

Framed to Die

The Case of Stan Swamy

**Peoples Union for Democratic Rights, Delhi
August 2021**

Preface

In June 2019, Stan Swamy wrote a piece entitled “Is Torture Part of Police Investigations?” Responding to the Attorney General’s 2018 comment before the UN that torture is alien to the Indian ethos as it is the land of the Buddha and Gandhi, the article begins with the observation that there hasn’t been any real documentation of torture in India. Framing his questions within this absence, Stan draws upon lived experiences to substantiate the meanings of torture. He asks when the ruling class punishes individuals who “have given the most and best of themselves for the cause of truth and justice and have clearly taken the side of the deprived, marginalized sections of society”, is it not torture? He asks when Adivasis are incarcerated under fabricated cases and when their families are forced to bear the repercussions of their imprisonment, is that not torture? He asks when an accused of the Bhima Koregaon case, a well-established lawyer, is repeatedly beaten in custody, is it not torture? And doesn’t everyone suffer torture in prison, he asks? He ends the inventory by pointing out a habitual truth: the poorer you are, the greater your chances of being physically tortured in prison.

Stan’s questions are disturbing as they offer a much more wide-ranging understanding of torture, including the normalizing of inequalities as well as the systemic impunities of state institutions. But by including the saga of what dissenters suffer as part of torture, Stan ironically anticipated his own experiences of torture, first as a suspect, then an accused, and finally as a victim in the Bhima Koregaon case. Before he was jailed in October 2020, he released a video message from his training centre at Bagaicha, Ranchi. He said what was happening to him was “not something unique” but part of a process whereby activists across the country were facing persecution through the fabricated Bhima Koregaon matter. He was “ready to pay the price, whatever be it.” He did pay the price – he died in custody on 5 July 2021.

The day after Stan died, on 6 July, the Ministry of External Affairs issued a clarification saying that Stan was detained by the National Investigating Agency (NIA) “following due process under law”, that his bail applications were rejected because of the charges levelled against him, and that he passed away on account of medical complications. What constitutes this “due process under law?” Stan died as an under-trial under the draconian UAPA, a law which deviates from ordinary legal provisions by creating an “exceptional” regime in which constitutional safeguards are curtailed to such an extent that they become non-existent. Stan’s bail applications were rejected precisely because regular bail cannot be granted if courts find reasonable grounds to believe that the accusations against the accused are *prima facie*, i.e. on first blush, true. This exceptional standard conflates a premature determination of supposed guilt with the purpose of pre-trial incarceration i.e. making sure the accused does not abscond and does not tamper with evidence or influence witnesses.

Therefore, once a charge-sheet has been filed against an accused, as it had against Stan Swamy, bail under the UAPA becomes near-impossible. Pending the trial, the accused cannot lead her own evidence nor cross-examine or question the credibility of the material relied on in the charge-sheet, thus making it impossible for her to show that the accusations are *prima facie* untrue. The UAPA’s logic of pre-trial or under-trial incarceration is circular: if there is material to show that UAPA offences are made out against an accused, then the bail restriction bar under the UAPA is attracted, and pre-trial incarceration becomes almost certain. What is left unsaid about the “due process” in bail matters is the power of the investigating agency in levelling charges against the accused, charges that can remain either until the courts are satisfied that the accused has spent a considerable length of time behind bars, or until the final decision is arrived at the time of trial – a time which can be several years away from the time of arrest.

Stan Swamy, as this report documents, was framed, fettered, and finally forced towards a fatal illness under due process of law. The report argues that the naturalness of Stan's death — a cardiac arrest driven by Covid complications — doesn't exonerate the unnaturalness of the persecution that he suffered under the UAPA. Underlying Stan's experiences of persecution lie the life-stories of many others, including the 15 accused in the Bhima Koregaon case. Beyond chronicling Stan's persecution under law, the report documents why Comrade Stan was a dissenter and a true patriot and why the state feared and criminalized his dissent under the UAPA.

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Comrade Stan Swamy: the Person, his Life and Work

Born in pre-Independent India on 26 April 1937 in Tiruchirappalli district (present day Tamil Nadu), Stanislaus Lourduwamy, also known as Father Stan, completed his schooling from the local St Joseph's school located nearby. At the age of twenty, in 1957, he joined the Society of Jesus. His association with the Church led him to travel to Jharkhand (then undivided Bihar); where he pursued a degree in Bachelor of Arts at St. Xavier's, Ranchi. In preparation for priesthood, he worked as a teacher and hostel prefect at St. Xavier's High School Lupungutu, Chaibasa, West Singhbhum for two years beginning 1965. It was in Chaibasa that Stan began to study at close quarters the indigenous society and its value systems. In an interview in 2018, he narrated his experience of visiting a student's house during his regency in the 1960s. The student's father had asked him to pluck fruits from the mango tree in the courtyard, but he was asked to leave the fruits on one of the branches. On probing, Stan was told that those fruits were left for the "birds of the air" to give back to nature that nurtures them. In the early seventies, he chose to live in a village called Badaibir in Kolhan, Chaibasa, inhabited by Ho Adivasis, to further learn about the community.

Stan was a comrade and a crusader for justice. An unconventional priest, Stan's inspiration probably had diverse sources, including his belief in liberation theology which articulates the power of the poor; in his radical humanism which he shared with his contemporaries in the late 70s and 80s; and finally in his experiences of teaching and researching at the ISI Bengaluru. But most importantly, it was the people of Chaibasa who imparted in him a more nuanced understanding and a more substantial involvement with questions of distributive and social justice. Stan's stay in Chaibasa, among the Ho Adivasis in early 1970s paved the way for him to readily bridge the gap between ideas and practice.

Stan's desire for scientifically understanding power structures in society was reflected in the subjects he chose for study and the activities he undertook. In 1967, he pursued his post-graduate studies in Sociology at the Ateneo De Manila University in the Philippines, where he also studied Theology. Here, he was impressed by the efforts made by the students and other sections of the Filipino society to overthrow the corrupt regime of Ferdinand Marcos. During 1974-1975, he studied Social Analysis at the Catholic University of Louvain in Belgium. After this, from 1975-1990, he went on to work with the Indian Social Institute, Bengaluru. Against the backdrop of the National Emergency, when many citizens were looking for ways to intervene, he started a three-month course on Community Organisation and Social Analysis. This course, following the Marxist approach, conceptualised society as divided into classes based on control over material resources.

In 1991, he again returned to Chaibasa and helped revive an organization called Jharkhandi Organisation for Human Rights (JOHAR), formed in 1989. He worked on reviving the traditional self-governance (*Munda-Manki*) system of the Ho society. This conventional system of self-governance and self-sustenance formed part of Stan's idea of people's collective struggles. According to him, what had weakened people's movements in this region was the erosion of traditional value systems due to the onset of capitalist practices based on profiteering, and on markets that promoted consumerism and dispossession of indigenous people from their land and resources.

Over the next ten years with JOHAR, Stan struggled against land grabs by large corporations. He wanted people to understand that the police who fired at protesting villagers did so at the behest of corporations, hand in glove with their elected government. His experiences of these class struggles and his emphasis on societal analysis inspired him to start a training and research centre in Jharkhand. Stan wanted to have a centre where people from different organizations and resistance movements could congregate and discuss strategies for coun-

tering the processes through which people were facing displacement, despite the formation of a new State. Bagaicha was thus established in 2006. An Adivasi architect was commissioned to design the centre. In the central lawns of Bagaicha, at one end is Birsa Munda's statue with a torch in his hand. On the other end is Pathalgadi, a traditional stone on which names of those who died in the people's struggle for land, from 1784 onwards, are inscribed. In Stan's own words, "Bagaicha, in Adivasi tradition, is where the community gathers, discusses whatever needs to be discussed, and comes to a consensus...those who come here will go back to their communities with one mind."



For Stan, a simple and powerful means of resistance against the onslaught of corporations in Jharkhand was to stand in solidarity with protestors. He was one of the founders of the Visthapan Virodhi Jan Vikas Andolan (VVJVA), an umbrella of people's organizations protesting against displacement and other issues. '*Jaan denge par zameen nahi denge*' was the call through which these organizations successfully stalled several Memorandums of Understanding (MoUs) signed by the Government with companies involving land acquisition.

The Persecuted Prisoners' Solidarity Committee (PPSC) was another organization co-founded by Stan Swamy to work for the release of thousands of struggling indigenous people inhabiting the overcrowded prisons of Jharkhand. The formation of PPSC was preceded by a research study of undertrial prisoners in Chaibasa by Bagaicha (see next chapter). In 2017, when VVJVA was called a Maoist front by the Union Home Ministry, Father Stan Swamy issued a condemnation. This statement highlighted the work done by the coalition. Apart from protesting against displacement, VVJVA also conducted fact findings

and published reports on fake encounter killings after the declaration of Operation Green Hunt in 2011. For example, it flagged the point that 514 tribal youths were made to surrender as “Naxalites” between 2012 and 2014 by luring them with offers of government jobs. In 2016-2017, VVJVA also opposed the proposed amendments to the Chhota Nagpur Tenancy Act, 1908 and the Santhal Parganas Tenancy Act, 1949, permitting non-Adivasis to purchase land in Jharkhand.

