Globalisation and the Courts

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Globalisation and the Courts

Globalisation is not just a policy. It is a mindset. When we look at it as a policy we look for the forces behind it, the World Bank, the WTO, the US, the powerful Transnational Corporations, and their collaborators among India's Capitalists. But when we look at it as a mindset we need to analyse the growth in our own societies of tendencies against equality, welfare, rights of the disadvantaged, community rights, etc. The need to look at the development of a vicious elitism within the interstices of our societies should not be forgotten in the high-pitched rhetoric against imperialism or neo-imperialism, which perforce appears to be an external agent,at most supported or aided by local collaborators. Loud protest against an external enemy will create an ephemeral impression of a comfortable unity, but the really difficult task may well lie amongst us.

This is why the fight against Hindutva carries an importance that goes beyond the need to protect the rights of minorities. In India, it is the Sangh Parivar's Hindutva that constitutes the philosophical underpinning of the socially regressive viciousness of thought that is fast seeping into social consciousness. It is this frame of mind that laps up the policy prescriptions of the World Bank and the US, and offers easy entry to the predators of the world. Ruthlessness of Corporate Capitalism meets with an inviting ruthlessness of thought, whose contours need to be mapped out in greater detail than the tendency to concentrate on the 'political economy' of Globalisation would allow.

Given the important role that the Law and Law Courts play in our society in endowing ideas in the public realm with legitimacy, the Courts could have,if they had chosen to,played a role in creating a bulwark of social consciousness against regressive ideological tendencies in the realm of social and political policy-making.In saying this,one is not implying that Courts should have gone out of their way to do so,for such a demand, which is some times unthinkingly made by otherwise right thinking people, can be quite dangerous.The Courts are the least accountable of all modern institutions to public opinion, and the less discretion they are allowed the better, in general. What one is saying is that if the Courts had developed a

comprehensive interpretative framework suitable to the Indian Constitution, there are enough positive values in that document to infer a social-economic policy imperative based on equity and welfare as binding on any one who rules India. That would have played a useful role in de-legitimising regressive social ideologies and in checking the ease with which Globalisation is being palmed off as a valid policy alternative by the Governments of this country.

That the Courts have not played this role, and on the contrary are often seen taking the lead in legitimising regressive policy tendencies is no accident,for they are part of society and not above it. But it will not do not put a full stop there, as radical analysis frequently tends to do.For when we are asking the Courts to play a certain role in upholding such positive values as the Constitution with all its limitations embodies, we are not pleading for a favour,but in effect demanding that the Courts protect the positive achievements of past social struggles and reform processes, which is a moral burden cast upon those endowed with the authority to shape and guide society. They are trustees of the achievements of the past, and they owe it to the future to execute the trust in the right spirit. It is not their private affair to be dealt with as they please. The unfortunate absence of a moral imperative (generally dismissed as neo-Kantian incursions) in radical and progressive thought in general has allowed this betrayal of trust to go unchallenged, reduced as it is to inevitable consequence of ineluctable class interests.

Even when Indian Courts took a progressive view of their role, they did so without evolving a jurisprudence suited to the aspirations underlying the positive dimension of the making of the Indian Constitution. Thus when the Supreme Court decided to defend land reforms, it did so by relying on the medieval English notion of eminent domain – that the Sovereign has superior right over every body's landed property and can take it over for what it regards as public purposes – instead of seeking guidance from Art 39(b) of the Directive Principles of the Indian Constitution, which says that governance of the country shall ensure that ownership and control of the country's material resources is so distributed as to subserve the common good. But the notion of eminent domain has worked havoc with the livelihood rights of adivasis: their habitat is reserved for others in 'public' purpose by the prerogative of the Sovereign. Similarly, when the Supreme Court wanted to prevent the Government from handing over natural resources to private interests to the detriment of the

needs of the people whose source of life and livelihood it is, it relied on an equally ancient notion, the Public Trust Doctrine of Roman Law, and not the right to adequate livelihood (Art 39(a)) as a component of the right to life (Art 21). (Kuldip Singh in the Kamal Nath Motel case* where a Minister's attempt to divert the Beas river to facilitate the construction of his Motel was struck down).

