

The Impact of recent court the judgements on the rural poor

Presentation by Prof. Babu Mathew

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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.