlets linked with various peoples struggles from the residences of Advocate Manuel and Ms. Jolly. The police have also not given receipts for the goods seized in the raids as required under the law. The absence of a specific seizure list by the police prepares the ground for a further abuse of the legal framework to aid in the repression of these activists. Moreover, it is also learnt that mobile phone and computer records were scanned at length by the police.

On Friday, 30 January 2015, the police formally recorded the arrest of Jaison Cooper under the draconian Unlawful Activities Prevention Act (section 13 b of UAPA) and presented him in the court at 1.30 p.m. and the court granted his custody to the police for the next six days.

Thushar was arrested in Kozhikode also on 29.01.2015 in Nalanda hotel after he addressed a press conference. The police approached him after Thushar finished his conference and asked him to come to the Chemmangad Police Station for some 'inquiry' which Thushar complied with. At the station his arrest was recorded and was later transferred to Kochi and is currently in judicial remand.

Their arrests follow a pattern; the government has been targeting human rights defenders and rights activists by labeling them as "Maoist" sympathizers and thereby criminalizing them. This is despite the Supreme Court order in the Binayak Sen case, which held that mere membership of a banned organization does not make a person criminal. The Bench, comprising Justices Markandeya Katju and Gyan Sudha Mishra, stated that:

"In our opinion, Section 3(5) cannot be read literally as otherwise it will violate Articles 19 9(free speech) and 21 (liberty) of the Constitution. It has to be read in the light of our observations made above. Hence, mere membership of a banned organisation will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence."

The arrests have also followed a series of raids on the residential premises of persons engaged in human rights activities in Kerala. What is especially worrisome

is the fact that though raids on their houses could not produce any incriminating evidence against them both Thushar and Jaison are still being kept under custody. Even the initial charge sheet filed by the police seeking their remand carried no evidence other than their possessing pamphlets and Maoist literature of the kind freely available in the public domain.

Appeal :

We, therefore urge you to immediately take necessary steps to ensure that the NHRC

- Orders an immediate, thorough, transparent, effective and impartial investigation into the above-mentioned events of the targeting of the human rights defenders through its investigation wing and then recommend drop the baseless charges against them and release them unconditionally as the right to read and possess literature is a freedom of expression guaranteed under the Constitution of India
- Recommend Initiation departmental action on the police who arrested the defenders on baseless charges and the illegal raids conducted at their offices
- Guarantee in all circumstances the physical and psychological integrity of Thushar and Jaison who are still under custody
- Ensure provision of reparation, compensation, apology to the defenders for the physical and psychological sufferings they underwent because of this arbitrary arrest and detention and provide a re-assurance of not engaging in such acts against HRDs such as Jaison and Thushar;
- Put an end to all acts of harassment against all human rights defenders in the State of Kerala to ensure that in all circumstances they carry out their activities without any hindrances;
- Takes steps to conform to the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, especially:
 - Article 1, which states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels

- Article 12.2, which provides that “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”;

- More generally, ensures in all circumstances the respect for human rights and fundamental freedoms in accordance with in accordance with the Universal Declaration of Human Rights and with international human rights instruments ratified by India.

Looking forward to your immediate action in this regard,

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Henri Tiphagne', with a horizontal line underneath it.

Henri Tiphagne

Honorary National Working Secretary