There are two things that I do not wish to be mistaken to be saying: that all foreign principles of law are bad, and that our Courts have never looked at the Preamble and Part IV (the Directive Principles of State Policy) of the Indian Constitution. As for the first, I believe that there is something called human civilisation over and above particular civilisations, which receives its value-inputs from various sources. These values are articulated to novel situations and find re-interpretation in diverse contexts and are enriched thereby. Any absolute divide of 'foreign' and 'Indian' would cripple civilisation, and would be unhistorical any way. I am only objecting to the underlying assumptions as to the valid sources of law as understood by our Courts. If ancient Roman legal institutions can be a valid source of law, why not the practices of contemporary tribal communities? If principles of Anglo-Saxon common law can be relied upon as sources of interpretation, why not the value-framework generated by the aspirations of India's freedom struggle and the social struggles/reform processes that paralleled it, which are to some extent embodied in the Preamble and Part IV of the Constitution?

As for the second, it is true that somewhat belatedly the Indian Courts came round to the view that the Preamble and Part IV of the Constitution are also sources of interpretation. But the precise sense has never been made clear and the development of this principle has been most haphazard. The conservative component of mainstream Indian jurisprudence is well developed and is daily enriched, if one may use that expression, by judgements that pour out of our Court rooms. The cautiously left-liberal component, whose ablest exponent was Gajendragadkar, is equally well developed and lives alongside the conservative component in some degree of disharmony. The more radical interpretations, attempted in the late seventies and early eighties of the last century by the likes of V.R.Krishna Iyer,

**M.C.Mehta vs Kamal Nath, (1999) 1 Supreme Court Cases 388*

P.N.Bhagwati, etc., remained a hit and run effort which never permeated the mainstream of adjudication. One reason is that it was attempted for only a short while, another is that it was attempted by only a few judges, but the least excusable reason is that it lacked philosophical depth. V.R.Krishna Iyer is the most widely known exponent of this radical effort, and is justly respected for his contribution to making Indian law (especially labour law and prison law) more humane. Nor can it even remotely be suggested that he was a judicial polemicist who lacked in learning, but it is difficult to deduce any jurisprudential theory or philosophy from his judgements or writings. Or even the view that no theory or philosophy of jurisprudence is possible within the confines of the present legal system, a view that a radical thinker may conceivably take.

Over the last ten years, the Courts have been gradually undoing what little the radical interpretation of the law achieved in the short while it was attempted. Perhaps even the left-liberal interpretation may not survive long, once the judges of the present generation get over the awe in which some of its exponents are held. We often blame politicians as the principal enemies of popular interests, but it is politicians sitting in legislatures that become law-makers, and India's law-makers have undone very few laws in the last decade in the interest of Global Capital. All said and done politicians need votes, are constantly in the public gaze through the media, and nobody thinks twice before sitting on a dharna against politicians and the laws they make. It is the judiciary, which is protected on all three counts, that has been in the fore-front in taking the law back. Few people realise that law is not just what legislatures make, but that plus what the Courts make of it. It is the second component of law that is being taken back faster than the first. It is not that there are no dissenting voices left or that the regression is uniform and across the board. The story is not so simple as that. But the regression has set in as a trend and is likely to gain speed in the coming days.

Labour Unions are agitated over the proposal of the Second Labour Commission that the power given by Sec 10(1) of the Contract Labour (Regulation & Abolition) Act to the government to prohibit engagement of contract labour in notified areas should be taken away. Parliament has not yet done so, and the only State legislature to have done so through a State amendment is that of the World

Bank's darling, Andhra Pradesh. But five judges of the Supreme Court* have unanimously interpreted the provisions of that Act in such a way that Section 10(1) is as good as taken away. They have done this in two ways: the procedure to be followed for imposing the prohibition has been interpreted in such a way that it would be impractical to undertake the effort. Two, no incentive is left to workers to demand such prohibition since the Court has held that if the workers continue to be engaged through a contractor even after the prohibition, they do not become regular employees. In fact, their position probably becomes worse on prohibition: since the engagement of contractor is prohibited, they cannot be described as contract labour, nor can they be described as regular workers because the Supreme Court has said they are not.

