

STATEMENT OF THE SECOND NATIONAL CONVENTION ON
THE JUDICIARY AND THE POOR

New Delhi, Feb 24, 2008

The Second National convention is of the view that the judiciary of the country is not functioning as an instrument to provide justice to the vast majority of the people in the country. On the other hand, most of the Judiciary appears to be working in the interest of wealthy corporate interests which are today controlling the entire ruling establishment of the country. Thus, more often than not, its orders today have the effect of depriving the poor of their rights, than restoring their rights, which are being rampantly violated by the powerful and the State.

To begin with, the judicial system of the country is not even accessible to the vast majority of the people, who are poor. This is because of distance, expense and the procedural complexity of the system. It cannot be accessed without lawyers, without whom they cannot even enter the system. Obviously, the poor cannot afford lawyers. In fact, a poor person accused of an offence has no hope of defending himself in the present judicial system and is condemned to its mercy. That is why so many poor persons spend more time in jail as under-trials than the maximum sentence that can be imposed upon them for their alleged crimes.

Even worse than the lack of access, is the increasingly elitist and anti poor attitude of the majority of the Judges, particularly of the Supreme Court. The ideology of the courts today, as reflected in their judgments, is more right wing and reactionary than even the government which is functioning as an agent of powerful corporate interests. The judiciary has remained largely impervious to the daily and widespread indignities heaped upon the poor. Thus when the poor are deprived of their land and natural resources on which they survive, without any rehabilitation, the Courts have, barring few exceptions, refused to interfere, even when they are petitioned on behalf of these people, and even when such dispossession is for the benefit of private corporate interests. Even worse however, is the fact, that the courts have often in the recent past, themselves ordered the eviction of poor slum dwellers from their dwellings without rehabilitation. This has been done without hearing them, in violation of the principles of Natural Justice and in violation of their right to shelter. This has been done sometimes on the ground that the slum dwellers do not legally own the land on which their jhuggis are put up, and sometimes on the ground that they are on the banks of the Yamuna or on the Ridge which are environmentally sensitive areas. But when shopping malls come up on the ridge, or the powerful Akshardham temple comes up on the same banks of the River, all kinds of other flimsy excuses are trotted out to allow them.

The courts have also ordered the removal of hawkers from the streets of several towns, again without a hearing, without rehabilitation and in violation of their right to livelihood. They have ordered the removal of rickshaw pullers from the streets of Delhi in a similar fashion. These are actions which even the governments dared not take because of their democratic accountability, but could be taken by a judiciary which is totally unaccountable.

We have seen in recent times the gradual dismantling of labour protection laws at the hands of the judiciary as it has refused to implement the Contract Labour Act and “creatively reinterpreted” various labour laws in favour of big business. In one judgement, the Supreme Court has gone so far as to say that labour laws should be interpreted in line with the economic policies of the government! Thus, they have achieved for the government what it could not get done legislatively because of the lack of consensus in Parliament.

This Convention finds the same bias against the poor when we examine the courts orders in matters involving civil rights. Bail applications of the poor and the weak are often not heard for years, while those of the wealthy and powerful, argued by corporate lawyers get heard immediately. Even Civil rights activists like Binayak Sen get hostile treatment from the courts and are denied bail, while smugglers and white collar racketeers are granted bail with alacrity.

The time has therefore come for the people of the country to reinvent the judicial system. A people friendly judicial system must be one which is simple enough to be accessed without the mediation of professional lawyers. It must function in a participatory and transparent manner. The laws and procedures must be simplified, so as to enable a better understanding and improved access to the judicial system by the common person. The proceedings of all courts must be videographed and the records made available to all citizens under the Right to Information Act. The recently proposed Gram Nyayalayas seem to be a step in the right direction. An adequate number of them must be set up so that they are available at every block level. This, along with a simple procedure will help in making justice quicker. We can outline the broad contours of a people's judiciary here, but its detailed blueprint needs to be prepared.

Most importantly, the judges who man such people's courts must be selected in a transparent manner with much greater involvement and participation of the people. The system of selection must also take into account the social and political philosophy of the proposed appointee to ensure that it is in tune with the social and political philosophy of the Constitution, and in particular that the appointees have some demonstrable understanding and sensitivity towards the poor. For this, we need a Judicial Appointment Commission manned by persons other than judges, which will conduct public confirmation hearings, allowing full participation of the people thereby conforming with the basic principles of democracy.

There must also be a transparent and participatory system of evaluating and reviewing the performance of judges and dealing with judicial misconduct and delinquency. Judges must be accountable not merely for corruption, but every kind of misconduct, including betrayal of the principles of the constitution-for action as well as inaction. A full time, independent, judicial performance commission, with an investigative machinery under its control must constantly review the performance of judges.

It is often said, even in "Official" seminars that the Judicial system is in a state of collapse, because justice delivery is very slow. However, merely speeding it up, will not make it an effective system of justice for the poor. For that we need to reconstruct the entire system. Such radical restructuring of the judiciary however, will need a powerful people's movement in the country. Though that may still be distant, yet, public discussion and debate must begin on this issue. For, it is clear, that no amount of tinkering with the present system is likely to yield significant results. Drastic surgery is required.

The call given in the first Convention in 2007 is reiterated that the Judiciary in the country needs to be "reclaimed and reinvented" by the people.