Stan regularly wrote articles and spoke at public meetings about “land banks” whereby the Government planned to attach 21 lakh acres of community lands in Adivasi villages without their consent to be handed over to corporate houses for industrial purposes. He spoke about the wide scale rejection of almost 45 percent, as of February 2017, of Adivasi claims over forest land in Jharkhand. Speaking of Khunti district land records, Stan said that barring family *pattas*, all lands were shown as *gairmajurwa* and allotted to land banks, in complete violation of lands traditionally held in community / *khuntikatti* villages. He also flagged the non-implementation of Panchayats (Extension to Scheduled Areas) Act, 1996 based on the principle of autonomy, due to the absence of the framing of necessary rules even as on date. Though his advocacy efforts centered around Constitutional laws and judgments which helped indigenous people assert their rights over their lands and resources, he was clear that these were their natural rights that were now being recognized by State laws.

Amongst all this, in 2018, the State framed a case of conspiracy against certain individuals with “purported links to Maoists”, which over a period of time came to include Stan. Amongst the 16 persons arrested under the Bhima Koregaon case till now, Stan was the last to be arrested as well as the oldest. It is ironic that Stan, who took up the cause of prisoners, himself died in custody as an undertrial prisoner, labelled by the state as a Maoist. The next two chapters take us through the tiresome journey of Stan’s life over the last three years when the State actively sought to delegitimise his life’s work by incriminating him as a Maoist.

Framed as a Terrorist: the Case against Stan

The Bhima Koregaon conspiracy, as the State would like to put it, which initially centred around a plot to assassinate the Prime Minister of India to one supporting the violent overthrow of the Indian State by individuals allegedly close to the Maoists, has to date 16 persons arrested and housed in two different jails of Mumbai. They are: Sudhir Dhawale, Shoma Sen, Surendra Gadling, Mahesh Raut, Rona Wilson, Sudha Bhardwaj, Vernon Gonsalves, Arun Ferreira, Varavara Rao, Gautam Navlakha, Anand Teltumbde, Hany Babu, Sagar Gorkhe, Ramesh Gaichor, Jyoti Jagtap and Stan Swamy.

The NIA Charges Against Stan Swamy

A few weeks before the NIA came to arrest him in October 2020, Stan Swamy told his friend, activist-writer Xavier Dias: “My bags are packed and I am ready to go.” Obviously, Stan knew that they would come, but the puzzle remains: why did the NIA arrest him? What prompted them to link him with the ongoing Bhima Koregaon case?

The second supplementary charge- sheet filed on 9 October, 2020, makes the following charges against Stan Swamy: that he was “a member of CPI (Maoist) and actively involved in furthering its activities”; that he corresponded with a cadre named Arun in the wake of huge “damage” done to the Party and was instructed to “report on progress of work assigned to him from time to time for future planning”; that he had received 8 lakhs through one comrade Mohan; that he was the convenor of Persecuted Prisoners’ Solidarity Committee (PPSC), a “front” of the banned CPI (Maoist); that among the documents seized were two letters, one from one Prashant, and a letter to Vijayan Dada; and, that evidence gathered during searches in Surendra Gadling’s house on 17 April 2018 revealed Stan’s role via the correspondence between co-accused Sudha Bhardwaj and someone named Prakash (17.56-60).

Over the next few pages, the charge-sheet reproduces a letter seized from Stan to illustrate the CPI (Maoist)'s "comprehensive understanding of secret communication system," and the role envisaged for overground activists. The significance of this document is akin to the one seized from Rona Wilson's computer that outlines the importance that the CPI (Maoist) gives to urban activists for setting up an anti-fascist front. Besides linkages between the underground and overground, the charge-sheet provides instances of emails and Call Data Records (CDR) of those arrested to show that they were in touch with each other. For instance, data seized from Surendra Gadling shows that Stan's organization, Visthapan Virodhi Jan Vikas Andolan (VVJVA), held a program in 2016 which was coordinated by Varavara Rao and for which Mahesh Raut was an invitee.

Beyond establishing the correspondence between the accused, the co-accused, and underground leaders, the charge-sheet also relies on material recovered from *other* arrested Maoists to further the case. So, the data seized from Narmadakka, a top Maoist commander arrested in June 2019, presents a similarity with what was recovered from Rona Wilson regarding the role of "front" organizations. This is used to prove the existence of "a concrete triangular link" between students' organizations functioning in New Delhi, CPI (Maoist) cadres working in urban areas arrested in the Bhima Koregaon case, and the Central Committee members "operating from the deep forest" (17.68).

These connections are furthered through data collected from convicted prisoner, G.N. Saibaba. Citing a 2012 correspondence from Saibaba's computer in which the Kangleipak Communist Party (KCP) expressed its inability to attend a function organized by the banned Revolutionary Democratic Front (RDF), the charge-sheet states that the regret letter was read by Rona Wilson to the audience. Further, through Saibaba's data, the role of Hany Babu is drawn in, as he corresponded with one of the office bearers of the KCP in which the latter

had shared a power-point interview with Ganapathy, the erstwhile leader of the CPI (Maoist).

Based on these coincidental “facts”, the charge-sheet concludes that Stan, along with Anand Teltumbde, Gautam Navlakha, Hany Babu, Sagar Gorkhe, Ramesh Gaichor and Jyoti Jagtap, conspired with those arrested, and with those identified as absconders in the previous two charge-sheets of 15.11.2018 and 19.02.2019, “to further the ideology of CPI (Maoist)”(18.1). But does it? Does the charge-sheet convincingly elaborate on Stan’s role as one who “waged war against the Government of India, brought into hatred and excited disaffection towards the Government established by law in India and thereby promoted enmity between different groups on grounds of religion, caste or community and committed acts prejudicial to maintenance of harmony”(18.2)? In the list of witnesses provided, there is hardly anyone who “testifies” against Stan. How reliable then is the evidence provided?

The 40 exhibits shown against Stan, indexed under Annexure B-4 to the charge-sheet, (which presumably spans over 850 pages) are all recovered from one purported file, named Earth Summit. Exhibits no 10, 11, 12 are the three letters, one addressed to Stan and two to “Vijayan dada”. In an online press conference held on 16 February 2021, Father Solomon, an associate from the Jesuit Society, stated that Stan had denied knowledge of these letters during his interrogation sessions by the NIA, and that he had referred to them as interpolations. Father Solomon stated: “Some letters by the Lokmanch had been edited, words had been added or inserted...For instance, a letter started with the greeting of *johar* that is common in Jharkhand. But the unusual word ‘lal’ had been added. This made Stan [Swamy] raise questions on the authenticity of the documents.”

The question of authenticity is important as Father Solomon’s press conference happened soon after the first Arsenal report which made public that Rona Wilson’s computer had been compromised, and that 10 letters had been planted by an unknown hacker from July 2016

onwards. Subsequently, a second report in April 2021 showed that another 22 documents, pertaining to meetings, correspondence and funding received from Maoist leaders and militants, had been planted in Wilson's computer. A third report released the day after Stan died revealed that Gadling's computer had also been hacked into and was kept under surveillance for over a period of 20 months, between February 2016 and October 2017. Importantly, one of the correspondences held against Stan is drawn from Gadling's computer. In the light of the Arsenal revelations, Stan's denial of the correspondences gains importance as they go a long way in denting the credibility of the electronic evidence on which the case hinges.

The Bogey of 'Banned Organization'

Apart from electronic evidence, the NIA's claim is that Stan was the convenor of PPSC, a "front" for the CPI (Maoist). In one of the witness statements, the PPSC is shown as associated with the now deceased Maoist leader, Narayan Sanyal, and convicted prisoner, Prashant Rahi (p 128, List of Witnesses). But how true is this genealogy of 'banned' activities?

The very category of "front organisations" is an executive innovation - the UAPA contains no mention of "fronts", only of organisations, which can be banned either by designating them as "unlawful" or as "terrorist". The CPI (Maoist) is designated a "terrorist" organization under the UAPA, and all that is needed to do so is the central government's belief that it is involved in terrorism. To designate an organisation as "terrorist", the government does not even need to believe that it or its members have participated in a "terrorist act." In circular logic typical of the Act, an organisation can be deemed to be "involved in terrorism" if the government believes it is preparing for, encouraging or "otherwise involved in terrorism." This gives the government full discretion to ban an organisation without even needing to disclose reasons. There is no judicial remedy against this ban. The organisation's only recourse is to appeal to the very body that imposed the ban; and

then, to apply to a government-constituted review committee that has no time-limit for deciding applications, and does not need to reveal if or when it met, or what it decided and why.