Equal pay for equal work is a principle that was read into the fundamental right of equality before the law by O.Chinnappa Reddy** in the hey-day of the expansive interpretation of fundamental rights by reading the directive principles into them. A driver of the police department came before the Court claiming that he should be paid the scale of drivers in government service and not that of a police constable, whereas his employer said that he may be doing the job of driving but he was recruited as a police constable and so he would be paid only a constable's salary. Chinnappa Reddy observed that whatever name may be given to him, if in fact he is appointed to a driver's job he must be paid the same scale as other drivers in government service, since equal pay for equal work is seen to be a fundamental right when Article 14 (a fundamental right) is read in the light of Article 39(d) (a directive principle). Parliament never tried to undo this judgement by legislative means, but the Supreme Court has whittled it down so much without over-ruling it that it is as good as taken away. As V.Sujatha Manohar*** (who later became a member of the National Human Rights Commission) said in the judgement that delivered the final blow, it is true that equal pay for equal work is a right, but that principle is not easy to apply because there are 'inherent difficulties in comparing the work done by different people in different organisations'. There may be differences in qualifications, nature of work, and 'various other considerations that have bearing on the efficient performance of a job'. The matter is

*Steel Authority of India Ltd vs National Water Front Workers Union, (2001) 7 Supreme Court Cases 1

** Randhir Singh vs Union of India (1982) I Labour Law Journal 344

*** State of Haryana vs Jasmer Singh (1997) II Labour Law Journal 667

therefore best 'left to be evaluated and determined by an expert body', which will of course be constituted by the employer. So in practice a case seeking equal pay for equal work can succeed only rarely as the law stands today, but the fine principle remains intact. It would have been more honest to declare that the view taken by O.Chinnappa Reddy was wrong, for the work of the driver of a police inspector's jeep is certainly not identical to that of a tahsildar's jeep. At any rate, a Court cannot say if it is. So why should all government jeep drivers be paid the same salary?

A.S. Anand is today Chairperson of the National Human Rights Commission. He is the author of another such significant reversal. This time it was V.R.Krishna Iyer's judgement in the matter of reservations. Krishna Iyer* had said that if a community of people are able to show that they are socially and educationally backward, they can seek reservations as a matter of right. In saying so he relied on an accepted principle of Administrative law, namely that if a power is given for a public purpose, then there is a duty attached to that power. Since the giving of reservations is a public purpose, the power to do so carries with it the duty to provide reservations when a case is made out that the community is socially and educationally backward. A.S.Anand**, presiding over a larger bench did not say any thing about that principle, nor could he say any thing, but declared that Krishna Iyer was wrong in holding that reservations can be demanded as a right. However backward a community may be, and however obvious that may be to everyone, the community will get preferential treatment only if the Government thinks so, and it cannot ask for it as a matter of right.

Prior to and up to 1990 the Courts took the view that when public property is made over to private person or persons, except only in cases where it is given for the benefit of the socially disadvantaged sections, the Government should get the best price possible. Public auction has been favoured by the Courts as the proper method of disposing of public property, not only because only then all interested parties would get the chance of purchasing it, but also because that alone would fetch the best possible price for the State. The underlying principle is that it is impermissible that private persons are enriched at public expense.

*Comptroller & Auditor General vs K.S.Jagannathan (1986) 2 Supreme Court Cases 679

**Ajit Singh vs State of Punjab, (1999) 7 Supreme Court Cases 209

In the BALCO privatisation case*, the BALCO Employees Union raised precisely this objection, namely that the valuation of the company's property was incorrect, and that the property was being made over cheap to private interests. A public auction was held and the highest bidder took the Company, but the base valuation was very low. The Supreme Court said that it would not look into the correctness of the valuation but only whether the lawful procedure for valuation was followed. If the lawful procedure was followed, then no complaint would be entertained by the Courts about public property being sold off cheap to private parties, said B.N.Kirpal, the then Chief Justice of India. It is known in fact that BALCO was sold off very cheap, and the book value method of valuation being adopted in the disinvestment process will result in all such concerns being old off dirt cheap. The BALCO judgement has forestalled invocation of judicial intervention in all such cases to come. The Government of India must have heaved a sigh of relief when it saw the judgement, for they are interested in getting rid of Public Sector Undertakings (PSUs) as quickly as possible, and do not mind selling them cheap to purchasers who will sell off the land as real estate, and the rest as scrap, and make a tidy profit. It is difficult to believe that the judges of the Supreme Court were not aware of this. They were, and did not mind. For they increasingly share the mindset that wants to see the PSUs in the dust bin as soon as possible.

In fact the BALCO judgement and the judgement in the Narmada Bachao Andolan case (both of them delivered by the same judge, B.N.Kirpal) put paid to hopes that the Supreme Court would stand by the policy prescriptions of the Constitution in the face of neo-liberal development and Globalisation. It is worth stressing once again that one is not asking the Courts to lay down the country's policies. There can be nothing more dangerous than putting that privilege in the hands of an unelected elite such as judges.

