

Indian courts continue to sanction open-ended imprisonment without trial

Kranti Kumara
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Despite last July's shocking death of the 84-year-old tribal rights activist and Jesuit priest Stan Swamy in what was widely recognized to be a state murder, India's courts continue to sanction the prolonged detention without trial of his fifteen co-accused in the phony Elgar Parishad terrorism case.

The activists are being framed up by India's National Intelligence Agency (NIA) under the country's draconian "anti-terrorist" Unlawful Activities Prevention Act (UAPA), because they have voiced criticism of Narendra Modi's Bharatiya Janata Party (BJP) government, its big business policies and suffocating Hindu-supremacist agenda.

The BJP government has targeted them for mobilizing tribals and Dalits to legally defend themselves against state-led and state-sanctioned attacks.

Stan Swamy died after the Bombay High Court and vindictive prison authorities cruelly denied him timely medical treatment after he contracted COVID-19 whilst in prison.

Another persecuted activist, the 82-year-old Telugu poet Varvara Rao, who was granted temporary bail in February due to extreme ill health, was recently ordered by the Bombay High Court to "surrender" for reimprisonment this week.

In an unusual judgement, which the NIA is now appealing before India's Supreme Court, the Bombay High Court on December 1 granted "default bail" to lawyer and tribal rights activist Sudha Bharadwaj on technical grounds. Bharadwaj has been behind bars since August 2018. The court ordered her release because the police did not file a charge sheet within 90 days after her arrest. The Bombay High Court has ordered Bharadwaj to appear on December 8 before a special court designated to try NIA cases. It will decide on the conditions and the date of her release, if the police agency's Supreme Court appeal fails.

The Bombay High Court has previously denied medical bail to Bharadwaj, who suffers from numerous ailments because of her imprisonment. The judges essentially accepted the NIA's cynical argument that Bharadwaj was

"taking advantage of the pandemic."

While ordering Bharadwaj released, the Bombay High court simultaneously denied bail to eight of her co-accused in the Elgar Parishad case. Police had also detained them for months without charge, breaching even the arbitrary, flagrantly anti-democratic rules set out in the Unlawful Activities Prevention Act. Yet the court refused to grant them "default bail" on the grounds the police had laid charges against the eight prior to their formally appealing for release on these grounds.

All long-time left-wing activists, the Elgar Parishad accused include prominent writers, academics, lawyers and journalists. They have languished in India's atrocious prisons for over three years without trial.

The Indian judiciary, at all levels, has repeatedly denied them bail. The courts have thus given their stamp of approval to the NIA's and Modi government's violation of basic democratic rights. Thousands of other opponents of the Modi government and its Hindu supremacist agenda have similarly been locked away in prison for years without trial, after being charged under the UAPA. Not only does this legislation lower evidentiary standards in the adjudication of cases. It gives the authorities great leeway to deny bail, enabling them to imprison people for years on trumped up charges without trial.

In another vile development, Elgar Parishad-accused Gautam Navlakha, was suddenly and arbitrarily transferred to what is colloquially known as the "Anda Cell" (Egg cell) of the Yerawada Central Jail. The Anda cell is a tiny egg-shaped prison cell with very little light that is located in a special "high-security" wing of the prison. It was constructed in the 1990s to house the two pro-Khalistan terrorists who killed the Indian army chief who directed the 1984 assault on the Sikh Golden Temple (Operation Blue Star.)

Navlakha was jailed in April 2020, after the Supreme Court rejected his bail application and ordered him to be turned over to the NIA. He is a journalist and human rights activist well known for highlighting the Indian

government's decades-long repression in disputed Kashmir. He is a consulting editor to India's well-known left-wing political magazine, the *Economic and Political Weekly* (popularly known as EPW.)

The "Anda cell" is designed to impose the most rigorous and inhumane form of solitary confinement, with those detained denied any access to the outdoors, sunlight and fresh air. It was built with the sadistic goal of breaking prisoners' spirit.

Solitary confinement is a violation of Article 7 of the International Convention on Civil and Political Rights, which prohibits inhuman or degrading treatment or punishment. The United Nations has condemned solitary confinement lasting 15 days or more as a form of torture.

Navlakha's fate was brought to public attention through an open letter written by Sahba Hussain, Navlakha's partner for 25 years, and widely shared on social media. When this author spoke to Ms. Hussain, she expressed a great deal of concern for the wellbeing of the 70-year-old Navlakha, whose health has already deteriorated severely due to the deplorable conditions of his imprisonment. These have included massive overcrowding amid the COVID-19 pandemic and disgusting toilet facilities. She also demanded to know why activists must constantly run to the courts just to uphold their most elementary democratic rights.

Navlakha was detained at the Tihar Jail in New Delhi when he surrendered on April 14, 2020. He was subsequently shifted to Taloja prison in Mumbai in late May 2020. However, when he was first brought to Mumbai, he was lodged in a school that had been converted into a "temporary prison" where inmates were forced to live like animals. Despite the raging COVID-19 pandemic, 350 prisoners were packed like sardines in six rooms with just three toilets, seven urinals and one common bathing area. They even lacked access to a mug or a bucket when bathing.

The NIA accuses the 15 surviving defendants in the Elgar Parishad case of being "urban Naxalites," i.e., of acting as an urban front for the banned Communist Party of India (Maoist) or CPI (Maoist). The NIA has also absurdly charged them with plotting to overthrow the BJP government. According to the NIA, their aim was to "spread rebellious thoughts" by attempting to create a national "anti-fascist front" so as to "wage war against the government."

The NIA claims that the evidence these activists were either working with or are members of the CPI (Maoist) is based upon numerous documents it purportedly discovered on the computers of some of the accused. A forensic analysis conducted by Arsenal Consulting, a highly regarded US-based computer forensics firm, concluded that these documents, located in a hidden folder, were planted by a well-financed computer hacker. Arsenal stated, "It should be

noted that this is one of the most serious cases involving evidence tampering that Arsenal has ever encountered."

The charges are based on the activists' alleged instigation "of violence" on January 1, 2018, during an event marking the 200th anniversary of Elgar Parishad (literally, a gathering with a loud declaration). This annual event, held at the village of Bhima Koregoan, in Maharashtra, commemorates the heroism displayed two hundred years ago by several hundred Dalit sepoys (soldiers) in the British colonial army during a battle against a much larger force fielded by the upper caste Peshwa-ruled Maratha Confederacy. The Peshwas were notorious for their abuse and mistreatment of Dalits.

In reality, it is Hindu-right activists who are responsible for whatever violence occurred at the 2018 Elgar Parishad event. A close ally of Modi and another Hindu-extremist working with him whipped up a frenzied, saffron-coloured flag-waving Hindu mob to attack the gathering, causing violent clashes.

While the real organizers of this violence are roaming free due to their intimate connections to the BJP government, the innocent and elderly activists have been left to rot in atrocious prisons indefinitely, and with the sanction and approval of India's courts.

Most of the activists were not even present at the Elgar Parishad gathering. In spite of this, the 16 activists were arrested by the Pune police, which accused them of being its "main organizers."

In fact, it was two activist retired judges, B.G. Kolse-Patil, a former Bombay High Court judge, and the late P.B. Sawant, a retired justice of the Indian Supreme Court, who were the "main organisers and sole funders" of the December 31, 2017 Elgaar Parishad event. They emphasized to the Scroll.in online publication, "We have openly been saying this from the beginning."



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