

HAS THE JUDICIARY TURNED ITS BACK ON THE POOR?

Background paper for the seminar on THE RECENT ROLE OF THE JUDICIARY REGARDING THE RIGHTS OF THE POOR

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 basic necessities of life. That was in the roaring 80's when the Court gave a series of path breaking judgements; Olga Tellis (where it held that even pavement dwellers have the right to resettlement and a right of hearing before they are evicted); the Asiad Workers case, where it held that non payment of minimum wages to the workers violated their right to life; the Bandhua Mukti Morcha case, where it was held that workers cannot be kept in bondage because of loans they had taken from their employers; in Vishaka where while giving a liberal interpretation to sexual harassment of women in the workplace, they held that international covenants signed by India can be read into domestic law. A new tool of Public Interest Litigation was fashioned where anyone could invoke the jurisdiction of the Courts even by writing a post card on behalf of the poor and disadvantaged who were too weak to approach the courts themselves. It seemed that a new era was dawning and that the courts were emerging as a new liberal instrument within the State to provide the poor some respite from the various excesses and assaults of the executive.

Alas, 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 liberalization. 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 are being ruthlessly bulldozed without notice and without rehabilitation, on the orders of the court,

or the urban hawkers of Delhi and Mumbai who have been ordered to be removed from the streets again on the orders of the court.

Public Interest Litigation has been turned on its head. Instead of being used to protect the rights of the poor, it is now being used by commercial interests and the upper middle classes to launch a massive assault in the poor, in the drive to take over urban spaces and even rural land occupied by the poor, for commercial development. While the lands of the rural poor are being compulsorily taken over for commercial real estate development for the wealthy, the urban poor are being evicted from the public land that they have been occupying for decades for commercial development by big builders, for shopping malls and housing for the rich. Roadside hawkers are being evicted on the orders of the Courts (which will ensure that people will shop only in these shopping malls). All this is being done, not only in violation of the rights of the poor declared by the Courts, but also in violation of the policies for slum dwellers and hawkers which have been formulated by the governments. 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.

All these have been done without notice to the affected sections of society and in complete violation of the principles of natural justice. Sometimes these actions of the Court seem to have the tacit and covert approval of the government (and the court is being used to do what a democratically accountable government cannot or dare not do), but occasionally they are against the will of the government.

The country today is living through a phase where the country's billionaires are growing as rapidly as farmers suicides in the countryside; where opulent shopping malls, commercial complexes and futuristic IT cities are coming up on land which the poor are being forced to vacate. Thus the poor are being deprived of the only real resources that they have, land, and are being made homeless and destitute in order to feed the greed of the wealthy.

This has bred and is continuing to breed enormous resentment among the poor and the destitute. Feeling helpless and abandoned, by every organ of the State, particularly the judiciary, many are committing suicides, but some are taking to violence. That explains the growing cadres of the Maoists who now control many districts and even States like Chhatisgarh.

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. The issue is far too important to be allowed to go by default.

It is to discuss these important issues, that the All India Lawyers Union along with the Stop Eviction Campaign have decided to organize a seminar on the 4th November at the Indian Society for International Law, Bhagwan Das Road, New Delhi. The seminar will be from 10 am to 5 pm and will have 4 sessions devoted to: Impacts of recent Court judgements on the rural poor, Impacts on the Urban poor, Impacts on labour, and one session on changing trends in Public Interest Litigation. The tentative schedule of the Seminar is attached. The seminar will be attended by judges, Lawyers, Social activists and workers and journalists.