

**Panel address on**

***Sensitising the Judiciary to the Rights of the Poor: the Judicial Legacy of Justice A.P. Shah***

**6<sup>th</sup> April 2010, Nehru Memorial Library, Delhi  
4:30p.m. – 7:30pm.**

**Background note**

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There was a time in the 70s and 80s when liberal judges in the Supreme Court like Justice Krishna Iyer, Justice P.N. Bhagwati and Justice Chinnappa 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. During this period the Supreme Court interpreted the right to life and liberty to mean not just a life of animal existence but to be able to lead a dignified life and to have the basic amenities required for a dignified life. Thus Article 21 of the Constitution was interpreted to include the right to food<sup>i</sup>, the right to health care<sup>ii</sup>, the right to shelter<sup>iii</sup>, the right to education<sup>iv</sup>, the right to a healthy environment<sup>v</sup>, etc. To enforce the rights of the poor who could not approach the courts themselves, the courts liberalised the rule of locus standi and opened a new path of public interest litigation which allowed any public spirited citizen working pro bono publico to approach the court on behalf of the poor and marginalised, to enforce these liberally interpreted fundamental rights.

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. One even began to see orders of the court which clearly violated these rights. Thus, while 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. This deprived them of shelter thus violating their Art. 21 rights as declared by the Supreme Court in the *Chameli Singh case*<sup>vi</sup>. And yet, a five-star apartment complex given to a private builder was allowed to come up on the same land in the guise of the Common Wealth Games? Similarly five-star hotels and malls were allowed on the Delhi ridge, also considered an eco fragile zone from which a few years ago jhuggi dwellers were evicted. The attitude of the Court towards slum dwellers is summarised by the observation in *Almitra Patel's case*<sup>vii</sup> in which it was stated in the context of giving alternative land to evicted slum dwellers

*“Rewarding an encroacher on public land with free alternate site is like giving a reward to a pickpocket”.*

One the other hand shopping malls built on the ridge without the mandatory environmental clearance were allowed to remain, where the Supreme Court in its judgment, on the writ petition against the Vasant Kunj Mall dated October 17, 2006 (in which it allowed the construction of the mall to go right ahead) went on to say:

*"Had such parties inkling of an idea that such clearances were not obtained by DDA, they would not have invested such huge sums of money. The stand that wherever constructions have been made unauthorisedly demolition is the only option cannot apply to the present cases, more particularly, when they unlike, where some private individuals or private limited companies or firms being allotted to have made contraventions, are corporate bodies and institutions and the question of their having indulged in any malpractices in getting the approval or sanction does not arise."*<sup>viii</sup>

The decades of the 90s and the 2000s seem to indicate that the higher courts in India had imbibed the neo-liberal philosophy that rights were as good as your money could buy. If you could not afford a house, you were rightfully condemned to live on the streets and if you could not afford food, you were rightfully condemned to starve. Most judges during this time appear to have forgotten not only the judgements of the Supreme Court itself holding that every citizen had a fundamental right to lead a dignified life, but the very preamble of the Constitution and the directive principles of state policy.

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. While at the Bombay High Court, his judgments displayed deep concern for the persons with living with disability – both economic and physical. He directed employment to those affected by HIV and held that dyslexic students were entitled to the benefit of various concessions under the Persons with Disabilities Act. The Delhi High Court judgments of Justice Shah continued to reflect his empathy for the weaker sections. He directed the Delhi Government to engage special educators for challenged students<sup>ix</sup> and he gave exemplary directions strengthening the Persons with Disabilities Act, protecting the rights of those with low vision or suffering from blindness, while pointing to the Governments failure to ensure proper implementation of the statutory reservation under the Act<sup>x</sup>. His best known and bold judgment is the one striking down S. 377 of the Indian Penal Code and thus upholding the rights of sexual minorities<sup>xi</sup>. Rather lesser known but even more important are the judgments upholding the rights of the rickshaw pullers to ply rickshaws in the city without harassment from authorities<sup>xii</sup>; rights of slum dwellers to humane relocation in case their lands are required for public purposes<sup>xiii</sup> and the rights of the homeless to night shelters .

At a time when the GDP of the country is growing at almost double digits but 78% of the country lives on less than Rs. 20 per day<sup>xiv</sup>; 200,000 farmers have committed suicides over 10 years; tens of lakhs of adivasis have been displaced from their lands cutting them off from their only means of survival; the ranks of the Maoists have burgeoned rapidly due to the brutalisation of and disaffection of the poor and marginalised; it has become increasingly important for the judiciary to at least stand up for the rights of the poor. If the judiciary does not do so, it extinguishes the only safety valve left within in the existing frameworks of our democracy against the callous policies of the government which are leading to the marginalisation and decimation of the most impoverished and destitute of the country. That then makes the condition ripe for insurgencies of the Maoist kind which are now being regarded by the government as the single biggest security threat to the country.

Justice Shah's retirement from the judiciary is an important occasion for us to discuss these issues and his judicial legacy. We wish and hope that his judgements and his 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.

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*i People's Union for Civil Liberties v. Union of India (1997) 3 SCC 433, AIR1997SC1203*

*ii Consumer Education and Research Centre v. Union Of India (1995) 3 SCC 42, AIR 1995 SC 922*

*iii Chameli Singh v. State of Uttar Pradesh, AIR 1996 SC 1051*

*iv Unni Krishnan JP v. State of Andhra Pradesh, AIR 1993 SC 2178*

*v Andhra Pradesh Pollution Control Board v. Prof. M.V. Nayadu (1999) 2 SCC 718*

*vi Chameli Singh v. State of Uttar Pradesh, AIR 1996 SC 1051*

*vii Almitra H Patel & Anr v. Union of India, (2000) 2 SCC 166*

*viii TN Godavarman Thirumulkpad v. Union of India, (2006)10SCC490*

*ix Social Jurist v. GNCTD 163(2009)DLT489*

*x National Federation of the Blind v. Union of India 156(2009)DLT446*

*xi Naz Foundation v. Government of NCT and Ors. 160(2009)DLT277*

*xii Manushi Sangathan v. Govt. of Delhi and Ors. WP (C) No. 4572/2007 and 8580/2009*

*xiii Sudama Singh and Ors. v. Govt. of Delhi and Anr., WP (C) 7317 and 8904/2009*

*xiv Report of the National Commission for Enterprises in the Unorganised Sector, Chaired by Arjun Sengupta 2007.*