

PRESS NOTE

Panel Address on Sensitising the Judiciary to the Rights of the Poor – The Judicial Legacy of Justice A.P. Shah

6th April 2010

Marking the retirement of Justice A.P. Shah as Chief Justice of the Delhi High Court and recognizing his judicial legacy characterized by his consistent sympathy for the rights of the poor, the weak and the marginalized, an umbrella of 15 human rights organizations, people's movements and academic/cultural institutions (listed below) organised a Panel address on the issue of *Sensitizing the Judiciary to the Rights of the Poor – The Judicial Legacy of Justice A.P. Shah*. The Panel address was held at the Nehru Memorial Museum and Library (Main Auditorium), Teen Murti House, New Delhi on the 6th of April 2010 at from 4:30p.m. – 7:30p.m.

The address was an occasion to focus on the judicial responses towards the poor spanning the 70s and the 80s when liberal judges in the Supreme Court like Justice Krishna Iyer, Justice P.N. Bhagwati and Justice Chinappa Reddy et al. expanded the rights of the poor by liberally interpreting the fundamental rights to bring them in tune with the other guiding principles of the Constitution, namely, the directive principles of state policy. Thus Article 21 of the Constitution was interpreted to include the right to food, the right to health care, the right to shelter, the right to education, the right to a healthy environment, etc. Beginning with the 90s however, one began to see a reversal of this trend, not so much by way of overruling the previous judgements by giving a more conservative interpretation of rights, but by way of refusing to implement these rights as declared by the court itself. Thus, workers rights liberally interpreted in the 70s and 80s were rendered nugatory by the Supreme Court refusing to implement the Contract Labour (Regulation and Abolition) Act and the Industrial Disputes Act in dozens of cases. One began to see the High Courts and the Supreme Court itself ordering demolition of jhuggis without rehabilitation, removal of hawkers from streets without an alternative space for hawking, removal of rickshaw pullers from the streets without an alternative livelihood option – and thus violating their Article 21 rights. All this was usually done on the ostensive basis of a clean and health environment. Thus the homes of more than a 100, 000 people were ordered to be demolished on the Yamuna Pushta on the basis that they were polluting the Yamuna which was an eco fragile zone. It is in these dark judicial times for the poor that Justice A.P. Shah's judicial legacy stands out by contrast and comes as a breath of fresh air. Throughout his career as a Judge, Justice Shah has delivered several landmark and progressive judgements. However what sets him apart is his consistent sensitivity to the rights of the poor, the weak and the marginalised.

Eminent **panelists** for the day, who have been involved in and have been speaking out on these issues included Mr. Anil Divan (Senior Advocate), Mr. Shanti Bhushan (Senior Advocate), Swami Agnivesh (Human Rights Activist), Prof. Upendra Baxi (former VC, Delhi University), Mr. Shekhar Singh (RTI Activist), Ms. Madhu Kishwar (Prof. CSDS and founder Manushi), Prof. Babu Mathew (Director, Action Aid), Mr. Miloon Kothari

(Former UN Special Rapporteur on Adequate Housing), Mr. Prashant Bhushan (Advocate), Mr. Dunu Roy (Director, Hazard Centre) and Mr. Gautam Bhan (Sexuality Rights Activist). The address was attended by over 200 people including social activists, academicians, people's movement's representatives, students, etc.

Senior advocate and former law minister, *Mr. Shanti Bhushan*, set the tone for the discussion by highlighting the four qualities of a good judge, all of which he stated were present in full measure in Justice A.P. Shah, namely, integrity, knowledge of the law, sensitivity towards the poor and basic courtesy. Justice Shah with his extraordinary sensitivity towards the poor stands out as an exception to the rather callous attitude of the judiciary towards the rights of the weak and marginalised. Renowned human rights activist *Swami Agnivesh* reiterated Justice Shah's exceptional sensitivity towards the poor but cautioned that an exception like Justice Shah did not clear the judiciary of its tarnished reputation as being unaccountable and unresponsive to the common segment of society. *Senior advocate Mr. Anil Divan* emphasised the need to keep up the fight against judicial corruption and unaccountability and highlighted the failure in the system of judicial appointments, citing as example the case of the appointment of Justice Ashok Kumar as permanent judge of the Madras High Court in February 2007, without any consultation with the collegium of judges as required by the law laid down by the Supreme court and despite his not being confirmed earlier on grounds of integrity. He also referred to the murky Ghaziabad Provident Fund scam where several judges of the High Court and a Supreme Court judge were named as beneficiaries of the illegal withdrawals. He emphasised the importance of the pressure of public opinion in the fight towards reclaiming the judiciary for the people in a democratic state like India.

