Taking the State to Court

Public Interest Litigation and the Public Sphere in Metropolitan India

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Contents

Acknowledgements

Glossary

1. Introductive Overview 1

2. Democracy, Development and Functional Differentiation 8
   - 2.1 Why Democratic Governance Depends on the 'Public Sphere'
   - 2.2 Historical Connotations of 'Civil Society'
   - 2.3 Neoliberal 'Good Governance' and Leftist 'Democratization'
   - 2.4 Governance Problems after Colonial Rule
   - 2.5 Governance in India
     - 2.5.1 'Erosion of the State' versus 'Resilience of Democracy'
     - 2.5.2 A Critique of Indian Communitarianism

3. The Changing Role of the Indian Judiciary 48
   - 3.1 Problematic Rule of Law in a Historical Perspective
   - 3.2 The Courts and the Political System
   - 3.3 Public Interest Litigation

4. Environment and Politics in India 63
4.1 The Emergence of Environmental Policy
4.2 Implementation Deficits
4.3 Opposition to Government Deficiencies
4.4 The Situation of the Calcutta Agglomeration
4.4.1 The Major Challenges
4.4.2 Administrative Slack
4.4.3 Environmental Activists

5. The Conflict over the East Calcutta Wetlands 84
5.1 Land Use in East Calcutta and Patterns of Urban Sprawl
5.1.1 The 'Waste Recycling Region'
5.1.2 An Area Unfit for Urban Growth
5.1.3 Government Policy Statements
5.1.4 The Example of Salt Lake City
5.2 The Pre-Litigation Pro-Wetlands Campaign
5.2.1 The Pro-Conservation Network in the Bureaucracy
5.2.2 Bureaucrats Mobilize Pressure Groups
5.3 *PUBLIC* v *The State of West Bengal*
5.3.1 The Initial Writ Petition
5.3.2 The Court Proceedings
5.3.3 The Judgement of 24 September 1992
5.3.4 A Summary Assessment of the First Phase of Proceedings
5.3.5 The Dispute over the World Trade Centre Continues
5.4 *M.C. Mehta v The Union of India*
5.4.1 Suggestions for a Calcutta Leather Complex
5.4.2 The Proceedings in the Supreme Court
5.4.3 A Wetlands Location for the Leather Complex
5.5 PUBLIC's Pending Contempt Accusations
5.6 *Surojit Srimani v the State of West Bengal*
5.7 Conservation Initiatives of the State Government
5.8 The Wetlands Six Years after the First Judgement

6. *The Howrah Matter* 143
6.1 The Civic Situation in the Howrah Corporation
6.2 The Howrah Ganatantrik Nagarik Samiti
6.3 Moving the Judiciary
6.3.1 The Role of Supreme Court
6.3.2 Proceedings before the Green Bench
6.4 Individual Issues
6.4.1 The Howrah Maidan
6.4.2 Bellilious Park and the Second Hoogly Bridge
6.4.3 The Police Morgue
6.4.4 The Fish and Betel Markets
6.4.5 Major Unresolved Issues
6.5 An assessment: The Court's Role in Changing the Polity

7. Enthnographic Observations: An Overarching Lack of Trust 182
7.1 The Approach of 'Thick Description'
7.2 The Judiciary
7.2.1 Non-transparency and Corruption Claims
7.2.2 Technical Skills and Professional Attitudes
7.3 The Environmentalist Network
7.3.1 Conspiracy Theories
7.3.2 Impeded Cooperation

8. Conclusion: Rudimentary Public Sphere and an Unresponsive State 207

Annexures 221
Timetable of events concerning the East Calcutta wetlands / Timetable of events concerning the *Howrah Matter* / Rough Sketch of wetlands map

References 226
Books, Journals and Reports / Newspapers / Websites / Legal Documents

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Glossary

AIIHPH	—	All India Institute of Hygiene and Public Health
Benami	—	illegal land holding
Bhery	—	Fish pond
BJP	—	Bharatiya Janta Party
Bigha	—	measurement of territory: 3 bighas equal 4000m^2
CEMSAP	—	Calcutta Environment Management Strategy and Action Plan (Undertaking of GoWB and ODA)
CMD	—	Calcutta Metropolitan District
CMDA	—	Calcutta Metropolitan Development Authority
CPCB	—	Central Pollution Control Board
CPM	—	Communist Party of India (Marxist)
CSIR	—	Council of Scientific and Industrial Research (GoI)
DCL	—	Development Consultants Ltd.
FACE	—	Forum for Action and Coordination on Environment
GNS	—	Howrah Ganatantrik Nagarik Samiti
GoI	—	Government of India
GoWB	—	Government of West Bengal
HIT	—	Howrah Improvement Trust
HMC	—	Howrah Municipal Corporation
IBRD	—	World Bank (International Bank for Reconstruction and Development)
IMF	—	International Monetary Fund
IWMED	—	Institute for Wetland Management and Ecological Design, 'Wetland Institute'
Lathi	—	Police truncheon of wood or bamboo

MoEF — Ministry of Environment and Forests
NEERI — National Environmental Engineering Research Institute
OBC — Other Backward Classes
ODA — Overseas Development Administration (UK)
OECD — Organization for Economic Cooperation and Development
Panchayat — Elected village council
PUBLIC — People United for Better Living in Calcutta
WBPCB — West Bengal Pollution Control Board
WWF — World Wide Fund for Nature

CHAPTER
ONE

Introductive 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 likeliness, 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.

CHAPTER
TWO

Democracy, Development and Functional Differentiation

When India became independent in 1947, it was expected to serve as the leading example in the worldwide drive for decolonization (Rudolph, and Rudolph, 1987: Bhagwati, 1993; Rothermund, 1998). After five decades of elected government, democracy is understood to be India's most significant achievement (Dréze, and Sen, 1996).

The decisiveness with which Indira Gandhi's emergency rule was rejected in the 1977 general election is seen as proof of the resilience of this democracy. In spite of recurring regional unrest, India's democracy overall seems surprisingly stable (Kohli, 1990, Rothermund, 1991; Manor, 1996). Democratic institutions have proved resilient (S.K. Mitra, 1990).

Nevertheless, India's democracy is troubled. A sense of gloom emanates from much recent literature on India. The distinction between formal and substantive democracy is highly relevant (Soerensen, 1993; Jalal, 1995; Bandyopadhyay, 1996). There have been regular elections, and fundamental rights are in principle (but not always) safeguarded. In spite of all this, citizens do not have much

influence on the course of policy-making. Administrative practices often amount to the abuse of public office.

The Indian republic is besieged by complaints about governmental lawlessness (Baxi, 1982, 1985), deficient administration of official policies (Wade, 1989; Gupta 1992) and very little democratic control (Kothari, 1989, 1995; Kohli, 1990). Even Atal Behari Vajpayee, as Prime Minister, has stated that this democracy 'appears to be moth-eaten from within' (*Statesman*, 1.2.1999). A modern constitution with both liberal and socialist aspirations coexists with more informal, if not illegal, power structures (Kaviraj, 1991; Gadgil and Guha, 1995; Bandyopadhyay, 1996).

On the local level, official plans and programmes are said to serve as mere propaganda and to be rarely implemented (Shaw, 19965). Principles spelled out in India's legislation are not necessarily applied in reality. Post-colonial and semi-feudal attitudes towards power undermine democratic principles.[1] Those in positions of power–whether legal or illegitimate–tend to be accepted as patrons on whose benevolence one depends. Lack of transparency and inaccessibility of administrative bodies reinforce such attitudes. Pre-1991 economic policy contributed to the emergence of what is today seen as a cartel of vested interests comprising politicians, state bureaucrats and the owners of businesses and large-scale farms (Bhagwati, 1993; Soerensen, 1993; Gadgil and Guha, 1995).

With economic liberalization, these relationships are changing. Most economists welcome deregulation (Bhagwati, 1993; Joshi and Little, 1997). To a certain extent, even the normally left-leaning *Economic and Political Weekly* appreciates beneficial consequences of liberalization (Virmani, 1997; S.L. Rao, 1998). New high-technology industries such as engineering and software are taking advantage of world market opportunities and do not need favours from the State apart from reliable telecommunications and power supply (Pedersen, 1992). Such changes, of course, affect the balance of power.

However, these new trends have not completely remodelled the Indian State. It still suffers from malfunctions in providing important infrastructure along with health care and education (Dréze and Sen,

[1] These terms are to be understood in a very literal sense: 'Post colonial' means after colonialism but still appropriate to alien rule. 'Semi-feudal' describes attitudes according to which a powerful individual is not seen as a citizen democratically equal to others but rather as an unaccountable executor of personal whims.

1996). Shalendra Sharma (1993:904) calls this an irony in the sense that 'for governments to reduce their role in the economy and expand the arena of market forces, the state itself must first be strengthened'.

There is no doubt that the State is all too often not functioning well. In scholarship, there even is a widespread notion of institutional 'erosion' (Rudolph and Rudolph 1987; Kothari, 1989, 1995; Kohli, 1990; Sudarshan, 1990, Kaviraj, 1991; Haragopal, 1995). These complaints concern the civil service, the political process and the rule of law. However, the term 'erosion' implies that things were at some point better, which is not consistent with the idea of Indian democracy being resilient. In the light of the empirical data presented in this book, it appears more appropriate to speak of the malfunctioning of various state institutions than of their erosion.

This question touches on the relationship of State and society. In a theoretical perspective, symptoms of governmental crisis in India are often explained by recurring to characteristics of 'civil society' (Chatterjee, 1990, 1995, 1997a; Kaviraj, 1991, D. Kumar, 1991; Rothermund, 1991, 1992; Béteille, 1997a). In a nutshell, this is about the social fabric and cultural conventions predominant in a former colony being unable to support a representative democracy according to the example of the former colonial power. Such a perspective places the blame for grievances with society rather than with the State.

In the light of empirical data on public interest litigation, I will argue that the set-up of the State apparatus is of at least equal relevance. India is not simply a parliamentary democracy troubled by an unruly, heterogeneous populace. Rather, the State structures have maintained some arrogant and almost absolutist powers more typical of colonial rule than of representative democracy. In order to redirect attention to governmental actors, it is, therefore, useful to draw a distinction between the terms 'civil society' and 'public sphere', with the latter being meant to include government agencies in the multiple discourse networks of the former.

In order to discuss such questions, a wider sociological theory framework of governance, modernity and development will be laid out in this chapter. It will first consider conditions of democratic governance in principle. These concerns are not about development in the sense of the 'Third World' catching up with 'advanced nations'.

Rather, these concepts derive from the studies of societal evolution as it occurred in Western Europe and North America. [2]

The conditions of democratic governance to be discussed here result from the exigencies of functional differentiation and the continuing pressures of modernization to which all societies, rich and poor, are exposed. Dynamism and specialization of interdependent social fields of action typically pose problems of integration and coordination. It becomes the task of governments to mediate solutions without stalling the beneficial effects of functional differentiation. This is, of course, a more challenging vision of the state than that of monopolizing the means of legitimate coercion and the consequent extraction of revenue. In turn, the legal system is necessary for safeguarding the requisite trust in the enforceability of legal entitlements and binding contracts in such a functionally differentiated society.

The first section of this chapter elaborates the distinction between 'civil society' and 'public sphere'. For those fond of reasoning along the lines of social philosophy, the second section traces historical and ideological connotations of these ideas to their roots. The third section looks at how, in recent development debate, neoliberal and leftist positions have been converging in their concern for democratization. Even if the recommended policies are not necessarily identical, there clearly is a shared interest in 'civil society' and government accountability. The fourth section deals with problems of governance after colonialism. The fifth section of this chapter returns to a discussion of the particular and unique case of India.

2.1 Why Democratic Governance Depends on the 'Public Sphere'

The notions of 'public sphere' and 'civil society' are so closely related that the terms are often considered to be interchangeable (Calhoun, 1993; Chandhoke, 1995). In order to assess the relevance of public interest litigation for governance in India, however, it is useful to draw a distinction. In this view, the judiciary is playing an

[2] It is acknowledged that such an imposition of Western or, more precisely, German standards to Indian reality is risky. However, results sometimes justify means and it will be seen that these theoretical considerations make sense in the context of public interest litigating in India.

important role by making government agents respond to queries and demands of non-government activists who belong to civil society. The courts are thus strengthening the sense of public sphere, which is not yet firmly established in India.

In this understanding, the public sphere includes government agents and institutions, whereas civil society is a societal space independent of the state. To put it another way, the public sphere, for our purposes, is conceptualized as the arena in which State agencies are exposed to the demands of non-State actors who, in turn, constitute civil society. The public sphere rests upon the discursive networks of civil society but also on publicly scrutable deliberations of government–for instance, in courtrooms or legislative bodies.

This distinction is not so much an expression of long-standing theoretical discussions. 'Public sphere', for our purposes, is related to but not entirely derived from fine-toned elaborations à la Habermas (1994). Similarly, 'civil society' for our purposes does not carry all the connotations it does in the tradition of Marx or Hegel. If such notions are to be of empirical relevance, they need to be more crudely made use of.

Following Craig Calhoun (1993:273), 'public sphere' is here understood as 'an arena of deliberate exchange in which rational-critical arguments rather than mere inherited ideals or personal status could determine agreements and actions'.[3] The public sphere must include State institutions such as parliaments, courtrooms and to a certain extent even cabinets and ministerial bureaucracies. After all, these are the agents that make collectively binding decisions (Luhmann, 1984). If they are to meet democratic aspirations and express the wishes of the majority, they must be made accountable to the general public. In other words, a minimum of transparency and responsibility (in the literal sense of having to respond) is necessary to expose state powers to any kind of public sphere worthy of the term.

'Civil society', on the other hand, is an indispensable concept to explain how any kind of 'general public' might be put into a position to express itself. This term has lately inspired social research,

[3] The emphasis is on *mere*. The concept does not exclude the influence of inherited ideals and personal status. Rather, it limits their impact on the outcome of societal disputes. Public sphere is not an ideal, perfect democracy but a social context that sets limits to un- or pre-democratic attitudes by providing scope for rational and critical debate.

despite–or maybe because of–the fact that it is 'more suggestive than precise' as Ralf Dahrendorf (1996:237) puts it. However, as Dahrendorf continues, the core meaning is quite precise:

> Civil society describes the associations in which we conduct our lives, and which owe their existence to our needs and initiatives rather than to the State. Some of these associations are highly deliberate and sometimes short-lived like sports clubs or political parties. Others are founded in history and have a very long life, like churches or universities. Still others are the places in which we work and live–enterprises, local communities. The family is an element of civil society. The criss-crossing network of such associations–their creative chaos as one might be tempted to say–makes up the reality of civil society. It is a precious reality, far from universal, itself the result of a long civilizing process.

The independence and freedom of civil society is the basis for a democratic public sphere in which matters of policy can be openly and critically debated–not only in parliaments and legislative assemblies, but also in the media, academia, non-governmental organizations, clubs, neighbourhood get-togethers, marketplaces and even bar-rooms. Civil society is what arises once people begin to systematically make use of constitutionally guaranteed liberties (such as those of expression, assembly, or association). In so far as it becomes politically relevant and interferes with government agencies, it gives rise to the public sphere. Both a vibrant civil society and an operational public sphere are pre-conditions for and consequences of the democratic nation state.

In the recent discourse of social sciences, the terms 'civil society' and 'public sphere' have become blurred because the distinction is no longer of practical relevance in most OECD nations. The reason is that government bodies have been integrated into the discourses waged in civil society for so long that this is taken for granted. To have the State and its coercive powers domesticized in such a context, in turn, has the effect of making discursive relations in civil society more stable, reliable and trustworthy because the rule of law has made contracts and fundamental rights enforceable.

For most empirical purposes in the OECD, therefore, 'civil society' and 'public sphere' blend into one another. Nevertheless, the distinction made above can be applied to rich nations as well as to developing nations. In this book the distinction will be consistently emphasized.

If one accepts functional differentiation as the essential aspect of modernity (Luhmann 1984, 1986), it will become obvious why civil

society and public sphere are indispensable for democracy. Functional differentiation means that society becomes polycentric. Politics, economics, religion, law, science and other fields of specialized activity become self-organizing social realms, operating according to their own exigencies. Central to this argument is the idea that neither market competition nor government hierarchies on their own can run complex societies efficiently. Modern societies need intermediary structures to function well (Willke, 1983, 1992, 1997). In order to integrate and coordinate complex and interdependent systems, civil society and public sphere are indispensable assets.

The basic notion of functional differentiation is deeply rooted in the history of sociological theory–from Emile Durkheim's focus on the division of labour to Max Weber's concept of result-oriented rationalization of distinct social fields of action. Building upon Talcott Parsons' system theory, Niklas Luhmann (1984, 1997) has elaborated the most sophisticated theoretical conception of functional differentiation to date. However, one need not adhere to systems theory to emphasize the systemic differentiation of politics and economy as the crucial aspect of modernity (Habermas, 1988; Giddens, 1996).

Functional differentiation has many consequences. Paramount among these is the increased efficiency and dynamism of most fields of human activity. This is true of economic productivity as well as of the capacities of the educational system or the development of technology. Functional differentiation has made unprecedented prosperity possible in the OECD, and not entirely so on the back of the less advantaged nations. After all, the latter are mostly better of today than at earlier times, in spite of ever-growing populations.

Modernization in the sense of functional differentiation implies result-oriented streamlining of social practices rather than the legitimization of social behaviour by accordance to tradition. It is a never-ending process, submitting inherited attitudes to the scrutiny of rational, goal-oriented reasoning. It is a reflexive process in which anticipations of future possibilities affect social reality (Willke, 1983, 1997; Giddens, 1996; Beck, 1986).

The increased potential of specialized fields of action is by no means without risk. Modernization may yet prove a mixed blessing as advanced technology, mass consumerism, and high-level military procurements place mankind at risk to an extent never known before. The possibility of environmental self-destruction looms darkly over

our species' future (Luhmann, 1986, 1996). The United Nations Conference on Environment and Development in 1992 highlighted the fact that the industrialized life style of the OECD nations is most likely unsustainable. Moreover, it was then recognized that the ecological balance of this planet would tip should all of humankind rather than a mere fifth enjoy the consumption standards of the OECD (Reid, 1995).

Such risks trigger legitimate criticism. While this does challenge the current life style in the rich countries, it does not put the principle of modernization in question. Rather, functional differentiation has developed such a dynamism that there is no turning back (Willke, 1983). An ever-increasing world population will not be fed by means of traditional agriculture but will depend on the dynamism of improved technologies for its very survival.

Many people in developing countries eye modernization theory with suspicion. Such writing is often understood to imply that former colonies should now emulate their former masters. Thus, modernization theory can even be read as retrospective legitimization of brutal imperialist rule (Washbrook, 1981).[4] However, this view overlooks that OECD nations are themselves constantly exposed to modernization pressures.[5]

It is beyond the scope of this book to discuss the controversial issue of globalization. However, it is worth pointing out that globalization is not only a question of competition in the world market. It is a more complex phenomenon and not driven by just a single dynamic. Globalization can be defined as the expansion of functional systems beyond the nation state (Willke, 1997). This means that modernization pressures are felt on an international level (Beck, 1997a, 1997b). Converging expectations and aspirations due to

[4] Washbrook not only submitted interesting material concerning the relationship of law and society in colonial India, but also claimed to sound the death knell of modernization theory by clearly spelling out that the colonial power had not been able to shape Indian society according to its own liberal ideology. However, there is more to modernization theory than a futile attempt to legitimize imperialism. Moreover, the Marxist foundations for declaring functionalist approaches obsolete are no longer as firmly in place as they may have seemed to be in the early 1980s.

[5] For instance, the new centre-left governments of both Britain and Germany do not tire of emphasizing their concern for modernization of these two countries and, indeed, of the European Union as a whole. This shows that a demand for modernization is not a means to look down on disadvantaged nations but rather expresses a desire to find viable solutions to societal problems. The emphasis is predominantly on making them operational in a functional sense rather than on ideological correctness.

satellite television, the internet and other media play a role that should not be underestimated. Such convergence is also fostered by mass travel, in the sense of both migration and tourism (Korff, 1995).

Modernization along similar lines seems the only viable course of development for former colonies (Huntington, 1971; Eisenstadt, 1987; P.L. Berger, 1997, Giddens, 1996). The downfall of the Soviet empire and the success of developmental states particularly in East and South-East Asia strongly reinforce the notion of this kind of 'modernization' as the single realistic route of development (J. Berger, 1996; Dahrendorf, 1996; Tetzlaff, 1996).

Ernst Gellner (1995) sees liberal democracy based on a web of intermediary agents as the only social setting that grants freedom from both the tyranny of despots and the tyranny of cousins in rigidly segmented traditional communities. He argues that the first establishment of civil society structures depended on the destruction of a generalized truth monopoly. This made space for the scientific revolution and in turn for systematic technological development alongside growing material wealth. Gellner stresses the need to separate of the realms of economics and politics. The result is a wider spread of the forces necessary to shape society.

If businesses are run according to market demands, new sources of wealth and influence are generated. That, in itself, checks and balances the government's influence on society. On the other hand, government regulations for market operations are necessary, because some economic choices have far-reaching consequences for society as a whole, for instance when different technological options are involved. Once politics and economics are separated, their balanced interaction becomes delicate and begins to rely on complex bargaining and negotiating networks that include, for instance, trade unions, employers and government agents.

One consequence of functional differentiation comprises ever-changing forms of the division of labour. Unlike under the condition of segmentary differentiation in feudal societies, individuals both gain the advantages of high mobility and are exposed to the cold winds of permanent social change. Personal biographies are no longer determined merely by one's parents' social status and individual security no longer guaranteed by extended family and community relations. Educational curricula, career opportunities, personal relationships and loyalties, and systems of belief all become matters of individual choice to an extent never known before. New freedoms

go along with keenly perceived risks of failure (Beck, 1986; Beck and Beck-Gernsheim, 1990; Giddens, 1997). From a sociological perspective, this explains why compulsory primary education and a minimum of government welfare policies go along with functional differentiation in Europe or the United States.[6] Similarly, it explains why both are essential for all developmental aspirations (Drèze and Sen, 1996).

A fully operational civil society must thus grant all individuals various opportunities to pursue their interests through a vast web of independent organizations and interest groups. Such intermediary institutions of civil society link households, market and state. They are the foundation of the public sphere that allows democratic participation in policy-making by obliging governmental actors to become responsibly involved in manifold bargaining and negotiating processes.

Through the emergence of the public sphere, the coercive powers of the state become domesticized and accountable to the various agents of civil society. This also has an inclusive effect: state institutions become accessible to all those who make use of their fundamental democratic rights. In turn, the domesticized coercive powers of the state, in a reflexive process, change the networks of civil society. Individuals no longer exclusively depend on their original communities. Relations within communities and families become subjected to the rule of law to the extent of making domestic violence illegal.

On a more systemic level, functional differentiation requires sophisticated mediation of diversified social realms. Whereas feudal societies are based on strict segmentary segregation in a functionally differentiated setting, highly specialized functional systems such as politics, economy, law and science do not exist in atomized spheres of their own. Rather such systems, though autonomous to a historically unknown degree, are interdependent. Each system thrives on the efficiency of the others. Again, the evolution of bargaining and negotiating networks is a consequence of this challenge (Willke, 1983, 1997; Mayntz, 1993). In the advanced societies, round tables,

[6] Cuts in welfare spending in OECD nations do not imply that welfare policies are abandoned altogether. A short mind game will prove this case. A single, unemployed mother living in post-Thatcher London would have good reasons not to change places with another single unemployed mother in New Delhi, while her Indian counterpart would have good reasons to do so–if, hypothetically, they were both given the choice.

trilateral committees (representing labour, capital and government) and similar structures make it possible to combine the systemic advantages of both market and government. They depend on the organized representation of vital social interests and their articulation in a public sphere including responsive government agencies.

Such conditions give rise to another specific trait of modernity–that of trust being vested not only in personal acquaintance, but also in the systemic operations of institutionalized social life (Giddens, 1996a). Trust is indispensable for the cohesion of a functionally differentiated society (Luhmann, 1997; Willke, 1997). Reliable compromise, spelt out in publicly available documents, inspires trust and further cooperation. The State, rather than being the mastermind of all decisions, will increasingly have to serve as the supervisor of a highly differentiated society (Willke, 1997). This also implies pressures of decentralization and devolution of government powers to regional and local levels.

In the context of public rather than personal trust, the legal system is of particular relevance. If it is generally perceived to be fair and independent, it will enhance the essential sense of trust. It has to ensure the enforceability of law and contracts, binding both private and governmental actors.[7]

To repeat, government ceases to be the paramount regulator of social life in this perspective. Rather, it becomes the obligation of the political system to ensure that such negotiating networks do not become too restricted, giving only particular interest a say in decision-making instead of brokering viable compromise of all relevant interests (Mayntz, 1992; Messner, 1994). Whenever such mediation fails, crisis, social protest and other frictions will disturb the ability of society to function (P.L. Berger, 1997). Challenges must be met in a pluralistic attempt to experiment with different options, probing for an adequate, satisfying result (Lindblom, 1990). Pluralism can only be safeguarded through civil society and public sphere.

[7] In recent Italian history, in this respect quite similar to that of India, the courts have played an important role of breaking up illegitimate power cartels in administration and legislature. While it is beyond the scope of our book to discuss this in detail, it is again worth pointing out that the pressures of modernization act not only on developing countries but also on OECD nations. Most recently, the European Union as a whole has been exposed as suffering from leaders' inadequate distinction of public and private interests leading to the resignation of the European Commission.

In this perspective, democracy and modernization are interdependent and mutually reinforcing in the advanced nation states of the OECD. Development necessarily leads to functional differentiation which, in turn, depends on and fosters democracy. This does not imply that conflict resolution under the conditions of functional differentiation is easy or that those conditions are free of conflict. Disputes in civil society and public sphere can be rough and noisy. There is academic concern whether they are functioning well in the United States (Etzioni, 1995) as well as in the European Union (Marks et al., 1996). However, it is worth emphasizing that growing disillusionment with democracy has nowhere in the OECD put its principles at risk in recent years.

2.2 Historical Connotations of 'Civil Society'

While discussions of civil society go a long way back in English-language social science literature, the German translation 'Zivil-gesellschaft' has only been in use since the 1980s. Before, the equivalent of civil society was normally the term 'bürgerliche Gesellschaft'.

The distinction between 'Zivilgesellschaft', based on the idea of the 'citoyen' (the citizen of a democratic state with a given set of political rights and duties), and 'bürgerliche Gesellschaft', based on the idea of the 'bourgeois' (the utility-maximizing individual in a market economy) is significant. The main connotation of 'bürgerliche Gesellschaft' is capitalism, the main connotation of 'Zivilgesellschaft' is that of representative democracy and civil liberties. This, of course, again reflects the fundamental aspect of modernity, the differentiation of market and state. In the light of contemporary systems theory it is clear that we cannot have one without the other.

This also helps to explain the new interest in civil society in connection with the collapse of the Soviet bloc (Keane, 1988a, 1988b; Taylor, 1990; Michalski, 1991; Kössler, 1992). So-called real socialism had monopolized both the access to information and the freedom to formally organize as means of the State party. Dissident organizations and initiatives (such as Solidarnosc in Poland or Charta 77 in Czechoslovakia) recognized the relevance of civil liberties. They applied the term 'civil society' as an alternative to monopolized

party power (Arato, 1982; Michnik, 1985; Keane, 1988a; Geremek, 1991; Langenohl, 1996).

The totalitarian communist regimes in Central and Eastern Europe collapsed almost immediately after having lost the ability enforce their party monopolies over information and organization. It was recognized that lack of communication and lack of competition had stalemated both economy and polity. Civil liberties proved indispensable elements of the efficient self-organization of society.

