



Kalyug: Descent into darkness



Between democracy and darkness stands the judiciary. It stands heads and shoulders above the judicial systems in Asia. But it is in rapid decline. Ahead is pitch darkness

Colin Gonsalves Delhi

In the 61st year of the republic, surely, India has transited into *Kalyug*. Surveys of the Union of India as well as expert reports published by the Arjun Sengupta committee and the NC Saxena Committee appointed by the Central government reveal that almost 77 per cent of the population in India are below the poverty line in terms of the food intake minimum standard of 2,400 kilocalories (kcal) per person per day, a standard set by the Planning Commission in 1979.

Over 50 per cent of all women and children are malnourished with 17 per cent of the child population being so severely malnourished that a whole new generation of Indians will become adults with malformed brains and stunted growth. Even in the urban areas where conspicuous consumption is always on display, malnourishment of children is upwards of 50 per cent.

This is the spectre of starving India.

For the top 20 per cent of the population (and less than 3 per cent of the sensex/stock market) who have experienced the licence to loot, corrupt and cheat during the ongoing period of globalisation, this is *Satyug*. Since the beginning of the decline of Nehruvian social democracy in the early 1990s and the establishment of what is called the liberalisation regime, the rich have never had it so good.

A seismic shift has taken place in the thinking of politicians, corporations, administrators and judges, fuelled partly by international capital and the devious planning of the World Bank and the IMF. Whereas earlier and in accordance with the constitutional mandate, the country was to be taken along as a whole, the resources of the State were to be used to subserve the common good and a reasonable part of the gross domestic product (GDP) was to be kept aside to subsidise education, health, food, housing and transportation for the working people. With globalisation all this began to change drastically, systematically and with abject cold-blooded deliberation.

Education for all was quickly jettisoned with the argument that it is impossible to educate so many poor children, that it is inadvisable and unproductive to spread resources thinly and that since in any case the middle classes are the engines of change, State resources ought to be concentrated on them if the GDP is to be pushed up. Thus, while fancy educational institutions multiply and students' fees rise many times over, poor students learn under trees or in the open (in freezing cold or scorching summer) without schools, textbooks and often without teachers and the officially promised mid-day meals.

The Supreme Court in TMA Pai's case, made a disgraceful decision opening the doors for commercialisation and privatisation of education and casting a shadow on the earlier decision in Unnikrishnan's case correctly providing for strict State regulation and prohibition on commercialisation.

Similarly, while some of the finest health facilities in the world sprung up in the cities of India, government public health facilities went into a tailspin. The public health centers lacked medicines, doctors, testing equipment, beds and food for poor patients. As the despair with public health care is increasing, the World Bank merrily came along with its prescription for "user fees" requiring people below the poverty line to pay for health services. Dalit or poor women delivering on the pavements outside government hospitals became a common sight.

Despite the jurisprudential exhortation that the right to public health care, free drugs and indigenously manufactured medicines is a fundamental right under Article 21 of the Constitution, the rot set in and is too deep to reverse. How does it matter and what effect could it possibly have on the GDP if tens of thousands of poor people suffer ill health or die of malaria or tuberculosis? From the GDP point of view, health care for the poor simply does not matter.

The shift in ideology away from social democracy towards what was quaintly called 'globalisation'

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affected the judiciary as well. Senior judges who were derisive of the post-independence emphasis on 'egalitarian socialism' used the enormous power of the judiciary to undermine social policies of the government, bypass binding precedents and generally stripped the working people of constitutional law protections.

In the Steel Authority of India Limited case, the Supreme Court made it possible for capitalists to convert their entire labour force into contractual labour, thus effectively taking away all their protection under labour laws. In Uma Devi's case, persons who were employed and were working for decades in permanent work positions on a pittance, were denied regularisation, thus giving a legal cover to slave labour.

