

[Focus]

“Failing the common people”

India has an independent judiciary. Nonetheless, the gaps between codified law and grassroots reality are wide. The Delhi-based Campaign for Judicial Accountability and Judicial Reforms wants matters to change. Prashant Bhushan, one of its leaders, explained what is wrong with the courts and what could make a difference in a D+C/E+Z-interview.

[Interview with Prashant Bhushan]

In any democracy, the judicial branch of government has to be sufficiently independent to check and balance the administrative authorities. On the other hand, every branch of government must be held accountable. To whom is the judiciary accountable?

Practically speaking, the judiciary in India is not accountable to anyone. The only method of holding a judge accountable under the Constitution is to remove him by way of impeachment. The procedure for initiating impeachment has been found to be totally impractical, so it really does not ever happen. To start impeachments proceedings requires the signatures of 100 members of Lok Sabha, the lower house of parliament, or 50 members of the Rajya Sabha, the upper house. Such numbers are virtually impossible.

Why is that so?

Politicians are unwilling to sign impeachment motions against judges of the High Court or the Supreme Court, since all of them fear a judicial backlash against their respective parties. The judiciary has been resisting any attempt to set up an independent constitutional body which can investigate complaints against judges. They have been saying that at best, the judiciary can only be accountable to itself. But self-accountability really amounts to non-accountability, because enforcing rules upon oneself is about enormous conflicts of interest.

In what respects are courts not living up to their official duties?

Those who are in authority are happy with a dysfunctional, unaccountable and corrupt judiciary. Such a judiciary will not hold abusing power to account, and it is easy for those in power to strike deals with corrupt judges. It is the common people of India who need a functional, accountable and honest judiciary. The courts in India are inaccessible to the common people of India who cannot afford lawyers. They have also become very elitist and anti poor. They function with enormous lethargy and have become largely corrupt.

Indian government bodies have a reputation of corruption. Are you saying that the courts are no different?

Transparency International found the judiciary in India to be the second most corrupt institution after the police. A corrupt judiciary will naturally not be successful in holding other institutions of the state to account. There are however honourable exceptions and several judges in various High Courts and some in the Supreme Court have done an admirable job in holding those in executive authority to account.

What kind of reforms would make the courts perform better?

We need to set up many more courts at the village level. These courts should allow common people access without the help of lawyers. In other words, they must not be burdened with strict, but meaningless procedures. Local courts would help to speed up the disposal of cases, many of which drag on for years if not decades. We also need independent, full-time statutory commissions for the appointment and removal of judges in the Higher Judiciary. And we need suitably trained judges who understand the problems of common people.

Many laws are not strictly enforced in India – and many are

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either out-dated or were probably not designed in an implementable way in the first place. What does that mean for judicial action?

Many laws are indeed outdated and impractical – and thus not enforced. But many other laws are not implemented because the rich and powerful are able to subvert the law enforcement machinery including the judiciary. In India, judges can find anyone disobeying their orders guilty of contempt of court, a criminal offence. In theory, that is a powerful tool of enforcement. But very often judges don't bother to enforce their rulings – especially when they would have to be enforced against the powerful.

Indian courts have a reputation of environmental activism, thanks to a series of innovative rulings in the 1980s and 1990s.

Yes, but if one examines the recent record of the Supreme Court in its environmental activism, two trends are immediately clear:

- When environmental protection comes into conflict with socio-economic rights of the poor and the marginalised, the poor usually get short shrift and
- when environmental protection comes into conflict with powerful vested commercial and corporate interests or what is perceived by the Court to be “development”, environmental protection usually get short shrift.

India's labour legislation is strongly in favour of formally employed staff, but it applies only to a small fraction of the workforce. Conditions for contract workers in industries or agriculture are much harsher. What are the implications in everyday life?

Even the legislation and judgments which support labour in the organised economy is not being enforced. This has been particularly so since India embarked upon neoliberal economic policies. There are, laws to protect contract labour in industries too, but there is no legal protection for agricultural or domestic labour. This needs to be rectified by legislation and proper enforcement.

Are the courts class-biased?

There can be little doubt that the Indian courts, generally speaking, are failing to protect the socio-economic rights of the common people who constitute the vast majority of the Indian population. Part of the reason lies in the class structure of the Indian judiciary. The higher judiciary in India almost invariably comes from the elite section of the society – and that is hardly different in the USA and other powerful, western nations, where courts tend to rule in favour of the establishment. The Indian judiciary, however, has become a self-appointing and self-perpetuating oligarchy. The Indian judges appoint themselves ever since the Supreme Court passed a remarkably self-serving judgment by which the judiciary appropriated the power of appointment from the government.

There is an inherent tension in the Indian constitution. The fundamental rights are conservative in the sense of protecting property and other personal rights of the well-to-do. The directive principles, on the other hand, outline an agenda of redistribution and wide-reaching empowerment. To what extent does that trouble the legal professions?

The Supreme Court's interpretation of fundamental rights has been quite progressive in theory, and it has declared that the right to life includes the right to live with dignity. However, that is not being enforced. And governments are flouting the directive principles of equality with impunity in the era of neoliberalism. None of this troubles the influential sections of the legal profession, which makes enormous money from the well heeled.

Questions by Hans Dembowski

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