

DV declares war on

JUDICIAL TERRORISM

V. T. RAJSHEKAR

and

IQBAL AHMED SHARIFF

JUDICIAL TERRORISM IN HINDU INDIA

V.T. Rajshekar

and

Iqbal Ahmed Shariff, Advocate

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DALIT SAHITYA AKADEMY

No. 109, 7th Cross, Palace Lower Orchards
Bangalore - 560 003. INDIA

email: dalitvoice@rediffmail.com, vtr@ndf.vsnl.net.in

Website: www.dalitvoice.org

FOREWORD

The upper castes (Hindus) ruling India are deeply worried because they know they are gradually losing political power being a numerical minority (15%). The power is gradually passing into our people —the non-Hindu SC/ST/BCs plus Muslims and other "minorities" —Bahujans.

To protect their ill-gotten power and properties, they are increasingly seeking the support of higher judiciary which is packed with upper caste judges. The *Manuwadi* media, which is another menace, is openly hostile to our people.

The "caste war" between the two is intensifying in many places and sometimes turning violent.

Our people, who have nothing to lose but their chains, do not mind if the rulers take to violence with the help of their media, higher judiciary, bureaucracy and even the police. Only the propertied class is worried about the law and order.

In every sector of the society, we welcome the upper caste efforts to sharpen the caste-class contradictions and resort to violent confrontation because we know that India's road to social justice can be only through caste war.

Because in India "class" is caste".

The Constitution of India gives the highest importance to "social justice" which means justice to each caste and community. This is the only meaning of "social justice".

Bangalore, South India

V.T. Rajshekar

Date: Jan.1, 2006

"Confrontation" between judiciary & legislature

V.T. RAJSHEKAR

For the first time in the history of "independent" India, we had a grand, a very welcome "confrontation" between the two creatures of the Constitution — the highest judiciary representing the ruling upper caste property-holders and the legislature, representing the people.

Lok Sabha Speaker Somnath Chatterji, Union Govt. and MPs and even Supreme Court Chief Justice Lahoti might have denied that it was not a "confrontation". This they said for public consumption. It was indeed eruption of the long bottled up fury against the higher judiciary. We are happy Chief Justice Lahoti pulled the cork and the fury flowed out.

Such a confrontation should have taken place long back but it was getting delayed and consequently the oppressed millions of India were denied social justice.

Courts blocking social justice:

DV references to the war, which we have continuously conducted against this anti-people higher judiciary, are cited on last page. As the country's oldest and largest circulated journal of Dalits, treated as the lowest of the low, and all other persecuted nationalities denied human rights, we owe a duty to our constituency and we are doing it.

It is our considered opinion, which is also shared by the elected representatives of the people (state legislatures and Parliament), that the country's un-elected higher judiciary is consistently coming in the way of social justice to which the Constitution has given the highest priority. It is also our view that the country's micro-minority upper caste rulers, who have usurped the country's wealth and power, are increasingly depending on the judiciary to seek protection to their ill-gotten

wealth and power and perpetuate their misrule. And the judiciary has been systematically obliging them.

Only one Dalit in Supreme Court:

Hence we welcome the latest confrontation between the two and the consequent frustrations of the Supreme Court.

The Supreme Court is not Supreme. People are supreme. Sovereignty rests with the people. Not the courts. And the people have vested the power with the elected representatives, MPs and MLAs. And they exercise these powers on behalf of the people.

The un-elected judges, who are appointed like other govt. officials and draw their salaries from the Consolidated Fund, cannot be expected to understand the pain, the agony and the depth of the feelings of the exploited people reeling under upper caste tyranny. This is because the judges are mostly from the upper caste. Hence the need for reservation in higher judiciary.

There is only one Dalit judge in the entire Supreme Court and when the then President of India, Dr. K.R. Narayanan, proposed his name (Justice Balakrishnan) the then Chief Justice exploded. Not only that. The Brahminical Govt. then in power in Delhi conspired with the Chief Justice and transferred the power of appointing judges to the Supreme Court — thus finally barring the doors to the entry of judges from deprived sections.

Respect not given but taken

Chief Justice Lahoti in his outburst in the court asked the govt. to "give the respect the courts deserve" (*Hindu*, Aug.24, 2005). Respect is not demanded but it is commanded.

