

HAS THE JUDICIARY TURNED ITS BACK ON THE POOR?

**A Report on the Seminar
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A film by Ruzbeh N.Barucha – “yamuna gently weeps” was shown in the beginning of the seminar. The film was very emotive and reflected the trauma the oustees have undergone in Yamuna Pushta Demolition drive ordered by the Delhi High Court in January 2004.

Welcome by Shri Prashant Bhushan,
Advocate, Supreme Court

However, it was a very powerful film as we saw just now. There was a time, not so long ago, when the Supreme Court of India waxed eloquent about the Fundamental right to life and liberty guaranteed by Article 21 of the Constitution to include all that it takes to lead a decent and dignified life. They thus held that the right to life includes the right to food, the right to employment and the right to shelter: in other words, the right to all the necessities of life.

All that seems a distant dream now, given the recent role of the courts in not just failing to protect the rights of the poor that they had themselves declared not long ago, but in fact spearheading the massive assault on the poor, particularly since the era of economic liberalisation. This is happening in case after case, whether they are of the tribal oustees of the Narmada Dam, or the urban slum dwellers whose homes were being ruthlessly bulldozed without notice and without rehabilitation. Similarly, the hawkers of Delhi and Mumbai have been evicted from the streets pursuant to the orders of the court.

Public Interest Litigation has been turned on its head. Roadside hawkers are being evicted on the orders of the Courts. Rickshaw pullers have been directed by the Delhi High Court to be removed from certain parts of Delhi, depriving thousands of people of their livelihood, and thousands of others of a non-polluting and convenient means of transport.

In cities like Delhi and Bombay, the poor no longer regard the judiciary as a protector of their rights. It is being increasingly seen as an instrumentality of the wealthy and influential sections of society, which is now being used in tandem with other instrumentalities of the ruling elite, like the police, to deprive the poor of whatever natural resources that they still have access to. The

judiciary has come to play an increasingly important role in the governance of the country and its role affects everyone, even those who may not be accessing the courts for their individual disputes. It is therefore important that there is informed public discussion and debate on the recent role of the judiciary, particularly between thinking citizens who work with the poor and the judges themselves. It is important that the judges understand what responsible citizens are thinking about the role of the courts and they in turn understand the viewpoint of the judges. We invited sensitive judges to this forum but it does not seem to happen.

There is an immediate need to form a campaign and demand the accountability of the judges in giving anti-poor judgments; there is also a need to ask for constructive judicial reforms.

Inaugural Address by Justice J.S.Verma

It is important to begin from the infamous role of Supreme Court in A.D.M. Jabalpur case during emergency, which let down the people. The judges who were responsible for passing the judgment had put many of us in shame. It is also a misconception to think that it was in Maneka Gandhi's case in 1978 that for the first time 'fairness' and 'reasonable' was incorporated in Article 14. It was actually the judge Vivan Bose who in 1952 said that 'fair justice' and 'reasonable' is the requirement of Article 14.

We all have to make judges to do serious introspection and examine the merits. In the recent past three news items caught my attention, which is seemingly unrelated, but to my mind they ought to be integrated. One item was the reporting on the high degree of pollution in Vapi in Gujarat. Then few days later, another news report a judgment by a single judge of Gujarat High Court, which not only dismissed a writ, which had allegation of pollution by an industry in Vapi, but also imposed a penalty of Rs 48 lakhs on the petitioner. Even if the PIL was motivated but still Rs 48 Lakhs as penalty in India is a huge amount.

In Law of Evidence, there are three things; proved, not proved and disproved. If it is not proved then there is not enough evidence. Only when it is positively disproved then one goes to the extent of judging against the petitioner. If this is the case, then how many people would take the risk of filing a PIL and end -up paying Rs. 48 lakhs.

The third news was the headlines in Hindustan Times, which says Gujarat Muslims give up right to buy peace. It was very sad read this item, when I am still waiting for a culmination of the Gujarat communal violence case in which I was initially involved. If they give up their rights to buy peace it is the worst thing.

The Directive Principles of State Policy in Article 37 was merely brought so that people do not directly bring the writ to the court. But this is what the Supreme

Court did; it read Directive Principles of State Policy into the fundamental rights so to enlarge the scope.

Well, one of the focuses of today's meeting is displacement of slum dwellers. The film also mentioned about Akshardham Temple. Every time I pass Nizamuddin Bridge especially at night, I am so upset seeing such a well-lit temple. Where is the distributive justice that we have promised in the Directive Principles of State Policy? Article 37 says these are fundamental principles in governance, which the legislative and the executive have to keep in mind while making laws. The judiciary should also keep those in mind for the purpose of interpreting the laws.

Likewise, one would not consider right to food, health not merely as the right to get some food, but the right to be free from hunger, if directive principles are not read into it. The right to adequate means of livelihood in Article 39 is an obligation of the state which compels state to ensure that everyone is able to have adequate means of livelihood. So that one is empowered enough not to depend on someone else's charity to get food, that is our concept for a welfare state and of distributive justice.

