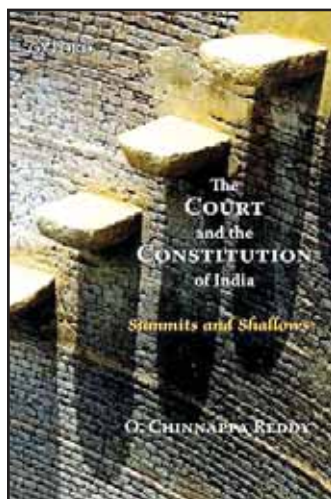


India's Supreme Court has singularly failed to recognize, concede or even engage with the fact that while politics is not about law, certainly not all about law, law is all about politics. It is okay to make great claims about objectivity and neutrality of the law off and on, but everywhere in evolved democracies, there is a clear recognition that politics does determine how our law and the idea of justice functions.

JUSTICE & THE INDIAN MIDDLE CLASS

A Search for An Awakened Soul



One of the most meaningless phrases uttered in India at a frequency that is almost stupefying is that "the law will take its own course." It is only matched by the astonishing number of times another meaningless sound byte is delivered: "I have immense respect for the judiciary and the judicial system." Men who utter such words include Narendra Modi after Gujarat massacre, L K Advani after Babri demolition, Mulayam Singh and Amar Singh after CBI cases into their shady deals, Lalu Prasad Yadav after fodder scandal, Jagdish Tytler and Sajjan Kumar as they keep dodging the law in court after court even 25 years after leading bloody mobs to kill, maim, burn Sikhs alive in the national capital.

The higher the court, the more pure their faith in the judicial system. So, the Supreme Court becomes the repository of all objectivity, justice and purest of motives. No wonder that men like Maninderjit Singh Bitta also hail their faith in the judicial system when utter miscarriage of justice is done in Prof Devinderpal Singh Bhullar case. One after the other gross violations of human rights happen right under the nose of India's Supreme Court, but the pretensions of India's ruling

Gian Inder Singh

elite and the brahmanical Indian establishment about the faith in the judicial system remains ever so high. The reason is simple. Any decision to recognize the warts is likely to lead to a serious engagement with the issue, and any serious engagement will bring out the hollowness of the sham that the Indian establishment has collectively come to put on when it comes to the ability and the inclination of the courts deliver justice.

When India's middle classes jump to their awakened conscience after 26/11 Mumbai terror attacks, the judicial system too joins them. It suddenly awakes from slumber to find that terrorism is indeed a bad thing, and the mayhem involving the massacre of 180 innocent young men and women at five star hotels and a railway station was unacceptable. "Enough is enough," goes the war cry. The middle class-elite-English speaking-TV friendly people initially wanted the most simple of solutions: Attack Pakistan. Shorn of its frills, it said they have killed our innocent rich, let's kill their innocent poor. And in larger numbers.

Well meaning columnists suggested exporting terror: "We should do to Pakistan what Pakistan has done to us," they said. Forgetting that we are



Mallika Sarabhai

Meera Sanyal

not awaken the middle class or the Supreme Court. But both respond to similar concerns. 26/11 jolts the middle class; 26/11 awakens the judiciary. See, whose interests have come to converge! The rulers, the middle class and the judiciary's concerns are converging, and converging fast. And one outcome of it all is a meaningless reiteration of a non-fact that the judiciary is always above politics, that the courts have nothing to do with politics and that politics per se is a bad word and a bad construct.

India's Supreme Court, and of course the larger judicial system, has singularly failed to recognize, concede or even engage with the fact that while politics is not about law, certainly not all about law, law is all about politics. It is okay to make great claims about objectivity and neutrality of the law off and on, but everywhere in evolved democracies, there is a clear recognition that politics does determine how our law and the idea of justice functions. Guantonamo Bay was not illegal, it was immoral. When it had to be shut down, it had become illegal because numbers of farmers committing suicide, unacceptable number of boots in the Kashmir valley, unacceptable nature of atrocities in India's north east, unacceptable role of India in many of our neighbourhoods does

do it to ourselves. Ajmal Kasab could not even buy new clothes, and he dithered into the world of terrorism. Large sections of India's population cannot even buy two square meals, and the apathy of the Indian state translates into what is shamelessly hidden in the umbrella term "naxalism".

But no, all of this does not awaken India's judiciary. The Supreme Court and the not so supreme courts, all sit tight as India goes on violating human rights. Unacceptable levels of poverty, unacceptable levels of malnutrition, unacceptable level of infant mortality rate, unacceptable numbers of farmers committing suicide, unacceptable number of boots in the Kashmir valley, unacceptable nature of atrocities in India's north east, unacceptable role of India in many of our neighbourhoods does

not awaken the middle class or the Supreme Court. Obviously this is recognition that there is always politics attached to our actions. But Indian judicial system is extraordinarily thick-skinned to underline this.

As the great American judge Benjamin Cardozo had said: "The great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by. The sooner we recognize this as a society, the better off we will be."

