

# From Kafkaesque to Orwellian in Postcolonial India: Neo-McCarthyistic Methodology in *The Curious Case of Binayak Sen*

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**Abstract** Famous pediatrician and human rights activist Binayak Sen was booked for sedition and hounded as a Naxalite in 2007. This decision was condemned by human rights activists from around the world as a case of insinuation and false accusations. In 2012 Mumbai based journalist Dilip D'Souza offers a discourse by deconstructing this case in his book *The Curious Case of Binayak Sen* through an intersection between law and literature. This paper delineates this piece of non-fiction within the ambits of Kafkaesque and Orwellian metaphors from literature in India's post-colonial context. Asserting this text's paradoxical status, once as literature and once as a legal document, D'Souza opens new annals in the socio-political genre. Also, designating this methodology of indictment to McCarthyism in the United States, this paper shall establish how the ramifications of India's colonial past sanction and entwine concepts like Kafkaesque, Orwellian and Neo-McCarthyism to hunt Naxalites. These books allow a triangular study of the work to probe if Binayak Sen is an 'urban naxal' and if sedition and dissent is well pronounced in India.

**Keywords** Binayak Sen; Orwellian; Kafkaesque; surveillance; Neo-McCarthyism

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“There are no private lives ...

This is a most important aspect of modern life.”

Philip K. Dick, *The Last Interview and Other Conversations*

## Introduction

Imagine a modern day Josef K. in an Orwellian locale, the quintessence of modern man baited by law and legality in the face of an ever-crushing authority. The nomenclatures, Kafkaesque and Orwellian have entered societal discourses so mellifluously that any critique of a harrowing totalitarian government cannot be complete without allusion to these two significant pieces of literature. When Kafka was writing *The Trial* in 1914 little did he anticipate that these series of works including *In the Penal Colony* (1919) and *The Castle* (1926) would serve as pointers towards a new kind of literature which would invariably be used in metaphorical terms by posterity. Similarly, when Orwell introduced the perils of data surveillance in his seminal book *Nineteen Eighty-Four* (1949), it was a prophecy of the futuristic dystopia only to be realized later. Since then, the term Kafkaesque has come to be used as a signifier of anything absurd from existential angst to legal punishment and divine judgment. While Orwellian, on the other hand has been used as a metaphor for a nation-state where privacy is namesake and citizens are puppets in the hands of an invisible authority. Literature had portended the birth of this despotic and autocratic entity that the modern state was bound to become early in the twentieth century with the publication of books like *We* (1924) by Yevgeny Zamyatin. Among various literatures, the latter half of the century has witnessed a swell in the writing of novels which include works like *The Transparent Society* (1998) by David Brin, *The Minority Report* (1956) by Philip K. Dick and *Oath of Fealty* (1981) by Larry Niven and Jerry Pournelle. This range of fiction is a pointer towards the portentous conditions of living in a technologically governed system where eyes are all over you.

Surveillance programs and reconnaissance have crawled into private human space with the very idea of inspection and control of citizens in the twenty-first

century. Countries which are predominantly police states exercise arbitrary power upon individual lives like we see in Nazi Germany or the Soviet Union or Cuba. The premise of totalitarianism was first used with respect to the fascist regimes that introduced all-pervading governance in which unlimited authority was vested in the hands of the state. An extreme form of socio-political condition wherein the personal lives of citizens are under scrutiny and control, totalitarian regimes became the order of the day after the Second World War. Totalitarianism was not dictatorship, neither was it authoritarianism, it was an extremist manifestation of both. According to Hannah Arendt in *The Origin of Totalitarianism* (1951) Nazi Germany and Communist Russia were the first countries which saw the unprecedented rise of totalitarianism. She asserted that Italian fascism was not a manifestation of totalitarianism but an authoritarian movement with a nationalist temperament. The roots of totalitarianism are not as important as the present day implications of this word which has been attached to numerous “signifieds” in the twenty-first century. In their article entitled “Bentham, Deleuze and Beyond: An Overview of Surveillance Theories from the Panopticon to Participation” Maša Galič Tjerk Tima Bert-Jaap Koops categorize surveillance optics into three divisions from Bentham and Foucault’s architectural designs of surveillance to Deleuze and Zuboff’s digital surveillance and surveillance capitalism. The third phase that we are living in today is just a furtherance of surveillance theories and optics already documented.

