

"PRISONERS AT RISK"

Binayak's Unjust Imprisonment

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How many does it take to metamorphose wickedness into righteousness?

One man must not kill. If he does it is murder. Two, ten, one hundred men, acting on their own responsibility, must not kill. If they do, it is still murder. But a state or nation may kill as many as they please, and it is no murder. It is just, necessary, commendable and right. Only get people enough to agree to it, and the butchery of myriads of human beings is perfectly innocent.

But how many does it take? This is the question. Just so with theft, robbery, burglary, and all other crimes. Man-stealing is a great crime in one man, or a very few men only. But a whole nation can commit it, and the act becomes not only innocent, but highly honorable...

Verily there is magic in numbers! The sovereign multitude can out-legislate the Almighty, at least in their own conceit. But how many does it take? Just enough to make a nation....Alexander the Great demanded of a pirate, by what right he infested the seas. By the same right, retorted the pirate, that Alexander ravages the world. How far was he from the truth?

—Adin Ballou, American social reformer and abolitionist (1803-90)

A famous story links two great Americans. When the United States invaded Mexico in 1846, the great naturalist Henry Thoreau, in an act of civil disobedience, refused to pay his taxes as a mark of protest against US actions and was sent to prison for his sin against the state. His close friend and mentor from Harvard, Ralph Waldo Emerson came to see him in jail. Emerson quipped “what are you doing inside?” Thoreau's reply made Emerson blush. “What are you doing outside?”, he replied.

There are times when jails become one of the few places of honour left in the world. Where, after all, would you like to find yourself if robbers and murderers were masquerading before the public as magistrates, judges and hangmen?

India today finds itself crouched in one such corner of shame, wherein those with permeable skin feel out of place before the television sets in their own living rooms. The air is thick with suspicion and accusation as the odour of staggering injustices hangs about people everywhere one goes.

While well-known serial killers gamely garner tickets from national parties for the parliamentary elections and mass-murderers sagely deliver their homilies from television screens, women and men of integrity and courage must lurk and slide in the dark alleys of Indian cities or in the forlorn jungles of the land. It is a state of affairs which would have appalled and nauseated decent citizens a generation ago, let alone the heroes and heroines of freedom movement. The sad truth is that as a civilisation India's standing in the world has suffered a precipitous fall during the last several years, even as elated elite's vainglorious aspirations to super-power-hood never miss a morning to announce themselves.

If Adin Ballou is right, and the multitude is indeed sovereign (“unpunishable”, in the words of Edmund Burke), the question for people in India today becomes as to which multitude is the more important one, the one which is suffering the lies and crimes of leaders, or the numerically far lesser one which prospers on their patronage. It is for the citizenry of this beleaguered country, to ensure that ordinary people find the courage to determine the morally correct order of importance. Or else, posterity will curse everybody.

After six decades of freedom from colonial rule, India is still a largely poor country. One of the most severe forms of deprivation suffered by the poor is with respect to health, particularly so in a time when the cost of drugs, tests and healthcare has shot up so dramatically, thanks to the “liberalization” and

privatization of the health sector. In such a context, it is worth asking how many Indian paediatricians one can name who have given 30 years of their lives – as a volunteer – in unstinting service to the needy poor in the countryside. At a guess, the actual number is in three figures, or perhaps even in two digits. But the name of Dr Binayak Sen surely figures prominently among them.

On May 14 it was two years since Dr Binayak Sen's arrest by the Chhatisgarh government in Raipur . He was detained for allegedly being in violation of the provisions of the Chhatisgarh Special Public Security Act (2005) and the Unlawful Activities (Prevention) Act (1967).

The chargesheet against Dr Sen bears resemblance to a page torn from Kafka. It accuses him, among other things, of “sedition”, of “waging war against the state”, and of “abetting unlawful activities”. It claims that Dr Sen “is certainly a doctor: but is a big zero in terms of actual practice of medicine.” Obviously, a gold medal from one of the nation's premier institutions (CMC, Vellore, where many of the leaders who pass draconian laws are treated), and international awards like the 2004 Paul Harrison Award and the 2008 Jonathan Mann Award given by the Global Health Council are not adequate testimony to the exceptional achievements of the accused. The state government of course does not have eyes to see the Shaheed Hospital that Dr Sen has helped to found in Chhatisgarh. And it seems to have forgotten that the “Mitanin” in the *Indira Mitandin Swastha Yojana* (Indira Volunteer Health Program) of the Chhatisgarh government is Dr Sen's contribution, involving the training of an elected woman from each village to serve as a primary health-care provider.