In his appeal challenging the constitutionality of UAPA's harsh bail restrictions, filed on 2 July 2021, days before his death, Stan drew attention to the fact that once declared a "front organization" under the UAPA, the said organization has no possibility of redressal for denotification, as such declarations are not based on any guidelines or stated principles. Further, a "front" organization, under the law, has no autonomy as it is said to be controlled by another organization. Hence, the accused has little or no rights to defend herself/himself against the charges of being a member of a "front" organization (para 51-58).

The PPSC was set up in 2015 to assist under-trial prisoners who had been framed in Maoist cases in Jharkhand, Odisha, Chhattisgarh and parts of West Bengal. In December 2015, the Bagaicha Research Team released a report reviewing the data drawn from 102 prisoners languishing in 18 jails across the state. The 'Summary' of the report points to some significant facts: that 97 percent of the respondents were accused of Maoist crimes; that the highest number of arrests took place between 2010 and 2013; that overwhelmingly the prisoners were within the age group of 18-40; that 69 percent of them were Adivasi or belonged to Schedule Tribes; and that, while agriculture formed the main occupation of 63 percent of the respondents, the monthly income of 59 percent was below 3000 rupees.

The report contextualized these findings within a stark political system which facilitated unscrupulous take-over of the land of the "economically poorest people and the nation's resources by both multinational and domestic corporates (corporatization)." Drawing attention to the fact that the arrests were suggestive of people's anger against "the policies of the reigning state", the report connected the rise of "left-wing terrorism" with "some of the perennial issues engendered by cultural and structural violence which produce endemic poverty, massive illit-

eracy, hunger and mal-nourishment, rampant corruption, continued oppression and exploitation of the less privileged by the powerful” (p 4). Denouncing this ecosystem of ‘political Brahmanism’, Chapter 6 of the report historically analysed the exploitation, marginalization and ruthless absorption of the Adivasis into mainstream societies (p 91). Against this hegemony, the report plotted the revolutionary potential of Adivasi history, its resistance and avoidance of the ‘Manu-system or political Brahmanism’ (p 94).

The report acknowledges that Stan was the mover behind the idea of the project: “the study of alleged ‘left-wing Extremist’, Adivasis and *Moolvasis* under-trial of Jharkhand” (p 5). The report, *Deprived of rights over natural resources, impoverished Adivasis get prison*, is probably one of its kind to have undertaken the specific activity of addressing the fate of the rural poor who were identified, arrested and forced to languish for long years as Maoists. Notably, Stan’s involvement with under-trials did not commence with the setting up of PPSC, as he had been actively campaigning for the rights of those arrested. In 2010 he wrote a book *Jail Mein Band Qaidiyon ka Sach* in which he documented the arbitrary ways in which tribal youth were framed in Maoist cases. After the release of the PPSC report, a PIL (case no WPC 4212/2017) was filed in Jharkhand High Court relying on its findings. In January 2018, the court directed the Home Secretary and IG-Prisons to furnish a list of under-trial prisoners in all the jails of the state. The PIL had estimated that there were as many as 5000 Adivasi and Dalit youth locked up in different jails of Jharkhand.

Though the Jharkhand High Court admitted the PIL, it has so far failed to take any action on the conditions of under-trial prisoners languishing in jails. Stan believed that the Bhima Koregaon case had been “foisted” on him to get him out of the way. Ironically, while Stan was the petitioner in a case of the rights of under-trials, his arrest, incarceration and death exemplified the worst fears that he had unravelled in the lives of under-trials who are accused of Maoist crimes.

The Raids and Interrogation

Prior to the 28 August 2018 raid of Stan's room in Bagaicha, the Jharkhand government headed by Raghubar Das had criminalised his politics as seditious, and Stan had to suffer continued harassment in this matter, which was compounded by the raids of the Pune police. Reacting to the charge of sedition against him, Stan wrote an open letter in early August stating his support for the Pathalgadi movement: "I believe they have been exploited and oppressed beyond tolerance." He enumerated his questions over the studied lapses, the silences and deliberate disregard of Adivasi rights of land ownership, of safeguarding their control over excavation of minerals from their lands, and of their right to economic development. He ended the letter with a line: "if this makes me a 'Desh Drohi' then so be it!"

But the stage had been set and the sedition charges accelerated into the Bhima Koregaon raid conducted by the Pune police in the early hours of 28 August 2018, at about the same time when similar raids were being conducted in the houses of other activists in New Delhi, Hyderabad, Mumbai, Thane, Faridabad and Goa. During the raid, the Pune police confiscated his laptop, phone, few CDs, and literature. From then on, Stan was doubly marked: as a seditious activist and as a terror suspect. He was subjected to a second raid by the Pune police in June 2019 when his hard disk and phone were seized, and his email and social accounts were blocked.

Stan was charged with sedition at the time of the second raid, and arrest warrants were issued against him and four others for failing to appear before the trial court. In September 2018, Stan and three others filed a petition in the Jharkhand High Court demanding a quashing of the sedition FIR (CrI MP 3183/2018). To his utter surprise, he found during the July 2019 hearing in the High Court, the Khunti Police had filed an annexure received from the Pune police citing him as an accused in the Bhima Koregaon case.

Framed for Sedition

On 26 July 2018, Stan and 19 others were booked in connection with an incident in which supporters of Pathalgadi movement had allegedly abducted the security guards of a BJP MP, Karia Munda, and resisted the police lathicharge with bows and arrows. The charges were expanded, and the above twenty activists were charged with sedition for their social media posts (case no 124/2018 at PS Khunti). The context was their support for the two-year old Pathalgadi movement which had spread to the contiguous areas of Chhattisgarh and Odisha, and which marked its presence in villages through ubiquitous green stone slabs announcing gram sabha sovereignty and several constitutional provisions.

In its bid to crackdown on the Pathalgadi movement, the Jharkhand government filed numerous FIRs between June 2017 and July 2018, against thousands of people for disturbing public order. A fact-finding report testified that the police artificially linked the leaders of the movement with an incident of gang-rape in Khunti village, in June 2018. Similar repressive measures were used against activists in Kochang and Ghagra areas with noticeable hostility towards the Church and its functionaries. The vilification of the Jesuit movement in Jharkhand had been on the agenda of the BJP Government led by Raghubar Das. This was seen when in August 2017, the Religious Freedom Act was passed, which penalized religious conversions. In 2018, a Jesuit priest was framed and convicted along with others for conspiring for the offence of gang rape in Khunti district, home to the Pathalgadi movement. Till now, his appeal is pending before the High Court. For a government driven by a Hindu majoritarian agenda, whose ministers publicly garland persons accused of communal lynchings, it was gainful to tarnish the image of those associated with the widespread Catholic movement in India.

In October 2019, the Khunti police raided his premises to “attach his property”—two tables, three chairs, a cupboard and mattress—on the ground that he had failed to appear before the trial court. The timing of this act was significant as it happened just after Stan filed a petition before the High Court seeking quashing of warrants. Presumably, it was done in a bid to thwart the possible outcome in this and the quashing matter. Finally, Stan, his co-accused and many others got the much-needed respite when the Hemant Soren government took power in December 2019 as it promised the withdrawal of all Pathalgadi cases. However, till date the procedures have not been completed.

When the Pune police raided his premises in August 2018, Stan issued a statement in which he stated that he wasn't aware of the purpose of the raid as the warrant was issued in Marathi. He made clear that he had no connections with events in Pune as he was a long-time resident of Jharkhand. Besides condemning the "unofficial Emergency" evident in the multiple raids across cities, Stan demanded that "the National Human Rights Commission intervene urgently to ensure the release of the human rights activists and to order an immediate, transparent, effective and impartial investigation into the simultaneous multi-city raids and arrests of the human rights activists by the state and the police on false and fabricated accusations and charges."

The NIA interrogated Stan for fifteen hours between late July and early August 2021. Two days before his arrest, after he had refused to go to Mumbai as directed by the NIA, Stan released a video in which he said: "In a way, I am happy to be part of this process. I am not a silent spectator, but part of the game, and ready to pay the price whatever be it." The charge-sheet seeks to show Stan as an enemy of the people by making him into an enemy of the state. The politics behind this framing of Stan is clearly rooted in Stan's refusal to be silenced, and in demanding what the state had failed to do: care for its people.

At a Glance: Four Years, July 2017-July 2021

19 July 2017: Based on a research study, Stan Swamy filed a petition before the Jharkhand High Court (WP 4212/2017) seeking for speedy trial and interim bail for persons booked under UAPA, CLA and Chapter VI of the IPC, and those languishing in jails due to delays on account of the prosecution. The petition also sought the constitution of a Commission of Inquiry to bring out the conditions of prisoners facing prolonged detention and the status of their cases across the State of Jharkhand.