One is only asking them to do their job by the Constitution, since we do have a Constitution that reflects democratic aspirations in its more positive parts.

It is somewhat strange to hear judges say, as they said in the BALCO case, that Courts will not go into the correctness of Government policies unless some body's legal or Constitutional rights are violated. It is as if the Indian Constitution has nothing to say about policies,

**BALCO Employees Union vs Union of India, All India Reporter 2002 SC 350

but only about rights and authority. Article 37 makes it clear that the Directive Principles of State Policy (set out in Part IV of the Constitution) are 'fundamental to the governance of the country'. This is the same thing as saying that Part IV gives the Constitutional policy frame-work for the governance of India. Of course the same Article says that the Directive Principles are not justiciable. But that only means that no Court can direct the Government to forthwith implement the Directive Principles. That is not the same thing as saying that the Courts cannot stop the Government from moving in a direction contrary to those Principles. This is in fact one vantage point from which a jurisprudence appropriate to the Indian Constitution could have been evolved: guiding the movement towards, and interdicting any movement away from, the goals and ideals of the Preamble and Part IV of the Constitution could have been made the fulcrum of interpretation in such a jurisprudence. Instead the weaker alternative of interpreting fundamental rights in the light of Part IV was chosen, and that too was discarded before long.

And so the Supreme Court says in the BALCO case that economic policy decisions of the Government cannot be struck down by the Courts unless there is violation of some law or the Constitution, unmindful of the complaint that the underlying policy itself is against the Constitution. Much the same was said by the same judge, B.N.Kirpal, in the Narmada Bachao Andolan case*, namely that in matters of policy decisions, Courts will not interfere except where some statutory rights are violated. This is nothing but a total abdication of the Constitutional obligation of the Courts, namely to ensure that policy options lie within the framework of the goals of governance set by the Constitution. The obligation was never interpreted in full but at least a beginning was made in the direction in the late seventies and early eighties of the twentieth century, when it was declared that fundamental rights are to be interpreted in the light of the directive principles. But that wisdom is being unlearned in the twenty first century because judges are as sanguine as the rest of the country's elite about the paradise that 'development' promises those who have adequate purchasing power.

Public Interest Litigation, another devise invented in the eighties to enable articulation of public issues before judicial forums,

*Narmada Bachao Andolan vs Union of India, (2000) 10 Supreme Court Cases 664

has been devalued a lot in the last few years. In the BALCO case, it was declared that 'public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power'. And: 'the decision to disinvest and the implementation thereof is purely an administrative decision relating to economic policy of the State and challenge to the same at the instance of a busybody cannot fall within the parameters of public interest litigation.' It was further prescribed that public interest litigation 'was meant to secure justice for the poor and the weaker sections of society who are not in a position to protect their own interests'. The Court appears to have forgotten that one of the most famous public interest cases was the 'Judges transfer case'* which was filed by some advocates questioning the policy of transfer of judges from one High Court to another. Judges are by no means incapable of protecting their interests nor do they belong to the 'poor and weaker sections'. And their transfer is a 'purely administrative decision relating to State policy'. Yet the case was entertained as a public interest case and detailed orders were given circumscribing the power of the executive in the mater of transfer of High Court judges.

It was always understood that there are two circumstances in which some one not directly affected by an act of the Government or Governmental instrumentalities can move the Courts in public interest: one, where it affects voiceless people who are unable to come before the Court; and two, where the damage caused is not to a particular person or group of persons but to society as a whole, to fundamental principles of Governance, etc. It is for the second reason that environmentalists were permitted to move the Court against pollution caused to the Taj Mahal by the Mathura Refinery, or the malafide exercise of power by which Union Minister Kamal Nath obtained permission to divert the course of the Beas river in order to accommodate the construction of his Motel. BALCO employees similarly wanted the Court to prevent unwarranted sale of an employment-generating Public Sector Undertaking to private parties, that too at a throw-away price. How do they suddenly become busy bodies? If this principle is consistently applied, the lawyer-activist M.C.Mehta, the busiest body of them all, will no longer be able to file all those environment cases that have made him justly famous.