### **Surveillance and Neo-McCarthyism**

To attribute surveillance to the optics of colonialism in the nineteenth century would not be erroneous. In his article “Managing Dangerous Populations: Colonial Legacies of Security and Surveillance” Yael Berda theorized that 9/11 was not the watershed which brought about surveillance to the modern world, surveillance in fact has legacy which dates back to imperialism. The British carried out surveillance to monitor populations in their colonies, against breach or mass agitation. “Particularly in the British colonies, namely Egypt, India, Pakistan, South Africa, and Palestine, a plethora of surveillance methods were established to monitor “dangerous populations”: traveling passes, distinctive zones, and permit regimes” (Berda). Following this pattern of governance the decolonized era also continued the established pattern of security and facilitated the sustenance of this surveillance society. However, in the twenty-first century, the deadly impact of surveillance programs being carried out throughout the world came to light only in 2013 when Edward Snowden broke to the world that their ‘data’ was not safe.

Former NSA consulate, Snowden reported to newspapers that in America, personal data of citizens was under the vigilance of the state to the extent that they could be penalized for their acts in an unwarranted manner. The NSA was accused of collecting data of telephone agencies like the Verizon on a continuous basis over a prolonged time period. Newspaper reports blamed the NSA of the surveillance machination being carried out through a program named Prism to retrieve data from websites like Facebook, Yahoo and Google. Labeled as a traitor, he was put behind bars for having let out confidential information. However, Amnesty International along with other national and international organizations signed a petition for the release of Snowden and he has been hailed as a human rights activist who warned the world against the breach of trust being practiced in America. America along with the whole world is indebted to Snowden for being the “whistleblower” against the US intelligence agency.

India however, does not boast of being a police state or a country where absolutism and autocracy is promulgated. Little had Kafka or Orwell foreseen that the distressing milieu that these books had predicted could be used in context of a democratic country like India. Is using the phrase “totalitarian regimes,” in the context of India a miscalculation then? The Indian constitution has vested powers and fundamental rights to the citizens of the country with respect to the nature of democracy and legal bindings where each citizen is free and enjoys unrestricted freedom in the country. Why then has India been lured into the techniques of mass surveillance in vogue in countries like the Soviet Union and Germany. Does India’s postcolonial identity have to be blamed for the sole culpability of this status? The implementation of the Aadhaar card by the NDA government in India in 2016 and its close association to being a lethal instrument of mass surveillance is a matter of concern for the Indian democracy. In case of a breach of security a citizen’s demographic information as well as biometric information can be used to attain almost anything against the state. Apart from the hassle of the compulsory imposition of the Aadhaar card there have been other instances too where an individual’s liberty has been compromised with within the borders of the country. India is not a totalitarian state but the implication of certain policies lately, have drawn debates and conjectures in support of this allegation.

Another aspect of India’s totalitarian machination is a phenomenon which has resurfaced in the annals of socio-political existence of the twenty first century is a portent known as McCarthyism. McCarthyism began in the 1950s and spread like wildfire in the United States gulping citizens for crimes they had not committed. The resurgence of McCarthyism globally is known as Neo-McCarthyism. In

India specifically, this revival has resulted in a witch-hunt of communists on the basis of insubstantial evidence. In India today, the government is suspicious of citizens and judges them by the literature they read and by the friends they keep. Eminent personalities like Seema Azad and Binayak Sen were entrapped in the tentacles of this deadly scheme. Like U.S. senator Joseph McCarthy, (after whom the movement was named) the accused were labeled traitors and were held for sedition against the country. The sedition case against Kanhaiya Kumar in JNU brought with it a swell of articles across social media and the internet with the ominous reference to McCarthyism being practiced in India. Binayak Sen is one such victim of McCarthyism in India where he served jail for two years because he was convicted as a Naxalite on the basis of feigned and contrived testimony. India is thus bordering close to a world which is characterized by Kafkaesque surrealism, Orwellian omnipresence and McCarthyistic prosecution. In her article “The Spectre of Naxalism: Neo McCarthyism in India” Ish Mishra, professor of the department of political science, Hindu College writes:

The raising the scare of the specter of Naxalism by the ruling elite of the country and arrests, prosecution, and imprisonment of civil rights activists and opponents of Corporate-oriented anti-people policies under various draconian extra-ordinary laws, reminds the state of affairs in the USA in 1950s (Mishra).