Charles Taylor (1990) distinguishes two traditions in the civil society debate. In the tradition of John Locke, civil society is a sphere outside the government's reach. Taylor does not consider this a viable solution to the complex challenge of societal integration. He therefore favours the tradition of Montesquieu in which civil society consists of 'crops intermediaries' of an 'amphibious' nature (Taylor, 1990:114). Such institutions have a 'life outside the political structure' but it is 'crucial to the health of the polity that they also play a role within it'.[8]

Taylor sees both traditions of the civil society debate blend in the work of G.W.F. Hegel. Hegel saw society as a product of history that was to be both conserved and transcended by the State. 'Bürgerliche Gesellschaft' in this context was the most advanced society. For Karl Marx, 'bürgerliche Gesellschaft' was the social structure that was the basis for the establishment of the bourgeoisie-dominated capitalist State.

In the Marxist tradition, government institutions and actions were understood as epiphenomena of ongoing class struggle. Social changes and shifting power resources were not attributed to government action or politically motivated processes in general. They were interpreted as economically determined results of the production needs of the ruling class and of technological progress.

Up to the 1970s, many scholars even in the West understood civil liberties to follow from socio-economic necessities in the context of a particular stage of class struggle rather than to be social achievements in their own right. Representative democracy and personal freedoms were interpreted as deceptive instruments of the bourgeoisie, granted only so long as its class dominance was not seriously threatened. This attitude, however, withered away after the collapse of the Soviet

[8] In the terminology suggested in this book, these 'amphibious' beings are, of course, part of the public sphere in so far as and in as much as they actually do play a role in the polity.

Union had proved that fundamental democratic rights were indeed a relevant source of political legitimacy and social stability.

Even within the communist tradition, however, there has long since been a more sophisticated line. Antonio Gramsci considered the capitalist nation states in Western Europe to be so far advanced that they no longer relied solely on the instruments of coercion and repression (Gramsci, 1967; Bobbio, 1988; Kebir, 1991). Gramsci saw 'società civile' as a non-governmental extension of the repressive bourgeois powers securing leadership and hegemony by establishing a national consensus. He understood this consensus to be little more than a voluntary subordination of the exploited masses enchanted by the bourgeoisie's cunning persuasion.

Civil society in his sense penetrates the national culture of everyday interaction in many spheres of social life. It comprises every social setting in which manners, values and meanings are established, debated, contested and changed. For Gramsci, such an entrenched position of the bourgeois state behind the civil society meant that Marxist organizations could not simply conquer power before having established what he called working class hegemony. He expected the Italian Communist Party, of which he had been a co-founder, to engage in this endeavour. Gramsci defined civil society as the arena in which the disputes over hegemony take place–the complex web of interaction and decision-making framed by formal and informal organizations.

This concept is maintained in the current debate that sees 'civil society' as a prerequisite of democracy and thus as a normative goal (Keane, 1988a; Neubert, 1992; Kössler and Melber, 1993). In this context, it has been stripped of the Marxist vision of class struggle being historically directed towards the establishment of a socialist state dominated by the working class.

Civil society thus becomes, in other words, a vision of a perfected liberal democracy in which the French Revolution's promises of 'liberté, egalité, fraternité' have come true. In this reading, the term 'civil society' is no longer distinct from 'public sphere', 'democracy' or indeed, 'good society'. Sometimes an element of socialist visionary thinking is included. For instance, welfare state instruments are meant to guarantee a minimum level of subsistence to all members of society in the name of 'civil solidarity' (Kössler and Melber, 1993: 82ff). Otherwise, societal inclusiveness would not be safeguarded.

But even if one focuses on the core meaning of civil society as the web of independently organized groups, associations and institutions, the modified Gramscian approach remains fascinating. Civil society has a twofold, almost ambiguous nature. It is an instrument to enforce social order and thus an asset of governance. Yet it also involves all social strata and provides space for the articulation of discontent and opposition.[9] 'Civil society' implies that compromise and even national consensus are constantly renegotiated in manifold bargaining processes. This stretches down to the micro-levels of social life, to plain face-to-face interaction.

Ideally, this would lead to the general acceptance of a dynamically adaptive social order in which all vital interests were taken into account. Civil society (in its core meaning of institutions independent of the state) would be the basis for a democratic public sphere including the government. Violence should be expected to be minimized as a consequence of reduced social frustrations that might lead to either crime or political uprising. More likely, civil society as the basis of an effective public sphere would evoke a sense of loyalty and maybe even commitment to the State. A vibrant civil society is thus at once a condition of an expression of good governance (Etzioni, 1995).

For the normative-utopian line of thought, such a social order is somewhat similar to the holy grail–always to be aspired for, never quite to be achieved. Civil society is the basic element of an 'open-minded, uncompromisingly pluralist, cosmopolitan and historically informed conception of democracy' (Keane, 1988a: X). For other authors (e.g. Shils, 1991a, 1991b), civil society has been established in the industrial democracies of the West to an extent that Western European nations and the United States appear as model cases. This view, however, conceals that societal consensus and compromises are constantly in dispute in these countries and that the democratic principles of constitutions have to be used actively to be of any practical value.

We have again passed the point where the concept of 'civil society' blurs with others, such as 'democracy' or 'public sphere'. Both Keane and Shils are stretching the term 'civil society' beyond its

[9] This again implies that civil society is not an affair of particular harmony. Conflicts can become rough and rowdy. However, their destructive impact may be expected to be contained in a framework of pluralism created by constitutional democratic rights.

core meaning–that of criss-crossing formal and informal organizations that serve as intermediary institutions.

Krishan Kumar (1993) therefore has some reason to raise the question whether it would not be more useful to stick with clearer conceptual approaches. Kumar suggests key words such as 'democracy', 'constitutionalism' or 'citizenship'. For our purpose, however, the emphasis is on the interaction of State and society and not so much on any particular constitutional framework. In other words, the civil society discourse is about the conditions for the above-mentioned desirable qualities of State affairs.

To summarize again, modern democracy is not imaginable without civil society giving rise to an operational public sphere that also includes agents of governance in an open and reliable discourse. In turn, this social fabric in the developed capitalist societies depends on democratic freedoms. In the light of this theoretical outline, it will become obvious why neoliberal and leftist positions converge in their concern for civil society in recent development debate.

2.3 Neoliberal 'Good Governance' and Leftist 'Democratization'

The World Bank (1997) links 'civil society' to its concept of 'good governance'. On the other hand, critics of the Bretton Woods Institutions, generally more at home on the political left, also use the term 'civil society' in connection with demands for more and deeper democracy, involving the people as a whole in decision-making (Friedmann, 1992; Kössler and Melber, 1993; Chandhoke, 1995; Haynes, 1997). The approaches are not identical and, as far as specific policies are concerned, they may actually be in conflict. However, their concern for civil society is similar and, as discussed above, relation to modernity in the sense of functional differentiation.

In the neoliberal case, the interest in 'civil society' is linked to a positive vision of government performance meant to lay the foundations for development in the sense of economic success and social prosperity. The emphasis is clearly on market efficiency. The following caption from the report of the Task Force on Multilateral Development Banks (1996:8) is typical of such proclamations:

> Efforts to promote reduction, private enterprise and a better natural environment require more effective government and the emergence of a strong civil society … Good policy includes the rule of law, protection of legitimate economic activities and interests, a government's accountability to its citizens, effective measures against corruption, a participatory approach to development, easy access to important information and services.

In a nutshell, this list comprises typical traits of modernity understood as functional differentiation: an economy based on market competition rather than political directives and distinct from a state run by a representative government with both State agents and private businesses bound by the rule of law. It would be wrong to interpret this notion simply as 'capitalism' defined by unrestrained market forces. Rather, the market must be embedded in institutions of democratic, responsible and efficient government. This includes a reliable and sufficiently independent judiciary to safeguard the enforceability of legislations and contracts.

Even the World Bank (1989, 1997) admits that the fruits of economic development are unlikely to be reaped simply from the application of 'structural adjustment' along the lines of market-oriented deregulation. Poor results of such policies in Africa led to the World Bank's re-assessment of the 'Role of the State in a Changing World' (1997). Corruption and general administrative slack had drained sub-Saharan societies, leaving hardly any scope for socio-economic development. The World Bank (1992:2) therefore conceptualized 'good governance'. 'Governance' stands for 'the manner in which power is exercised in the management of a country's economic and social resources for development'.

The World Bank (1997) considers free elections to be important, but not enough, to ensure good governance, Key elements of this concepts are:

- capacity and efficiency of public sector management,
- accountability of government agencies,
- rule of law,
- transparency and reliable information,
- macroeconomic stability,
- protection of poor people and of the environment,
- division of powers with an independent judiciary, and
- reliance on self-regulating systems such as markets.

In the view of the World Bank, there are also typical failure symptoms due to 'bad governance', including the following:

- poor distinction between private interests and public office,
- erratic legal situations
- excessive regulations impeding official markets and thereby spawning black markets,
- corruption, nepotism and patronage,
- misallocation of resources, and
- untransparent decision-making.

The World Bank (1999: 46) has, in its own words, acknowledged the relevance of trust made possible through democratic participation in the public sphere:

> By providing citizens with the opportunity to express their views, encouraging them to monitor the workings of local government and calling on them to participate, an effective system of governance creates a willingness to obey laws and to pay taxes. Over time, sound governance builds trust and social capital.

The World Bank's recourse to the argument of 'good governance' has been criticized as a mere detraction from the failure of its own policies and as an illegitimate attempt to introduce an option of political conditionality into its scope of action (George and Sabelli, 1994; Jayal, 1997; Harris, 1997). Indeed, the idea of imposing democracy from outside a country's borders seems a contradiction in itself (Soerensen, 1993; Jayal, 1997). Similarly, it is ironic, to say the least, that the World Bank simultaneously calls for good governance and dictates strict measures of monetary and budgetary policy without much democratic deliberation in the countries subjected to structural adjustment (George and Sabelli, 1994).

However, such criticism casts more doubt on the World Bank as responsible agent of development than on the concept of good governance itself. The phenomena of failure listed above are too common in developing countries, including India, for us to dismiss the argument as self-serving World Bank propaganda.[10] Moreover, the same principles are central to demands for more deep or more substantial democracy (Friedmann, 1992; Kössler, 1992; Neubert, 1992; Kössler and Melber, 1993; Wignaraja, 1993; Haynes, 1997).

[10] They are not without relevance in supposedly advanced nations, where, of course, corruption does occur.

Many of these authors are among the critics of the Bretton Woods Institutions. In their line of thought, interest in civil society puts less stress on business efficiency than on political fairness and socio-economic justice. Social movements and non-governmental organizations are seen as motors of development that would be more in tune with the needs of poor people.

In this context, the term 'civil society' again serves to define a normative political goal as much as it is used as a scientific category of analysis (Neubert, 1992). In this normative capacity, the term would imply the spread of virtues such as civic sense or responsible pursuit of the common good. However, this normative dimension is confusing because it again blurs the core meaning of the term. The argument would be clearer if it emphasized the public sphere, thus involving the State as a proponent of the necessary spread of democratic values.

Indeed, 'civil society' is sometimes even understood to be a web of progressive, developmental non-governmental organizations (Bundesministerium für wirtschaftliche Zusammenarbeit, 1996; Nuscheler, 1996; Khilnani, 1997). This is a misconception. Civil society also includes other actors in the realm provided by constitutional freedoms who do not pursue progressive or even democratic goals, for instance exclusive elitist circles or religious fundamentalists (Rodan, 1997; Haynes, 1997). They also have formal and informal organizations of their own and make use of fundamental democratic rights. To exclude them, by definition, from civil society would be a choice inspired more by concerns of political correctness than by sober-minded analysis.[11]

Similarly, it makes little sense to (academically) set an agenda of progressive democratization for civil society as a whole (Chandhoke,

[11] According to Rodan, under conditions of mass illiteracy and other kinds of deprivation, civil society will be totally dominated by the educated elite, leaving no scope for poorer sections of society to pursue their needs. With regard to India, Dietmar Rothermund (1992) makes a similar point, arguing that the institutions of civil society as known in Western Europe or North America reach only the upper 10 per cent of the population. Such reasoning shows that it would be wrong to expect an explicit strategy of democratic inclusiveness and progress of civil society as a whole. More fundamentally, however, it casts doubt on the applicability of concepts of civil society and public sphere to developing countries. With respect to India's recent history, I would argue that over the longer run civil society has slowly become more inclusive. Increased levels of literacy, social movements and progressive political parties have contributed to greater inclusiveness and have added to democracy's resilience in India. We will return to this subject in the last section of this chapter.

1995). If it is understood to be the totality of self-organized, non-governmental social life, civil society cannot be expected to have any such agenda. How democratic values and civic norms are to be enhanced within civil society is an altogether different question. Most likely making governments accessible and accountable in a democratic public sphere would work in this direction by enhancing a sense of societal trust.

In a related normative vein, strengthening civil society has been cited as a specific means to tackle corruption (Leiken, 1996; Kaufmann, 1997). However, that would again have to be done by making government bureaucracies accountable in public. This, once more, shows how useful it is to distinguish civil society from public sphere. After all, one must always expect members of civil society to try and bypass public discourse and secretly influence the government, for example through collusion and corruption. Civil society based on the rights of assembly, expression, association and other democratic liberties does not by itself serve as a protective means against such abuse of public office.

To 'empower' or 'strengthen' civil society means to establish a public sphere that makes government and administration accountable to more than a selected few, but to all legitimately organized interests. In turn, government agencies supported by the legitimacy provided by an operational public sphere can be expected to limit anti-social and mafia-type networking, thus enhancing the sense of reliability in civil society. [12]

The institutional set-up of state and government are not simply reflections of the social fabric. They are relevant in their own right. Good governance, therefore, not only requires an interactive, vibrant civil society, it also depends on more technical issues such as adequate payment of civil servants and a realistic scope of legislations and administration. As the World Bank (1997) argues, unattainable aspirations must lead to unimplementable regulations. This, in turn, impedes efficiency and invites corruption.

To cling to unviable regulations in the long run must be seen as the conscious provision and maintenance of bribe-seeking

[12] Of course, government agencies can never eliminate such networking, but it does make a difference whether one can rely on the rule of law so as to be able to do business with people other than one's own kindred. If not, freedom of choice and opportunities of action will be severely hampered. According to Hernando de Soto (1989), this is one aspect that keeps people who depend on the informal slum economy of Peru poor.

opportunities (Krueger, 1974). In spite of conditions of poverty, official agencies in developing countries can be shaped by work cultures promoting efficiency and responsibility towards the public sphere (Grindle, 1997). This suggests that a development policy along the lines of democratization and official accountability makes sense. This is exactly the point at which World Bank and its critics conceptually converge.

This convergence will come as little surprise to anyone who has accepted that market competition and representative democracy are two different aspects of a single modernity. They do not exist independently of one another. Rather, they are mutually reinforcing (Huntington, 1971; J. Berger, 1996).

This is particularly so if one keeps in mind that processes of successful development are also processes of urbanization (World Bank, 1999). Life in cities tends to imply increased social mobility, a more diverse setting of societal organizations, higher rates of literacy, and more sophisticated information and communication infrastructures. It also implies a constant clash of interests, for instance over space, and thus a constant need for compromise and mediation. While metropolitan centres the world over are becoming similar, their internal and multicultural diversity is growing. This makes cross-community networking indispensable (Korff, 1993; Berner and Korff, 1995).

That said, the question does arise whether the conditions of democratic rule can be expected to exist in post-colonial contexts. After all, a modern liberal constitution does not, by itself, lead to good governance. Rather, social life must reflect the principles outlined in such a body of law (Walzer, 1983). It is understood that legal principles will never be an inch-to-inch map of social reality (Habermas, 1994). But undoubtedly gaps between constitutional aspirations and ground reality can be narrower or wider.

We will now turn to the problematic of trying to establish democracy after colonial rule in countries in which neither civil society based on constitutional freedoms, nor a public sphere thriving on pluralistic tolerance, is to be taken for granted. The trouble is, if these are simultaneously conditions for the consequences of democratic governance, how are they to be established in the first place? It is beyond the scope of our project to answer that daunting question. However, the remainder of this chapter will discuss difficulties that are not the same in every post-colonial context. A

society with strong feudal characteristics, as was typical of colonial India, is an altogether different setting than a pre-literacy, predominantly tribal world, as was typical of post-colonial Africa.

2.4 Governance Problems after Colonial Rule

Studies of post-colonial states in Africa (Sandbrook, 1985, 1986) have concluded that there is a distinct pattern of institutional failure due to the lack of 'civil society'. This line of thought suggests an almost inevitable downward spiral of exaggerated hopes, poor economic performance and disintegrating institutions of governance.

Welfare states in advanced capitalist economies redistribute wealth in order to mitigate conflicts stemming from social cleavage. They provide legitimacy for the social order by various forms of entitlement legislation. Such complex social arrangements are based on an equally complex interaction of manifold associations, trade and employer unions, political parties and state agencies in the public sphere.

According to Richard Sandbrook, this was not immediately possible in post-colonial states because governments faced more than the challenge of coordinating the redistribution of wealth. The leaders of independence movements and the masses following them expected the state to produce wealth in the first place. It was therefore expected not only to perform the functions of government according to the Western model, but also to become the main supplier and controller of capital. Resources for development were channelled through government institutions and bureaucracies. Public office thus became the main opportunity for the appropriation of wealth as the fruitful separation of government and market had not occurred.

The immediate consequence was that the struggle for access to material wealth and economic prosperity took place within the state itself. Political and business activities in government enterprises were not distinct. Anybody aspiring for material wealth would have to gain positions of power within the state. Corruption, nepotism and patronage spread wide.

Charismatic leaders of independence movements turned into populist, increasingly authoritarian heads of government and state. Their rhetoric concealed the exploitation of national assets by the cliques surrounding them. Their propaganda no longer conveyed

serious development strategies geared to increase the welfare of the entire population. Regimes gravitating around an exploitive, despotic 'strongman' (Sandbrook, 1986: 323ff) became the norm.

Briefly stated, the lack of modern attitudes, based on an operational separation of politics and economics, led to a downward spiral of false populist promises along with high popular expectations and a consequent loss of trust in the government. This led to an increasing recourse to violence and oppression, camouflaged by more extravagant and even less trustworthy promises by the national leadership. Such downward spirals were accelerated by the fact that ethnic groups are the principal point of reference for social identities in the African context. Autocratic regimes would manipulate such social frictions for their own purposes.

In other words, post-colonial societies did not have a web of independent, overlapping organizations and institutions that could be understood as civil society. Therefore, there could also be no public sphere, in which compromise or even consensus could have been achieved through inclusive societal discourse. Predominantly ethnically defined identities did not give scope for such arrangements but were more likely than not to play into the hands of strongmen.

The challenge to all recent aspirations both of 'good governance' and 'democratization' is whether such pattern can be reversed. Adrian Leftwich (1994, 1995) contends that it can, and indeed that it would be desirable. He argues that strong governments can (and should) put in place the social conditions for functional differentiation to take off–and to thus escape from the downward spiral described above. After maybe a generation or so of rather authoritarian rule in such a 'developmental state', Leftwich expects the issues of civil society, public sphere and democracy to return to the agenda, as happened in South Korea, Taiwan and Thailand in the 1990s.

It is beyond the scope of this book to discuss Leftwich's idea in depth. Suffice it to say that a central problem with his approach is simply that dictators do not tend to be benign. Most authoritarian regimes do not serve the function of developmental states but remain purely exploitive versions of Sandbrook's strongman model (Soerensen, 1993). This debate does not apply to India, where it is unlikely that an authoritarian, one-party developmental regime will be imposed in the foreseeable future.

In India, there are, however, strong incidences of the governmental malfunctions that, according to Richard Sandbrook, are

to be expected in post-colonial contexts. But the formally democratic framework did not disintegrate. Moreover, independent India has become richer, not poorer. Its economy has grown faster than its population. Poverty rates have fallen, even though they remain intolerably high. Apparently, the specific social fabric of India is such that this vast developing country deserves some particular considerations.

2.5 Governance in India

Had Indira Gandhi's 'emergency' dictatorship prevailed, it would be easy to apply the downward spiral theory of the last section to India.[13] Even though this strongwoman did not establish autocratic rule over the longer run, there is a strong tendency in recent scholarship on India to argue along lines similar to those of Richard Sandbrook, emphasizing the difficulty–but, in this case, not the impossibility–of liberal democracy in a post-colonial setting. However, there are many differences between India and Africa that deserve to be taken into account.

While mass illiteracy is a problem for both, Indian illiteracy coexists with a tradition of scholarly writing which go back millennia. While it is true that Nehru's government had strong centralist aspirations pursuing socialist policies, it cannot be said that, at independence, the State was the only source of capital. There was a local business elite in banking, trade and industry.

India, like African countries, is multicultural. But the common cultural traits are strong enough to inspire a sense of coherence in a subcontinent of one billion people, twice the population of sub-Saharan Africa which has over forty sovereign states, many of them on the verge of total disintegration. Unlike in Africa, Indian identities are shaped by various, partly overlapping, factors such as language, region, religion and caste. It is impossible to polarize all of society along any one such line (Manor, 1996).

In the context of Indian governance problems, the term 'civil society' appears remarkably often (Chatterjee, 1990, 1995, 1997a;

[13] There is a certain trend in public discourse to blame 'erosion symptoms' on Indira Gandhi. This is, perhaps, an easy cop-out. After all, she was operating under constraints. The polity conditions led her to both personalize politics and deinstitutionalize the Congress Party, with considerable success (Kohli, 1990).

Kaviraj, 1991, D. Kumar, 1991, Rothermund, 1991, 1992; Béteille, 1997a). Unfortunately, the authors who use it do not have a precise common understanding of the term. It may stand interchangeably for 'capitalist society' or 'political conventions' or of course, 'intermediary institutions'. Nevertheless, it is possible to expose those problems to empirical scrutiny by using Dahrendorf's civil society concept of a web of non-state interactions. In light of experiences with public interest litigation, I will argue that focusing on civil society (in whatever meaning of the term) obscures dysfunctional aspects in the set-up of the State.

Before looking at social science assessments of state-society relations along such lines in India, it will be necessary to pay some attention to the trials and tribulations of India's democracy. The following subsection therefore juxtaposes the notions of 'erosion of the State' and 'resilience of democracy'. The second sub-section then returns to the more theoretical discussion of civil society and public sphere.

2.5.1 'Erosion of the State' versus 'Resilience of Democracy'

Academic writing knows of many crisis symptoms concerning governance in independent India. Complaints about malfunctions are common to both the political process and bureaucratic procedures. They often deviate strongly from what would be desirable according to democratic norms and principles.

It must be emphasized that this does not imply that such norms and principles would be perfectly established in OECD nations. However, while reasons for frustration also exist in many rich countries, the level and public acknowledgement of poor governance in India exceeds by far what would be considered acceptable in most rich countries. Problems cases such at Italy or Belgium are exceptions.[14] Public outrage proves that many of the citizens of these

[14] To judge by the annual Corruption Perceptions Index published on the internet home page of Transparency International, a non-governmental campaign fighting corruption after the model of Amnesty International, the situation is worse in India. An index of 10 stands for 'absolutely clean' and an index of 0 stands for 'absolutely corrupt'. In 1998, the index for Belgium was 5.4, the index for Italy 4.6 and the index for India 2.9. However, this index is not a truly reliable measurement. It is based on surveys of how people doing international business perceive particular countries. There is no accurate assessment of how bad corruption 'really' is in any given country.

countries find poor governance unbearable–as do many citizens of India.

A brief summary of typical assessments would render an exaggerated picture, as is, nonetheless, quite stereotypically reproduced by the press in India. Politicians are widely perceived as self-serving careerists, exploiting public office for their personal benefit. They rely on inscrutable support networks in which gangsters play a role to intimidate opponents within and outside one's party (Kohli, 1990; Kothari, 1989). Election campaigns are expensive and depend on black money. Contributions to campaign funds are often seen as advance payments for future favours (Wade, 1989; Gupta, 1992).[15]

Populist agitation and mass mobilization rather than programmatic discourse are typical of Indian election campaigns. Gaining office is what matters, not what publicly expressed promises one will be able to keep once in office (Kothari, 1989, 1995).[16] Lately, this has been exacerbated by shaky coalition and even minority governments. India's version of federalism has further enhanced the gridlocks and malfunctions of the political process (Rothermund, 1991; Rajashekara, 1997). Maybe even more than on the central level, political power in the states lends itself more readily to the pursuit of personal gains than to devising and implementing policies to improve the people's well being (Kohli, 1990; Khator, 1991).

This sorry perception of politics, of course, goes hand in hand with a poor reputation of government bureaucracies. Administrative bodies are also generally expected to be corrupt and inefficient (Schenk, 1989). Frequent transfers cause many officials to feel hardly any ties with the area under their jurisdiction (Wade, 1989). Remuneration of civil servants is rather low and thus provides an important incentive for seeking bribes (Gupta, 1992). Rises in pay seem to have done little so far to improve this image.

Along the lines of rational choice theory, government agencies have ample reason not to perform well. If what they are meant to deliver is scarce, they can charge their clients on a personal basis for

[15] The problem of campaign finance serving as an inroad for corruption is again not at all special to India. Amitai Etzioni's assessment (1995) of US politics is quite similar. The degree of the problem is probably greater in India, where, in spite of reform proposals, it has for long been inconceivable to run an election campaign by entirely legal means. The strict regulation of party finances does not permit the accumulation of enough money for all the expenditure needed.

[16] Exaggerated campaign promises, again, are not a specifically Indian problem.

its delivery (Gadgil and Guha, 1995). In this context, bureaucracies are interpreted as distinct groups interested in acquiring as many regulatory powers as possible. This puts them in a position to grant personal favours. Similarly, there appear to be virtual markets within the bureaucracy for the sale of attractive positions with access to modern amenities and ample chances to extract additional income. This kind of illicit bargaining allows those higher up in the hierarchy to participate in the revenue sharing (Wade, 1989).

Bribery and corruption are believed to abound (Lewis, 1995). Administrations therefore are not primarily considered as tools for the implementation of government policies. They are seen as an infighting network of self-serving gangs in severe competition with one another (Gadgil and Guha, 1995). In the words of (Renu Khator 1991:213), officials are 'allowed to use their state authority to gain personal benefits, but they are not permitted to use the same authority to obtain policy compliance'.

If not even those holding elected office or positions in the civil service are generally expected to be playing by the official rules, it is obvious that India must also be suffering from a strong sense of lawlessness. In a country with poor infrastructure, the reach of the judiciary is likely to be limited to urban agglomerations. The suspicion that judges are corrupt and serve elitist interests cannot be ruled out anywhere, and it is particularly common in poor countries (Betz, 1996).

In all liberal democracies, financially potent persons have better access to qualified legal representation before the courts. In India, this has encouraged powerful members of elite groups to resort to violence and crime to coerce those depending on them. They know that the probability of their being taken to court is minimal and that of their actually being convicted practically nil. On the other hand, there is evidence that members of Scheduled Castes and Tribes are repeatedly arrested without warrant, tortured, kept in jail for years without legal aid, and killed in custody (Kothari, 1989; Baxi 1994a, 1994b; Kannabiran, 1996). Chapter 3 of this book deals extensively with the Indian judiciary. It will suffice, at this point, to state that the courts are themselves struggling with accusation of inefficiency, corruption and the abuse of power.