Dr Sen's bail application has been summarily dismissed both by the High Court and by the Supreme Court. This despite the fact that not one of the more than 83 witnesses listed for deposition by the prosecution could furnish legally admissible evidence to establish the charges against Dr Sen in the few hearings that have been held. 16 were dropped by the prosecutors themselves and six were declared 'hostile'. Jail officials themselves have denied the possibility that Dr Sen could have been an inadvertent mailman for Narayan Sanyal, said to be a senior (imprisoned) Maoist leader with a heart condition, who Dr Sen had been treating.

It is clear that Dr Sen was arrested to check his activities as a crusader for civil liberties in Chhatisgarh. He is the national Vice-President of the People's Union for Civil Liberties (PUCL) and had been exposing false encounter killings of innocents by the state police over the years. He had also exposed and publicly opposed the formation of *Salwa Judum*, the vigilante force that the state government has formed over the past several years by dividing the tribal population of the state against itself. With the help of the police, the security forces and *Salwa Judum*, the government has managed to get hundreds of villages forcibly vacated in order to clear the decks for powerful corporations to do their mining for coal, iron ore and bauxite. The evicted population – numbering in the hundreds of thousands – has been forced to hide in the jungles or get recruited by Maoist rebels and Naxalites. Hundreds, possibly thousands of people have been killed or imprisoned and tortured over the last few years. The remainder lives in conditions of utter squalor by the highways, without access to drinking water, sanitation, food or medicines. These are the people being 'asked'

to pay the price for India's rapid march to the big league nations of a globalized world. Human cruelty is driven by a heartless, avaricious cowardice.

Apart from treating thousands of people for malaria, diarrhoea, and other diseases Dr Sen had exposed these crimes of the state government repeatedly over the years. That is the main reason for his unlawful detention. His incarceration is meant to serve as an object lesson to all those who are keen to do their duty as citizens, expose state crimes, and fight for a decent society.

Even the Supreme Court is slowly waking up to the fact that Dr Sen and others who have exposed the state crime involved in the formation of *Salwa Judum* are right. In September 2008, a Supreme Court Bench headed by Chief Justice K G Balakrishnan, after going through the National Human Rights Commission report on violence in Chhattisgarh said, "The allegation is that the state is arming private persons. You can deploy as many police personnel or armed forces to tackle the menace. But, if private persons, so armed by the state government, kill other persons, then the state is also liable to be prosecuted as abettor of the murder." Chief Justice Balakrishnan added "It is very painful to read the report. It says there is arson and looting, people are armed and they [Salwa Judum] are committing serious offences. It says people who are subjected to serious problems are still afraid of coming out."

The other day Ex-Chief Justice of India, Justice V R Krishna Iyer wrote an open letter to the Prime Minister drawing his attention to Dr Sen's case. He pointed out that "instead of recognising their social contributions, the Indian state, by wrongly branding Dr Sen and many other human rights defenders like him as 'terrorists', is making a complete mockery of not just democratic norms and fair governance but its entire anti-terrorist strategy and operations... the sheer injustice involved will only breed cynicism among ordinary citizens about the credibility and efficacy of Indian democracy itself."

Recently, a letter issued by more than 50 Indian doctors in America, and endorsed by a leading US linguist and dissident Noam Chomsky, wrote to the Chief Justice of India urging him to grant bail to Dr Sen since he had been ailing with a heart condition for a while. He is on Amnesty International's "Prisoners at Risk". So far, there has been no response from the Indian justice system.

In an open letter to the authorities, Binayak Sen's mother Anusuya Sen wrote last year :

"Should I regard as justice the refusal of bail to one who even as a child was moved by injustice, who having devoted his entire working life selflessly to providing food and health to the poor, who without coveting wealth survived for days on dal, rice and green chillies, who is accustomed to living like the poor, who dedicated his life to serving the people of his country, and who is now arraigned for breach of public security and waging war against the state?"

"Doctorsaab cared about us," Pilko Ram, a Chhatisgarh villager told *The Hindustan Times*. "And he did not charge any fee. Once, during a food crisis, he distributed grain in the village for two weeks."

Except for the rank of crorepati, perhaps a crore in number, the legal system in present-day India, intoxicated with wealth and corruption, deploys in practice the following dictum : "you are guilty until proved innocent". You can be picked up for mere whispers if they are seen to expose state crimes.

One Rowlatt Act was enough to precipitate Jallianwala Bagh nine decades ago, causing an intensification and acceleration of the Indian freedom struggle. A slew of far more invasive legislation in “independent” India—the Chhatisgarh Special Public Security Act (CSPSA), the Armed Forces Special Powers Act (AFSPA) and the Unlawful Activities Prevention Act (UAPA), to name just a few of the many that have been passed in recent years—draws from independent India but a cowardly, paralysed silence.

