

CHAPTER
ONE

Introductory Overview

This is an essay in the sociology of governance. It deals with the division of power between the administrative and judicial branches of government and their interaction with society as a whole in the particular case of one mega-city in a developing country.

At the core of my work is the scrutiny of two major cases of environmental litigation in the urban agglomeration of Calcutta. The findings are, nevertheless, relevant in a larger context than just the local polity concerned. The ongoing, excited media debate about public interest litigation and judicial activism makes this evident. These terms stand for judicial interference in the policies and administrative activities of elected governments. This phenomenon has recently become typical of India. Its effect on governance deserves some systematic sociological scrutiny.

Accordingly, this book deals with the notions of ‘good governance’, ‘civil society’, ‘public sphere’ and related issues concerning the relationship between state and society, and specifically the viability of representative democracy. The question debated in

current development studies is whether such value-based concepts can be applied to developing countries. As far as my empirical data show, they make sense in Calcutta—a finding that is, of course, relevant for the Indian polity as a whole.

Calcutta, the State capital of West Bengal, is the centre of India's second largest urban agglomeration. The regional Left Front, overall, has a good reputation among scholars. It is not known for particularly serious abuses of power but rather for positive examples of (mostly rural) empowerment. India's first environmental bench on the High Court level was set up in Calcutta, following an order of the Supreme Court. That was a landmark in the history of judicial activism. This book takes a close and critical look at this innovative institution. While my findings do not claim to be representative for India as a whole in any statistical sense, there can be no doubt that the qualitative data are relevant far beyond the Calcutta metropolis.

My core arguments are as follow: Calcutta's urban society has an operational 'civil society'. People enjoy and use fundamental political freedoms such as those of expression and association. These liberties are used to form non-governmental organizations (NGOs) to pursue issues of private and public interest. Such agents of civil society are making efforts to check and balance government action.

However, this activist civil society is too weak to actually control the government and effectively limit its powers. This is due to an overarching lack of trust both among the various agents of civil society and with respect to government agencies. Different NGOs find it difficult to cooperate. There is constant suspicion that potential allies might, in truth, be pursuing a hidden, illegitimate agenda, that one might deprive another of well-earned claims to fame, or that they might only be attempting to siphon off foreign funds.

This lack of trust reflects a malfunctioning administrative structure. Generally speaking, government appears to be unreliable and unaccountable. It does not adequately implement its own legislation. Policy statements are often no more than propaganda. Corruption is felt to be rampant, giving rise to untransparent, inscrutable, mafia-type power structures.

In this context, greater transparency may improve both government performance and legitimacy. It may give rise to a minimum level of public trust. In the particular setting of Calcutta, the judiciary has become a forum that can, to a certain extent, provide such transparency. Public interest litigation (in which agents of civil

society sue the government) does permit some access to the wielders of state power and, accordingly, a minimum level of scrutiny of their doings. Courtrooms can thus become the location of a rudimentary ‘public sphere’, defined here as the arena in which civil society and state interact in a rational, critical and rule-bound rather than merely hierarchical discourse.

The judiciary is inspiring hope for better governance, but it does not yet warrant trust in the administration. The courts provide fora where claims against the state are staked. However, they do so with some serious handicaps. Most notably, they are themselves bedevilled by non-transparency, inefficiency and corruption. This is not surprising as the judiciary is one branch of the very government structure that is malfunctioning. However, the strong institutional autonomy of the courts gives judges room for manoeuvre—and considerable scope to enhance the public sphere.

My findings in Calcutta suggest that government shortcomings in this specific urban context are not best explained as results of a segmented, semi-feudal society, unready for a liberal constitution. Rather, it is the institutional framework of a quasi-authoritarian, post-colonial administration that does not allow the participation of an assertive civil society in policy matters. If Indian democracy is to be strengthened state agencies will have to become responsible and cooperative actors in the public sphere.

In this book, the discussion of the above arguments follows this outline: Chapter 2 presents the theoretical framework for such findings. It will discuss why there are theoretically elaborated reasons to doubt whether notions of ‘good governance’, ‘civil society’ and ‘public sphere’ make sense in a developing society traumatized by colonial history. While acknowledging that India is a case of deep-rooted dualism where modern constitutional aspirations coexist with more traditional attitudes of inequality, I shall argue that there is indeed scope for the deepening of democracy. Various communities do provide the basis for feelings of identity, belonging and solidarity, as the paradigm of ‘Indian communitarianism’ states. However, these communities are not per se an obstacle to representative democracy.

I chose to apply these Western concepts on the basis of three considerations. First, the division of powers is a typical trait of Western modernity in the sense of functional differentiation. The systems of politics and law become separate social realms. Given that India’s constitution was drafted along the lines of Anglo-Saxon legal

conventions, it does seem appropriate to apply an equally Western theoretical approach to assess its current reality. Judicial activism is not typical of developing countries. Therefore, this subject does not lend itself to the conventional approaches of development studies. Rather, it beckons us to apply concepts of Western modernity.

Second, after the collapse of totalitarian communism, and in view of the undeniable successes of several East and South-East Asian developmental states, modernization theory (along with its acknowledged Western bias) seems to be the only viable approach to development studies. Modernization implies functional differentiation – and the fact that the judiciary in India is increasingly taking advantage of its relatively large degree of autonomy does suggest that this is under way.