The area occupied by the displaced families is not more than the area occupied by the Common Wealth Games or the Akshardham Temple. There is elite population, having more than one houses and have been allotted more houses in the same area. Governments make these discretionary allotments and courts upheld it. Olga Tellis, twenty years back, had held the right to shelter as a human right, right to development a basic human right and right to adequate means of livelihood as envisaged in Article 39. The rights in all the international covenants are included in Article 14 and 21. These are the things, which judiciary has done earlier and if the judiciary is reversing this approach, then it is a matter of serious concern more for those who are in the judiciary.

There should be greater public awareness and the people should have participatory role in governance. That's what democracy is all about. People's role is not merely to vote at sporadic elections but to monitor constantly the performance of all institutions including the judiciary. Judicial Accountability includes all these things. There is considerable rather almost total lack of any effort at fair criticism of the judgments and role of judiciary.

There is a 'law quarterly review', which reviews the modern judgments, which could help the judges to do self-introspection, but most of the articles written by the advocates are to please the judges. We need to write articles which should objectively analyze judgments and render a fair view.

According to me, the misuse of the contempt power is something, which erodes the credibility of the judiciary most. Even before the Act was amended, truth should be a permissible defense. People, who don't want to say something, take the pretext of the contempt of court but we should remove this misapprehension by encouraging honest criticism.

The cause of the migration towards urban areas is related to lack of good governance. The standard of education in Delhi is much higher and most development happens in Delhi. So anyone who can afford comes here while those who cannot afford comes and lives in slums.

If we strictly speak on legal terms then we have the law of Adverse Possession. Wherein a person occupying a piece of land for more than 12 years (against private citizen) and 60 years (against the govt.) which is now for 30 years, will have to be made owner of the land. When these provisions have legally empowered the occupier of a particular land that the state should not be evicting inhabitants living on the land for more then 30 years.

In Pannalal's case justice Vivian Bose delivered a good judgment on Adverse Possession, which was reported in AIR 1937, Nagpur. The judgment raised that under the Specific Relief Act, possession alone is sufficient to sue for restoration of possession of a displaced, when the suit is brought within 6 months.

This shows that a person living for a long time cannot be uprooted. While making orders, the courts must read Article 21 with Article 39. So thank you very much for inviting me, I have spoken with as much reserve as I am capable of.

Session I: Impact of Recent Court Judgements on Labour

Chair: Baba Adhav

Presentation by Prem Krishan Sharma

Advocate, Supreme Court

After independence, the concept of social justice was introduced and the labour law developed more as a judgment law. There were various laws but with the intervention of judiciary, the labour law was moving in a progressive direction. The issues concerning the labour matters such as wage, minimum wage, fair wage, employment security, social security, etc. were initiated, right from the Express Newspaper's case.

Between 1970 and 1980, the definition of industry was widened; employment security was given to workman as a right. The right to get the back wages if the dismissal of the workman was found to be unjustified, and the worker's right to strike was declared as legitimate weapon for collective bargaining. Till 1980's, the labour laws were developed to suit the interest of working class. But now the recent judgements show that the judiciary has taken a U-turn.

In the SAIL case, the courts denied the workman the right of permanent employment while in the famous Tamil Nadu case, the right to strike was called morally and legally incorrect. Earlier a lawyer could successfully argue in the courts that by striking, a workman do not lose his right of employment. But with UP State Corporation case, it has been laid down that if the workman continues to be on strike then the employer can declare that he has voluntarily abandoned his services.

Since 1968, the burden of proof was on the party filing case against the worker. But in Municipal Corporation Faridabad's case, the burden of proof has been cast on the worker. If the worker was retrenched, still he has to prove that he worked for 240 days, while the attendance records are with the employer. In recent case of Uma Devi, the court remarked that the worker does not have any right to service even if he worked for 10 - 20 years as millions are waiting for employment.

When it is declared that by striking a workman can lose his job, the right to protest is lost. It is futile for the working class to fight at individual level, it can only assert through collective bargaining. The strike is the most peaceful way to assert. The right to work includes the right to not to work but when that right is denied, as a consequence of losing job, the workers can't strike.

After centuries of struggle, the working class got some security of employment and the right for fair opportunity and enquiry but it has been nullified. The worker was given the opportunity of fair hearing before he is thrown out even if it had its own limitations. In Guzari Steel's case, it was held that in case of the dispute between the management and the worker, the management could prove the worker guilty, the order of dismissal will be from the date when labour court has passed the order and will not date back to the earlier order of dismissal by management. But now in the recent Punjab National case, it has been laid

down that if the charge is proved against the worker in the labour court then the order will date back to the day of dismissal by the management.

What is the practical impact of this decision? An employer can hire and fire any workman any time without any enquiry and without any opportunity of hearing. And if the workman raises an industrial dispute, it takes 2-3 years for the case to get referred to the labour court. For instance, in Rajasthan even if the workman goes directly to the labour court, he has to prove whether he was an employee in the industry, which takes years. After that the management will come into picture and defend itself.

