

CHATTISGARH AND BINAYAK SEN

More on Sedition

Ilina Sen

[Following is a slightly shortened version of a statement issued by Ilina Sen at the RTI Convetion, Shillong, March 16, 2011 and published in sanhati.com]

Today, at many levels and in many for a, the people of India are struggling for the establishment of accountability and transparency in governance structures as befitting India's status as the world's largest democracy. However, it is a sad reflection on the system that once a false case is registered in the name of security, it is almost impossible to turn the clock back, even if facts stare people in the face that indicate that the case had no basis.

Binayak Sen has been convicted of sedition and of violating sections of the UAPA and the Chhattisgarh Special Public Security Act and sentenced along with two others to rigorous life imprisonment. His jail ticket notes his provisional date of release as 2028. The conviction has followed an unfair prosecution and prejudiced judgment based on confessional statement recorded, according to the judge, during 'preliminary investigation' before the first accused in the case was taken into police custody, thereby defeating the provision of inadmissibility of custodial confessions. In the absence of any visible crime, this first arrest and the so-called 'preliminary investigation' become the 'incident' around which the case is woven. The charges framed are equally vague regarding nature, time and place of the 'crime'. Extensive and expensive police investigations (sadly beyond the orbit of the RTI Act!) into Binayak's (and mine) homes, places of work and associates failed to provide any evidence other than social service in remote rural areas, and obviously was not brought on record. The case against Binayak hinged upon his 33 meetings with jailed Maoist leader Narayan Sanyal, his supposed couriering of Sanyal's letters and their passing on to Pijush Guha, through which letters, the death and destruction being carried out by the Maoists was supposedly given effect.

Since the prosecution failed to produce even a single jail official or any other eye witness testifying to any letter or message, oral or written, being passed by Narayan Sanyal to Binayak Sen in their jail meetings, the verdict makes much fuss about certain entries in jail registers referring to Sen being Sanyal's relative, ignoring the defence contention that these entries were filled in by the jail officials, and not by either the visited or visitor, as apparent from the face of the record. On the contrary, all the applications Binayak Sen submitted to the jail officials, requesting a meeting with Sanyal, were written on the letterhead of his organization –PUCL (a Civil Liberties and Democratic Rights organization founded by leading Sarvodaya leader Jayprakash Narayan). These visits were duly permitted by the jail officials and transpired in their full view and hearing. Binayak's own statement to the court gives a perfectly rational explanation for these visits and the way in which his intervention was essential in facilitating the hand surgery of Narayan Sanyal at the Raipur Medical College, but this was not taken into account.

Binayak is also supposed to have had prior acquaintance with Sanyal and facilitated the hiring of a house by him. This is based on the testimony of a landlord who, while testifying to this fact also alleges that Sanyal was arrested from his house, which is contrary to the facts brought on record during this trial. Sanyal's arrest was in Andhra Pradesh according to the testimony of the arresting officer, and how a witness who perjures himself in one part of his testimony becomes a reliable witness for the other part, beats imagination.

Hearsay evidence from police officers about Binayak's presence in naxal meetings, his supposed association with 'hard core naxals' who are not even named in any case anywhere

in the country , supposed seditious literature pertaining to resistance of US imperialism and atrocities committed during the salwa judum seized from Binayak's house during police search, correspondence addressed to the ISI (read Walter Fernandez, Director, Indian Social Institute, New Delhi) and the evidence of correspondence with people bearing Muslim names constitutes the rest of the evidence.

While weaving a narrative of sedition against Binayak Sen and other accused in the case, the Sessions court verdict violates a well laid judicial principle of the Supreme Court in matters of sedition. In *Kedarnath Singh vs State of Bihar* the Supreme Court has held that the provision of sedition in the Indian Penal Code must be interpreted in a manner consistent with the fundamental freedom of speech and expression guaranteed by the Indian Constitution. In this regard the Supreme Court held that the offence of sedition, which is defined as spreading disaffection against the state, should be considered as having been committed only if the said disaffection is a direct incitement to violence or will lead to serious public disorder. No speech or deed milder than this should be considered seditious. The Sessions court verdict in the case against Binayak Sen and others fails to establish that the words or deeds of the accused were a direct incitement to violence or would lead to serious public disorder. This would be the case even if it was established beyond doubt that Binayak Sen had passed on Narayan Sanyal's letters to Pijush Guha, or Pijush Guha was likely to pass on these letters to other members of the CPI (Maoist), or that Narayan Sanyal was a politburo member of the CPI (Maoist).

Both the trial court as well as the appellate court (while passing and upholding the maximum sentence for sedition) have gone on record that the situation of violence and uncontrolled Maoist bloodshed calls for non-application of any grounds for leniency in sentence. This is without any clear establishment that Binayak Sen had any involvement in such bloodshed, in fact even the court does not allege this. How criminal justice can be based on the doctrine of lateral responsibility is mind boggling. Clearly the verdict and the sentence are both intended to make an example of a civil society activism, and to send a message to all of dissenters who are making any kind of questions. The issues in this case thus go beyond the case itself and the fight for justice for Binayak becomes the struggle of all for the Rule of Law in the polity. □□□

[P.S. The Supreme Court finally granted bail to Binayak Sen on April 15. ‘‘No case of sedition is made’’. This observed the apex court.]