

CHAPTER
EIGHT

**Conclusion: Rudimentary Public
Sphere and an Unresponsive State**

In the current social science debate on India, government institutions are widely considered to be inefficient and corrupt, untransparent and unresponsive. Their general attitude is described as arrogant and authoritarian towards citizens and defensive towards other government institutions. While it is probably exaggerated to portray the administration in general as exclusively exploiting rather than serving the people, such an impression does arise from much academic and journalistic writing.

The conventional wisdom of recent discourse explains such phenomena with the assumption that, while India does have a democratic constitution, it does not have a civil society as is typical of the Western models for parliamentary democracy. These ideas are most prominently expressed by 'Indian communitarians'.

The findings of my research do not support this theory. Rather, they suggest that we focus on the institutional arrangement of State powers to analyse disappointing aspects of governance in India. This approach has the advantage of being not quite as bleak as notions of erosion: While it does acknowledge serious governmental

malfunctioning, it also points out what might be changed to improve matters and who would be responsible to promote such reforms.

I do not challenge the notion of community identities playing an important role. Nor do I dispute the assumption that local power structures are prone to supersede the official, constitutional arrangements. However, in the case of Calcutta, structures of civil society are operational. People make use of their constitutional freedoms. They organize, speak freely, stage rallies and start media debates. It is, in principle, possible to mobilize technical and academic expertise. There undeniably is, to return to the definition of civil society in Chapter 1, a 'criss-crossing network of such associations' (Dahrendorf, 1996: 237).

Non-governmental organizations pursue specific private and public interests. Some people are prepared to run considerable personal risks and go to great lengths to do so. Environmental NGOs are trying to make the government accountable. Careful attempts are made to bridge divides of caste, creed and language. This is not common, but the examples of the GNS in Howrah or the FACE in Kalighat (Chapter 4, section 4.4.3) show that it can be done, as it is in a multitude of NGOs involved in social work and not dealing with environmental issues.

The environmental NGO network suffers from a lack of trust. The crucial point is not so much that Calcutta's environmentalists find it hard to deal with migrant Bihari workers in Howrah slums or ethnic Chinese tannery owners in the Tangra neighbourhood. Rather, it is striking that upper caste, educated, well-to-do Bengalis face immense difficulties cooperating with one another. This cannot be explained by strong communal sentiments, particularly as most of the decisive people in administration and judiciary also share this background.

It is, indeed, one of the major limitations of my research that I have almost exclusively dealt with people from this social stratum. Their lifestyle and their attitudes are of course not representative of all Indians. However, they have a particularly strong influence on the course of their nation's development. Generally speaking, their attitudes may be expected to be eventually emulated by other social strata.

Moreover, given the strong sense of suspicion in this particularly privileged social grouping, it is doubtful whether the supposed strong sense of solidarity really exists to such an extent in other

communities. The attribution of untroubled community cohesion to other social strata may be romanticist wishful thinking of Western-trained academics rather than reality as experienced by members of India's less privileged population. Additional empirical research on this aspect would be interesting. The fact that dowry deaths and other cases of domestic violence occur more within castes and communities than between them indicates that my suspicion might be valid.

Civil society in Calcutta generally suffers from a lack of trust and, consequently, of cooperation even though media coverage does provide some support. Environmental issues are reported in the English, Bengali and Hindi papers in Calcutta. State-run broadcast media have also picked up the topic. However, stories are not necessarily followed up. Research and reporting tend to be short-term. Journalism, everywhere, tends to be erratic and have a short attention span, and this is no different in Calcutta.

However, this important part of the public sphere can be mobilized. There is a market for news stories. What is more, newspapers do not cater only to the educated elites. There even is a Hindi daily (*Sanmarg*) that specifically targets migrant labour from North Indian states, by no means a privileged stratum of Bengali society. As elsewhere, the media appeal to generalized curiosity, and political issues are of major relevance in this context.

