

# Through the Lens of National Security

*The Case against Dr. Binayak Sen  
and the  
Attack on Civil Liberties*

People's Union for Democratic Rights, Delhi  
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War engenders its own distinct laws, and the normally complex code of governing principles is reduced to a fundamental imperative: victory at any cost.

– Ryszard Kapuscinski,  
*Travels with Herodotus*

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*Dr. Binayak Sen has been true to the spirit and vision of his alma mater and has carried his dedication to truth and service to the very frontline of the battle. He has broken the mould, redefined the possible role of the doctor in a broken and unjust society, holding the cause much more precious than personal safety. CMC is proud to be associated with Binayak and Ilina Sen.*

#### **The Citation in 2004**

when his alma mater, Christian Medical College, Vellore, gave him the prestigious Paul Harrison award for his work

On 14 May 2007, Dr. Binayak Sen, a people's doctor and a champion of civil liberties in Chhattisgarh, was arrested in Bilaspur. The charges made out against him concerned crimes against the state spanning various sections of the Unlawful Activities Prevention Act (UAPA), the recently created Chhattisgarh Special Public Security Act (CSPSA), and the 'crimes against the state chapter' of the Indian Penal Code. Nine months later, Dr. Sen continues to be in Raipur jail, with his bail petition having been turned down by the Sessions Court, High Court and the Supreme Court.

Fifty-seven year old Dr. Binayak Sen, after working at the Vellore hospital and teaching at the Jawaharlal Nehru University, has spent 25 years of his life in Chhattisgarh working primarily on people's health issues: helping setting up of a workers' hospital in Dalli-Rajhara, running a medical clinic in a remote adivasi village, advising the state government on public health and setting an example that other doctors were to emulate. As the vice president of the national People's Union for Civil Liberties (PUCL) and general secretary of its state unit for the past five years, Dr. Sen has tirelessly documented and brought to light instances of fake encounters, abysmal jail conditions and the state of malnutrition and dysentery among poor tribal communities. His contribution and his dedication have earned him respect from his patients, from the medical fraternity as well as from social and political activists, in Chhattisgarh and outside.

Large numbers of people staged protests against the arrest in many towns across the country demanding the scrapping of false charges and asking for his unconditional release. Appeals were made to political leaders and parties, to bureaucrats and to the National Human Rights Commission. Dr. Sen's arrest became the subject of many articles in magazines and newspapers, many questioning the accusations and charges made against him. Three people's committees were formed to campaign for his release. But to no avail.

The authorities, on the other hand, have damned Dr. Sen. They have used their official clout to plant stories against him in newspapers, painting him in the worst manner possible. He has been accused of being a supporter of the banned CPI (Maoist) and even his medical practice and contribution to public health issues have been belittled. All his activities, as a doctor and as an activist defending people's rights, are projected as a façade for aiding Maoist activities. Most recently, in the Supreme Court the prosecution claimed that Dr. Sen supervised Maoist armed training camps and was a key link coordinating Maoist activities across different states.

Once such claims, even patently false ones, were made and their legal counterparts, the security provisions that Dr. Sen is charged under, were used, efforts to get him bail were bound to fail. For, extraordinary laws are far from a mere collection of provisions. They reflect a mindset immersed in national security, one that perceives every criticism of the state, every

people's organisation and movement as a threat to that security. One that feeds media images of wanton violence and in turn feeds on them. Excepting probably those who are close to the context of violence, this mindset then pervades society, including the 'objective' judicial mind. To the extent it does so, it lowers the standards of democracy by criminalizing many activities that are considered the life-blood of any democracy and in the process, denies justice to those who need it most.

Thus the case against Dr Binayak Sen has become one of the biggest challenges facing the civil liberties and democratic rights movement in India. Because the specific charges against him, even false ones, concern activities that are legitimate and essential for any people's rights activist. Also because the central and state authorities have used the criminal case against Dr. Sen to discredit the civil liberties and democratic rights movement accusing these organisations of acting as a front for the Maoists.

This report hopes to augment the voices committed to safeguarding democracy and justice from any further erosion. It provides a background of the threat perceived by the state in Chhattisgarh, an exposition of the chargesheet filed against Dr. Sen, and a brief look at the legislations that form the pillars and beams of the charges. Through this the report attempts to challenge this national security mindset, to reveal how it transforms a people's rights activist and a dedicated doctor into a threat to that security.



## Chapter I

### The Politics Behind

“For the past several years”, Dr. Binayak Sen said just before his arrest by Chhattisgarh police, “we are seeing all over India – and, as part of that, in the state of Chhattisgarh as well – a concerted programme to expropriate from the poorest people in the Indian nation their access to essentials, common property resources and to natural resources, including land and water... The campaign called the Salwa Judum in Chhattisgarh is a part of this process, in which hundreds of villages have been denuded of the people living in them and hundreds of people – men and women – have been killed. Government-armed vigilantes have been deployed and the people who have been protesting against such moves and trying to bring before the world the reality of these campaigns – human rights workers, like myself – have been targeted through state action against them.”

As general secretary of PUCL Chhattisgarh, Dr. Sen, has been singled out for highlighting a number of instances of mass

killing of adivasis, rape of adivasi women, destruction of homes and livelihoods, and forcible eviction from villages. All these were done in the name of fighting the CPI (Maoist). PUCL Chhattisgarh has also been at the forefront of the countrywide protests against the state-sponsored Salwa Judum militia and security forces' operations in South Chhattisgarh. Since June 2005, Dantewada district has been in the throes of a war launched by the government. A vigilante group was set up and armed by the government, which in association with the security forces has been responsible for crimes against people. At last count, people from 644 villages were evicted and virtually dumped into 27 camps. Consequently, one lakh acres of cultivable land is lying fallow. And now these camps fenced and barricaded will be transformed into revenue villages guarded by para-military forces.

Even before the Salwa Judum began, PUCL Chhattisgarh had been at the forefront

to bring before the public the apathy of the State towards the adivasis in Chhattisgarh. For instance, Dr. Binayak Sen and his colleagues were the first, in 1987, to investigate and highlight the deaths of adivasis due to blood dysentery in Bastar. They were the first, in March 2004, to document deaths due to hunger and malnutrition in south Bastar. PUCL has also reported on how, through criminal manipulation of gram sabha records and subversion of procedures laid down under Panchayati Raj Extension to Scheduled Areas Act, adivasi land was being annexed by the State to benefit large corporations (see *Down to Earth*, 31.10.2006). Most recently, it was PUCL Chhattisgarh that exposed the custodial mass killings of adivasis on 31 March 2007 at Santoshpur and revealed how the police and state administration had whitewashed their heinous crime.

As in many other poor regions of the country facing neglect by successive governments, South Chhattisgarh has a history of peasant and tribal mobilisation spanning nearly three decades through what are now called Maoist organisations. This has culminated in the people setting up their own 'governance' in parts of South Chhattisgarh. By the government's own estimates as reported in *The Hindu* dated 4 January 2008, "18,000 sq. km. in Bastar, Dantewada, Narayanpur and Bijapur districts were under naxalite (Maoist) control".

The peasant and tribal organisations began in the early 1980s as a campaign against exploitation by forest, revenue and police departments and moneylenders. By the early 1990s these organisations started to address "internal contradictions" in adivasi society, and issues of unequal land ownership. The land reforms initiated by the peasant-tribal organisations challenged the authority of the traditional adivasi chiefs and their exploitation of fellow adivasis was opposed. These organisations confronted the forest and revenue departments in fixing the rates of

procurement of forest produce. For instance, tribal mobilisation led to the price of tendu patta rising from Rs 2 per hundred bundles in 1980, to Rs 80 by the mid-1990s. (*When the State Makes War on its Own People*, All India Fact Finding Team, April 2006) Thereafter began the process of creating an alternative parallel administration. The "janata sarkar" began to run schools, provide a rudimentary preventive health system, offered rural credit and set up seed banks, and constructed small irrigation projects. (*Safarnama; Jangalnama: Bastar ke jangalon mein*, by Satnam, New Vista Publication, Delhi 2006). The new parallel administration also introduced social changes such as gender sensitive reforms within adivasi society, including within the family. Evidence for some of the changes brought about by them is available in a rather striking manner. The Prime Minister gave the first R.N. Goenka Award for category 'Uncovering India Invisible' on 12 April 2006 to C. Vanaja for her article in *Andhra Jyothi* of 10 April 2005. This is an account of the *development work* undertaken by the "parallel" Maoist government in Dandakaranya! (*The Economic Times* and *The Tribune*, 14 April 2006) Not surprisingly, the district collector of Dantewada was emphatic that: "(t)o end the problem of naxalites it is not enough to kill naxalites but... to crush and destroy their system operating at the village level" (District Collector's *Work Proposal for the Salwa Judum*, 2005, pp. 15-16, translated from Hindi).