The higher judiciary has been gradually losing the confidence of the people. How can it command the respect of the people?

The Aug.23 outburst of the Chief Justice shocked even the Hindu nazi party MPs. Its spokesman, V.K. Malhotra, said

Parliament had every right to maintain social harmony. CPM's Gurdas Dasgupta said "never before had such caustic remarks been made by the Supreme Court which contained elements of animosity and intolerance and undermined the Constitution".

Who is confronting whom

The outburst of the Chief Justice was on the issue of reservation to India's deprived destitutes. The upper castes have been using the higher judiciary to deny social justice to our people in the name of "merit".

To think these upper castes will have a change of heart one fine day and we wait for that day is futile. Wolves will never, ever love and sleep with lambs and protect them. Hence the need to separate the wolves from lambs.

We demand the issue of reservation to Dalits, Tribals, Backward Castes and religious minorities, comprising over 85% of our population, be brought under the 9th Schedule of the Constitution so that no court can fiddle with reservation. Because reservations are our human rights.

Upper castes losing political power

We are happy that the lava boiling inside the volcano has burst out. And it is now open. We welcome this confrontation signifying the sharpening of the social contradictions between the haves in the judiciary and the havenots represented by the legislature. The higher courts have been not only consistently blocking social justice but also infringing on the sovereignty of Parliament and the state legislatures. Lok Sabha Speaker Somnath Chatterji himself has said this.

As more and more deprived sections of the society start opening their eyes and electing their representatives to the legislature, the upper castes will be losing their political power. The higher judiciary as the representatives of the upper castes is rushing to the aid of its *jatwalas* by trying to eat into the

rights and privileges of the legislature.

The way-out is the govt. will have to take back the powers given to the Supreme Court to appoint judges. Pending a constitutional amendment to introduce reservation in higher judiciary, immediate steps must be taken to select judges from the socially deprived sections.

The outburst of the Chief Justice must alert Delhi to act immediately. The anger of the people and the people's representatives should be made use to immediately pass such constitutional amendments. ■

(Dalit Voice Editorial September 16, 2005)



Supreme Court turning into "Modern Manu"

IQBAL AHMED SHARIFF, ADVOCATE, 94/1- 11TH CROSS, TANK GARDEN,
JAYANAGAR-1ST BLOCK, BANGALORE - 560 011

The latest judgment of the Supreme Court on the rights of private educational institutions to be their own masters in selection and admission of students has raised a controversy greater than the one on Shah Banu. There have been vehement opposition on many court judgments like those on appointment of Dalits as temple priests, reservation for Backward Castes, weightage mark for village people, job quotas of Muslims. In all these cases the losers were the over 85% of Indians — Dalits, BCs and minorities.

In all these cases, the vast majority of the elected representatives, state-wise and all India-wise, supported the people against the judiciary. In this latest judgment, the victims are those other than the upper castes, capitalists and education merchants. The reaction has been the greatest by the people's representatives. The counter reaction by the Chief Justice of India was also the greatest bringing out the words — "close down the courts" from his mouth.

Judicial excesses:

This has brought India to the biggest crossroad of history — confrontation between the people and a few self-proclaimed "super brains" of the highest judiciary — and this requires to be properly tackled — may be by amending the Constitution and defining the limits of judiciary. Ever since the Emergency there has been a gradual change in the attitude of the higher judiciary. Immediately after the Emergency there was panic in the judiciary and later over-zealous assertion in the form of cases already cited above. These judgments were hailed by the Brahminical media, and the judiciary started feeling that it can go extra-judicial and enter into political and public

domain. Judges started attending public functions and hearing grievances of the "public" as placed by rich anti-social NGOs like environmentalists, animal rightists, feminists.

The menace of PIL:

This gave rise to the greatest anti-people judicial intervention in the name of public interest litigation (PIL) and judicial dictates were issued. It did not strike the judiciary's mind as to why there are elected bodies like the parliament and state legislatures, the members of which go into every street and home at least once in five years, receive the public praise and also brick-bats through the votes. Their doers are kept open at least for a few hours every day for the public to meet. They are the receivers and redressers of public grievances. They see, meet and talk to thousands of public and their social workers. They are the best judges to know as to what is in public interest or not. And since public comprises the rich, over-rich and poor, intellectuals and ignorant, upper caste, Backward Castes, majority and minority— people of different creeds and sexes—they only can judge what is in the best interest of the people. Again, they are controlled and controverted by others like them in the elected bodies, and after long discussions they resolve as to what is in the best interest of the people and act.