Indeed, it is remarkable that Calcutta's emergent public sphere suffers more seriously in a different respect. In the beginning of this book, 'public sphere' was defined as the 'arena of deliberate exchange in which rational-critical arguments rather than mere inherited ideals or personal statuses could determine agreements and actions' (Calhoun, 1993: 273). This can only be the case if governmental agencies play cooperative roles.

In Calcutta, such cooperation is not normally to be expected. The institutional set-up of governance in the agglomeration does not allow civil society much leverage. Indeed, it often seems questionable whether government bodies in Calcutta and Howrah can be called democratic at all. They lack the minimal transparency requisite for rational debate and critical scrutiny. Public sphere remains rudimentary. The empirical evidence of Calcutta thus supports the programmatic approach of the Berlin-based network Transparency International which, after the example of Amnesty International, wants to tackle corruption and governmental negligence.

Civil society in Calcutta needs to be empowered by more official information. Then it might indeed prove able to put more effective checks on the government and spawn more corporatist forms of decision-making. After all, the diverse communities of urban Indian life are organized. They can (and do) interact.

Admittedly, these networks are not strong. Given the shocking deficiencies of local government in Howrah, it is amazing that there are not many more initiatives such as GNS demanding improvements. To most citizens, any kind of activism probably appears to be too much of an effort with too little positive result to be expected—particularly as there is a risk of being harassed by government or mafia agents. In any case, it is more comfortable to try and obtain the free rider position of someone else's efforts, a phenomenon also all too common in rich nations.

Without reliable data, without detailed knowledge of government policies and programmes, without faith in the implementation of laws and enforcement of judgements, there is little scope for civil society to put pressure on the government. So far, there are only inklings of a public sphere effectively including the State.

In the cases I have examined here, lack of transparency was evident in governmental activities. All the relevant documents concerning town planning were not publicly available. They were written in English. Even those papers that somehow leaked out of the bureaucracy and were reported in the media were normally not legally binding.

Equally troubling was that government agencies were clearly not fulfilling their duties. The CMDA, for instance, after almost thirty years of existence, had still not come up with the comprehensive planning schemes it was meant to provide and implement. The double assignment of drafting and enforcing such plans is, in itself, problematic as it eliminates an important stage of control.

Furthermore, the CMDA is not responsible to those democratically elected bodies supposedly governing the metropolitan area. It is controlled directly by the chief minister and the Urban Development Department of the state government. It is not subordinate to the corporations of Calcutta and Howrah and the other municipal bodies within its jurisdiction. The CMDA handles its own information restrictively even when dealing with other government agencies.

In the context I researched, the people living in the agglomeration

were reduced to the role of subjects of arbitrary governmental and bureaucratic whims. This was true not only of the poor strata of society, but also of the educated middle classes. Even they could influence the fate of their city and region only to a very small extent by exercising their fundamental rights. All citizens of a democratic state deserve more empowerment.

Devolution of government power to local and regional levels is an important issue of democratic decision-making. The strongest evidence in West Bengal is the success story of panchayat rule in the rural areas. Decentralizing State power in this way has firmly established the hegemony of the Left-Front. It has increased efficiency and accountability and is widely considered a model case for other states in India (Kohli, 1987, 1990; Lieten, 1994, 1996). However, similar strategies have not been adopted with respect to the CMDA, the most important institution for local policy-making in the Calcutta metropolitan area.

The personal power attributed to the chief minister, other high-ranking officials, judges and influential members of NGOs seems more typical of a (post)colonial power structure designed to keep people in place than of a democratic polity serving the public. It is not so much a sign of strong communitarian sentiments as a result of untransparent, undemocratic structures. In such a maze of inscrutable power relations, one clings to those who appear to command some clout. This shows that there is no generalized trust in the operation of impersonal systems (Giddens, 1996) as would be required by functional differentiation.