The Supreme Court in one of the recent judgements stated that the management is the best judge to decide about the conduct of an employee and such decision should not be made subject to judicial review. It is only in the condition when the judge becomes suspicious of the role of management that the judicial review comes into play but it is never practiced. It is clear that the Magna Carta created is for the employer not for the workman. According to Justice S. B. Sinha in U.P Brass case, the interpretation of labour laws, in this changed scenario of privatisation and globalisation, cannot be the same as it was in 80's.

During 70s and 80s, the success rate was 95 percent in the labour courts and the Rajasthan High Court. It was not necessary that the worker always got the relief but the judgements were upheld by High Courts and even Supreme Court in favour of the worker. But gradually after 90's the success rate has dropped to 5 percent.

Earlier when the judiciary was in support of the working class, it was not due to its pro-working class stand or greater understanding of socialism, as was in the case of E.M.S Namboodari pad. In fact, in those days the bourgeoisie and the ruling class were in need of the working class. But today the trade unions movements have become scattered and weak. The trade unions leaders are dependent on judicial decisions than taking the movement forward.

As a trade unionist, I feel that instead of struggling with the workers on the streets, most of our time was spent in the courts. It was nothing but betrayal of working class movement. Today's judgements have defied all employment security, and the right to strike. The positive impact was that we must come out of the illusion that the judicial system can help the struggle of working class. Judiciary is nothing but a tool in the hands of ruling classes. E.M.S. Namboodari pad had said this and was punished. In this age of privatisation and globalisation, we cannot implement labour laws in its true sense. We need to hasten the process of coming out of this illusion and struggle with the working class.

Dr. Baba Adhav

Hammal Panchayat, Pune

7% of the total work force is organized labour while 93% is unorganized with no law to protect them. Supreme Court in Madras case denied workers the right to

strike but the doctors' strike was termed legal. This shows what is governing the psychology of the judiciary. We are untouchables here. For these 93% of the workforce we demanded social security laws, which are pending since 2002. MP's Salary bill and the 6th pay commission were passed within 24 hours. Ravinder Verma Commission worked on the umbrella legislation for 37 crore unorganized sector workers which includes social security, insurance, compensation at the time of accident and pension. Both Sonia Gandhi and Manmohan Singh have given passing comment on the bill inspite of the fact the Common Minimum Programme has felt the need of this bill. Most of the countries like US and China have Social security laws in place.

People of our country want some sort of security and self-respect. For instance, when women waste pickers took out a rally on 15th August, they demanded Sharad Pawar (then Chief Minister) that they have not come for flag hoisting ceremony but want to highlight the issue of sexual abuse by police when they go for waste picking in the morning.

The government tries to find way to keep the Bill at bay; Chidamdram said that the government has no funds for it. It is also necessary to learn from Mathadhi Protection Act in Maharashtra, where a collie have got provident fund, bonus, gratuity without taxing on anyone. So there is a lack of political will. Supreme Court has repetitively ignored Constitutional right to livelihood, so where will the working class go.

Discussion:

Com. Kelkar: 80% workers in Pune are contractual, they are modern-day bonded labour. Supreme Court, while passing anti-worker orders has never addressed contractual labour issue. Attempts have been made to reduce permanent workers by voluntary retirement schemes, which is also a systematic attack on the working class. It has turned the working class into slavery with no right what so ever. Employer can do and undo whatever he wants.

Question: The sudden change as Sharmaji referred is due to over protection given by judiciary for a long time or due to lack of interpretation of the constitutional or legal provisions or is it due to the globalisation, liberalisations?

Prem Krishan Sharma's Reply: The Bangalore Suraj case, which widened the definition of industry, has done more harm than benefit. Earlier, High Courts were giving certain relief to the workers, but now widening the definition, all cases has to go to labour courts. The change is due to the political thinking, earlier the ruling class was in need of the working class's support. Now they are in need of the support of private industries.

Baba Adhav's reply: Earlier the courts used to talk about their socialist viewpoint, but now they are dictated by Liberalisation, Privatisation and Globalisation.

Lalit Batra: It seems there is no relation between the organized and the unorganized sector. The representation of the Central Trade Unions has been token while talking about a social security comprehensive legislation for 37 crore workers. When NPMO was formed by central trade unions, there were 2 rallies in Delhi with more than 2 lakh people participating. But they have never shown their strength to support the unorganized sector. Is it possible to bring these two sectors together? We should also look into the conspiracy of the government, as 2nd labour commission attacked the organized sector, it is proposing the social security for the unorganized sector workers.

Prem Krishan Sharma's reply: Very well, the attempts should be made to bring together these two sectors.

Baba Adhav's reply: Attempts have been already made. There has been two meetings where the central trade unions have come together and as far as NGOs are considered, talks to involve them is on.

Dunu Roy: Question to Sharmaji is that when he said that instead of struggling in the street with the workers, they were struggling in the court rooms, which according to him was a betrayal to the working class movement. Isn't it that the unorganized sector bill will be second betrayal?