But will India's Supreme Court ever muster up the courage to do so? This is the Supreme Court that takes up cases of ban on polythene bag on suo motu basis, that hauls up politicians for their failure to stop someone from splashing paint on hill sides and calls it Rape of the Rocks, but it cannot stop the demolition of Babri mosque, it cannot take suo motu notice of the Sajjan Kumars and Tytlers, or of Narendra Modis or of rapist and murderer self-styled godman like Gurmeet Ram Rahim.

But off and on, one or the other good soul engages with these issues and puts India's judicial system to shame. The system that India's politicians and the ruling brahmanical elite love to praise. Who praises whom is always a good indicator of who serves whom. If the politicians praise the judicial system all the



All these are well meaning, honest, beautiful people-like-us who want to do good. Their politics is simple. It starts with 26/11, or the debate on reservation, or the Jessica Lal case. Their mantra to build a new India of equal opportunities is to end the quota system. An odd fodder scam will not bother them much, they can always make up by making fun of a Bihari politician in laughter challenge programmes. They cannot see Hindutva politics. Ideological fights are petty politics for them. They do not believe in the politics of Left or Right; they claim to believe in some higher form of politics in which the ideal is divorced from politics.

time, surely it is not serving the common man. It is this simple fact that the scintillating new book "The Court and the Constitution of India: Summits and Shallows" by O.Chinnappa Reddy (Oxford University Press) has brought out. Reddy is the right man to intervene. He is an insider, a former judge of the Supreme Court of India (1978 to 1987) and he was a judge of the High Courts of Andhra Pradesh, and of the Punjab and Haryana prior to that. He is the youngest of the legendary quartet of Supreme Court judges (along with Justices V.R. Krishna Iyer, P.N. Bhagwati and D.A. Desai) who, some three decades ago, changed the course of India's judicial and political history by seeking to radically transform the Court, in the words of Upendra Baxi in his brilliant foreword to this book, "from the Supreme Court of India into a Supreme Court for the Indian impoverished."

Reddy's is a judgment on those who deliver judgments for a living. India's top court has been found wanting at crucial times and in crucial cases. Its eagerness to send Arundhati Roy to jail is matched by the near apathy about the killers who roam free. The judicial response to the terrorism on the poor of India being wreaked by the neo-liberal policies has been a poor statement of the politics of law. The judges are sharing the ivory towers with the politicians and claim neutrality because they do not go out for dinner with the local councillor but they have failed to descend to the crowded mud huts and littered pavements to see how their words about participative justice and people's participation in the judicial process are hollow and meaningless.

Reddy has narrated in detail a few samples, including the 1967 Supreme Court verdict in the Golaknath case (denying Parliament the right to amend fundamental rights) which he called "a tragedy" whose effect "was to stop Constitutional progress and fossilize the Constitution." The Emergency-era decision of the

Court in the ADM Jabalpur case—holding that our life and liberty were gifts of the State that could be taken back by it at its pleasure—is "dreadful and calamitous", an instance in which the Supreme Court of India "touched the lowest point that could ever be touched by any court with a conscience." The decision of the Court in punishing the late E.M.S. Namboodiripad in 1970 was "a serious blot in the Supreme Court's history." Justice Reddy takes the view that the Court should not have punished Arundhati Roy. "The demolition [of the Babri Masjid] took place with the Supreme Court almost a mute spectator. The Court failed to take any positive steps to save the situation." The 50 per cent limit on reservations imposed by judicial fiat "may indeed be considered an amendment of the Constitution by the judiciary which, of course, is beyond its competence."

There is a scathing criticism of the Supreme Court cases on Hindutva and on the decisions restricting the right to strike and bandhs; and on matters internal to the judiciary, including current processes for appointment of chief justices.

The utter blindness of India's Supreme Court is in keeping with the class that talks of neutrality of law as if the judges exist as human beings outside the purview of values and thought processes that all other human beings are impacted by. The ideals of not be partisan is stretched to claim that there is no place for politics in law and justice. This is nothing but complete hypocrisy of those who know very well that law and justice are heavily political entities and constructs and it is better to recognize this than to be part of the sham.

No wonder India's middle classes also walk the path shown by the Supreme Court and the self-appointed town hailers of the majesty of the law who demolish mosques, gulp millions in fodder scandals or talk of cutting the hands of Muslims but praise the majesty of the law that always takes its own course. If it has no intention of taking the course of justice to the people, naturally it takes its own course. A course that India's middle classes being nursed on neo-liberal values and capital love to take themselves on.

So a Sarabhai wants to fight elections and an ABN Amro bank executive wants to change society. Both have a skewed understanding of politics. Sarabhai wants to ask Advani why he did not take up issues of Gandhinagar's rural areas in Lok Sabha and why he did not spend all of his Rs 10 crore of MP Local Area Development fund. ABN Amro's Sanyal is angry that Mumbai is not getting enough money from the Centre even though it contributes Rs 95,000 crore to the central kitty of taxes. Sanyal was jolted by 26/11, having failed to be jolted by farmers' suicides, malnutrition deaths, female foeticide, Gujarat riots or anything else. Sarabhai says she too was jolted by 26/11, and has expressed surprise that slums in Gandhinagar do not have toilets.

