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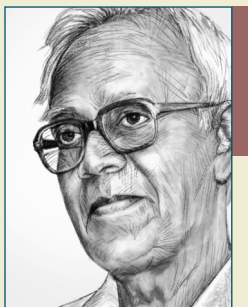
STAN SWAMY A LIVING LEGACY



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age, of 83, his health conditions, nor Covid-19 protocols, despite Stan's plea that he was ready for virtual interrogation. The NIA had already interrogated him in July 2020 for 15 hours.

Realising that the arrest was politically motivated, the Jesuits applied for medical bail, through their Advocate Sheriff Sheik in the Sessions Court in Mumbai. After four months, the Sessions Court rejected his medical bail. An appeal petition was filed in the High Court of Mumbai stating that continuous incarceration in Taloja prison will be detrimental to his health.

July 5, 2022, marks the first death anniversary of Fr. Stan Swamy SJ.

The National Investigation Agency (NIA) took custody of Swamy on October 8, 2020, from Bagaicha, Ranchi, for his alleged linkages with Maoists and Naxalites.

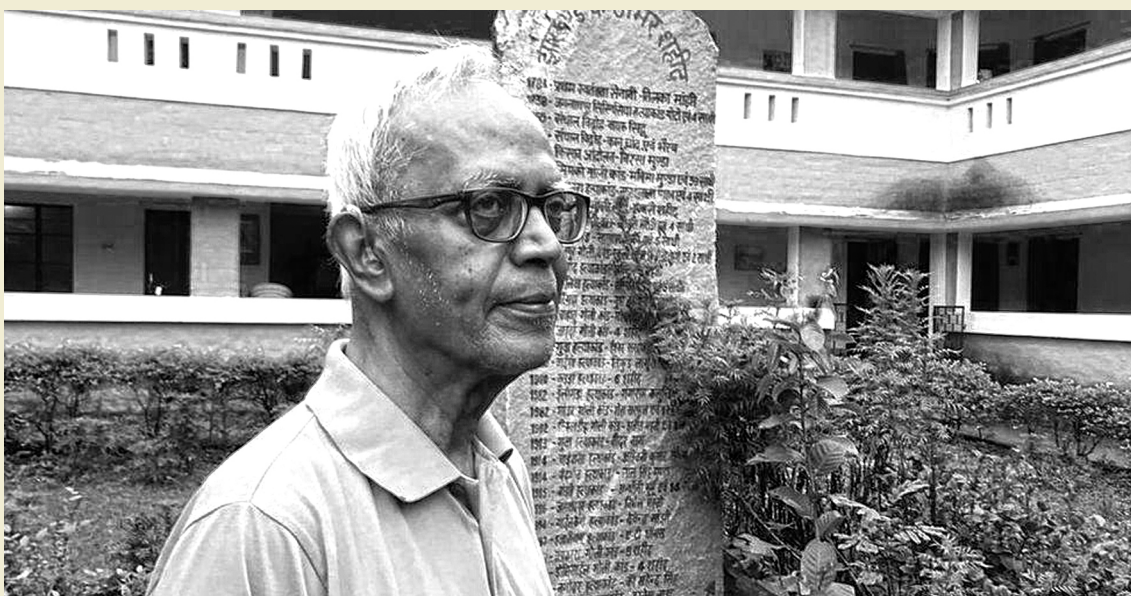
Fr. Stan founded Bagaicha to serve as a nodal social centre for the Jesuits and Adivasis of the Chottanagpur region. Though the NIA filed the charge-sheet in the Sessions Court (NIA Special Court) in Mumbai on October 9, 2020, when Stan was produced in person in the court, there was no indication of when the trial would begin.

The arrest took place against the government's pandemic advisory as well as the rights of the elderly persons. The NIA did not respect his

Then, Covid-19 was rampant in Taloja prison. There were just a few medical personnel to attend to the inmates. The High Court judge had a virtual conversation with Stan and ordered that he be shifted to a private hospital in Mumbai. The doctors diagnosed that his health condition was deteriorating, and the aftereffects of Covid-19 were evident clinically.

On July 5, 2021, when his bail petition was to be heard by the Mumbai High Court, Stan died at the age of 84, as an undertrial at the Holy Family Hospital, Bandra, Mumbai.