8 January 2018: The Chief Justice of Jharkhand High Court directed the State to file an affidavit giving district-wise details of prisoners, their cases and reasons for prolonged detentions.

26 March 2018: The High Court of Jharkhand noted that no response had been filed by the State despite specific orders. The Secretary (Home), Government of Jharkhand was directed to be personally present on the next date in case a response is not filed. The response was then filed in April 2018.

19 June 2018: The unsatisfactory nature of response filed by the State was noted by the High Court. Advocate General for the State was directed to appear in the matter. Since Stan had also filed an application bringing attention to the deficiencies in the response of the State, the High Court directed that another response be filed furnishing specific case-wise details for every prisoner. Responses were filed by the State thereafter. However, the matter is pending till date.

26 July 2018: Stan Swamy and 19 others were booked for sedition over social media posts regarding State excesses in the Pathalgadi movement (FIR 124/2018 under Section 121A, 124 of the Indian Penal Code and Section 66A, 66F Information Technology Act at Police Station Khunti). Section 66A of the IT Act had already been struck down as unconstitutional by the Supreme Court by then.

28 August 2018: Raid in Bagaicha campus conducted by Maharashtra and Jharkhand Police in connection with the Elgar Parishad case. Stan's mobile phone, laptop, some audio cassettes, CDs and a press release on Pathalgadi movement by Women Against Sexual Violence (WSS) were seized. Search order, not warrant, was issued in Marathi and Pune Police brought two persons as 'panch' (witnesses) to oversee the raid.

6 September 2018: Stan and three other activists filed a petition seeking quashing of the sedition FIR. The petition is still pending before the High Court (Crl MP 3183/2018).

14 December 2018: Bombay High Court rejected quashing of FIR (Elgar Parishad case filed on 08.01.2018) against Stan on the ground that he was only a suspect, not an accused and that investigations were ongoing. (WP 4741/2018)

12 June 2019: Second raid in Bagaicha campus by Maharashtra Police led by ACP, Shivaji Pawar and State police. Stan's computer hard disk, pen drive and documents seized. His email and social accounts were blocked.

19 June 2019: Almost a year after registration of FIR, a warrant of arrest was issued against Stan and four others over the sedition FIR by Chief Judicial Magistrate, Khunti.

22 July 2019: CJM, Khunti passed an order under Section 82 Code of Criminal Procedure, 1973 initiating proceedings for declaring Stan as a proclaimed offender (proceedings against absconder).

24 September 2019: Stan was served an order under Section 83 of CrPC (warrant for attachment of property of absconder) issued by Chief Judicial Magistrate, Khunti.

21 October 2019: Khunti police attached property of Stan for failure to appear in court regarding the sedition case of July 2018. The police took away two tables, three chairs, a cupboard and a mattress belonging to Stan.

6 December 2019: The High Court quashed the orders dated June 19, July 22 and September 24 as the orders were observed to have been passed by the court mechanically without recording any satisfaction, especially with regard to evasion of arrest by Stan in the matter (CrI MP 3222/2019).

29 December 2019: New Jharkhand government led by Hemant Soren decided to drop all cases related to Pathalgadi filed by the previous government between 2015 and 2019. The matter against Stan and others has not been quashed/closed yet.

27-July 6-August 2020: NIA 'interrogated' Stan for 15 hours in which Stan disowned documents cited by the agency as incriminating, and that such documents might have been "intercalated" (to insert among existing elements).

8 October 2020: NIA arrested Stan in Ranchi and the following day he was transferred to Taloja Central Jail, Maharashtra

9 October 2020: Supplementary Charge-sheet filed by NIA against Stan and others.

18/19 October 2020: Stan files for interim medical bail before NIA court.

23 October 2020: NIA court rejects Stan's interim medical bail and states that Stan was seeking 'undue benefit' under 'the garb of the current situation of the global pandemic Covid 19'

6 November till 4 December 2020: Stan moves court for sipper; NIA states that it was never in their possession; court rejects petition. Second petition that jail provide facilities: Stan finally receives sipper

26 November 2020: Stan files for regular bail before NIA court.

22 March 2021: ASJ DE Kothlikar of NIA court rejects regular bail and observed: "the collective interest of the community would outweigh the right of personal liberty of the applicant".

26 April 2021: Stan moves Bombay High Court against rejection of regular bail

4 May 2021: Division bench of HC orders government to file report

19 May 2021: Stan applies for medical bail on account of worsening Parkinson's. Stan's case taken up on urgent hearing by Bombay High Court.

21 May 2021: Stan tells HC that he cannot walk and that he desires to go home

28 May 2021: On the basis of Stan's affidavit expressing his willingness to be shifted to Holy Family Hospital, Bandra, the vacation bench of Bombay HC directed his treatment to the private hospital, owing to the 'peculiar facts and circumstances of the case'. The vacation bench clarified this after the Additional Solicitor General, Anil Singh, said that sending Stan to a private hospital may set a 'wrong precedent'.

30 May 2021: Stan tests positive for Covid 19 and is shifted to the ICU.

10 June 2021: HC extends treatment till June 18.

16 June 2021: NIA opposed bail plea on grounds that in the garb of helping tribal community, Stan Swamy carried out banned activities.

17 June 2021: HC extends his treatment in hospital till July 5 and directs NIA to make further submission on July 3.

3 July 2021: Stan files plea challenging s. 43 D (5) of UAPA which creates insurmountable hurdles in obtaining bail.

5 July 2021: Stan has a cardiac arrest and dies.

Manacled by Law: the Struggles in Court

It is important to note that after arresting Stan, the NIA did not seek a single day's police custody. Stan Swamy was arrested on 8 October, flown to Mumbai and produced before the Special NIA Court, Mumbai on 9 October. The same day the NIA filed its supplementary charge-sheet against him and seven others. The NIA's application seeking his remand to judicial custody is not public, and we do not know precisely on what grounds the NIA justified its request, nor what weighed with the judge during the hearing. However, we do know that on 28 August, 2018, when Stan's house and office had been raided first by the Pune police, he had not been named in the FIR; and that the Bombay High Court had rejected his plea to quash the FIR on 14 December 2018, recording the state's submission that at that point in time, because of the lack of material against him, the Pune police had not made him an accused.

We also know that Stan had fully cooperated with the investigation since the beginning, including when his premises were raided for the second time on 12 June 2019, and subsequently after the investigation was transferred to the NIA on 24 January 2020, when he was interrogated between 25 July 2020 and 7 August 2020. On 30 September 2020, the NIA asked him telephonically to be present at their station in Mumbai on 5 October 2020. Stan was unable to travel during the pandemic owing to his old age, and he was arrested on 8 October 2020. We also know that Stan's hands shook so much during his remand hearing that he couldn't even sign his *vakalatnama*, his advanced Parkinson's tremors having been exacerbated by the stress and exhaustion of travel. But his age, medical condition, and cooperation with investigation; the fact that the NIA clearly did not need to interrogate him in custody- none of these came in the way of the court remanding him to judicial custody in Taloja Jail till 23 October.

Plea for Interim Medical Bail

At Taloja Jail, Stan applied for interim medical bail on 18/19 October under criteria evolved by the Maharashtra High-Powered Committee (HPC), which had been constituted as per the Supreme Court's order dated 23.03.2020 (*Contagion of COVID-19 in Prisons*). The HPC had excluded under-trial prisoners accused of offences under UAPA from being considered for temporary release on COVID grounds but had clarified that those above 60 with underlying medical conditions could still be considered for temporary release. In his interim medical bail application, Stan pleaded that besides his worsening Parkinson's, he had almost lost his hearing ability and had fallen multiple times in jail. He also had intense pain in his lower abdomen because he had recently had two hernia related operations.

The NIA opposed his plea, saying he was trying to take "advantage of the pandemic" to get out of jail. On 22 October, a day before his judicial custody remand was to expire, the Special Court denied his interim medical bail because he had been implicated under the UAPA. The court agreed with the submissions made by the Superintendent of Taloja Jail that Stan had been lodged in a separate cell in the hospital-dispensary section and been given adequate medical treatment. The court in fact held it against Stan that he had moved an application seeking directions to jail authorities to provide him the amenities he required. The court further held that "even by stretch of imagination [*sic*]... the applicant is [not] suffering from any illness for which the treatment is not available in the prison."

Request for straw / sipper

A few days after the court noted that jail amenities were sufficient, on 7 November Stan filed an application in court stating that the NIA had seized his straw / sipper during his personal search and requested this to be returned, as his Parkinson's disabled him from drinking water directly from a glass. The court posted the matter for 26 November,

giving the NIA 20 days to file a reply. In its reply, the NIA claimed that it had made no such seizures at the time of Stan's arrest. Stan was thus constrained to file yet another application in court, seeking directions to the jail authorities to give him a drinking aid - the same jail authority had earlier claimed it was providing Stan with requisite facilities, though this was patently false. Nearly a month later, on December 5, reports surfaced that Stan had finally been provided with the straw he needed to drink water.