How do the judges of the higher judiciary and particularly of the Supreme Court fit into the capacity of knowing public interest? The Supreme Court judges have no connection with the public, not even litigants. They come from the High Courts and high court judges are mostly selected from among the high court advocates, most of whom do not even see their clients (the minimum of public) as the High Courts are courts of records and not of trial. High Court advocates are provided with briefs by trial court advocates in appeal cases from different and distant places. It is only on the original jurisdiction side, that litigants meet the high court lawyers

and the cases on this side are few. Thus, most of the High Court judges and almost all judges of the Supreme Court do not see and talk even to the litigants. Then what do they know of the public and of what is in public interest? They must limit their judicial functioning to only those matters where litigants have personal interests. The judicial functioning in the higher judiciary is like post-mortem surgery, scanning of files and books.

Judicial dictatorship:

The minimum that could be done in PIL was to compel the PIL petitioner to issue notice to the entire public of India by publishing the PIL petition in newspapers all over India and in all languages so that others could also participate and give their versions. This is the minimum on the universally accepted legal principle — *Audi Alterem Partem* (hear the other party), and since it is PIL, the other party is the entire public—that is all Indians. Why the judiciary has not done this minimum? Can some govt. officers on the otherwise be the "public"? This is a paradox. This has created a set of PIL lawyers who have even received accolades from some of the judges. Some judges and PIL lawyers have assumed for themselves an extra constitution authority which the founding fathers of the constitution did not anticipate. This calls for a reform of the judicial functioning. A kind of judicial dictatorship is coming about in India. If not checked it may result in people losing all faith in the Supreme Court and people may say — "Fine, close down the Supreme Court. It is a luxury of a few rich appellants in PIL petitioners".

Cause of trouble:

Apart from these, there is another cause of trouble for the vast majority of Indians comprising Dalits, BCs and minorities. This is the exercise of the right of "equity and good conscience" on the part of the higher judiciary. While the trial courts and trial judges (contemptuously called "subordinate judiciary" by the "higher" judges) go only by law, the high court judges

take for themselves another additional right of "equity jurisdiction", and the Supreme Court judges assume for themselves yet another "good conscience": that is, law plus equity plus good conscience. Equity is something beyond law to meet the ends of justice the principles of which are universally well established. This too affects only the litigants. It is very ancient and well defined. King Solomon ordered for the dividing of the child into two halves to be given to each of the claiming mothers on the basis of equity, as the result was expected that the real mother would forgo her half and give over the full to the other and real mother found out. This was a method of doing justice on equity.

Jehangir & Noor Jahan:

Emperor Jehangir also gave the bow and arrow to the aggrieved wife of the slain washerman to shoot and kill him and stood before her to make Noor Jahan also a widow. He knew well that the washerwoman would not do so and accept damages instead, as the killing was accidental. Since she had approached the highest court, the king's court, the court of equity, she was treated equitably under the equity jurisdiction and not under law. Equity is a very ancient concept to meet the needs of justice by going beyond the law. But this applies only to litigants. But the concept of "good conscience", which is the ruling monarch of highest justicing where public interest is involved, particularly in PIL, is undefined and has no limits. In countries like England, France, Pakistan and Egypt "good conscience" may play a good role in certain matters but it is a menace in India because in other countries, judges and the public, as members of the same race, religion and morals have a more or less common conscience. The source of their conscience-building is the same - sacred books, philosophy, history.

But in India the situation is different because of differences of castes, communities, religions, philosophies, beliefs and so on. One belonging to each of these has a different

conscience. An adherent of Manu has a different conscience than its opponent. The Brahmin's conscience is directly opposed to the conscience of Dalits, Christians and Muslims. The pains and pangs of Dalits, BCs, Muslims — physical, moral, psychological—cannot be understood by an upper caste, born and brought up in *vaidik* atmosphere and in particular in the present days where there is an anti-Indian RSS which prunes and sharpens such conscience on a daily basis.