Third, the concepts of ‘civil society’, ‘good governance’ and ‘public sphere’ play a crucial role in the current international debate on development policy. This study attempts to make sociological sense of such concepts and to apply them to the reality of an Indian mega-city. This choice included the conscious risk of my becoming yet another scholar testing and rejecting the Western model, but in the end, I have not been forced to do the latter.

The second chapter also looks at the track record of governance in independent India. After discussing literature on erosion of the State and democratic resilience, it rejects both notions. India is neither a case of totally disintegrating government structures nor one of untroubled democracy. There is reason to worry and there are signs of hope. Democratic and pre-democratic attitudes exist side by side. They lead to dualist tensions—but not necessarily to the collapse of the existing State. In India, local power structures do not always reflect constitutional provisions. Clientelism, patronage, corruption and infighting within untransparent bureaucracies often distort democratic principles, at least at the local level.

Chapter 3 argues that the malfunctioning of State agencies in India has assumed an alarming level that is distinctly different from what is common in most countries of the Organization for Economic Cooperation and Development (OECD)—perhaps with the exception of particularly troubled cases such as Belgium or Italy. These worries are amply documented in Indian writing, both scholarly and journalistic. In tackling these issues, I do not mean to frown upon a disadvantaged post-colonial society. Rather, I am fully aware that it is the Indian public that suffers most from this sorry state of affairs.

What may appear farcical to a cynical observer actually is a tragedy for those directly involved.

The third chapter presents a survey of the literature on the increasingly assertive role of the Indian judiciary. It argues that while the courts have become important fora for questions of government performance and public participation, they cannot, on their own, resolve the crisis symptoms—not least, because they themselves manifest such symptoms.

Chapter 4 examines the issues of government efficiency and democracy from the angle of environmentalism. This chapter includes a section dealing with the Calcutta Metropolitan District. India suffers from a now widely acknowledged environmental crisis. Environmental policies tend to be inadequate all over the world. This has become evident in the so-called Rio process during and after the United Nations Conference on Environment and Development of 1992. However, shortcomings are particularly evident in India, where the unfavourable effects of ecological crisis are more acutely felt than in many other countries. This is exemplified by the fact that, in India, even basic legislations concerning urban planning and fundamentals of hygiene and public health are hardly implemented.

Chapters 5 and 6 present the case studies. They deal with litigations concerning the future of the East Calcutta wetlands, and with the dismal state of civic amenities in Howrah, India's oldest industrial town. The two issues are not related. The respective locations are on either side of the Hoogly River. Both case studies deal with highly complex matter. Court proceedings have been going on for many years.

In the case of the East Calcutta wetlands, the protection of a fragile environment on the urban fringes is at stake. The area, according to local experts, serves several functions for the metropolis—for instance, as a 'Waste Recycling Region'. Nevertheless, urban expansion poses pressures on this area. In the *Howrah Matter*, an assertive NGO is demanding the improvement of the civic infrastructure.

The two cases, though unconnected, have several aspects in common: The petitioning NGOs have achieved some successes. The impact on the ground has been more than symbolic, even if sometimes only moderate. The legal struggle was, at least initially, accompanied by efforts to mobilize the media and the public. Monitoring the implementation of court orders has become a heavy

burden for the petitioning parties. Finally, the judiciary has, in both cases, so far shied away from tackling a fundamental, underlying issue—that of inadequate urban planning. Rather, the judges have dealt with individual symptoms resulting from this governmental shortcoming.

Chapter 7 again deals with empirical data on public interest litigation in Calcutta. However, it does not present detailed facts from individual lawsuits. Rather, it assesses the attitudes displayed and expectations articulated by those appearing in court. It again discusses why the judiciary itself is not completely trustworthy and then turns to the prevalent sense of suspicion within the environmentalist network. This chapter emphasizes that while there is an operational civil society in Calcutta, there is not enough trust among its principal agents to efficiently check malfunctioning government in the arena of environmental politics.

The findings presented in Chapter 7 are not of the same nature as those of the case studies. Whereas the case studies are primarily based on the evaluation of various documents relevant to litigation, such as petitions, affidavits, judgements, and government plans and reports, the fundamental data of Chapter 7 stem from ethnographic field-work. This chapter therefore includes a section elaborating the methodology. It also explains that the person of the researcher as responsible observer of the scrutinized culture must be expected to make a difference.

For this reason, it is futile to stick to the academic convention of presenting all research results as impersonal ‘truths’. It is no longer unusual to discuss one’s findings in the first person. In doing so, I intend to assume full responsibility for my work, which included the delicate task of portraying the socio-political culture of a foreign country, including some of its less favourable aspects.

The conclusion in Chapter 8 summarizes my findings. It includes the modest suggestion to the judges involved in public interest litigation that they (1) use their potential clout to provide greater government transparency and (2) subsequently hold government officials responsible for the commitments made in court. This appears to be a viable strategy for fostering the sense of public sphere without getting lost in the intricacies of legislations neither implemented nor, in all likelihood, implementable in the first place.

It will become clear that Indian judges are in a strategic position to enhance the so far only rudimentary public sphere. The executive

and legislative branches of government cannot be expected to do so as it would undermine conditions that—while being unfortunate for governance as a whole—are quite comfortable for those holding public office. The judiciary, in spite of its own problems, is not deeply entangled in the muddled affairs of the other government branches. Therefore, it is in a position to give society more leverage over state authorities.