

A strong Indian state must be humane too

Having an audit system to review cases such as Fr. Stan Swamy's will also help **reassure international liberal opinion**



VIVEK KATJU

Father Stan Swamy passed away in a Mumbai hospital last week, on July 5, while his case for bail was going on in the Bombay High Court. On being informed of his death, the Bench hearing his case is reported to have observed, “with all humility at our command, this is a shocking news. We passed that order, to take him to the hospital of his choice. We have no words to express our condolences...” Fr. Swamy, 84, was suffering from Parkinson's disease, bilateral hearing loss, back pain and “generalised weakness”. His health had begun to deteriorate since his incarceration in Mumbai, after his arrest on October 8, 2020, by the National Investigation Agency (NIA) under the Unlawful Activities (Prevention) Act (UAPA), in the Bhima Koregaon case. On May 28 he was moved to a private hospital, following a court order, but his condition had worsened. Meanwhile the court had continued hearing his bail application but not arrived at a decision.

Global criticism

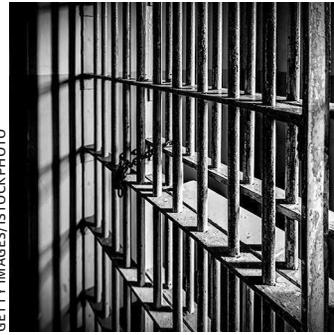
Like the Bombay High Court Bench, Fr. Swamy's many admirers in India and abroad would have been “shocked” at his death while still in custody. This important fact – that he continued to be in custody in Mumbai – will not be missed by those who followed the case, including human rights or-

ganisations abroad, for Fr. Swamy had wished to be allowed to return to Jharkhand, but tragically that was not to be. Naturally, even then the law would have taken its course in respect of the trial.

The Indian system's treatment of Fr. Swamy has attracted substantial and pointed criticism from significant international quarters. Mary Lawlor, the United Nations Special Rapporteur on the situation of Human Rights Defenders, after his death, plainly made the accusation that he was arrested on “false charges of terrorism”. The European Union's Special Representative for Human Rights, Eamon Gilmore, did not go so far, but said that the European Union had been “raising his case repeatedly with the [Indian] authorities”. In a statement on July 6 on Fr. Swamy's death, Liz Throssell, the spokesperson for the United Nations High Commissioner for Human Rights, Michelle Bachelet, stated, “We are deeply saddened and disturbed” and went on to describe him as a “long standing activist, particularly on the rights of indigenous peoples and other marginalised groups”. The United States State Department expressed sadness at his death and called him a “Jesuit priest and tribal rights activist”. And, the United States Commission on International Religious Freedom “condemned in the strongest terms the deliberate neglect and targeting by the government of India that led to the death of Father Stan Swamy... long-time human rights defender”.

A defence that is wooden

While denying him bail, a special NIA court concluded that the “material placed on record thus prima facie denote[d]” that Stan Swamy



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“was not only the member of the banned organisation Communist Party of India (Maoist) but he was carrying out activities further in the objective of the organisation which is nothing but to overthrow the democracy of the nation”. This opinion clearly has not been taken into consideration nor has it been found to be credible by international observers. Fr. Swamy has continued to be described as a human rights activist.

It is also doubtful that the defence of the Ministry of External Affairs (MEA), that “Authorities in India act against violations of law and not against legitimate exercise of rights. All such actions are strictly in accordance with the law”, will find many takers in respect of the Fr. Swamy case, both with regard to his arrest as well as denial of bail.

In response to criticism in the case, the MEA, on July 6, also noted that “India's democratic and constitutional polity is complemented by an independent judiciary, a range of national and state level Human Rights Commissions that monitor violations, a free media and a vibrant and vocal civil society. India remains committed to promotion and protection of human rights of all its citizens (<https://bit.ly/3kh4CCN>)”.

This, no doubt, is true as a general proposition. However, these words will inevitably be refracted through the prism of denial of bail to an ailing, very old man who was considered by influential sections of international opinion to have been an activist for the tribal people, assisting them in the preservation of their rights and their way of life. Also, inevitably, they will not be able to forget that it took almost a month for the jail authorities to provide a straw, sipper and winter clothes to Fr. Swamy, as Parkinson's disease made it difficult for him to hold cups or glasses. The ‘straw and sipper’ may become a visual metaphor, for words too paint pictures. These aspects, among others, will raise questions about the MEA's statement especially among Christian church groups abroad because Fr. Swamy was a Jesuit priest and it will not be unnatural for them to take some interest in the matter.

Perceived path of the state

All this will also be viewed in the context of the events of the past few years, when international liberal opinion has been deeply concerned by what it perceives as the direction taken by Indian society and polity. There is of course no question of pandering to such opinion on India's core security interests in issues relating to terrorism from abroad and indiscriminate violence driven by ideology-driven direct perpetrators of violence against the state causing, *inter alia*, the loss of innocent lives. However, diplomacy requires engagement with international liberal opinion, not wooden and inflexible assertions of general principles only. The Government has refused to engage with either

domestic or global liberal opinion.

What has to be realised is that even as the national public culture and mores seek to shed the vestiges of both their anglicised and Persianate past, it needs to retain the old value of caring. Indeed, a strong and effective state can and must also be a humane state, which it hardly was in the case of Fr. Swamy. When India embarked on the great national enterprise after Independence, it did so on the principle that it would achieve development not through an authoritarian polity but a democratic and liberal one, despite the obstacles and challenges that lay in the way.

For the superior judiciary

Yes, special laws were, and continue to be required to meet the challenges that arise from violence that cannot be confronted under the ordinary criminal statute. Their application, however, requires constant review. As jail is the rule and bail the exception for those charged under special laws, there should be very strong evidence to substantiate these charges. But in some cases, this is obviously not so. Consequently, the accused while languishing in jail for many years are acquitted during trials indicating that there was insufficient evidence *ab initio* to lock them up. This is unacceptable and the superior judiciary needs to redress the situation through an audit of such cases. Fr. Stan Swamy's case should provide an impetus to put such an audit machinery in place as India approaches the 75th year of its Independence. It will also reassure international opinion that India is a responsive state.

Vivek Katju is a former diplomat