This fear the democracy has of its own people is a situation of a paradoxical knot which cannot be unknotted until the judiciary and legislature undergo amendment. Neo-McCarthyism in turn is closely related to the hunting down of *urban naxals*. Recently the arrest of eminent personalities like Sudha Bharadwaj, Varavara Rao, Gautam Navlakha, Vernon Gonsalves and Arun Ferreira has brought a swell of criticism of the government which has arrested five people on ambiguous charges. In his article “Yet another Binayak Sen” Anand Teltumbde quotes another instance of a miscarriage of justice where Dalit activist Sudhir Dhawale is framed for sedition. It is outrageous that Sen has now been in prison in a prolonged trial that keeps shifting charges which are unclear and possibly politically motivated. Faith in the Indian justice system needs to be restored. Binayak Sen though long ago, was similarly perceived as a predecessor of the urban naxal.

### **The Curious Case of Binayak Sen**

With growing technological advancements, the governments of countries are encroaching on the liberty of personal space of citizens. When the state is suspicious

of an individual it is near impossible that the individual can lead a normal life. The Indian Judiciary has meted out many decisions that have been met with skepticism and raised eyebrows. One such case is the sentence given to well-known pediatrician and human rights activist Dr. Binayak Sen. Dilip D'Souza's analyses the conviction of Binayak Sen through his book "The Curious Case of Binayak Sen" published in 2012. This text is an amalgamation between law and literature. Though a non-fiction in terms of its generic classification, the book can be placed alongside literature by Kafka, Dostoevsky, Orwell and Camus if not by its literary merit but for its thematic resemblance and episodic narration of the existential dilemma of its protagonist much in the manner of literature. The book is divided into seventeen chapters, with the very first chapter beginning with generic statements and philosophy at length about the veneration of doctors in society. It unfolds in the manner of a fictive rendition where each chapter unfolds like a *buildungsroman* of Sen's life as a doctor, gradually building his reputation before the sinister case hauls his life to a standstill. However, D'Souza makes it very clear in the last section entitled Commentary. He says,

This book is not and never set out to be a biography of Binayak Sen. Nor is it an effort to paint him as a saintly man unjustly wronged. Nor a defense of Maoists.. Nor a jeremiad about India. . .

It hopes to make you ask this question: if the evidence presented against Sen is this flimsy, what does that say about the prosecution's own faith in its case? (D'Souza 177).

This book dissolves interdisciplinary boundaries and thus is at one time dystopian literature while at another a legal document. The aim of this article is to bring about a close allegorical analogy between the protagonist of Franz Kafka's *The Trial*, Josef K and Binayak Sen and determine how India today is drawing close on Kafka's Prague, a world of bureaucratic totalitarianism. To only speak of Kafka and Prague would leave out certain nuances that the case of Binayak Sen seems to offer. It also reads like a piece of fiction, much of the kind written by Orwell. "Given how frequently the adjectives "Kafkaesque" and "Orwellian" are employed, often in conjunction, in contemporary discussions of societal bureaucracy and hypersurveillance, comparative studies on the two author's works are surprisingly scant" (Shah 703). Drawing from this conjunction Binayak Sen's case reads like an intriguing story of injustice and persecution. Dilip D'Souza in his book *The Curious Case of Binayak Sen* lashes out his diatribe against this state-induced tyranny

which denounces a citizen by purposeful misinterpretation and predisposition. D'Souza's book shall form the central discourse even though there is a whole repertoire of literature on Sen after this infamous case, because it is an important holistic document on the mysterious nature of this case. Though multitudes of discourses have emanated in relation to this sinister case, D'Souza's book is taken as the central discourse to lay bare its literary dimensions when reading alongside Kafka and Orwell. Maligning the gap between fiction and nonfiction, this paper attempts at a faux pas of nullifying generic considerations, to emphasize how texts create meaning as text. This paper shall illustrate D'Souza's version of Sen's case as the quintessence of what literature had portended, oscillating between moments of absurdity and existential rhetoric.

