

# Rights of the Poor: An Overview of Supreme Court

*The Supreme Court's recent declaration which says that the slum dwellers have no right to a notice before eviction and demolition is an indication of its attitude towards the poor. This article examines the functioning of the apex court since its inception in matters regarding the rights of India's poor.*

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**T**he declarations by the Supreme Court that people staying in slums have no right to notice before eviction and rehabilitating these encroachers on public land “is like giving a reward to a pick-pocket”<sup>1</sup> seem to have caused some critical thinking amidst general adulation for the institution. In fact, in the recent debate in Parliament, members expressed anguish at the anti-poor attitude of the court and inquired about the appointment of judges and the need for intervention in the process.<sup>2</sup>

The post-Emergency era of the late 1970s and 1980s with the emergence of public interest litigation (PIL) seems to have

created a strong image of the institution as being pro-poor and exploited. However, an overview of the functioning of the Supreme Court since its inception is instructive in forming an understanding of the institution's view of the poor in India.

## **Court's Approach: An Overview**

*Land reforms:* After independence, the abolition of the zamindari system and implementation of land reforms were the agenda of the Congress Party and the government. Zamindars were the symbols of oppression and there was near total support of the rural population for these measures. Land reform laws were passed in most of the states by the Congress

governments in power. The landlords challenged the validity of these acts in courts.

The court's approach was one of protection of the rights of property, an aversion to land reforms and indignation that zamindars were being deprived without adequate compensation. The Bihar Land Reforms Act of 1950 was struck down by the Patna High Court as violative of the right to equality. After the striking down of the act, the Parliament amended the Constitution in order to protect laws passed for the acquisition by the state of any estates or any rights from being struck down on the ground of violation of fundamental rights.<sup>3</sup> However despite the amendments, the provisions of land reform legislations were struck down by the Supreme Court in cases like *Maharajadhiraj Kameshwar Singh*<sup>4</sup> (1952) and *Thakur Raghubir Singh*<sup>5</sup> (1953). Cases with regard to compensation after acquisition of land or property were inevitably decided in favour of the owner of property as in *Bela Banerjee*<sup>6</sup> (1954), *Dwarkanath Das*<sup>7</sup> (1954), *Subodh Bose*<sup>8</sup> (1954) and *Saghir Ahmed*<sup>9</sup> (1955).

*Economic laissez-faire:* Thereafter, the court supported economic laissez-faire and struck down the nationalisation of banks in the *R C Cooper* case<sup>10</sup> (1970) holding it to be discriminatory and violative of the guarantee of compensation. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 had been passed with the object of public control of national finance and elimination of concentration of wealth, however, the court ruled in favour of private business and private enterprise. There was a strong demand for the abolition of privy purses granted to erstwhile rulers of princely states. The court in *H H Maharajadhiraj Madhav Rao Jiwaji Rao*<sup>11</sup> (1971) held the abolition to be unconstitutional as violative of fundamental rights and contrary to the Rule of Law. The judgment declared that the government did not have the power to abolish the concept of rulership, privy purse and privileges on the ground that these were incompatible with democracy, equality and social justice.

*Civil liberties:* In the area of civil liberties, the court, soon after its inception had to engage with the issue of preventive

detention in the case of the communist leader A K Gopalan. The Preventive Detention Act, 1950 had been passed by the Parliament. Under the provisions of this act, a person could be detained if the government was satisfied that it was necessary that he should be prevented from acting prejudicially to the interest of the state or the maintenance of public order. There would be no trial but the person could be put in jail for a period of one year. Gopalan was arrested by the Madras government as there was disturbance in public order in Telangana. Gopalan challenged the constitutionality of the act as well as his detention. The submission was that a person who is detained would lose his other fundamental rights like freedom of movement, freedom of speech and expression, freedom to do any business, trade or profession. Under the Constitution, these rights could only be taken away if the legislation satisfied the test of reasonableness. Therefore, the preventive detention law must satisfy the test of reasonableness. The majority of the judges were of the view that guarantees and restrictions relating to other freedoms

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should not apply to preventive detention. Each of the fundamental rights was held to be specific and independent with its own individual limitations. Justice Fazl Ali representing the minority view held that principles of elementary justice applied and a person could not be condemned without hearing by an impartial tribunal. The majority judgment of the court declared that the test of reasonableness was not applicable and upheld the preventive detention law in Gopalan's case<sup>12</sup> (1950).

In the shameful ADM Jabalpur case<sup>13</sup> (1976) during the 1975-77 Emergency, the court upheld the suspension of the fundamental right to life and declared that no habeas corpus petitions could be filed for deprivation of life and liberty. The Terrorist and Disruptive Activities (Prevention) Act (TADA) was upheld by the court in Kartar Singh's case<sup>14</sup> in 1994, the Armed Forces (Special Powers) Act in the Naga People's Movement for Human Rights case<sup>15</sup> in 1997 and POTA in People's Union of Civil Liberties<sup>16</sup> in 2004. Even in the sphere of gender discrimination, the court has not struck down laws discriminating against women in the matter of property in Madhu Kishwar<sup>17</sup> (1996) or with regard to the father as natural guardian and not the mother in Gita Hariharan<sup>18</sup> (1999). In fact, it is Parliament which allowed TADA and POTA to lapse and made amendments towards gender equality in the Hindu Succession Act.