Public interest litigation, as has been shown in the case studies, can make some difference. It is inspiring hope for better governance, even if it does not yet warrant generalized, impersonal trust in the performance of State agencies. Indeed, the judiciary is giving members of the general public some leverage over the State. This is a forum in which leaders of government and bureaucracy can be forced to respond. The courts provide a minimal sense of transparency and accountability. They can order the government to lay open plans and set limits to arbitrary decision-making.

The judiciary is in this position because of its relatively high institutional autonomy. The leading people in the Supreme Court and the High Courts do not directly depend on the bureaucracy, nor on central or state cabinets, nor on the various elected legislative bodies.

Judicial autonomy grants the courts some scope to clean up government performance in India. This is relevant in view of politically motivated claims that the judiciary is overstepping its duties and superseding democratic government. The crucial point is that the legitimacy of the courts is based on their own credibility—which must, of course, be safeguarded.

There will, however, be little doubt that this credibility is troubled. The judiciary itself is highly untransparent and unpredictable. The judges wield considerable personal power and make little effort to hide it. The course of proceedings can appear to become detached from laws and precedents. Reforms to improve the general efficiency, speed and transparency of the legal system would enhance the legitimacy of the courts and, consequently, the scope of public interest litigation.

Diligent case management, court administration based on computerization and systematic classification systems have had good results in the Supreme Court (Chodosh et al., 1998). This is a promising start. If the judiciary is to warrant trust in democratic institutions, its own trustworthiness must, of course, be safeguarded. Similarly, it would make sense to establish a National Judicial Commission to monitor the courts and to evolve procedural reforms that enhance their public legitimacy (Jethmalani, 1999). If, however, such a commission would only give the other branches of government control over the courts, such a reform would be counter-productive.

So far, public interest litigation has often tended to be frustrating and time-consuming. Enforcement of court rulings is by no means a safe bet. Sometimes, not even symbolic adherence to judgements can be taken for granted. Consequently, petitioners who have won court cases are afterwards burdened with monitoring the results on the ground. New cases of litigation are likely to increase the activists' workload for a long time, but they are not likely to provide fast relief from major grievances. All this serves as a disincentive to take State agencies to court.

In spite of such shortcomings, public interest litigation has, several times, made a difference in people's immediate surroundings. While it does not provide an easy road to official accountability and democratic deliberation, it does raise hope for change. Indeed, ample media coverage of public interest litigation gives rise to more democratic expectations, simply by spelling out that governments are

not by definition beyond the law. The risk involved is obvious: Such expectations may well be disappointed, leaving the people even more sceptical and cynical about questions of governance.

On the other hand, positive results are generally taken into account. The media attention raises the profile of those who succeed in court. Even moderate implementation of rulings is widely appreciated. Therefore, going to court is not seen as irrational or meaningless behaviour.

Media coverage is not only important in terms of the courts' trustworthiness. The data presented in the case studies suggest that public interest litigation may be most dynamic when supported by assertive media coverage. The effects that newspapers and judicial action have on one another deserve more in-depth research. In order to be truly 'public', all action concerning the public sphere by its very nature needs publicity. However, the culture of widespread suspicions brings up the question whether the judges perform more convincingly in the public interest when they are under the pressure of public discourse. My data do not permit any conclusive assessment.

In any case, judicial activism and media coverage combined are beginning to have an effect of the bureaucracy. In Howrah, probably one of the most neglected urban areas on earth, the administration has begun to react to complaints from citizens. The (implicit or explicit) threat to take a matter to court may set an otherwise inert government in motion. Citizens' hopes for relief from grievances through public interest litigation are thus reflected by officers' fears of being held accountable in court. This has begun even without the judges having used their most powerful weapon, punishing individuals for contempt of court.

The judiciary would probably be well advised to use its power to provide greater transparency. Given the fact that the judiciary is already overburdened, it does not seem viable for it to do the administration's job by passing overly detailed orders. Such orders are bound to prove unrealistic and difficult (if not impossible) to implement.

