

Peoples' Convention on Judicial Accountability And Judicial Reforms

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Indian Social Institute, New Delhi

The mandate to bring together peoples' organisations was to ensure a more accountable judiciary, which can be accessed by poor. In his **welcome note Shri Prashant Bhushan** spoke of the need for all like-minded individuals, institutions and organisations to assert the right to justice. Shri Prashant Bhushan began by introducing the Convention and putting forward the rationale for such a People's Convention. Shri Bhushan said that when the World Bank or the Government of India talk of judicial reforms they talk of alternate judicial resolutions, such as privatisation or arbitration , which is only accessible to the well-off. The Government of India is quite happy with an unaccountable judiciary so long as the judiciary does not hold the government to account and the government allow the judiciary to remain unaccountable. Through this Convention an attempt is being made to take the issue of an insensitive judiciary to the people and start a people's campaign.

Fifty per cent of the people (the common women and men) of this country have no access to the judicial system in this country. Those who have access to the system have to tackle delays and corruption. Judiciary is as corrupt as any other wing of the State and there is no system for disciplining judges apart from impeachment. [Ref: Justice Ramaswamy case] And even then no judge has been subjected to any criminal investigation in the last 15 years. The power of contempt does not allow any criticism of the judiciary. He also referred to the increasingly elitist anti-poor attitude of the judiciary, which is now much more pronounced, particularly in this period of economic liberalisation. Anything which is necessary to enable an individual to lead a dignified life has been held to be part of his fundamental right, however, despite these pronouncements; the judiciary has been on the cutting edge of ordering demolitions or evictions of slums rendering lakhs of people homeless. Judgments ordering lakhs of hawkers off the streets have become common. Recent Supreme Court orders have asked for the removal of vendors and hawkers in Delhi and if these orders were implemented they would render several thousands without livelihood. Referring to the Delhi High Court judgments on rickshaw pullers he said that judicial orders are being passed to prohibit rickshaws although there is no system of licensing the number for cars plying on the streets which seems to be a crying need .

Today, judiciary is seeking to do things which the executive have never dared to do, since they are accountable to people at large. Instead of protecting the rights of the poor; the Judiciary has been instrumental in suppressing their rights which the people's representatives will never dare to openly. It is the common people who are the main stake holders of the judiciary, for whose protection they should work.

It is very easy system for the government to remain unaccountable and it will also not allow the judiciary to be accountable too.

Inaugurating the Convention Justice P.B.Sawant appreciated the debate initiated by the Campaign for Judicial Accountability and Reforms, which would make people aware that they also have rights, responsibilities and that they are not excluded. He said that the impression today is that the legal world has its own fraternity, with its own procedural laws, its own language coupled with the privileges of the judges. There is a general impression that legal and judicial reform is a concern only of lawyers. A class with a world of its own coupled with the privileges of the judges, the law of contempt of court, the mumbo jumbo of the procedural law and the language of the law has almost created a domain which is outside the reach of the common people. It is forgotten that these institutions are part of our democratic fabric and hence they are as much responsible and accountable to the people as any other institutions. In fact the 'rule of law', which is the foundation of our democratic system depends on the responsibility of the judiciary and responsibility of the lawyers who assist the judiciary in their function.

The manner of seeking accountability may differ but it is one thing to say that there is no uniform method of securing accountability from all institutions and another thing to say that judiciary is a unique institution and should be immunized from all such methods of accountability. The judiciary should rather come forward and offer its scrutiny to the people, but unfortunately it is increasingly receding.

Whatever method or manner in which one seeks judicial accountability, one must see that it does not interfere with the independence of the judiciary. Judiciary has misused the concept of independence of the judiciary to shield itself from the scrutiny of its work. How does one secure this accountability without interfering with its independence? It is important to first understand what independence of the judiciary means and where it lies. There are two sides to the judiciary - the administrative and the judicial. In order to understand the independence *per se* one needs to see both administrative and judicial functions.

Functions like appointment of the judges, staff in the registry, the criminal or civil procedure of causes, files in the court and their journey till its final disposal are all administrative in nature. So the transparency in these processes does not imply any kind of interference in the judiciary. It is only the process of hearings and decision making, which constitutes the actual judicial process or the 'justicing process'. Judges are overstepping their briefs if they say that everything warrants shielding, on the grounds that it is an interference with the independence of the judiciary. The Supreme Court asked the government to exclude it completely from the Right to Information Act 2005, which is a very retrograde step. They have laid down a very bad precedent for all institutions in this country for taking a lead from them. A most unfortunate statement by Chief Justice of India in an interview was, "No self-respecting person will disclose his assets". This suggests that nobody other than CJI has self-respect and nobody should be asked to disclose his assets!

On the Judges Inquiry Act Justice Sawant said, the Act since the beginning has been politicized. A committee of sitting judges is in charge of looking into an inquiry report on a judge; even if one judge disagrees the report is shelved. In case the committee finds the judge guilty, the case goes back to

the executive and has to be passed by 2/3rd members of the Parliament, which again has a high risk of politicisation. If the motion is passed, the President is obliged to remove the judge. However, the judge can appeal the decision and the matter once again goes back to the same judiciary. This sort of appeal in the Supreme Court is made after the Parliament and president approve the impeachment. By allowing this, the Parliament is handing over the jurisdiction given to it by the Constitution to the Judiciary. It is in fact an invitation to the Supreme Court by the Parliament to make the process cumbersome and introduce further delays.

The greatest lacuna in our Constitution is the matter of appointment of Supreme Court and High Court judges. Before the **S P Gupta case** the provision in the Constitution was that the appointments would be made by the Chief Justice of India in consultation with the judges of the Supreme Court and High Court. However, in practice the Chief Justice alone selects the judges for appointment to High Court and sends it to the Chief Justice of India who then forwards the selected names to the Central Government. The process is the same for the appointment of Supreme Court – judges' appointments are left solely to the Chief Justice of India.

In India, we have a system, which has been adopted from the English Judicial system. This process of appointment has no judicial review. While the American system takes into account the judicial review where a judge's name has to be announced 2-3 months before it is sent to the President, in the meantime he undergoes a live open interview on national television. This scrutiny is not available in our system. Therefore we have to take precautions right from the stage of appointment of judges. So the modus operandi ought to be that a mechanism appointed by an independent body must carry out the appointments. Unless an independent mechanism is put in place, it will not work. The suggested constitution for an Independent Commission is 5 members including nominees of Chief Justice of India and all Chief Justices of High Court, the Speaker, leader of opposition, Comptroller and Auditor General & the Vigilance Commissioner (excluding the functionaries to secure independence of the Commission) for the appointment of Supreme Court judges. It is also recommended that the names of the selected nominees be announced two months in advance.

As far as the delays and arrears are concerned, it is occurring because 70% of the population is outside the judicial system, there is absence of legal aid, legal literacy, the time taken for proceedings is too long, which means loss of day's wages another important cause is poverty, which leaves a majority of the population unable to afford the lawyers or the court fees. The geographical location of courts is also a problem; the Law Commission had suggested mobile courts, which would hear the case, give the decision and implement it there and then. He added that the system of *lokadalats* has been previously working well in some states. However, he cautioned that these should not become a ceremony but should be a day-to-day affair. The *lokadalats* can start their daily work after the regular courts close.