*Supreme Court Advocates Assn vs Union of India, (1993) 4 Supreme Court Cases 441

The BALCO judgement lays down one more fatal restriction on public interest litigants. It says that when projects or schemes taken up by the Government are challenged in a public interest case, ex-parte stay or injunction can be granted only on condition that in the event that the case is dismissed, the petitioner shall reimburse the entire cost. Now, it can be nobody's case that stay of projects should be given for the asking, but to make reimbursement – which is absolutely impossible for any private citizen or group of citizens – in the event of dismissal of the case a pre-condition is to throttle public interest challenges to even the most undesirable and irrational projects. A challenge to a project that does not ask for a stay would be meaningless because once the execution is complete no Court will direct its reversal. But since success depends upon the vagaries of adjudication, which are by no means slight, no one can be sure of success before hand. In effect the Supreme Court has said that there will be no judicial interference in any project involving capital outlay undertaken by the State. This non-interference by the judiciary is what the rulers of the country have wanted from the time the reforms process started, and now they have it. Indeed, in the days when public interest litigation was most enthusiastically received by the Courts, there was talk among the political class that a law should be passed prohibiting or at least limiting it. They could not pick up the courage to do so, but the Supreme Court has come to their aid.

Civil and political rights is another area where the Courts have in recent times exhibited an inclination to let the intolerance of democratic rights characteristic of social and political elites in the 'reforms' mood get the better of liberal judicial wisdom. The Kerala High Court* wrote a political dissertation in the name of a judgement declaring that giving a call for a bandh, even if it is not accompanied explicitly or implicitly by threat of coercion, is unconstitutional. When the CPI(M) carried that judgement to the Supreme Court, M.B.Shah scripted the briefest possible judgement in a civil liberties case**, extracting sentences from the Kerala High Court's judgement and expressing his agreement with their contents. No matter that every body is aware that just as there are instances where coercion is used to enforce bandhs – that is a penal offence, and it required no pronouncement from the Supreme Court to proscribe such coercion

*Bharat Kumar K Palicha vs State of Kerala, All India Reporter, Kerala 291

**Communist Party of India (Marxist) vs Bharat Kumar, (1998) 1 Supreme Court Cases 201

– there are instances when people spontaneously express their collective protest or sympathy by observing a bandh. How can such a peaceful collective act of protect be unconstitutional?

The same judge went on to say in the lawyers strike case that lawyers should not go on strike under any circumstances, and it was he again who wrote the judgement in the Tamil Nadu employees case, expressing appreciation of the Jayalaitha government for having come down with an iron fist upon the striking employees, and declaring that employees have neither a legal nor an equitable right to go on strike. All that one understands from these judgements is that M.B.Shah, the person, dislikes strikes. He is entitled to his views but he has no more business than you or I to declare his views to be the law of the land on slipshod reasoning merely because he holds a position which permits him to lay down the law. But what is germane for the present is that even before the executive, which is vary of the hindrance civil rights of citizens can cause to its economic reforms project, has thought seriously of banning democratic protest, the Supreme Court has started doing so inch by inch.

Managements of industrial establishments have generally been averse to 'outside' leadership of Unions. Unions consisting of their own workers are so much easier to handle. But the law recognises the need to permit workers to have non-workers with experience in trade union activity as executive members of Unions to represent them effectively in industrial disputes. The Industrial Disputes Act and the Trade Union Act permit outsiders to the tune of not more than fifty percent to be in the executive of a Union. Managements have put up with the law, however reluctantly, though they have been grumbling for a change in the law. Law-makers (the politicians whom we abuse day in and day out) have not responded to them, but the Supreme Court* went out of its

way to declare that non-workers cannot represent workers in an industrial dispute. That the judges knowingly did some thing that they knew they had no power to do – pass orders contrary to the law – is an indication of how impatient they are that the polity be done with the backward, outdated notions that defined popular politics in much of the twentieth century – and, unfortunately for their impatience, in the Constitution itself.

*SBI Staff Association vs SBI, (1996) 4 Supreme Court Cases 378

'Tough' criminal law is another felt requirement of India's elite these days. They are aware that the social-economic policies they are following and the constant humiliation the minorities are being subjected to are likely to lead to unrest. In any case, the days when they tolerated liberal principles of criminal investigation, detention and trial are irrevocable gone. But even here, judges are exhibiting a more harsh temperament than the legislators. Terrorist & Disruptive Activities (Prevention) Act (TADA) was replaced by Prevention of Terrorism Act (POTA), which is harsher in that some new provisions have been added but a slight improvement in that some of the old provisions have been relaxed a little. But what is striking is that the Criminal Law Amendment Bill proposed by the Law Commission in between is harsher than the POTA that was finally enacted. And the Law Commission was at that time headed by B.P.Jeevan Reddy, a retired Supreme Court Judge who can be put in the left-liberal category rather than the conservative category.