Ms. Madhu Kishwar, Prof CSDS and founder Manushi, demonstrated the depth of Justice Shah's understanding of the needs of the common citizen by citing his exceptional judgment in the rickshaw pullers case in which he not only held as unconstitutional the licence quota on rickshaw plying but also de-legitimised the owner-puller policy, which in the garb of being pro-poor played much to the detriment of the average rickshaw puller. The judgement further ordered the Chief Secretary of Delhi to constitute a task force to review the cycle rickshaw policy as well as equitable road space sharing, all of which is to be monitored by the Hon'ble court itself. *Mr Miloon Kothari*, former UN Special Rapporteur on Adequate housing, detailed Justice Shah's judgements which came as a breather for the mass slum dwellers in the city as he order the right to humane relocation in case their lands are required for public purposes and the rights of the homeless to night shelters. RTI Activist *Shekhar Singh* highlighted the absurdity of the whole judges' assets controversy with the Supreme Court now in appeal before itself from the full Bench decision of the Delhi High Court as well as the judiciary's constant struggle to shield itself from the full application of the Right to Information law. *Prof. Upendra Baxi*, former Vice Chancellor Delhi University, defined Justice Shah and those who honour his legacy today as "Part IV A citizens" of the country emphasising the need for all to focus on their fundamental duties as embodied in the Constitution of India. Justice Shah redefined "dignity" in many of his judgments with his humane understanding of the plight of the weaker and poorer sections of Indian society. Developing "Citizen Justices" like Justice Shah with an equally responsible "Citizen Bar" would pave the way towards a systematic renovation of the judicial system.

Drawing a parallel with the creeping in of neo liberalism in the 1990s with the peaking of the tremendous process of social exclusion, *Prof. Babu Mathew* brought out a realistic picture as he stated that there has now been increasing consensus among the academic and social thinkers that nearly half of India's population falls within this excluded category. He pointed towards the need to draw lessons from Justice Shah's legacy that used law as an appropriate means of social change. His judgments came as a moral booster that further enables people to better rally and organise themselves with this new ray of hope.

Mr. Gautam Bhan, sexuality rights activist, brought forward Justice Shah's inclusive understanding of the rights of every citizens as was reflected in his courageous and reasoned S. 377 judgment upholding the rights of sexual minorities and his interpretation of "constitutional morality". From the decline in the attitude of the Judiciary towards the rights of the poor in the 90s, panellists took note that with exceptions like Justice AP Shah becoming a role model for the judiciary to emulate, we may begin to see a reversal of this declining trend in the years ahead.

Justice Shah's retirement from the judiciary marked an important occasion to focus on the role of the judiciary as protectors of the rights of the weak and marginalized section of Indian society and the panellists were unanimous in emphasising the importance of a Judiciary that is a truly people's judiciary, responsible and accountable to the people of this country. The panel concluded with the hope that Justice Shah's legacy will become a beacon for the judiciary in this country to emulate so that we can again reclaim this republic for the common people of this country.

Issued by:

Mr. Harsh Mander (*Aman Biradari*)

Swami Agnivesh (*Bandhua Mukti Morcha*)

Mr. Prashant Bhushan (*Campaign for Judicial Accountability and Reform*)

Mr. Arvind Kejriwal (*Parivartan*)

Ms. Madhu Kishwar (*Manushi Sanghatan*)

Mr. Ramendra (*Delhi Shramik Sangathan*)

Ms. Medha Patkar & Mr. Rajendra Ravi (*National Alliance of People's Movements*)

Prof Mridula Mukherjee (*Nehru Memorial Museum and Library*)

Mr. Shekhar Singh (*National Campaign for People's Right to Information*)

Ms. Anjali Gopalan (*Naz Foundation, India Trust*)

Mr. Rakesh Agarwal (*Nyaybhoomi*)

Mr. Bhupendra Singh Rawat (*Jan Sangharsh Vahini*)

Mr. Subhash Bhatnagar (*Sajha Manch*)

Amita Joseph, Miloon Kothari & Indu Prakash Singh (*Shahri Adhikar Manch: Begharon Ke Liye*)

Ms. Paramjit Kaur (*Ashray Adhikar Abhiyan*)