The functioning of Supreme Court should also be decentralized with at least six branches across the country. This suggestion has been consistently resisted on the ground that it will break up the integrity of the court. The argument advanced by the High Court and District courts is that judges

have to sit together to avoid lack of coordination. The obstacle is actually the legal profession. Bogey for disintegration of the courts is a bogey created by fear of diminishing the pockets!

Elitism is present in all key institutions in this country on account of the caste system, lack of education - institutions like judiciary and education even the media have an elitist approach. Therefore we don't need to single out the judiciary. By and large, the judiciary comes from an urban elite background, which is influenced. So the right approach will be to take care at the time of appointment and appoint judges from all sections of the society, to represent interests of all classes. Today, this is not happening.

We have been talking about the judicial accountability and reforms for a long time and it's for the first time a people's convention has been organised to address the issues. Unless we start a campaign, which raises these issues, nothing is going to result. This convention is a good start. Let's make a sincere beginning for starting this Campaign on judicial accountability and reforms.

Chairing the inaugural session **Admiral Tahiliani** remarked that the study conducted by Centre for Media Studies and Transparency International India two years ago had ranked judiciary as the most corrupt after the police. In agreement with Justice Sawants' observation on the applicability of the Right to Information Act, Admiral Tahiliani spoke of the urgent need to campaign for the judicial accountability and reforms.

Session I
Appointment and Accountability of Judiciary
Chair: Kamini Jaiswal

Shanti Bhushan
Senior Advocate, Supreme Court

The Campaign should begin with the people and not lawyers and judges, as they are part of the system. The Country and the Constitution are for the common person; the executive, the legislature and the judiciary are for the people. On 26 January 1950 India became a republic, and the citizens became the masters. However, the colonial hangover persists, the only difference is that today, we are ruled by our own people. The Campaign must reiterate to the people that the people are the real masters; it should show how the citizens can demand accountability from state institutions and its functionaries whom they entrust to govern on their behalf.

Shri Shanti Bhushan recalled the time when he started his practice; there was no bribery in court. It was unthinkable then that the judges could take bribes. Its not that all judges are corrupt but there are only very few judges like Justice Krishan Iyer and Justice Sawant who are sensitive to the issues of the poor. It is the right of the masses to ask for the conduct of judges and their accountability in the same way that they can demand this right from the executive.

The case of Judge Ashok Kumar of Madras who was formerly a session's judge and has been given a permanent position in the Chennai High Court by the Chief Justice of India in February 2007 is horrifying. When the complaints were levelled against him of corruption, an inquiry report by the Intelligence Bureau (IB) gave an even more horrendous report against him. But all the reports were ignored and he was promoted to the High Court. This happened due to the political pressure from the Central Government, as the judge was close to DMK government (now ruling party of the State) and DMK government threatened to withdraw support from the UPA government. So it is due to that, that the law minister asked the CJI to give extensions and finally made Ashok Kumar a High Court judge.

Recently in another case of a judge from the Allahabad High Court Justice Bhalla, it was reported that his wife brought a plot of 7200 sq feet plot in NOIDA, which was worth Rs 7 crore, for only Rs 5 lakh. When the ADM complained the issue was brought to the notice of the centre, but in spite of this Justice Bhalla's name has been recommended for the Chief Justice of Kerala.

In another case where a huge amount of money was recovered from a judge's house, the judge said that his wife runs a dairy business and over the years the money had accumulated and she did not bother to put it in a bank!

Making reference to the Vera Swamy's Case Shri Shanti Bhushan observed that all judges should declare their assets - it should be done with pride! Why raise issues of self-respect? He said only those who have something to hide will be reluctant to disclose their assets!

In the last 15 years no cases have been brought against any judge. If an FIR is lodged against a judge - the police shall investigate and submit its report. No High Court or Supreme Court judge has ever been summoned. If an FIR cannot be lodged against a judge, how can we prove a case against a judge? Corruption is crime under the Indian Penal Code as well as under The Prevention of Corruption Act, but judges have always enjoyed this immunity and have now come to understand that they can take as much money as they want since they will not be caught.

Unless the people demand judicial accountability through this campaign and say that they are fed up with the attitude of the judiciary; unless they press for the effective institutional mechanisms to ensure judicial accountability, reforming the judiciary will be difficult. We hope this campaign will bring back the honest judiciary for the people of India.

Dr. Bhaskar Rao
Chairman, Centre for Media Studies

Dr. Rao spoke about the common person's perception of the judiciary and corruption within the judiciary. He shared some of the findings from a study jointly conducted by the Centre for Media Studies (CMS) and Transparency International-India.

Highlighting the seriousness of the problem Dr. Rao put forward a number of statistics, which portrayed a very grim picture of the judiciary as seen through the eyes of a common person. The findings of the first ever study on judiciary highlighted that:

- ? 3/4th of those interacting with judiciary think that corruption is prevalent in the judiciary. Hardly 10% think otherwise.
- ? 50% think that the judiciary is not serious in fighting corruption.
- ? 2/3rd of them think that corruption in the judiciary has increased in the last 1 year.
- ? More than 60% who have dealt with courts say that the quality of judiciary has declined.
- ? 3/4th of them confess having paid a bribe in accessing the judicial system.
- ? The percentage of people who have put in extra efforts (or used influence) to get work done in or by the judiciary - 23% had done so to get a favourable decision, 23% for speeding up the trial, 16% to receive bail, 18% for an affidavit
- ? Normally a bribe was paid for manipulating a public prosecutor; the bribe was paid to lawyers in 59% of the cases, to the court official in 32% of the cases, to the middle men in 14% of the cases, to the public prosecutor in 8% of the cases and directly to judge himself in 5% of the cases.
- ? In district courts and even high Courts it is common practice to misplace a file or lose a file.
- ? 1 out of 10 people in the country have experienced this at some or the other level of the judicial system.
- ? The amount involved in corruption among in the judiciary is two thousand five hundred crores per year.

Dr. Rao added that the Right to Information Act could play an important role in tackling corruption within the judiciary. Unless the effort to exclude the judiciary from the scope of RTI Act is countered, the scenario will be very bleak. Referring to Justice Sawant's point, he said that it is important to implement the Right to Information in all levels of Judiciary.

Arundhati Roy
Writer Activist

Arundhati Roy started with an anecdote, of the time when she walked into the Tihar Jail after being convicted of contempt of court. She met three women who were convicted of serious criminal charges. When they asked her what crime she had committed, she replied that she insulted the court. They responded '*salo ko goli marna chaiya*' - mere insults were insufficient.

Ms Roy said that when one spoke of the courts in India, one should recall the number of stories that are covered daily, in magazines and newspapers on court judgments. The courts are the most powerful institution in our country, they micro-manage the lives of citizens - whether people should spit on the street, what fuel they should consume, whether the slums should be removed, whether the dams should be built, etc.... As Justice Sawant says that the court has begun to accumulate power.