Plea for Regular Bail

Meanwhile, in end-November itself, Stan filed for regular bail before the trial court. He pleaded that there was no *prima facie* material to implicate him in any crime, especially because the electronic evidence relied on by the prosecution had uncertain authorship, and an independent forensic investigation conducted by US-based firm Arsenal Consulting had revealed grave tampering with the electronic evidence. The NIA submitted that the *Caravan* magazine report on the Arsenal findings was a "direct attack on the administration of the criminal justice system" and actuated by "malice and anti-national element", and hence constituted contempt of court. The NIA sought directions from the court to restrain *Caravan* from making such allegations and to restrain accused persons from confusing the court through such articles.

The trial court took 4 months to pass its order, declining bail on 22 March 2021. It refrained from passing the directions sought by the NIA, but agreed that there was substance in its objections, and deprecated the reliance on "such extraneous material" and the attempts to interfere with the administration of justice. The court based its order on the gravity of the allegations against Stan. Under Section 43D(5) UAPA, accused persons cannot be released on bail if the court finds reasonable grounds for believing that the accusations against the accused are *prima facie* true. The court held that concerns over the admissibility and credibility of evidence could only be gone into at the stage of trial, and hence the accusations against the accused were

prima facie true. Other parameters justifying pre-trial incarceration – such as whether the accused poses a flight risk or might tamper with evidence or influence witnesses – were irrelevant. Regarding Stan’s medical condition, the trial court simply stated that “if seriousness of the allegations made against the applicant are considered in proper perspective, in that case there will be no hesitation to conclude that the collective interest of the community would outweigh the right of personal liberty of the applicant and as such the old age and or alleged sickness, of the applicant would not go in his favour.”

High Court Proceedings

Following this, Stan filed an appeal against this order before the Bombay High Court on 26 April 2021. On 4 May, the High Court directed that Stan’s medical report be filed and gave the parties the liberty to mention the matter for listing in the week starting 17 May. By 15 May, however, Stan developed fever and his condition became extremely fragile. On 18 May, the NIA filed a reply to Stan’s bail plea disputing Swamy’s medical condition, stating that Stan’s “alleged medical documents... are not conclusive proof of alleged Parkinson’s disease.” The NIA further averred that the best medical facilities were being provided by the jail authorities to Stan; and that such applications were a standard strategy adopted by the accused in the present case to use deceptive methods and relentlessly file “petitions consistently against the agency on the cost of judicial time.”

On 19 May, Stan’s case was taken up for urgent hearing by the Bombay High Court. Stan had again pleaded for medical bail on the grounds of his worsening Parkinson’s, hearing loss in both ears, intense abdominal pain as well as pain from lumbar spondylosis, i.e. wear and tear of the lumbar disc. The Talaja Jail’s medical report dated 10 May contended that his general condition was “hemodynamically stable.” The state counsel had to take instructions during the hearing to explain what this phrase meant and explained to the court that Swamy has a stable pumping heart and good circulation of blood. The jail report

stated that two prisoners had volunteered to attend to Stan so that he wouldn't fall; and that he had been provided battery cells for his hearing aid. The jail report did not say anything about his abdominal or lumbar pain, and simply recorded that he was satisfied with Taloja's facilities and had not complained. Because the jail had denied the seriousness of Stan's medical condition, the High Court ordered that he be taken to the state-run JJ Hospital, Mumbai, the next day for a medical Committee to opine on his health and listed the matter on 21 May.

The JJ Hospital medical committee recorded that he was conscious and that his blood pressure and pulse rate were normal. Their report confirmed his tremors, hearing loss and degeneration of his lumbosacral spine, but advised merely that he be provided with a walking stick, wheelchair and physical assistance. The report further stated he had no major psychopathology at the moment, nor did he have any neurological deficits, and that his higher mental functions were normal.

For the 21 May court hearing Stan was produced via video-conferencing, and it was apparent to the court that he was physically very weak. The judges had to speak to him through the person sitting next to him as he was unable to hear. Stan described his rapid deterioration in jail: "When I came to Taloja, my whole system, my body was still very functional. But during these eight months, I have gone through a steady regression of all bodily functions." Unable to bathe, walk or eat on his own, his deterioration, he told the court, was more powerful than the small tablets he was given. Aware of the kind of inadequate treatment available to him, he pleaded for medical bail, to go home to Ranchi and to be with his own. The court ignored him, refusing to engage with or hear arguments on his request for medical bail. Instead, it offered him a compromise, a choice between treatment at JJ hospital or any other private hospital of his choice, including Holy Family Hospital. Stan's counsel sought time to convince him to accept the compromise. The court listed the appeal for 7 June, with liberty to apply prior to the adjourned date if required.

A lawyer appearing for three of Stan's co-accused wrote an op-ed in the *Indian Express* criticising the High Court's conduct on 21 May. In a related matter heard a few days later, the High Court chided the lawyer's senior colleague, asking him why lawyers came to courts if they didn't have faith in them. Meanwhile, Stan's health deteriorated rapidly, and on 28 May, Stan's counsel urgently moved the High Court to allow him to be taken to Holy Family Hospital, Bandra at his own expense. The state counsel opposed even this, asking the court that Stan be taken to the state-run hospital instead, as permitting him to go to a private hospital would set a bad precedent. In the alternative, the state counsel asked that even if Stan is allowed to be admitted to Holy Family at his own expense, no private person should be allowed as his attendant. The court allowed him to be shifted to Holy Family, directed the hospital to provide him with an attendant, allowed one of his colleagues to meet him, and directed the hospital to allow a police guard.

Shortly after being moved to Holy Family, Stan tested positive for COVID on 30 May. On 10 June, the High Court extended his permitted admission at Holy Family and directed the hospital administrator to file Stan's medical report in a sealed envelope within a week. On 16 June, the NIA filed another affidavit-in-reply before the High Court, continuing to aver that his "alleged medical documents... are not conclusive proof of alleged Parkinson disease or lumbar spondylosis", and that jail facilities were adequate for his medical treatment. The NIA further stated that, "when an accused has committed a crime whose ultimate motive is to overthrow the democracy, certainly not the age but the act of the accused that is to be taken into account, especially when the appellant/accused has committed a crime of high gravity and under special statute like UA(P) Act."

On 17 June, the High Court further extended Stan's hospitalisation as the medical report stated that he continued to be critical and required intensive care and listed the matter for 3 July 2021. On 2 July, he filed

another petition in the Bombay High Court challenging the constitutional validity of S. 43D (5) UAPA. On 4 July Stan suffered a cardiac arrest and was placed on ventilator support. On 5 July, he passed away at 1:24 PM. The High Court noted this “with a heavy heart” in its order on the same day, listing the matter for 13 July as Stan’s lawyer wanted to make certain submissions. Swamy’s medical records were supplied to court on 13 July, and the matter was adjourned to 19 July.

In the hearing held on 19 July, the Bench praised the work done by Father Stan. “Such a wonderful person. The kind of service he has rendered to the society. We have great respect for his work. Legally, whatever is there against him is a different matter”, recorded Justice Shinde. However, in the next hearing on 23 July, the NIA took umbrage at the words of praise showered on Father Stan by the Bench, at which the judges decided to remove the same from the court proceedings. The NIA had objected that the judges’ comments “demoralized” the investigating agencies and reinforced the public perception that the NIA and the prison authorities were responsible for Stan’s custodial death. Stan’s counsel, Mihir Desai, urged the court to monitor the magisterial inquiry into Stan’s death; allow his close friend Father Mascarenhas to join the inquiry; and have the inquiry report placed before the court. The NIA vehemently opposed all the directives sought by Desai. In fact, the NIA argued that under the Cr.PC, Stan’s bail appeals stand abated as Stan is no more. In response, Desai urged the court to invoke its “parens-patriae” jurisdiction i.e. to act as the parent of the appellant when he is not in a capacity to make decisions, so that the appeals don’t stand abated. We have no further information on subsequent developments.

The “Soft” Torture of Routine Incarceration: the Ordeals of Varavara Rao

Stan’s experience of the state’s indifference, neglect and deliberate denial of medical bail during the Covid 19 outbreak was preceded by Varavara Rao’s ordeals in Taloja, especially between May 2020 and March 2021. Arrested in November 2018 in the same Bhima Koregaon case, octogenarian Rao’s health deteriorated rapidly in the wake of Covid 19, especially after his first medical bail was rejected by the NIA court on 31 March 2020. That Rao was suffering from something serious came to light during the progress of the second medical bail application which was filed on 15 May 2020.