Marvelous environmental jurisprudence meticulously put in place by Justice Kuldeep Singh and others in the Supreme Court was systematically dismantled by subsequently appointed judges in the superior courts who had a pro-capitalist bend of mind. They saw environmental law and environmental activism as an irritant which hindered the 'development' of the country. They, therefore, used the quite dubious doctrine of 'sustainable development' in an even more suspect way to allow for all kinds of environmentally destructive industrial activity, quite unmindful of its catastrophic and long-term effect on the environment.

As a result, India today is in the process of being completely devastated. The forests have been decimated in many parts indiscriminately for big projects, the cities are polluted, lush green areas have been mined, the rivers of India turned into sewage drains and water shortage has become so acute that in the years to come social upheavals will centre around this acute deprivation. The great Indian nation is being turned into a desert with its sacred rivers becoming dirty drains.

When the tribals, dalits, workers, slum dwellers and the dispossessed of this country protested, often feebly, they were met with fierce repression. Police torture is widespread and has become the principle forensic tool for the investigation of crimes. Nowhere in the world, perhaps, has the police force turned into such an awesome body of ruthless creatures in uniform, as in India.

The average rate of conviction in the country in cases of atrocities against Dalits has sunk to 1 per cent. As a result, rape of Dalit women, murder of Dalits, destruction of their houses, burning of standing crops, robbing of cattle, destruction of Dalit temples, throwing excreta inside wells, untouchability and practices such as the two tumbler system, continues unchecked till this day while the justice system seems immune.

Despite the right to housing being declared a fundamental right by the Supreme Court in Nawab Khan's case and although the UPA manifesto specifically includes a ban on forced evictions of slums, about a million of the urban poor every year have their homes bulldozed without notice, compensation or rehabilitation to make way for the skyscrapers of the rich.

All this does not auger well for the legal system in India, one of the main pillars of the democratic State. The working people shy away from the courts and participate reluctantly when they are dragged into the legal system through coercive proceedings. Labour court proceedings throughout the country have shrunk by 75 per cent and the once vibrant institutions that balanced the interests of capital and labour have become stultified. Tribals shun the courts. Even the most serious of crimes like rape and murder make the victims approach the courts with grave reluctance.

This is not difficult to understand as the legal system operates just like a colonial power, as an engine of oppression. Probably, one million false or trivial cases are pending in the Indian courts against innocent tribals who are forced to attend court and lose their wages day after day. It took a Maoist uprising for PC Chidambaram, the Union Home Minister, to understand this elementary truth and announce the withdrawal of one lakh cases filed by the State against tribals in Jharkhand alone.

Decisions of the Supreme Court under the Land Acquisition Act have made possible tyrannical state acquisitions of land throughout the country making the vast majority of Indian farmers suspicious of the legal system. With regard to as elementary and established a right as a woman's right to maintenance, the woes of women in family court matters seems never ending.

The State just can't get its act together to enforce the appointment of judges although it is now well settled that India has one fifth the number of judges that it needs. Delays are not accidental, they are intended. The legal system is designed to tie the litigant up in endless and expensive proceedings where justice is illusory.

Public Interest Litigation, which is the only lifeline between the judiciary and the people of India, is being denigrated time and again and not unexpectedly because there are those who believe that the legal system is best used for sorting out property disputes and commercial matters. Legal aid has been reduced to a farce of seminars with the presentation of bouquets. In death sentence cases involving destitute persons, the legal aid lawyer may even miss a cross examination or two.

It is sometimes all too easy to blame judges for the ills of the legal system. If one turns to the quality of the Bar, one would notice all kinds of elements wearing bands and gowns and committing all kinds of illegalities. Criminality pervades many parts of the legal system.

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judicial systems in Asia. But it is in rapid decline. Ahead is pitch darkness.

This is the period of Kalyug. The lust for money that globalisation brought with it has decisively depleted spirituality, morality, collective sharing, equality and social justice. It has only institutionalised a spiraling network of stark and relentless injustice. Only a national uprising will reverse this trend.

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