She said that she didn't think the judiciary is unaccountable. Rather, the question is, who is it accountable to? The most successful movement in this country has been the succession of the rich, where they have taken control of the resources, the judiciary, the power and the media. 70% of the people are completely controlled by the judiciary are having their rights eroded everyday. Why should people not have contempt for the court?

What is corruption? It is not some illness that affects some bad person, it is not some individual, whimsical decision one makes. Corruption has to do with power, with being in a position of power. She said she was not surprised that the judiciary has such a high turn over of Rs 2,500 crores of unaccountable money. But she didn't think corruption or contempt of court clause were the only problems.

The language being used today, in court judgments' portrays a lack of intelligence, logic of any kind and lack of intellectual integrity. The issue is not about subversion of the system alone but how they are using the system. Recently the newspapers reported a statement made by Justice Katju, that corrupt people should be hung from the lampposts. How can a judge talk like this when the Chief Justice of India has observed that many judges in higher judiciary are corrupt? Are we also saying that the corrupt judges should be hung from lamp posts too?

Referring to another case of the NBA Public Interest Litigation (PIL), she drew attention to how the acronym PIL' has been twisted. Quoting from the judgement, she read out what the judge told the litigant: "you do not have the right to make any submission about big dams, be specific to your case". She also raised a vital question while referring to the remarks of the court on PILs in reference to the NBA case, where it had said that the PIL should not

be confused with “Publicity Interest Litigation” or “Private Inquisitiveness Litigation”. What are you telling people who are losing their livelihood and their homes – that they have “private inquisitiveness” in knocking at the courts’ door?

We have Justice Kirpal who termed the slum dwellers “pick pockets” of urban land, he ordered closing down of small scale industries in Delhi; ordered the interlinking of rivers, etc. Is there not a kind of politics emerging from the courts? In another recent case heard by Justice Ruma Paul to remove a slum called Nagla Machi, the petitioner requested the court for some more time, as the relocation site was not ready. Justice Ruma Pal said that there will never be any time for relocation and they need not come to the city if they cannot afford a living!

When the courts are displacing people from the villages and also from the slums, where will the people go in this country? Referring to the language in several judgments highlighting the courts insensitivity and complete lack of intellectual integrity she called the judiciary the “*Chowkidar*” (gate keeper) of the middle and upper classes. One of the favourite phrases of almost everyone in this country is the ‘rule of law’. But the courts have been bowing down to the elite.

Take the Vasant Kunj Mall case . On one side the courts are cleaning the city and removing everything illegal, so why are the courts allowing the malls to come on the ridge when slums are not being allowed? The Supreme Court says that the only option for the illegal construction is demolition but it does not apply in this case as it is a question of a corporate institution and private company, “who have not indulged in any malpractice”! In the days of Enron and GM, how can a Supreme Court judge say that the corporates do not indulge in malpractices?

In the case of the Parliament attack, everything was implicated and brought against the accused. The trial court judge who has been promoted to the High Court has passed an order that there is no reason to doubt the police action, as the police had no enmity at any point against the accused. Today we are fighting the way we had fought for freedom during British regime, where there was no system of hearings. This accused in the Parliament attack case has been sentenced to death. Prashant filed the case against the police official in Kashmir whose interview telecast was broadcast on primetime TV wherein he publicly accepted that he had tortured Afzal brutally (this officer has the history of torturing people). In that same TV programme there were senior police officials and journalists but no one had anything to say! He publicly declared that he has the highest number of custodial deaths in the world. And yet, at the case hearing the judge insulted Prashant by asking him why have you come to court, why have you not filed an FIR?

There was another case where she along with Medha and Prashant were charged with attempted murder by five lawyers in the Supreme Court premises. The complaint of the lawyers stated that these three attacked them and Prashant called them touts and Medha said “kill them”! The police refused to file that FIR, but the Supreme Court passed a contempt order, which implies that for the Courts contempt is a far greater issue than torture. What can we expect from such a judiciary?

There was a time when social movements used the courts; then the courts used them; now the courts are going after them; bleeding them! I think the first stumbling block, which has to be moved, is contempt of court. We all must enter into a “mass contempt of court” not in a hysterical way but continue to do it in our own way. We must write about it; if a judge is corrupt, lets say he is. People do not need to voluntarily accept suffering.

The Judicial system is a battering ram of neoliberalism. Neoliberalism can not work in a democracy; India has to turn into a police/ army state for it to work. People, who believe that they cannot get justice, are fighting in their own way. How do you make democracy undemocratic - you promote the most undemocratic and unaccountable institution, which is the court! The media is doing this to some extent.

Comments :

The comments in the session emphasised that while the convention must address the issue of judicial accountability and reform it was equally important to look at the role of lawyers more closely. **Nalin Sinha** from ITDP said judiciary is a culmination of a large process, it is the lawyers and their exploitative fee not so much the judiciary that is the problem, we must challenge the lawyers lobby. **Kamlesh** pointed out that private revenge Vis a Vis public justice is becoming the order of the day. Can we talk about reforming the lawyers before reforming the Judiciary? In this regard, he also raised the issue of elevation of retired judges to positions of Governors of state, Ministers of Parliaments, and Chairpersons of committees. **Dr. Vandana Shiva** emphasised the cleaning up of the justice system, which has been dirtied up because of the neoliberal approach. The courts have acquired a new role and are functioning as an instrument of globalisation. Law making in India is no longer taking place democratically, it is primarily WTO influenced. The judiciary's job is to test laws. However, the State and the Executive are using the courts to do the market management. It is important to look at the corruption of these institutions along with the corruption in the judiciary.

Session II
Access to Judiciary and Delay in Justice
Chair: Miloon Kothari

Mihir Desai
Advocate, Bombay High Court

Mihir Desai said that he will be talking about access to justice by the people who are marginalized and the people's ability to enforce their right. When one is talking about access to justice than one has to keep in mind the level of justice. By and large people do not come in touch with the judiciary in order to enforce their right to justice. But what are the basic problems, which the people face when they do approach the court? They come to the court and then wait for justice for years on end. On August 2006, the figures of pending cases were 39 lakhs at the level of High Courts and 235 crore in subordinate courts, while 35000 cases are pending in the Supreme Court. Figures of cases filed per thousand population comes around 1.2 per 1000 population, which is far less than 17 cases per 1000 in Malaysia and 14 per 1000 in Korea. This shows that in India we do not have many people approaching the courts for getting justice.

Every Law Commission is dealing with disparity in the number of judges per population. According to the standards of the world, the country should have at least 50 judges per million population. But in India in 2004, we had 12 judges per million population. Apart from the fact there are 2000 vacant positions in subordinate judiciary.

Who do these delays and backlogs impact the most? How do they impact access to justice? In case of the criminal cases, the poor people are the most affected. More than 70% of persons inside jails who are held on suspicion of having committed a crime are not able to pay the bail amount, which is very high. They are inside the jails for months and years, as they cannot afford a lawyer.