### **Contradictions and Draconian Laws**

Born in 1951 Sen's life is an exemplary story of a man who wanted to make it count in society, until the ominous day of his arrest happened. Sen completed his degree in pediatrics from Christian Medical College (CMC) Vellore, where he received the Paul Harrison award for service to the poor. "He also trained in social medicine at the Jawaharlal Nehru University, New Delhi" (Jacob). In Dalli-Rajhara, Sen established the Shaheed Hospital for the mine workers who had no recourse to medical aid before the establishment of the hospital. Along with Dr. Saibal Jana, Sen worked in rural Chhattisgarh, four years after graduating. Among his most eminent work Sen is known to have spoken of malnutrition and society of "structural violence." Structural violence according to Sen was the condition where more than half the population of this country suffered from malnutrition. In his double capacity as a doctor and civil rights activist Sen's sympathy for the poor is evident in the work he did. With wife Ilina Sen he set up an NGO by the name Rupantar, with the "aim of providing medical and public healthcare to all the people in the area" (Jacob). "Rupantar trained people in community health work, deployed the workers in 20 villages and monitored their work" (Jacob). Sen was appointed the Health Advisor to the Chhattisgarh State Drug Formulary to advise on "matters such as community-based health services, strengthening of health surveillance, epidemiology, planning in the event of an epidemic and control of epidemics, health problems of the poor, capacity-building, rational drug use. . ." (Jacob). As the vice-president of the People's Union for Civil Liberties (PUCL) Sen investigated into "caste violence, Naxalite brutality, deaths in police custody and in fake encounters, and the atrocities of the Salwa Judum" (Jacob).

Twenty-two Nobel Laureates from across the world signed a petition for the

release of Binayak Sen when he was arrested for sedition in 2007. Men of intellect like Noam Chomsky and Amartya Sen criticized the verdict by observing this as a clear case of human rights violation on the basis of flimsy evidence. Binayak Sen's case against the State of Chhattisgarh thus became one of the exemplary cases in the history of the Indian judiciary where the machinations of law have ambiguously terminated a citizen. Sen was arrested on May 14, 2007 in Bilaspur on the following charges.

Appellant in Cr.A. No. 20/2011 Binayak Sen has been convicted for commission of the offence of sedition punishable under Section 124A of the IPC; sections 8(1), 8(2), 8(3) & 8(5) of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005; and Section 39 (2) of the Unlawful Activities (Prevention) Act, 1967.

The first charge under Section 124A of the Indian Penal Code is of sedition, which translates as any activity written or spoken or visual which may "excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life." Under sections 8 (1), (2), (3) and (5) of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam Sen was convicted as being a part of such meetings and organizations which are deemed unlawful. Section 39 (2) of the Unlawful Activities (Prevention) Act, 1967 convicted Sen of being a part of a terrorist organization which could be punishable for ten years with fine. Sen is accused of having transported three letters from ex-Naxalite Narayan Sanyal to a businessman named Piyush Guha in Kolkata. He is framed for having acted as a "courier for the Maoist movement" (D'Souza 61). Quite derogatorily Sen was referred to as the "naxali dakiya" (Naxalite postman) in newspapers and televisual media (Punwani). According to Sen, he was approached by the family of Narayan Sanyal for the treatment of his health while imprisoned in Raipur Central Jail. In his double capacity as a human rights activist as well as a doctor he visited Sanyal thirty-three times. In carrying letters from a prisoner the law is not broken, even if the prisoner is a Maoist. According to the Indian Penal Code this does not fall within the ambit of crime. Then why was Sen penalized with the burden of a mysterious crime he had not committed. Radhamadhab, brother of jailed naxalite Narayan Sanyal wrote to the superintendent of Raipur Central Jail in April 2006 requesting medical aid to his brother who was suffering from "Palmer's contracture." "Radhamadhab turned to Binayak Sen, who was not just one of the state's better-known doctors but also the head of the Chhattisgarh PUCL and therefore familiar with the laws and rights of prisoners" (D'Souza 65). The fact that

Sen met a Naxalite leader through proper channel and under proper supervision was not enough to declare that Sen himself was a Naxalite involved in some terrorist activity against the state. The offensive taboo associated with the term Naxalite is a stance associated with India's postcolonial legacy.

### **Epistolary Motif**

Binayak Sen was convicted on the basis of the three letters which have been summarized, to facilitate reading between the lines and scrutinize how these letters could possibly form the basis of life imprisonment. The first among the three letters is written by Sanyal in English, where he is lightly reprimanding someone disguised by the name V of not lending enough support to comrades as promised. He says "Why don't you send some fund to take to city friends so that they can do things. 30-50 thousand?" (65) He talks about his failing health and arthritis with queries regarding the progress of work and propaganda. The second letter is addressed as "Dear P" and it re-emphasizes the lack of funds to be able to carry out their propaganda. Sanyal expresses discontent with the fact that the movement needs "to expand to other areas" (65). "Without penetrating in these sectors, it is difficult to take the movement to the highest stage" (65). He coaxes the receiver to act, so that they can form an international congregation and assimilate the masses into the movement through indoctrination. The third letter, which is translated from Bengali begins with the endearment "Dear Friend" (67). Sanyal informs the receiver that his case has shown no progress whatsoever and he is helpless about the bail. "The advocate has been told but he is also unable to do anything. Maybe he is trying to delay. In my opinion, he is not doing anything seriously. Ask Tilak to talk. The state surely wants to delay as much as possible" (67).