It is this conscience which works behind some of the judgments of the Supreme Court, like in the Shah Banu case, the holding of the Assam Immigrants Act and the latest verdict giving all powers to money-making private educational institutions.

Supreme Court is anti-Muslim:

In spite of the earth-shaking upheaval by the Muslims on the Shah Banu judgment in which even a warning was given that Common Civil Code (CCC) will be upon the dead bodies of Muslims and it will shatter India into pieces, the Supreme Court again recommended CCC in a later judgment, knowing full well that this is an agenda of an anti-Muslim movement (RSS) and its political wing (BJP). In spite of this, in a judgment the Supreme Court again had the temerity to harp on the CCC. It forgot that the BJP itself after coming to power gave it up in public interest because it came to know that politics is the art of adjustment with various forces inside and outside the country.

The Supreme Court struck down the Assam Illegal Immigrants Act 1983 after 20 years of its enactment to deprive the Assam Muslims of their right of citizenship, to be expelled from India merely on somebody's saying. This judgment was hailed by the Hindu nazis. The Supreme Court took upon itself the burden of political decisions which may result in mass bloodshed, unsettling the lives of lakhs of Indian Muslims

upon the seeking of an anti-Muslim lawyer- petitioner.

Shariat Courts:

The Supreme Court also made undesirable statement on the Shariat courts maintained by Muslims — meaning that parallel justicing is not permissible. It ignored the existence of parallel judicial institutions like court martial, departmental inquiries, domestic inquiries, arbitrations, compromises. It even forgot that Medical Councils and bar councils have their own disciplinary committees and proceedings which impose penalties. Nay. It forgot that the higher judiciary itself has its own disciplinary committees which pass judgements on the misconduct of judges and punishes them. It forgot that nobody can be compelled to go to court only to seek redressal. Everyone has a right to waive off his rights.

As soon as the Supreme Court comes to know of something connected with Islam and Muslims, it loses its head and jumps to uncalled for conclusions. In the same vain the Supreme Court said that the object of the minority commissions is to slowly amalgamate the minorities into a single group.

Apex Court using RSS language:

Whose language is the Supreme Court using? From where the judges and particularly the chief justices are getting inspiration? This leads to the suspicion that Hindu nazi RSS elements wait for decades to come to the post of chief justice of India and propagate RSS ideals to overtly pour venom on Muslims and covertly on BCs and Dalits.

They put these ideals on record and pass it on to thousands of judges and lakhs of lawyers all over India. Some chief justices have openly acted as RSS ideologues and propagandists. The confidence of the Muslims in the Supreme Court is gradually eroding and a time may come when Muslims may demand that Hindu judges of the Supreme Court should not sit upon matters connected with Muslim affairs.

Now, through this latest judgment, the Supreme Court has acted as "Modern Manu" to deprive the government of its rights to do social justice, which will affect 85% of Indians. No time the Supreme Court has taken into account the running away of "merited" upper castes to Western countries (brain drain) to serve themselves and those countries after getting degrees in India free of costs. Now their children are provided facilities in the NRI quota at fees far cheaper than those in the countries of their migration — a loot at the expense of BCs and minorities.

Wanted judges with conscience:

What is happening is that every time the higher judiciary commits such anti-Dalit/BC/minority acts and we do not even protest out of fear of the court. Laws are made that are held wrong. Such type of situation does not exist in other countries. It is only in India. This is because the "good conscience" of the highest judges is different from that of the people. This conscience disparity requires to be removed early.

And this is possible only by putting those with the conscience of Dalits/BC and minorities into the position of higher justicing. And this is possible only by providing reservations in higher judiciary as they only know where the shoe pinches just as the upper caste judges know where their shoe pinches. Social justice has to be first brought about in institutions of justice. In this matter we are supported by past experience.

At the dawn of "independence" the entire executive was full of upper castes. Slowly through reservation, Dalits and BCs also entered and they are now in substantial numbers. By remaining in constant touch with them in the office and institutions, the upper caste officials also got educated on social justice. One individual's neighbourhood teaches more than hundreds of books.

Supreme Court warned:

If Dalit and BC judges are allowed to sit on the benches of higher judiciary, not only there will be check on anti - Dalit/BC/minorities judgments, but also the upper caste judges will learn lessons on social justice apart from legal and technical justice. Reservation is not just a means of livelihood and status but of creating and promoting national integration. Lack of reservations in higher judiciary is the main cause for these anti-social judgments.