Prem Krishan Sharma's reply: The presentation showed the interpretations of judiciary. If the implementation policies of laws will be the same, then nothing will change. But if new concepts are devised then things will be different.

Prashant Bhushan: As the government wanted to climb to the next level of economic reforms, the concept of liberalisation, privatisation and globalisation was debated in formulating labour reforms. But politically, the left parties have obstructed to these reforms, so the State had to get all these things done through judicial interventions, which would not damage their political credibility. The concept of Special Economic Zone was introduced as only way to bring in contractual labour and revive the industries. SEZs have labour flexibility, with many provisions of the Industrial Dispute Act, Contract Labour Laws and many other labour friendly laws not been applicable. According to Section 49 of SEZ Act, the Central Government by notification can exempt any or all SEZs from the operations of any or all laws. This is totally unconstitutional for excessive delegation. The court should take the issue suo-moto and should squash such an Act. The SEZ has become a new weapon to finish the labour protection laws.

Prem Krishan Sharma's reply: In China in 1984, there were 18 SEZ, but they have not removed labour protection laws from these zones. So if our country is following China, it should do it entirely.

Session II: The Impact of recent court the judgements on the rural poor

Chair: Miloon Kothari

Presentation by Prof. Babu Mathew

Country Director Action Aid International-India

This debate is quite crucial, which is reminiscent of what happened with judiciary during the period when India was trying to abolish Zamindari system and introduce land reforms. While reflecting on the judiciary and its impact on the rural poor, the most popular analysis is the class analysis but one should not confine to it alone, one should also consider caste analysis. We must also remember the indigenous people. (They do not like to be called 'Adivasi' or 'Tribal' in the North-East and perhaps the expression 'indigenous people' is more appropriate). Our general experience in civil society process is a tremendous reluctance to identify Muslims as a group of people who are also among the rural poor. The fisher folk, weavers, etc are the most backward communities in India.

The figures show that together this section constitutes more than half of India's population. So what we are witnessing today is displacement of unprecedented nature, one is at the level of scale and the other is that it is encompassing every single segment of the excluded. There is a tremendous relationship between the growth model and the model which has been imported since June 1991. That growth model is tremendously volatile and it seems the higher the growth rate is, the more would be the destruction of livelihood.

According to one of the best economists Prof. Deepak Nair's recent analysis, there was virtually no growth during the 1st phase of imperialism in India and it begins during the 2nd phase. Obviously that raises a number of questions but it is important to note that a kind of a structural breakthrough vis-à-vis the growth which is only after independence.

Prof. Nair's analysis shows that it is not that the post-new economic policy period which witnessed the highest growth but in fact it begins in 1980's itself. We are talking of a GDP of 5.9% and the government is talking of 8% and 10%. What is important here is to see the relationship between this growth model and displacement and the destruction of livelihood.

If we think about the displacement and destruction then the indigenous people are worst affected. For instance, in the North East there are 168 new dams planned, and in Andhra Pradesh 40 new dams. In terms of the mineral wealth extraction as in Orissa, Jharkhand, and Chhatisgarh, the affected population in the region is of 70 million. Dalits, which is about 170 million, have been agricultural labourers, there is massive displacement due to privatisation and modernisation of agriculture. With fisher folks, it's disaster capitalism as what neo-liberalism could not enter before Tsunami but was able to do it after Tsunami. So capitalism now waits for a disaster to penetrate even that segment

of the economy. This has completely destroyed the livelihood of the fisher folk through modernisation of the ports, fishing sector, and introduction of tourism industry. It has destroyed their right to traditional habitat and efforts are going on in a big way aided by the World Bank, Asian Development Bank, etc.

As regards the Muslims, tremendous destruction of their artisanal occupation has occurred. A study conducted with the Indian Social Institute reveals that their plight is as bad as that of Dalits and Adivasis. In the context of urban poor the pauperisation process, is the accumulated result of what is happening in other sectors. For those who are somehow living in slum areas have to undergo the urban reform process which has been unleashed in sixty cities to destroy their human rights to housing and livelihood. Finally, the peasantry, which has suffered not only because of the agrarian crisis, but also due to the Special Economic Zones.

The kind of protection, which was enjoyed in the past, could have come through constitutional provision or through statutes or through budgetary allocations. While the judiciary could only subvert the systematic remedy (such as 5th & 6th Schedule) it will be more generous if it is a safety net package.

The excluded population may be broadly put into three models.

1. Model A: This is a situation where the Indian State provided an alternate paradigm to co-exist with the dominant paradigm through a constitutional arrangement. It was semi permanent arrangement such as the fifth and the sixth schedule or legislation.
2. Model B: It is situation where the dominant paradigm accommodated transitional paradigm, through reservations.
3. Model C: It is the present situation where the dominant paradigm will exclude and destroy all other paradigms.

Professor Upendra Bakshi says that the judiciary is now structurally adjusted.

