

INAUGURAL SPEECH JUSTICE A P SHAH

Hon'ble Shri Justice B.N. Srikrishna, Hon'ble the Chief Justice Shri C.K. Thakker, Hon'ble Shri Justice Venkatachaliah, former Chief Justice of India, Smt. Maja Daruwala, brother Judges and sister Judges, distinguished guests and friends.

In the book *'Everybody Loves A Good Drought'*, P. Sainath, a journalist, has told the story of a Subhaso, who is a Gond-tribal woman. She owned immovable property. Her property was being auctioned at 9:00pm by the bank. There was only one buyer. The real purchaser was an employee of the forest department and his brother in law was the nominal buyer. The reason for bringing her land for auction was, ostensibly, her failure to repay a loan taken from the Bhumi Vikas Bank. Her story is one in which every law relating to such transactions was violated.

First, she had taken no loan. A moneylender had asked her husband to put his thumbprint on a document promising something else but using it to take a loan in Subhaso's husband's name. Using their names, the moneylender acquired a pump set and dug a well in Subhaso's land and obtained, gratis, two acres from Subhaso's husband who did not know what had actually happened. Of course the money lender did not repay, he had no intention of doing so. The interest mounted, and one day the bank, without issuing a notice, sprang the trap on Subhaso. There is a law which prohibits any alienation, auction or transfer of Adivasi land. This was violated by the bank. Section 170B of the Madhya Pradesh Land Revenue Code permits re-opening of any dubious deal relating to any Adivasi Land. This is a socially sensitive legal provision. But Subhaso was totally ignorant of this legal protection. The auction and the sale were entirely void, vitiated by many legal infirmities.

On the auction date many persons came to purchase the property, but the Forest Department employee took the auctioneer aside and returned in the night after all the purchasers had left. Two lakhs worth of property, which was inalienable because it was Adivasi land, was sold for Rs 17,500/-. The bank after appropriating the amount towards the loan ought to have returned the balance but did not do so.

Redress under the law should have been possible since there was a gross violation of the law. But tribals are mortally afraid of the Forest Department and each trip Subhaso made to the Collectorate was harassment. The Collector upheld her rights, asked her to seek redress in an appropriate court. He also gave a letter to the local Tahsildar to take action. The Tahsildar told her that she would never get her land back. She was "ranged against a coalition of money lenders, Forest Department staffers, bank officials and a corrupt Tahsildar."

She found herself defeated. She has no money. Her family was in sorry plight. She cannot even speak about it coherently any more.

This story tells us all about access to justice and poverty. In a developing society such as ours where around 50% of the people are living below the poverty line and about 70% of the people are illiterate and large numbers of men and women are living a life of want and destitution, misery and sufferings, access to justice systems are of greater significance. Today, more than ever before, what is vitally important is to secure enforcement of human rights

because there are millions in our country who are denied human rights and unless we evolve new strategies for ensuring realization of these rights by them, human rights will remain merely an illusion.

Enormous delays and expenses of the legal system effectively barred to the poor access to justice. To use the words of Justice P. N. Bhagwati, “the poor are priced out of the legal system; they are functional outlaws”.

The poor see the institution of justice, especially the police and sometimes the court officials and others, not as a source of protection but as entities to be avoided. They see lawyers and courts as part of the problems to be avoided, rather than a solution to their difficulties. Mere access to courts will be of little use if it means greater access to delay, harassment and unresponsive systems.

They are often victims of governmental and police lawlessness and many a times totally without any remedy against oppression and injustice. The courts are too remote for them and even if they can approach the courts, they do not have the social or material resources to fight. The benefits of social welfare laws and governmental schemes and measures are not reaching them and these benefits are siphoned off by intermediaries or are confined only to a few. It is universally recognised that access to justice is one of the most basic human rights and without it the realisation of most other human rights may become difficult. We have to innovate new strategies for the purpose of achieving human rights and making them meaningful for the larger masses.

In this judicial exchange on access to justice we will focus on issues relating to access to justice in the context of poverty and marginalisation and reflect upon innovation and success in the developed judge made law and further challenges regarding access to justice and enforcing human rights. We will examine judicial practices to facilitate effective protection of human rights, including those used in international and comparative human rights law in national courts.

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