Dantewada and its neighbouring districts of Bijapur and Bastar are estimated to have the richest deposits of the finest quality of iron ore in the country. For several years now various governments have been coveting these resources for exploitation by large corporations in the name of "development". It is no coincidence that the escalation of the war in Chhattisgarh since June 2005 is also centred around this district and that the Salwa Judum was launched here, displacing villagers through a state sponsored policy and

forcing them to live in camps. The repeated claims by the state that Maoists are obstructing 'development' have not succeeded in muting opposition to the state sponsored land and forest grab. Nor can anybody ignore the mass support enjoyed by the Maoists and the mass resentment to the land and forest occupation as well as against the heavy presence of para-military forces.

On 5th November 2007, at least two lakh adivasi people came walking to Jagdalpur town, defying a situation akin to military occupation, some of them walking for 4 to 5 days carrying their rice, to join a rally of the Adivasi Mahasabha lead by Manish Kunjam (ex MLA, CPI), Ramnath Sarfe and Rama Sodhi, to demand in no uncertain terms, "*Stop Salwa Judum*", "*Stop giving adivasi lands to companies*", "*Disband the camps*", "*Send back the paramilitary forces.*" Since no permission was given for a rally, people poured in from all directions. While the government could not provide enough drinking water, an IAF plane was hovering overhead continuously! There were no buses and trucks and official machinery to transport them. They were not offered a daily wage to attend the meeting as invariably happens with officially sponsored programmes. Most people, that day, came from a radius of upto 250 kms., which includes large areas under Maoist administration.

The point is that, however much the State projects Maoists as "anti-development" and

tom-toms how adivasis are suffering at the hands of Maoists, people equate the Maoist's fight against the State as being in support of adivasi rights over their land, forest and water and against the presence of para-military forces. It is obvious, given the war being waged, that the Maoists are perceived as the most stubborn opponent of the State's attempt to force through corporatised capitalist development in Chhattisgarh. Consequently, for the State, unless Maoists are removed the job of allowing corporations to enter and exploit these mineral deposits for their own profit, will not get off the ground. Thus Salwa Judum was formally launched on 5 June 2005, the very day Chhattisgarh government signed an MOU with Tata Steel. Coincidence?

In the conditions of "war" which exists in Chhattisgarh it is *our own people who are being militarily suppressed* by the State, being killed, raped, evicted from their houses and means of livelihood destroyed. It is in such conditions that PUCL Chhattisgarh has been carrying out its work in the last few years, particularly, the last two years, appealing to the state to terminate its policy of military suppression and of forcible evictions so as to suppress any local adivasi opposition to the state's policy of development. It needs to be remembered that *in this period the PUCL did not hesitate in condemning the Maoists for their excesses*. It is in this light we should appraise the case made out in the chargesheet against Dr. Binayak Sen.

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## Chapter II

### The Case Against Dr. Binayak Sen

The case has been filed against three accused, namely, Piyush Guha, Dr. Binayak Sen and Narayan Sanyal under S. 2(b), (d), 8 (1), (2), (3), (5) of the Chhattisgarh Special Public Security Act, 2005; S. 3, 10(a)(1), 20,21,38,39 of the Unlawful Activities

Prevention Act, 2004; and 120B, 121A, 124A of the IPC (see Box, *The Relevant Sections*).

#### THE POLICE STORY

The story presented in the chargesheet begins by claiming that on 6 May 2007 the police control room at Raipur asked every

police station to investigate in their respective areas “suspicious” vehicles and “suspicious” persons staying in hotels, dharamshalas, dhabas etc. In the course of this exercise the police “received” information about a “suspicious” person heading towards the Raipur railway station. The said person, Piyush Guha from Kolkata, was held. On searching him, police “found” literature of the banned organization CPI (Maoist), Rs. 49,000 in cash and three letters. On his “detailed interrogation” he allegedly stated that the three letters had been handed to him by Dr. Binayak Sen who had in turn received them from Narayan Sanyal, the arrested “Naxalite master mind”, on one of Dr. Sen’s visits to Raipur Central Jail. The police has submitted two “public witnesses” statements that Piyush Guha acknowledged this in their presence.

As per the police, following this, they started a “search” for Binayak Sen that culminated in a “raid” when Dr. Sen was arrested from the chamber of his lawyer on 14 May 2007. A police search of Binayak Sen’s house led to the following being seized and filed to show Binayak Sen’s association with Maoists:

- (i) a postcard sent by Narayan Sanyal to Binayak Sen from jail,
- (ii) a letter from “Naxalite commander and leader of banned Maoist organisation Madan Barkade” sent to Binayak Sen from Raipur Central Jail,
- (iii) eight CDs in which “Salwa Judum and Gola Palli, Katgaon (Narayanpur) in which Dr. Binayak Sen himself has been shown conversing with village women and children” (sic),
- (iv) a copy of a magazine *People’s March*
- (v) a computer,
- (vi) letter in English opposing imperialism and a booklet “related to Maoist organisations” containing “banned objectionable articles”, and a Salwa Judum cassette etc.,

The chargesheet emphasizes that Dr. Binayak Sen visited Narayan Sanyal frequently in jail – 33 times to be exact, of which 5 visits were in April 2007. The chargesheet attempts to establish association between Dr. Sen and Piyush Guha by pointing out that Binayak Sen used to meet Piyush Guha in the hotel where he stayed. It is also claimed that Binayak Sen helped arrange a job and a house on rent for one Amita Srivastava, where Narayan Sanyal also stayed. Binayak Sen is also claimed to have provided a job in Rupantar, an organization run by his wife Dr. Ilina Sen to one Shankar Singh. The last two, the chargesheet claims, are linked together and with the Maoists and they have been absconding since 2005.

While opposing Binayak Sen’s bail petition in the High Court, the prosecution brought forth more evidence against him. Photocopies of handwritten sheets claimed to have been found from the site of two police encounters with Naxalites that mention Binayak Sen by name. An FIR registered in Bijapur district on the basis of a complaint by a 13-year old girl that Naxalites killed her father and left from there shouting slogans that mentioned PUCL. In the Supreme Court when Binayak Sen’s bail petition was heard, the prosecution brought another letter allegedly seized from a Maoist written to him by his wife that mentions Binayak Sen.

The chargesheet also claims that “Dr Binayak Sen is a doctor but as a practicing doctor he is zero” as they found nothing “that looked like a doctor’s clinic”, nor any medicines. The chargesheet claims that he has “no adequate and legitimate source of income”. From here on allegations are made on hearsay: that “in and around Raipur it is said that Dr Binayak Sen and his wife Dr Ilina Sen receive foreign funds to help the naxalites, and to carry out naxalite tasks (sic)”. On this basis the chargesheet concludes that “Dr. Binayak Sen’s *doctori* is a front and with this front he tours Naxalite areas in the name of practicing medicine. These tours are



often for helping the Naxalites, either overtly or covertly. All his unlawful activities are undertaken under this guise, and with this front of practising medicine he promotes himself in the media.”

This for the doctor who laboured for years to set up the Shahid Hospital at Dalli Rajhara, the only hospital established by workers, where Binayak Sen was working till his arrest, whose contribution in the field of public health is recognized by the Chhattisgarh government itself, and who traveled distances to a clinic at village Bagrumnala in Dhanwantri district, a neighbourhood that never had access to any medical facility. These efforts were also recognized when Binayak Sen was presented the prestigious Paul Harrison award by the Christian Medical College for selfless service, and most recently awarded the R.R. Keithan gold medal in absentia on 29 December 2007 at the Indian Social Science Congress at Mumbai. But the blatant bias guiding this case is most clearly and poignantly exhibited by the prosecution’s attempt to undermine his life-time’s work as a people’s doctor.