## Transition of PIL

The area of public interest litigation has played a major role in the enhancement and expansion of the powers of the court into almost each and every sphere of life and governance. It has also impacted on the balance between the three wings under the Constitution, viz, legislature, judiciary and executive.

The constituent assembly debates make clear that the Supreme Court was not visualised as playing an active role in policy-making or governance of the country. At that time, Parliament representing the sovereign will of the people was considered to be the final arbiter as to the policies and laws which would serve the best interests of society. However, the court has come a long way in more than half-a-century of functioning and today occupies centre stage in almost all aspects of policy and governance.

In fact, in the ongoing Godaverman forest case, an application was moved by the

amicus curiae seeking intervention with respect to the Scheduled Tribes (Recognition of Forest Rights) Bill 2005 which is to be tabled in Parliament. The apex court, rather than dismiss it outright as unmaintainable, has thought it fit to keep the application pending before it. Though it is totally antithetical to the Constitution we seem to be moving towards a stage of courts considering passing orders restraining legislatures from passing laws, judging them unconstitutional even before they are made! A sort of government by judiciary treating Parliament like an inferior court.

In fact, the transition of PIL from its beginnings of trying to make justice accessible and fundamental rights real to the exploited and oppressed sections and communities, to its present 'avatar' has lessons for us as to the role of the institution in terms of the interests of various sections of society.

The PIL began with the Bihar undertrial case<sup>19</sup> where to provide some relief to the thousands of undertrials languishing in jails for at times, periods longer than the maximum punishment provided for the offence charged with, the court relaxed the strict rule of locus and entertained a petition on their behalf based on a news item in the *Indian Express*. A series of cases followed like the Asiad case<sup>20</sup> dealing with minimum wages for construction workers of Asiad, the Bandhua Mukti Morcha case<sup>21</sup> involving the release of bonded labours, etc. Prisoner's rights was another area in which a series of cases followed led by the Sunil Batra case.<sup>22</sup> Even in this era, in the absence of any evaluation it is difficult to assess the concrete benefits to the exploited and weaker sections on whose behalf the cases were taken up.

Thereafter, the scope of PIL extended to cover diverse issues like corruption, hawala, fodder scam, petrol pump allotment, environment, Taj Mahal – the list is endless and ever expanding. However, from the beginnings of PIL as pro-poor and trying to effectuate rights for the exploited, it is increasingly taking a diametrically opposite direction. There was a time when courts would provide relief from the harsh and arbitrary actions of the executive reflected, in say the grant stay of demolition of slums on the grounds of the lack of a rehabilitation plan or the hardship of monsoons or school examinations. Today, demolitions of slums are being directed on the orders of the courts. In fact,

the tables have turned and today the executive and legislature are trying to have a relief and rehabilitation scheme in place before demolitions and the courts are declaring that demolition should be done straightaway and people rendered homeless.

In fact, a similar trend is reflected in a large number of areas of PIL. Thus, in the decision to shift heavy industries out of Delhi,<sup>23</sup> the court heard the public interest litigant, the owners of the industries, the government, but denied an opportunity to be heard to workers whose right to life and livelihood was directly going to be decided by the decision. In the name of public interest persons whose fundamental right to life and livelihood were not even heard by the court. Protection of environment is another area in PIL where the people versus environment paradigm has been constructed and the courts seem to, with a vengeance, giving a series of orders in the ongoing Godaverman case to evict tribals and other villagers from sanctuaries, national parks and tiger reserves. The right to life and livelihood of thousands of persons residing in these areas finds not much place in the developing environmental jurisprudence.

## Industrial Jurisprudence

Today, the trend in industrial law has a similar anti-worker/employee and anti-egalitarian trend. Like in the area of demolitions courts were earlier providing protection against harsh and arbitrary actions of governments and employers, directing implementation of social reform legislations and expanding the concepts of equality. Equal pay for equal work was laid down as a part of the fundamental right to equality in Randhir Singh's case.<sup>24</sup> In a number of cases the courts led by the Supreme Court were directing the regularisation of contract workers performing work of a permanent nature. Reinstatement with back wages was the norm in case of harsh punishments imposed by the employers.