How much does it take our good citizens from the middle classes to discover the lack of toilets in slums?

All these are well meaning, honest, beautiful people-like-us who want to do good. They too, lest you fail to notice, have full faith in the majesty of the judicial process, the neutrality of India's Supreme Court and the hidden truth in the law's ability to take its own course. Their politics is simple. It starts with 26/11, or the debate on reservation, or the Jessica Lal case. Of and on, they may sign a petition for building a new India of equal opportunities, and their mantra will be to end the quota system. They will all hail the Supreme Court, and their faith in the neutrality and merit of India's judicial

system will be strengthened. An odd fodder scam will not bother them much, they can always make up by making fun of a Bihari politician in laughter challenge programmes.

They cannot see Hindutva politics but like Navjot Sidhu's corny jokes. Ideological fights are petty politics for them. They do not believe in the politics of Left or Right; they claim to believe in some higher form of politics in which the ideal is divorced from politics.

They love the Nano and forget Singur. They wish you well. They want everyone to have a Nano at least. They have no problems with State Bank of India issuing advertisements saying "A Nano for every Indian" at a time when India's per capita food intake is the worst in a decade.

India's Supreme Court cannot and does not engage with the fact that farmers in India are committing more and more suicides ever since the country's growth rates are rising. ABN Amro contributes to such a growth pattern. Sanyal works for ABN Amro. There are many Sanyals, and there are many ABN Amros. Sanyal does not come



Lovers of Nano forget Singur. Indian national banks are issuing advertisements saying "A Nano for every Indian" at a time when India's per capita food intake is the worst in a decade. Mass killers are joining hands with engines of neo-liberal growth. What doesn't bother the middle class doesn't bother the Supreme Court either.

into politics because of suicide rates. Sarabhai is not jolted by the fact that a farmer has to buy fodder grain from the market for his family. What does not bother the middle class good people does not bother the Supreme Court either.

The official figure of the number of farmers who have committed suicide in India between 1997 and 2007 now stands at a staggering 182,936. It is not enough to jolt the Indian middle class, or the Supreme Court. It is jolted by 26/11. A country in which a large majority depends on farming, millions of small and marginal farmers are net purchasers of food grain. They cannot produce enough to feed their families. Hunger among those who produce food is a very real thing.

Per capita net availability of food grain has fallen dramatically among Indians since the reforms began: from 510 grams per Indian in 1991, to 422 grams by 2005. That's not a drop of 88 grams. It's a fall of 88 multiplied by 365 and then by one billion Indians.

But we love the progress that India is making. India's middle classes want to take the country ahead and make it a global power. They are enthused by the progress. Their spirit is not dampened because of the fact that the average poor family has about 100 kg less today than it did just ten years ago; their spirit is lifted by the fact that the neoliberal model that pushed growth through one kind of consumption also meant re-directing

huge amounts of money away from rural credit to fuel the lifestyles of the aspiring elites of the cities and countryside. That's why when private banks like ABN Amro opened the highest number of branches in India ever, India's national banks shut down the highest number of branches in rural areas. That's why there were so many people at the five star hotel when 26/11 happened. That's why so many editors called the five star hotel their second home. That's why India's middle classes saw the Taj in Bombay as the icon of India. They cannot and do not want to see that it is an icon of a class. Just as for another class, one of the prominent slogans of freedom struggle was "Tata Birla Hai Hai."

It is good that people get jolted by something. That India's law and courts that always take their own course get jolted by something. Mumbai got the attention with 180 deaths on 26/11. It is also the capital of the state which saw, as per official data, 40,666 farmers' suicides since 1995. Of course, with very little media attention.

India's Supreme Court and India's middle classes want to

develop India at a rate much faster than the politicians want to. So the Supreme Court has no compunctions in raising the height of Narmada Dam, and the middle classes want India to have giant corporate hospitals, sky scrapers, flyovers, a Burj Dubai in every town. Talking about networks of small dispensaries is passé, talk rather of the possibility of medical tourism. Let the poor villager die of something as simple as gastroenteritis.

This is our vision of development, and this is how it operates in tandem with the so-called apolitical judiciary. Look Mama, we're world class. Our Supreme Court is devoid of all politics, and 26/11 has awakened our soul. After 9/11, we were all Americans. Now we are all truly Indians. The rest may well commit suicide. Be sure, the Supreme Court will take no suo motu notice. And if a quill moves, the law will send P Sainath to jail. He can rot with Binayak Sen and both discuss the interface between farm impoverishment, lack of land reforms and rise of naxalism. And yes, we do have a jail reforms programme if you think we are apathetic to the rights of the prisoners.

Awakened conscience of a Sarabhai or Sanyal would surely not need the two measly votes of Sainath or Binayak Sen. The middle class has risen above politics, just like our Supreme Court. The ideal is being achieved. Its growth rate matches our ambition to see India as a super power.