To sum up, the time has come for India to bring about the following changes in the Constitution:

1. The number of judges in all courts must be increased.
2. Reservations to Dalits/BCs and minorities should be provided in higher judiciary so that at no time the proportion of upper castes goes beyond 50%.
3. Selection of the judges of higher judiciary should be done by committees, which should also collect information about the ideological and social background of the candidates.
4. Article 32 (2) conferring right upon the Supreme Court to issue directions, orders, writs must be deleted. (Original jurisdiction). Enough that the High Courts have it under Art.226. Supreme Court should exercise only appellate jurisdiction, that too limited only to the litigants. Sermonising, suggesting and inferring from out of records must be prohibited for the courts of records.
5. Articles 124 (3) and 217 (2) should be so amended to see that the higher judges have a practice of at least 10 years in the trial courts, so that they may know litigants, witnesses and the public directly from observation and contacts.

The Supreme Court should of its own come forward for these changes as otherwise people will be compelled to demonstrate before the Supreme Court. ■

(Dalit Voice September 16, 2005 p. 5)



Who has powers to clip wings of judiciary ?

OUR CORRESPONDENT

Bangalore: After the Aug.23, 2005 "outburst" of Supreme Court Chief Justice R.C. Lahoti, a Hindu Marwari belonging to the Maheshwari sect of the Birlas, he continued his tirade. In a speech at Bhopal, he warned that the judiciary has the powers to clip the wings of the executive and legislature. (DV Edit Sept. 16, 2005: "*We welcome long overdue confrontation between judiciary & legislature*").

He said:

"All three institutions —executive, legislature and judiciary — should work in accordance with constitutional provisions and if anyone acts beyond its jurisdiction, judiciary can clip its wings", he said at a seminar on "Quick and accessible justice: Co-operation between the executive and the judiciary". (PTI-Deccan Herald Sept.4, 2005).

Contempt of court:

But he did not say who has the powers to clip the wings of the judiciary if it acts beyond its limits.

That there is corruption in higher judiciary is admitted by the judges themselves. Thousands of cases are pending which means justice delayed is justice denied.

Why Speaker is silent:

The Parliamentary Standing Committee report has pointed out the judicial impunity and the lack of accountability. It has also spoken of the power of contempt of court being interpreted as if they can intimidate the media for exposing the corruption, Arundati Roy was jailed. Can the court muzzle dissent and stifle criticism? Are the courts above people and its elected representatives? Where does the sovereignty lie?

We are sorry no proper debate is taking place in the country

because the upper caste domination of country on these subjects has made us into an intellectually dishonest society. Read our book, *India's Intellectual Desert* (Dalit Sahitya Akademy -1999, Rs. 50). -

Lok Sabha Speaker Somnath Chatterji, who created a storm over judiciary's "encroachment" into legislative domain in the Jharkhand case, later expressed concern over courts discharging executive functions through their orders on PILs. But even he is silent now. Why? ■

(*Dalit Voice* October 1, 2005 p.6)



Anti-people Supreme Court

V.T. RAJSHEKAR

Reservations are our human rights. The Constitution says so. Elected leaders, people's representatives and all organisations of the country's deprived sections (SC/ST/BCs and Muslims/Christians/Sikhs) want reservations and have fought for their human rights.

Even the judiciary has been upholding the human rights so far.

But lately, the Brahminical enemies of our human rights have started using the judiciary to subvert the same after failing to do so through other means. Both the legislature and executive are firmly in favour of reservations though the Aryan upper caste-dominated bureaucracy is contributing its share to sabotage the same.

Judges are like govt. servants:

But it is the upper caste -dominated higher judiciary, the high courts and the Supreme Court, which is today in the forefront of destroying our human rights.

We want to warn these upper caste judges that they can't. They may try to bend us but they can't break us. Because the country is governed by the people through their elected representatives. The judges are not elected but appointed like govt. servants. If this is the logic, servants cannot dictate to the masters. The masters are the people. Sovereignty lies with the people. That is the meaning of democracy.

DV has done considerable writing on the "judicial terrorism" and while publishing the speech of R.N. Kovind, a BJP member of the Rajya Sabha, we have cited all the references. (DV Aug. 1, 1999 p.20 and 21).