Terrorism is another symptom of troubled statehood (e.g. S.K. Mitra, 1990; Brass, 1994). Militancy follows the loss of governmental legitimacy and adds to worries about the viability of democracy in

India even if large-scale, violent strife is regionally confined and does not seem to threaten India as a whole for the time being (Manor, 1996). Indeed, West Bengal, where my empirical data were gathered, was one of the most troubled Indian states in the 1960s and 1970s. However, the Left Front government's ability to re-establish the political order and to implement some reform measures from 1977 on has been regarded favourably by several scholars (Kohli, 1987,1990; Webster, 1992, 1995; Lieten, 1994, 1996).

Nonetheless, evidence for bad rather than good governance in India has been summed up in a theory of 'State erosion' (Rudolph and Rudolph, 1987; Kothari, 1989, 1995; Kohli, 1990; Sudarshan, 1990, Kaviraj, 1991; Haragopal, 1995). This would imply that matters were once decidedly better, which seems improbable. After all, the growth of mafia-type power cartels driven by corruption and patronage are typical of colonial rule, particularly in the case of absentee landlordism (Gambetta, 1988b; Pagden, 1988).

In other words, there is reason to trace such phenomena back to before 1947. Bernard Cohn (1990) has extensively dealt with problems of the colonial judiciary. Some of the symptoms are so similar to what is happening in Indian courts today that the sense of continuity appears stronger than that of 'erosion'.[17]

Such assessments fit in well with the more general notion that India has known vast formal empires of mainly ceremonial impact that went along with less formal, locally prevalent power structures (Kaviraj, 1991; similarly, S.K. Mitra, 1990; Khilnani, 1997). As long as a certain revenue from any given area was guaranteed, the larger political structure did not interfere in everyday life regionally. This was controlled instead by local tyrants and various forms of community self-regulation.

These power structures were difficult to discern and would normally be based on varying coalitions of the upper strata of society. Up to today, locally prevalent arrangements of influence and coercion appear to vary. They do not necessarily reflect the principles laid out in the constitution. Instead, informal and illegal power cartels prevail in the guise of modern liberal democracy. Sudipta Kaviraj (1991) implies, but does not explicitly state, that the constitution with its

[17] For our purpose, it is more relevant to look at Cohn's empirical data than to subscribe to his theoretical explanations. From a functionalist perspective, it is more interesting to see in what context the courts were operating than to explain some kind of supposedly inherent and unchangeable characteristics of the Indian psyche such as 'litigiousness'.

rhetoric of modernity and egalitarianism today fulfils the largely ceremonial role of former Indian empires.

Strategic groups (Evers and Schiel, 1988) of influential local politicians, bureaucrats, landlords, businessmen and members of the underworld dominate such power structures. According to Kuldeep Mathur (1992: 347f), the 'liberal democratic character of the Indian political system tends to disappear at the local level'. Rather vested interests rely on elaborate systems of corruption and patronage (Gupta, 1992). They keep the vast majority of deprived Indians in place through a threefold strategy. The poor are given a small trickle of charitable handouts, they are kept uneducated and assetless, and they are exposed to violent coercion if they actively resist (Gadgil and Guha, 1995).

In this context, India is said to be exploited by vested interests of small sections of society in various ways behind the mask of a formally functioning democracy (e.g. Baxi, 1982, 1994a, 1994b; Kothari, 1989, 1995; Jalal, 1995). To go by the erosion theory, such exploitation is increasing and has been made possibly by a continuously deteriorating performance of both politicians and civil service.

However, with such structures deeply rooted in colonial and feudal history, it does appear doubtful that matters were so much better in 1947. Most likely, social reality in India was never as pleasant as the nostalgic memories of the Nehru era suggest. Indeed, eulogies of that time have been criticized as 'unresearched and uncritical' (Jalal, 1995: 6). What if the shortcomings of the Indian democracy became apparent to scholarly debate only when social change was actually beginning to take root and more oppressed people began to demand their rights? As James Manor points out (1988: 79, emphasis added), 'ethics *seemed* more clearly defined and more commonly applied during the fifties, when disadvantaged social groups were just awakening, and Nehru's reformism appeared sufficient to meet their demands'.

Only at first glance will it seem paradoxical that the success of policies meant to uplift disadvantaged strata of society is evident in their growing assertiveness. Given that social settings are still unfair in many ways, it is not surprising that those victimized will use any improvement of their situation to demand more improvements. Such successes, in turn, would not have been possible had all government

institutions indeed eroded and served only the vested interests of the elites.

To a certain extent, the sense of disappointment with governance in contemporary India may also stem from unrealistic, exaggerated and idealistic expectations in 1947 (Lewis, 1995). Similarly, it has been stated that the Indian public tends to expect saintly self-denial of leading politicians and bureaucrats and is then prone to contempt if they turn out to be merely human (Desai, 1995).[18]

This, however, also has a rather healthy aspect. Outspoken contempt for leaders who have disappointed the electorate is a clear token of democracy. And indeed the most obvious indicator of democratic resilience in India is the recent anti-incumbent trend in elections, not unlike that witnessed in the United States. Clearly the electorate is prepared to kick out those who have been perceived as unreliable and inefficient. Governments that have excessively abused the public good have repeatedly been driven out of office. The most spectacular case was the defeat of the Congress Party after emergency rule in 1977. Since then, voters have repeatedly affirmed their readiness to deny re-election to those who have disappointed them in office.

In 1996, an opinion poll was carried out for the magazine *India Today* (31.8.1996) by the Indian Council of Social Science Research and the Centre for Studies of Developing Societies. Under the headline 'Sustaining the Faith', Ashis Nandy (1996: 41) commented on the results of this national survey of almost 9500 respondents in 108 parliamentary constituencies as follows: 'The appeal of democracy has not faded in India. Indeed, it has deepened over the years. It now cuts across parties, educational levels, classes, castes, religions, gender, regional and ethnic divisions.'

The survey showed that, unlike in many OECD countries, the poor are more keenly aware of their right to vote than the rich. Nandy rates this as evidence that the weaker sections of society cherish anything that gives them an opportunity to influence their country's fate. Similarly, it has been noted (Kannabiran, 1996) that the poor in

[18] The mockery of modesty expressed by rewarding politicians and top bureaucrats in kind rather than cash is to a certain extent reminiscent of feudal arrangements. Free (and comfortable) housing, transport and other facilities, rather than decent pay, go with public office. This also constantly blurs the line between what is public and private in the lives of political leaders and civil servants.

India are generally more aware of the potentially beneficial role of courts, police and other State institutions than those more privileged.

The detailed results of the *India Today* survey (Yadav, 1996) show that, generally speaking, relatively autonomous institutions of government enjoyed a greater legitimacy than the political parties, their leaders and the agencies directly under their control. The Election Commission and the judiciary gained the highest indices of popular trust. Both had been known for anti-corruption activism in the immediate past.

All summed up, the picture of governance in India remains ambiguous. Corruption, nepotism, violence and governmental lawlessness coexist with a fundamental democratic awareness of the people and a marked tendency to remove governments from office. India is, in the words of Rajni Kothari (1989: 290), 'neither a functioning democracy nor a functioning dictatorship but a tottering state structure controlled and exploited by parasites'.

Even a scholar of such deeply pessimist attitudes claims there is an alternative to what are perceived as downward-spiralling public affairs. Kothari bases hope on the emergence of genuine social movements (1984). Such initiatives, while not being linked to partisan politics in the narrow sense, tackle political issues just as new social movements in Western nations have begun to change political arenas. This, of course, is an expression of civil society becoming more assertive in confrontation with the State and can be read as a demand for rational debate and fair compromise in the public sphere.

Kothari points out that there are some inspired and well-meaning individuals within the State sector and the political parties (1989). He includes an activist judiciary among the assets of India's democracy. The most striking evidence for this trend so far has been the anti-corruption investigation led by the Supreme Court in the Jain Hawala, Jharkand Mukti Morcha, St. Kitts and similar cases (Ganguly, 1997). Criminal investigations into the activities of former chief ministers have had similar spectacular effects on state politics in Bihar and Tamil Nadu.

The assessment of governance in India reveals a mixed picture. There are symptoms of failure and signs of success. India is a case of rather pronounced dualism (Boeke, 1966) in which constitutional arrangements coexist uncomfortably with illegitimate power cartels prone to violent coercion. Democratic aspirations similarly go along

with traditional subaltern attitudes. [19]

India's democratic future is neither assured nor hopeless. Indeed, some of the current frictions can be read as phenomena that go along with a deepening of democracy. In other words, modernization might simply make India's dualism more apparent, which, of course, would not necessarily imply an erosion of the State structure. Malfunctions may thus be an expression of quasi-colonial continuity and not so much symptoms of deteriorating democratic institutions.

This distinction is highly relevant. The notion of eroding State institutions is dangerous as society-wide expectations of poor performance are likely to be self-fulfilling. After all, institutions are basically what people expect as day-to-day normality. Social activity within institutions is shaped by what is considered to be appropriate from past experience more than by ethical concerns or rational considerations (March and Olsen, 1984). In this sense, it seems advisable to warn against a depressing view of India's democracy that would blur the spectacular success of maintaining at least formal democracy in a multi-cultural and multi-lingual entity of one billion people.

An attitude of generalized suspicion tends to be reinforced to a large extent by day-to-day experience of the gaps between reality and constitutionally professed aspirations. The vast literature on government deficiencies, corruption and implementation deficits supplies ample evidence for mistrust. It must be spelled out, however, that similar malfunction symptoms are known in all representative democracies. India is not fundamentally different in this sense. Rather, the challenges in India tend to be more daunting.

This discourse concerning governance quality is ambivalent by its very nature. It can lead to higher expectations, but also to more profound disappointment. The debate about civic norms is at once a positive element in the struggle for a democratic public sphere and a worrying sign of the people's loss of faith. It needs to be handled with care.

With this in mind, the last section of this chapter shows that the theory of Indian communitarianism is problematic not only in an academic sense. Spreading skepticism in times of crisis might, after

[19] Such attitudes are traditional in the sense of having been learned from one's elders. The school of subaltern studies has sufficiently made clear that these attitudes are products of colonial and feudal history. They are by no means to be considered unchanging or, even worse, unchangeable characteristics of Indian mentality.

all, exacerbate the crisis. In a nutshell, the theory emphasizes that representative democracy does not function well in India because of characteristics of its civil society. As will be elaborated, this theory misses some points of high sociological relevance.

2.5.2 A Critique of Indian Communitarianism

There have been attempts to explain symptoms of bad governance in India as consequences of the incompatibility of liberal democracy with prevalent attitudes among its people. Sarah Joseph (1997) calls this approach 'Indian communitarianism'. She explicitly mentions Partha Chatterjee, Sudipta Kaviraj and T.N. Madan as representatives.

The concern these authors share with Western communitarians (e.g. Etzioni, 1995, 1996), according to Joseph (1997: 2517), is the attempt to counter 'individualism and alienation of modern life by rebuilding community networks and restoring to people the sense of a shared moral universe'. The emphasis is on identities and, accordingly, solidarities being shaped by communities. However, there is a notable difference between Indian communitarians and the Western variety, who consider various communities to be indispensable for representative democracy rather than an obstacle to it (Etzioni, 1995, 1996).

In India, traditional, pre-modern allegiances are often considered the main problem plaguing the performance of the contemporary State. The argument is that 'primordial loyalties which are woven around caste, religion, language and ethnic ties have badly affected the process of national integration, secularization and democratization' (Gehlot, 1996: 11).

André Béteille (1997a, 1997b), who is not a communitarian, emphasizes fundamental ambiguities in the Indian constitution. The notions of 'equality' and 'secularism' do not conform with the Western concept of liberal individualism. Rather, in the name of group equality there is a reservation policy similar to affirmative action in the United States. It grants privileges to traditionally oppressed strata of society. Similarly, 'secularism' does not stand for government equidistance from all creeds and beliefs but rather for a guaranteed non-interference in the traditional practices of religious minorities. In this sense, the concepts of 'equality' and 'secularism' conform to a segmentally differentiated society but not necessarily to a functionally differentiated society.

Madan (1997) also distinguishes between different notions of secularism. He sees the anti-religious ideology favoured for instance by Jawaharlal Nehru as doomed to failure. This ideology in the long run resulted in the Congress Party granting the Muslim minority special rights, not out of special respect for this religion, but rather to appeal to the Muslim vote in election campaigns and to undermine the legitimacy of Pakistan's claim to be the exclusive nation state of all South Asian Muslims. Religious Hindu sentiments did not figure in such calculations and were resented as pre-modern by the governing elites of the Congress Party.

Such politics, indeed, did not reflect the idea of governmental equidistance from all religions. Rather, it manipulated communal feelings for supposedly secular policies. Madan points out that this attitude, in the long run, had to alienate those to whom religion is a core value in life. However, he sees a future for secularism in the sense of governmental equidistance from all religions in India. It would need 'rigorous rethinking and concerted action'. The gist of his argument is, however, not optimistic. Madan continues (1997: 263):

> What is at stake is the very survival of the Indian State. Social backwardness in the form of a weakly developed sense of civic ties–the bond of responsible citizenship–that would moderate if not replace the divisive primordial loyalties of religion, language and caste, is indeed a severe handicap.

Madan (1997) and Kaviraj (1995) agree that fundamentalism is not an expression of traditional religious feelings. Both view fundamentalism as a politically motivated abuse of religiously defined identities. Their point is, however, that in the Indian context of dualism and weakly developed national identify, such abuse is very likely. Similarly, mobilization along linguistic or caste lines is expected to undermine responsive, democratic discourse.

Kaviraj (1991) points out a paradox: If the democratic state is expected to represent society, it cannot be an agent of revolutionary change transforming and reshaping society in a radical attempt to modernize, as was expected by many in 1947. The Nehruvian solution to this unacknowledged problem was centralized, top-down politics. Mahatma Gandhi's grassroots campaigns had opened up new channels of power. However, his approach of micro-level modernization, reforming the traditional fabric of Indian society from within, was not followed up in independent India (Parekh, 1995). The growing elites in Nehru's day planned to develop India according to

their line of thought. Mass participation in ongoing essential debates was not heard of. Instead, a small intellectual elite planned progress.

Consequently, the modernist discourse of the Indian elite was, and is, detached from the discourse of the lower strata of society, whose world view was shaped basically by exploitation, poverty and caste relations even after independence.[20] The conflict is exacerbated by the fact that the discourse of democratic modernization is held in English, the exclusive language of the urban elite. The discourse of traditional, irresponsible power structures, on the other hand, is held in the local languages (Kaviraj, 1995).

Kaviraj sees these two discourses as distinct and in constant conflict. His outlook for the future of India's institutional life is doubly bleak. On the one hand, he complains that 'the actual conduct of those in authority has tended in recent years to slide backwards towards a more historically "familiar" style of "irresponsible power"' (1991: 91). On the other hand, this comes as no surprise in a society where the vast majority of people have a stronger sense of belonging to their respective communal background than a sense of citizenship in general (1991: 33f):

> If Indian politics becomes genuinely more democratic in the sense of coming into line with what the majority of ordinary Indians would consider reasonable, it will become less democratic in the sense of conforming to the principles of secular, democratic state acceptable to the early nationalist elite.

This perspective is, perhaps unwittingly, unfair. The blame is on the increasingly assertive lower strata of society. Power, however, still is largely with the elites who have dominated politics and the constitutional discourse. The upwardly mobile strata are behaving according to what they have experienced as governmental practice rather than to the official rhetoric. Kaviraj is expressing contempt for both aspects of India's dualism.

He dislikes the double standards of the elites and the apparently somewhat uncivilized assertiveness of the former outcastes. It does not become clear who would be the agents of positive change, nor why the oppressed strata of society are now in a position to raise

[20] Urban, English-speaking professionals do not necessarily share the world view of members of the same caste who live in the rural areas and whose prosperity depends on their land holdings (D.L. Seth, 1995). The discourse divide may thus cut clearly across community lines.

demands. This suggests a general frustration with representative democracy in India without, however, offering any viable alternative.

Partha Chatterjee (1990, 1995, 1997a, 1997c) argues along similar lines, but more radically so. In his view, a sense of solidarity stems from adherence to a particular community and not from citizenship of a nation state in India. The great conflict, as he sees it, is between communities and capital, not between State and civil society. Western-type democracy, according to his line of thought, is not possible in India. Rather, a new type of democracy suitable for communities should evolve. In Chatterjee's view, individual rights according to liberal constitutions undermine communities, making way for the unhindered sway of capitalism. Chatterjee's line of argument is problematic in several senses: It ignores the fact that communities are not only sources of solidarity but also sources of repression, of what Gellner (1995) calls tyranny of the cousins. Issues such as dowry deaths and domestic violence (Jethmalani, 1995) show that the issue of individual rights may be of great relevance within traditional communities.

Second, Chatterjee's argument is conventionally Marxist in the sense that the economic system is understood to control and dominate all spheres of social life. If, as systems theory suggests, modern society is the ensemble of several, interdependent but autonomous systems, then an overemphasis on the economic sphere is bound to distort social analysis.

Finally, the concept of democracy based on communities rather than individual rights does not seem pragmatic in any implementable sense. Its meaning remains unclear. Sarah Joseph (1997: 2523), therefore, criticizes Indian communitarianism:

> To give importance to communities without at the same time confronting the need for greater democratization of communities and state and without expressing commitment to egalitarian ideals could send all the wrong messages about what is needed to strengthen inter-group tolerance in our society.

While this argument is one of political correctness, Sarah Joseph also points out correctly in terms of scholarship that Chatterjee's reasoning goes against the grain of western communitarian theory as expressed by Michael Walzer or Charles Taylor. According to them, strong, self-reliant and responsive communities are indeed the lifeblood of liberal democracy.

Etzioni (1996) challenges the neoliberal notion of individual citizens maximizing their personal benefits, rationally choosing those options that serve them best without concern for others. Instead, he stresses the fundamental human need to adhere to communities such as family, neighbourhood, religious group and profession. Such communities are seen as instances of support for the individual on the one hand, but also as enforcing a sense of responsibility and moral integrity. Communities both protect and oblige their members.

If such communities adhere to modern concepts of liberal democracy, they should be in a position to safeguard the normative framework and sustainability of the public sphere. Etzioni (1995) suggests that such communities must be the backbone of democratic problem solving, under the condition that they respect the fundamental rights of one another and of their respective members. Western communitarian discourse focuses slightly more on informal than on formal organizations. As participants in the public sphere, of course, the latter are considered important expressions of professional, religious, regional, linguistic and other communities. Active adherence to particular communities is open to choice, but adherence to some communities is indispensable, according to Etzioni.

The big question one faces when applying this concept to India is whether Indian communities can be termed 'responsive' in Etzioni's sense. It is undisputed that communities put considerably more pressure on their members in India than in more individualized Western countries. Also, it appears doubtful whether these communities principally respect the rights and existential demands of other communities. In many ways, the Indian polity seems to resemble more an all-out war of all against all. Indeed, Etzioni states that while Western democracies need less individualism, Asian societies may need more emphasis on personal freedoms.

Communities in Etzioni's sense are less strictly segmented than they are in Chatterjee's. Also, they are not seen as opposed to liberal democracy or to the rule of law based on individual rights. Rather, responsiveness of the State is seen in relation to responsiveness of communitarian structures. This implies a circular reasoning: State structures need to be controlled and balanced by a vibrant civil society in an interactive public sphere. In turn, power differentials within the community must be mitigated by the rule of law.

Under the condition of adequately responsive government, there is no apparent reason why Indian communities should not be able to adapt in the course of modernization. Indeed, during my research, I have not come upon traditional communitarian sentiments obstructing liberal democracy. Rather, in the particular context of Calcutta, it is the institutional set-up of governance that does not allow coalitions of various interest groups, associations and community organizations to thrive. The polity is not based on a critical public sphere and a sense of democratic, deliberative, trustworthy discourse.

In principle, this should be possible, particularly in view of the fact that Indian community divides were originally fuzzy. They hardened only with British enumeration, imposed by the colonial decennial censuses (Kaviraj, 1991). Strict segmentation is thus seen as a result of foreign divide-and-rule strategies. Indeed, even today there are authors who consider communal riots in India to be the expression of modern manipulative politics at least as much as the expression of irreconcilable rifts in Indian's social fabric (Brass, 1997; Nandy, 1997).

In general, not even the respective monopolies of competing religious truths are argued to be that rigid. All Indian religions have traditions of tolerance (Madan, 1997; Nandy, 1997). Moreover, Hinduism is not a single, monolithic, codified religion. Rather, the term itself is a residual category, originally covering all the religions east of the Indus river, such as Shaivism and Vaishnavism (Kaviraj, 1995). Such arguments suggest that, at least theoretically, greater responsiveness in Etzioni's sense is imaginable among India's many communities.

There are also benefits derived from the fact that socio-political identities in India are grounded on several, often overlapping factors. James Manor (1996) adds the general divide between North and South as well as regional, class, educational and occupational characteristics to the conventional categories of caste, religion and language. He stresses that 'tensions do not become concentrated along a single fault-line in society' (p. 463), as many of these categories cut across one another. Accordingly, the multiplicity of identities lends itself to mainstream accommodationist politics. There is, thus, a potentially sound basis for a network of overlapping, responsive civil society organizations.

It must also be emphasized that the arguments of Indian communitarians revolve around patterns of cultural understanding of

oneself and of one's social surroundings. Unlike in Sandbrook's theory of the downward spiral because of a functionally overburdened State that allows strongmen to play the ethnic card in Africa, in the Indian context there always seem to be alternative possibilities for the definition of politically relevant identities.

It is also worth stressing that the literature of Indian communitarianism does not have to be read as an expression of an irreconcilable clash of communities with Western-type individualism. Rather, it can be seen as an assessment of the difficulties stemming from the difference between functional and segmental differentiation. The concern is typical of a dualist society. There is a tension between inherited attitudes and functional requirements defined by market economy and representative government. [21]

This tension does not have to lead to a collapse of the political system if communitarian attitudes were to change in an evolutionary process of adaptation. In the words of T.N. Madan (1997: 275), 'whatever is difficult is not impossible, but it is important to recognize the difficulties as far as possible in advance'. Indeed, to a certain extent Indian communitarians are running the risk of throwing out the baby with the bathwater by aggravating the crisis discourse without indicating any clear strategy of alleviation.[22]

If my findings can be generalized, a healthy adaptive process is made less likely by a governmental set-up that is unresponsive and does not allow trust to evolve in a democratic public sphere. Indeed, as the scrutiny of cases of public interest litigation in the rest of this book will show, administrative bodies are a serious impediment to a democratic public sphere. The reason is that they do not allow actors of civil society much scope for responsive interaction, neither among one another nor with the State.

This chapter has introduced a distinction between the terms 'civil society' and 'public sphere'. It has elaborated why both are indispensable for democratic governance and in what sense neoliberal and leftist positions are converging in this respect in recent

[21] To a great extent the tension exists in all liberal democracies. As has been discussed above, all nation states are under constant modernization pressure. Again, the challenges are plainly more daunting in India.

[22] The related subaltern studies school does something similar; by emphasizing undeniably destructive historical roots of subaltern, un-democratic attitudes, this paradigm unwittingly becomes a source of legitimating an unsatisfying present as a presumably inevitable consequence of a dark past.

development debate. In India, we have seen that there is a potential basis for a vibrant civil society in the form of a multitude of different but overlapping dimensions providing identity (e.g. language, region, religion, caste, profession). However, the undeniable existence of illegitimate and irresponsible power cartels shows that by no means is all well with the public sphere. Democracy in India is neither totally eroded nor firmly established beyond any doubt.

The issue of the public sphere will be further debated in the remainder of this book. Chapters 3 and 4 examine the changing role of India's judiciary and the emergence of environmental policies. This discussion will set the stage for the empirical findings.

CHAPTER
THREE

The Changing Role of the Indian Judiciary

A strong ambivalence clouds the public image of the Indian judiciary. On a superficial level, it reflects the shaky state of India's democracy. Both are basically in place, but both are also seriously troubled. Galanter (1984: 500) summarizes the public's perception as follows:

> Courts in India are viewed with a curious ambivalence; they are simultaneously fountains of justice and cesspools of manipulation. Litigation is widely regarded as infested with dishonesty and corruption. But courts, especially High Courts ... are among the most respected and trusted institutions.

To judge by recent literature, this ambivalence has increased. On the one hand, judicial activism is seen as a sign of hope to set shortcomings right. Social awareness, insistence on human rights and the attempt to check governmental lawlessness are said to have 'transformed the Supreme Court *of* India into a Supreme Court *for* Indians' (Baxi 1994a: 143, his emphasis). In the words of a former Supreme Court Justice, 'the judiciary has ensured that howsoever

high you may otherwise be, the law is above you' (Khanna, 1999: 25).

On the other hand, symptoms of inefficiency haunt the courts as they do other state institutions. The courts are not free of corruption (Khannabiran, 1995). The legal process is even said to have become 'more and more intractable, dilatory, whimsical and protective of the criminal and law breaker having influence or financial clout' (Anand, 1996: 16). There are serious complaints of 'widely reported allegations of judicial misconduct and a disconcerting compromise of integrity and impartiality' (Jethmalani, 1999: 22).

This mixed picture is reinforced by a recent assessment of a high ranking expert group including a former chief justice of the Indian Supreme Court, A.M. Ahmadi (Chodesh et al., 1997:5):

> Widespread and profound backlog and delay currently undermine the fundamental priorities of a law-based society. Backlog and delay in the resolution of civil disputes in India erode public trust and confidence in legal institutions, and act as significant barriers to India's chosen path to social justice and economic development. The inability to enter final legal decisions within a reasonable time renders state action functionally immune, turns obligations to perform contractual duties into effective rights to breach with impunity, and devalues remedies eventually provided. In sum, the inability to resolve disputes in a timely manner eviscerates public and private rights and obligations.

While it is acknowledged that trials are delayed throughout the world, the authors go on to state that 'nowhere, however, does backlog and delay appear to be *more* accentuated than in modern-day India' (Chodosh et al., 1997; 5f, their emphasis).

The same essay, however, mentions signs of hope. Most important, it suggests that court administrations and case management be reformed. Such reforms should dramatically enhance the efficiency of the judiciary. They include computerization, systematic classification of cases, comprehensive tracking of ongoing proceedings, and similar measures. The essay stresses the remarkable success of reforms along these lines that were initiated by A.M. Ahmadi in the Supreme Court: 'These initiatives dramatically reduced the Supreme Court caseload from approximately 120,000 cases in October 1994 to 28,000 cases in September 1996' (Chodosh et al., 1997: 12f). The essay also places hope on alternative dispute settlement through, for instance, *lok adalats*, or people's courts.

Chodosh et al. stress the relevance of a trustworthy and efficient

judiciary for a 'diverse and exploding population, the largest democracy and the seventh largest national market in the world' (p. 7). They mention 'the recent drive toward greater accountability in public administration' and the relevance of judicial reliability in view of 'post-1991 market reforms'. In a nutshell, their analysis once again reflects the exigencies of functional differentiation and modernization as discussed in Chapter 2.[1]

In order to sociologically assess the role of the courts in India's democracy, this chapter first delves into history. The first section looks at how the trials and tribulations of the legal system during British rule have been discussed in academic writing. The second section deals with the relation of the judiciary to the other branches of government in independent India. The third section then focuses on public interest litigation, the clearest expression of judicial activism to clean up state affairs in contemporary India. It was initiated two decades ago and has since been gaining momentum.

3.1 Problematic Rule of Law in a Historical Perspective

Generally speaking, there are reasons to be sceptical about the capacities of the judiciary in developing countries (Betz, 1996). Poverty, lack of education and social exclusion in general reduce access to the legal system. Poor infrastructure is likely to limit the judiciary's scope to urban areas. Not all judges can be expected to play by the official rules. All these admonitions make sense in the Indian context. Even more so, they must have made sense at the time of the British Empire.