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However, as Stan was no more, any further legal proceedings require a legal heir who is eligible to sign the documents. Stan left his family and joined the Society of Jesus many years ago. The Jesuit companions are his legal heirs.

Fr. Jerome Cutinha SJ missioned Fr. Joseph Xavier SJ, Director of Indian Social Institute Bangalore to coordinate and monitor the development of the case and Fr. Frazer Mascarenhas SJ to be considered as next of kin of Stan.

Advocate Mihir Desai impressed upon the High Court by explaining how the Society of Jesus, a religious order functions and only a Jesuit can be a legal heir as per religious practice. The Court admitted the petition and allowed Fr. Frazer Mascarenhas SJ, the former principal of St. Xavier's College, to function as the legal heir of Stan and authorised him to sign the vakalat.

This procedure took some months.

After this breakthrough, Mihir filed another petition in the High Court with a specific prayer that the High Court allow the continuation of the trial process of Stan, as the aggrieved party, namely the Society of Jesus, would like to clear Stan's name from all allegations. The prosecution (NIA official) opposed this petition and wanted the case to be closed.

Mihir argued that the alleged offences under UAPA have damaged not only the name of Stan, a human rights activist but also that of a well-known organisation, the Society of Jesus, which has done enormous service to the people of India. The High Court admitted the petition for further hearing. During these months, a few other developments took place which derailed the legal proceedings.

Hon. Justice Shinde, who has been hearing the Bhima Koregaon cases in the High Court of Mumbai recused himself, stating that his continuation in hearing the case has become untenable. He made this appeal to the Chief Justice of the Mumbai High Court.

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The organisation called The Legal Rights Observatory, an organisation affiliated with the Hindu nationalist group, the *Rashtriya Swayamsevak Sangh* took up a campaign against Justice Shinde, asking the President of India to impeach him, for making Stan a martyr.

The day after the funeral service of Stan in Mumbai, Justice Shinde said, "I do not watch TV. I happened to see a meaningful and magnanimous funeral service."

This spontaneous comment of the High Court Judge infuriated the RSS outfits. They engaged in a devastating personal attack on Justice Shinde. About three months ago, the NIA filed an additional charge-sheet in the form of seven volumes. At least in three volumes, Bagaicha is mentioned.

In the meantime, despite local vendetta politics, an interesting development took place in the international arena. The Working Group on Arbitrary Detention, besides expressing its grave concern over Stan's death in judicial



custody, has sought answers from the Indian government on four specific questions. The 13-page report also stated that the death of the Jesuit priest and Adivasi rights activist in judicial custody will “forever remain a stain on the human rights record of India”. (Rf: <https://www.ohchr.org/sites/default/files/2022-03/A-HRC-WGAD-2021-57-India-AEV.pdf>).

On June 2, 2022, the Martin Ennals Foundation, a renowned international human rights organisation in Geneva, recognised Stan’s contribution posthumously. The chief of the foundation,

Isabel de Sola said, “We decided to honour Fr. Stan with the Martin Ennals Award. But unfortunately, he passed away. As per the policy of the foundation, no one is awarded posthumously. So, we decided to honour him publicly for his contribution to the Adivasis of India.”

The petition in the High Court is expected to come up for hearing any time soon, as the Court has resumed its work after the summer vacation. As and when the High Court allows the petition, Stan will be technically treated as one among the BK-16 and will be part of the trial proceedings, whenever it commences.

A favourable order from the High Court would also allow the Jesuits to access materials confiscated by the NIA and prove Stan’s innocence in the court of law.

The Latin maxim ‘ei incumbit probatio qui dicit, non qui negat’ means ‘presumed innocent until proven guilty. The Universal Declaration of Human Rights, Article 11, states: “Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to the law in a public trial at which he has had all the guarantees necessary for his defence.” Stan is innocent *de facto* (factually) and he will be proved innocent *de jure* (legally).

The faith in our judicial system and unflinching hope in humanity keeps the Jesuits, partners and friends to continue to take forward Stan’s legacy and mission.

Joseph Xavier SJ is Director,
Indian Social Institute, Bangalore.

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