Before talking about providing legal aid, we must take care of legal representation for the poor. Every accused is entitled to lawyer. Should the right to legal aid be recognized as a right, paid for by the State? *Lok adalats* have now been given statutory recognition. However, the fact that *lok adalats* have failed (if parties are likely to settle cases sent to *lok adalat*) is a recognition that your judicial system has failed. They remain largely ceremonial/ ritualistic, terms of settlement are usually high, an arbitration method is applied and often matters are referred to *lokadalats* even though settlement had been reached in court to show that *lok adalats* are working. In practice legal aid seems to be functioning well in Tamil Nadu, but overall the legal aid system has not been working well. The PIL has been turned on its head. It is used either by the judiciary or by people who go to court to give vent to their upper class/middle class problems. It is being used as a tool to suppress people.

**Bhagwanji Raiyani
Jan Hit Manch**

The main concern is the arrears and backlogs in lower and higher courts. In Bombay High Court, if you are a common man, you have to take the challenge to be present in the court. Jan Hit Manch has filed various PILs during the past few years. But one could see that judiciary has not progressed and it has in fact degraded. So there is a need to save the judiciary and save the people of Mumbai. The challenge is – how to progress from a stagnant machine to a beneficial instrument for the common person? We have to work together to make judiciary more competent, people oriented, and not anti-poor. We have to take the campaign all across the country and build a strong network. We offer to host the next convention in Mumbai on behalf of Jan Hit Manch.

**Prof. B.B. Pandey
University of Delhi**

Prof B.B. Pandey said that one should acknowledge people like Justice Sawant, the activist lawyers and the activists who are working with the masses and have made an attempt to organize this people's convention. There is a section of population who has "excess" of judiciary – such as in juvenile homes, in jails, in beggars' court. However, in the High Court and Supreme Court the same population does not have "access". One needs to create access and block excess, the roping in and stigmatising of large sections of population for whom the judiciary is like the end of the tunnel. It is important to work towards making the law more humane and stop the indiscriminate criminalisation of people. He said that once a policeman told him that beggars are the mafia to which he replied that they are actually the victims of mafia. Organised beggary is carried out by only 8-9% and yet people are roped in and brought into beggars' courts in hordes. Therefore, one needs to block their excesses. One needs to take a partisan view. He said, "Let us openly say that we are speaking on behalf of those people and creating judicial accountability for them!"

Who suffers when delays occur? It is the poor who suffer when a person has to come to the court regularly and has to lose the day's wage. When the case is disposed, the poor man is put in the jail for few months as he is unable to pay the fine amount. It is important to constantly expose the weaknesses of judiciary as an Institution and creatively shame the judiciary.

Quoting from the Juvenile justice report Prof. Pandey pointed out that cases are pending for four to seven years. A total of 4,042 youth are involved in the juvenile justice system. The juveniles who have been put in the juvenile homes with charges of pick-pocketing, minor injuries, eve teasing, theft, are living literally like animals. When speedy trials are held and many young men are released, then the media reports that 'High Court judges took extensive notes and 32 juveniles were released', there is great insensitivity in releasing these juveniles who are considered a threat to the city. Justice Sachar in one stroke decided the cases of attempt to suicide - why can't 3500 of these juvenile cases be decided similarly – it's a problem of mindset. Prof. Pandey also spoke of the break down of judicial accountability in

context of specific target populations i.e., women, children, slum dwellers. We must quote international charters that India is signatory to and impress on the judiciary. The Convention on the Rights of the Child, which India is a signatory has failed extensively. It is important to educate many and people should understand their right to demand justice.

Comments

Prashant Bhushan said a system of video graphing of the proceedings of the court should be put in place. Video cameras should be installed in courts. This would allow oral recording of cases and enable illiterate persons to file petitions orally and improve their access to justice. This will also enable people to access the judicial system without lawyers. The National Advisory Council had made a suggestion for *Nyaya Panchayats* an informal court system to reduce dependence on lawyers and avoid use of their lawyers. *Lokadalats*, Mr. Bhushan said, are the last resort by parties when they are completely frustrated! Case disposal and getting justice has no correlation today in Supreme Court today.

In response to a comment **Prof. Pandey** replied, that somebody said the common person is afraid of khaki uniforms and black robes – it's a question of mindsets. The problem needs to be understood from two perspectives of 'us' and 'them'. Ours is a divided society and 'they' have become unmanageably large. There is a need to educate 'them' – it is our obligation to deliver justice and also to educate 'us' – they must understand it is their right to demand justice.

Session III
Values and Attitude of Judiciary Towards the Poor
Chair: Ajit Bhattacharjea

Shri Ajit Bhattacharjea introduced the session by making some brief opening remarks, he said, the first impression of the courts which he remembers as a journalist was that large number of people were sitting on the ground, totally ignorant of what was going on but they were sitting there waiting to be called, with no idea of what was happening. This was justice for them. The situation today is no better there are more people sitting outside the courts- waiting! The present day elitist view of justice is a very dangerous one. He said that he can not recall anything like this in the early days even though it was the post-colonial period. Referring to the High Court judgement banning rickshaws in *Chandni Chowk* he said that while there is no limitation on the number of cars on the roads of Delhi, the so called justice decides that rickshaw pullers will not ply!

Advocate PK Sharma
Advocate Supreme Court

The Judiciary has been conceptualized as one of the three wings of the State other two being the Legislature and the Executive. The State actually belongs to those persons or classes who are in a seat of authority - the rulers. Even those sections which call themselves democratic have not yet been able to get rid of their colonial mindset and that there always remains a clear cut distinction between the rulers and the ruled, though the roles may periodically change. It may also be that in the ostensible proclamation or incorporation in the written Constitution, it might have been said that the State itself belongs to the people or that, the people are sovereign; but in reality it remains a myth. 'Myth is an intellectual word' and it is a fraud on people. Then if the Judiciary is the part of the State, which it actually is in the present system, it means that it belongs to the ruling class as distinct from those, which are ruled. The demarcation becomes clear when the ruling class becomes equipped with power and prosperity and rest with lack of them. This naturally is the value and attitude of the Judiciary which emanates from this position and any body who comes to seek redressal of his grievances, will be considered as a subject and that too, a subservient one.

He said that if he had to summarise his experiences in a sentence, about the behaviour of the judiciary, he would say it is that of contempt against the common man. The judiciary's attitude fluctuates between these two extremes. But the common man does not come to court for pity, he comes to court because it is his right. This fact is completely ignored.

The common understanding is if the poor are compensated then the state treasury will be empty - the system will collapse. Everyone knows that torture is going on and custodial deaths are occurring but nothing is done about it. It is not the perception of certain individual judges but is the perception of the whole system, so it is difficult to fight for this change.

Why? Judiciary is one of the organs of governance; it represents state power, even if people think they are different. The country is still in the same 'virasat' (heritage) that was left behind. Historically, the judiciary is a residue of the colonial rule, so its attitude is also elitist. It is important to take some radical steps to get rid of the colonial hangover of the judiciary so that it becomes more people friendly.