Indeed, the British did not firmly establish their ideas of rule of law in colonial India.[2] Cohn (1990) describes the problems of the judicial system during that period. According to him, the courts were used more to harass people than to settle disputes. Corruption was rampant and legal matters would drag on for long periods, providing

[1] In line with such an assessment, the proposed reforms are result-oriented rather than emphatically ideological.

[2] As a matter of fact, it may also be doubted that the way legal matters were dealt with in Victorian Britain would meet standards considered normal and fair in today's United Kingdom as governed by Tony Blair's New Labour government. 'Western' modernity is not a static, ahistoric social setting but rather undergoes constant change.

opportunity for more bribes and a constant source of income for lawyers. The enforcement of court rulings was not to be taken for granted.[3]

A similar picture emerges from other academic writing (Mendelsohn, 1981; Washbrook, 1981). The 'pathology' of the Indian legal system is considered to be rooted in 'a turbulent agrarian structure' which was in turn 'reflected in an immensely problematical judicial system' during colonial rule (Mendelsohn, 1981: 859). Similarly, Washbrook (1981: 670) sees the inefficiency of the judicial system as a consequence of the needs of the colonial power. The East India Company had subjected India 'less to the rule of property and law than to that of bureaucratic despotism and state monopoly'.

Washbrook criticizes Cohn for blaming the sorry state of the legal system on attitudes of the Indian subjects of British rule rather than on the colonial power itself. He stresses that the East India Company did not set up a judicial infrastructure powerful enough to enforce its rulings. Corruption was rife, appeals might intolerably prolong individual litigations and the courts were run by incompetent personnel who were incapable of jobs more important for the colonial regime or who, after retirement, needed some additional income. Moreover, the insistence on British conventions of mostly written evidence was unrealistic.[4]

Later in the 19th century, judicial institutions were only very slowly and, overall, inadequately enhanced. Washbrook makes out an ambivalence on the side of the British. They did have an inherent economic interest in liberal, market-friendly legislation on the one hand, but, for political reasons, also were keen to maintain a system of personal law alien to individual landed property on the other.[5]

According to Washbrook, the colonial power depended more on controlling the country than on introducing liberal standards of rule of

[3] From a functionalist perspective, it is more interesting to note that the courts could (and can) be used for harassment. It is less relevant to try to explain this through attitudes and disposition of the people. If the legal system operates in such a dysfunctional manner, that is likely to shape the expectation people have. One should not blame the people going to court for the fact that the judiciary does not settle conflicts but rather prolongs litigation (Kidder, 1973).

[4] Cohn similarly leaves little doubt that rule of law was not of high priority for the colonial power.

[5] In this sense, the British, in a policy of divide and rule, created or at least exacerbated the communitarian binds that are today sometimes seen as traditional obstacles to the viability of democracy after the British model.

law. After the authority of the East India Company had been shattered by the early nationalist uprising of the 'mutiny', the continuously problematic reality of the legal system reflected delicately balanced power arrangements. Such informal coalitions included the colonial bureaucracy and local landlords, urban commerce and, from the early 20th century on, local industrialists.

In a similar vein, R. Sudarshan (1985) analyses the legal system in post-independence India. He points out that the British approach to law was not abandoned in 1947 and therefore must have served some domestic needs. The suggestion is that it actually was useful to broker compromise between powerful landowners and a strong domestic bourgeoisie.

While not being totally implausible, Sudarshan's approach subordinates the judiciary (and the State apparatus as a whole) to the forces of class struggle. This implies that the judiciary is not conceived as a source of socially relevant power that, in its own right, might be expected to have an impact of society. Whereas law and judiciary are seen as depending and thriving on their basic autonomy in systems theory, they are 'only' part of a more or less irrelevant superstructure in the Marxist view.

More generally speaking, the problem with the Marxist paradigm is as follows: It is always possible to analyse social history along its lines in retrospect, but its prognostic qualities are doubtful, to say the least. In this sense, the chaos theory approach of contemporary systems analysis in terms of functional differentiation has the advantages of being based on the notion of contingency from the outset and of not being teleological.[6]

Recent Indian history does confirm the potential of the judiciary's autonomy. Its upper echelons have been playing an increasingly assertive and important role. This was essentially recognized by R. Sudarshan in a later essay (1990: 60) on the political relevance of the judiciary: 'With the exception of the judiciary to some degree, no other institution appears to have realised the importance of the quest for the idea of state.'

[6] In a free interpretation of Luhmann it might be said that, at the end of the 20th century, it seems more advisable to expect the unexpected than the eventual triumph of the working class.

3.2 The Courts and the Political System

At independence, India was seen to be subjected to the rule of law in a modern sense. After all, the British legal system was basically maintained and a new constitution put in place that combined the principles of liberal democracy with socialist aspirations of general equality and welfare. Today, there is a strong sense of disillusionment. The concept of universalist legalism, of equal rights, in fact of the very rule of law, has been said to be alien to Indian tradition (Baxi, 1982).

However, as in the above discussion of the 'state erosion' theory, it is again doubtful that matters were all that different immediately after independence. Why should the Indian public have had a better understanding of law and judiciary then, if undemocratic attitudes are prevalent today? And if courts today suffer from the same symptoms they showed during colonial rule, why would it have been all that different immediately after 1947?

Rather than seeing the idea of rule of law as inherently alien to the Indian mindset, it is interesting to note the high relevance of legal experts in the struggle for independence, for instance Gandhi, Jinnah, Nehru and Ambedkar. Indeed, the use of constitutional law was intended to reach a wide societal comprise, and not only between competing capital factions. In spite of undeniable difficulties, it is clear that it has not failed to serve the nation. On a fundamental level, it is important to emphasize that today's legal system is an Indian institution, and not simply something left behind by the former colonial power.

The Indian constitution does have some inherent ambiguities. It stresses property among personal, inalienable rights and thus protects the traditional social structure. The directive principles of the constitution have strong redistributive qualities and thus call for the transformation of society. In general, old laws protecting privileges are actively enforced, whereas reforms in favour of the oppressed, meant to foster social change, are inadequately implemented (Baxi, 1994a). Moreover, parliament and state assemblies pay scant attention to the issue of implementation while drafting reform legislation (Sivaramayya, 1993). Reservation policies have not only benefited disadvantaged sections of society, but also re-emphasized the

relevance of caste, which is officially abolished by the constitution (D. Kumar, 1992; Béteille, 1997a).[7]

In any case, a latent sense of lawlessness is, of course, reinforced by the fact that those holding political office or positions of the civil services are not expected to play by the rules themselves. Bending or evading rules is often understood to be an appropriate way of wielding power (Baxi, 1982). It is obvious that court procedures in this context will tend to be considered volatile and subject to personal manipulation and arbitrary decision-making rather than the application of impersonal, abstract rules to specific cases.[8]

However, such negative assessments are only one part of a mixed picture. The other is a long-standing, surprising propensity in India to hold the judiciary in high regard (Gadbois, 1985; Sudarshan, 1985; Galanter, 1989; Chodosh et al., 1997). It is largely perceived to be independent of politics and comparatively less affected by corruption. Its integrity is considered to be the basis of its power. In retrospect, the judiciary (particularly the Supreme Court) has been the most effective opposition to the central government. This can already be stated for the Nehru era.

From the prime ministership of Jawaharlal Nehru to his daughter Indira Gandhi's first term in office, the Indian Supreme Court was not seen as an ally of the poor and oppressed. Rather, it was considered to be a conservative protector of the economically better-off (Sudarshan, 1990; Rudolph and Rudolph, 1987). Nehru was in favour of radical land reform. But the Supreme Court insisted on full financial compensation of former landlords, reducing the Indian Republic's redistribution options. Nehru repeatedly criticized specific rulings,

[7] As argued already in Chapter 1, increased assertiveness of the Scheduled Castes and Tribes and perhaps also the Other Backward Classes is a consequence of deliberate policies meant to enforce equal citizenship. It is part of the paradox of affirmative action anywhere that it emphasizes and thereby reinforces the distinctions of caste, gender or–in the case of the United States–race that it attempts to transcend. However, once such difficulties become apparent after decades of reservation policies, they should not obscure the fact that there has been social change, mostly to the benefit of individual members of the deprived social groups.

[8] In this study of courts in Bangalore and Mysore, Robert L. Kidder (1973: 123) states that 'the skills developed by the various specialists of legal administration and the interest structure which has evolved within and around the bureaucracies of legal administration have produced a maze of such intricate and unstable practices and relationships that the legal system cannot provide predictable, decisive, final outcomes through knowledge of, and appeal to, "the law" in Bangalore'.

but, being a trained lawyer himself, he never put the judicial processes or institutions in doubt (Gadbois, 1985).

Indira Gandhi did not follow his example. She intended to nationalize the Indian banking sector and abolish the privy purses and other privileges of the nobility that had formally ruled the Indian princely states in colonial days. The Supreme Court overruled her decrees as not being in line with the constitution. This led to a full-blown attack by the prime minister on the Supreme Court.

Indira Gandhi portrayed the government as being obliged to pursue socialist policies by Part IV of the constitution, the Directive Principles of State Policy. She accused the Supreme Court of not being committed to these goals and instead stubbornly defending inequitable property arrangements in favour of a privileged few by its insistence on the fundamental rights laid out in Part III. The prime minister claimed that the directive principles were superior to the fundamental rights. She also insisted on the notion of parliamentary sovereignty and attacked the notion of legislations being judicially reviewed.

In its 1973 *Kesavananda* ruling, the Supreme Court granted that parliament was entitled to amend fundamental rights. However, it also insisted on the Supreme Court's duty to defend the 'basic structure' and the 'essential features' of the constitution. These included, among others, judicial review, the federal structure of the State, and the principle of free and fair elections. The Court thus upheld its right to check legislation while basically accepting that the contradiction between Parts III and IV of the constitution granted parliament space for far-reaching amendments.

Two years later, the Allahabad High Court ruled that there had been irregularities in the election campaign and that Indira Gandhi was consequently to lose her seat in the Lok Sabha. This led to the imposition of emergency rule by the prime minister. In 1976, during her dictatorship, Indira Gandhi had parliament pass the 42nd Amendment. It radically limited judicial review and writ jurisdiction. The amendment granted parliament unlimited constituent powers. It legally subordinated the fundamental rights to the directive principles. Property rights were amended according to Indira Gandhi's redistributive policy approaches.

In what were surprising political developments, Indira Gandhi first lost the 1977 general election and then won the 1980 general election. Four months after her return to power, the Supreme Court

upheld its 1973 Kesavananda doctrine, undoing much, but not all, of the 42nd Amendment. Property rights (and, as will be discussed in Chapter 4, Section 4.1, environment principles) were upheld according to Indira Gandhi's terms. The Court did, however, reclaim judicial review and vast writ petition competences.

After the legal breakdown of emergency rule, the Supreme Court had to reassert its position. R. Sudarshan (1990:55f) assesses the situation as follows:

> [The Supreme Court] sought to refurbish its image with a new activism which championed the rights of those who are prevented from claiming the privileges of full citizenship because of social and economic disability. The success of the [Supreme] Court's attempt to open its doors to new constituencies, and its efforts to curb the lawlessness of government and enhance public accountability, greatly depend on the strength of social action movements which have produced a new consciousness about problems and struggle for survival of the poor.

Akhileshwar Pathak (1994) also interprets the move towards public interest litigation as an expression of the ongoing conflict between parliament and the Supreme Court. The latter, after the emergency rule in the late 1970s, sought to assert its position by espousing the cause of the poor and disadvantaged strata of society. This was all the more so, as several Supreme Court justices had been politically close to Indira Gandhi and had been perceived as favouring her even though they had 'stopped short of overtly legitimating the emergency regime' (Baxi, 1985: 293).

The current trend of insisting on liberal legalism at the upper ranks of the Indian legal system can thus be traced back to the traumas of Indira Gandhi's brief dictatorship. Ever since, liberal legalism coincides with what is publicly perceived as governmental lawlessness. Clearly, the judiciary is reacting to such lawlessness, struggling to assert its own position in Indian society. The role of courts depends on the rule of law. It therefore comes as little surprise that judges are in the forefront of this conflict (Ganguly, 1977).[9]

Generally speaking, scholarship regards judicial activism as a sane reaction to incidences of governmental lawlessness (Agrawala,

[9] In a cynical vein, one might even say that, in an overall corrupt State, members of the judiciary can only take a share of the spoils if they make sure that a minimal level of rule of law is maintained. If legal provisions were to become totally obsolete, so would the courts of law.

1985; Baxi, 1996; Béteille, 1997a; Conrad, 1995, 1997). Claims that the judges are overstepping their competences and need to be curbed are common in the media and quite obviously motivated by political interests. This line of argument misses the point that the judiciary in India has not interfered with administrative powers that were being exercised according to the law (Spathe, 1997).

What gives its activism particular potential clout is that the Indian judiciary enjoys an especially high degree of autonomy (Galanter, 1984). The chief justices of the Supreme Court and of the High Courts determine the agenda and the personnel of the benches. Judges actively direct proceedings, admitting and even inviting parties and witnesses. They enjoy life-long tenure and high public esteem. The Supreme Court is the only central judicial institution. It deals with cases of any kind and binds the lower courts with its decisions. By assuming the authority of appointing judges of the two highest judicial levels, the Supreme Court in 1993 further enhanced its already high autonomy (V. Kumar, 1996).

From a sociological point of view, it is also interesting that judges are a very homogeneous group. They share the same background of higher education and the professional use of English. It is not surprising that such common ground has served as a basis for judicial activists.

Unsurprisingly, this has given rise to the critical notion that they have become overactive. The question of judicial accountability is on the public's agenda, with regular claims of politicians and bureaucrats that the judges are overstepping their competences (V. Kumar, 1996; Bhatia and Singh, 1993). In this context, it is important to remember that the esteem in which the Indian public holds the judiciary is high only in relative and not in absolute terms. The courts have a better reputation than, for instance, the bureaucracy or the police.

Nevertheless, the judiciary is itself not necessarily beyond reproach. To many, it appears corrupt and even increasingly so (Anand, 1996; Kannabiran, 1995; Bhatia and Singh, 1993; Jethmalani, 1999). Chandra Pal (1993) points out that inadequate pay and pensions along with the convention of governments appointing retired judges to high-profile, well-paid commissions put judicial independence in doubt. Judicial activism is therefore by no means unproblematic. Its controversial instrument is that of public interest

litigation. This 'crowning glory' of the judges (Baxi, 1996: I, 11) will be discussed next.[10]

3.3 Public Interest Litigation

Essentially, public interest litigation consists of writ petitions by people who are not immediately affected by the grievances cited. Social workers, journalists and other politically aware persons now file petitions if they feel that certain matters are of public relevance (Agrawala, 1985; Baxi, 1985; Iyer, 1985; Galanter, 1989; Hurra, 1993; Baxi, 1994a; Ahuja, 1994; Jethmalani, 1995).

The new activism of the courts goes along with a sense of public awareness fostered by the press (Baxi, 1985). After having themselves been exposed to illegitimate violence during the emergency of 1975 to 1977, many members of the Indian middle classes became more aware of the importance of the rule of law. They were less willing to tolerate violations of human rights of members of disadvantaged social groups.

The judiciary assumed an activist role. A good example is what one might call 'epistolary jurisdiction', the fact that Supreme Court justices have gone so far as to accept mere postcards concerning infringements of fundamental rights as writ petitions (Agrawala, 1985; Iyer, 1985; Rudolph and Rudolph, 1987). Public interest litigation has been on the rise since the early 1980s and has 'brought justice to the doors of those who live a hand-to-mouth existence and are illiterate and unorganized' (Prakash, 1984: 332).

Human rights issues, such as those of detained but untried prisoners, industrial relations, as in the case of labour bonded by debt, and environmental matters have been subjects of such litigation (P. Singh, 1985, 1990). There has been a noteworthy trend towards environmental litigation (P. Singh, 1985; Shastri, 1990; A. Sharma, 1993; Mukul, 1997). Issues dealt with by the courts include domestic violence and dowry deaths (Jethmalani, 1995), the situation of institutionalized mentally ill persons (Dhanda, 1990) and even the

[10] Upendra Baxi (1985: 290f) prefers the term 'social action litigation' because he sees it as primarily serving the needs of India's deprived masses. However, this term does not emphasize that the rule of law is not only relevant in terms of class strife but is indeed an issue of public interest. Therefore, I find 'public interest litigation' more appropriate.

social acceptance of homosexuality (Balasubrahmanyan, 1996). In the mid-1990s, the judiciary began to tackle the issue of corruption by taking up public interest litigations. As Manoj Mitta pointed out in *India Today* (15.2.1966), 'to many legal observers… the Supreme Court's assertive role in the Jain hawala case wasn't one it had suddenly assumed'.

The judiciary has thus become a potential ally of individual citizens and of action groups insisting on better performance of State institutions. It has 'become a byword for judicial involvement in social, political and economic affairs', with a range so wide that 'anything under the sun is covered under the rubric PIL' (P. Singh, 1992: 239).

Public interest litigation thus provides an important forum for agents of civil society to stake their claims. It has turned the judiciary into an arena in which government lawlessness and malfunctioning are debated, providing public exposure and, to a certain extent, relief for frustrated and even traumatized citizens. However, the impact of public interest litigation must not be overestimated.

Basically, there are three factors that put its success in doubt. The first is the unreliabiliy of court-order enforcement, the second is the limited access to a remote, English-speaking judiciary, and the third is the inherently slow and onerous judicial administration. In other words, many of the phenomena of government malfunctioning reappear in connection with public interest litigation, an instrument applied in an attempt to purge them.

Parmanand Singh (1992) generally questions the effectiveness of public interest litigation and suggests more research is needed to understand its impact on social movements and Indian society in general. Particularly the enforcement of judgements cannot be taken for granted. As early as 1985, S.K. Agrawala (p. 41) found it 'highly questionable if there has been tangible improvement in administration in any arena through PIL'.

B. Sivaramayya (1993) and Madhu Kishwar (1994) appreciate progressive rulings by the Supreme Court but complain that the judgements were not enforced by the administration, which thus rendered the public interest litigation futile. They suggest that public interest litigation may be more beneficial for the public profile of the lawyers and the social activists involved than for the marginalized people suffering from governmental lawlessness. Kishwar emphasizes

that proceedings in English do little to empower uneducated and otherwise deprived people.

According to Marc Galanter (1989), public interest litigation tends merely to react to episodic cases of outrage. It still depends largely on legal initiatives of members of the middle classes because poverty, lack of literacy and scarce legal knowledge deprive oppressed strata of Indian society of access to the courts.

Sivaramayya (1993: 296) even concludes that public interest litigation appears to be more a 'sedative' than the 'cure' and that 'its effectiveness' is 'limited to the judicial arena'. His empirical base for so vast an assessment, however, is one single, admittedly prominent, case concerning illegally bonded labour near Delhi. Oliver Mendelsohn (1991: 67), dealing with the same case, found that, indeed, 'nothing much' had changed for the workers concerned after the Supreme Court intervention.

Other authors are more optimistic, granting that public interest litigation judgements did result in some improvements on the ground (Dhanda, 1990; Mehta, 1996; Jethmalani, 1995). However, in the Indian context, the enforcement of judgements can no more be taken for granted than the implementation of laws. This comes as little surprise, as both would have to be carried out by the very same administrative bodies.

In principle, the judiciary can resort to contempt of court proceedings. Disobeying court orders is a criminal offence. Prison sentences are possible. However, they appear to occur rarely, as do proceedings for contempt of court. Agrawala (1985) writes that the judiciary thus avoids confronting high-ranking officials head on. This is particularly so, as it might be difficult to prove wilful contempt of court by holding individual members responsible for the shortcomings of an entire bureaucracy. Sadly, there has been reason to warn judges against abusing the instrument of contempt of court as a means to silence critical voices (Khanna, 1999; Narayanan, 1999). It seems irritating that judges might rather sue persons who find their rulings worthy of serious public debate than those who not even find them worthy of obedience.

Equally troubling is that the very enforceability of court orders appears to be questionable in many instances (Delhi Janwadi, 1997; Economic and Political Weekly, 1996; Kishwar, 1994; Sivaramayya, 1993). Dealing with environmental matters, Banerji and Martin (1997) claim that the Supreme Court does not have adequate technical

know-how and should refrain from giving detailed, unrealistic orders. Ashok Sharma (1993) mentions similar concerns. This admonition is all the more relevant as the credibility of the judges 'depends wholly on the conviction that the relief granted by the Supreme Court is enforceable' (Agrawala, 1985: 34).

The efficiency of public interest litigation is further undermined by the fact that court administrations, like other bureaucracies in India, do not have the reputation of being fast and efficient (Kishwar, 1994). Public interest litigations may drag on for years. For petitioners this is highly frustrating, particularly if the court is far away, perhaps in Delhi or a state capital. Conrad (1995) warns of the judiciary running the risk of overburdening itself by taking up too many politically controversial issues.

Such efficiency problems are exacerbated by the excess workload of Indian courts. They are generally perceived to be poorly equipped in terms of manpower and facilities. Some 600,000 cases were pending before the Supreme Court and the eighteen High Courts in 1978 (Baxi, 1982: 61). That figure dropped to 500,000 by early 1996 (*Economist*, 23.3.1996: 63).

As discussed in the opening section of this chapter, administrative reforms and computerization have dramatically shored up the judicial process in the Supreme Court. However, such reforms still need to be implemented in the High Courts. The assessment of Chodosh et al. (1997:4) for what was to be expected of judges working under normal conditions is bleak: 'Judges are so under-paid and over-worked that they often adjourn and delay the preparation of a case, if only to put off the demands of reaching a decision.' The frequent transfer of justices from one bench to another or, even more so, from one court to another, was said to serve as an incentive for such strategies.

Obviously, public interest litigation proceedings are prone to be as erratic as the institutional setting they are undertaken in. Even the enthusiastic supporter of judicial activism Upendra Baxi (1994a) bemoans that not all courts – and much less all judges – are progressive.

Most of this criticism of public interest litigation held true in the empirical cases of environmental disputes I studied in Calcutta. As will be elaborated in Chapters 5 to 7, court proceedings tended to be long and potentially frustrating. Judgements were by no means automatically enforced. Some of them were technically inadequate. Nonetheless, the situation was often affected for the better, provided

the petitioners kept up the pressure on the government by monitoring the results of litigation. Even then, however, results might diverge from what was ordered by the judges.

It can be generalized that, through the instrument of public interest litigation, the judiciary has become a forum in which to debate governmental lawlessness. It can provide some transparency and, while not being a guaranteed road to relief, it does provide at least a chance of improvement. It is strengthening the sense of public sphere by forcing government agencies to become involved in serious discourse with citizens in an arena that is not as inconsequential as promises on the campaign trail tend to be.

My findings do not support a regularly vented concern in the Indian discussion of public interest litigation, that of litigation depoliticizing (Ray, 1997, Raj 1996a; Baxi, 1994a; Economic and Political Weekly, 1996) and thus weakening social movements. Rather, public interest litigation appears to be an increasingly important resource for political movements. It needs to be accompanied by monitoring and other mobilizing activities. This suggests that the concern that legal action may deprive social movements of their scope might be a primarily academic one.

The struggle for a democratic public sphere is waged in all arenas of public life. This study is concerned with the arena of environmental politics. In the case of Calcutta, the courts have become probably the most important forum in this respect, with some, but not altogether convincing consequences. However, it would be cynical to dismiss public interest litigation as an irrelevant epiphenomenon. It has had some effect on actual conditions, and that is more than many would expect under the circumstances of poverty and human resource underdevelopment in India. The role of the judiciary has changed since colonial rule; it is no longer to be perceived as a primarily oppressive system (Baxi, 1994a). Rather, it has to a certain extent become a centre of activism to clean up the State apparatus, while still being affected by some malfunctions itself.

We will return to this topic in the case studies after a discussion of environmental politics in India in the next chapter. It will again illustrate that the gap between the ground reality and official policies tends to be unacceptably wide.

CHAPTER
FOUR

Environment and Politics in India

The widespread assumption that the environment is of concern for advanced societies but not for developing countries is wrong. This is evident in South Asia. According to Anil Agarwal (1994: 346), the environment is 'an idea whose time has come in India'.

For more than two decades, there has been a lively environmental debate along with a high degree of legislative activity in India. Of course, this intensified as a consequence of the Bhopal gas leak in 1984 (Khator, 1991; Krishna, 1996), which led to the Environment Protection Act of 1986. However, there is vast agreement that the results of various reforms and regulations have been disappointing. Implementation has been poor. India's course of development is most likely unsustainable (Paulus, 1992). Its current development strategy is therefore increasingly disputed along lines of ecological considerations (Hörig, 1995).

According to a World Bank analysis (Brandon and Homman, 1996), the total cost of environmental damages in 1992 amounted to 9.7 billion US dollars in India. This was the equivalent of 4.5 percent

of GDP. The comparative figures for China and Mexico were 2.6 and 3.3 percent of GDP. In industrialized nations the annual environmental damage was estimated at one to two percent. Anil Agarwal (1996) considered the World Bank data for India to be underestimated as they did not account for the loss of biodiversity, health costs due to hazardous waste and deforestation impacts other than timber depletion.

Air and water pollution and lack of sanitation, garbage and sewage disposal and other basic urban services severely hamper the development of India's cities. The prime ecological worries in India's rural areas are soil erosion, deforestation, water pollution and the scarcity of safe drinking water. In the cities, up to one-third of household wastes are never collected by municipal services (Venkateswaran, 1994). The situation is particularly bad in slums, which house at least one-fifth of India's urban population. Up to three quarters of Indian city dwellers lack sanitation (J.M. Rao, 1995a).

Overall, India's environmental situation in bleak. J. Mohan Rao (1995a) claims that 60 percent of agricultural land is degraded to varying degrees. Semi-arid and fragile soils have been brought under the plough. Waterlogging, erosion, salinization and overgrazing add to the depletion. While the government targets one-third of the nation's land to be covered by forest, the ratio had dropped below 20 percent by the late 1980s. Seventy percent of surface waters are seriously polluted. Eighty percent of the population do not have permanent access to safe drinking water.

Such data prove that India needs effective environmental policies. Indeed, the issue has been of political concern since the early 1970s. This is discussed in the next section. Section 4.2 scrutinizes deficiencies in implementation. The failure of environmental policies has triggered opposition and social movements in India (section 4.3). The last section of this chapter reconsiders these phenomena in the case of the Calcutta agglomeration. Throughout this book, the emphasis will not so much be on the physical reality of India's environment, as it would be in an engineering context. As this is an effort in sociology, the focus will be on academic assessments of environmental initiatives and even more on governmental and semi-governmental reports that are normally expected to serve as guidelines for State action.

4.1 The Emergence of Environmental Policy

In the early 1970s the environmental feasibility of economic growth became an issue of governmental concern in its own right for the first time in India. The impetus came from the 1972 United Nations Conference on Human Environment in Stockholm. This reflected the international trend.

Before, there had been environmentally relevant disputes, for instance, over the use of water or forests. In the case of India, such historical developments have recently been of academic interest (Gadgil and Guha, 1992; Arnold and Guha, 1995). However, it was only when the very survival of humankind was perceived to be threatened because of ecological degradation that environmental policies and bureaucracies began to emerge on national and international levels (Jänicke and Weidner, 1997, Jänicke et al., 1999). The Stockholm conference was of lasting impact in this sense.