The chargesheet then goes on say that Narayan Sanyal is a politburo member of CPI (Maoist) who is carrying out from inside the jail “Naxalite activities” and through “the medium of letters and visits, with the aid of associates like Binayak Sen and Piyush Guha” is entering into a conspiracy for sedition, and is responsible for directly or indirectly killing of “innocent people and women (sic)” and blowing up of electricity poles. It also says that Narayan Sanyal has been engaging in “carrying out violent activities in plains and urban areas, of publicity and dissemination, and collecting funds”, through the “medium” of Binayak and Piyush.

Of Piyush Guha the police allege that he is an “active and dangerous Naxalite”, who has been meeting Narayan Sanyal in jail and has also been meeting Binayak Sen at his residence and whose “net of Naxalite activities is spread from West Bengal to Chhattisgarh”.

The chargesheet alleges that he was acting as a courier, collecting letters from Narayan Sanyal and sending them to secret code numbers in order to execute Naxalite plans and also collecting funds for their activities. In an attempt to give weight to the accusation of Guha being a Naxalite, it is also alleged that he was wanted in the Purulia district of West Bengal, in concern with a case of bomb blast by the Maoists (FIR # 20/2005), and had been absconding since then (see Box *Purulia Bomb Blast and Piyush Guha*)

Thus Binayak Sen’s visits to the jail to meet Narayan Sanyal, and Piyush Guha in hotels in Raipur, along with the latter’s alleged statement that the three letters found on him were given to him by Binayak Sen, form the crux of the case. The rest of the evidence is by way of supplementary/ corroborative evidence to show how from time-to-time Binayak Sen has been helping out various people said to be Naxalites.

Let us critically examine the main evidence mounted against Binayak Sen.

## ANALYSING THE EVIDENCE

### A. The Arrests

Dr. Binayak Sen was in Kolkata with his old mother when the Chhattisgarh police released statements to the press that he was absconding. On hearing these accusations, Dr. Sen told press persons in Raipur that he was available on his cell phone, and that his phone number was available to the police and state government officials; that he was anyway returning to Raipur to go back to his clinic. His friends and other civil liberties organizations advised him to apply for anticipatory bail before going to Raipur. But paying no heed to this advice, Binayak Sen decided to approach the Chhattisgarh police to question them about the vile allegations against him.

On arriving in Bilaspur on 14 May 2007, Binayak Sen went straight to PUCL activist and lawyer, Sudha Bhardwaj and from there

To The Chief Judicial Magistrate, Raipur.  
Through Id. Advocate Amit Bannerji.

Ref:-Gorj P.S.Case No.44/07,  
U/s 2(B)/E,8(1)(2)(3)(5) Chhatrisgarh P.S.Act  
and U/s 3,(W(A)-1,20,21,38,39 ULA PA 1967  
"State -Vrs.- Pijush Kumar Guha @ Pijush Guha"

A.F.F.I.D.A.V.I

I, Sri Pijush Kumar Guha @ Pijush Guha, s/o Sunil Kumar Guha, aged about 37 years, by faith Hindu, by occupation-Business, permanent Resident of village-Kilambarpara, P.O.Sagarpara, P.S.Jalandi, Dist. Murshidabad, West Bengal, At present resident of 20/4 New Santoshpur Main Road, P.S. Purba Yadav Pur, Dist. South 24-Parganas(West Bengal), now at present under the Care of Superintendent, Dist. Correctional Home, Purulia (W.B.), do hereby solemnly affirm and declare on oath as follows:-

1.Now at present I am in Judicial Custody in connection with Bandwan P.S. Case No.20/05 dt. 04-10-2005 and U/s 121,121-A,122,123,427, 323,325,506 I.P.C. along with other section and I am in care and custody of Superintendent Correctional Home Purulia (W.B.).

2.That I was also arrested by Raipur Police, Chhatrisgarh Police and I am also in Judicial Custody in connection with the above reference case as given above.

3. That I was arrested by Chhatrisgarh Police in connection with the above case on 1st May 2007 and kept in illegal detention till 6th May 2007 when my arrest was shown by Chhatrisgarh Police.

4.That I stated this before the Magistrate of the Raipur Court at the earliest opportunity on 7th May,2007,I had also stated that I had a ticket on 2nd May,07 of Mumbai Howrah Mail Express whose status was on waiting list No.36 on 1st May'07 from Durg to Howrah Station which was seized from me by police of Chhatrisgarh on 1st May,2007.

5.That during my illegal custody from 1st May,2007 to 6th May 2007, Police have got my signature on blank papers and statements forcibly.

6.That I fear that with the help of any such forcibly obtained Signatures/statements I along with other person may be framed in false cases.

7.That during my illegal detention from 1st May 2007 to 6th May 2007, I was mentally and physically tortured even though it did not result in external injuries. I have been kept with my eyes closed at all times during my illegal detention. I was physically tortured by means of Kicks & by fists and blows on various parts of my body.

8.During my illegal detention police forcibly took my personal E-mail I D and pass ward for checking my mail list. I think that may be used on illegal way to frame false cases.

Verification

The statements made above are true to the best of my knowledge and I sign this verification here at ~~Raxukax~~

..... on .....

Pijush Kumar Guha  
Signature of accd.Pijush Kumar Guha  
@ Pijush Guha ( Deponent)

Attested

  
18/5/07  
Cecretar

Durga District Correctional Home

called the in-charge of Tarbahar police station. He was told to come and give a statement. When he presented himself along with his lawyer he was told that the Raipur police had ordered his arrest.

So, the entire police story of a raid to arrest Dr. Binayak Sen is a simple lie and this was done to besmirch his reputation. This plainly exhibits an interest on the part of the police to persecute Binayak Sen, more than that can be explained by the police duty to prosecute crime.

The arrest of Piyush Guha unmistakably shows the criminal intent behind the police action. Piyush Guha arrived in Raipur on 1 May 2007. He possessed a waitlisted rail ticket for Kolkata by Mumbai-Howrah mail for 2 May and should have reached back on 3 May. On 4 May, police in Sagarpara, Murshidabad, West Bengal visited Piyush Guha's father and enquired whether his son was a Naxalite. He said no. Police informed him that Chhattisgarh police had arrested Piyush. The family then contacted PUCL Chhattisgarh. After enquiring at the hotel and finding that Piyush had not been seen since the evening of 1 May, PUCL was certain that he had been picked up by the police. The hotel record of Mahendra Hotel shows that he had checked in at 10.45 am on 1 May 2007 and checked out the same day from the hotel at 8.45 pm. (Property Seizure Memo, 31/07/07 signed by city police officer BBS Rajput). On 6 May PUCL Chhattisgarh issued a press release protesting the disappearance of Piyush Guha. The next day the police produced Piyush Guha before a magistrate and his family was officially informed of the arrest. On the first available opportunity, on 7 May, Piyush Guha informed the magistrate at Raipur that he was in police custody for five days during which he was "mentally and physically tortured", and coerced into signing on blank paper and statements, through which, he feared that "I along with other person may be framed in false cases" [see Affidavit filed by Piyush Guha].

## **B. The Letters**

The falsity of the claim of arrest on 6 May calls into question the primary basis for the charges made out in the case – exchange of letters. The letters could not have been recovered from Piyush Guha on 6 May, since he was in police custody from the evening of 1 May. The statements of the "public witnesses" on 6 May confirming arrest on the road and Piyush Guha's disclosure in their presence later on the same day, that he had received the letters from Binayak Sen are equally false, since Piyush was not walking on the road to the railway station, he was suffering physical and psychological torture in illegal police custody. It is thus eminently clear on the basis of hotel records that are available with the prosecution, the ticket records of the Indian Railways, and Piyush Guha's timely statement to the magistrate, that the claim that the police recovered letters from Piyush Guha is false.

Where the police got hold of these letters and planted them on Piyush Guha is not central to the case against the accused. However, evidence is available on record that can point to a solution to this puzzle. On 27 December 2006 the jail authorities of Central Jail, Raipur had *seized* a letter written by Narayan Sanyal to another detainee in Raipur jail named Dheeraj Mohali [The same is registered as Crime Number 44/07]. This suggests that both jail and police authorities were aware that Narayan Sanyal was sending letters to others. This would have increased the vigil at the jail. Most likely jail authorities could have intercepted more letters after that date if any more letters were sent from inside the jail. It is therefore in the realm of possibility that already intercepted letters were shown as having been recovered from Piyush Guha. And through this mechanism it enabled the police to link Binayak Sen and Piyush Guha to a purported crime, and make a false case against the three accused.