Learning from history, the nation must evolve more people friendly policies. It is necessary to understand the social and political context in which the Judiciary works and how difficult it is to get out of it. Today the judiciary says they will follow current trends of globalisation and liberalisation. Those who join the judiciary do not enter a social service, but do so to be part of a state service. Their attitudes and prejudices are formulated there. This elitist attitude is due to the source of recruitment of judges. The judiciary must not be restricted to be the bastion of lawyers. Social service - oriented people should enter it. There is no trend to teach social sensitivity. The judiciary's attitude cannot be changed by mandates of law, even though it can be one of the factors. The barriers of complicated procedures, feudal structure and procedures, legal professionalism, extensive delay, rampant corruption and the use of language will all have to be addressed.

It is not true that India do not have good laws. Of course they are not revolutionary and are not meant to completely transform the society but at least they are workable for a welfare state. The Constitution itself also has a vision spelt out in favour of the fundamental rights and directive principles. But because of class character of the ruling elite they are never implemented in right earnestness.

The path of the land laws was never smooth because of judicial obstacles. The reason was not in the process of building a welfare state, but in the process of transforming the existing feudal systems into a capitalist one, which is now being manifested in shape of mining leases, dams, special economic zones, information technology parks, big farm houses and so on.

Incidentally, there was a brief period when the judiciary became obsessed with activism. The idea of public interest litigation was enthusiastically flaunted. The fundamental right of life and liberty was interpreted in wider terms to include all the basic necessities by which a citizen can lead a decent and dignified life. Labour Laws were also liberally interpreted and it seemed that the judiciary intended to stand by the side of poor and disadvantaged sections of the society. However, it was proved to be more rhetoric than actual deed and the bubble burst within a short period. Thus, though the mandate of the Law ought to be an important factor in the formation of values and attitudes of the judiciary towards the poor, experience has shown that it hardly is of any consequence. The same laws can be interpreted in many ways. The Hon'ble Supreme Court in U. P. Brass Ware Case said that they will be interpreting laws in the present context of globalisation, liberalisation, privatisation and outsourcing of employment; it clearly means that the laws do not guide values and attitudes of judiciary; it is otherwise. The values and attitudes of judiciary, which are already deep rooted because of other social and political constraints, will be the criteria to interpret the law.

There are numerous examples which can be cited to demonstrate this pathetic state of affairs. In the Narmada Water case, the plight of lakhs of displaced families went unheard and the Court refused to restrain further construction of the dam and that too, without ensuring actual rehabilitation. Now the Narmada Water will fathom the fate of thousands of families and at the same time benefit a handful of industrialists, water park designers and golf course enthusiasts. In the case of slum dwellers of Delhi and Mumbai orders the Courts passed orders to bulldoze the jhuggis on the grounds that they are illegal occupants of public land. The courts forgot that these slum dwellers are an integral part of 'the public'. The courts have also ordered eviction of hawkers from streets of Mumbai and Delhi in spite of previous orders that recognized hawking on the streets as a fundamental right though subject to regulation. However, the current fate is that they are left at the mercy of the authorities. Even the cycle-rickshaw, which is a pollution free means of transport, can not ply roads of *Chandni Chowk* as per the recent Supreme Court orders.

Actually, poverty reduction and promotion of social rights are seen as matter of policy and not legal adjudication. But actually in the present class society both the aspects intermingle, therefore, with methodical precision it can be concluded that the values and attitudes of the judiciary towards the poor are bound to be anti poor, even if the different players within the system genuinely wish otherwise.

However, Adv. Sharma said that a lot can be done. Even in the present set-up, a new jurisprudence can be evolved. He said he is not in favour of throwing the poor and the disadvantaged persons towards individual terrorism of any colour; but a new jurisprudence can be evolved only if all right thinking persons unite and work towards it with a people oriented political consciousness.

Dr. Baba Adhav
Hammal Panchayat, Pune

Gandhi said that the working class would get justice post-independence. All the speakers today spoke very well but if today a worker is unable to find work, how will the judiciary come into picture. Thirty-seven crore unorganized sector workers are living in abysmal situation. Mahatma Phule said that *Stree*, *Sudra* and *Atisudra* should get justice. But till today, in India, this section of the population is considered untouchable.

The rickshaw pullers and hawkers are removed from the city; people are thrown out accusing them of being illegal 'Bangladeshi' immigrants. Today people are fighting the way they did during emergency situation in the 1970's; in fact the situation is rather worse than it was in the emergency period. People are suppressed if they try to organise and struggle for the realisation of their rights.

**Dr Venkatesh
Lok Raj Sangathan**

Today toiling people of this land do not regard the judicial system as a system which will provide justice to them. What is justice? Dictionaries define it as 'fairness, exercise of authority in maintenance of right'. The concept of rights itself has changed over the years. The Colonial law was based on the 'divine right of kings'. According to this concept, sovereignty was vested in the crown. It was this sovereignty, which gave the crown the right to make the law of the land and to rule over its subjects. Waging war against the King – for independence of the motherland – was a most serious crime. The people were completely disempowered under the colonial rule in India. The right to private property, and in particular the right of the British colonialists to freely exploit and plunder the land and labour of India, formed the basis of colonial law.

The post independence era saw most of the laws inherited from the British colonialists, which had colonial exploitation as their basis, being left untouched. Witness the struggles of the peasants today against land acquisition and handing over their lands to big capitalists for setting up plants or SEZs – they are made using the land acquisition acts enacted by the British colonialists! The judicial system which too was inherited in 1947 from the British colonialists was largely left intact.

In the Nehru and Indira Gandhi eras, the state was touted as being 'socialist'. The massive investments made in the state sector and nationalisation of key industries like oil and banking led credence to this. While the investments were made by the government, the benefits of these did not really go to the people, but to the new elite whose power grew day by day. Meanwhile people's struggles also led to the recognition of many rights under the law, especially for the organised working class. Minimum wages, employment security, social security etc were initiated and developed in this period and the right to collective bargaining of the workers was upheld. Several pieces of 'social' legislation were enacted. The judicial system too was persuaded to uphold 'social justice'. Slowly but surely, however, all of these did not translate into real benefits for the toiling people – the gap between the haves and have-nots, the property-owners and property-less widened with every passing year.

In the Narsimha Rao period of the nineties, the ruling elite no longer wished to be fettered by conceptions of socialism and social justice. Fattened by years of protection and license Raj, these were seen as chains limiting the growth of their wealth and power. Concepts of social security and of the state being responsible for the welfare of its citizens were thrown overboard.

The drive to refashion Indian cities, especially Delhi, into 'world class' urban centres has seen the dispossession not only of the urban poor, but of the middle classes as well. Tens of thousands of shops and small businesses have been sealed and shut in the last year.