As elsewhere, the environmental challenge was initially seen primarily as a threat to economic development in India. As quoted by Renu Khator (1991: 23), Prime Minister Indira Gandhi summed up this point of view in her address to the plenary session of the conference on 14 June 1972, stating:

> On the one hand the rich look askance at our continuing poverty, on the other they warn us against their own methods. We do not wish to impoverish the environment any further and, yet, we cannot for a moment forget the grim poverty of large numbers of people. Are not poverty and need the greatest polluters?

In this perspective, environmental protection appeared to merely increase the costs of economic activity. It was thus considered unaffordable for developing countries. Environmental worries were seen as a concern mainly of the rich world–and yet another means to keep the poor world poor (Paulus, 1992). To some extent, this perspective still prevails. In the words of J. Mohan Rao (1995a: 681), 'many in India today including government officials … regard the environmental lobby as a child of northern conspiracy and northern funding'.

Even back in 1972, however, this was not the only attitude. Indira Gandhi returned from Stockholm having become something of an environmentalist herself. Renu Khator (1991) lists several reasons

why this prime minister with autocratic tendencies became interested in the issue. Indira Gandhi saw herself as a leader not only of her nation but of the Third World in general and was therefore eager to pursue what she saw as a progressive issue. More important, she used this, and other issues, to centralize power. Forests, water and energy had previously fallen exclusively under state legislation. Pressing environmental concerns provided an opportunity for constitutional reform, increasing the influence of the central government.

Finally, Indira Gandhi perceived the chance of using environmental issues in order to politically mobilize mass frustration by predominantly symbolic means. Khator labels the attempt to deal with environmental challenges without affecting the economic and social basis of the Indian society as 'politics of reconciliation' (1991): 22). While this may appear disappointing, it must be emphasized that it is typical of emerging environmental policies the world over to be chiefly symbolical at first (Jänicke and Weidner, 1997, Jänicke et al., 1999).

In 1974, the Water (Prevention and Control of Pollution) Act was passed. Since then, there has been ample legislative activity in India (Pathak, 1988). In 1976, the constitution was amended in order to include environmental protection among the principles ruling State policy and even individual behaviour:

- The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife. (Art. 48A)
- It shall be the duty of every citizen of India … to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. (Art. 51A)

International environmental politics continued to affect the Indian government, as has been exemplified by the Montreal Protocol, the international agreement to phase out ozone-depleting substances. While Indian diplomacy played a role in securing funds for poor nations to pursue this goal, the government had difficulty in developing a national strategy (Sims, 1995).[1]

[1] Of course, there are technological problems involved here. However, implementation problems are also predictable, particularly as small-scale industries account for some two-thirds of the chlorofluorocarbons applied in India.

4.2 Implementation Deficits

The 1974 Water Act serves as the paradigm of Indian environmental legislation and of its failure to achieve the desired goals. Khator (1991: 72) states that 'from the very beginning, several loopholes existed in the Water Act, making it symbolic in nature and ineffective in practice'.

The Act established a network of State and Central Pollution Control Boards, but their hierarchy and responsibilities remained unclear. Neither acceptable limits of pollution nor clear time spans for their implementation were defined. Municipalities had been identified as the main polluters of India's water bodies, but they were not made liable for prosecution.

By the mid-1980s, Khator (1991) counted more than fifty different items of environmental legislation in India, thirty of which dealt with pollution alone. There were various programmes of the central and state governments for afforestation and soil conservation. Major policy issues such as the prevention of air pollution and environmental protection in general became the jurisdiction of the Pollution Control Boards. In addition to their network, India today has a full-fledged Ministry of the Environment. It was initially established as the Department of the Environment in 1980 and turned into a ministry in 1985.

The vast bureaucracy did little more than create awareness and establish a monitoring network. According to Khator (1991: 100), the achievements of this organizational endeavour can be 'summed up in a few sentences':

> The rate of deforestation has not been reduced; the level of pollution in water has not been decreased; and the quality of air has not been improved in any significant way….Even after ten years, the reports of the achievements of the Central Water Pollution Control Board emphasize activities rather than achievements.

As argued above, local power structures in India do not necessarily reflect constitutional aspirations. According to Khator, this also holds true for environmental regulations. She made out five core reasons for the almost complete failure of India's environmental bureaucracy:

- the cost of enforcement for local officials,
- the cost of compliance for polluters,

- conflicting interests of state and central authorities,
- rivalry with other state or central departments, and
- the politicization of bureaucratic structures.

Khator's five arguments of 1991 are briefly summarized here.

While those who formulated policies were exposed to pressures by environmentally concerned international donor agencies, those in charge of implementation of the policies were under the pressures of powerful local elites, which include the usually well-connected owners of polluting industries. Within their bureaucracies, officials were held responsible for following procedural rules but not for the results of their actions. As they were generally perceived to be prone to corruption, there was no reputation to be lost. The future careers of the mostly frustrated and alienated low-ranking bureaucrats depended on their being perceived as not causing trouble. This scenario meant that the individual cost of enforcing strict environmental standards became considerably higher than that of paying lip service to procedures and neglecting environmental standards in practice.

For the polluters, in turn, the cost of compliance tended to be higher than the cost of non-compliance. Corruption, litigation and (rather unlikely and normally low) fines were cheaper than installing anti-pollution devices. Most industries were operating under considerable pressure to cut costs in highly competitive markets. The polluters' general view was that bureaucrats could be bought. Their local power alliances with high-ranking party and State officials were based more on suspicion than on mutual interest. Business people did not normally get involved in policy processes. The cost of lobbying would again have been higher than that of simple non-compliance. This, in turn, meant that legislation tended to be unrealistic in terms of economic viability, thus reinforcing polluters' general approach of non-compliance.

Institutional inefficiency was exacerbated by the fact that state governments had to implement central government policies. The relationship between them was often characterized by animosity. Beyond formal recognition, there tended to be little concern for the needs of other government levels. Authorities at the state level were likely to see environmental regulations primarily as the central government's tools to delay projects and to interfere in state interests.

The chances of successful environmental policy were further diminished by the fact that the bureaucracy concerned was a weak

player within the rivalry of various government agencies. It had no powerful clientele, nor even a clearly defined target group. Information about the confusing multitude of environmental hazards was still scarce in India, making the cost of action appear to be higher than the costs of inaction. Finally, the environmental bureaucrats had little legal means of enforcing their policy objectives if other agencies proved unwilling to cooperate.

The politicization of the administrative bodies along partisan lines further diminished motivation and efficiency. In day to day practice, loyalty to party personnel mattered more than policy compliance.

This scenario of 1991 still was basically accurate in 1998. However, public interest litigation had in the meantime given some clout to the Pollution Control Boards, as Deb Kumar Bose, chairman of the WBPCB, and other high ranking officers told me in interviews. Industries are now more afraid of increasing fines or closures of their companies in the case of non-compliance. Environmental consultancies have become good business because companies are required to prepare environmental impact assessments and are increasingly taking this matter seriously, particularly when large sums of investment are involved.

The general impression today is that the judiciary has become an ally for those in the environmental bureaucracy committed to the goal of their institutions. Books on environmental law include extensive chapters of public interest litigation (Shastri, 1990; Leelakrishnan, 1992). Leading judges are aware of their potentially decisive role, as the following quotation of former Supreme Court Chief Justice R.S. Pathak (1998: 1178f) exemplifies;

> Where, however, there is no law on the subject it will be a question for consideration whether the [Supreme] Court, in the guise of affirmative action, can embark on a programme of environmental protection and enter into the area of law making. The Court has done so in some cases, assuming an 'activist' role, provoked no doubt by the absence of pertinent executive action or of the requisite legislation.

Nevertheless, Khator laments that Indian environmental policies have been mostly symbolic. While this complaint is common for OECD nations as well (Huber, 1991), in the case of India we are dealing with a keener perception of implementation deficits. Renu Khator (1991: 123) makes out as general deficiencies of India's institutional life:

> Lack of rationality and neutrality in officials; absence of the public trust in the bureaucracy; presence of corruption and the acceptance of this corruption by the society; existence of the alliance between the elite and the ruling party; non-accountability of technicians; and finally, the domination of political patronage in policy processes.

Gadgil and Guha (1995: 48) agree with this dismal assessment of Indian government institutions:

> Each department has developed a culture of a well-knit, highly organized group pursuing its own vested interests in an independent fashion. Of course, each department does interact with others to carve out the total share of the pie, but to no other useful purpose.

Given the sorry state of government affairs in India, it is naïve to merely suggest technocratic solutions to the ecological impasses. Specialized environmental courts, introduction of preventive strategies and modernization of public sector industries as suggested by Paulus (1992) can be of little help as long as societal conditions do not allow such instruments to operate effectively. Consequently, Paulus also demands greater transparency and public participation, as do an increasing number of Indian citizens (Qaiyum, 1997).

Granting that 'ambient standards of air and water pollution continue to be routinely exceeded and in some places quality has distinctly deteriorated', a radical overhaul of India's environmental policies has been mooted (Mehta et al., 1997: 17). In tune with the recent international debate, the argument is that restrictions and government regulations are less efficient than fiscal incentives. However, this approach has little to offer in terms of safeguarding implementation. Fiscal instruments, of course, would depend on tax collection effectively covering the entire economy, something not to be taken for granted.

There will be little doubt that the senses of ecological threats and frustration with government action are particularly strong in India. However, it must be kept in mind that the emergence of the specific policy arena in India is following a pattern that has been made out internationally (Jänicke and Weidner, 1997, Jänicke et al., 1999). It is normal for environmental politics to begin with symbolical measures and then to become more stringent over the years (not least as the result of an increasingly intense public debate).

4.3 Opposition to Government Deficiencies

In view of India's urgent ecological crisis, social protests and opposition movements have been emerging, mostly at local levels. The Chipko activities to protect mountain forests and the mass campaigns against the Narmada Dam project have gained international media coverage. They are examples of grassroots political opposition gaining momentum (Guha, 1989; Krishna, 1996; Baviskar, 1997). Madhav Gadgil and Ramachandra Guha (1994) list them as the most prominent examples of environment-related political activities throughout India.

India has a long tradition of conflicts over the use of natural resources. Disputes with a clear environmental aspect have occurred at least since the British rule in 19th century (Gadgil and Guha, 1992; Arnold and Guha, 1995). However, arguments over the right to consume forest materials or of access to water were then seen to be rather of a social than of an environmental nature (Gadgil and Guha, 1994). Ecological issues were interpreted as matters of resource distribution not concerning the long-term ability of society as a whole to survive.

Gadgil and Guha (1992) stress that up to today many environment-related conflicts in India have a sharper social edge than in the industrialized countries. The livelihood and survival of those poor who are living at subsistence level are normally harmed whenever land use, water access or urban space are in dispute (Viegas and Menon, 1989).

Sumi Krishna (1996) points out that for poor people involved in conflicts viewed as environmental by scholars or journalists, the emphasis is still likely to be on the protection of their immediate livelihood. This includes the internationally known Chipko and Narmada movements (Guha, 1989; Baviskar, 1997). In the first case, villagers' rights to access and use the forest were at stake. In the second case, farmers do not want their land to be flooded. For these movements, ecological reasoning has become a resource in the socio-economic struggle to protect livelihood. This helped to create coalitions that went beyond single communities.

Krishna compares the Chipko and the Narmada movements to similar cases in which people were mobilized along linguistic or caste lines. The former tend to be less violent and more effective in rallying

support from outside their respective regions. They also appear to be more successful in securing the livelihood of the people involved. Environmental arguments mobilize entire networks in civil society and give wider scope for successfully opposing government power. Grassroots movements emphasizing environmental aspects have found academic support. Members of India's urban elites take interest in these issues. The first widely regarded non-government documentations of environmental decay were published by the Centre for Science and Environment (1982, 1985).

Critical social scientists and economists generally demand a new development model. They claim that the current policies of structural adjustment and world market integration are adding to ecological disaster tendencies (e.g. Shiva, 1991; Arun Ghosh, 1994, Gadgil and Guha, 1995; J.M. Rao, 1995b; P. Sheth, 1997). Empowerment of the rural masses is meant to lead to greater environmental protection. Particularly the rural poor, after all, depend immediately on the biomass production of their village and surroundings.

Skeptical of reducing complexity by means of such somewhat romanticist ideologies, Sumi Krishna (1996) warns that it is very likely a misconception to believe that the rural poor are inherently more protective of the environment. Nor does she consider women to be necessarily more ecologically aware than men, as suggested by 'eco-feminist' writers (Mies and Shiva, 1993).

Sentimental visions of small village communities living in harmony with nature will easily appeal to the educated, urban elite (Krishna, 1996; Baviskar, 1997). However, for the people concerned, the day-to-day reality may be one of grim struggle for survival. Given the choice, many might indeed opt for the consumerist development model both enjoyed and despised by members of the urban environmentalist elite. Both Krishna and Baviskar basically call for more participative democracy to resolve such dilemmas. This, in the end, is politically the same demand as that made by those accused of romanticism, with the difference that Krishna and Baviskar do not expect immediate ecological relief.

As discussed in Chapter 3, public interest litigation has become an important arena for environmentalists (Shastri, 1990; Sharma, 1993). Before turning to the case studies that will elaborate such matters, it will be necessary to take a closer look at the local context of Calcutta.

4.4 The Situation of the Calcutta Agglomeration

The environmental situation of the Calcutta agglomeration and the state of its environmental polity reflect what has been stated so far for the entire nation. The Metropolitan Area faces tremendous environmental challenges, as has been amply documented on behalf of the state government itself (A.K. Ghosh, 1988, 1991; State Planning Board, 1990; CEMSAP 1995).

However, the activities of the authorities responsible have, in general, been more symbolic than effective. Opposition to inadequate and unimplemented government planning has been organized by various groups and associations, with many concerned citizens now resorting to public interest litigation. However, the activists normally are from the middle class. Their campaigns are not based on a struggle for their immediate livelihood.

This section first assesses the major environmental problems of the Calcutta area. It then examines programmatic government documents that, overall, have not been implemented. Finally, the environmentalist action groups are discussed.

Before turning to these environmental issues, it is useful to briefly discuss governance in West Bengal on a more general level. In the 1960s and 1970s this state was exposed to serious civil strife and was perhaps even the most troubled state in India. 'One measure of the chaos that existed in Calcutta in 1970 and 1971 is that, even under presidential rule, there could be as many as 60 political murders committed in a day. Politics became a dangerous profession' (Kohli, 1990: 130). Today, this no longer holds true.

In 1977, a Left Front coalition dominated by the Communist Party of India (Marxist) (CPM) gained a solid majority in the state assembly. It has since been repeatedly re-elected. It is generally considered successful in having re-established civil peace and implemented some reforms (Kohli 1987, 1990; Webster, 1992, 1995; Lieten, 1994, 1996; Chatterjee, 1997b). It is true that some writing supports the Left Front in West Bengal only with critical scepticism (Echeverri-Gent, 1992; Engelsen Ruud, 1994; Sengupta and Gazdar, 1997). Increasingly, it has been stated that the Left Front is pressing less and less for progressive social change, but rather has assumed the role of a power broker (Olnhausen, 1990; Webster, 1995). Nonetheless, even its harshest critic blames it only for not performing

above average, rather than for particular abuses of power (Mallick, 1992, 1993).

The progressive policies implemented by the Left Front were predominantly focused on the rural areas. They included a modest land reform and the establishment of village self-administration (panchayat raj). Contrary to what many well-to-do citizens of Calcutta express, the Metropolitan Area was not totally neglected. There have been noticeable improvements in traffic infrastructure and slum settlements, as is elaborated in the next sections. Nonetheless, the environmental challenges remain daunting, and some of the most important duties of city management, for instance urban planning, have not been carried out in a satisfactory way.

4.4.1 The Major Challenges

Calcutta has a reputation for 'urban decay' (B. Banerjee, 1990: 27). According to the State Planning Board (1990: 204), it is 'one of the worst polluted cities in the world'. Major problem include waste water, industrial effluents, poor sanitation and drainage, air pollution, noise, traffic congestion, and high population density (also United Nations, 1986; State Planning Board, 1990; Chakraborti, 1990; A.K. Ghosh, 1991).

A few selected data and figures from the State Planning Board's report will suffice to illustrate the dimension of Calcutta's environmental drama. Measurements of suspended particulate matter in the urban air went up to almost 420 µg per cubic metre (compared to an allowable limit of 90 µg). Sulphur dioxide and nitrogen dioxide also exceeded the allowable limits. The mean noise levels in residential areas such as Shyambazar and Gariahat rose above 80 decibels (compared to average human tolerance level of 60 to 65 decibels). Calcutta has less than half an acre of open space per 1000 inhabitants (compared to the international standard of four acres). The CEMSAP report of 1995 confirmed these trends.

The picture for waste water disposal was equally dismal: 'Calcutta and Howrah are not fully covered with underground system of sewage disposal. Most of the areas are serviced by open drains. Treatment facilities are inadequate wherever existing' (State Planning Board, 1990: 201). In some of the unsewered areas bucket latrines are still regularly emptied manually, a system causing health hazards and environmental nuisance: 'This socially degrading system is a scar on

the three hundred year old city', writes K.J. Nath (1991: 300) in his contribution to a book published by the state government on the occasion of Calcutta's tercentenary (Dasgupta et al., 1991).

The same can be said for garbage disposal. There is no overall collection from individual households (CEMSAP, 1995). Rather, the sidewalks are swept and solid waste gathered in handcarts. Labourers bring the garbage to intermediary collection points on roadsides. From there it is removed by truck to waste disposal sites on the fringes of the city. Estimates of the backlog of uncollected solid waste range from 10 to 20 percent (Chakraborti, 1990) to some 30 or even more percent (State Planning Board, 1990; CEMSAP, 1995) in the Calcutta Corporation, the best-serviced area of the metropolitan district.

Ragpickers and animals roam through the waste piling up at the roadside and in the collection points. Neither the trucks nor the handcarts are specifically designed for garbage collection (K.J. Nath, 1991). Roughly 400 tonnes of waste were estimated to be dumped daily in canals, drains and open spaces around slum and squatter settlements, creating serious health hazards (CEMSAP, 1995: 3.40). Garbage was dumped in an unorganized manner, and sanitary landfills did not exist (CEMSAP, 1995). Garbage was used by private landowners to raise low-lying terrains prior to construction of new buildings. Up to 1999, there was no separate disposal system for hospital waste.

Calcutta's urban crisis is exacerbated by several factors. First, the metropolitan district is a poor and densely populated urban agglomeration. Roughly one-third of the population live in slum and squatter settlements (United Nations, 1986). In terms of per capita income, Calcutta ranks last among India's metropolises. Petty trading and other forms of informal economic activities provide a living for large sections of the population. This agglomeration is the most densely populated urban area in India. On an average, 8000 inhabitants lived in every square kilometre in 1990, with the figure surpassing 30,000 for the city of Calcutta proper (CMDA, 1990).

Second, Calcutta's industrial base is probably the oldest in Asia. In colonial times, industrialization started on the banks of the Hoogly in the 1860s and 1870s (A.K. Mukherjee, 1992). The industrial progress of this region was stalled for several decades beginning in the 1960s. This was due to diverse influences such as labour unrest and unfavourable central planning (United Nations, 1986). Tiny

small-scale industries and a number of industrial dinosaurs surviving only on subsidies today characterize the manufacturing structure. In 1988, the metropolitan area housed almost 150,000 industrial units providing employment for some 1.2 million persons. Many units were considered environmentally hazardous, and most do not follow norms and scientific procedures in discharging wastes and emissions (State Planning Board, 1990: 200).

Third, the urban agglomeration has grown for over 300 years in an almost completely unplanned manner. Apart from the 'British' area in the city centre between Park Street and the government buildings at Dalhousie Square, the city was allowed to sprawl unchecked. 'In the pre-independence period there was no national policy or strategy to guide or influence urbanization', summarizes Tapan K. Banerjee (1991: 30). The Calcutta Improvement Trust was established as late as 1911 (Bhattacharya, 1990; Banerjee, 1991). Even then, it was not designed to come up with a comprehensive urban development plan. Rather, it conceived and implemented some isolated but expensive projects such as the construction of the Dhakuria Park and Southern Avenue complex.

Commercial, industrial and residential areas are not separated. The traffic infrastructure is inadequate and not systematically laid out. Calcutta also houses a vast wholesale market in the centre of the city. Cargo pours into the city by truck and train. Traffic congestion is particularly bad between the two main railroad stations, Howrah and Sealdah, where, in addition to motorized vehicles, coolies and handcart pullers deliver all kinds of merchandise.

Immediately after independence, Calcutta had to deal with the massive influx of refugees from what had become East Pakistan. Only in the 1960s did concerted urban planning efforts begin. A WHO report highlighted the risk of epidemics in this overcrowded city with poor infrastructure. In 1970 the Calcutta Metropolitan Development Authority (CMDA) was formed; it is the statutory planning body for the entire metropolis (Bhattacharya, 1990 and Banerjee, 1991). It is directly responsible to the state government.

The CMDA has operated with considerable success in some areas. Its achievements in slum improvement are acknowledged by critics of the state government (Forum for Calcutta, 1988). Reform of the tenancy laws has given the residents legal security. The vast majority of the city slums have been provided with paved footpaths, tubewells and community latrines. The slums have been connected to the

electricity grid. They are generally better maintained than those in other major cities, for instance Bombay or Delhi–not least because the residents (no longer facing immediate threats of eviction) invest in their housing.

The government has also tackled some infrastructural problems. Calcutta, once famous for power failures for hours on end, had a fairly reliable electricity supply in the 1990s. Tanks to major construction projects such as the Eastern Metropolitan Bypass, the Second Hoogly Bridge and the underground Metro Rail, traffic runs considerably faster. The CMDA deserves its fair share of credit for this.

However, this government body has not succeeded in drafting, publishing and enforcing adequate development plans for the area under its jurisdiction. The CMDA's own categoric assessment (CMDA, 1990:9.1) reads: 'The chaotic sprawl that had plagued this metropolis during the last four decades will have to be checked with determination'.

4.4.2 *Administrative Slack*

Ashis K. Ghosh (1991: 61) highlights the lack of systematic planning as follows: 'This trend continues more than 20 years after the Basic Development Plan (1966-1986) for metropolitan Calcutta came out'. According to this author (1991: 64), the consequences are serious: 'The absence of any zoning system and continuous violation of existing norms are the major reason for the present dismal environmental situation'.

The CEMSAP (1995) report summarizes the following deficiencies: Subsequent planning documents were not consistent. The growth pattern of the agglomeration did not follow the proposed outlines. Decentralization of the urban core was as rarely addressed as environmental issues. Finally, many reports were only internal papers and not legally binding. The report says: 'To date, only development control plans for Howrah and Calcutta have been prepared, and unplanned growth in fringe areas continues' (CEMSAP, 1995: 5.20).

Given Calcutta's socio-economic state as a subsistence city and its history or urban crisis, there can be little doubt that improving the environment will be a daunting task by any international standard (B. Banerjee, 1990). It is, in the words of a British consultant, 'constant fire-fighting' (Green, interview).

In this context, it appears encouraging that the CMDA has conceptually recognized the relevance of environmental matters. It is worth citing at length from its 1990 'Plan for Metropolitan Development 1990-2015' (p. 6.3):

Development projects should be environmentally sound. Otherwise, it will not be possible to sustain the development. The metropolitan development plan, therefore, should have provision for

- conservation of nature, the wetland and wildlife to maintain ecological balance,
- ecologically balanced waste water disposal system recycling the waste resources as manure, fish protein and irrigation water, and thereby relieving natural water courses from the nuisance of eutrophication,
- conservation of greeneries, parks and public open spaces and water fronts along the river, canals and lakes,
- regulatory measures for reducing air, water and noise pollution,
- extensive tree plantation and social forestation, prohibition of indiscriminate abstraction of ground water, development of sanitation low cost and appropriate facilities for all, and
- safe and hygienic disposal of solid wastes in form of sanitary land fill and garbage farming as well as incineration, energy recovery and compositing.

In addition to this last the CMDA (1990: 6.3) states:

A major concern of metropolitan development should be to ensure environmental restoration and conservation. This will involve systematic study of environmental impact assessment with environmental mapping.

This text basically expresses what would be the dream of most environment activists in the metropolitan area today. We will return to almost every single item in our analysis of two major matters litigated in court. Both passages quoted here were copied and, nearly word for word, included in an environmental chapter in a 1992 CMDA document concerning the development of Howrah. We will return to the second document in the case study of the *Howrah Matter* in Chapter 6. Yet another passage (CMDA, 1990: 6.10) has lasting appeal for Calcutta's environmentalist NGOs:

For effective decentralization of planning and development, public participation is essentially required. The most essential basic objective of any action for metropolitan development is to maximize community benefit. The purpose of implementing development control measures is also to protect community

interests against individual gains. The Development Plan, therefore, should have the approval of the people.

The paper explicitly recommends the involvement of slum committees, important NGOs, professional bodies, chambers of commerce and cooperatives in urban planning. This has not happened. Rather, the report, like most government documents, is not publicly available.

As has been stated for India in general, the authorities' track record for the implementation of such well-conceived intentions is rather depressing. While the Left Front government of West Bengal reformed legislation for urban planning soon after it gained power in the late 1970s, documents sponsored by the very same government constantly reiterate the need for determined execution.

In its chapter on environment, the State Planning Board's Perspective Plan draft recommended the implementation of existing laws 'with all possible seriousness' (p. 209) and the 'rigid enforcement of the Town and Country Planning Act (1979) along with other (Central) Acts' (p. 210). And the CMDA (1990), in its basic chapter on environment, points out that urban planning should be exercised 'under the Town and Country Planning Act'.

Smoke nuisance legislation was introduced in Calcutta as early as 1863 (Amit Mitra, 1992: Anderson, 1995), but it still suffers from obvious governmental and administrative neglect.[2] In an essay for the feature page of *The Statesman* (5.1.1998), Chinmoy Mazumdar complained that politicians and bureaucrats had turned the CMDA into an 'ideal environment for open corruption' with the result that the Master Plan for the Metropolitan Area was 'still not charted even though the CMDA was statutorily established 27 years ago to do the same'.

Such complaints are typical of South Asian mega-cities. According to the World Bank (1999), the development authorities of Delhi and Bangalore particularly have reputations of inefficiency and corruption among the citizens dealing with them. Pretty much the

[2] Apparently, the colonial administration in the 19th century faced tremendous difficulties implementing anti-smoke policies. They remained ineffective for years. Eventually, regulations put the burden of reducing smoke entirely on the workers operating the smoke-stacks rather than on the industry owners. Only after this compromise between administrators and capitalists was reached, on the back of labour, did the legislation have some impact (Anderson, 1995).

same complaints have been made in the case of Pakistan's business hub Karachi and its development authority (Zaidi, 1997).

It must be emphasized that skepticism concerning the track record of urban planning is not confined to non-government agents. Ashis K. Ghosh (1991: 82) concludes in his essay dealing with Calcutta's environment and written on behalf of West Bengal government for a book to celebrate Calcutta's tercentenary:

> The problems have long been identified. Many solutions have been evolved, proposed and accepted, but implementation has not been forthcoming or started and been abandoned halfway through. The quality of life in the city of Calcutta can even now be improved with determination and effort, otherwise, the problems would only accumulate and get worse and neglect would become more pervasive.