At this stage one might wish to know just what was written in those three letters that

the police and the courts are hell-bent on punishing even an innocent. The concerns expressed in the three letters are given in the box below. As will be clear from the contents, the letters are such as would be written by any political activist in jail. What makes them heinous is the ban on the CPI (Maoist) and the national security mindset that informs the governments of today. What makes the police get after Binayak Sen is the moral and political position that PUCL Chhattisgarh is unwilling to abandon.

### What the Three Letters Say

Concern about seriousness on the part of the lawyers representing his cases in Raipur and Giridih and lack of any progress.

Complaint regarding lack of concern for people in jail and demand for funds to arrange legal support for them.

Seeking information about expansion of work among the peasantry at large, among workers and in urban areas.

Advising on the need to expand work among workers and in urban areas and in the middle sections and impossibility of sustaining the organisation without it.

Praising the completion of the Ninth Congress and asking about reactions to the debates and decisions.

Pointing to the powerful impact of the media despite its anti-people character.

Putting forth views on imperialism, generation of inequality, economic crisis, and lack of people's reaction globally.

Informing of his increasing age and the onset of arthritis.

### C. Criminal Association / Conspiracy

The major argument to strengthen the claim of guilt of the accused is to show an association between Binayak Sen and PUCL, on the one hand, and the CPI (Maoist) on the other. A number of separate claims are made in this regard.

The first is to show an illegitimate association between Narayan Sanyal, Piyush Guha and Binayak Sen. To this end, are brought forth a number of arguments: (i) that Binayak Sen met Narayan Sanyal in jail 33 times; (ii) that Piyush Guha is a part of the Maoists; (iii) that Binayak Sen met Piyush Guha; and (iv) that Narayan Sanyal wrote to Binayak Sen. Let us examine each of these.

According to police records 67 year-old Narayan Sanyal, alleged to be a leader of the CPI(Maoist) was arrested from Bhadrachalam in Andhra Pradesh on 3 January 2006. At the time of his arrest, he was suffering from acute pain in his hands due to a condition medically described as Palmer's contracture. When in Warangal jail, doctors started examining his hands for surgery. Meanwhile the court granted him bail. But he was arrested from the jail premises in a case of murder in Dantewada district and brought to Chhattisgarh and lodged in Raipur central jail. His brother Radhamadhab Sanyal traveled from Kolkata to meet him. On realizing his medical condition, he approached the PUCL for help and also sought the help of PUCL to engage a lawyer for his brother. Narayan Sanyal also wrote directly to Binayak Sen on 3 June 2006 through a post card sent officially to him through the jail administration (this postcard duly attested by the jail is one of the items seized during the search in Binayak Sen's house). This letter that has been oft repeated by the prosecution in courts to deny bail to Binayak Sen reads:

*“Sir, yesterday I talked with Superintendent and Jailor and ask them to permit you to visit me at least once in a week and they agreed. So this is to inform you that you take your own time and come as early as possible. That day Mr. Kinger told that he is going to file bail in the High Court as early as possible. Has he filed. Good wishes to you all. I am other wise fine. More when we meet. Yours (sd/-) Narayan Sanyal*

Dr. Binayak Sen took up the matter of the treatment with the jail administration. In fact



the jail administration too wrote to Binayak Sen regarding the developments in the treatment. Narayan Sanyal's brother too asked Binayak Sen to visit his brother in the jail as he was unable to do so as he was ill himself. Each visit to the jail was held in the office of the Jailor; the Assistant Jailor has confirmed this in writing. Contrary to the prosecution's claim in the Supreme Court that Binayak Sen met Narayan Sanyal claiming he was a family member, applications made to the jail under the Right to Information Act reveal that each time Dr. Binayak Sen applied to the jail authorities either on his doctor's letterhead or the PUCL letterhead.

Narayan Sanyal was not the only jail inmate that Dr. Binayak Sen met. In fact, recognizing the work that PUCL and such organizations do towards preventing gross injustice, Binayak Sen was approached by the jail administration itself to assist prisoners. One such recent letter from the jail authorities to Binayak Sen is available, regarding the case Lakshman Das, a prisoner from Maharashtra jailed in Chhattisgarh, who though having completed his term, cannot be released because of certain anomalies in prison rules.

Piyush Guha is a small businessman residing in Kolkata, known to Narayan Sanyal's family, who has business interest in Chhattisgarh. After his illness, Radhamadhab Sanyal had requested Piyush Guha to find out about Narayan Sanyal and look after his legal defence. At the time of his arrest Piyush Guha was traveling to Raipur with money to pay Narayan Sanyal's lawyer. The same Rs. 49,000 was seized from him and is mentioned in the FIR. After his arrest, and to bolster the claim that he was a courier for the Maoists, it became important for the prosecution to claim Maoist links for Piyush. A bomb blast case in West Bengal came in handy and conveniently his name was added after his arrest in Raipur. The seriousness of the charge, not the evidence against him, prevented his bail for three months. Finally the prosecution did not file the chargesheet in the stipulated 90 days

(see Box: *The Bomb Blast case and Piyush Guha*). The failure of the police to prove Guha's involvement in the Purulia case, leave nothing but his meetings with the other two accused and his possession of some literature, as proof of his "Naxalite", i.e. criminal activities in the present case.

As far as Binayak Sen and Piyush Guha's association is concerned, it is worth noting that since Piyush Guha was helping Narayan Sanyal's family with his defence, therefore he frequently visited Raipur. The lawyer for Narayan Sanyal had been approached through the good offices of PUCL Chhattisgarh. Binayak Sen was the contact with the lawyer, and Piyush Guha the representative of Narayan Sanyal's family. In helping a detenu obtain legal assistance, Binayak Sen was doing routine civil rights work and there is nothing remotely illegal in any part of his activity.

This is the sum and substance of the alleged 'illegitimate association' between the three people accused in this case.

Another claim of association cited by the police is that Binayak Sen helped get a job for a woman, Amita Srivastava, in a school, helped her to rent a house and open an account in a bank sometime in 2005. An 'old man' used to live in the same house who the police claim was Narayan Sanyal. And Amita Srivastava has been "absconding since December 2005". This is supposed to be damning evidence. Binayak Sen's wife Ilna Sen did help Amita Srivastava get a job in a school. Binayak and Ilna Sen have worked for more than three decades in Chhattisgarh. It is but obvious that many young people, searching for jobs would approach them for assistance.

Bank records refute that Binayak Sen was her introducer; the bank form contains some other name. As far as helping her in finding a house in which Narayan Sanyal allegedly stayed, the evidence brought forth by the police are statements by the son and the son-

### **The Bomb Blast case and Piyush Guha**

After Piyush Guha was arrested by the Raipur police, he was accused on 14 May 2007 of being involved in a case of bomb blast which took place in Thana Bundwan, District Purulia in October 2005. He was sent to Purulia on 4 June 2007. The case was registered on 4 October 2005 [No. 20/05 under sections 121, 121A, 122, 123, 427, 323, 325, 506, 307 of IPC, S. 3, 4 of Explosive Substances Act and S. 25, 27, 35 of the Arms Act. His name was not part of the case. For more than a year and eight months there was not even a whisper about his involvement. And as of now, i.e. after 25 months the chargesheet has not been filed.

He was produced before the Chief Judicial Magistrate (CJM) in Purulia “for investigation” on 4 June and was remanded to police custody for 14 days. The CJM thereafter kept on rejecting the bail application, first citing S.161 statements of witnesses claiming he had been named and given the seriousness of the crime he could not be granted bail. No explanation was given as to why his name was not included in the original FIR, if he had been named by witnesses, as the CJM claimed. Then it was stated by the CJM that Piyush Guha had “confessed” to his involvement. Finally after 90 days elapsed and police failed to file the chargesheet the CJM was obliged to grant him bail.

The point to note is how under one pretext or the other for five times Piyush’s bail application was turned down, under one or another excuse. It would appear that this attempt to implicate him in the Bundwan bomb blast case was nothing but an attempt to browbeat the accused into toeing the police diktat. And shows the enormous powers that the police and judiciary have to persecute a person on the most flimsy ground.

in-law of the landlord of Amita Srivastava. These statements claim that Binayak Sen introduced Amita Srivastava to the landlord. But they also go on to claim that an “old man” was arrested in a police raid on the house on 28 December 2005. Narayan Sanyal’s arrest is officially recorded at Bhadrachalam in Andhra Pradesh on 3 January 2006. Which of these claims by the police is true? The statement clearly contains serious infirmities that make them suspect. Besides, since when has helping a young person get a job, a house or a bank account become a crime?

