

“Crimes Against Humanity”

As the Harrisob Award citation states Dr Binayak Sen has redefined the possible role of a doctor in the "unjust broken society". Over the past three decades he has always extended his sphere of work into what public health professionals, researchers, and health workers now refer to as the "social determinants of health"—what one sees in the larger social context as "human rights". Moving beyond medical service, Binayak has demonstrated how medicine and public health can contribute to the broader struggles for basic rights to food, health and education as well as for democratic rights.

Reflecting on his ability to reach out, people at Bagrumnala said, "Doctor Binayak has done much more than just curative work in this place. He has done manual labour with us during construction of a pond." During a drought in 2001, initially he helped organise emergency grain distribution, then he enabled the people to set up a grain and seed bank called "Chaarjhaniya". He connected this to a biodiversity conservation programme combining the objectives of protecting traditional seeds and ensuring community food sovereignty, both threatened with extinction by unregulated growth of agro-industry. Adopting the model, the State Government subsequently set up grain banks in 17 villages, and seed banks in 25 villages. Under Binayak's encouragement, villagers have contributed from their wages to a local "Nirmaan Samiti".

Binayak has engaged widely in debates on sustainable development, including in the Socialist Front and in the National Alliance of Peoples' Movements (NAPM). In 2001, he took an active interest in organising the *Desh Bachao–Desh Banao Yatra* when it passed through Chhattisgarh, and the *Rozgar Guarantee Yatra* in 2004.

Over the last 15 years Binayak has worked for legal entitlements of adivasis in the forests near Bagrumnala. When he found the entire male population of village Piprahi Bharri, inhabited by the primitive Kamaar tribe, jailed for 'encroaching' on forest land, he arranged for their legal defence. On behalf of the people of Kekrakholi, Futhamurha and other villages where land entitlements were contested, he negotiated with officials.

Similarly, in Dugli village loans were sanctioned on paper to many villagers by the lead bank and the money was shown as given to them. It was part of a major fraud and no loans were actually received by the villagers named as beneficiaries. When they got recovery notices from the bank and were harassed by bank officials, the villagers approached Binayak. Following his request to the Reserve Bank at Nagpur to inquire into the matter, an inquiry team was sent and the matter was resolved in the villagers' favour.

Binayak's civil rights activism dates from 1984, when he joined the PUCL team that enquired into an incident of firing on textile workers at Rajnandgaon near Dalli-Rajhara, in erstwhile Madhya Pradesh. The People's Union for Civil Liberties (PUCL) is a well-known human rights organisation that has its origins in the complete suspension of all fundamental rights during the emergency period in the 1970s. The peaceful campaigns by the PUCL then helped to turn the

tide for the restoration of democracy. Since 1997-'98, Binayak has been associated with the Chhattisgarh branch of PUCL, and he has recently been elected General Secretary for his second term. In 2002 he was elected Vice-President, National PUCL and he continues in that office. Thus, as a key-office bearer, he has organised fact-finding investigations at state level into human rights violations ranging from hunger deaths and dysentery epidemics, to the welfare and rights of under-trial prisoners, to custodial deaths and fake encounter killings, and the findings have been announced in public fora. According to PUCL, since 2005 the Chhattisgarh Government has a growing record of "crimes against humanity", using excessive and unwarranted police power in the name of resolving the "naxalite problem". PUCL-Chhattisgarh and other democratic rights activists have been raising their voices and campaigning against the "Salwa Judum" and fake encounters in Chhattisgarh, of which there were 155 in 2005-'06. In May 2007, PUCL publicly demanded a CBI enquiry into all extra-judicial killings in the state since 2005. One instance is that of the supposed "encounter deaths" of 12 innocent adivasi youth in Santoshpur village by the Chhattisgarh Police in March 2007. After a sustained campaign by PUCL the state Government was forced to order an investigation and only recently charges have been filed against some of the involved policemen. Similarly, PUCL has demanded an official investigation into killings and other illegal acts by the so-called *Salwa Judum* movement in Dantewada district with the connivance of the State Police.

In a letter to the Chief Minister and at a meeting with him after Dr Sen's arrest, the PUCL explained that as a human rights worker and an active office-bearer of PUCL, Dr Sen was duty-bound to bring to light the human rights violations of both state and non-state actors. Contrary to the impression created by the police, Dr Sen had publicly raised the issue of human rights violations by both the state and the naxalites, and had condemned the killings caused by the Maoist violence. His concern throughout has been for an end to such acts. He had appealed to both Government and Maoists to find a political solution through negotiations and dialogue with all those concerned, including political parties, NGOs and naxalites. He had stressed that such a process was overdue to find the way out of the tragic situation in Chhattisgarh. PUCL has also been demanding the withdrawal of the Chhattisgarh Special Public Security Act (CSPSA) which was shown to be liable to misuse by the police.