What is the response of the judiciary to all this? Is it leaning towards the toiling people or the big capitalists and corporations, Indian and foreign? Is it upholding justice for the toilers, the tillers, the tribals and indigenous peoples? Or is it throwing its weight behind the increased loot and plunder

of the nation, and its people? It is now showing itself more than ever to be an arm of the state – just like the government and police and the rest of the anti – people repressive machinery. In this drive, the judiciary is turning out to be the most obnoxious element, heartily decreeing the destruction of tens of thousands of dwellings and small and medium businesses. While political parties would dread to enact or implement legislation which earns the wrath of millions, the ‘independent’ judiciary, insulated and ensconced as it is, has issued order after order destroying property and ruining the lives of tens of thousands in this city alone. It is performing the same function for the present – day plunderers of our land and its labour, which the colonial judiciary did for the plunders of that time – namely maintaining order so that loot and plunder can continue unobstructed. It upholds the ‘right’ of the big corporates, Indian and foreign to profit at the expense of the people. Moreover it has another advantage - no fear of popular dislike as the political parties have to have before the elections.

It functions as an arm of the state, appropriating to itself legislative and executive powers which are not expected to be in its purview. In a state with proper division of powers, the judicial system has further become a ‘law unto itself’ - it does not even want to have a modicum of accountability either in appointments of its members, gross and rampant corruption, or review of its actions by the people or even by quasi – official bodies.

This is perhaps the appropriate place to comment on judicial ‘activism’. In recent times, the judicial system has actually been ‘activated’ to achieve much of what the powers of the day would like to ordain and achieve, but are reluctant to do so for fear of adverse public reaction. Activism is thus a readily available means to unpopular ends at the disposal of the powers of the land. A few cases here and there of ‘judicial activism’ in which the government or authorities are pulled up for failing to perform their duties have been used to create the impression that the judiciary can be relied upon to protect the interests of the people from ‘corrupt or negligent officials’ and the government. In fact, ‘judicial activism’ is anti – people, arbitrary, unjust, not subject to review or scrutiny, and does not have a legitimate basis in a modern state with proper division of powers between the legislature, executive and judiciary.

One hundred and fifty years after the first major revolt against colonialism, we must rededicate ourselves to the task of vesting sovereignty with the people – of empowering them to decide their future so that people can live in this land with their heads held high, free of oppression and exploitation! This is the way forward, not only to ‘sensitise’ the judiciary to the needs of the poor, but to real freedom for all the toiling people!

Pradeep Prabhu
Campaign for Survival and Dignity

There is a lot of confusion, when we see “there is no place for the poor in the court of this land”. Judiciary is not an agent of the ruling elites. But it is clear that it represents the ruling elite. There is no need to debate this. He said during his 30 years of experience as a lawyer protecting the rights of the marginalized, he has been tried for conspiracy; when he challenged these allegations in the lower court and High Court, the Courts continue to uphold these charges.

Justice Sawant in one of the case stated that the “people have a right to conserve the forest”; it was for the first time in the history of Maharashtra that such an order was passed. The immense power of court is reflected in its orders; after the order was passed the armed police was removed from the village within an hour. But the implementation of a pro – poor judgement can only be done by the people and not by the court.

A situation has arisen where the State is failing to deliver and people have to go to courts again and again for the enforcement of rights. He said that when a poor person approaches the court, then he is marginalized further. Unable to articulate, the poor person can only be articulated through those in black robes (crows- as our people call them they are no different from scavengers). Still people would need lawyers to articulate and communicate in the Court of law.

The judge is an inscrutable part of the judicial process where it is evidence and not truth that is sought. There is nothing called truth, only evidence. The rich and powerful can generate as much evidence as possible but the poor can not. He said he always thought that the Court is a place for application of mind, but it is otherwise : it is a place for non-application of mind. The Court is not applying its mind to evidence. He said that his experience of the court is an experience of intense insecurity, so he hates going to court.

Prof. Babu Matthew
Country Director, Action Aid India - International

He began by congratulating the campaign for its continuous efforts since the last meeting in November 2006 and bringing it to the people’s convention level. This should now be translated into people’s conference all over the country. He raised some critical questions, “how do we congregate the values and attitudes of the judiciary? Is it enough to attempt it in a strictly legal frame, a positivist frame, and a rather discredited frame of jurisprudence?” The scale on which human rights are being violated today in India is much higher than in the colonial era. This is due to the extent and nature of globalisation.

He said that people of India have gone through the colonial state, but India has been fortunate to have had a struggle for political independence. India has great strengths. Part of the success of the independence struggle was the values created during its course. Much of it is captured in the Constitution. Upendra Bakshi has said, “the entire Constitution is a foot note to the Preamble”, but today these values are threatened by the neoliberal framework. Neoliberalism cannot co-exist with the contents of the Preamble to the Constitution of India. The material basis of the anti-imperialist movement is substantially eroded therefore the values of the constitution appear as dead letter of the law. Today, the way in which sections of population are excluded e.g. Muslims, dalits, poor, etc. The genocidal events of Godhra, Gujarat do not bother or trouble the State.

India is used to a certain order which is the bourgeois democratic order. A separation of powers is necessary as too much power in one organ e.g. judiciary will corrupt it. The background of the national movement is a starting point, where a national consensus was formed including the poor, intelligentsia, even Muslims. In the postcolonial state certain groups were still left out of the consensus but this was recognized and an attempt was made to take care of them. Sub-altern communities that could not fully participate were left out but they had to be taken care of. So protection was given to them in the Constitution - Muslims / tribal/ dalits / other social groups were protected by the national consensus. Particular attention was paid to peasantry. However, the tragedy today is the erosion of the material basis of what the Independence era and post independent India had, even the judiciary begins to capitulate. The Judiciary today can get away ignoring the written word of the law. This Judiciary is being vested with more power than the executive or legislature. So the Judiciary is at the cutting edge of this bourgeoisie democratic order.

Today SEZ gets a quicker response but not issues raised during the WTO rounds. Has the Indian state become something else which we are not familiar with? Are we have something like a *bonapartist* state, where the contending classes are seeking to capture power or is this irreversible?

All organs of the state judiciary, executive and legislature are working in tandem for a neoliberal paradigm. Judges in India are going through a major inarticulate premise; the premise is the neo-liberal agenda. They do not subscribe to the Constitutional values and these values cannot be saved by merely appealing to them. Unfortunately, the middle class is becoming a beneficiary of globalization, the consensus is emerging. But even the middle class is not aware of the Washington Consensus. In June 1998 India subscribed to the most dogmatic idea of neo-liberalisation, which speaks of privatisation, withdrawal of the state, restructuring of the financial sector, liberalisation in terms of free flow of funds, flexible labour concepts, intellectual property regime etc.

Prof Babu concluded by saying that, "unless we go to the root of the matter, there are no short cuts and it's a long route. So we have to mobilize people, we have to build a new political block!"

S R Hiremath
Samaj Parivartan Samudaya, Karnataka

In the 1980's, judiciary tended to be pro-poor, that was the time, he said that they approached the court for reclaiming peoples rights in protecting the natural resources. A forest department was created in order to protect our natural resources. In India, the change in bureaucracy or government after independence is merely that of brown officers replacing white officers.

So the recourse taken was to have a political struggle to protect the rights of the villagers. He said it is pertinent to bring before the people of the country the failure of the state. So it's important for us to organize and work together to take this campaign forward.