Another letter seized from Dr. Binayak Sen’s house is quoted as damning evidence. This letter is written by Madan Lal Barkade, said to be a Naxalite commander, who is lodged in Raipur jail and was received by post. The letter opens with addressing Binayak Sen as “comrade”, a term that the police finds offensive and a basis for establishing criminal association. This is ridiculous and what is more so that this argument has been oft repeated in courts to deny bail to Binayak Sen

and that the judicial mind has taken it seriously. This letter lists a number of grievances of maltreatment of prisoners inside the jail. It requests Binayak Sen to make this public and to forward their complaints to human rights organizations and the media. PUCL Chhattisgarh circulated this letter, which was carried by Raipur’s evening daily “Chhattisgarh” on 16<sup>th</sup> February 2007. There is nothing unusual in the request to Binayak Sen as jail reforms are standard issues taken up by civil rights groups internationally. It is surprising that this letter, instead of prompting suo-moto action by relevant authorities to address the complaints, has been turned into something that is supposed to incriminate Binayak Sen!

#### **D. Later Additions**

Four more claims of association with Maoists were brought forth when Binayak Sen’s bail petition was being heard in the High Court at Bilaspur.

One, that Binayak and Ilina Sen's names appear in some handwritten notes of a meeting, said to have been found at Churia under Rajnandgaon police station on 21 May 2007! The reference is to a private relationship between two persons and Ilina Sen's reservations found their way into the handwritten notes of "party" activists. The paper notes, "Binayak and Ilina should be consulted". It is unclear if all the pages are part of the same document or mixed up pages, This document is mostly illegible. When a more legible copy was requested, it was discovered that the original document has gone missing from police custody! Or it never was present where it was claimed to be. So it is only a photocopy whose authenticity cannot be established. In any case given that Binayak and Ilina Sen are highly respected social activists of long standing, many people would wish to consult them in a variety of situations.

Another reference to Binayak Sen, Ilina Sen and Rajendra Sail and PUCL's name occurs in Gondi language on a scrap of paper allegedly seized by police of Thana Farsegarh, Bijapur police district (Crime No. 07/07). The contents are unclear as the writing in most parts is not legible. The more legible words refer to the Chhattisgarh Vishesh Jan-Suraksha Adhiniyam (the CSPSA). The names of PUCL activists appearing together with references to this law are hardly surprising. PUCL Chhattisgarh has been at the forefront in publicly opposing this extraordinary legislation. Once again, routine civil rights work of opposing anti-democratic laws is sought to be represented by the police as evidence of unlawful activities.

There is still another piece of evidence that has been brought forth. It is stated in an FIR dated 9 June 2006 in Bijapur district that a group of armed Maoists killed one person. An FIR (no. 17/07) was registered on the basis of a statement by the victim's 13 year old daughter. The FIR states that while leaving the Maoists shouted slogans "Naxalwad zindabad, PUCL zindabad" and "salwa judum

murdabad". This one seems really far-fetched. Realising that there is nothing 'criminal' in the entire evidence presented, these additional things seem to have been added in the hope that a larger collection of lies has a greater possibility to masquerade as the truth.

The latest additions to this list are two letters written by Shoma Sen, a teacher and social activist in Nagpur, to her husband, Srikant. The police claim to have seized the letter when they arrested Srikant in December 2007. One letter mentions that Binayak Sen was a great help in co-ordinating an all-India fact-finding team into the police attacks on dalits around Nagpur after the Khairlanji killings. The prosecution has quoted one sentence in the letter out of its context to argue that Binayak Sen was supervising an armed training camp of Maoists. The second letter refers to Binayak Sen having sent a letter to Shoma Sen that he received from jail. This statement is being used to, once again, fuel the argument that Binayak Sen smuggled letters out of jail. However, the letter being referred to here is the letter by Madan Lal Barkade regarding conditions of prisoners in jail, a letter that Binayak Sen circulated to a number of civil rights organizations. Hence, a bunch of lies, insinuations and prejudices are being passed off as 'evidence', since no real evidence against Binayak Sen exists. What is shocking is that these have been accepted by various courts to deny Binayak bail.

### **E. Banned Literature**

A matter of serious concern is the claim of the prosecution that banned literature was seized from Binayak Sen's house and that the presence of such literature is a crime or is evidence of his association with the Maoist party. The items seized by the police from his house (i) a copy of *People's March* (Nov.-Dec. 2004 issue), (ii) an article reporting an interface between women's groups in Andhra and Naxalite organizations in which the feminist movement's criticism of Maoist

parties' politics are discussed; (iii) a document on the need for opposing imperialism; (iv) an article on globalization (v) Compact Disks (CDs) dealing with the Salwa Judum; (vi) many newspaper clippings reporting police encounter killings; and (vii) a computer.

First, it needs to be pointed out that none of these are secret documents, and none of them deals with the planning of a crime or a terrorist action. The *People's March* is known to be associated with Maoist ideology, is a registered publication and is openly available online. Similarly, a reading of the paper on the women's movement's critique of revolutionary politics makes it amply apparent that far from being a party document it is written by a member of the women's movement in Andhra, is critical of the revolutionary parties' understanding on the issue, and takes further a debate that has been going on for some time. The article on globalisation is an analytical one discussing its impact on people. All these are evidence of is the range of Sen's social and intellectual interests and fairly common among progressive activists. Again, the document opposing American imperialism and arguing for a movement to do so is hardly expressing anything secret, or unlawful, or for that matter even uniquely Maoist or even communist.

The CDs and newspaper clippings contain material on Salwa Judum and fake encounter killings. They corroborate PUCL's opposition to the state-sponsored criminal organization salwa judum, and to killing of people in fake encounters. Every civil liberties and democratic rights organisation in the country has condemned such state policies and has campaigned against them. Some of the CDs

are prepared by the PUCL as part of its fact-finding missions. This criticism of the Salwa Judum is shared by many, including ex-Chief Minister, Ajit Jogi. And yet out of these materials the police have sought to make a case of sedition, and waging war against Binayak Sen.

A glimpse of the police and prosecution's way of looking at this same literature was provided in the arguments on charges on 28 December 2007 at the Sessions Court at Raipur: *Salwa Judum is a self-initiated rebellion of tribals against the Maoists. Therefore Maoists oppose the Salwa Judum. Anyone opposing the Salwa Judum is therefore a Maoist or its sympathizer.* This is a logically inconsistent and specious argument, a verbatim copy of the war-mongering Bush doctrine: *if you are not with us, then you are with the enemy.*

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In sum, there is proof of manufacturing of evidence against the accused by the police that shows vested interests of the government in silencing Binayak Sen and PUCL. But even more serious is that a number of activities that are normally considered legitimate, appreciated as human qualities of sensitivity and helpfulness, and considered the life-blood of a democracy, are being designated as criminal. This becomes possible only because all political and social opposition to the government and its policies is increasingly being viewed through the lens of "national security". Such a mindset creates its own set of laws, ones where purported intention, ideology and politics overshadows the action in defining what is a crime, where subscribing to progressive politics itself becomes a crime.



## Chapter III

# Through the Lens of National Security

While “upholding the constitutional validity of anti-terror laws, the Supreme Court has not only endorsed extraordinary procedures on the ‘rational of supreme necessity, not covered by regular law’, it has also upheld the executive’s delineation of ‘necessity’, for example, public order, national security, waging war against the state, conspiracy against the state, terrorism, etc.”<sup>5</sup> (*The State, Democracy and Anti-Terror Laws in India*, Ujjwal Singh). What it means is that once the government pushes for a draconian law in the name of “national security” citizens have little scope left to challenge the abrogation of their constitutional freedoms such as right of association, propagation of one’s beliefs and convictions, protection against arbitrary arrests and/or prohibition to self-incrimination.