The Chhattisgarh Special Public Security Act 2005 has been shown to be unconstitutional and anti-democratic in nature. Various political parties, people's organisations, journalists' associations and both national and international human rights organisations have pointed out the illegal and repressive features of this Act. Among its arbitrary and dangerous features are the vague definitions of "illegal" and "unlawful" activities and of so-called "support" to organisations engaged in illegal activities. The definitions are such that even peaceful forms of democratic protest and ordinary civil disobedience can be brought under its purview and declared "unlawful activity" and any protesting group can be declared "unlawful". The Act also does not specify the need to establish definite intention; hence even activities done unknowingly or unintentionally can be punished. (For example, shopkeepers have been arrested on the accusation that

they sold cloth to persons who have been identified by the state as Maoists.) Apprehensions are that, in using its discretion, the Government could misuse the Act for settling scores with political opponents. In fact, the State Government did ban some organisations under the CSPA even before the Advisory Board was constituted under the Act. Banning of such innocuous organisations as the *Adivasi Balak Sangh* raised doubts that even children below the age of 18 years in the tribal-dominated areas would be arrested. Among those arrested since the enactment of the law is a girl student of 12th standard.

On 14th May 2007, Dr Sen had just returned to Bilaspur from a visit to his ailing mother in Kolkata. He was in the office of Advocate Sudha Bharadwaj when they received a message from the Bilaspur City SP asking him to go to the police station to record a statement. Dr Sen asked if he could do it the following day, after returning from his weekly clinic in Bagrumnala. As this request was turned down, he and his advocate went to the TarBahar police station. The two were made to wait there for a long time. Then he was abruptly told that the Raipur SP was arriving to place him under arrest. A medical check-up was done, after which he was given the option of getting hospitalised or going to jail, and he chose the jail.

Dr Sen was arrested under Sections 10(a)(1), 20, 21, 38 and 39 of the UAPA, and Sections 2(b)(d) and 8(1)(2)(5) of the CSPA, comprising the following charges:

Being a member of an unlawful association.

Being a member of a terrorist gang or organisation.

Holding the proceeds of a terrorist act.

Giving support to a terrorist organisation, and Aiding an unlawful organisation.

He has also been charged with sedition, conspiracy to wage war against the state, and conspiracy to commit other offences. However, no evidence has been given in support of any of the charges. More than a month after his arrest, despite having no evidence, the police added charges under sections 120(B), 121 (A) and 124(A) of the IPC.

Arguments on the framing of charges against Binayak Sen and others took place only on December 28, 2007. The application of defence for discharge on grounds of lack of evidence was rejected, and all the charges of the prosecution have been retained. According to the prosecution Dr Binayak acted as a courier for the naxalites; however it could not produce any evidence to support this accusation.

The evidence that the police claim to have is the record of various visits made by Dr Sen to Mr Narayan Sanyal, a 70-year-old undertrial in Raipur Central Jail and a senior leader of the Communist Party of India (Maoist). Mr Sanyal sought to bring to the notice of the jail authorities, as well as the national and state human rights commissions and several human rights groups, his health condition and his desire to get legal aid as his right under the laws. In his capacity as a PUCL member, Dr Sen met Mr Sanyal in jail to provide him with both medical and legal assistance. As a civil liberties activist it was his legitimate task to meet detainees and ensure that their fundamental rights are respected and that the due process of law is being observed. These visits by Dr Sen were in the due process of

law and in the presence of the all authorities, as provided for in the Jail Manual. He was searched at the point of entry both before and after the visits.

The police have confiscated what they claim to be "incriminating documents" from Dr Sen's residence. The CPU of their computer was seized and sent for forensic examination to Hyderabad. Aside from newspaper clippings, the confiscated materials include five CDs containing interviews pertaining to PUCL investigations on fake encounters, which have been distributed by the PUCL in the last two years. There is a post-card from Narayan Sanyal dated 3rd June 2006 regarding his health as well as his legal case, duly signed by jail authorities and carrying their seal. There is another letter from a prisoner, a member of the Communist Party of India-Maoist, about the inhuman conditions and illegal activities in Raipur Central Jail, which was subsequently sent to newspapers and electronic media by the PUCL and prominently published in some newspapers. Additionally, there is a copy of an article subsequently published in the *Economic and Political Weekly*, a CPI (Maoist) document on recent police activities and labourers, a book by the Committee of Tribals affected by the *Salwa Judum* and an article on 'Globalisation and the Service Sector in India'.

The court proceedings to hear Dr Sen's bail application have seen delay after delay. In the High court the bail application travelled from one bench to another, as the concerned judges said that they were members of an advisory committee constituted under the CSPSA to review the banning of specific organisations. For several hearings in the District Sessions court at Raipur where Dr Sen is to be tried, he was not produced in court on the pretext of security concerns. While rejecting his bail plea on July 23rd, the High Court relied solely on the allegations of the prosecution, all of which associate Binayak with unlawful organisations and individuals only by implication, and failed to give adequate consideration to the defence arguments. On July 31st, at the first Supreme Court hearing on the special leave petition to consider bail, the two-judge bench ordered a notice to be sent to the Chhattisgarh Government in this matter. The response to this notice was obtained only in December, after four-and-a-half months. Following that on December 10th the Supreme Court dismissed the special leave petition for consideration of bail in a one line order, without naming any reasons.