Opening bureaucratic desks to public scrutiny could trigger local expertise in a more inclusive debate concerning the metropolitan district's future. If the judges, in addition, use their power to punish contempt of court, they could pressure State officials to honour commitments made before the bench. This could also lead to more pragmatic regulatory activities that would take into account the

poverty-ridden, congested realities of this mega-city.

On a more general level, the issue of contempt of court deserves a critical mention. If the judiciary is to raise its own legitimacy, judges must not use this instrument to suppress legitimate public criticism of their decisions (Khanna, 1999, Narayanan, 1999) while hesitating to use it to ensure their orders are enforced. Judges do not do their office a favour by punishing members of civil society who find rulings worthy of public debate, rather than government officials who find them unworthy of obedience.

It is well within the scope of the judiciary to further the emergent public sphere in India, if individual judges are prepared to use their privileged positions of governmental power accompanied by high institutional autonomy in a socio-politically responsible way. In the specific setting of governmental arrangements in India, judges can enforce steps towards better governance, particularly as they independently set the agenda in the courtroom once a case has taken off. To a large extent, judges are even independent of the judicial administration, which is not necessarily trustworthy, like every administration not only, but particularly, in India.

While better governance is clearly desirable, it may be unrealistic to expect cabinets and bureaucracies to work towards greater transparency and empowerment of the public sphere. In the long run, this might increase their legitimacy and, indeed, their abilities to shape society. But in the short run, it would only make matters less comfortable for those holding public office. Members of High Court or Supreme Court benches, however, are not affected by these considerations. Rather, by taking up public interest litigations, they can raise their profiles and assert their powers.

Scholars have often bemoaned that, in India, legislations and policies are devised with little concern for people's needs, for implementation, or for long-term sustainability. Similar statements have been made in my interviews. As conventional wisdom has it, the informal (in the sense of not officially acknowledged) reality often makes formal legislation non-viable. In other words, governments are not taking social reality into account.

However, there is no apparent reason why this has to remain so. The history of Calcutta's Slum Improvement Programme is an example that concern for social reality can serve as basis for successful policy-making after forsaking desirable, but unrealistic, goals set

by the examples for foreign urban agglomerations. The CMDA's slum improvement schemes acknowledged that poor people's settlements were here to stay and had to be made the best of (Chapter 4, section 4.4.1). Similarly, the Left Front's widely appreciated success in rural politics also stems from the fact that it introduced greater transparency and participation in the villages (Chapter 4, section 4.4).

Of course, poverty, illiteracy and the fragmentation of society do not make such tasks any easier. They do make mismanagement, corruption and inefficiency more likely. However, it is worth emphasizing that the institutional set-up of governance is just as conducive to such attitudes and behaviour. Moreover, this is no idiosyncrasy of the Calcutta agglomeration. Other urban development authorities in South Asia, for instance in Delhi, Bangalore and Karachi, are reported to share many of the faults of the CMDA (World Bank, 1999; Zaidi, 1997).

My research was limited to the urban area of Calcutta, which has always been more exposed to modernizing influences than the rural hinterland. Moreover, my studies have focused on a very particular field of social activity, that of environmental public interest litigation. There can be little doubt that courtrooms are the societal space where politically relevant agents of civil society are most likely to be found.

In this sense, it might seem tempting to dismiss my findings as redundant. In the same vein, however, I would argue that the fact of raging caste war in the remote districts of Bihar, the poorest of India's large states, is no proof for the assumption that such communal divides can by no means be bridged anywhere in India.

Rather, the example of Calcutta shows that notions of interacting civil society and government structures based on a minimum of transparency and accountability are not limited to advanced Western nations states. Indeed, the discourse of good governance, value-based as it is, makes sense in this poverty-ridden (post)colonial context. Similarly, the relatively successful Chipko and Narmada movements in India are examples of societal activities being based on popular coalitions—and show that such developments need not occur only in urban settings.