In this era of globalisation, there is a lot of pressure to change the labour and industrial laws of the country to favour the employers. However, the court, even ahead of any such changes being made is steaming ahead and changing the face of industrial jurisprudence. The recent trend in the courts and tribunals is of non-interference in administrative actions, quasi-judicial decisions and cases of imposition of harsh

and disproportionate punishment like dismissal of employees for minor infractions by the management.<sup>25</sup> Labour legislations, the preamble and the directives principles of state policy in the Constitution laying down moving towards a more equitable distribution of material wealth remain, yet the approach of the court today is of dilution of principles like equal pay for equal work<sup>26</sup> and abolition of contract labour for permanent work.<sup>27</sup>

The portends for the future are ominous. Declining authority and erosion of the legislature and executive along with an increasingly activist judiciary favouring the haves rather than the have-nots. Perhaps, certain other categories from elite sections would have to be added to the then law minister Shiv Shankar's<sup>28</sup> statement: "Mahadhipatis like Kehsavananda and zamindars like Golaknath evoked a sympathetic cord nowhere in the whole country except in the Supreme Court of India. And the bank magnates, the representatives of the elitist culture of this country, ably supported by industrialists, the beneficiaries of independence, got higher compensation by the intervention

of the Supreme Court in Cooper case. Antisocial elements, i e, FERA violators, bride burners and a whole lot of reactionaries have found their haven in the Supreme Court." **EPW**

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## Notes

- 1 Justice B N Kirpal sitting with M B Shah and DP Mohapatra JJ speaking on behalf of a three-judge bench of the Supreme Court in *Almira H Patel versus Union of India*, AIR 2000 SC 1256.
- 2 'Appointment of Judges Debated' – *Times of India*, August 1, 2006.
- 3 Articles 31 A and 31 B – First Constitutional Amendment 1951.
- 4 Sections 4(b) and 23(f) of the Bihar Land Reforms Act, 1950 were declared unconstitutional and void in the State of Bihar versus *Maharajahdhiraj Kameshwar Singh*, 1952 SCR 889.
- 5 Section 112 of the Ajmer Tenancy and Land Records Act, 1950 was declared unreasonable and violative of the right to "acquire, hold and dispose of property" under Article 19(1)(f) in *Thakur Raghuraj Singh versus Court of Wards, Ajmer*, 1953 SCR 1049. Article 19(1)(f) was omitted by the Constitution (Forty-fourth Amendment) Act, 1978.

- 6 Section 8 of the West Bengal Land Development and Planning Act, 1948 was struck down as unconstitutional and void in *State of West Bengal versus Mrs Bela Banerjee*, 1954 SCR 558.
- 7 Taking possession of Sholapur Spinning Mills when the mill was closed first by an ordinance and then by an act was declared as overstepping the limits of legitimate social control legislation in *Dwarkanadas Shrinivas versus the Sholapur Spinning and Weaving Co Ltd*, 1954 SCR 674.
- 8 *State of West Bengal versus Subhod Gopal Bose*, 1954 SCR 587.
- 9 With the exclusion of private bus owners from road transport, the UP Road Transport Act was held to be unconstitutional as it amounted to deprivation of property without compensation as well as violative of the fundamental right to carry on business, trade and profession under Article 19(1)(g) of the Constitution in *Sagir Ahmed versus the State of UP* (1955), 1 SCR 707.
- 10 *Rustom Cowsjee Cooper versus Union of India* (1970) 2 SCC 298.
- 11 *H H Maharajahdhiraj Madhav Rao Jiawaji Rao versus Union of India* (1971) 1 SCC 85.
- 12 *A K Gopalan versus the State of Madras*, 1950 SCR 88.
- 13 *A D M Jabalpur versus S S Shukla* (1976) 2 SCC 521.
- 14 *Kartar Singh versus State of Punjab* (1994) 3 SCC 569.
- 15 *Naga Peoples' Movement for Human Rights versus Union of India* (1998) 2 SCC 109.
- 16 *Peoples' Union for Civil Liberties versus Union of India*, 2004 (9) SCC 580.

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- 17 Madhu Kishwar versus State of Bihar (1996) 5 SCC 102.
- 18 Githa Hariharan versus Reserve Bank of India, (1999) 2 SCC 228.
- 19 Hussainara Khatoon versus Home Secretary, State of Bihar, AIR 1979 SC 1369.
- 20 Peoples' Union of Democratic Rights versus Union of India (1982) 3 SCC 235.
- 21 Bandhua Mukti Morcha versus Union of India (1984) 3 SCC 161.
- 22 Sunil Batra versus Delhi Administration (1978) 4 SCC 49.
- 23 M C Mehta versus Union of India (1996) 4 SCC 750.
- 24 Randhir Singh versus Union of India (1982) 1 SCC 618.
- 25 State of NCT of Delhi versus Sanjeev (2005) 5 SCC 181; Damoh Panna Sagar Rural Regional Bank versus Munna Lal, (2005) 10 SCC 84.
- 26 State of West Bengal versus T K Ghosh (2005) 10 SCC 339; Deb Narayan Shyam versus State of West Bengal (2005) 2 SCC 286.
- 27 SAIL versus National Union Waterfront Workers, (2001) 7 SCC 1.
- 28 Excerpted from P N Duda versus P Shiv Shanker (1988) 3 SCC 167, where it was held that the statement does not amount to contempt.