The charge made out against Dr. Binayak Sen and the utterances of prosecutors in the courts do not get consigned to the rubbish bin precisely because of the laws under which the charges are framed. Various terms such as “black”, “undemocratic”, or “anti-terror”, such laws with national security at their core, became a permanent part of the statute book since the UAPA was promulgated in 1967, that brought into existence the provision for imposing a ban. In 1985 with the promulgation of the Terrorist and Disruptive Activities (Prevention) Act (TADA), new and vague crimes were defined and the provision of banning was made more arbitrary and less amenable to judicial redressal. At its height during the 10 years of its operation, over one lakh people were consigned to jails and denied bail as a rule. The law overturned every tenet of fairness, justice and liberal jurisprudence.

Barely days after the withdrawal of TADA, following large scale popular opposition, police departments started a clamour for its re-promulgation. What was to follow were

avatars of TADA – the Criminal Law Amendment Bill, Prevention of Terrorism Act (POTA) – that finally led to the incorporation of the hated provisions of TADA into the Unlawful Activities Prevention Act (UAPA) in 2004. At the same time, state governments were advised to promulgate versions of TADA through the state assemblies. Through this route appeared the Maharashtra Control of Organised Crime Act, Madhya Pradesh Control of Organised Crime Act, and most recently the Chhattisgarh Special Public Security Act (CSPSA). Thus provisions pernicious to democracy became part and parcel of the statute book across the country.

### DEFINITION OF CRIME IN ANTI-DEMOCRATIC LEGISLATIONS

What do these laws contain that makes them so pernicious to democracy and to people’s rights?

Foremost concerns the ways in which an offence is defined. Contrary to common-sense notion of crime, the actions of the accused are not central to its definition. The supposed intention is given prime importance and the state defines and interprets this intention as it wishes, making it completely arbitrary.

In the UAPA after its amendment in 2004, a ‘terrorist act’ is defined as the use of a hazardous substance or instrument against any person or properties of the government with the intention of threatening the unity, integrity, security or sovereignty of India. The CSPSA goes a step further and removes even the requirement of a violent act. It defines ‘unlawful activity’ as “any action taken by such individual or organisation whether by committing an act or by words either spoken or written or by signs or by visible representation or otherwise;

- (i) which constitutes a danger or menace to public order, peace and tranquility; or

- (ii) which interferes or tends to interfere with maintenance of public order; or
  - (iii) which interferes or tends to interfere with the administration of law or its established institutions and personnel; or
  - (iv) which is designed to overawe by criminal force, or show of criminal force, or otherwise, any public servant including the force of the state government or the central government in the exercise of the lawful powers of such public servant; or
  - (v) of indulging in or propagating acts of violence, terrorism, vandalism, or other acts generating fear and apprehension in the public or indulging in or encouraging the use of firearms, explosives and other devices or disrupting communication by rail or road; or
  - (vi) of encouraging or preaching disobedience to established law and its institutions; or
  - (vii) of collecting money or goods forcibly to carry out any one or more of the unlawful activities mentioned above.”
- These laws cast a net much wider than even what these vague definitions suggest. For, abetting, advising, inciting “terrorist acts” or harbouring or concealing a “terrorist”, the accused need not be charged with committing *any* terrorist act, and yet can be charged under these laws. The CSPSA declares it to be a crime to have *any association* with a person committing any of the acts described above. In fact an unlawful organisation “means any organisation which indulges in or has for its object, abets, or assists or gives aid, succour, or encouragement directly or indirectly through

## **The Relevant Provisions Chhattisgarh Special Public Security Act (CSPSA)**

### **Section 2: Definitions**

- (b) “Organisation” means any combination, body or group of persons whether known by any distinctive name or not and whether registered under any relevant law or not and whether governed by any written constitution or not.
- (d) “Notification” means notification published in Chhattisgarh gazette and the word “Notified” shall be construed accordingly.

### **Section 8: Penalties**

- (1) Whoever is member of an unlawful organisation or take part in meetings or activities of any such organisation or contributes or receives or solicits any contribution for the purpose of any such organisation shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
- (2) Whoever not being a member of an unlawful organisation in any manner contributes or receives or solicits any contribution or aid for such organisation or harbours any member of such be punished with imprisonment for a term which may extend to two years and shall also be liable to fine.
- (3) Whoever manages or assists in the management of an unlawful organisation or promotes or assists in promoting a meeting of any such organisation or any member thereof, or in any way indulges in any unlawful activity of such organisation in any manner or through whatever medium or device shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
- (5) Whoever commits or abets or attempts to commit or plans to commit any unlawful activity in any specified area shall be punished with imprisonment for a term which may extend to seven years and also be liable to fine.

any medium, device or otherwise to any unlawful activity”. Such categorization of activities as unlawful banks entirely on subjective interpretation and undermines the principle of certainty of offence in criminal law. It consequently offers enough latitude to the authorities to read criminal “intent” behind a variety of activities. This vagueness extends the reach of these laws to just about any person or organization, allowing (inherent) potential for misuse and abuse of the legal process.

Thus the universe of CSPSA and UAPA while being imprecise in definition enlarges the official world of arbitrariness. Therefore, Sections 2(b) & (d); 8(1) (2) (3) & (5) of CSPSA (see *Box: The Relevant Provisions*) read with Sections of UAPA i.e. Section 10 (3) (a) (i) Penalty for being member of an unlawful association; S 20 Punishment for being member of terrorist gang or organization; S 21 Punishment for holding proceeds of terrorism; S 38 Offence relating to membership of a terrorist organization; S 39 Offence relating to support given to a terrorist organization; and further read with S 120B (punishment for criminal conspiracy); S 121 A (Punishment for Waging, attempting or abetting to waging of war) and 124 A (Sedition) of IPC, amount to preparing a formidable case against Binayak Sen.

#### **RELIABILITY OF EVIDENCE**

In keeping with the vagueness of definitions, these laws allow for enough latitude as far as evidence is concerned. What is noticeable is the drastic lowering of the threshold of admissible evidence when a person is charged as a threat to national security. This is really bizarre. When a crime is being defined as most serious, when the punishments are enhanced, when the powers of the police go sky-high, when key evidence against the accused can be made confidential, it should only be expected that discrepancies in the evidence should be taken seriously, that the accused be convicted only if no sequence

of events is consistent with the innocence of the accused. But the mindset of national security allows for just the opposite. So there is a greater likelihood of evidence being manufactured, facts misconstrued or twisted and innuendos presented. For instance a person is ‘disappeared’, tortured and a statement extracted from him and then produced before a magistrate. While this is illegal the evidentiary value of such statements has been accepted. In the world of national security, such practices of the police become minor aberrations in procedure. Forgetting that such illegal procedure was laid down precisely to prevent the fabrication of false evidence and to enable the judge to rely upon evidence to distinguish between innocence and guilt.

In the Red Fort Attack case of the year 2000 use of such unreliable evidence has been documented where the case was lodged under provisions such as waging war, criminal conspiracy and sedition. While illegalities may meet their Waterloo during trial or appeal, the judiciary has not exactly covered itself in glory. Moreover, the damage, so to say, is already done because getting bail becomes a drawn out battle and to be kept incarcerated for the period of trial – eight months having passed and Binayak Sen has not got bail – amounts to convicting a person before establishing the veracity of the charges levelled.

#### **BANNING OR PROSCRIPTION OF ORGANISATIONS**

One of the most harmful fallouts of such laws, with wide-ranging implications for democratic rights, is proscription of an organization. Both the UAPA and the CSPSA contain provisions for banning organizations as unlawful. Placing a ban on any organization is made into a routine procedure by adding a name to a list. The government is not required to present any specific reason for placing the ban. It is not even obliged to share contents of the intelligence bureau reports

## **The Relevant Provisions**

### **The Unlawful Activities Prevention Act**

#### **3. Declaration of an association as unlawful.**

- (1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.
- (2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary: Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.
- (3) No such notification shall have effect until the Tribunal has, by an order made under section 4, confirmed the declaration made therein and the order is published in the Official Gazette:  
Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette.
- (4) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall also be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely:-
  - (a) by affixing a copy of the notification to some conspicuous part of the office, if any, of the association; or
  - (b) by serving a copy of the notification, where possible, on the principal office-bearers, if any, of the association ; or

- (c) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or
- (d) in such other manner as may be prescribed.