D'Souza, in the text has a clear and succinct view of how these letters were depicted in a sinister light in favour of the state discourse to work against Sen. He says,

Again, my reaction while reading these paragraphs was, where's the crime? What is there in these letters that violates the law in Chhattisgarh? I realize that a prosecution that uses these letters as evidence will do its best to find suspicious phrases or hints of conspiracy and explain those to the court. Perhaps, they'll say, the language is all an elaborate code anyway. (68)

Is transporting letters from a person in jail to someone outside marked as crime in India? According to Sen's lawyer Ram Jethmalani, the content of any letter

or speech “would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order.” “The three “seditious” letters are themselves ludicrous. They are addressed to a “Dear Mr. P,” a “Friend V” and a “Friend” and are unsigned. They could have been written by anybody and planted on Guha. In any case their content is far from explosive” (Majumder and Mishra). It is surprising how Sen has been accused of being the carrier because according to the jail authorities his meetings were conducted under strict supervision, which implies that there is no proof of Binayak Sen actually carrying the letters.

### **Sedition as Colonial Legacy**

India’s position as a ‘post’ colonial nation is still a contested term today after more than seventy years of independence from imperialism. The colonial legacy of India has not run its course yet, policies of land inequality, feudalism and segregation of the society into classified strata led to the violent insurgency of the Naxalite movement in the seventies. Monopoly of power in the hands of the upper class was a vicious maze when India became independent. India’s identity as a hybrid nation-state persisted where on one hand the Bengali intellectual explicated the *babu*-culture by dressing, eating and reading like the British and on the other hand carried on this red revolution, the repercussions of which the country is still experiencing. Furthering some malicious laws of the colonial period India embarks on nationalistic pride in terms of judicial law and order. Along with some former colonies like New Zealand and Australia, India has maintained laws like the Unlawful Activities (Prevention) Act (1967), Criminal Procedure Code (1973), and Prevention of Seditious Meeting Act (1907) to prevent sedition in the country. Sedition laws have a colonial legacy because they formed a part of Macaulay’s draft penal code 1837-39 (9)’ (Sedition Laws). Mahatma Gandhi, Bal Gangadhar Tilak and Anne Besant were among the few names that fell into the clutches of the sedition act, then popular as the Treason act. In fact, Mahatma Gandhi had called this the ‘prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen’ (Sedition Laws). The sedition trial of J.C. Bose in 1891 was one of the first instances of punishment for sedition because Bose pointed out the economic exploitation that the colonial mission carried out. “The particular injustice of convicting a person who has merely exercised his constitutional right to freedom of expression has attracted the nation’s attention to the draconian colonial

legacy of a hundred and forty year old offence.”

A colonial legacy like sedition law, which presumes popular affection for the state as a natural condition and expects citizens not to show any enmity, contempt, hatred or hostility towards the government established by law, does not have a place in a modern democratic state like India. (D’Souza 59)

Governments are guilty of using these laws to beleaguer whoever harbors a non-conformist stance towards the government by nomenclatures of anti-national and traitor. Such laws should not have a place in a democracy like India. The particular injustice of convicting a person who has merely exercised his constitutional right to freedom of expression has attracted the nation’s attention to the draconian colonial legacy of a hundred and forty year old offence. Section 124 A, of the Indian Penal Code as it stands today, reads:

Sedition.-Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added or with fine. (Shutler 39)

The charge of sedition law being used to stem dissent is not without force; Binayak Sen, Arundhati Roy, Dr E. Rati Rao, Bharat Desai, Manoj Shinde, V. Gopalaswamy (Vaiko), all these individuals did things far from creating a tendency to incite violence against the state, and were expressing their opinion through speeches or writings which criticized specific activities of the State (D’Souza 30).