Rao fell unconscious on 28 May 2020 and was taken to JJ Hospital but was hastily discharged on June 1 and lodged in the Taloja jail hospital. However, he was readmitted to JJ Hospital in early July where his family members found him in a shocking state of delirium and tremors and with no proper nursing assistance. On July 16, he fell from his bed and sustained forehead injuries which required stitches. He tested positive for Covid 19 and was shifted to St. George’s Hospital. Because his delirium continued, he was shifted to Nanavati Hospital on July 19 after the intervention of the NHRC. At Nanavati, besides existing medical problems, a further urinary tract infection was diagnosed. Despite his deteriorating condition, Rao was discharged from Nanavati Hospital on August 28. However, since he continued to deteriorate in Taloja hospital, at the intervention of the High Court, he was readmitted to Nanavati on November 15. He remained there till he was granted bail for six months on 22 February 2021. He was however released on bail on 2 March.

In all, Rao approached various courts 7 times, between December 2018 and July 2020, and he filed 4 bail pleas before special courts, and 2 appeals and a writ before the High Court. All 4 pleas were rejected (including 2 medical bail applications), and while one appeal still remains pending (his appeal against the rejection of regular bail by the Pune Special Court on 6 November 2019), his appeal against the rejection of medical bail by the NIA on 26 June 2020, his writ demanding proper medical treatment, and his wife’s writ demanding his release under Art. 21 of the Constitution formed the basis of the HC’s judgment for bail.

Addressing the consequences of the UAPA and law of sedition in a webinar on 24 July 2021, Justice Madan Lokur, former Supreme Court judge, drew attention to the “soft torture” practiced in prisons through overcrowding and lack of hygiene, and paucity of toilets among other abysmal conditions. “Soft torture” then is not exceptional and targeted violence but the mental and physical harm that prison inmates undergo because of the conditions in which they are forced to live. Rao’s “soft” torture began from the time of his arrest, in November 2018. He fell unconscious while in police custody in Pune and had to be hospitalized at Sassoon Hospital between 18 and 25 November 2018. Again, while in Yerwada Central Jail, he was hospitalized twice, in December 2018 and February 2019.

Death in Judicial Custody: the Last Nine Months

On 7 July 2021, the ten accused in the Bhima Koregaon case lodged at Talaja Central Prison, where Stan too was incarcerated, observed a one-day hunger strike in protest against the “institutional murder “of Stan Swamy on 5 July. We join them here in drawing attention to some of the aspects of the completely arbitrary and wanton incarceration and death.

Stan was remanded to judicial custody and sent to Talaja Central Prison in Navi Mumbai on 9 October 2020. The last among the accused in the Bhima Koregaon case to be incarcerated, at 83 he was the oldest. At the time, Varavara Rao was already struggling for life, a victim of the NIA, the courts, and the prison conditions. Given Stan’s age, serious illnesses and co-morbidities which placed him in the high-risk category for contracting Coronavirus, it was obvious that his stay in prison would be tortuous, even dangerous. The NIA and jail authorities from day one lodged him in the jail dispensary, thus betraying their awareness of Stan’s fragile medical condition.

In October 2020, the population of Talaja jail reportedly stood at 4000 plus, nearly double its housing capacity of 2,124 prisoners. Notwithstanding the HPC’s orders regarding decongestion of prisons in the light of the pandemic, the Talaja jail was the only one in the Mumbai Metropolitan Area that continued to admit new inmates, of whom Stan was one. In the Bhima Koregaon case alone a total of six inmates were imprisoned in Talaja after the outbreak of the pandemic. Stan’s chances of getting interim bail because of the pandemic were practically non-existent, as the HPC ‘s orders excluded those charged under UAPA from availing such relief. At the time of Stan’s death in July the prison population post-decongestion reportedly still hovered around 3000. The overcrowding in the jail made social distancing impossible. Under such conditions it was inevitable that Stan would contract Covid.

Covid in Taloja

By mid-May Stan was already displaying what by then were well-known symptoms of Covid: diarrhoea, fever, and extreme fatigue. He was administered some generic medicines for what was a rapidly advancing infection. The RT-PCR test was conducted on 28 May in Holy Family Hospital at the court's orders. On 30 May Stan tested positive and was put on oxygen support. From thereon it was a steady deterioration and Stan passed away shortly before his bail hearing on 5 July.

Stan fell victim to the prison authorities' routine violation of Covid protocols on social distancing, sanitisation, testing, vaccination, and treatment. Vaccination began in Maharashtra prisons in March 2021. Despite being in the high-risk category, Stan was vaccinated only on 18 May, the delay being because he lacked an Aadhaar card. The central government waived the mandated requirement of an Aadhaar card (and other designated ID proofs) for vaccination for certain social groups, including prisoners, in an SOP (Standard Operating Procedure) issued on 6 May under which prison officials were to ensure that inmates were vaccinated, and on 12 May, the Bombay HC ordered all state government institutions to follow the same. The HC also directed the state to fill up vacancies for doctors and other medical staff in prisons. However, it took the jail authorities another six days to get Stan vaccinated on 18 May, when he was already suffering from an infection. His serious ailments and age notwithstanding, he was taken to hospital for vaccination unlike the other inmates who were vaccinated in jail.

Stan, however, was not the first victim of the jail officials' negligence and callousness. Exactly two months earlier, on 5 May, a much younger inmate, Vishal Anand Dasari, an under-trial in his twenties arrested under the POCSO Act (Prevention of Children from Sexual Offences Act 2012) had succumbed to Covid at St George's Hospital. According to his brother, the prison authorities had ignored Vishal's complaints

about his health, and by the time he was taken to JJ Hospital on 30 April and tested, it was already too late.

Life in jail

Harassment and willful neglect characterised Stan's period of incarceration in Talaja jail from the very beginning, as he was deliberately targeted by the then Prison Superintendent Kaustabh Kurlekar. At the time of arrest, Stan brought with him a bag which contained a few essentials: a sipper, a few clothes, medicines, wallet with some cash and his voter ID card. However, Stan wrote in a letter that the "tumbler-sipper" that he used for drinking water and tea was "disallowed at the prison gate on entry on 9 October". Neither the jail authorities nor the NIA however saw it fit to replace what was a bare necessity for an octogenarian inmate suffering from Parkinson's. He was forced to use a child's "sipper" bought from the jail hospital. At the time of writing the letter, he did not know what had happened to the bag, either. Even after a court order, the jail officials took more than a week to finally supply him with the drinking aid, as mentioned earlier. Thus, a systematic and targeted erosion of Stan Swamy's right to life and dignity began with his entry in Talaja. In another letter Stan mentioned that the person who brought a sweater and socks he had asked for because he found the prison cold was turned away on three occasions.

It was apparent from the very beginning that Stan's suffering from Parkinson's Disease, a degenerative neurological disorder that requires careful monitoring and assistance, in addition to his other health problems and age, would make his stay in prison that much more difficult than is "normal". The lived daily reality of his prison experience and hardships, comes through in his early letters (see below).

“Dear friends,

Thank you so much for the solidarity support by so many, for me and my co-ac-cused. I am really grateful.

The Prison administration provides breakfast, tea, milk, lunch and dinner. Any additional edibles are to be purchased from the prison canteen, twice a month. Also, newspapers, toiletries, stationary and other essentials can be purchased through the prison canteen.

My needs are limited. The Adivasis and the Society of Jesus have taught me to lead a simple life. I had brought with me a “sipper-tumbler”, to drink tea and wa-ter. However, the same was disallowed at the prison gate, on entry on 9 October.

Now, I am using a baby-sipper mug, which I purchased through the prison hospi-tal. I have communicated this need to our lawyers. I am still awaiting to receive the sipper-tumbler.

Varavara Rao is very sick. Kindly, pray for him. Listening to the life-narratives of the poor prisoners is my joy in Taloja. I see God in their pains and smiles.

Fr. Stan Swamy SJ”

[...]

“Dear friends,

Peace! Though I do not have many details, from what I have heard, I am grateful to all of you for expressing your solidarity support. I am in a cell approximately 13 feet x 8 feet, along with two more inmates. It has a small bathroom and a toilet with Indian commode. Fortunately, I am given a western commode chair.

Varavara Rao, Vernon Gonsalves and Arun Ferreira are in another cell. During the day, when cells and barracks are opened, we meet with each other. From 5.30 pm to 06.00 am and 12 noon to 03.00 pm, I am locked up in my cell, with two inmates. Arun assists me to have my breakfast and lunch. Vernon helps me with bath. My two inmates help out during supper, in washing my clothes and give massage to my knee joints. They are from very poor families.

Please remember my inmates and my colleagues in your prayers.

Despite all odds, humanity is bubbling in Taloja prison.

