

Ethical Aberrations and Dystopian Justice: Reflections on Law and Morality in India

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There is a strong consensus among scholars and commentators on Indian affairs that the justice system in India is on the verge of collapse. Judges of the Supreme Court have also bemoaned the parlous plight of the judiciary and warned that it could lead to chaos. Scant respect for the rule of law is a ubiquitous phenomenon. The only time the law acquires sanctity is when one is trying to vindicate one's rights. On all other occasions, it is viewed as an impediment that must be circumvented. Violating the law and dodging the consequences, though legal transgressions, evoke social admiration. Defying the law is a low risk-high return activity; one that enhances one's social standing and begets recognition. The upshot is that virtually nothing is sacrosanct in India. Almost everything can be manipulated, fudged, misrepresented or made to disappear. School transcripts, land records, official documents, affidavits, court papers, legally established procedures, constitutionally guaranteed rights – nothing matters. Normlessness rules. India, as Galbraith once remarked, is 'a functioning anarchy.'

The grave anomalies of the justice system have garnered significant scholarly attention. Academics have critiqued endemic delays, caste based nepotism, lack of access to the courts, the prohibitive cost of litigation, the chicanery of lawyers, the pervasive skullduggery of the system, and language barriers. They have explained how these baneful trends add up to a dystopian dispensation. Others have zeroed in on more serious defects such as the lax enforcement of court orders, the corruption of the judges, prosecutorial misconduct, tampering of evidence and the intimidation of witnesses.

In the recent decades, the administration of justice has developed more anomic and aberrant features which could catalyze the subversion of the entire system. Vigilantism is rearing its ugly head everywhere. Vigilante justice is perceived as quick, fair, and prompt. Likewise, kangaroo courts, mostly caste based entities like the *Khap panchayats*, have sprung up to purvey medieval 'justice' whose touchstone is fealty to ascribed identities like caste, clan, and ethnicity. The mainstream courts are helpless. They are backlogged by millions of cases, hamstrung by a severe shortage of judges, and rendered ineffective by a recalcitrant state which perfunctorily upholds the law. Besides, the courts are plagued by judicial activism and inconsistent rulings, often driven by the ideological predilections of the judges.

Going beyond the apparent lacunae of law enforcement, I argue as follows. First, an inchoate justice system in a postcolonial country like India marked by severe inequality, social cleavages, sclerotic institutions, a soft state, low levels of human development and literacy, a society caught in a painful, uneven transition from feudalism to capitalism is bound to be blighted by its grotesque milieu.

Second, the incongruities of the system spring fundamentally from the profound disjuncture between the prevalent malformed social mores, twisted morality, and deviant ethical compass of the people and the demands of an inclusive, egalitarian system. As Durkheim stated: ‘Where mores are sufficient, laws are unnecessary; where mores are insufficient, laws are unenforceable.’ Several features of mainstream Hinduism, the religion of the majority of Indians - such as a rigid, stultifying system of caste based stratification, the notion of Karma, religiously sanctioned discrimination, in-built biases against women, minorities, and the lower castes – militate against the evolution of nuanced sensibilities of fairness, equity, and social inclusion. For centuries, India practiced untouchability and social exclusion based on the accident of birth. The idea that people get just desserts based on their deeds in previous births has burrowed deep into the Indian consciousness. What India lacks is a culture of equity and freedom from the vice-like grip of injunctions against social solidarity. This explains the yawning trust deficit in contemporary India which manifests in a mad scramble for resources, power, and privileges.

Third, I posit that resolving the absurdities of the justice system requires a systematic interrogation of the philosophical, moral, and social underpinnings of its culture and religion. Just as critical is fostering the ethos of wholesome ethical standards which segue into the imperatives of a modern, democratic society. Among other things, it involves reinstating affirmative communitarian values such as social accord and non-discrimination. Furthermore, the notion that the law is a moral enterprise, one that is committed to human flourishing must be strongly underscored (Araujo, 2014).

Fourth, following Shapiro’s *Planning Theory of Law*, I maintain that building the edifice of law involves two types of activities: social planning and instituting legal norms (Shapiro, 2011). The objective of this project is ‘to remedy the moral deficiencies of the circumstances of legality’ and to create legal norms that are part of ‘a shared plan’ of justice (Plunkett, 2013). India has a robust plan in the form of a progressive Constitution. Two things require urgent intervention: first, the Indian state has to evolve a common ethical consensus regarding the values enshrined in the Constitution; and, second, it must actuate this agreement through solid institutional mechanisms. This mammoth undertaking is the unfinished part of the noble task of nation-building in India.

References

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