What is sedition? Even if it is believed that the letters were transported by Sen, were the letters directly proportional in bringing about violence or disrupt in the country? Did the repercussions of these letters have a direct bearing on the state of affairs in the country? On a cursory look, the letters seem to be nothing more than a comrade’s exchange of information with another comrade. Does this amount to sedition? “The point about defining sedition like this is that it makes criticism of the government an offence, in a democracy, this is meaningless” (147). Did the government actually prey upon Sen because as Vice president of the PUCL he was “instrumental in bringing to light the murder of the 12 *Adivasis* on March 31. Or more than 155 encounter killings that have taken place in the state over the last two

years? (Padhi, Negi and Gupta)

Sen was accused of meeting an imprisoned sixty-seven-year-old man the state machinery called a Maoist. This meeting, no questions asked, was enough to call Sen an ‘antinational.’ One mention of the word ‘Maoist,’ and plenty of people otherwise skeptical of governments become instant believers. (D’Souza, 31)

For instance, Ilina Sen’s email to someone by the name Walter Fernandez at the ISI, New Delhi was politicized and presented as proof because of the misinterpretation of the long form of ISI. Sen and his wife were accused of having associations with international terrorist organizations. “Their basis for saying this? An email from Ilina Sen to Walter Fernandes, director of ISI which happens to be the Indian Social Institute in New Delhi” (Majumder and Mishra). Among the data elicited from the personal computers of the couple, a number of emails have been derived which add to the ambiguity of the case according to the state. Therefore on failing to decrypt the messages encoded such, the court marked them as criminal and dubious. In an email addressed to someone by the name Mary Ganguli, Ilina Sen calls the president of the United States a chimpanzee. “But of course, Ms. Ganguli had no idea that this throwaway phrase would one day be used to damn Binayak Sen” (D’Souza, 104). Public prosecutor Pandya, however represented this phrase in the light of deep conspiracy by marking that as a part of the international terrorist organization, Mrs. Sen’s contempt of America is evident in this email. D’Souza says “It is hard for me to believe that any reasonable prosecutor would actually seek to make a case like this, about an ‘international terror network’ from ‘evidence’ like this. Yet that is precisely what prosecutor Pandya did” (104).

Rupantar again, was an NGO run by the Sens for the tribal in Chhattisgarh. “In his testimony, inspector Jagrit described Rupantar as a Naxalite organization run by the Sens, which did “urban networking” for the Naxalites” (Punwani). The primary doubt on Binayak Sen’s case was that he “had talked to Maoist prisoners and was alleged to have Maoist literature in his home. The guilt they presumed was by association and insinuation, for Sen was not himself a member of the Maoist party, nor had he committed acts of violence or otherwise broken the law” (139). Narayan Sanyal himself who is supposed to have drafted the letters was charged of sedition much later, merely as an addendum. “Why was Mr. Sanyal – whose Maoist connections led to charges against the co-accused in the first place – himself never charged with sedition or conspiracy to wage war or even with belonging to

or supporting an unlawful organization until well after Dr. Sen's arrest under those serious offences?" (Sethi) In his defense Binayak Sen's lawyers had asserted in 2008 that Narayan Sanyal was not even accused under the Chhattisgarh Special Public Security Act, 2005 and the Unlawful Activities (Prevention) Act, 1967 he was only accused of murder "under Section 302 of the Indian Penal Code" (Sethi).

### **Sen as Josef K**

Keeping in mind the trajectory of Binayak Sen's case, I am inevitably forced to draw a corollary between a similar fiction which is probably the quintessential text of life in a bureaucratic age. Sen served jail for two years on unconfirmed charges and joined the league of such prisoners incarcerated on flimsy grounds. Comparing Sen's plight to that of Kafka's protagonist Josef K from *The Trial* would not be incongruous. If one was to compare and draw an analogy of how Sen and Joseph K. had to face trials and tribulations before being succumbed by the Law, it would give in too much already. Therefore, before conjectures and analogies it is imperative to elucidate how the Indian Judicial system has attracted unwarranted suspicion and qualm in the face of severe criticism. Binayak Sen's story nonchalantly appears to be the narrative of a person wrongly convicted and imprisoned by the state much in the manner of what Kafka had depicted in Prague. Binayak Sen's case is Kafkaesque; however, a holistic understanding of the term is a prerequisite for the understanding of the case.