4.4.3 Environmental Activists

Reflecting the national trend, there has also been a growth in citizens' groups that campaign for environmental improvement. The current network of NGOs has two distinct roots: neighbourhood and community initiatives concerned with their immediate surroundings, on the one hand, and nature lovers and conservationists, on the other. While the first might be considered to be basically pursuing environmentally relevant strategies, the latter group clearly has an environmentalist outlook with an interest in the maintenance of the ecological balance. For practical political purposes in Calcutta, however, this distinction is not relevant. Both groups have found support from engineers and scientists.[3]

Some NGOs date back to the early 1950s. The Tollygunge Development Council was formed as a reaction to the particular problems arising from the massive influx of refugees. It initially campaigned for better infrastructure, such as the Tollygunge railway bridge and railway station. The Howrah Ganatantrik Nagarik Samiti, also concerned with the immediate neighbourhood, was formed in 1978, when a strike of municipal workers had put sanitation facilities out or order for weeks on end. Such local groups increasingly pick up environmental issues.

Other environmental NGOs in Calcutta are generally concerned with nature conservation. In 1971, the World Wide Fund for Nature

[3] The data presented here mostly rely on ethnographic field work during my research in Calcutta, as will be discussed in Chapter 7, section 7.1.

started its branch office for East India in Calcutta. Besides funding projects, it has spawned nature clubs in many of the city's schools. Former regional directors of this international organization now play crucial roles in other organizations such as People United for Better Living in Calcutta (PUBLIC) and Forum for Action and Coordination on Environment (FACE). These again overlap with Prakriti Samsad, as association of some sixty amateur birdwatchers and botanists.

A 1996 membership list of Calcutta 36, a loose umbrella organization, indicates some fifty groups in the city and the metropolitan area. Some relevant NGOs, particularly from outside Calcutta's city limits, are not members. Neither the Howrah Ganatantrik Nagarik Samiti nor the South Howrah Development Association have joined Calcutta 36.

These NGOs have a wide range of activities, including various methods of awareness-raising such as seminars and demonstrations, publication of leaflets, or academic expertise on matters such as garbage, traffic, or water disposal. Prakriti Samsad specializes in nature excursions and wildlife observation. Other organizations tidy up garbage before holidays in order to set an example and embarrass the municipal corporation.

The activities of some NGOs are confined to particular neighbourhoods, others aspire to cover all of the metropolis. Some cooperate closely with government authorities, for instance by taking responsibility for maintaining certain public parks. While there is strong criticism of State failures, this does not, in most cases, add up to clear-cut partisan opposition to the ruling Left Front coalition in power at both the state and the city levels in Calcutta and Howrah. Many involved persons define themselves as 'leftists' and claim to normally vote for the CPM and its allies. Most consider the Congress Party even less efficient and committed.

Only a few of these NGOs interact and cooperate closely. Others eye one another with a sense of suspicion and competition. There is a tendency, as in social movements elsewhere, of personal animosities as well as friendly feelings affecting the quality of coordination. Overall, the interaction is difficult. As will be elaborated in Chapter 7, the NGOs could very likely achieve more if they mustered enough mutual trust to cooperate more closely. So far, there is hardly any division of labour or active mutual support.

Typically, these groups consist almost exclusively of Bengalis with an educated, upper caste background. English-speaking abilities

are an important status symbol. Travelling abroad is not uncommon for these people. Several of them have worked or studied in the United States, the United Kingdom or other advanced industrial countries.

Caste is generally declared to be irrelevant in Calcutta. However, it cannot be a coincidence that most of the people named in Calcutta 36's membership list as representative of over fifty associated organizations are upper caste Brahmins, Kayasthas or Baidyas. Muslims, who make up a large share of Calcutta's population, are not represented in these organizations, and nor are other communities that make up the bulk of Calcutta's poor population. It is worth pointing out that members of the upper castes also make up the vast majority of government, administration and party leadership. There are only isolated Muslims or tribals in their ranks. The same goes for the judiciary.

Apparently, environment is not an urgent issue for those struggling for their day-to-day subsistence, even though pavement and slum dwellers are among the most severely exposed to environmental hazards. Again, as elsewhere in the world, Calcutta's environmental NGOs find it easier to mobilize people of their own social strata than to reach out to others.

As education levels coincide with caste status, it is impossible for the foreign researcher to make out which distinction is more important. In Calcutta, reservations of social interaction such as not sharing meals with people of other castes are seldom seen. This does suggest that here the symbolic capital of good education and fluency in English matter more.

Contacts with the urban poor are possible. FACE, for instance, is involved in a sanitation improvement programme in a slum neighbourhood along the Tolly Nullah Canal. However, such contacts are difficult to establish and to maintain. Well-to-do NGOs do not easily gain poor people's trust. Purnima Dutta of FACE told me: 'We have to convince *them* that we want something for *them*' (emphasis added). However, as will be elaborated in Chapter 7, trust is also fragile with other groups of one's own social background.

CHAPTER
FIVE

The Conflict over the East Calcutta Wetlands

Calcutta was built on the levee of the Hoogly river, the westernmost large river of the Ganges delta. Historically, the city expanded to the north and south along the river. Only in this century did it begin to sprawl east, reclaiming low-lying swamps and wetlands for urbanization.

There are several reasons why experts do not find further expansion on the city's east advisable. Even today, this landscape consists of ponds, lakes and agricultural land, much of which is seasonally flooded. However, the development pressure is immense. Land prices tend to rise close to the metropolitan centre, especially since the Eastern Metropolitan Bypass and its connecting roads have made the area quickly and easily accessible (Kundu, 1994).

Motivated and briefed by environmentally minded bureaucrats, city-based non-governmental organizations took up the cause of wetland protection and conservation in 1991. Members of the administration actively mobilized agents of civil society when they felt that the state government was deviating from its earlier policies. This led to what many local experts consider the most important case of environmental litigation in Calcutta. In court, a sense of public

sphere was established, forcing the state government to take its own programmatic statements into account.

This was the first incidence of a movement building up with an explicitly environmental goal in the metropolitan area. Also, the High Court case *PUBLIC v State of West Bengal* led to Calcutta's first widely cited judgement on an environmental matter. It forced the state government to take public opinion into account in its urban planning, again for the first time.

Another litigation concerning the wetlands, *M.C. Mehta v Union of India*, started in the Supreme Court in 1985 and focused on industrial pollution of the Ganges. During the 1990s, the Calcutta tanneries became an issue in this case, with the Supreme Court finally ordering their relocation to an area within the wetlands, to a site many believe to be protected by the initial High Court ruling.

Development planning on Calcutta's eastern fringes was at stake in yet another public interest litigation, *Surojit Srimani v the State of West Bengal*. In this case the environmentally motivated petitioners did not achieve any of their goals.

Overall, the track record of judicial intervention is mixed. To a certain extent, it does make sure that environmental issues are respected. However, the proceedings tend to be erratic, and judges appear to be overburdened and not always adequately briefed in scientific terms. Litigation is cumbersome, time consuming and frustrating. So far, the judiciary has neither assertively forced government bodies to clean up their act nor systematically tackled urban planning, the core issue of Calcutta's environmental crisis. It appears to be simply muddling through.

The role of the state government in the wetlands issue has been ambiguous. Its statements in different legal cases do not seem to be consistent. Some of its agencies propagate and devise conservation strategies, while others tolerate or even promote urbanization. Evidently, some government servants actively supported the pro-conservation NGOs. On the other hand, the state government also proposed and promoted the conversion of wetland areas. There are strong signs that the administration as a whole is neither organized nor equipped to adequately deal with the delicate issue of urban fringes.

Informal and illegal changes of land use threaten the ecological balance of the area, as do unplanned encroachments on the fringes of the region. The struggle for wetland protection is therefore far from

over. Court intervention must be seen as a resource in the dispute, but not necessarily as its final settlement.

The ongoing struggle over Calcutta's eastern fringes and wetlands is complex and multifaceted. The future of a unique integrated system of waste recycling and nature conservation will depend on it. Several NGOs are involved, legally spearheaded by 'People United for Better Living in Calcutta (PUBLIC)'. The interaction of these NGOs and interest groups has been uneasy.

The first section of this chapter describes the history and ecology of the East Calcutta wetlands with respect to the patterns of the city's growth. The second gives an overview of the polity arena concerned and describes the beginning of a pro-conservation movement. In the third section, the first phases of the court proceedings of *PUBLIC v The State of West Bengal* are analysed. It began with the first writ petition in early 1992 and has led to repeated judgements prohibiting changes of land use in the Waste Recycling Region of the wetland area.

Section 5.4 deals with *M.C. Mehta v Union of India* as far as it concerns the East Calcutta wetlands. It will become apparent that this judgement is potentially in serious conflict with the High Court judgements. The Supreme Court has ordered that the tanneries in Calcutta must relocate to an area that may fall into the protected area. The available maps are not detailed enough to tell. So far, neither court has taken up the challenge of determining which borderlines are legally binding.

Section 5.5 again elaborates on the issue of the imprecise borders of the protected area, returning to the PUBLIC case. In 1995, this NGO had accused leading government officials of contempt of court, a criminal offence, for not having adequately safeguarded the wetlands, particularly with respect to the leather complex and several other minor encroachments. This accusation matter was of little legal consequence.

Section 5.6 examines the third public interest litigation concerning East Calcutta, *Surojit Srimani v State of West Bengal*. In this case, citizens were trying to tackle the complex issue of urban planning. They focused on those areas of the East Calcutta wetlands region not protected by the High Court. This time, however, the efforts were not fruitful.

Section 5.7 deals with several state government initiatives in favour of wetland conservation. All of them occurred after the first

judgement of the High Court. This section again shows that the attitudes displayed and programs drafted by the state government were not consistent. Finally, the last section of this chapter scrutinizes the ground reality of the area concerned five years after the first ruling. It includes a first summary assessment of the judiciary's role in shaping the future of this fragile environment.

5.1 Land Use in East Calcutta and Patterns of Urban Sprawl

The term 'East Calcutta wetlands' is not well defined. According to the internationally binding Ramsar Convention (Art. 1), wetlands are 'areas of marsh, fen, peatland or water, whether natural or artificial, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters'. 'Wetlands' are thus not merely water bodies. The term also covers seasonally flooded areas as well as the surrounding stretches of land, which play an important role in their ecology.

Such wetlands are important breeding grounds for waterfowl and wildlife in general. Environmentalists the world over demand conservation of such invaluable habitats.

The East Calcutta wetlands basically comprise all areas not yet urbanized to the east and south of Calcutta. In the marshy land east of Calcutta, 248 species of birds and 22 species of mammals were observed in the 1960s (A.K. Ghosh, 1991). More recent surveys have found the number of bird species reduced by almost 85 percent (CEMSAP, 1997). According to Prakriti Samsad, an organization with many bird watching enthusiasts, eagles were last seen in East Calcutta in 1992.

However, the urgency of nature and biodiversity conservation is not the only valid argument for the protection of these particular wetlands. Much attention has been paid to what the state government's Institute of Wetland Management and Ecological Design (IWMED) calls the 'Waste Recycling Region'. This term is sometimes used interchangeably with East Calcutta wetlands, but has the advantage of having been defined by a map. The definition is ambiguous, however, as the map is of inadequate scale and exists in various versions, none of which has been officially published by the

authorities. It is the Waste Recycling Region that was protected by the High Court rulings.

The following subsection elaborates the Waste Recycling Region. Subsection 5.1.2 discusses the further general relevance of the East Calcutta wetlands within and outside the Waste Recycling Region. This concerns issues such as flood control, provision of drinking water, and traffic. Subsection 5.1.3 refers to the official government policy which, for a long time, ruled out urban expansion here. The section ends with a brief summary of the development of Salt Lake City. This township was built on the northern part of the East Calcutta wetlands.

5.1.1 *The 'Waste Recycling Region'*

In 1865, the colonial authorities bought the 'square mile' some six kilometres east of Park Street. After the introduction of a light rail system in 1867, it became Calcutta's solid waste dump. Composted organic waste from the city has ever since been used to fertilize fields. In 1868, the Calcutta corporation began to pump its drainage and sewage through canals to the Kulti Gong river, the nearest large Ganges estuary to the east (Furedy, 1987).

In the 1930s, local communities started to feed fisheries with waste water. Over the years, they improved their methods. Water from the outlets of the fish ponds was used to irrigate paddy fields. Combined, these pisci-agricultural activities gave rise to a massive informal waste recycling scheme (Furedy, 1987; D. Ghosh and Sen, 1988).

Government authorities during the colonial period and ever after independence were not much concerned with what became of Calcutta's refuse. Haraprasad Chattopadhyaya (1990: 60) traces the first official recognition of sewage-fed fisheries to the 1940s and also notes that the Fishery Department in 1944 suggested the 'formation of a syndicate with necessary statutory powers' to raise fish production. Such a statutory body was never established, however.

Systematic research began only in the 1980s on behalf of the state government. Dhrubajyoti Ghosh, a civil engineer, prepared the first report for the Department of Fisheries in 1983. He became the first director of the newly established Institute of Wetland Management and Ecological Design (IWMED) in 1986.

The Institute prepared a map of the 'Waste Recycling Region for Calcutta City', a 5500 hectare territory of farms and fisheries (IWMED, 1988, Map No. 2). The local practices were considered to be economically attractive and reasonably safe in terms of both public health and environmental sustainability (IWMED, 1988, 1995; D. Ghosh and Sen, 1987; D. Ghosh, 1993, 1996).

Calcutta's solid waste is dealt with in a way typical of many developing countries. Ragpickers collect useful items from the garbage on the streets and on the dumping site at Dhapa, east of the Metropolitan Bypass. The organic residue is composted and used as manure in agriculture.

The sewage-fed fisheries, however, deserve a more detailed description. The fish producing scheme makes use of the tropical climate, solar radiation and shallow water. The flow of water is diligently managed. First, the waste water is left stagnant in shallow ponds of roughly one metre depth so that solar radiation kills the bacteria. Then this nutrient-rich water is channelled into ponds in which algae and fish breed abundantly (IWMED, 1995; D. Ghosh, 1996).

According to most local experts, the health risks induced by the use of garbage and sewage in the Waste Recycling Region are negligible: 'Calcutta sewage contains a low concentration of heavy metals and there is no evidence that normal pond-fish from other places contain fewer pathogens than the sewage-grown-fishes in question' (D. Ghosh and Sen, 1987: 223). Similarly, the IWMED argued in 1995 (p.23): 'The villagers have been using the pond water for domestic purposes for the last 50 years with no record of epidemic or enteric diseases.' Coliform count, an indicator for faecal contamination, is reduced 100,000-fold in the pond system.

Water hyacinths accumulate much of the chemical and heavy metal residue in the waste water (Nath Sarkar, 1990). However, I was told on site that the water hyacinths are composted for application on the farms. The toxic substances thus remain in the food chain. Health risks, therefore, deserve some concern, as stated by the CEMSAP (1995: 3.29):

> So far, there is no documented evidence of Calcutta's population having been affected by the consumption of fish and vegetables grown on the wastewaters, but this may just be due to lack of actual monitoring. Indeed very few studies have been carried out anywhere in which the heavy metal concentrations in blood serum have been measured let alone any trends assessed. It is however felt

that though the biological risks of such consumption could probably be reduced through proper cooking, the health risks associated with ingestion of the heavy metals and toxic organic wastes need to be considered seriously.

In spite of such doubts, the CEMSAP report (1995: 5.2) declared garbage farming and sewage fisheries to be 'an example of best practice in the "wise use" of wetlands'. While mildly challenging this notion, in 1997, the CEMSAP still concluded that the current practices should be continued.

Photo: Fish Pond

Local experts advise against applying EU or US standards. One should rather assess the relative risk and not the absolute risk. Compared with the general hazards Indian consumers are exposed to, food contamination in the wetlands is not said to be of much concern. According to ODA consultant Michael Green, it is 'definitely not the greatest killer' (Green, Interview). The danger of bacterial contamination, moreover, is reduced by the fact that fish is not eaten raw in Bengal (D. Ghosh, 1993).

Calcutta's patterns of water pollution may, however, be changing. More motor traffic, for instance, is bound to increase the lead exhaust from the tailpipes, and accordingly the lead concentration in the drainage water (Green, interview). Production changes in Calcutta's industries are also likely to change the sewage contamination. Small-

scale industries are difficult to monitor and particularly prone to discharging toxic effluents (Malhotra, interview). Such businesses have grown over the last decades. Lead smelters are of particular concern for their heavy metal contamination (A.K. Ghosh, interview).

In spite of all this, the East Calcutta waste recycling approach has various advantages in view of India's resource scarcity. It has been estimated (D. Ghosh, 1993: 43) that an investment of 4.5 million dollars or almost 1.4 billion rupees would be needed for a new conventional sewage treatment plant designed to process Calcutta's daily output of 750 million litres of waste water. That would be an astronomic amount by Indian standards, particularly as there is no guarantee that such a plant would serve the needs of West Bengal any better.

The fishery system is comparatively reliable and cost-efficient. As sunshine abounds, energy costs do not arise. Fish ponds have longer life spans than conventional treatment schemes, the metal parts of which are particularly prone to corrosion in the humid, trop ical climate of Bengal. There is no problem of missing spare parts. Continuous maintenance does not pose serious management challenges. For the people involved, fisheries are a source of revenue rather than a cost. The economic incentives of fish production radically reduce the need for supervision (D. Ghosh, 1996).

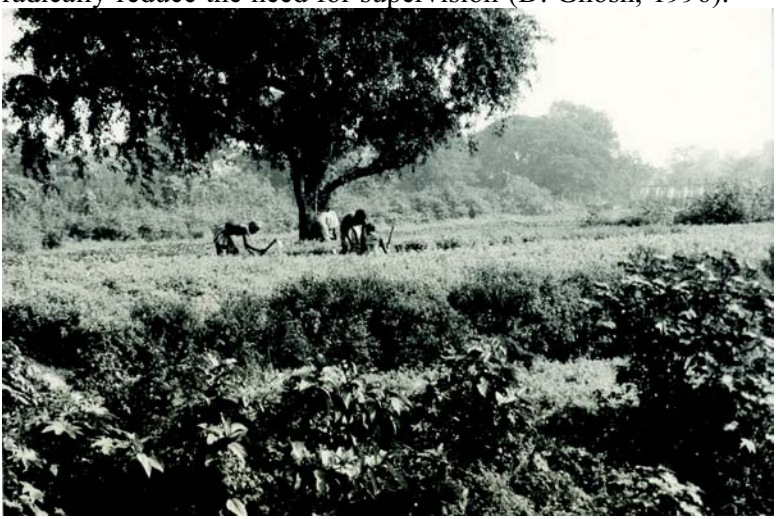

Photo: Garbage farming in the Waste Recycling Region

The appropriateness of this low-cost folk-technology for waste recycling has been internationally recognized. In December 1988, a conference in Calcutta involving among others the World Bank, the

World Food and Agriculture Organization (FAO) and the Gesellschaft für Technische Zusammenarbeit (GTZ) emphasized the need to preserve the area.

Consequently, sewage-fed fisheries along the lines of the Calcutta model have been included in the central government's Ganga Action Plan. The results are said to be satisfying and on an average better than those of conventional treatment plants (K.K. Chakraborty, interview). Sewage-fed fisheries are clearly preferable to disposal of waste water directly into the rivers where organic matter is not broken down systematically.

Moreover, the Waste Recycling Region provides important resources for the metropolis. Estimates of the annual fish production in the East Calcutta wetlands range from 4000 tons (IWMED, 1995: 20) to 8000 tons (D. Ghosh, 1993: 43). This compares to an annual consumption of 50,000 tons in Calcutta. The annual vegetable production in the Waste Recycling Region is said to be between 55,000 tons (Nath Sarkar, 1990: 173) and 135,000 tons (D. Ghosh, 1993:43) or roughly 20 percent of city's supply (A.K. Ghosh, 1991: 73).

The inconsistency of these figures is troubling, but it is nevertheless apparent that the food production is substantial. As the area is close to the city, transport costs are low and the produce from East Calcutta is known to be among the cheapest in the urban markets.

The Waste Recycling Region not only produces affordable food for the poorer section of the urban population, but also generates employment for a large number of people. Again, the estimates vary from 17,000 people employed (Nath Sarkar, 1990: 174) to 20,000 families living in the wetlands (D. Ghosh, 1993: 43) and even up to 35,000 people working as ragpickers and sewage fishermen (IWMED, 1995: 24).

This appropriate recycling technology has been largely compatible with the goal of nature conservation. It is understood that it can be so in the future, depending on how pisciculture and agriculture are organized.

In sum, the East Calcutta wetlands are a natural habitat with a rich but eroding biodiversity. A major part of the area serves as the city's main waste disposal and sewage treatment scheme, on what local experts call a sustainable and appropriate technological basis. The area provides comparatively cheap food for the urban markets and

employment for many thousands of villagers. Possible health hazards are considered to be minor by Indian standards.

These are, however, not the only reasons why the eastern fringes of the city are not an obvious choice for further urbanization. Others deal with the geology, hydrology and traffic situation of Calcutta. In the early 1980s the State Planning Board had therefore discouraged further urban growth on the eastern and south-eastern fringes (Sinha, 1988). These considerations are dealt with next.

5.1.2 *An Area Unfit for Urban Growth*

Calcutta lies on the edge of the delta area. As is typical of such landscapes, the surface gradients are very low. The microtopography varies widely because of the changing patterns of the natural drainage network. Delta landscapes are characterized by relatively high levees along the banks of the major rivers. These levees are normally flood-safe. Further away from the river, spill basins and swamps dominate.

According to Subrata Sinha (1988), Calcutta's original growth pattern followed the flood-safe levees along the banks of the Hoogly. The expansion particularly went north, away from the delta. To a lesser, but still considerable extent, urbanization also continued to the south-west, again following the safe levees along the river. Today, the metropolitan area spans almost 70 kilometres from Uluberia in the south-west to Kalyani in the north. But it hardly stretches more than a few kilometres inland.

The pattern of simple north-south expansion was given up only in the 1930s with the reclamation of marshlands in the south and south-east. Wetlands made way for new neighbourhoods such as Ballygunge or New Alipur. Drainage of these low-lying, flood-prone areas proved to be difficult, expensive and ineffective in the rainy season. Nevertheless, they were attractive because of their relative vicinity to the city centre. The massive influx of refugees after partition in 1947 led to further urbanization in the east and south-east (S. Sinha, 1988; Chatterjee, 1977b).

The original drainage and canal system of the city became ineffective because of the newly urbanized areas. Sewers and drains were constantly overcharged (S. Sinha, 1988). This situation has improved somewhat owing to infrastructure investment in the 1980s and 1990s. However, as the monsoons of the 1990s were not heavy, it

is difficult to evaluate how effective the system is nowadays (A.K. Ghosh, interview).

Subrata Sinha's (1985) assertion remains plausible, that filling up of ponds and marshlands to obtain real estate is linked to increased problems of drainage and flooding. Ponds and marshlands provide space for run-off water. They also absorb some water sub-surface. The more spill basins are filled up, the more the costs of efficient drainage will rise. Calcutta's drainage already depends on a system of canals and pumping stations and not simply on geographical slope.

In addition to flood damages and general inconvenience, increased waterlogging leads to serious health hazards in the Calcutta area. Water-borne diseases here are among the most dangerous in India (Green, interview).

The ground water level would be affected by further extraction of water and it would also decrease owing to further loss of waterbodies and swamps.

The provision of drinking water is another particularly daunting challenge in the east and south-east of Calcutta. Subrata Sinha (1988) stresses that water from deep tubewells in the delta area is unsuitable. Here, deep aquifers are rich in iron and other dissolved solids. There is also a high risk of aquifers becoming saline.

This means that water for these potential urban areas would have to be extracted from the river Hoogly at high purification costs. Given that Calcutta's port already suffers from low water levels and given that sharing of Ganges water with Bangladesh in the delta is an issue of high diplomatic sensitivity, further extraction of the river water does not seem realistic.

Finally, expanding the agglomeration further into the delta will increase the traffic problems in the already congested urban centre. Calcutta's economic hinterland lies to the west. The major railroads go west and north-west through Bihar to Uttar Pradesh and Delhi, or south-west through Orissa to South and Central India (S. Sinha, 1988, CMCPC, 1995).

For these reasons, alternatives to eastern and south-eastern urban expansion have been favoured by government experts (S. Sinha, 1988). That urban development should concentrate on the northern end of the metropolitan area had been envisioned by the Basic Development Plan as early as 1966 and, in principle, has since been the official policy of the state government.

5.1.3 *Government Policy Statements*

In its proclaimed policies, the Government of West Bengal is in favour of wetlands conservation. Legislation for the protection of wetlands is included in the West Bengal Town and Country (Planning) Act of 1987. The conservationist line of reasoning was also reflected in two major documents, which were mentioned in chapter 4, section 4.4.2. These papers are the CMDA's 'Plan for Metropolitan Development 1990-2015' and the State Planning Board's draft of a 'Perspective Plan for Calcutta: 2011). With regard to East Calcutta, the CMDA paper stated in 1990 (p. 8.5f):

> With the widening of Diamond Harbour Road and Raja Subhodh Mallick Road as well as construction of Eastern Metropolitan Bypass along with its connectors, the accessibility of eastern and southern areas has improved to a very great extent. This has generated a spurt of private land transaction and development activity in these areas. As a result, indiscriminate encroachment on green areas, wetland and water bodies is taking place. This tendency should be … properly controlled and guided. … The direction of development should be reoriented to restore it to the north and west.

The CMDA paper also explicitly mentioned waste recycling activeties. It suggested improvements in sorting techniques to reduce occupational health hazards for ragpickers and garbage farmers. The report stressed that sewerage, drainage and solid waste management had to be improved.

In November 1990, the State Planning Board presented its draft of a 'Perspective Plan for Calcutta: 2011'. It made explicit reference to the East Calcutta wetlands (p.204): 'Functional importance of wetlands towards flood control, regulation of water quality, treatment of waste water, recharging ground water, pollution abatement, and a strong pisciculture is recognized.'

The relevance of the wetlands for waste recycling and as natural habitat was pointed out. The State Planning Board suggested that these wetlands should be kept for pisciculture and nature conservation. It also warned that 'both in urban and rural areas, water bodies, parks, playgrounds and other open spaces are being filled up and being used for building' (p. 200). Both papers were in favour of Calcutta's further expansion going north. This strategy is, however, politically difficult (S. Sinha, 1988). It would involve the modernization of old townships and revitalization of areas occupied

by sick or abandoned industries, thus touching on longstanding, vested interests.

Salt Lake City, also called Bidhan Nagar, is an early example of how different government programmes can be in conflict and nevertheless be in force simultaneously over long periods of time.

5.1.4 *The Example of Salt Lake City*

Salt Lake City is a new township built on a large part of the original wetland area to the north-east of Calcutta (Chatterjea, 1990; Chattopadhyaya, 1990). It was the brainchild of West Bengal's post-independence Congress Chief Minister Bidhan C. Roy.

Salt Lake City's reclamation had already been well under way when the Basic Development Plan of 1966 generally suggested northward expansion of the metropolitan area. The Salt Lake City project did not fit into this plan, but was nevertheless continued over the decades to come. Nitai Kundu (1994) cities this as one example of the incrementalism of Calcutta's growth pattern, which prevailed in spite of planning efforts.

Salt Lake City is located only 7.5 kilometres from the city centre and, with 23 percent of its space reserved for roads, is not nearly as congested as the Calcutta corporation, with only 6 percent road space. Salt Lake City's first private house was built in 1970. By 1990, the newly urbanized area was home to some 175,000 inhabitants (Chatterjea, 1990). Several agencies of both the state and the central government operate from large-scale office complexes. The township has shopping facilities, sport fields and playgrounds. It houses the largest football stadium in India.

Salt Lake City has become a fancy neighbourhood even though it was initially intended to provide housing for middle income groups. Deb Prashad Chatterjea (1990: 178) conceded that 'through various subterfuges, the leaseholds of these cheap and attractive properties are passing into the hands of speculators and the very rich'. Given Calcutta's congested reality, this part of the metropolitan area appears extraordinarily attractive: 'More such developments are urgently needed to ease the relentless pressure on Calcutta's housing and business space–and the only practicable locations within striking distance of the inner city are to the east' (Chatterjea, 1990: 180).