The President of India, Dr. K.R. Narayanan, in the interest of promoting social justice, wanted to bring Justice

Balakrishnan, Chief Justice of Gujarat High Court to the Supreme Court. Balakrishnan is a Dalit but the upper caste judges scenting the danger sabotaged the move and even maligned the respected Dalit President of India.

The Confederation of SC/ST Employees Association headed by Ram Raj held a powerful demonstration before the Supreme Court on Sept. 1 (*Dalit Voice*, October 1, 1996 p.6: "*Dalit protest against Supreme Court*").

We have to step up this agitation and the Supreme Court must be gheroad (mobbed) as desired by the Dalits who should be in the forefront of all human rights movement.

Latest judgment:

In spite of all these protests the Supreme Court is going ahead with demolishing and destroying our human rights and this became more clear from its latest judgment:

New Delhi: A Constitution bench of the Supreme Court has ruled that candidates, who got jobs through reservation quota, could not be entitled to seniority over general category employees as a matter of right.

"We hold that both Articles 16 (4) and 16 (4A) do not confer any fundamental rights nor do they impose any constitutional duties but are only in the nature of enabling provisions vesting a discretion in the state to consider providing reservation if the circumstances mentioned in these article so warranted", the bench said.

As both Articles 16 (4) and 16(4A) provided for "equality of opportunity for all citizens in the matters relating to employment or to appointment to any office under the state", it would not "prevent the state from making any provision for reservation..." the bench said. The bench held that "in the matter of due representation in service for Backward Classes and SC/STs, maintenance of efficiency of admission is of paramount importance".

"In a case where the reserved candidate has not opted to contest on his merit but has opted for the reserved post, if a roster level is set at level 1 for promotion of the reserved candidate at various roster points to level 2, the reserved candidate

if he is otherwise at the end of the merit list, goes to level 2 without competing with general candidates and he goes up by a large number of places". "It deserves to be noticed that the roster points fixed at level 1 are not intended to determine any seniority level 1 between general candidates and the reserved candidates", the Supreme Court added. (PTI-Hindu, Sept.20, 1999).

This latest verdict of the apex court makes it clear that instead of acting as the guardian and custodian of the Constitution, it is acting as the destroyer of the Constitution.

The entire upper caste world is mightily pleased with its verdict. In a democracy, the majority rule. In India we the SC/ST/BCs and Muslims/Christian/Sikhs are the majority. That means the above ruling of the Supreme Court is against the wishes of the people. The Supreme Court, therefore, becomes anti-people. The Supreme Court, in its bid to protect the interests of its *jatwalas*, is tampering with our human rights.

We welcome confrontation:

That means confrontation between India's original inhabitants and the alien Aryan forces is inevitable and unavoidable. The judiciary is promoting it and we welcome it.

The Supreme Court to safeguard the upper caste interests has usurped to itself the power to appoint the judges to high courts and Supreme Court. Even Law Minister Ram Jethmalani and many other jurists have lodged their strong protest against this action of the Supreme Court. It wants to appoint only upper castes and their followers as judges in the higher judiciary so that their *jati* interests are protected by the judiciary. Now that the election process is over, the Bahujan representatives coming to the new Parliament will have to address themselves to the task. ■

(Dalit Voice Editorial October 16, 1999)



Judiciary sabotaging social justice

OUR CORRESPONDENT

New Delhi: If India's drive towards social justice stands sabotaged the major credit goes to the higher judiciary loaded with upper caste judges. Enough has been written on this subject including Editorials in DV.

Chief Justice of the Supreme Court A.S. Anand's criticism of India's first Dalit President K.R. Naryaan's polite suggestion on the need for reservation in higher judiciary must make us seriously think of disciplining this anti-people judiciary.

The Parliament and political leadership should immediately create the All-India Judicial Service as recommended by the Constitution (Article 312).

India perhaps is the only country in the world where selection of High Court and Supreme Court judges is left solely to the Supreme Court which has not even a single Dalit judge today.

SC/ST employees should launch a powerful agitation against this biased judiciary which must be fully exposed. President Narayanan must be thanked for his timely warning on the danger facing India.

(Dalit Voice Feb.16, 1999 p.4)

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