For Kafkaesque at its most meaningful and exalted denotes a world that has its own rules, its own guidelines, its own form of behaviour that cannot be amenable to the human will. Kafkaesque, in fact, seems to denote a will of its own, and it is, apparently, destructive of human endeavors. . .Kafkaesque in our century has replaced the now-old fashioned fate or destiny or even circumstance and happenstance. (Karl, 759)

Josef K is seen to be tormented by an invisible Law which is a non-tangible entity yet overpowering and influential in personal lives. This Law finds manifestation through courts and the judiciary which corrupt this Law, otherwise binding. The opening sentence of Kafka's *The Trial* resonates what is happening with Binayak Sen. "Somebody must have made a false accusation against Josef K., for he was arrested one morning without having done anything wrong" (Kafka 1). Who is the "somebody" here? To put the blame behind Sen's arrest to one individual would be erroneous. Despite Sen's work as a human rights activist and a social reformer and

his respect in society, the Chhattisgarh State government had an unsaid abhorrence towards Sen because of his frequent diatribes against government policies like the Salwa Judum and Naxalite encounters. Therefore when Sen was convicted, the “ideological state apparatuses” acted in unison to work against him. Sen is indubitably the allegorical counterpart of modern day Josef K. In stature Josef K. is as ordinary as any of us. Working in a bank, K’s characteristic life is marked by the very diminutive existence of modern man in the “unreal city.” On the morning of his thirtieth birthday, K is summoned by “two warders” who withhold their identity and arrest him for an unstated crime. The opening chapter of the novel is so eerie and mysterious that posterity has often attached the pertinent label of “Kafkaesque” to it. A compartmentalized definition of Kafkaesque is somehow askew. Frederick R. Karl, biographer of Kafka posed this question.

“What’s Kafkaesque, he argued in his 1991 interview with the new York Times,” is when you enter a surreal world in which all your control patterns, all your plans, the whole way in which you have configured your own behaviour, begins to fall to pieces, when you find yourself against a force that does not lend itself to the way you perceived the world . . . You don’t give up, you don’t lie down and die. What you do is struggle against this with all of your equipment, with whatever you have. But of course you don’t stand a chance. That’s Kafkaesque. (Bluemink)

A study of existential agitation and vulnerability, Josef K is a metaphor of all citizens engaged in the labyrinthine ways and procedures of the legal system. Here in this Kafkaesque world bureaucracy governs with mortals exercising less meaningful control over their lives. The servitude to the state that Sen undergoes is probably the primary way in which we attach the label of “Kafkaesque” to the whole case. Sen is made to submit to the accusations of the court by way of the court’s blindness towards his plea. Therefore Sen’s whole case becomes a tragic farce of helplessness and vulnerability in the name of national security.

### **Orwell and the Big Brother**

If Binayak Sen’s case categorically fell into the nomenclature of “Kafkaesque” it would make easy classification. Somehow, Sen’s case draws closely upon Orwellian also as the data and personal information that is extracted from his home elicits concepts of surveillance and scrutiny carried out by the government. The term “Orwellian” came into vogue with the publication of texts like *Nineteen Eighty-Four*

and *Animal Farm* by George Orwell. Orwell's country is a state akin to numerous city-states today. Donald Trump's election as the President of the United States, saw an unprecedented increase in the readership of this masterpiece by Orwell. The internet was flooded by corollaries drawn between 2017 and Orwell's 1984 because it was anticipated that Trump would impose all methods of surveillance totalitarianism in America. In Orwell one finds a predicament with the incapacity of being able to do anything in the face of an omnipresent force bent on repression and subdual.

The phrase "Big Brother is Watching You" has thus entered popular discourses from television to social media with so much ease that it has often been misused and misinterpreted. Who is Big Brother? The ambiguous personality of the character by the name Big Brother lent an uncanny and eerie feeling to existence in a society where you are being watched even as you sleep. Big brother's face is symbolic of the party in Orwell's *Nineteen Eighty-Four*, wherein he is the leader of Oceania. "Big Brother demands complete obedience from its citizens and controls all aspects of their lives. It constructs the language, rewrites the history, purges its critics, indoctrinates the population, burns books, and obliterates all disagreeable relics from the past" (Solove 29). The streets are covered with his posters intimidating the citizens with his scrutinizing gaze. With helicopters hovering the skies of Oceania, it is nothing but a police state where eyes are watching citizens through all doors and windows. The establishment of tele-screens throughout the city, the thought police and the think poll, all are features of the Orwellian state through which big brother maintains vigilance.