Fr. Stan Swamy SJ”

Stan was not allowed to share a cell with the others accused in the Bhima Koregaon case. Staying locked in for fifteen and a half hours in a cell which was shared with two others was clearly difficult. In the time he was let out, Arun and Vernon helped him to bathe and eat his breakfast. His two cellmates helped him with meals, washed his clothes and pressed his aching knees. Amidst his own hardships in prison, Stan wrote about the poverty of all those incarcerated, and asked for support for them. Stan's humanity and concern for the poor stayed with him in prison.

Stan's empathy for his impoverished cellmates apart, the letters are a reminder that when Stan first entered prison, though he required assistance for some of his daily chores, he could carry out several tasks on his own and his body was very functional. However, by May the situation had changed drastically, and Stan told the High Court:

"The main issue is that eight months ago I could take a bath by myself; I could take a walk; I could do some writing by myself. But all of these are disappearing one after another. So, Talaja jail brought me to a situation where I can neither write nor go for a walk by myself. I can't eat. Somebody has to feed me through a spoon."

Why did Stan's health degenerate so very rapidly?

Health Facilities

The rapid degeneration can be attributed to prison conditions, especially the poor health infrastructure in the jail, which made adequate medical treatment impossible. Talaja Central Prison, Navi Mumbai which came up in 2008, is the ninth and newest central jail in Maharashtra. It has three Ayurvedic doctors and two compounders. The ratio of doctors (3) to prisoners (approximately 3000) in decongested conditions is still 1:1000. Other prisoners perform the task of looking after ailing inmates, as in Stan's case and earlier Varavara Rao's. Talaja is thus grossly understaffed and the available medical staff nowhere near approximates the one medical superintendent who is an

MD, five doctors all with MBBS/ MD degrees, three staff nurses, three nursing assistants, two pharmacists, two lab technicians and two psychologists stipulated under the Maharashtra Prisons (Prison Hospital) (Amendment) Rules, 2015. In the absence of MBBS doctors, it is valid to assume that allopathic treatment is routinely prescribed by the Ayurvedic practitioners in Taloja.

Prisons are opaque institutions, invisible and inscrutable to the public eye, and their refusal to divulge information adds to the repression associated with state institutions. Hence, other than official documents, correspondence, and sporadic news reports, it is difficult to know conclusively what kind of treatment Stan was given for his ailments, though one would surmise that in the jail hospital he would have only been treated by Ayurvedic practitioners. Stan had complained about the absence of an MBBS doctor at Taloja hospital. Based on court documents and letters, it has been reported that the medicines he was administered in Taloja for Parkinson's were different from what he was taking before imprisonment. The Jail Superintendent Kaustabh Kurlekar, when asked reportedly said that a visiting psychiatrist treats Parkinson's in Taloja; that Kurlekar wasn't a doctor and so could not comment on the line of treatment; that probably Stan's prescriptions from Jharkhand were being followed; that Ayurvedic doctors could administer allopathic medicines under the Practitioner's Act, and that since he was not the 'appointing authority' he could not be held responsible for the absence of MBBS doctors. The last two were responses to issues repeatedly raised by Stan and his friends.

Further information about Stan's life in jail was curtailed by lack of communication. Xavier Dias reported in a virtual conference on 15 May organised by family, friends and associates that he was not allowed to call Stan though he was registered as Stan's contact in prison. Stan was allowed sporadic calls, but their brevity and the poor quality of the connection between Mumbai and Ranchi, made meaningful conversation impossible and restricted knowledge about Stan's life in

prison. This surveillance and control of communication by prison officials maintains the opacity of the institution and makes it that much more difficult to learn of its operations.

As demonstrated in the previous chapter, the NIA argued against Stan's pleas for medical and regular bail and the courts agreed by refusing him the much-needed relief. This coincidence between the investigating authority and the courts based purely on *prima facie* charges and defended as 'due process under law', equally informs the attitude of the other institutions, the prison and the hospital, in aiding and abetting the process of denial of bail. At various stages of the bail hearings, the courts asked Taloja jail officials and JJ Hospital for reports on Stan's health and the facilities provided by the prison administration. The contents of these allowed the NIA to argue that Stan did not require medical bail.

In their submission as counsels for Varavara Rao's medical bail plea, Indira Jaising and Anand Grover drew attention of the Bombay High Court to the fact that "there were no staff nurses, no pharmacists, no compounders, no nursing assistance, no Lab technicians and no medical specialists at all, to attend to the inmates at the Taloja Central Jail hospital." The court agreed that the jail was "ill equipped and inadequate" to take care of the health of an under-trial. Thus, even while the Jail Superintendent refused to be held responsible, the sorry state of Taloja had been documented in court. Despite this knowledge, the NIA insisted that Stan should stay in prison!

Stan's emphatic rejection of the High Court's advice on 21 May that he should get admitted in JJ Hospital starkly exposed the systemic denial of prisoners' rights, and especially their health:

"I would rather die here [Taloja]. I would prefer this than be admitted ...I have been to JJ hospital. What medicines will the JJ Hospital give me? I have been there twice. I know the set-up. I don't want to go there. I prefer to be with my people in Ranchi". About his health he

added, "It will not improve, it will keep going. I would rather die here very shortly if things go on as it is." And he did.

Institutional Culpability: The Talaja Central Prison

In their 7 July protest the Bhima Koregaon under-trials held the NIA and the Jail Superintendent Kaustabh Kurlekar squarely responsible for Stan's "institutional murder" and highlighted the vindictive behaviour of the Jail Superintendent who never missed a single opportunity to "harass" Stan, whether it was the "ghastly treatment" meted out to him inside the jail, the haste to transfer him back from hospital to jail, or even denying him trivial things like a sipper.

It may be recalled that on 4 July, when Stan's condition was already very serious and the bail hearing was coming up the next day, the Jail Superintendent was shifted out of Talaja and attached to the office of IG Prisons. Over a period of time, he had become the public face of the state in the Bhima Koregaon case, both because of his public targetting of Stan and the violation of prisoners' rights by the Talaja authorities brought to light by the family and friends of the Bhima Koregaon accused. Around 28 June the news surfaced that Kurlekar had approached the NIA Special Court asking for the transfer of all the Bhima Koregaon accused out of Talaja on the grounds that they were spreading "false information" with the intention of pressurising the jail authorities.

Stan's death and the consistent efforts of those associated with the Bhima Koregaon accused have to an extent breached the walls of silence and secrecy that keep the goings on in prisons hidden from the public gaze and have brought to light the power of life and death that prison administrators wield over those in their custody. In a context where prison officials are an endemic part of maintaining, enforcing, and perpetuating the systemic violence of the carceral system, Talaja Superintendent Kaustabh Kurlekar's transfer is an attempt by the state to shield Kurlekar *and* evade its own culpability for Stan's death. Notably, no criminal accountability has been fixed for Stan's death and the

The Truth behind “false complaints”

Around 28 June the news surfaced that Superintendent Kurlekar had approached the NIA Special Court asking for the transfer of all the Bhima Koregaon accused out of Taloja on the grounds that they were spreading “false complaints” with the intention of pressurising the jail authorities. In all he had sent three such applications, on 7 April, 17 June and 27 June 2021 seeking their transfer, all of which have been passed by the Special NIA Judge Kothalikar.

Over the last few months those actively connected with the Bhima Koregaon accused had drawn attention to the abysmal infrastructure in Taloja Jail, and the arbitrary behaviour of the Prison Superintendent. In June 2020 Gautam Navlakha’s partner detailed the conditions in the quarantine center where Navlakha was kept before being shifted to Taloja in a letter. 360 inmates were kept in 6 rooms with three toilets between them. On 7 December 2020 she issued a statement that the jail authorities on 5 December stopped a parcel with spectacles sent to Navlakha to replace the pair which had been stolen. It took the Bombay High Court’s observation with reference to the spectacles that “humanity is most important” and that “this is high time to conduct a workshop for jail authorities”. On 11 May Hany Babus’s wife and two brothers issued a press statement drawing attention to the delay by the jail authorities in getting Hany Babu treated for a serious eye infection. Moreover, the statement said that the infection worsened in the meantime because the prison water with which he was forced to bathe his eye was dirty, a charge which the Superintendent has vehemently denied. Babu was finally admitted to JJ Hospital on 12 May where he tested Covid positive. On 15 May at the virtual press conference held by the families and friends of the Bhima Koregaon accused Mahesh Raut’s sister spoke about not being allowed to reach medicines and an oximeter to her brother. In June 2021, Surendra Gadling’s wife drew attention to his extended quarantine in a small room with sixty other inmates, even after testing negative for a suspected Covid infection. On 3 July the Bombay High Court had issued notice to the Maharashtra Government, the NIA and the Taloja Jail Superintendent response to a petition filed by Anand Teltumbde and Vernon Gonsalves’ asking that the court direct the jail Superintendent to allow exchange of letters between them and their husbands. They demanded an inquiry and action against Superintendent Kurlekar for withholding and delaying letters from all ten Bhima Koregaon accused to their families, which is against Jail rules. He had also withheld books sent for them.

state government has not acted on the demand of the Bhima Koregaon accused, who witnessed the events inside the jail, that charges under Section 302 (murder) of the IPC be filed against NIA and the Prison Superintendent, Kaustabh Kurlekar. The immunity of prison officials continues with the state once again protecting its own.