Shanta Toofani
Ankur

In 1996, Justice Kuldip Singh passed the order to close down industries, rendering lakhs of workers unemployed overnight. There is another lawyer who said in the court that the slums are creating pollution, so the court ordered removal of slums. Several thousand people were rendered shelter less. With no employment and source of livelihood, many started pulling rickshaws; once again the court intervened to ban rickshaws from plying on streets. She said as a consequence of this assault on the poor by the courts, she has a lot of anger against the court, since the court has stopped listening to the workers.

The courts are doing it not only in Delhi but also all over India, be it forest dwellers or people displaced due to dam. In the Narmada valley people have got together and said that they will die in the submergence but will not leave the land. The women have come together and are fighting for justice in those areas.

When the people are displaced and removed, the state knows that they will no longer be organized. But today we have to organize ourselves and overthrow the regime like the people did in Nepal.

Session IV **Press Conference**

Admiral Tahiliani began the press conference by reading out the Campaign Statement

Shri Shanti Bhushan referring to the Evidence Act said the Act created by the British with the intention to mystify judgments so that the common man could not understand them. Why do we need 100 sections of Evidence Act when any tool which would lead to investigation can be admissible evidence? Today there are very few judges who understand the nuances of code of civil procedure or any procedural laws; these have been created only to give work for lawyers and judges so that they have a field day. All laws such as Limitation Act or the Advocates Act have been created for the lawyers to obtain work. In order to increase the accessibility of courts Shri Shanti Bhushan spoke about the mobile courts, which he said could be very useful in hearing small cases, petty cases and poor peoples' cases. A new system will have to be created, but this will be resisted by political parties. Once people realize the way they have been taken for a ride by this complex system of judicial proceedings they will have to rise and fight for a change. People's power exists, people just have to understand the potential of their power and exert that power in order to change the system and procedures of the court.

Dr. Bhaskar Rao added that issues from grassroots have been brought forward for discussion. There are forty organisations from across the country supporting this Campaign. Media must also take a serious interest in this issue. He proposed to hold the next Convention in the next few months in Hyderabad. Highlighting the issue of corruption in the judiciary he quoted from the study jointly conducted by Centre for Media Studies and Transparency International India which showed that only with 10% of population approaching courts the corruption is still extremely high at Rs. 2,750 crores a year.

Mr. Pradeep Prabhu highlighting the role of the common person said the best forum for adjudication is the community itself. The common man or woman has been alienated from the system and from justice. He suggested that the Gram Sabhas should have the power to adjudicate matters, which will enable communities to adjudicate their issues in a transparent manner. For every struggle there has to be a constructive approach and the alternative needs to be formulated. The alternative to judicial insensitivity is that people themselves should start acting judicially. Repeatedly State governments flout High Court as well as Supreme Court orders; the lower court is virtually helpless. He said that if we go back to our Constitution for inspiration and recall "We the People" of India, it gives ourselves a sense of justice, mechanisms of justice through the community. He further said that people have no other choice but to take the law in our own hands. And create alternative institutions where not only is justice seen to be done but also felt. Giving an example Mr. Prabhu said, 400 tribal villages used their common sense in deciding their cases have approached the courts hardly 6-7 times in the past 15 years. The tribals requested the police to stay away and let the community adjudicate, which resulted in reduction of violence,

conflict and abuse. A people's movement needs to be created, which will hopefully result in the redundancy of the judicial system.

Preeti Verma said that this Campaign draws its inspiration from the Right to Information Campaign. She spoke about the various aspects that the Campaign hoped to raise and address for instance Judges Watch, Judgment Watch and try to bring these to the public domain. A website will also set up which among other issues will also report cases of corruption in appointments, new developments in laws and policies, propose new policies even a new Judicial Commission Bill and how different groups can take them forward in their names. The Campaign website will be protocol driven.

Advocate Prashant Bhushan laid out the two broad ideas that this Convention seeks to address:

1. Judicial system has not merely collapsed but has become oppressive of the poor, depriving them of whatever little they have in terms of real resources etc
2. Those who are in power (i.e. the Executive or the Judiciary) have no reason to change the system, as the system in its present state suits them very well.

He added that there is a realisation now that until the common people who are affected by the collapse of this system get involved it will be difficult to change or reform the system. Those in authority must feel the pressure of public opinion. Therefore, the objectives of the Campaign are :

- a. To get people involved to kick-start a Campaign in a decentralized manner
- b. To allow local organisations to continue the activities as watchdogs of the judiciary

Session V
Open discussion on strategies for the Campaign
Moderators: Dunu Roy and Indu Prakash Singh

Dunu Roy placed two broad themes of the Campaign inviting the participants to suggest strategies around the two themes, contempt of court and contempt of the common person. The Committee on judicial accountability where the lawyers and judges are also troubled by the behaviour or the attitude of the courts are also in fear of contempt of court provisions and the plight of people who are victims of court insensitivities, which is in contempt of the common person. Unless we bring these together, the fear of reaching out to all masses will be diminished.

Indu Prakash Singh said that this campaign, before the people's convention was conceptualized, had a history. In May 2006, when Justice Ruma Paul observed in a hearing of Nagla Machi case as to 'who asked the slum dwellers to come to the city' and dismissed the case. At the time a group of people initiated the debate on Law vs. Justice called by Hazards Centre and formed a platform called Stop Eviction Campaign. The campaign had series of meetings in Indian Social Institute and decided to demonstrate outside Supreme Court on July 3, 2006, the day the court reopened after the summer vacations. More than 1000 protestors gathered outside the Supreme Court. After that on November 4, 2006, the group organized a full-day seminar called "Has the Judiciary turned its Back on the poor?". The report of the seminar has been published and after the seminar a campaign was formed on Judicial Accountability and Judicial Reforms.

The discussion included suggestions and commitments made by various individuals on behalf of their organizations. For instance Dr. Bhaskar Rao would organize meeting in other states and regions and identify people who interact with the media. While Dhananjay Tingal suggested that child rights groups and women rights groups should be involved in the campaign. K. Mahesh suggested that the campaign statement should be circulated to all those who are in judiciary and like-minded judges. Suresh Prabhu said that a resolution calling for mass contempt should be prepared. Ranjan Kumar suggested that the state level bar councils should be involved in the campaign. Anand Lakhan suggested preparing a toolkit or training manual for the groups to take the struggle forward and issue press statement for the regional media. Diwan Singh said that it is important to recognize sensitive judges and their judgements. Preeti Verma said that the campaign should be clear in its political stand and perspectives. Hemalata Kansotia said that the community members should be included to take the campaign forward.

Prashant Bhushan concluded the people's convention by responding to all the comments and said the website (www.judicialreforms.org) will have two important features one is 'judge watch' and another is 'judgement watch'. The campaign should not be centralized but should have decentralized secretariat all over the country. In these regional secretariats, the information should be compiled and displayed for wider dissemination. The Campaign would take off only when the common man and the grass roots movements take ownership of it.