Through the protection of Civil Rights Act, Dalits had enjoyed some rights. But judiciary discovered a new category called 'Insult Simpliciter' in Phool Singh Vs State of Madhya Pradesh, wherein the Dalits will no longer have the protection of Civil Rights Act. Methods to water down not only social, economic and cultural rights but also even civil and political right were sought. Simultaneously, in case of tribal, the Samata judgement has been diluted further through the Godavaram process.

It is also important to understand that the judiciary, legislature and executive are hand in glove, which makes sure that the excluded suffer. The situation today is, when the executive attempts to give protection then the legislature will undo it and vice-a-versa, so it is necessary to understand the correlation.

During the earlier era, the ninth schedule, which is been debated now, was necessary to protect land reform legislations due to the presence of the self-reliance approach. In the present era, when the liberalisation process has seeped in, what are we going to really protect using the 9th schedule? The

Government in power knows that they will pay a prize if they blatantly follow anti-poor stand. Today, democracy is the only instrument to give some kind of protection, while the neo-liberalism will get even more pro-neo-liberal judges and of lesser quality also. So that's the kind of a crisis in which we are.

The expression used by jurists as the foundation of the society is 'grundnorm'. So if we have to see the Constitution of India, today, as the grundnorm, then the elites in India would like to see this grundnorm over thrown. When Chief Justice or the Prime Minister or the President is sworn to uphold the Constitution, it means that the Constitution still offers hope for the poor. But still the poor has to make sure that the Constitution of India remains alive and retained. It need not be that it can be achieved by Public Interest Litigations but it will be retained by building a new political bloc. A new political bloc should include the marginalized working class, the organized and the unorganized with the professionals and the organic intelligentsia. This is a big challenge that awaits us.

Session III - Impact of Recent Judgements on Urban Poor

Chair: Miloon Kothari

Presentation by Prashant Bhushan

Advocate, Supreme Court

One broad category of urban poor is the slum dwellers living in unorganized housing sector, having occupation of street vendors, rickshaw pullers, etc. This is the section, which has suffered the maximum onslaught of judicial decision in the recent past.

The earlier paradigm laid down in a number of judgments of the Supreme Court such as Chameli Singh case, PUDR judgment relating to the Asiad workers, which stated that the right to live with dignity is the part of the right to life, which includes right to shelter, right to food, water, health care, education. In Chameli Singh case, it was categorically said that every citizen of this country has a fundamental right to shelter and it is the obligation of the state to provide shelter to those who do not have. It also becomes the responsibility of the judiciary, as an institution to enforce the rights of the people, to take note of the situation of homelessness and suo-moto try to find out ways in which the problem of homelessness be addressed. Instead, PILs filed to defend these rights have been put in cold storage such as was the case filed by Aashray Adhikar Abhiyan about four years ago.

To add to it, Delhi High Court has been ordering removal of slum dwellers from the Yamuna Pushta on the ground of alleged pollution or on issue of encroachment of public land. Instead of helping the people, what we saw in a case filed on behalf of National Alliance of People's Movement, which prayed to get basic civic amenities to the slum dwellers, the court adjourned the matter for many years. But in the petition filed by middle class colonies asking for the eviction of slum-dwellers whether on Yamuna Pushta or near their middle class colonies, the courts have ordered their removal without providing for any alternative place, bypassing the relocation policy.

It is necessary to examine the ideology and sensitivity of the judges towards these kinds of issues of the urban poor. Existing judiciary with a close system of appointment will appoint more neo-liberal judges, which is seriously due to lack of judicial accountability. First they appropriate the power of appointment to themselves, and then pass self-serving judgment as in Vira Swami's case, which ruled that an FIR couldn't be lodged against a judge without the consent of the Chief Justice of India. So this is a catch 22 situation.

I am only emphasizing to say that judiciary has become embolden to pass these kind of judgments with impunity. It is because they enjoy immunity from any kind of scrutiny whatsoever wherein no disciplinary action is taken against them.

Miloon Kothari's address

It is quite clear from both presentations that there has been a massive failure on part of the judiciary. It is true that the basic human rights principles as enshrined in various UN conventions and covenants with regard to the displaced population have not been respected. While the very basic Human Rights principle is of protection of the rights of the most vulnerable has been violated, but it has moved into a direction where there is an assault on the poor and criminalisation of the poor.

Discussion

Ramit Basu from United Nation Development Programme.

While examining the performance of the parliament, the judiciary, the executive and local self-governance, on the rights perspective, we believe it is important to strengthen the governance structure. We should lessen the need to go to judicial redressal. If we look into the Supreme Court observations with regard to hunger deaths from 1998 to 2001, where, there has been gross violation of the implementation of scheme which did not reach the poorest of the poor. When the budget distribution systems have failed, FCI have failed; why can not we make the judiciary ensure that people get food? why can not the Supreme Court also take suo-moto case and dispense a pro-poor judgement on the basis of the newspaper reports?