Under the CSPSA even if someone is judged by a state functionary to have a “tendency to pose an obstacle to the administration of law” s/he can be detained.

In keeping with its campaign promises (and pressure brought to bear on it by over a hundred parliamentarians and the National Human Rights Commission) the UPA government had the widely-abused POTA (Prevention of Terrorism Act) and TADA (Terrorist and Disruptive Activities (Prevention) Act) legislations removed from the statute book when it came to power in 2004. But most of the provisions under these laws were replicated in the legislation that it got introduced and passed after coming to power. Arrests without warrant and home searches without court orders are among them, as also pre-trial detention for up to six months.

According to legal experts the Criminal Procedure Code in India has tougher provisions than many of the anti-terror laws enacted in the US and the UK in recent times.

Binayak Sen is not the only human rights campaigner unjustly detained by the Indian state. Thousands of such people are languishing in the jails of the North-Eastern states, Jharkhand, West Bengal, Orissa, Chhatisgarh, Andhra Pradesh and elsewhere. One of the most remarkable cases is that of Irom Sharmila, a woman from Manipur who has been on a hunger strike since November 2, 2000 demanding the complete repeal of the AFSPA. She was arrested for attempted suicide that year, and has since been force-fed by the authorities to keep her alive.

In the name of fighting terrorism and extremism, the Indian state has gone to absurd and barbaric lengths to maintain its hegemony in a time of growing illegitimacy. If this is what the emerging shape of “the world's largest, fastest-growing democracy” is what would a totalitarian legal system look like?

India's appalling human rights record in recent years has led the internationally renowned Human Rights Watch to conclude in their report last year :

“Despite an overarching commitment to respecting citizens' freedom to express their views, peacefully protest, and form their own organizations, the Indian government lacks the will and capacity to implement many laws and policies designed to ensure the protection of rights. There is a pattern of denial of justice and impunity, whether it is in cases of human rights violations by security forces, or the failure to protect women, children, and marginalized groups such as Dalits, tribal groups, and religious minorities. The failure to properly investigate and prosecute those responsible leads to continuing abuses.”

A universe of human struggle for dignity stands between rule by men and the rule of law. Some of the more glorious chapters in the history of the world since the American and the French revolutions occupy this universe.

Today in India people live—de facto—under the rule of men, rather than under the rule of law. As the moral decline of the Indian justice system keeps pace with the decay of the polity (there are over 25 million pending cases in different Indian courts), are the haves going to keep sipping beer and munching chips while watching the IPL on Television every night? How long before the government admits that—election or no election—it can never assure the security of sportsmen and women again, the state Pakistan has already reached?

22 Nobel Laureates—including 9 in medicine, 9 in Chemistry, 2 in Physics and 2 in Economics—signed a petition a year ago asking for the unconditional release of Binayak Sen. They expressed “grave concern” that Dr Sen has been held in prison for the peaceful exercise of fundamental human rights. They point out that this is in contravention of Articles 19 (freedom of opinion and expression) and 22 (freedom of association) of the International Covenant on Civil and Political Rights to which India is a signatory. They also point out that Dr Sen is charged under two internal security laws that do not conform to international human rights standards.

Surprisingly, there was not a single Indian name in that list.

Thankfully, less than a month ago, before the G-20 meeting in London, a group of 141 UK-based academics, mostly Indians wrote a letter to *The Guardian* newspaper urging the G-20 to “consider human rights as well as the credit crunch” adding that “the needs of the world's underprivileged must be at the forefront of the G-20's discussions. The Government of India must act immediately to withdraw the charges against one of the strongest champions of social justice. We urge that Dr Sen be released, and be treated in the spirit of India's own Constitution. At a time when the global economic situation has made the poor even more vulnerable, governments must support and work with, not incarcerate and abuse, those like Dr Sen and other human rights activists who work for positive change.”

But none of this is enough. Popular outrage at the perpetrators of injustice needs to be louder and more relentless.

This piece began with a story from America. It is perhaps fitting to end with a similar, even more illuminating and optimistic, story from India's own shores. Many years ago, a dissident in Orissa, Damodar Rath protested the foolish injustices of the state government by going on a fast outside the prison where many similar people were incarcerated. His one and only demand was to be locked up inside with his friends. He sat there for ten days before the warden finally asked him why he wanted to suffer so foolishly. Rath's riposte was that there were better people inside than outside the jail.

The prisoners were released immediately! □□□

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