Annexure I

CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORMS

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CAMPAIGN STATEMENT ISSUED BY THE PEOPLE'S CONVENTION ON JUDICIAL ACCOUNTABILITY AND REFORMS

(Held at ISI, New Delhi on 10th and 11th March 2007)

The judicial system of the country, far from being an instrument for protecting the rights of the weak and oppressed, has become an instrument of harassment of the common people of the country. In fact it has become the leading edge of the ruling establishment for pushing through neo liberal policies by which the resources such as land, water and public spaces left with the poor are being increasingly appropriated by the rich and the powerful. While the system remains dysfunctional for the weak and the poor when it comes to protecting their rights, it functions with great speed and alacrity when invoked by the rich and powerful, especially when it is for appropriating the land and public spaces from the poor. The courts are increasingly displaying their elitist bias and it appears that they have seceded from the principles of the Constitution which set up a republic of the people who were guaranteed "Justice- social, economic and political".

The problems with the judicial system begin with the lack of access to the system for the weak and the poor, partly because of the procedurally complex nature of the system, which can only be accessed through lawyers who are unaffordable to the common people. On top of this is the delays and lethargy of the system, which makes justice a distant dream even for people who can afford access to the system.

Compounding this further is the problem of corruption in the system exacerbated by a total lack of accountability of the higher judiciary. The layers of protection from accountability afforded to judges include the lack of any effective disciplinary mechanism, the self acquired protection from even being investigated for criminal offences, the virtual immunity from public criticism due to the law of contempt, and finally by the immunity from public scrutiny by another judicially created insulation from the Right to Information Act.

The most serious problem has however been created by the elitist and anti poor bias of the judiciary. It has essentially become an instrument for protecting and furthering the interests of the rich and powerful, both Indian and foreign. Thus judges who have taken the Oath to defend the Constitutional principles of Justice-Social, economic and political have ordered the bulldozing of the homes of lakhs of jhuggi dwellers, leaving them homeless on the streets. They have ordered the removal of lakhs of street vendors and rickshaw pullers from the

streets of Delhi and Bombay, thus effectively depriving them of their livelihood. By their “creative reinterpretation” of labour laws they have effectively deprived citizens of the protection afforded by the laws. They have thus accomplished the corporate friendly “labour reforms” which successive governments have not had the political mandate to do.

It is clear that the judicial system needs to be reclaimed and reinvented by the people of the country, so that it can come to function in accordance with the philosophy of the Constitution. The system will need to be cleared of procedural complexities and cobwebs so that it can be accessed by the common citizens without professional lawyers, who have become a part of the exploitative judicial system. It will need to be strengthened to deliver justice quickly, efficiently and honestly. Whatever, additional financial allocation or additional judges are required for this must be done. For this, the various layers of protection created to shield the judges from accountability would have to be peeled away. To begin with, the clause relating to scandalizing the judiciary would have to be deleted from the Contempt of Courts Act.

The system of appointments of judges would have to be made transparent and such that the proposed appointees can also be scrutinized from the point of view of their sensitivity to the ideals of the Constitution. An independent Judicial Commission would be needed to examine complaints against judges and hold them accountable. The immunity from criminal investigation would need to be withdrawn. The Right to Information Act would need to be strictly enforced particularly for the judiciary. In fact, every court room judicial proceeding must be video-taped and its record made accessible to the people

None of these changes would however be made by the ruling establishment of the country without sustained public pressure from below. Both the executive and the judiciary are obviously happy with the existing state of affairs. The judiciary enjoys enormous power without accountability and the government is happy with a judiciary which enthusiastically promotes its neo liberal policies. The only judicial reforms that the government appears to be interested in is market oriented reforms such as increasing arbitration which is a form of privatized system of justice for the wealthy.

The judiciary has long been regarded as a holy cow that was considered out of bounds for people outside the select circle of lawyers, judges and government Commissions. It is increasingly clear that it would be suicidal for the common people to ignore it any longer. That is why several organisations, which work with common people came together to organize this convention. We hope and expect that this convention will kick start a people’s campaign and movement on this important issue. The contours and strategies of this campaign will be worked out, but one element would definitely be a concerted effort to keep a close watch on the actions and judgments of judges particularly from the point of view of class and communal bias, arrogance, corruption and non-adherence to Constitutional principles. The threat of contempt must be ignored and mass contempt will have be committed if any attempt is made by the judiciary to use the contempt law to discourage this scrutiny.

This convention resolves to encourage people’s organizations all over the county to initiate a sustained public campaign to reclaim the judiciary for “We the people” of this republic.

Annexure II

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A Report on the Peoples Convention

10th & 11th March 2007

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Peoples' Convention on Judicial Accountability and Judicial Reforms

10-11 March 2007

Campaign for Judicial Accountability and Judicial reforms

Indian Social Institute

10, Lodhi Institutional Area

Lodhi Road, New Delhi

Day One - Saturday 10th March 2007

Tentative schedule*	
9.30 am	Registration of the delegates and Tea
10.00 am - 11.15 am	Inaugural Session Address by Shri Prashant Bhushan Inaugural Address by Shri V.P.Singh Key note address by Justice P.B.Sawant
Session - I (11.15 am - 1.10 pm)	
Appointment and Accountability of Judiciary Chair: Ms. Kamini Jaiswal	
11.15 am - 12.15 pm	Keynote Address by Shri Shanti Bhushan Speakers: Shri. N.Ram - Chief Editor, The Hindu Dr. Bhaskar Rao, Centre For Media Studies Ms. Arundhati Roy, writer
12.15 pm - 1.10 pm	Discussion
<i>1.10 pm - 2.00 pm - Lunch Break</i>	
Session - II (2.00 pm - 5.00 pm) Access to Judiciary and Delay in Justice Chair: Shri. Miloon Kothari	
2.00 pm - 3.15 pm	Keynote speech by Shri. Mihir Desai Speakers: Shri Bhagwanji Raiyani, Janhit Manch Prof. B.B.Pandey Prof. Mulchand Sharma
<i>3.15 pm - 3.30 pm - Tea break</i>	
3.30 pm - 5.00 pm	Discussion

Day Two – Sunday 11 March 2007

<i>9.30 am – 10.00 am - Tea</i>	
Session - III (10.00 am – 12.45 pm)	
<i>Values and Attitude of the Judiciary towards Poor</i> Chair: Shri Ajit Bhattacharjee	
10.00 am – 11.15 am	Keynote speech by Adv Prem Krishan Sharma Speakers: Shri. Baba Adhav Dr. Venkatesh (Lok Raj Sangathan) Shri. Pradeep Prabhu Prof. Babu Mathew
11.15 am – 12.45 pm	Discussion
<i>Session - IV (12.45 pm – 1.15 pm)</i>	
12.45 pm – 1.15 pm	Preparation of Campaign Statement
<i>1.15 pm – 2.00 pm - Lunch Break</i>	
2.00 pm – 3.00 pm	Press Conference
Session - V (3.00 pm – 5.00 pm)	
<i>Open Discussion on strategies for the campaign</i> <i>-Formation of a Campaign Organization-</i>	
3.00 pm – 5.00 pm	Open Forum on Strategies
<i>5.00 pm – 5.15 pm - Tea</i>	