Babu Mathew's reply

That every judge has his own ideology, there is no neutral judge. So from where the judge derives this ideology, it is from contemporary society, with neo-liberal influences. So the judges are no longer upholding the Constitution beyond the legislature and the executive and the overall mode is the neo-liberal mode.

Sucharita from Lok Raj Sangathan:

Prof. Babu talked about the relationship between the executive, the legislative and the judiciary, while Prashant said the judiciary seems to have lost its conscience. It makes us ponder that what dictates their conscience, is it the big monopolies or the SEZs? Moreover, working class have been giving vital contribution to the economy, to the industry, to the transport and to every thing that makes the city work. Calling them 'pick pockets' or giving them anti-social labels and criminalisation of the poor needs to be highlighted. Can the city really function without all of these services? The land use has been violated numerous times when the State needs to build commercial structures or Akshardhams. But it is called violation of Master Plan when the traders, small shopkeepers or slum dwellers want it as their right and are named as illegal occupants. In Okhla Industrial Area, when the industries were setting up, they allowed the slums to develop, as they wanted cheap labour. And today, when Okhla is developed these slums are called encroachers. We need a united platform of all affected sections, to assert our right to life.

Biju Lal from Indian Social Institute

Are we following Constitution of India or Manusmriti? In several places in India one can see that Manusmriti in practice, which says that the so called lower caste people should not own any other things than dogs and donkeys. And if they own a cow, then they will have livelihood. The Indian judicial system should be fundamentally reviewed and the processes should involve people who are actually excluded. The BJP government had tried to revise the whole Constitution in a very bad way, negating the livelihood rights of the people.

Indu Prakash Singh from Action Aid India

The biggest challenge today in the country is judiciary. I would like to ask is there any judicial norms, can a sitting judge in full court room call people pick pockets, cheats, robbers, etc. Is there any basic ethics, which forms the part of judiciary? Even the parliament is scared of taking judiciary by its own; they are scared of the contempt against them. Why shouldn't there be contempt of constitution against the judiciary? Prashant has mentioned about the Vasant Kunj Mall issue, which has been approved and cleared. At the same time we have Bhatti Mines on the ridge where 25000 people are living for last 30 years. But it has been issued notices of eviction. The elite are spared, the poor are prosecuted. Then there is the issue of relocation of the slum dwellers who have been given plots 45 - 50 kms away from the city and on the basis of licenses of 5 -10 years. The fear of eviction is always hanging. The preamble of the Constitution says that we the people of India give ourselves to this Constitution. But now it has become 'we' the judges of India have given this constitution to the country and its people and 'we' are the vanguards of this country.

Swami Agnivesh

We should criticise the judiciary but at the same time we should not absolve the executive and the bureaucracy, they are the real perpetrators. Who is taking decision to throw people out of the slums, it's the government and judiciary is only stamping it. Our Prime Minister sent his minister to Narmada but did not give cognizance to the report. It was judiciary which asked the Prime Minister to intervene but in vain. We have no expectations from the parliamentarians. In the bonded labour case, during the demonstration Madhu Dandvate asked us to stop the protest and assured to resolve the issue. But the police lathicharged the workers and killed 12 workers. Police illegally took thumb impressions of workers and fabricated against us. No hearing was given in the Supreme Court. Justice Bhagwati the then chief justice reserved the judgement. We planned a protest, which was published in newspapers and immediately Upendra Bakshi called up a meeting with P.N.Haskar, Nikhil Chakravarti at Justice Desai's house and then Justice Bhagwati was made to give the judgement during vacation.

Prashant Bhushan's reply

We can't say that all judges have lost all their conscience, but it depends not only on the external milieu, but also the external constraints and accountability of that judge. If you remove all accountability from judges which is what has happened today then you will have a situation where even conscience will slowly diminish. Sucharita had said that judiciary has assumed the role of the legislature and the executive but while interpreting the constitution if the judges start misusing their powers, then nothing is above them. In fact the interpretation of article 21 can be easily misused. They are governed by their own predilections, if they find that interlinking of rivers is beneficial, they still can't order for implementation. Judiciary has no reason to dictate to make amendments, while they should intervene and ask the authorities to follow due process. The arrogance of power has inherently corrupted their thinking and made them not just arrogant, but also insensitive.

Therefore, even though the judiciary is an important institution of the state and has the potential of enforcing the rule of law and protecting the fundamental rights of people, etc. But this does not mean that the judiciary should not be criticised or should not be made accountable. The point Indu raised is also an aspect of accountability. After insulating themselves from accountability, the judges are resisting National Judicial Commission. They have recommended amendment to the Right to Information Act suggesting that if the Chief Justice orders that certain information cannot be given then nobody can question.

So the Campaign need to debate about the kind of accountability, question the provision of contempt of court, implementation of the Right to Information Act. And save the judiciary from getting lost.