However, a general misnomer about the concept of Orwellian resides in the fact that anything authoritarian is not necessarily Orwellian. In his essay "Politics and the English Language" Orwell situates the importance of language in framing thoughts and perceptions. For instance the language in Oceania; Newspeak which is again an instrument of draconian control affects the citizens in a hypnotic cognitive manner manipulating their thought process and making them feed on euphemisms and complex ambiguous sentences which shroud actual facts. Similarly, if we think of how Sen's case has been delineated in the courtroom with the manipulative use of language and wrong emphasis on trivialities at the cost of ignoring facts that would have made clear how Sen is being framed. Thus, Orwellian more than being an authoritarian totalitarian system is a system where language manipulates and governs and conclusively creates an ever changing discourse by the addition and the elimination of words at will. Modern day surveillance techniques draw enough from Foucault and Bentham as is practiced in Oceania via the tele-screens. The way

Sen is watched and hounded by the Chhattisgarh State government is exemplary of how modern totalitarian societies function. His home is searched, information is extracted from his personal computer, his emails and communications have been intercepted to the extent that private communications with family and friends have been interpreted as suspicious and seditious. Like Orwell's Oceania alternative facts are encouraged today, in the way we live, in the way the world is depicted. The letters elicited from Sen do not bear his signature and have no proof that they were written by him. The key evidence that was used against Sen was

“an unsigned typed letter allegedly written by the Maoists thanking Binayak Sen for his ‘service’, which the police claims to have seized from his house. . . this typed letter does not have either his or investigating office Rajpoot’s signature as proof that it was found in his house.” (D’Souza 67)

A degree of simulation has encompassed our lives to the extent that this virtual world is alluring and exciting. The Ministry of Truth in Orwell's Oceania manipulates facts to suit the needs of the party so as to maintain its authoritativeness. If Big brother predicts erroneously, it is the ministry's job to erase all historical records and prepare new data to prove him right. Here the Indian Judiciary combined with the State of Chhattisgarh is a metaphorical representation of Big Brother. The state was bent over crushing Binayak Sen because Sen was the upholder of tribal rights in the face of state atrocities and tyranny. He had vehemently criticized some of the policies adopted by the state with respect to the leftist insurgency, so the state, on the basis of prejudice and pejorative assumptions did all it could to convict Sen.

### **Conclusion**

Drawing from this we posit that one of the most conspicuous features of modernity is the relentless dependence on surveillance optics for the working of modern society. This dependency has had a strong bearing on the quality of life in the postcolonial and post-world war scenario. From social networking to dining at a restaurant continuous monitoring and vigilance characterizes life of modern man, his space and privacy is compromised to accomplish aims of surveillance society in the name of governance. Can we in India boast of autonomy like we used to or are these conditions the premonition of an Orwellian state? Binayak Sen's case is an instance where surveillance disrupts personal space and entwines a citizen within its deadly wrap. Sen's case is a tragic impasse where a noble man is punished because the state fails to decipher between Leftist activism and Maoist terrorism by

obtrusive interference into his personal life. Through this paper it is contended that Binayak Sen is one among the many prisoners convicted as Naxalites and Maoists, some even without proper trial and legal proceedings. His case is a quintessence of the dread of *urban naxals* in India which is gaining vogue in lieu of its recent mission.

Today, methods of surveillance and totalitarianism are still being carried out in the name of law so that the government can negate the nuances of its postcolonial identity, where the concept of a unified nation-state still does not apply completely. In framing Sen as a Naxalite this country is pronouncing its postcolonial dilemma that has invariably left an indelible mark on its socio-political arena. The judiciary seems to be in compliance with the colonial masters in snubbing any form of non-conformist behaviour by calling it undemocratic and seditious. Again, the Chhattisgarh state government allegorically takes on the role of the colonial master who is gnawing at the convict with its draconian laws of dissent. Binayak Sen's arrest is yet another failure of law and order in a country dilapidated in the postcolonial aftermath. He is a victim of McCarthyism in India, like many others whose associations and affinities label them as enemies of the country.

*The Curious Case of Binayak Sen* therefore forms a vital document against the anarchy of the state's version of what had happened. The paper has reached a culmination through a triangular analysis of three books, two pieces of fiction and one non-fiction to establish that literature forms the edifice on which this case study can be placed. This parallel discourse that D'Souza offers is an audacious attempt to negate the Indian judiciary's decision in certain cases where bureaucracy and obsequiousness win in the name of justice. When Orwell and Kafka had written their respective texts less had they prefigured that these taxonomies could be applied to a democratic country like India. At the same time, reading *The Curious Case of Binayak Sen* furthers the reading of postcolonial literature in the *adept* stage where it can be placed alongside exemplary texts of the Western literary canon like Kafka and Orwell (Barry 189). Though modest in stature this text unfolds much in the manner of an equivocal world of Kafkaesque and Orwellian where there is more than meets the eye. D'Souza's work has certain nuances of famous premises of literature and thus blurs the boundary between fact and fiction at the same time opening frontiers in the field of law and literature.

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