#### **10. Penalty for being members of an unlawful association.**

Where an association is declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section,-

- (a) a person, who
- (i) is and continues to be a member of such association; or

#### **20. Punishment for being member of terrorist gang or organization.**

Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

#### **21. Punishment for holding proceeds of terrorism.**

Whoever knowingly holds any property derived or obtained from commission of any terrorist act or acquired through the terrorist fund shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

#### **38. Offence relating to membership of a terrorist organization.**

- (1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation: Provided that this sub-section shall not apply where the person charged is able to prove
  - (a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

- (2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

**39. Offence relating to support given to a terrorist organization.**

- (1) A person commits the offence relating to support given to a terrorist organisation,-
- (a) who, with intention to further the activity of a terrorist organisation,-
- (i) invites support for the terrorist organisation, and
- (ii) the support is not or is not restricted to provide money or other property within the meaning of section 40; or
- (b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is-
- (i) to support the terrorist organisation, or
- (ii) to further the activity of the terrorist organisation, or
- (iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or
- (c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.
- (2) A person, who commits the offence relating to support given to a terrorist organisation under sub-section (1) shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

with the accused organization in the name of “national security”! Thus the overriding concern of national security becomes reason for banning an organization as well as for denying to the organization even the specific charge that becomes the basis for the ban.

This translates into denying to the organization any opportunity to examine and contest the charges leveled against it. This by itself makes the procedure for lifting the ban a veritable torture. And the procedures provided in these laws make the lifting of the ban near impossible. The UAPA has a committee to review the ban but its members can be hand-picked by the government (the chairperson of the committee may even be a retired judge) i.e. there is no space for the application of an independent judicial mind. The review does not even allow the banned organization space for a hearing. The procedure for denotifying the organization is similar in the CSPA, only a bit worse, since the requirement of any form of judicial mind is done away with altogether. There is thus little scope for the banned organization to contest the ban and hope that its plea is heard impartially. And given the very definition of these “national security” crimes – so vaguely worded, and yet so comprehensive – subjectivity in the form of political bias and prejudices enjoys much space in influencing decisions.

In real terms, banning an organization means curtailment of the fundamental freedom to hold political beliefs. Further, under a ban, providing any form of support, inviting support, arranging or assisting a meeting to support or further the activity of the banned organization, or taking part in such a meeting, all become proscribed activities. Thus, the holding of a political belief is itself made into a crime, not because it is violent or criminal, but because of the ideological association with a banned organisation. Moreover, bans not only stigmatize and isolate a particular politics by criminalizing it, but also provide a handle to



the state for silencing all dissent by identifying organizations and individuals such as PUCL Chhattisgarh and Binayak Sen with the proscribed organization.

Thus, we see there is no charge against Binayak Sen of helping in robbery, gun running, killing someone or even helping in commission of a crime under IPC. Instead the charge held against him rests on his 'alleged association' with the banned CPI (Maoist). Reading the above evidence clearly shows that, but for the fact of a ban on Maoist party, none of his activities would have acquired the sinister tone that the authorities have invested in them.

Bans entail a serious reduction of the rights of accused individual or organization, whereas powers of law and order machinery to persecute the person or organization are inflated manifold. Once a person is labeled a Maoist (or terrorist or naxalite), his guilt is assumed. All the tenets of liberal jurisprudence e.g. of the presumption of innocence till proven guilty etc. disappear into thin air. The procedures followed, of holding hearings through video conferencing on the pretext of them being dangerous Naxalites, or newspaper reports labeling the three as Naxalites, all indicate that the accused's guilt is already taken as decided. Significantly, under none of the laws under which Binayak Sen is charged, is the onus of proof on the accused. The politics of proscription simply allow the police to replace evidence and investigation with the magic mantra of association with a proscribed political organisation, a logic that the judiciary also buys into, and it is left for those like Sen to prove that he is *not* a Naxalite.

#### **'NORMAL' LAW AND CRIMES AGAINST THE STATE**

The attempt of the state is to somehow establish the association of Binayak Sen, and of PUCL with the CPI (Maoist), thus bringing them within the ambit of the special legislations as members of, or having an

association with an unlawful organization. Therefore the constant emphasis on Binayak Sen's "Maoist" credentials- in the form of his possession of Maoist literature, correspondence with Maoists, CDs dealing with the state sponsored attack on Maoists i.e. the Salwa Judum, as well as his meetings with alleged Maoists Sanyal and Guha, all activities which become crimes through and only through this association with proscribed politics.

Once this is done, the sections of the "normal" law, i.e. the sections that constitute the crimes against the state chapter of the IPC – waging war, conspiracy to wage war, sedition – come into play. The section on waging war requires as an ingredient of the crime that a specific incident amounting to waging war should have occurred u/s 121, and u/s 121A that criminal force or the show of such force should have been used to overawe the government, for these sections to be applicable. However once an "association" with a banned/ unlawful organization that believes in armed resistance is made possible by these special legislations, no specific crime need be proved as the organization practicing armed resistance e.g. the CPI (Maoist) has at various points committed acts involving criminal force and does intend to overawe the government. As such those supporting Maoist politics, by the logic followed by the police and accepted by the courts, become automatically guilty of, at the very least, abetting or attempting to wage war u/s 121, or conspiring to overawe the govt. using criminal force u/ s121A. No specific crime involving killing, destruction of public property, bombing at a particular time and place, and the accused's involvement in it need be proved through investigation and evidence.

That this is the logic being followed by the police is apparent from the chargesheet: "In the process of investigation these facts have emerged that the three accused were directly and indirectly abetting to overawe the state government through the show of criminal force and through criminal conspiracy,

## **The Relevant Provisions Indian Penal Code**

- 120A: Criminal Conspiracy: When two or more persons agree to do, or cause to be done, (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy; provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.
- 120 B: stipulates that for offences carrying a punishment of two years imprisonment or more, the punishment for 120A will be the same as for abetting the offence.
- 121: Whoever wages war against the government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death or imprisonment for life and shall also be liable to fine.
- 121A :Whoever within or without India conspires to commit any of the offences punishable by section 121, or conspires to overawe by means of criminal force, or the show of criminal force, the central government or any state government, shall be punished with imprisonment for life or with imprisonment of either description which may extend to 10 years, and shall also be liable to fine.
- 124A: Whoever by words, either spoken or written, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the government established by law in India shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

playing an important role in effecting serious and dangerous crimes. They have excited hatred and contempt towards the government established by law, and are continuously attempting to do so. ...as part of an organized plan of criminal actions and violence in naxalite areas, arson, bomb blasts and blowing up of electricity towers and railway lines through landmines, causing loss of crores of rupees, daily killings of innocent, poor adivasis and policemen and other administrative employees at the behest of Naxalite commanders and mastermind Narayan are continuing, and these three by participating in these activities are taking the task to its conclusion. Therefore S. 120B, 121A, 124A IPC were added". The charges deal in generalities. No specific instance of a crime which has been investigated and proved, no direct connection established between the acts of violence mentioned and the persons charged. None of the letters or the other evidence deal with any specific action or incident of the crimes listed in the

chargesheet being planned, or executed. But the accused's "association", in this case through literature and civil rights activity, with the CPI(Maoist) is enough to convince the court to deny bail and to accept these charges as the basis for the trial.

The other charge under normal law being brought to bear in the case is that of sedition i.e. section 124A of the IPC. The charge of sedition is designed as a weapon to be used by the state against all political manifestations that governments might find inimical to their policies, at different points of time. This law does not even require the use of criminal force, or causing of injury, or large scale destruction of public property etc. If a person by words either spoken or written, signs, visible representations, or otherwise, brings or attempts to bring the govt. into hatred or contempt, or causes disaffection, he will be considered guilty of sedition. This law criminalizes everyday activity, and gives the state the power to outlaw all protest and

dissent against the government in any form whatsoever. The punishment for sedition includes life imprisonment which is not only extreme but punishes acts such as putting up posters, writing articles etc. which outside the framework of national security do not constitute crimes! What is therefore being punished is the politics expressed in these manifestations. And the intent of the state is to safeguard its authority at all costs by outlawing popular dissent. Mahatma Gandhi therefore called it “the prince among the political sections of the Indian Penal Code”, and argued against it saying that “Affection cannot be manufactured or regulated by law.”