Babu Mathew's reply

We must destroy that very process which feels that the judiciary is infallible. The Constitution of the country is supreme so it is important to have accountable and healthy judiciary. Today when there is hegemony of neo-liberalism, our job is to build counter hegemony, which can be done by attacking all institutions. The doctrine of separation of powers was invented to make sure that we do not have a tyrannical institution with all powers vested in it. One of the tasks of this platform would be to restrain judiciary from becoming some such tyrant.

Miloon Kothari

It is a very good beginning and the strategies on holding the judges accountable should be explored along with appeals to international forums. One of the preconditions of these appeals is to exhaust local remedies, which we have already exhausted. A collective submission from all the groups in this forum can be addressed to the United Nations Human Rights Council and to the High Commissioner for Human Rights. The international community has high admiration for the Indian courts.

Session IV - Changing Trends in Public Interest Litigation

Chair: Swami Agnivesh

Presentation by Sanjay Parikh

Advocate, Supreme Court

It is important to discuss about the reasons for developing a tool like Public Interest Litigation and how it has transformed recently. While criticizing judiciary one must not forget about the executive inactions of last ten years and the recent laws passed by the legislature. It is necessary to substantiate by two examples, one is aquaculture case which permitted the multinational corporations to have their aquaculture activities at the cost of the traditional fishermen. The second was the case on Electoral Reform wherein it was mandatory for the candidate to give declaration of assets, immediately an ordinance was brought in.

When the PILs were getting developed, it was an understanding that the job of the courts is not to work to interpret the laws but also make the States carry their executive actions. Even the limited understanding of judiciary review cannot provide justice to what constitutes the social wrong, they are wrong to the general public; there may be perpetuation of illegalities and executive excesses, either on an individual or on the society as a whole. The failure to perform public duty should not go unchecked and should not promote disrespect for the rule of law.

As the purpose of the concept of Public Interest Litigation was to make the constitutional rights of the deprived sections meaningful. In the meantime, courts have evolved their own guidelines and principles for entertaining Public Interest Litigation. It is also true that individuals or institutions have done a great service to the people by addressing the issues concerning the rights of women, civil liberties, custodial deaths, environment, public health and the courts have given bold and far reaching judgements on some of these issues.

At this juncture, it is pertinent to see globalisation which has the potential to wipe away the social, economic, and cultural rights of the people and nullify the Constitution and democracy. What role the courts will have to play within the constitutional parameters? Can the courts simply brush aside the decisions, widely affecting the rights of the people? There cannot be any just or fair reason to depart from the march of Public Interest Litigations towards achieving equality. The debate can only be about the controlling mechanism and how to prevent its abuse, but the abuse of it by busy-bodies or persons with self serving interest cannot give any justification to depart from PIL jurisdiction.

On one hand the court has taken the right to food seriously, but on the other took away the benefit of employment or the source of livelihood from contract labours, daily wagers and even individual workers seeking reinstatement. Similarly, on the one hand protection of environment, forest reserves has been taken up vigorously, but in the name of development construction of hotels and

residential apartments has been permitted in sensitive areas, big hydel projects have been allowed by saying that precautionary principle does not apply to them.

While the industries were polluting the river Yamuna in the name of environment protection, people living in the slums have been asked to shift without realizing that there is a deep-rooted problem of migration. The state's obligation to protect the life and livelihood is not meant only for haves, but also for have-nots.

Corruption impedes development and infringes on human rights in various processes of empowerment. It is realized that electoral reforms alone can bring in true democracy to free and fair elections. But the political parties, have completely eroded the democratic values of the constitution, resulting in money and muscle power of the ruling class.

For centuries the agriculture farmers had complete control over seeds, agricultural operations, etc, but it is not there today. The Breeders' Acts, Seed Act have been amended and Protection of the Plant Varieties and Farmer's Rights Act 2001 has been introduced. These provisions have forced the farmers to shift from their traditional breeders' rights. International law has become relevant while determining the legal and constitutional rights including of the people of our country. For example, through the intervention of the courts the patents of Basmati rice was retained by India.

Swamiji pointed out that there are very few advocates left to file the Public Interest Litigation. There is no doubt that the executive negligence in action and violation, corruption and political life and the legislatures has brought enormous pressure on the court. It is indeed a testing time not to give up but to fight with knowledge and conviction.

Shanti Bhushan ji

Senior Advocate, Supreme Court of India

Parikh has shown as to how this principle has evolved over the years and why Public Interest Litigation was conceived. The judges conceived it in 70's and 80's with an objective that rule of law requires, the rights of the downtrodden, human rights and legal rights, to be enforced as the poor were not able to come to the courts to enforce their individual or collective rights. Thus, PIL was devised as machinery.

Those were the days when we had judges like justice Krishna Iyer, justice Chinnappa Reddy, justice Bhagwati, etc. Since the tone of Supreme Court has changed this also determines the tone of the High Courts. The Supreme Court, some years back, ruled that no commercial activity in the residential area be permitted according to Master Plan of Delhi. There could have been two approaches to deal with this case - one where courts have blatantly stopped the commercial activity and rendered lakhs jobless and the other is to direct the

government to amend the Master Plan according to the needs of this population. If the Supreme Court would have consisted of elected judges who were dependent on the votes of the people, they would have preferred the later approach. The concept of democracy depends on votes; the constitution gave power to the votes only so that the interest of the poor could be protected.