A comprehensive replacement for the criminal law handed down to us by the British, to ensure that every guilty person shall be punished, is in the making. The draft of suggestions prepared by V.S.Malimath, retired High Court Chief Justice (of the Kerala and Karnataka High Courts) and former Member of the National Human Rights Commission is bad as it could be. One of its most objectionable proposals is that witnesses should be tied down to the first statement they give to the police in the course of investigation. Either they stick to it and send the accused to jail or they themselves mandatorily go to jail for speaking contrary to the statement given by them to the police. This gives extraordinary power to the police. They can shape any criminal trial the way they please and get a conviction. This particular suggestion has now been acted upon by the Union Law Ministry and a Bill is now placed before Parliament. The Bill drafted by the bureaucrats of the Ministry and to be passed by the legislators (the much abused politicians) is however a slight improvement over the suggestions of the retired High Court Chief Justice, and former Member of National Human Rights Commission: It says that the statement made to the police in the course of investigation should be got recorded before a judicial magistrate, and only then it will bind the witness in the sense that if the witness resiles from it he/she will be prosecuted. But even here the mandatory prosecution is relaxed to let the trial Court decide on the need to

prosecute the witness. This may still leave scope for abuse by the police if they are determined to 'get a conviction' by coercing witnesses, but it is an improvement over what V.S.Malimath proposed.

To get back to where I began, this regression not only affects the protection the Courts can offer to the rights of the people but also inaugurates a process of legitimising the ideas underlying the economic reforms process. That 'the Court said so' continues to be an important proof of truth of ideas in popular consciousness in our country. This damage is more insidious than the direct damage done by the refusal of the Courts to intervene in particular policy changes, but its importance is as great.

Addressing the Constituent Assembly on the occasion of the placing of the draft Constitution before it for discussion and approval, Ambedkar said some thing very prescient about the Directive Principles of the Constitution. Their utility had been questioned by some members who variously held them to be mere window-dressing without any stock behind them, or worse still a fraud on the people. Ambedkar had his own personal views about what the Constitution should give the people as a matter of right. But accepting the Constitution as drafted with all its limitations, he explained:

*Who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the tests of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these Instruments of Instructions, which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a Court of law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realised better when the forces of the right contrive to capture power.**

Prescient words, indeed. However, for the value that Ambedkar spoke of to be realised, the Courts should have, by means of interpretative devices, modified Ambedkar's view in one respect: if not for breach, then certainly for moving in the teeth of the Directive Principles, the Courts should have empowered themselves to force those in power to answer in a Court of law too, and not merely at

*The Framing of India's Constitution: A Study, Indian Institution of Public Administration, 1968 p.329

election time. We are bound to live under the limitations of the Constitution, but we are equally obliged to stretch its limits to the extent possible to incorporate as much as we can of the best aspirations that underlie it. This applies to the Courts as much as to all who function by the Constitution. A rather uncertain beginning was made in that direction about twenty five years go and abandoned thereafter. Today the 'forces of the right' – and I don't mean just the BJP – have 'contrived to capture power'. But it appears they have captured the Courts too in substantial measure. That fact is not yet universal, and contrary voices continue to be heard from the Courts including the Supreme Court, once in a while, but only once in a while. One has no prescription for salvaging matters, but a continuous critique of the Courts, as vigorous and uncompromising as the critique we subject the other wings of the State to, is a must. For the weak-kneed, a word of encouragement: all criticism of the Courts is not Contempt, and even if it is, the maximum punishment they can give you for Contempt of Court is only six months' simple imprisonment.

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Globalisation is not just a policy. It is a mindset. When we look at it as a policy we look for the forces behind it, the World Bank, the WTO, the US, the powerful Transnational Corporations, and their collaborators among India's Capitalists. But when we look at it as a mindset we need to analyse the growth in our own societies of tendencies against equality, welfare, rights of the disadvantaged, community rights, etc. The need to look at the development of a vicious elitism within the interstices of our societies should not be forgotten in the high-pitched rhetoric against imperialism or neo-imperialism.

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