Nonetheless, Haraprasad Chattopadhyaya (1990) is sceptical about whether to consider this project a success. The provision of

drinking water, according to him, was already very difficult in 1990 with ground water levels dwindling rapidly. He also mentioned the disturbed ecology on either side of the Eastern Metropolitan Bypass and bemoaned the reduced fish supply in Calcutta's markets. For such reasons, Chattopadhyaya argues that it would be impossible to solve Calcutta's shortage of housing space with such townships. With only a third of its planned population, Salt Lake City had already reached its natural limits of urban growth by 1990.

Finally, Salt Lake City's history is ridden with social problems. Some 30,000 people were dislocated because of the construction of this township. A field survey among 600 of them revealed that 'the majority of the respondents (79.33 percent) became economically worse off' (Kundu, 1994: 102). Employment and housing schemes initially promised by the government never materialized.

All summed up, experts present many reasons not to let urbanization spread further to the east. These include the protection of biodiversity, the recycling of waste water and garbage, food production, employment, flood control, the sustenance of ground water levels, and avoidance of traffic problems.

Nevertheless, there is also a considerable urbanization pressure in this area. Relatively close to Calcutta's congested centre, there would be a tremendous potential demand for housing as well as for commercial space. The Eastern Metropolitan Bypass has made the area accessible and Salt Lake City apparently provides additional basic infrastructure. Potential profits of real estate speculation seem enormous. The protection of the East Calcutta wetlands is thus a test case for the ability of the polity to control and channel such forces.

5.2 The Pre-Litigation Pro-Wetlands Campaign

In the 1990s, wetland conservation was turned into an issue of intense public debate in Calcutta. This was not done by those living in the area and thus personally affected by potential urbanization. The individuals initially involved were government servants, at the central and the state level, who had reasons to doubt that the government would consistently adhere to its proclaimed policies. These bureaucrats had contacts with people living in the wetlands and with urban, environmental, middle class pressure groups.

The people living and working in the wetlands could not be expected to start such a campaign as their area was traditionally torn by conflict. Fishery owners face constant labour unrest. Landlords are in dispute with agricultural workers. Migrants from other states are only seasonally employed, which adds to the conflict potential (Kundu, 1994).

In the late 1960s, land grabbing was widespread in this area. Many open questions of land ownership have not been permanently settled since. On top of that, there has traditionally been a conflict over land use between farms and fisheries (D. Ghosh and Sen, 1987; IWMED, 1995).

In the 1980s, a real estate mafia entered the old conflict between the farm mafia and fishery mafia (Sharma et al., 1995). These mafias are said to have political connections, both with the Congress and the CPM. Disputes in the area tend to be resolved by muscle if not by gun. Formal interest groups and institutions of liberal democracy such as village panchayats blend into a situation of near anarchy in the wetlands proper.

Under these circumstances, bureaucrats with some grassroots contacts mobilized an awareness movement that caught the attention of the urban public. The following subsection looks within the govt and bureaucracy. When pro-conservationists felt they were losing the struggle, they began mobilizing the NGOs, as is discussed in the second subsection. The NGOs later turned to the High Court, frustrated with the meagre results of their campaigns.

5.2.1 *The Pro-Conservation Network in the Bureaucracy*

There is a general consensus in the West Bengal Government and administration that the wetlands should be protected and the Waste Recycling Region kept operational. But as Kalyan Biswas, secretary of the Environment Department till the summer of 1997, expressed in an interview for this project, disputes tended to arise about how much and exactly what territory is necessary for this purpose. There would also be disagreement about the exact meaning of wetlands conservation. This is exacerbated by the fact that advice from scientific experts is not necessarily consistent.

One senior official claims the IMWED map of the Waste Recycling Region covers the minimum area required. Others believe a smaller area might do. The hard-line conservationists oppose any

encroachment on Calcutta's east for reasons of biodiversity protection and geohydrology.

The pro-conservation bureaucrats themselves do not adhere to a single school of thought. One group of experts categorically opposes any further development on Calcutta's east. The others, contrarily, suggest that environmental needs be reconciled with the pressures of urbanization through strictly controlled and implemented planning (Kundu, 1994).

It is not within the scope of my study to take sides in this dispute. It is, however, worth considering Kundu's (1994: 84) admonition that 'urbanization initiated by any authority invariably leads to sporadic and speculative growth in neighbouring areas leading to a high degree of densification'. In East Calcutta, urbanization has already begun, indeed spawning 'sporadic and speculative growth'. And stringent enforcement of rational planning has never been typical of Calcutta's growth.

Opposing these two kinds of conservationism, a third school of thought in government and administration is apparently convinced that the issue of wetlands protection should not be exaggerated and that the city should be allowed to expand. From what veteran bureaucrats say, it appears that the rift between conservationists and developers is apparent even within the State Cabinet. The current home minister and former urban development minister, Buddhadev Bhattacharya, is said to be pro-conservation. On the other hand, the chief minister and chairman of CMDA, Joyti Basu, is said to be in favour of large-scale development schemes.

In the 1980s, the IWMED made various attempts to draft and finance a large management and development scheme to improve the efficiency of the Waste Recycling Region. However, this institute, despite its ambitious name of 'Wetland Management and Ecological Design', was never given the powers that would have turned it into a true wetland authority. The institute did not get beyond research projects and educational efforts.

Indeed, the IWMED had ample opportunity to scrutinize the almost impenetrable maze of government bodies involved in wetland issues. In the late 1980s, it listed seven state government departments along with the Wasteland Development Board and four institutions of the central government as having some jurisdiction over the wetlands (IWMED, 1988: 9). The East Calcutta wetlands cover areas in the Corporation of Calcutta and two neighbouring districts. Up to early

1997, the territory was not totally included in the Metropolitan Area. Large parts fell under the jurisdiction of the CMDA, while others did not. The institute (1995) complained that there was no overall authority concerned with this ecologically fragile landscape.

In short, West Bengal's bureaucracy is not adequately organized to deal with the delicate needs of these environmentally fragile and economically relevant urban fringes and adjoining areas. Apparently powerful government branches are impotent in this respect and tend to block one another. The infighting is not transparent and is likely to frustrate all parties involved.

With the benefit of hindsight, it is clear that neither the developer nor the conservationist faction in this bureaucratic conflict had its way. Indeed, from an administrative perspective one might look at the entire dispute including the episodes of public interest litigation as just an extension of the struggle raging inside the bureaucracy and the government. The conservationist government servants mobilized the NGOs and indirectly the court as a resource in their favour.

5.2.2 *Bureaucrats Mobilize Pressure Groups*

The conservationists had (and apparently still have) considerable influence in the labyrinth of governmental competences. However, their views were also always contested. Ashis K. Ghosh, at the time with the Zoological Survey of India, recalls as a particularly important episode the publication of an article in the *Telegraph*. On 31 August 1988, this newspaper reported a plan to expand Salt Lake City that would have affected the northern rim of the Waste Recycling Region. The project was to be approved by the state cabinet and was expected to proceed soon.

The plan never materialized. Instead, it immediately alerted the conservationist network. As will be elaborated, the High Court ruled out most of the plan in its wetlands verdict of 1992. The state government officially shelved the plan in 1994 (*Telegraph*, 30.3.1994).

It is clear that some bureaucrats, who apparently felt more commitment to the proclaimed goals of their office than to formal rules of conduct, contacted NGOs that they felt were serious about ecological affairs. The personal accounts of people involved vary. It is obvious, however, that the NGOs were briefed on the relevance of the

wetlands and motivated to act as pressure groups launching a pro-conservation campaign.

The NGOs first intervened in August 1991. Fishery owners had told bureaucrats they were afraid of the impending land-grabbing movements. They had themselves been warned by CPM activists. The immediate threat was that the land would be occupied and then declared to be redistributed among the rural poor. From past experience, however, it was assumed that such a takeover would lead to the reclamation of the pond and, eventually, its sale as profitable real estate.

The NGOs were informed of these likely events. Their immediate reaction was to write to State Environment Minister Ambarish Mukherjee, asking him to intervene and to speak out for the protection of the wetlands. The letter was signed by representatives of Concern for Calcutta, PUBLIC, the Indian National Trust for Art and Cultural Heritage (INTACH), Prakriti Samsad and the World Wide Fund for Nature–India (WWF). On 4 August 1991, these NGOs (with Swastho Paribesh stepping in for INTACH) published newspaper ads along similar lines.

Nevertheless, on that day some 2,000 men occupied several fisheries in the wetlands, claiming them to be illegally held (benami) land that should in future benefit the rural poor. The local police did not intervene to protect the pond owners. Some men in the crowd were armed (*Statesman*, 15.8.1991).

The NGOs stated in a letter dated 19 August 1991 to members of the state assembly 'that this dastardly act was the first step towards eventual conversion and sale of the land as commercial property'. The letter urged the legislators to prevent further encroachments, reiterating some of the standard reasons for conserving the wetlands:

(a) They are the drainage spill basin of Calcutta;
(b) they are the last of the sinks to absorb pollutants;
(c) they are the core of the biological filtration of the city's sewage;
(d) they are the source of fresh fish and vegetables for Calcutta's markets;
(e) they act as rechargers for the aquifers; and
(f) they are the key to microclimate control for all of us. But most of all they provide the means for livelihood and survival for thousands of poor in the backyard of Calcutta.

The pro-conservation bureaucrats maintained a low profile in the campaign, with the NGOs presenting their arguments in public. The

NGOs, continuously in contact with their informants in the bureaucracy, stepped up their efforts to raise awareness. Particularly the *Statesman* (10.9.1991, 6.10.1991, 4.12.1991) took up the issue, after some apparent initial hesitation.

Signatures were collected for an open letter to the chief minister. The goal was to get 100,000 people to sign, but the final figure, stated in the writ petition, was around 8,000. This and similar attempts to gain the general public's attention had a strong bias towards the upper income, educated elites of the city. The NGOs were obviously able to mobilize people of their own social stratum.

By the end of the year, it became apparent that these mobilization efforts had little bearing on the state government's plans. Rather, the number of news stories about new development schemes in the area was becoming ever more impressive. On 28 August, the *Statesman* reported plans to set up a permanent trade fair ground proposed by the state government in the assembly. On 11 November, the *Statesman* carried an article about land acquisition for apartment housing. On 8 December, the *Economic Times* covered plans to build a World Trade Centre. There also had been repeated advertisements by real estate promoters who wanted to sell land east of the Metropolitan Bypass.

Eventually, the conservationists decided to go to court. PUBLIC, a group of roughly a dozen urban professionals, volunteered to take up the cause. It was led by Bonani Kakkar, an independent public health consultant, and her husband Pradip. According to Pradip Kakkar, the organization was started in the 1980s out of frustration with Calcutta's environmental situation and the wish to get the government 'to finally do its job'. The gap between official duties and actual performance was (and is) perceived to be disturbingly large by many members of Calcutta's middle classes. To a considerable extent, government publications agree that this frustration is legitimate (CMDA, 1990; A.K. Ghosh, 1991).

The efforts to raise public attention for the wetlands case continued during the litigation period. Media attention, however, was more focused on the events in court than on rallies and other campaign efforts. In this sense, the court proved to be a better forum for agitation than the streets had been for the educated middle class NGOs, with the particular advantage that this forum had the power to pass legally binding judgements and to make government officials answer during the proceedings.

Bureaucrats had initially been essential to the conservation campaign, they carried their internal conflict into the public sphere. The environmentalists in the administration mobilized allies from outside when they felt they were losing the struggle within the government apparatus. However, the attempt to mobilize a mass campaign failed, although it caught the attention of the educated middle classes.

5.3 *PUBLIC v the State of West Bengal*

The litigation known as *People United for Better Living in Calcutta (PUBLIC) and another versus the State of West Bengal and others* (Matter No. 2851 of 1992) is an example of public interest litigation checking government unaccountability. The first phase of the case is also special in the sense that the proceedings went on quickly and led to a consistent, apparently easily implementable judgement. In the beginning, Justice Umesh Chandra Banerjee had delved deep into the matter, trying to understand all aspects of it. Over the longer run, however, it turned out that the map outlining the protected area was of inadequate scale. Since 1995, proceedings of contempt of court based on the first High Court ruling have been going on particularly slowly.

The case will be dealt with chronologically. This section elaborates on the initial writ petition (5.3.1), the proceedings in court (5.3.2) and the first judgement (5.3.3), assessing these events in subsection 5.3.4. The last subsection then deals with appeals to the High Court to permit the construction of a World Trade Centre in the wetlands bordering on Salt Lake City. Such a complex had been permitted in principle in the first judgement, but ruled out for the time being on the grounds that there had so far been no convincing planning.

The World Trade Centre had become the core matter of debate in the first phase of the litigation and has since been dealt with in further judgements in November 1994 and July 1995. The dispute was, nevertheless, still pending in early 1999. At that point, the core facility of the centre was being built outside the protected area, with the investors hoping to eventually expand into a few acres of the litigated territory once the court gave permission.

The third phase of the litigation was more important. It started with accusations of contempt of court filed against leading

bureaucrats in 1995. PUBLIC sued them for not protecting the wetlands as had been ordered by the High Court. This petition no longer dealt with the World Trade Centre but rather with other encroachments within the Waste Recycling Region, including the planned Calcutta Leather Complex. We return to this phase in section 5.5 after an assessment of the tanneries case in the Supreme Court (section 5.4).

5.3.1 *The Initial Writ Petition*

On 8 January 1992, a writ petition filed by PUBLIC was accepted in the Calcutta High Court. Listed as respondents were the State of West Bengal through the secretaries of the Departments of Local Government and Urban Development, Development and Planning, Land and Land Revenue, and Metropolitan Development, along with the chief executive of the CMDA. The petition also named the Union of India through the secretary of the Ministry of Environment and Forests among the respondents.

The petition saw the State of West Bengal and its officers legally bound to protect the wetlands in accordance with the West Bengal Town and Country Planning Act, 1979, section 46(1). Also, it demanded that earlier government propaganda, such as the introduction of a state-wide 'Save the Wetlands Day' in 1988, should be followed up by action.

PUBLIC then referred to the constitution. Article 51A lists the protection of the environment among the duties of the citizens of India. The legal argument was that this includes the protection of lakes and must also bind the government and its personnel. PUBLIC also interpreted Article 21 of the constitution, the fundamental right to life, as implying the right to live in 'environmentally safe and pollution-free conditions'.

The petition asked for several writs to protect the wetlands. The state authorities should be directed to maintain the wetlands' character in its present form, to stop all development plans and to prevent any further encroachments. They should also be ordered to prohibit any further reclamation as well as any change of land use from agricultural to residential and/or commercial.

According to the petition, the State of West Bengal was to be directed to appoint a special officer or an expert body to report on conservation and protection options. The High Court was also asked

to make sure that a special officer would be appointed and entitled with the symbolic ownership of the wetlands. PUBLIC, in other words, wanted the administration to be streamlined so that it might manage the task of wetland conservation efficiently. Declaring the issue as too important to be left to the state government alone, the petition additionally asked for a writ directing the central government to constitute an expert body to report on conservation options for the East Calcutta wetlands.

The petition estimated that only half of the original East Calcutta wetlands remained. It defined the remaining area according to the IWMED's map of the Waste Recycling Region. This document was 'annexure C' of the petition.

The petition summarized the usual arguments for the conservation of the wetlands. Further encroachments might tip the delicate ecological balance of the area and endanger the future of Calcutta. The results would include, among others,

- more flooding in Calcutta,
- a lower ground water level,
- a sharp reduction of cheap fish and vegetable supplies,
- unemployment and displacement,
- the loss of biodiversity of flora and fauna, and
- a change of the city's microclimate.

The petition also cited the relevance of the wetlands for garbage and waste water disposal.

To substantiate its reasoning, the petition referred to several of the above-mentioned newspaper articles, the State Planning Board's Draft Perspective Plan (1990), a booklet by WWF–India (1991), a 1988 publication by A.K. Ghosh, and a chapter on Calcutta from the *Directory of Asian Wetlands*. The last-mentioned document was produced by the Asian Wetland Bureau, an NGO based in Kuala Lumpur. Excerpts of some of the documents were annexed to the petition.

With a polemical pitch against the city authorities, the petition emphasized that the Calcutta Corporation concerned itself only with transport (and not comprehensive management) of garbage. Even this was not considered to be 'handled efficiently and properly'. On the other hand, the informal non-governmental waste recycling scheme in the wetlands served as a model case in the Ganga Action Plan and had gained international attention.

Finally, the petition argued that the planned projects in the wetlands were neither necessary nor beneficial for society as a whole: 'Going by the experience of other states, particularly of Maharashtra, the World Trade Centre at Cuffe Parade, Coloba, Bombay, is nothing but a shopping complex'. The petition also pointed out that the planned extension of Salt Lake City would not solve the housing crisis in the Calcutta metropolitan area.

5.3.2. *The Court Proceedings*

The beginning and end of the dispute in court are documented by the original petition and the judgements. These have been made available for examination by the attorneys of PUBLIC. However, I have no exact documentation of the court proceedings. This section therefore draws on the newspaper coverage in the *Statesman* and the *Telegraph* as well as on personal memories of people involved.

The matter was first heard in court on 14 January 1992 by Justice Umesh Banerjee, who, as reported in the *Statesman* of the next day, instantly passed an interim order prohibiting any change of land use. In the proceedings that followed, the high environmental significance of the wetlands was never in dispute.

Rather, the state government claimed to be the first and pre-eminent agent of wetlands conservation (*Statesman* 3.3.1992, 5.5.1992, 14.5.1992). It blamed PUBLIC for not taking the government's protection efforts into account. The government repeatedly suggested that PUBLIC did not care about the environment but rather wanted to prevent a World Trade Centre (*Statesman*, 15.1.1992) and stall the development of the area, meaning all of Calcutta and West Bengal (*Statesman*, 3.3.1992).

According to the state government, the extension of Salt Lake City was no issue at all as the government was itself in favour of maintaining the ecological balance. This, however, did not concern the fish ponds in dispute. Rather, the issue at stake here was whether private promoters and individuals would profit from urbanization (*Statesman*, 10.6.1992). Members of PUBLIC recall being accused by government personnel of acting on behalf of 'the foreign hand'. Connections were also alleged with the Bombay business community, which might have had an immediate interest in keeping Calcutta's economic profile low.

The government's line was that the expansion of Salt Lake City in its so-called Sectors IV and V had been planned early on. It would not affect the viability of the waste recycling activities needed to dispose of Calcutta's garbage and sewage (*Statesman*, 5.5.1992, 28.5.1992). The government also intended to excavate other fisheries to compensate for the loss accruing through Salt Lake City's expansion (*Statesman*, 15.1.1992).

PUBLIC maintained that the state government's approach was 'piecemeal' and 'haphazard' (*Statesman*, 15.1.1992), as environmental impacts had not been assessed. At the very least, more research was deemed necessary to identify, demarcate and protect the core wetlands area.

Justice Banerjee, in turn, was particularly keen on obtaining exact data relating to the geography of wetlands and the projects planned therein. The *Statesman* reported that the judge complained about 'sketchy and incorrect maps' (7.4.1992), demanded to be informed how much of a particular area was 'used for cultivation and how much for fishing' (26.4.1992), and asked to see 'the original plan and programme of the West Bengal Government for the reclamation of Salt Lake' (5.5.1992). He went on to demand a 'definite statement of the West Bengal government's reclamation programme' (*Statesman*, 14.5.1992).

Unable or unwilling to provide detailed maps and construction plans, the state government kept reducing the area it wanted to reclaim. Initially it had demanded some 780 acres (*Statesman*, 15.1.1992), later it reduced to scope to 224 acres (*Statesman*, 5.5.1992) and then to 187 acres (*Statesman*, 12.5.1992) for the immediate construction of a World Trade Centre and a trade fair ground.

It soon emerged that the CMDA had no outline development plan for the area and had not even been ordered to prepare one (*Statesman*, 15.1.1992). PUBLIC pressed the case that the government was legally bound to provide such an overall plan (*Statesman*, 13.3.1992). The NGO referred to court rulings from other Indian states obliging the respective governments to provide such plans (*Statesman*, 13.5.1992).

The CMDA, moreover, had an internal guideline of not filling in ponds larger than 2,000 square metres (*Statesman*, 13.5.1992). This was emphasized by the government as proof of its own sense of responsibility concerning wetlands protection. The state government claimed to have no power over the land use in the wetlands outside

the Metropolitan Area as these were not covered by the Town and Country Planning Act (*Statesman*, 3.3.1992). However, it soon began promising legislation to include these areas in this particular regulation.

The judge was not satisfied with the quality of maps provided (*Statesman*, 13.3.1992, *Telegraph*, 13.3.1992). On invitation by the state government, he agreed to visit the wetlands personally. On the first occasion, due to a misunderstanding (*Telegraph*, 7.4.1992; *Statesman*, 20.3.1992) the representatives of the state government did not show up. Justice Banerjee and a group of journalists went to the wetlands on their own.

According to the *Statesman* (20.3.1992), villagers complained to Justice Banerjee about their feelings of insecurity because of law and order problems in the area. Justice Banerjee confronted the state representatives with this issue in the next court session (*Telegraph*. 7.4.1992). This aspect, however, was of no relevance in the judgements. All parties went on a second court excursion into the wetlands. This time, the physical state of single fishery ponds was assessed in detail (*Telegraph*, 26.4.1992).

During the proceedings, the views of the central government were also heard. It maintained a diplomatic stance, submitting that the East Calcutta wetlands were of great ecological relevance. Any project within the area should be taken up only after an environmental impact assessment (*Statesman*, 13.5.1992, 30.7.1992). It stated that wetlands should generally be conserved.

During the court proceedings, the state government began making haste. Allegedly, an investment of four billion rupees was involved (*Statesman*, 3.3.1992). Later, the figure rose to five billion rupees. The project was urgent as it would improve Calcutta's overall economic standing by boosting exports, industrial investment and employment. If it didn't proceed soon, the investing company Development Consultants Ltd. might opt for a location in Andhra Pradesh (*Statesman*, 14.5.1992).

In sum, the need of environmental protection was not contested in court. The specific characteristics of the wetlands as described in the petition were hardly debated. The state government professed its intentions to safeguard the ecosystem, particularly in the Waste Recycling Region. But it also argued that a small portion of the wetlands should give way to urbanization. PUBLIC viewed this as an irresponsible, overall threat to the environment.

The newspaper coverage shows that one of Justice Banerjee's central interests was to obtain exact data. He thus touched upon the state government's core difficulty in dealing with environmental matters–its often-bemoaned failure to stringently implement rational urban planning. The judge's first ruling made this evident.

5.3.3 *The Judgement of 24 September 1992*

Justice Banerjee delivered his first major verdict on 24 September 1992. The proceedings had been speedy, taking nine months to deal with a fairly complex matter. The verdict was reported in the *All India Reporter* (AIR) and in the *Calcutta Law Journal* (1993, Vol. 1, January to June). This book draws upon the latter, less popular publication and will therefore not only refer to the pages but also to the paragraphs of quoted passages.

For PUBLIC, this first ruling turned out to be an almost total success. Except for the establishment of expert bodies to review conservation strategies for the wetlands and the appointment of a symbolic administrative 'owner', all the basic goals of the original petition were attained. Paragraph 41 (p. 128) reads:

> There shall be an order of injunction restraining the State-Respondents from reclaiming any further wetland. There shall also be an order of injunction prohibiting the respondents from granting any permission to any person whatsoever for the purpose of changing the use of land from agricultural to residential or commercial in the area as indicated in the map annexed to the petition and marked with letter 'C' (Waste Recycling Region, H.D.). The State-Respondents are further directed to maintain the nature and character of the wetlands in their present form and to stop all encroachment of the wetland area as indicated in the map annexed to the petition and marked with letter 'C'. The State-Respondents are further directed to take steps so as to stop private alienation and, if required, by extending the statutory provision in regard thereto.

The state government did not lose its case completely. It was given limited scope to plan a World Trade Centre and permanent fair ground (Paragraph 42, p. 128):

> It is clarified, however, that in the event the State-Respondents are desirous of having a World Trade Centre or a Public Exhibition Centre in its reality, the State-Respondents, however, would be at liberty to apply before the Court within a period of twelve months for variation of this order upon proper materials for future consideration of this court. It is, however, made clear that

this further consideration would be restricted to 187.44 acres of Chinta Singh Bhery, of which a portion has already been reclaimed, but the portion already reclaimed shall not in any way be utilized for any other purpose than a World Trade Centre or a Public Exhibition Centre if so authorized by the Court at any future point of time and till such time, however, status quo as of date shall continue. In the event, however, of failure to apply in terms of this order within the time as specified above, the writ petition shall stand disposed of without any order of costs.

The verdict elaborated at length the ecological necessities in general and the relevance of wetlands in particular. The judge did not derive his conclusions from India's environmental legislation. Rather, he referred to the fundamentals of the environmental debate and to international standards.

By extensively justifying his verdict, Justice Banerjee revealed that he felt he was entering uncharted territory. He expressed his hesitation to rule against the state government (Par. 30, p.123). 'This court is not trying to denounce the State activities in any way whatsoever. The state is equally conscious of the ecological problem.'

On the other hand, Justice Banerjee, pointed out that courts have a 'duty towards the society for its proper growth and further development' (Par. 2, p. 107). Similarly, 'on the wake of 21st century when there is a total global awareness in regard to maintenance of ecological balance', responsible judges could not afford to keep 'their eyes shut in regard to this concept of ecological imbalance' (Par. 28, p.122).

The first paragraphs of the judgement deal with a general concern for ecological balance: 'There shall have to be a proper balance between the development and the environment so that both can co-exist without affecting the other' (Par.2, p. 107). Particularly in a poor country such as India, economic development was seen as necessary.

Quoting international conferences (United Nations, 1972, Stockholm, Sweden; Habitat, 1976, Vancouver, Canada; World Water Conference, 1977, Mar del Plata, Argentina), the ruling emphasized the global awareness of potential ecological disaster. Justice Banerjee did not use the term 'sustainable development'. But he reformulated the concept in his own words without particular reference to the United Nations Conference on Environment and Development in Rio de Janeiro earlier that year (Par. 2, p. 107):

> Nature will not tolerate us after a certain degree of its destruction and it will in any event have its toll on the lives of the people. . . . The present day society has a responsibility towards the posterity for their proper growth and development.

Justice Banerjee also dealt extensively with the relevance of wetlands in general. He quoted sources from Australia, the United States, Sweden and the World Bank to prove his case. Not all of his sources were brought up by the petitioning party. He obviously did research on his own initiative.

While the Indian legislation referred to in the petition was not mentioned per se in the verdict, the document does state that India is a contracting party of the Ramsar Convention and has thus made a commitment to wetlands conservation (Par. 24). In accordance with this document, the ruling made it clear that wetlands do not consist only of permanent water bodies. Swamps, marshes and seasonally flooded areas were included in the court's definition.

The judgement also elaborated the specific characteristics of the local wetlands. It concluded that 'there cannot be any manner of doubt that the Calcutta wetlands present a unique eco-system' (Par. 19, p. 115). This reasoning followed the general lines of the petition and drew on the sources it listed. Justice Banerjee, however, quoted additional publications.

Justice Banerjee stated that the East Calcutta wetlands 'recycle waste water for efficient nutrient recovery, provide fresh fish to the market of Calcutta and employ thousands of rural people' (Par. 19, p. 116). The wetlands were seen as 'vital for maintaining microclimatic conditions; absorbing pollution from air receptacle to rain water and sewage; waste recycling; pisciculture; habitat for aquatic flora and fauna; proven high biomass density' (Par. 15, p.113). Their relevance as spill basins was also mentioned in this context.