At the bail hearings in the High Court Dr Sen's counsel pointed out that Mr Sanyal, whose messages Dr Sen is alleged to have carried out of the jail, was charged under the CSPSA and UAPA only after having been in police custody for 15 months, on 19th June 2007. That, too, only after Dr Sen's bail application had been filed in the High Court. Until the 18th of June Mr Sanyal had not been declared a member of an organisation banned under the CSPSA.

Raipur Central Jail, where Dr Sen is incarcerated, is hardly a kilometre from the District Sessions Court. Yet, on several occasions the jail authorities have refused to produce him in court on the pretext of insufficient "security". In lieu of personal appearances they arranged for video-conferencing. Thereby, Dr Sen was denied his right to be present and heard at the trial court. Instead he was kept in an intimidating situation in a prison room under heavy guard and without the presence of his lawyers, family and friends. He was shown only the face of the judge and could not even see his lawyer. At least on this matter, however, the Court has now clarified that it has passed no such orders, and that at the times of

framing of charges, examination of evidence and cross examination of witnesses, it would ensure that the accused is physically present and personally heard.

At the hearing of the court on 28th December 2007, he was brought to court to hear the framing of charges. However his application for parole to receive the Keithan gold medal awarded to him in December 2007 by the Indian Academy of Social Sciences was also rejected on technical grounds.

At the time of the arrest in May, the police seized the CPU of Dr Sen's computer from his house and sent it for analysis to CFSL, Hyderabad. The Prosecution failed to hand over a DVD of the CPU as evidence in the trial court, or to the defence, on the grounds that it was an "article" (property) and not a "document". The counsels of Dr Binayak argued that computer evidence is treated as document and the accused was entitled to a copy of it.

Thereupon the Additional District Judge ordered the prosecution to hand over the DVD, and subsequently it was submitted to the court. Only in early December was it given to Dr Sen's family. In addition, the prosecution engaged in such a way that the independent witness ordered by the court to be present during the examination of the CPU at Hyderabad was prevented from being there. The circumstances whereby the examination was manipulated in order to exclude the witness have been intimated to the court. After all this, the government has failed to find any 'incriminating' material in the CPU.

In Raipur Central Jail, Dr Sen is kept in a barrack along with some other prisoners. He suffers from several serious ailments (hypertension, gout, and angina) and in over eight months of detention he has lost 7 kilograms. His application for urgent attention to his medical condition was noted by the court on 28th December, asking for his health records to be sent from the jail. In the Sessions court hearing on January 17th the jail authorities filed an unsubstantiated medical report with a long list of dates on which Binayak was medically examined, claiming that he was of ideal weight for his height and age.

The central jail authorities have classified Dr Sen as a "hardcore naxalite criminal" even before the police investigations were over and the chargesheet filed, leave alone a trial having taken place. Letters from the Jail Superintendent to the district Police authorities for security to escort him to court for extension of remand refer to him to in these terms. Family members visiting Dr Sen are made to sign in a special register pertaining to naxalite prisoners.

Even prior to Dr Sen's arrest on May 15, a vicious media campaign was mounted against him. Later that month a similar campaign was launched against his wife Prof Ilina Sen alleging that her relationships are suspicious and stating that her activities would be investigated. A Police Special Investigating Team visited Ilina's mother's home in Kolkata, enquiring about her antecedents and why the couple had chosen to work in Chhattisgarh. Such police intrusion violates the fundamental liberties of Indian citizens guaranteed by the Constitution to live and work in any part of India as well as to hold dissenting political positions.

Thus, it seems that Dr Sen's "crime"—or contribution—consists of the selfless, fearless and uncompromising pursuit of truth and dedication to his work. This he was carrying out not just through clinical practice but also by pursuing an alternative public health approach, by working as a civil liberties activist to

uphold the constitutional commitments of the Government towards its citizens, and by speaking up for justice and dignity of the marginalised and the impoverished. Binayak is what the renowned 19th century physician, pathologist and public health pioneer Rudolf Virchow would have described as a "natural advocate for the poor". His activities through CMSS and CMM, through RUPANTAR, PUCL, JSS, etc., indicate his commitment to constructive, and open, democratic forms of political action and engagement.

The R R Keithan Gold Medal, awarded to Dr Sen in absentia at Mumbai on 29th December 2007 highlights this in its citation :

"The Academy recognises the resonance between the work of Dr Binayak Sen in all its aspects with the values promoted by the Father of the Nation."

To those who are able to visit Binayak in jail, he makes the mission clear:

"We must not personalise the issue of my arrest, but focus on the wider issues for which I was arrested."

These issues are: the worsening of human development indices for the majority, the deepening social and economic disparities, the erosion of nutritional security and sovereignty, and the impact on public health of corporate-led industrialisation and increasing militarisation.

The arrest of Binayak Sen needs to be viewed in the background of the kind of development that has been going on in India for over a decade now. □□□

[Excerpted from the pamphlet–'Release Dr Binayak Sen'–issued by Medico Friend Circle.]