Though projected as a law meant to simply safeguard a “government established by the law”, the latitude it allows for the centralization of power, for authoritarianism, for suppression of people’s struggles, and for denial of fundamental political rights – of thought, belief and expression, and the freedom to form associations – is more than apparent from Binayak Sen’s case. Use of section 124A therefore becomes an effective instrument to silence all those who are questioning the state. It could be civil rights activists like Binayak Sen, journalists like Prashant Rahi or editors committed to a particular politics like Gobind Kutty of the Peoples’ March. And while today Maoist is the catch word being used to stigmatise political dissent and legitimise the incarceration of Dr. Sen, the fact that the person accused is a rights activist of the standing of Dr. Binayak Sen, and one who is completely innocent, should itself warn us of the danger these laws pose to democracy and dissent.

#### THE CONSEQUENCES

Pause for a while and consider that under these laws read with provisions of the Indian Penal Code we would surely commit a crime if we purchase, read and discuss banned literature. We commit a crime if we provide legal or medical assistance to a person allegedly a member of such an organization.

We commit a crime if we stage a protest against the heinous crimes by the armed forces of the State. We commit a crime if we protest a ban on a Maoist organization or any organization whose politics (eg nationality movements) are inimical to the state’s interests. We commit a crime if we stage a ‘dharna’. We commit a crime if we try to prevent police/administration from suppressing or violating protection offered to adivasis.... Indeed if one happens to be a doctor, apart from being a civil liberties and democratic rights activist, the *duty* to provide medical help is transformed into a criminal act. (Not too long ago in 2005 two doctors in Bihar were charged against S 120 B, 121A and 124A for treating injured Nepali citizens including Nepali Maoists.) Reading the above evidence shows that but for the fact of a ban on Maoist party none of the activities would have acquired the sinister tone that the authorities have invested in them.

These national security laws are also counter-productive. Since indulging in an armed attack was anyway a crime, the placing of a ban really outlaws all forms of non-violent activism: dissemination of literature, mobilizing and organizing people to politically articulate their demands, hold mass meetings. If people engaging in such activities are to be hunted, arrested, tortured, killed or persecuted in other ways, then the path of non-violent protest is devalued to that extent. And it seems to justify what those taking the path of armed resistance have been saying all along – that protest without an armed resistance is futile, because the state will use violence, legal and illegal, to crush any people’s struggle that challenges it. In short, the state’s resorting to and justification of violence creates its own mirror image in society.

Therefore, not merely to prove the Maoists or other any other political opinion that believes in carrying on an armed resistance wrong, but to believe in a more peaceful way of bringing about social change, is to believe that people have a right to struggle for what



they consider is right. And to enable this, the state has to foreclose the option of curbing the right to organize, hold mass meetings, disseminate literature and to struggle. In short, the state has to believe in the inalienability of democratic rights of the people and cease to wage war against our own people with all its accompaniments of laws,

and military might. It is this that forms part of the world-view of Civil Liberties and Democratic Rights (CL&DR) groups and informs our activities. And it is this view that has come under attack in the case against Dr. Binayak Sen.

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## Chapter IV

### Prisoner of Conscience

The arrest of Binayak Sen is part of the attack being mounted by the state against the civil liberties and democratic rights movement in India. The state clearly wishes to make an example of Binayak Sen, and of PUCL Chhattisgarh. After the framing of charges against Sen, special prosecutor T.C. Pandya reportedly said that the police was ready to frame a second chargesheet with more evidence on the “anti-national activities” of Dr. Sen, Guha and Sanyal. The focus of this chargesheet would be to establish that the PUCL was a “Naxalite front masquerading as a civil liberties body,” and presumably to proscribe it under the extraordinary legislations.

In other words the reason for persecution of Binayak Sen is not just an issue of manufacturing a case against him, or the Constitution’s validation of such anti-democratic laws. There is also a wider political motive, other than the immediate political context to it, of the active role being played by PUCL Chhattisgarh in opposing the militarisation of Chhattisgarh, the displacement of adivasis, and state repression. This wider context is one where the state wants to outlaw all forms of political dissent, e.g. in the criminalizing of civil rights activity, by representing them as threats to national security and to existing government. These laws, as is apparent from Binayak Sen’s case, do not merely penalize criminal acts but criminalize political activities and belief. It is

just these consequences of such laws that need to be understood and opposed.

The targeting of Binayak Sen and PUCL Chhattisgarh is very much part of a history of the state’s targeting of civil liberties and democratic rights activists opposing state violations and repression, in areas where there are strong people’s movements. Over the years, many activists paid with their lives such as Parag Das, Dr. Ramanadham, Puroshattam, Azam Ali, Jalil Andrabi or Jaswant Singh Khalra . As part of their work as civil liberties activists, they had raised their voices and criticized the state for its relentless and unjustifiable repression against armed movements in their areas of Assam, Andhra Pradesh, Punjab and Kashmir to name just a few. But the state does not need to always kill those who raise their voices; it doesn’t always need to use armed gangs to do its dirty work. There are other forms of intimidation and harassment: threats to family members, implication in false cases, beating and torture in custody, raids on their homes and organisation’s offices and publication of dossiers with names of activists.

In each case the state legitimized the attack by accusing civil rights organizations of being hand-in-glove with the people whose issues of rights denial they were raising: as Khalistanis, terrorists and extremists in Punjab, Kashmir and the North East; Naxalites and Maoists in Andhra and Chhattisgarh.

Therefore, for us Binayak Sen is a prisoner of conscience, who is being persecuted for following his conviction and his commitment to real, and not formal, democratic processes. The war against Maoists being waged in Chhattisgarh camouflages a dirty war against adivasis and peasantry to occupy their land, water and forests. The killings that have ensued are a direct result of the war imposed by the government. To ensure that the story of forced displacement, evacuation of people from their land, manipulation of gram sabha records to legitimize land grab by corporations, custodial killings, torture, rape and encounters which have accompanied this war, is not forgotten, is of *utmost* importance. Conversely, in manufacturing the case against Dr. Binayak Sen, the silence of the CL&DR organisations is what was sought to be achieved.

In the context today, of various political groups waging armed resistance, if the state wages war instead of finding political solutions, then the state merely justifies the violent methods of resistance, creating a society as its own mirror image. As against this, ironically Binayak Sen was one of the civil rights activists who had raised the issue of compliance by all combatants with Geneva Conventions and its Protocols, to restrict the violence and brutality, to minimize its impact on common people. PUCL Chhattisgarh has in several statements since 2006 raised this demand.

Be that as it may. And notwithstanding how various people assess the role of Maoists, no CL&DR activist in Chhattisgarh can remain oblivious of their presence or the war being waged. They are not only living in proximity to the so-called 'war zone' but are witness to its brutal reality. In such

circumstances, to accept the government version of the 'truth' would be an act of cowardice. To expect that CL&DR groups will remain mute while the State wages a war and that they would desist from recording and highlighting crimes being committed by the State against our own people is simply wrong. By doing what is correct and humanitarian, including at times defying unjust laws, forms the quintessential duty of the CL&DR activist. However, just as rights activists do not resign from this duty, they also consider it their duty to criticize armed resistance movements if and where they indulge in reckless violence, attacking non-combatants, or people in their custody – a part of CL&DR activity that the governments try to conceal in the bid to cast them as "front organizations".

Coming back to the chargesheet. PUDR reiterates that the case against Dr. Binayak Sen is fabricated. All that he did any doctor 'worth his/her salt' as well as many CL&DR activists would have done and will continue to do. To read criminal intent into all this is itself indicative of a criminal mind desperate to hide the truth about a dirty war being waged which is simultaneously carrying out land and forest grab for corporate profiteering. Verily, *when the State sows paranoia it is bound to reap myopia*. On the other hand, it is worth remembering that if Binayak Sen arouses respect and adoration among his peers, his comrades in the CL&DR movement, and amongst the vast body of democratic forces, it is because he epitomises for us what we yearn to be. Simply put, to have 'courage of our conviction'. When we defend Dr. Binayak Sen we assert our right to protest injustice and oppression and practice what our conscience guides us to do.

PUDR therefore demands:

***Withdraw the false case No. 44/07  
filed against Dr Binayak Sen, Piyush Guha and Narayan Sanyal.  
Cease waging war against the people of Chhattisgarh.***

If the security of the country really means  
That living without conscience becomes a necessity for life  
Approval apart, every expression becomes obscene  
And the mind cringes before the lumpen times  
Then we fear the security of the country.

– *Avtaar Singh 'Paash'*

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