The social context of metropolitan life in Calcutta is typical of urban life in India. Media and non-governmental organizations are no less active and assertive in India's other four metropolitan centres. The Green Bench in Calcutta was the first of its kind in India, but a

second one was shortly after established in Madras. In Delhi, the Supreme Court has been the forum of various environmental litigations. In the Bombay High Court, there is Public Interest Litigation Bench presided over by the Chief Justice.

My project was restricted to two complexes of environmental litigation in Calcutta area. The findings cannot claim to be representative of all proceedings even before the Green Bench of this High Court. One might therefore argue that the data only relate to these isolated matters and do not allow conclusions concerning the Indian polity as a whole. However, they are qualitative rather than representative. The cases of the East Calcutta wetlands and the *Howrah Matter* are fairly complex. They are valid topics to assess governance in this mega-city. Moreover, they are not the only incidents of public interest litigation leading to rulings against state and central governments.

My findings support the potential universality of such notions as 'civil society' and 'public sphere'. It is worth emphasizing, however, that simply maintaining institutional arrangements and attitudes inherited from colonial Britain is an inadequate way of applying such universal principles in India. Democracy without an operational public sphere for open and stringent debate based on reliable data is more difficult to imagine than democracy without a civil society composed exactly after the (ever-changing) West European or North American model.

It is peculiar that India's former colonial power Britain is generally known to have one of the least transparent governments in the European Union. The habit of declaring relevant issues as 'official secrets', of course, is more in the interest of the administrative agencies than of the general public. The approach to freedom of information is more favourable for the citizen in other European Union countries and in the United States. Strict adherence to the British example is therefore not necessarily the most promising approach to representative democracy in India.

At least in principle, community interests can be organized in a responsive network of mutual respect. This would be more probable if the State itself set an example of such responsiveness to and respect for the legitimate interests of its people. Empowering communities might thus mean administrative reform along the lines of the 'good governance' argument (World Bank, 1997, 1999). These include

transparency as well as devolution of power to the local and regional levels.

Such reforms would empower civil society and thus provide space for communities to responsibly stake their claims and bargain for compromise. In principle, representative democracy according to a liberal constitution gives scope to such inclusive policy-making. In turn, the Western variety of communitarianism sees vibrant social life in civil society as the foundation of democracy (Etzioni, 1995). In this perspective, it no longer seems necessary to devise new forms of democracy based on fundamental rights of communities rather than individuals as implied by Partha Chatterjee (1995, 1997a), probably the most radical representative of Indian communitarianism.

In a wider theoretical perspective, it is noteworthy that agents of civil society and the phenomenon of public interest litigation in India are challenging the formerly semi-absolutist power of government and bureaucracy. This is a process of demystifying the State and of societal modernization. Government personnel are being forced into public discourse in which the inadequacies of the State's performance become apparent in view of India's daunting challenges of poverty and under-development. The judiciary is an important, but not the only, forum in which this can happen.

At this historical stage, the distinction between civil society and public sphere is highly relevant. In the advanced nations, these concepts may be used interchangeably, but they do not actually signify the same thing. They only seem synonymous because civil society has had its impact on the state and, in turn, the general reliability of contract and law enforcement has had its impact on civil society. In the experience of people active in West European or North American politics, civil society and public sphere thus do indeed blend into one another.

In India, this is not the case. Rather, the distinction between civil society and public sphere reveals different levels of their inclusiveness. It has been stated that, as a rough rule of thumb, some 10 percent of the Indian population, the 'middle classes', enjoy the conveniences of liberal democracy and a standard of life similar to what would be normal in North America or Western Europe (Rothermund, 1992). However, if one takes into account how difficult it is for urban professionals in Calcutta even to gain access to the relevant documents of urban planning, it is obvious that even they are

excluded from what might become the public sphere. On the other hand, it is also obvious that civil society in the sense of freedom of association is open to many more than the middle classes.

