

The Curious Incident Of The Underdog's Defence

IN A PRO-RICH SYSTEM, HE ALWAYS RULED PRO-POOR, PRO-JUSTICE. IS THAT WHY HE WAS NOT APPOINTED TO THE SUPREME COURT? **SHOBHITA NAITHANI** PROFILES THE OUTSPOKEN MAN

FORTY YEARS ago, Justice Ajit Prakash Shah — the recently retired Chief Justice of the Delhi High Court, famous for his pro-poor judgements — was at loggerheads with his passion. He was 22 then. Having put his sweat and tears into amateur theatre, his family suddenly told him that he had the makings of a “successful lawyer”. Extensive chats ensued with his father, who would later become a judge of the Bombay High Court, and his paternal grandfather, a lawyer in hometown Solapur, western Maharashtra. Law wasn't “compelling enough” but Shah listened keenly, argued civilly and decided prudently. That quality stayed with Shah, the oldest of four siblings, first as lawyer and later as judge.



No time to quit For AP Shah, new battles for justice and equality are about to begin
PHOTOS: VIJAY PANDEY



Shah's beneficiaries But for the Chief Justice, night-shelters in Delhi wouldn't exist
Photo: AFP

When Shah, 62, celebrated both by contemporaries and juniors for being humane and honest, retired as the Chief Justice of the Delhi High Court on February 12, it was only fair that he not hide the truth. A little over a year ago, Shah was bypassed for appointment to the Supreme Court. He waited until this month to speak out, triggering a big controversy. He spoke candidly about the ambiguous system of appointments to the higher judiciary in India. “What's questionable about the current system is that it is carried out in secret,” he told TEHELKA (see *interview*), speaking of the collegium that the Chief Justice of India heads to select new judges.

When Shah, a political science graduate from Solapur, enrolled in a Mumbai law college, judgeship wasn't even on his mind. The thought was to give the profession his best. On attaining a law degree, he began practicing law in Solapur under his grandfather. Acting in plays by then had become occasional. Two years later, in 1976, he shifted to Mumbai. His father was already living in the city as a Bombay High Court judge. But Shah chose to live separately. Thereon, he sank his teeth into his profession, and never looked back.

With his sheer compassion for the underdog and the tacit understanding of the law, Shah has over the years earned himself the distinction of being a fair, forthright and fearless judge. In 1997, as a judge of the Bombay High Court, he overruled the government's decision to ban filmmaker Anand Patwardhan's celebrated documentaries that raised disconcerting questions about communalism. "He came so thoroughly prepared to court that he was always a step ahead of the lawyers," recalls Patwardhan. "One didn't have to explain to him that injustice was being done.

For Shah, *nyaya* (justice) and *niti* (moral) are inseparable. *Nyaya* would be meaningless if it didn't benefit those seeking it. Therefore all his judgements are about real lives, people and concerns. This February he slammed the Delhi government for trying to restrict the number of cycle rickshaws — because it violated their right to livelihood. A month earlier he had directed the government to rebuild night shelters for the homeless that had been demolished as part of an on-going beautification drive. "You are doing it in the name of the Commonwealth Games. Is it beautification?" he had said. "You can't run away from your responsibility to the public." Ditto for slums. Delivering his last judgement before retirement, Shah admonished the forcible expulsion of slumdwellers without alternative housing.

"The perception is that the organs of the state are for the repression of the common man," says Delhi lawyer Ashok Agarwal. "But Shah turned that perception on its head." Agarwal once appeared before Shah for an NGO seeking special educators for disabled children in government schools. He ruled that schools should hire specialist teachers, and include dyslexic children in regular classes instead of segregating them.

The rule of law, says Shah, should mean inclusiveness. "Social justice has lost its relevance because of globalisation," he told TEHELKA. "It is the duty of the courts to ensure equality." As the Chief Justice of the Madras High Court and, earlier, as a judge in the Bombay High Court, Shah forced transport authorities to introduce disabled-friendly buses and stopped railway police from removing visually challenged hawkers at railway stations. Controversially, he also fined political parties for calling general strikes that paralysed city life.

Lawyers and colleagues say Shah is quick to anger, is painstaking and unhurried in his proceedings. But Shah has an ability to turn his failings into his forte. His anger has become angst towards injustice, painstakingness has become precision and the unhurried pace means he listens intently to young lawyers.

Like his judgements, Shah is unfussy. An agnostic, he visits temples because his wife wants him to go along. Once, he recalls, he surprised himself by breaking into tears before the idol of Balaji in Tirupati. But, typically, he made no attempt to find an answer to the "bizarre experience". He has never played cricket, but he loves Virender Sehwag's bludgeoning hand. He reads ravenously, even during meals. "Sometimes he is not even aware of what he is eating," laughs his younger sister, Anuradha Gandhi. Shah's law researcher Kapil Rustagi, who has seen the judge work 12-hour days, says he "is simple in his working and explanation".

Two women are Shah's support system: his mother Chhaya Prakash and wife Swati Shah, a psychologist who has worked extensively with dyslexic children. Shah inherited his concern for the poor from his mother, 87, who was influenced by Mahatma Gandhi as a teenager and taught Dalits in Solapur. As a child, Shah observed Dalits closely. Some friends at the "unsophisticated" Haribhai Devkaran High School were Dalits from the cotton mill households. Their pain and inequity led Shah to turn to the literature of Marathi Dalit writers like Namdeo Laxman Dhasal, Arjun Dangle and Narayan Surve, which soon became his passion.

Perhaps, the only discordant note in the story of his life would be his exclusion from the Supreme Court. But then, his mother wrote him a letter saying he should ignore the material things in life and keep marching. So what after retirement? "I will not take up any post-retirement

appointments," he says. The Pune-based NGO, India Law Society, has roped him to draft proposals to amend the Mental Health Act to ease admission, treatment and discharge procedures. Shah is keen to join the campaign towards creating a National Wage Policy that would increase the wages of daily wage labourers. For now, though, Shah is busy packing up to quit his sprawling bungalow in Lutyen's Delhi so that he can return to Mumbai to be with his ailing mother.

WRITER'S EMAIL
shobhita@tehelka.com