The SC has often held that the fact of incarceration does not imply that a prisoner loses all his fundamental rights or that he ceases to be a human being entitled to rights. The loss of liberty does not mean loss of life. While the tenet is oft repeated, the frequency of custodial deaths points to the contrary. More often than not, such deaths go unnoticed because the victims come from the most marginalised sections of society, too poor to even post bail, or are perceived as “deserving” such deaths because of their social and political locations. Life in jail is clearly expendable, given that most of the deaths could be prevented. Stan’s death in judicial custody, thus makes him one of many for whom loss of liberty has meant loss of life, including life with dignity. Stan’s custodial death, however, is extraordinarily significant, not least because of the visibility it has garnered. An agitator for prisoners’ rights in life, Stan’s death as an inmate on the other side of the prison walls speaks out against the denial of the fundamental rights of people by the state and arguably it’s most coercive institution, the prison.

Requiem for a Fallen Comrade

Stan Swamy's detention under the UAPA conforms to a pattern established over many years whereby those questioning the acts of omission and commission of the prevailing regime become liable to be deemed as enemies of the state. However, the sheer incongruity between an entire lifetime devoted to an altruistically informed public service, on the one hand, and his alleged criminality, on the other, unravels the hollowness of the state's commitment to social, economic, and political justice which, in principle, is the core agenda of governance in independent India. This contradiction perhaps explains the widespread dismay in the public mind at his incarceration; and his custodial death metamorphosed this dismay into outrage.

Stan will always be remembered. On July 18, a congregation of friends and supporters etched his name on the *pathal* marking the names of martyrs who died in the struggle against State repression, in the precincts of Bagaicha campus that he helped establish. Stan's dedication to the cause of marginalized Adivasi communities exposed the contradiction between the current development model of the Indian state and the livelihood concerns of tribal communities. His activism, which in a sense brought the Constitution to life, centred on demands for the protection of the water, forests, and the lands through which the Adivasis derived their livelihood for centuries. It contested and contradicted the corporate-centric developmental model of a regime that advocates the exploitation of natural resources to generate profits for the corporate sector. The slogan, '*jaan denge par zameen nahi denge*' (we would rather die than give up our land), which was the *sine qua non* of a coalition of people's organizations, eloquently conveys the life-and-death situation that confront the Adivasis because of the collusion between capital and the state. Indeed, as formulated by Stan Swamy, they have been pitted against an eco-system he characterised as 'political Brahmanism,' which draws parallels between an oppressive Brahmanical order and the exploitation of Adivasis by corporate interests.

Historically, the state has unleashed its armed might against these communities to crush their struggles against the corporate aggrandizement of their resources. All post-Independence regimes, both at the centre and the states – creations of India’s electoral democracy – have consistently failed to incorporate the plight of the marginalized in agendas of governance. Worse, both the current Bharatiya Janata Party (BJP) government and the National Democratic Alliance (NDA) government that preceded it, have conflated Adivasi resistance with terrorism and have provided a rationale for state repression, which includes the application of draconian laws. We need to remind ourselves that the roots of these rights and principles were embedded in the Independence movement, and therefore the struggles by marginalized communities in contemporary India for social, economic, and political justice are a form of social engineering designed to achieve this goal.

The draconian law at the centre of Stan Swamy’s death is the UAPA, which normalizes years of incarceration before the accused has even stood trial. Under the UAPA, no person accused of terror offences can be granted bail if the court finds reasonable grounds to believe that the accusations against her are *prima facie* true. An April 2019 judgment of the Supreme Court further held that courts cannot go into questions concerning the admissibility or credibility of the evidence against the accused and have to presume the material against the accused can be relied on while deciding the granting of bail under UAPA. Thus, after a charge-sheet is filed, this bail restriction becomes impossibly difficult to traverse. If the material in the charge-sheet cannot be questioned, what other conclusion can a court come to, except that the accusation against the accused is *prima facie* true? Despite a plethora of Supreme Court judgments pronouncing that bail is the rule and jail the exception, the court has cemented a UAPA regime where the converse is true. Stan Swamy challenged the constitutionality of the UAPA’s harsh bail restrictions on 2 July a few days before his death, arguing that making pre-trial incarceration the norm under the UAPA is mani-

festly arbitrary and offends the presumption of innocence guaranteed under our Constitution. Courts have not yet decided his petition, nor adjudicated the constitutionality of these bail restrictions in any other case, and it is profoundly ironic that Stan died in the custody of a constitutional court, which, in principle, is the ultimate protector of the right to life.

Stan's death in judicial custody in times of Covid-19 is not a coincidence as it reveals the utter indifference that prisons show towards the health and well-being of prisoners generally, and their absolute incompetence in dealing with the fallout of the pandemic on individuals. This institutional disregard for individual welfare is systemic and historic as prison reforms have never been seriously attended to, and, as a result, prisons continue to display their colonial mindset in structure and authority. In Stan's case, routine *and* collusive state power ensured that neither the prison administration nor the investigative agency ever acknowledged how Taloja's abysmal health facilities were responsible for Stan's deteriorating health. The matter of prisoner rights has never been an institutional concern; it has always been left to the prisoners and their families and lawyers to raise the questions of the horrifying conditions as well as the arbitrary and vindictive mindset of the administration.

Added to the issue of institutional neglect is the continuing problem of overcrowding in prisons. This increase in prison population testifies to the growing nature of mass incarceration, an issue that reminds us that crime and criminality of all hues—political or otherwise—form the seamy truth of democracy. This is starkly evident in the absence of concern and knowledge regarding the reality of prisons in political discussions which are focused on crime and punishment. Stan's death urgently questions this indifference and dissimulation of civil society towards those incarcerated, and his case exemplifies how the state criminalizes dissent in order to preserve and fuel the myth of national security.

In this scenario of escalating preoccupation over national security, a situation that automatically leads to shrinkage of political rights and obliteration of prisoner rights, the role of courts as upholders of justice become critical. However, instead of being bulwarks that protect our fundamental right to life and liberty, courts have often refused to intervene when it comes to extraordinary laws like the UAPA, therefore becoming complicit in the state's endeavours to silence its opponents. Barring the multitudes who somehow live out their lives unmindful of the toxic political ambience around them, the few who highlight fault lines in their society become liable to fall under the dark shadow of state power. The fact that the NIA court denied him bail on the ground that "the collective interest of the community" outweighed his precarious health condition strikingly points to a judiciary overwhelmed by the power of the executive. In a lecture delivered on 30 June 2021, the Chief Justice of India stated categorically that "the judiciary cannot be controlled, directly or indirectly, by the legislature or the executive, or else the Rule of Law would become illusory" (*The Indian Express*, 2 July 2021). Not unrelated to this cardinal principle underlying an independent judiciary, another Supreme Court judge pronounced, "Our courts must ensure that they continue to remain the first line of defence against the deprivation of liberty of citizens" (*The Indian Express*, 14 July 2021). The world would not have lost Stan Swamy if these fundamental judicial precepts had been practised.

Stan's death in judicial custody has exposed, beyond belief, the complete lack of accountability of the present system.

PUDR demands:

Action against Talaja Superintendent, Kaustabh Kurlekar, for wilful neglect and harassment caused to Stan Swamy and other accused in the Bhima Koregaon Case.

Action against NIA counsel for opposing medical bail petitions of Stan and other accused, and for misleading courts into believing that prison health facilities are sufficient.

Judicial inquiry into the health infrastructure in Talaja Jail.

Withdrawal of the Bhima Koregaon case and immediate release of all 15 arrested in it.

Repeal of UAPA and release of all political prisoners held under it.



This poem was posted by Fr. Stan on 7 April to Fr. Joseph Xavier and received on 27 May. On 28 May the Mumbai High Court allowed Fr. Stan to be admitted in Holy Family Hospital, Mumbai.

Light, Hope, Love – The New Order (From Taloja prison)

Light overpowering darkness
Hope replacing despair
Love winning over hate
Is the message of Jesus risen

Darkness, despair descended on me
At lower court declaring me complicit
Of waging war against the State
As such not deserving bail

And what was the evidence?
Some documents planted in my computer
Which were supposedly addressed to me
Something I myself was not in the know

My co-accused colleagues
Assured me this accusation is nothing new
They too have been accused similarly
I was thus consoled to be in their good company

But fight we will till the end
Not so much just to save our skin
But to speak truth to power
Counting all the while you all are with us
in mind and heart.

Published by:

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