Why has this change come out in the judiciary, it's because sometimes people in a high position including those in the judiciary think that they are the rulers and the people are their subjects. So, they have only replaced the Britishers.

Pre-1993 era, the judges were appointed by the government that was answerable to the elected house committed to the social cause. But in 1993, a nine-judge bench of the Supreme Court gave a judgment, which took away this power from the executive and giving independent power to a collegium of five judges to do the appointments of new judges. Today, the judiciary itself has appropriated this power. Even in the U.S, Supreme Court judge cannot be appointed unless he appears before the senate committee and the president. The situation of appointments in India is such that the Supreme Court judges would themselves decide to appoint some like-minded judges who are away from the social philosophy and reality of India. The judges belong to the most affluent class who has never acquainted themselves with the pain and suffering of the working people. This is also one of the reasons why the Public Interest Litigation concept has taken back stage.

Now the PILs filed by the affluent sections are allowed and immediate orders for the removal of slum dwellers are passed. Now the need of the hour is reforms within judicial appointments, the campaign should demand a separate body where people have power of selecting judges. If the campaign will be able to achieve that I think there would again be a reversal in the principles of public interest litigation.

Anuradha from Hazard Center.

Whether public interest is defined in any Act or Statute. Or is it a total discretion of judges to decide what constitutes public interest.

Shantibhushan ji

Public interest is not defined anywhere, it depends largely on the discretion of the judiciary. That is why it is necessary that the social philosophy of the judge concerned must be on the right track. He must feel that public interest means the public interest which is the interest of the voiceless and the downtrodden masses who are suffering from centuries of oppression.

Siddharth from Pune University

The idea of the Supreme Court to hire the judges would have only occurred perhaps to remove the influence of the legislature. Hence, the mechanism was to bring about the judiciary to be independent in itself. Now, decade later it seems that judiciary itself have gone on an absolute power mode. So in a sense

one could say the judiciary may not be corrupt, but the judiciary has become autocratic.

Shanti Bhushanji's reply

Today, we are talking about the corruption among the politician but a few years back the sitting Chief Justice of India, justice Barucha declared that atleast 20% judges in higher judiciary were corrupt. When I joined practice in 1948, it was impossible to think that a judge could be corrupt. Under the code of criminal procedure, if a person has committed a crime and a FIR is lodged than the police should make investigation. But in case of corruption in judiciary which is clear from the Vera Swami case in 1990. Vera Swami was chief justice of Madras High Court and cash worth lakhs was recovered; the explanation given was that the chief justice's wife was carrying on diary business. When the matter came to the Supreme Court, it laid down a new principle to maintain the independence of the judiciary, that an FIR for any offence cannot be recorded against the judge of the High Court or the Supreme Court without the permission of the Chief Justice of India. Chief Justice of India will never give permission for the lodging an FIR against his brother judges.

Therefore, the judges feel that they are totally immune so they have a liberty to be corrupt. Recently the Committee for Judicial Accountability had written to the Chief Justice of India giving him evidence against a judge's wife who had purchased land worth lakhs for only 5 lakhs and asking for permission to lodge an FIR. We are yet to receive an answer, but it is not enough to remove a corrupt judge but it is necessary to send them to jail.

Vishnu Prakashji

The impact of the liberalisation and globalisation is also on the media. The rights of the poor have been systematically dismissed. For instance, the demolitions are happening everywhere but the press is not reporting it at all.

Swami Agnivesh

Once we were protesting outside the Supreme Court, a case of contempt was filed against Arundhati Roy, although she was sitting peacefully and we were making most of the noise. The tool of Public Interest Litigation was the need and is a very important tool for advocating our rights. Though there are aberrations but still we have to protect this tool. Major contribution was also on part of judges. For instance the Master Plan of Delhi has become ball game for the two political parties, who violated the same plan many times. It is not only judiciary but also the executive, which is corrupt.

When I was in the Janata Party and a minister there, my own government applied Section 144 in industrial area of Faridabad for almost a year. When the workers took processions, the police opened fire and 12 workers were killed. When I raised the issue in the Parliament, I was questioned and asked not to raise the issue as I was the cabinet minister. I was asked to resign and I

resigned. The very party, the Janata Party changed its stand for working for the rights of the poor. There is something which changes everything just after they come to power.

This calls for the need for judicial accountability, as the judiciary has absolved themselves from any scrutiny, right to information, FIRs, etc.

Vote of Thanks

Prashant Bhushan

This is only the beginning of this whole issue and the debate has to be taken forward. All of us should take the lead to organize into the strong movement on this whole issue of judicial accountability and judicial reforms etc.

Indu Prakash Singh

95 people participated today, so it shows that people are interested in this campaign. Thank you for joining.