In order to deepen India's formally established democracy, agents of civil society need more leverage over the still far too absolute powers of the State. If these pressures were to result in more faith in the rule of law, they would reshape governance. In a virtuous circle, they might strengthen the dynamics of civil society by making it less dependent on traditional communitarian bonds, loosening but not necessarily breaking these ties.

Rather, the reliability of the rule of law would give communities of all kinds wider scope to pursue their interests in a democratic and responsive society. The evidence of dowry deaths indicates that communitarian relations can be very oppressive. An operational public sphere may well alleviate such oppression once a credible social discourse gets underway. Of course, this was not at stake in the cases scrutinized here. There will be little doubt, however, that environmental litigation is playing a positive role in Calcutta. It is part of the dynamics that, together with a lively media debate, is allowing a sense of public sphere to emerge.

A stronger sense of public sphere might also clarify the professional role of civil servants. Those bureaucrats who feel a stronger sense of duty towards the official goals of their administration rather than towards the personal demands of their superiors would be encouraged by greater transparency and accountability to the public. They would be empowered to interact less secretly with agents of civil society in the public sphere.

The complex dynamics of globalization may in future prove to work in favour of the public sphere. This would include the economic logic of the world market—as Calcutta, of course, needs a cleaner image to attract investors. The local authorities are obviously aware of this. For instance, they proudly reprinted a prominent *Newsweek* article (31.3.1997) about improvements in this troubled mega-city.

Globalization is not only an economic process. Indeed, I suspect that the internationalization of media, education and communication will be of even greater relevance for public life. Satellite television, university degrees from abroad and, not least, wealthy cousins from overseas are bound to have an impact on society-state relations in Calcutta. It is, probably, no coincidence that several of those involved

in Calcutta's environmentalist network have studied or worked in advanced societies. Expatriate Bengalis have been known to become more keenly aware of the institutional arrogance and abuse experienced at home.

At a more theoretical level, it is clear that public interest litigation is an expression of the advent of more consequential functional differentiation. A public sphere involving civil society and the government is emerging. Like societal evolution in general, this process should not be expected to be easy or fast. Generally speaking, it would be possible to suppress it, for instance by the imposition of a military dictatorship. While this, happily, appears rather unlikely for all of India, regional civic turmoil bordering on overt warfare (as in Bihar), of course, also suppresses any notions of the public sphere.

Most of the government malfunctions experienced in India are universal challenges to democratic rule. Corruption and administrative slack, to varying degrees, exist everywhere. While it may seem depressing that these phenomena are more pronounced in India than in most richer nations, it is, nonetheless, encouraging that India's democracy has not eroded. Given the dramatic levels of poverty and the complexities of Indian society, one might argue that the nation is doing surprisingly well, and there is scope for further improvement. The fact that issues relevant to the formation of identities (language, religion, caste, region etc.) overlap rather than mutually exclude one another is an asset for representative democracy. This makes criss-crossing networks more likely.

Political pressures may slow down public interest litigation but are unlikely to stop judicial activism altogether. The functional differentiation of the legal and political systems does appear to be quite deeply entrenched in India. Once such distinctions have been established, it is almost impossible to reverse them. After the emergency rule (1975-1977), both judiciary and media rebounded with more assertiveness.

The demands for transparency and accountability will not go away in India. They are nothing but the call for a public sphere involving and binding the government, even if that term has not been applied systematically in this context. As far as I can tell, democracy has not been eroding in India, but rather slowly and steadily taking deeper root. Reactionary forces should be expected to try to suppress this development, but they do not command any magical spells to

reenchant the by now disenchanted absolute powers of the post-colonial state. Over the long run, neither the dynastic appeal of Sonia Gandhi, nor the eloquent conjuring of Hindu spirituality, nor, for that matter, the detonation of nuclear test devices, should be expected to command charms that powerful.