

Why the law was used to persecute Dr Binayak Sen

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THE STATE of Chattisgarh has naxal problems. It has gone into an overdrive — not to tackle problems but be seen to tackle them. The private armies called Salwa Judum were inducted as private police through an archaic legal relic from British rule.

This provision was intended for ancillary purposes, not to create veritable armies of vicious lumpen support.

The Salwa Judum recruitment included children who would emerge and evolve as freelance officially trained terrorists for the future. In a conversation in October 2008, DGP Vishwa Ranjan frankly told me that things had gone wrong with Salwa Judum. State counter- terrorism had itself become a terrorist to terrorise public activists. As a matter of style and habit, in the Chattisgarh area even pacific social activism is crushed as terrorism.

Counter- terrorism

As a member of the Peoples Tribunal on the Bhilai massacre, I heard witnesses of the terrorism unleashed by the counter- terrorism strategy of the M. P. state. State officials and the local thugs have a strong symbiotic relationship. The murder of Shankar Niyogi, the clumsy prosecution, random beating of people, form part of an ongoing state hostility against anyone who supports the cause of the people.

Binayak Sen is an outspoken pacifist doctor. A graduate of the Christian Medical College (Vellore), he came to Chattisgarh in 1981. Inspired by Shankar Niyogi, he set up hospitals with workers money and along with his wife Illina, acquired an incontrovertible reputation as a doctor as well as a social advocate, involved with the PUCL, of which he was vice- president. To the authorities, his formidable reputation was seen as a threat, because of his general association with people, including communists. He was, therefore, to be silenced.

In 2007, the legal method devised by Chattisgarh was to charge this pacifist with sedition, waging war against the nation, being associated with a banned organisation and conspiratorially supporting terrorist activity. The proof was as unconvincing as the strategy. All of a sudden, he was presented as a Maoist, terrorist and Naxal.

Of course he had worked with a large number of people. Doctor activists invariable do. The PUCL was neither banned nor treated as dangerous. The case against him was that he had visited Maoist Narayan Sanyal in jail 33 times. Since I argued the first bail application before the Supreme Court, I have the papers.

Every trip was sanctioned by the jail authorities who supervised each visit.

He was accused of being a courier for the Naxals because a tendu- patta businessman (Piyush Guha) claimed three letters were sent by Sanyal through Binayak. Later in court, Piyush said he was harassed and tortured.

In the first Supreme Court round, Advocate Gopal Subramaniam appeared for Chattisgarh to suggest Binayak Sen was part of a huge naxal conspiracy — stretching from Andhra and Maharashtra to Bihar and Chattisgarh.

The proof was that Binayak had attended a training course in Patna, also attended by many other distinguished activists. Curiously these others, including B. D. Sharma, IAS, who also works in Bastar, were not terrorists. But Binayak Sen was.

So to Subramaniam, Binayak Sen put the nation at peril. There was also some niggling detail about a hotel reservation for some persons and contributing Rs. 49,000 to the Naxal cause. Some lawyers and I met advocate Subramaniam to tell him he had made a terrible mistake. Apart from some facile suggestions, he said he would speak to the governor! But why was Binayak Sen targeted? He had exposed fake encounter deaths in Santhoshpur, Rajpur, Gollapalli, Narayan Kherwa and various custodial deaths — as indeed his revealing report along with others on the Salwa Judum in 2005.

Terrorist

For the state, this made him a terrorist.

Activists who expose state brutality are enemies of the nation. The problem with Binayak was not that he was a terrorist, but one soft and vocal, without any fear about protesting against state organised encounters and custodial deaths. Since there was nothing against him, the easiest way to get him was to say that he was a conspirator and terrorist. But can a person, who as a doctor, visited a Naxal under strict supervision to impart medication be a terrorist? To shut up Binayak, he was transformed from an activist to a terrorist.

But for the state authorities silencing Binayak was not enough. He had to be humiliated, locked up in prison, denied health facilities and generally badly treated. He would have to go through a trial — of which the process was the punishment.

But most important of all, he had to be denied bail. The only way to do this all the way to the Supreme Court was to portray him as a terrorist. Left to his imagination DGP Vishwa Ranjan might even have connected him to Osama Bin Laden! Rich in forests and minerals, Chattisgarh is up for grabs by business.

The tribals live there with inchoate land rights. The activists were trying to show that development would not take place at the expense of the tribals.

Social injustice creeps out of every woodwork. This powerful business and corporate lobby found Binayak a threat.

The authorities claim that they are fighting a veritable war. They want a free hand. A recent report of the International Commission of Jurists (2009) states that fighting terrorism with state- terrorism creates conditions of inhumanity.

Bail

There was no reason for not granting bail to Binayak. Stringent conditions could have been imposed on his staying within an area, reporting periodically to the police. But once the state manufactured an image of Binayak as a dangerous terrorist, the courts backed off even though they knew that the case against him was flimsy. There were no chances of his interfering with witnesses. Often bail is granted on the condition that any interference with witnesses would see it being cancelled. Presented as the archetypical terrorist justice withered away.

While in prison Binayak was treated cruelly. His health was failing, but medical assistance was denied to him. Justice D. K. Jain who was part of the regional bench that had denied bail to Binayak, told the state on 4 May 2009 to provide medical aid for Binayaks heart condition. Finally on 25 May 2009, Justice Markandeya Katju cut through the shroud of nonsense and granted Binayak bail.

Binayak was a pacifist rebel and prisoner of conscience. The entire world thought of him as such, from Noam Chomsky to all of us. The argument is not just about bail. It is about how cruel officials deal with activists. It is Indian activists such as Medha Patkar and others who have fought for justice for the worst off who would otherwise be ignored.

Self- satisfied officials aggrandise their power to target activists and subvert peoples based democracy.

In their eyes, every activist is a terrorist to be abused, incarcerated and bullied into submission.

If Binayak Sen is an icon, it is because he typifies the struggle of social democracy to get justice for the marginalised and to keep reminding state authorities that they cannot themselves become goondas and terrorists. We know that the Indian state reeks of corruption, violence and brutality. Our hope lies in people like Binayak Sen exposing the mal- activities of the state machinery and restoring sanity to Indian governance.

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