The state government's argument concerning proposed development schemes were also considered. The expansion of Salt Lake City from 3000 to 3784 acres, it was stated, would not tip the ecological balance of the wetlands. This alone, however, did not imply it would be permissible.

Justice Banerjee also referred to CMDA's Metropolitan Development Plan 1990-2015, a document not listed in the petition. As has been emphasized above (subsection 5.1.3), the CMDA had made a clear choice against eastern expansion. Justice Banerjee concluded that the wetland area 'is not included in the future development of the CMDA's plan' (Par. 31, p.124) and rhetorically asked whether the

High Court could 'proceed on any other basis' than the document of the official planning authority (Par. 32, p.124). In a later case (discussed in section 5.6), the same judge, now acting as senior member of India's first environmental bench, no longer considered this paper legally binding.

In September 1992, Justice Banerjee (Par. 17, p.113) defined as his task to decide 'whether further encroachment of 784 acres of Calcutta's wetlands will lead to such a degradation of environmental conditions so as to have its toll on society'. The ruling distinguished between general urbanization for personal benefits in terms of housing or business space and 'development projects' that benefit society as a whole. Only for the sake of the latter would it be justified to sacrifice a portion of the East Calcutta wetlands. In a globalizing economy, on the other hand, a World Trade Centre would benefit the whole country by promoting international trade, thus creating welfare and ensuring prosperity. The Eastern Metropolitan Bypass and other infrastructure (such as readily available power supply) made the disputed fish ponds an attractive location.

Satellite townships were seen as a phenomenon of all major urban centres and generally approved of. But that did not 'imply that the gift of nature to humanity shall have to be destroyed' (Par. 20, p.116). Rather Justice Banerjee stated (Par. 39, p. 127) that wetlands have 'a significant role to play in the proper development of the society–be it from environmental or from economic perspective', and continued:

> Pollutionwise this metropolitan city of Calcutta tops the list in the country–can we in this city further endanger the environment by reclaiming the nature's gift to mankind when, in fact, such a reclamation is only for the purpose of expansion of the satellite township on the Eastern Fringe of the city of Calcutta? …I am of the view that question of further consideration of the matter does not and cannot arise since wetland is precious, wetland ensures to the benefit of society at large and wetland assists mankind to live in a cleaner and purer environment.

Justice Banerjee considered the proposed World Trade Centre and the public exhibition centre as 'development projects' worthy of some sacrifice in order to strike the desired balance between environment and development. Such projects should not be embargoed by the judiciary (Par. 37, p. 126). Thus the area for potential extension of Salt Lake City was reduced from 784 to 187.44 acres–the space the state government demanded for these complexes.

Justice Banerjee, however, did not simply permit these two 'development projects'. No detailed plans had been presented in court. The proposal had 'not reached the stage of even the state government's approval and as such it can safely be concluded to be in a state of fluidity' (Par. 36, 126). The ruling pointed out that the World Trade Centre in Calcutta did not even figure on the central government's list of such future projects.

Given the limits of the public purse, Justice Banerjee also doubted the economic viability of the suggested projects. The paragraphs relating to the quality of governmental planning clearly expressed the judge's frustration (Par. 37, 38, p. 126f).

> This court is completely in the dark as to the area which would be occupied by this World Trade Centre and the Public Exhibition Centre. .. The Court needs to be told the economic viability of a project: The Court needs to be told the sources of finance: The Court needs to be told the future of this project: The Court needs to be told as to who would be responsible for the maintenance of the same and what would be the financial outcome thereof–none of these details have been furnished to this court.

Justice Banerjee ruled out general encroachments on the precious wetlands ecosystem. Striking a 'balance of environment and development', he was prepared to reconsider any serious proposal for the World Trade Centre and a public exhibition centre on the condition that the government first present reliable planning data.

5.3.4 *A Summary Assessment for First Phase of Proceedings*

Several aspects of this case so far are worth emphasizing. The state government had wanted to limit the debate to an area of almost 800 acres. The court did not agree to this limit. Its judgement instead covered 5500 hectares of wetlands, protecting the entire Waste Recycling Region with the possible future exception of almost 190 acres. The definition of 'wetlands' was consistent with that of the writ petition. Other wetlands in East Calcutta, however cherished by conservationists, were not included in this ruling.

It is also relevant to stress that during the proceedings the scope of the government's development scheme had been constantly narrowed down. The writ petition had challenged a planned extension of Salt Lake City. According to the submissions of the state government, in the end, only a World Trade Centre and a permanent exhibition hall

were at stake. The further dispute over the World Trade Centre is discussed in the next subsection, but it did not substantially change the stance of the first ruling. Therefore, other important traits of the proceedings up to this point will be assessed first.

The court ruled on behalf of 'society at large'. Issues of personal interest such as ownership of ponds, access to housing or business space had to yield to concerns of both the economic and the environmental well-being of the Metropolitan Area as a whole. The judge thus expressed concern for the public good. Both the Waste Recycling Region's actual and the World Trade Centre's potential role for the rest of Calcutta metropolitan area and the state of West Bengal were taken into account to strike the balance.

Justice Banerjee based his understanding of the public interest not so much on the Indian constitution, as he could have, but on the growing international awareness of environmental risks to public welfare. His ruling drew on sources from Asia, Australia, America and Europe. In this sense, the judgement was more in tune with the international debate than with Indian society or–least of all–the social reality of the East Calcutta wetlands.

Contrary to an acknowledged need to take into account socio-economic conditions, the judgement avoided dealing with the social conditions of the Waste Recycling Region. Government programmes were taken at face value in so far as they had been explicitly formulated. Issues of law and order and the incidents of land occupation by force were not recognized in the judgement, even though Justice Banerjee had expressed his concern during the court session (*Telegraph,* 7.4.1992).

The socio-economic needs and worries of the wetlands poor were not taken into account. From a sociological point of view, however, it is doubtful whether any conservation strategy would succeed without tackling those needs. The judge did not seem to be aware of this challenge and accordingly did not direct the state government to take any measures about it.

It also seemed doubtful that Justice Banerjee would have been as diligent if the state government's development plans had been just a little more advanced at the time. In other cases, late and poorly drafted urban planning documents were accepted as legally valid by the Green Bench presided over by the same judge.

5.3.5 The Dispute over the World Trade Centre Continues

In the autumn of 1996, construction work for the World Trade Centre was under way. Litigation had delayed the project by almost five years and had radically reduced the space available. In early 1997, the *Statesman* (12.1.1997) reported about it under the headline 'The Shape of Trade to Come'. The core facility was being set up on four acres bordering on the Waste Recycling Region. The private company Development Consultant Ltd. (DCL) was prepared to expand the project into the Waste Recycling Region's Chinta Singh Bhery should the court finally grant permission.

The matter was still pending, and many of the buildings that were initially meant to go along with the centre were now being planned at other locations (for instance the five star hotel or the convention and exhibition centre called 'Science City'). They had become issues of another public interest litigation, which are dealt with later in section 5.6.

At stake in this subsection is the High Court's general permission to build the World Trade Centre. It is relevant because many people in Calcutta believe that the court reversed its first judgement, eventually ruling against PUBLIC. This perception is wrong. Rather, Justice Banerjee's second ruling of 30 November 1994 was consistent with the first one. Because the second judgement did not set a precedent, it was not reported in the law journals.

The state government had not appealed in the time defined by the first ruling for permission to build the World Trade Centre. However, in the last week of the period granted, DCL had done so. This company had been reported to be the relevant investor when the *Economic Times* first covered the topic (8.12.1991). Proceedings consequently led to Justice Banerjee's second judgement.

As this judgement stated, DCL had asked for permission to set up a World Trade Centre on 73 acres of the premises of the Chinta Singh Bhery. The Court permitted it, with the explicit admonition that there was to be no further encroachment in the future. Justice Banerjee repeated his formula of the wetlands being a 'gift of nature' and the necessity of striking a 'balance between ecology and development', again with a particular emphasis on economic growth in poor countries.

The company had obtained a memorandum of understanding signed by the assistant secretary of the Urban Development

Department. The memorandum suggested the construction of the centre (if so permitted by the High Court). Justice Banerjee accepted this as a legitimate basis for DCL's appeal (p. 21).

In court, DCL now presented the information demanded in the first ruling. It predicted future employment for 8,000 to 10,000 World Trade Centre staff, investment costs of 500 to 600 million rupees and a construction period of five to six years. The company promised to come up with the capital and to manage the centre. A full-fledged World Trade Centre, according to DCL, should have

- a business centre with computer, telephone and fax facilities,
- information and trade research services covering the world market,
- information services on trade-related government regulations on an international basis,
- conference rooms of different sizes,
- an exhibition hall, and
- office space for export companies, financial institutions, customs authorities and trade promotion and shipping services.

Additionally, DCL wanted to construct a hotel complex and space for restaurants, travel agents, airline officea and sports facilities. There were also ideas of establishing an 'international school' in order to encourage business people from abroad to move to Calcutta.

Justice Banerjee's second judgement referred to DCL's statement that it was already successfully running a pilot project on Park Street, complete with video conference facilities and a satellite link to the New York World Trade Centre head office. The company had obtained regular membership in the international World Trade Centre Association. Over 160 million rupees had already been invested in data processing facilities alone.

The second judgement also repeated DCL's assertion that World Trade Centres in Taipei and Seoul had significantly contributed to the well-known export successes of Taiwan and South Korea. Such centres were stated to be in a position to provide necessary infrastructure particularly for smaller companies interested in access to the world market.

Justice Banerjee expressed his doubts about the employment possibility of up to 10,000 people, given that much of the activities were to be computerized. Nevertheless, he concluded that the World Trade Centre would 'benefit to the society at large' and must be called

a 'developmental project' (p. 16). It was expected to improve the industrial climate of West Bengal and to attract potential investors. The court therefore granted 12 acres to be allotted for the project.

The ruling pointed out that half of the original wetlands area had already been lost. The 73 acres currently at stake did not even amount to one percent of the remaining area. The project was not likely to cause any major harm to the wetlands ecosystem as a whole. Nonetheless, the ruling went that 12 acres would be enough for the World Trade Centre.

Justice Banerjee did not grant permission for a new hotel complex. No health centre, international school, or recreational facilities were to encroach on the wetlands. Such services were already available in Calcutta and investments to expand capacities could take place elsewhere.

The first court order was thus modified, permitting the construction of the World Trade Centre plus access roads and parking space: 'No other encroachment, however, can be permitted so far as the future expansion is concerned' (p. 22). This also applied to parts of the contested area that according to DCL's plans would be reserved for a lake and adjoining landscaping. No encroachment for other than the listed purposes was to be allowed and particularly no commercial activities.

There had been no proposal for a permanent exhibition site within the initial twelve months granted for application. Without further debate, this project was therefore ruled out for good with respect to the Chinta Singh location.

The PUBLIC case was still not disposed of after Justice Banerjee's second ruling. Rather, DCL was obliged to file an affidavit with the exact project details after the Christmas break. All parties were given liberty to appeal to the court in case of implementation problems.

The next affidavit of DCL immediately triggered another appeal by PUBLIC. The NGO stated that the details were not necessarily in accordance with the second ruling's definition of the World Trade Centre. For our purpose it is irrelevant to delve into the minutia of this piecemeal process. It mostly resulted in further restrictions of the territory allotted to the World Trade Centre.

An interesting sidelight is that the second judgement complained that the central government had still not come up with an environmental impact assessment. This goes to show that the judge

was not familiar with the regulation for such assessments. Indeed, the central government had submitted, in the first phase of the litigation, that such a project required a profound assessment. However, it is not the central government's duty to make the assessments.

The permission for a deviation from the CMDA's Metropolitan Development Plan 1990-2015 is also worth a critical remark. Justice Banerjee gave two reasons for the deviation. The first was that the Chinta Singh Bhery was a highly suitable location for the project. In view of the 'balance' the judge wanted to strike between environment and development, this makes sense. Infrastructure would be readily available, and the traffic situation was favourable at Chinta Singh.

The second reason, however, appears to be problematic. This was that some of the reclamation damage had already been done and that the fishery had already gone dry. It amounts to a serious breach of the principles of rational urban planning to retroactively legalize inadequately planned development. In principle, it would mean that any government and its contractors could get away with breaking the laws if it was later found that their action had made sense or, for that matter, their intentions had been good. Such decisions may indeed undermine the principle of rule-bound government.

The last relevant consideration concerning the World Trade Centre episode is the following: It is remarkable that a relatively tiny small area (less than one percent) of the Waste Recycling Region got so much attention over such a long time span.[1]

5.4 *M.C. Mehta v the Union of India*

This section deals with the judgement of the Supreme Court concerning Calcutta's tanning industries. The judgement was highly relevant for East Calcutta. In late 1996, the Supreme Court ordered the tanneries to relocate in an area that may well be part of (or at least overlap with) the protected Waste Recycling Region. Up to early 1999, neither of the judicial tiers involved had cleared the decisive

[1] It is futile to speculate about why the issue received such attention. One reason may be that PUBLIC labeled DCL as a 'multinational' and argued against a private, profit-driven company operating in favour of development. Moreover, DCL, being a corporation, depended on the legal permission. Unlike a government agency, it could not risk losing invested capital should the High Court eventually rule against the project.

legal question, whether or not this place was covered by the protective High Court ruling of 1992.

The litigation in the Supreme Court focused on the question of industrial pollution, an issue that was neglected by the High Court litigation. The Supreme Court, on the other hand, did not deal with aspects of urban planning or the idiosyncrasies of East Calcutta. Different angles of environmental reasoning thus lead to apparently different and probably conflicting judgements.

This goes to show that the judiciary as a whole is not applying comprehensive environmental legislation that would take into account all relevant aspects. Rather, the approach is haphazard and erratic.

Whereas the proceedings of *PUBLIC v the State of West Bengal* were heard in the High Court, *M.C. Mehta v the Union of India* (also known as the *Ganga Matter*) was heard in the Supreme Court. Originally it had concerned the tanneries in Kanpur. The Supreme Court had ruled that these tanneries could no longer be permitted to pollute the Ganges. The tanneries of Kanpur had been ordered to either provide effluent treatment or close.

In the early 1990s, the scope of the case was extended to cover all industries along the Ganges. This affected the Calcutta Metropolitan Area in many ways, not only the local tanneries. For instance, Howrah Station was eventually forced to set up a treatment plant (*Statesman*, 24.1.1997), and proceedings concerned with the Howrah foundries were still dragging on in 1999, as local activist Subhas Dutta complained. This section will deal neither with the *Ganga Matter* as a whole nor with its overall impact on Calcutta. The discussion here is restricted to the aspects relevant to the East Calcutta wetlands.

The vast socio-economic intricacies of relocating these traditional industries will not be dealt with here either. They are daunting indeed. Owned by minorities of ethnic Chinese and non-Bengali Muslims, the industries employ some 10,000 to 15,000 workers of the lowest social strata (IWMED, 1995; CEMSAP, 1995). At least 100,000 jobs in Calcutta's leather trades depend on them. For the purpose of this study, it must suffice to state that both tannery owners and their workforce were reluctant to move.

There was, consequently, little local enthusiasm for conservation. Calcutta's environmentalists, in turn, seemed more concerned with protecting the wetlands as ruled by the High Court. They were generally not in favour of relocation and viewed M.C. Mehta as an

outsider imposing his ideas and interfering in an issue he did not understand.

On 12 December 1996, Justices Kuldip Singh and S. Saghir Ahmad of the Supreme Court delivered a final and summary judgement (reported 1996(9) SCALE: 397-415) concerning the Calcutta tanneries. By then, they had been dealing with this particular issue for almost four years. In the end, they ordered over 500 businesses to either relocate or close by 30 September 1997. Stating that the Supreme Court no longer needed to with this issue, the judges referred further monitoring to the Green Bench of the Calcutta High Court, which had been established in 1996.

By early 1999, the construction of the leather complex was well under way. The first handful of businesses had actually shifted to Karaidanga, a location east of Bantala. Bantala is the village in the centre of Waste Recycling Region. However, the vast majority of tanneries were still operating in the Tangra, Tapsia and Tiljala neighbourhoods of Calcutta, defying the Supreme Court decision for the time being.

My assessment of this case is based on published Supreme Court rulings, newspaper clippings, the 1995 CEMSAP report and personal statements of M.C. Mehta and people generally involved in the wetlands issue. There was no access to internal data of the West Bengal government. It is therefore impossible to reconstruct what went on within the administration. It will become clear, however, that the state government's stance in this case was not necessarily consistent with its elaborations in the PUBLIC case.

The following subsection deals with the location of the tanneries and the environmental problems involved. The second subsection discusses the proceedings in the Supreme Court. The final subsection elaborates on the conflicting nature of Supreme Court and High Court rulings.

5.4.1 *Suggestions for a Calcutta Leather Complex*

In December 1991, the Supreme Court (reported 1993 Supp (1) SCC 434) had ordered industries along the Ganges to report their efforts to stop pollution according to the Water Act. In early 1993, the Supreme Court began to deal explicitly with the Calcutta tanneries. At this point, the state government immediately submitted that these polluting industries were to be relocated.

The role of the West Bengal government in this case is ambiguous. It constantly presented plans to set up a new Calcutta Leather Complex and appeared to be actively promoting it. However, it did not seem at any time prior to the final Supreme Court judgement to be in a hurry to implement these plans. Finally, it never acknowledged that the leather complex project might contradict its other proclaimed policies of wetlands conservation.

Publicly, the Calcutta Leather Complex was first mentioned in the summer of 1992. On 26 August, the *Statesman* ran a story about plans for a new '1000-acre Leather Complex in Bantala', the village in the centre of East Calcutta wetlands. This was one month before Justice Banerjee's first ruling. The *Statesman* pointed out that the project had never been mentioned in the High Court in the *PUBLIC v the State of West Bengal* proceedings. The paper considered the news to be a severe blow for those struggling for wetlands protection.

The *Statesman*'s source was the Indian Leather Industries Association. The state government was to make available the land and improve road and power infrastructure. The project proper was to be paid for by the tanning businesses. A common effluent treatment plant for the new tannery complex was expected to be funded with an amount of 1.55 million dollars by the UNDP. The paper did not mention the Supreme Court. Nevertheless, the plans seem connected to the Supreme Court's demand for reports on compliance with pollution control legislation.

In later state government documents, the Supreme Court is generally not mentioned. Plans are made to appear as the government's own initiative, but it is not apparent who exactly is behind them. Their potential inconsistency with conservation intentions in the wetlands is also neglected. Typically, the CEMSAP (1995: 7.19ff) dealt with the leather complex as if it was proven to be economically and environmentally sound:

> The Government of West Bengal has identified the leather industry as a growth sector, given the global trend to shift production and processing of leather to developing countries. It considers that relocation of tanneries to a 'green field site'–Central Leather Complex (CLC)–offers the opportunity to upgrade technology and increase productivity, to introduce more efficient environmental practices and to install a cost-effective centralized effluent treatment plant.

Indeed, the traditional tannery areas of Tangra, Tapsia and Tiljala in East Calcutta gave ample reason for environmental concern: 'At

present, apart from screening to remove solids, there is no treatment of effluents discharged from the tannery clusters' (CEMSAP, 1995: 7.17). Anyone visiting the area for the first time would have been appalled by the smell, the piles of industrial waste and the brightly coloured effluents flowing though open drains. This waste water was contaminated with salts, sulphide and chromium. Owing to organic residues, the biological oxygen demand was very high. All the waste water went through the canal system into the wetlands. The Supreme Court considered tannery effluents to be ten times as polluted as domestic sewage water.

5.4.2 *The Proceedings in the Supreme Court*

In the Supreme Court, the West Bengal state government first mentioned the planned tannery relocation on 19 February 1993. The judges ordered appropriate steps to be taken within three months. That did not happen. The state government applied for a longer time span, which was not granted by the Supreme Court.

Nevertheless, the hearing in court dragged on with the judges on several occasions threatening to prosecute government officials for contempt of court (15.10.1993, 25.2.1994, 29.7.1994). On 9 September 1994, the court stated (SCALE, 1996 1996: 403, Par.6):

> We are prima facie satisfied that there has been no effort on the part of the West Bengal Govt. to comply with the directions given by this Court. Despite our finding, we restrain ourselves and refrain from issuing contempt notice.

During the proceedings, it became apparent that the tannery owners did not want to move, particularly as they would have had to bear the cost of relocation. The proceedings dealt with the investment involved and how it was to be financed. The alternative to relocation would have been to set up a common effluent treatment plant. This was debated on several occasions, with Justice Kuldip Singh and his colleague finally being convinced that it would not be viable because there was not enough space.

According to an affidavit on 5 October 1993, filed by the West Bengal Pollution Control Board (WBPCB), the tanneries had been 'operating for a considerable period of time with no regard to environmental pollution control'. The WBPCB had never enforced national legislation. In the worlds of the Supreme Court (1996: 398, Par. 1), 'the State of West Bengal and … the West Bengal Pollution

Control Board are wholly ... re-miss in the performance of their statutory obligations to control pollution and stop environmental degradation'.

During the proceedings, both the National Environment Engineering Research Institute (NEERI) and the WBPCB repeatedly reported to the Supreme Court that it would be impossible to set up effluent treatment plants in the tannery areas of East Calcutta. Both agencies recommended that the industries should be shifted.

The Supreme Court judgement did not clarify why the relocation was stalled for so long. Apparently neither the state government nor the tannery owners were making haste. The tannery owners had initially consented to the relocation and for that reason the Supreme Court had not carried out its threat to order their closure. Later the Supreme Court found the tanneries to be 'wholly non-cooperative' (SCALE, 1996: 409, Par. 11).

Pressing for implementation reports, the Supreme Court came to learn in early 1995 that the land acquired by the State of West Bengal was to cost the tanneries 860 rupees per square metre. The tannery owners complained that this was not affordable.

The court dealt with the issue in the following matter: On 7 April 1995, it ordered the state government to set up and pay for the common effluent treatment plant. Financial support was to be made available from the central government's Ganga Action Plan. As soon as the leather complex was operational, the companies concerned were to pay an effluent charge to the government. This solution meant that the price per square metre of new tannery territory could be reduced to 600 rupees.

The Supreme Court order was not obeyed. The tannery owners claimed that it was, after all, possible to treat effluents at the current locations. According to them, the state government had indicated that under these conditions the relocation would be reconsidered. A company called KROFTA Engineering Ltd. from Chandigarh had allegedly made some proposals.

On 5 September 1995, the Supreme Court again ordered NEERI to report on the feasibility of on-site effluent treatment in Tangra, Tapsia and Tiljala. On 30 September 1995 NEERI again declared such treatment to be impossible. Finally, in December 1996, the Supreme Court in its last ruling on the matter ordered the tanneries to relocate within the next eight months.

To judge by this case, the Supreme Court did not act assertively. It did not start contempt proceedings, but rather patiently tolerated time lags and lack of implementation. The role of the state government remained ambivalent. It apparently favoured relocation but did not press the issue. Moreover, the state government had generally claimed it would not let Calcutta expand eastward.

5.4.3 *A Wetlands Location for the Leather Complex*

The final Supreme Court ruling of December 1996 ordered the tanneries to relocate to a place called Karaidanga, east of Bantala. Environmentalists from Calcutta claim that this area is covered by the first wetlands judgement of the High Court. There are reasons to believe that the proposed leather complex will at least partly overlap with the protected Waste Recycling Region. Judicially, the question remains unresolved. At this point it will suffice to state that contempt of court proceedings in this matter are pending in the High Court. These are dealt with in the next section.

The issue of wetlands protection had been mentioned in the Supreme Court. In the summer of 1995, the tannery owners had brought it up as a reason for not being able to relocate. The state government contested their statement. If filed an affidavit on 14 July 1995 declaring that the planned tannery complex would not be in the wetlands. The terms used are confusing. It will be remembered that the High Court had ruled to protect the 'wetlands' as outlined by the map of the Waste Recycling Region. While all of East Calcutta is basically wetland area, the High Court did not use the term 'Waste Recycling Region' for the protected area.

It is possible that the state government deliberately further confused these terms. As will be elaborated in the next section (which deals with PUBLIC's contempt of court petition), there is a second, official map of the area with the title 'East Calcutta Wetlands (Based on Waste Recycling Region)'. It is likely that this one was submitted to the Supreme Court. According to some members of the West Bengal bureaucracy, the judges were indeed shown the wrong map.

The second map outlines an area within the Waste Recycling Region as 'wetlands'. This area is considerably smaller than the Waste Recycling Region with the omitted territory being close to Karaidanga. If used in the Supreme Court, the second map would have invited a misreading according to which the High Court would

have protected this area rather than the entire Waste Recycling Region. No map had been published along with the ruling.

Several wetlands conservation activists of East Calcutta claim to have been advising the tannery owners in this matter. The Supreme Court's attitude to the issue shows that they did not brief the tannery owners well enough. The owners were unable to convince the court. Rather, the judges accepted the state government's assertion that it was not interfering with the wetlands protected by the High Court.

The petitioning lawyer in the *Ganga Matter*, M.C. Mehta, said in an interview for this research project that he felt the argument about the wetlands was a mere pretext. According to him, local 'self-proclaimed environmentalists' were basically serving the vested interests of the tannery owners who were unwilling to shift. He said he had personally visited the place (admittedly not in the rainy season) and had found it dry.

In the interview, M.C. Mehta also emphasized that there was a waste water canal running through the area. He considered the canal to be evidence that the location was not worthy of conservation. This indicates that he was not informed about the complexities of the East Calcutta Waste Recycling Region. One might expect India's most prominent environmental lawyer to be better briefed, particularly since the case was heard in the Supreme Court. Apparently, the characteristics of the East Calcutta wetlands were never discussed in this forum.

Environmentally, the Supreme Court ruling seems to make sense at first glance to the visiting German sociologist, for two reasons. First, tannery effluents are indeed a major health hazard (particularly in food production in the waste recycling schemes), an issue overlooked in the PUBLIC case. Second, the Supreme Court had insisted that the areas vacated by the tanneries were to remain green areas. Those areas were wetlands that were long since reclaimed. Ideally, the Supreme Court ruling would involve shifting the tanneries to the east and expanding the Waste Recycling Region to the west.

However, that idea is not realistic. The old tanneries are located in an area where there are several other buildings serving commercial, industrial and residential purposes. There are also temples, churches and mosques. The area is not an isolated tannery complex.

Questions of viability are not the only points of criticism. In strictly legal terms, the approach of the ruling is also unsatisfying. A certain area had been protected by a High Court ruling. If, as appears

likely, that area was infringed upon by the Supreme Court ruling, then the High Court's authority would have been put in question. This would all the more be the case if it had happened without explicit revision of the former legally binding decisions of the High Court.

The fact that the two judgements appear to be in conflict does not merely highlight the inadequate interaction of the two judicial tiers involved. It is also an example of the difficulties of India's urban, middle class environmentalists when interacting with one another. PUBLIC and M.C. Mehta could have coordinated their legal efforts, but they did not. Rather, the parties involved harboured resentment and conspiracy theories towards one another.

5.5 PUBLIC's Pending Contempt Accusations

Whereas *PUBLIC v the State of West Bengal* was settled quickly and initially was a promising example of public interest litigation making government agencies more accountable, this assessment does not entirely hold true over the longer run. The ruling was not convincingly enforced. The Calcutta Leather Complex project was particularly disturbing. In early 1998, it still needed to be judicially clarified whether the project was in accordance with the High Court ruling and, if not, whether the High Court would modify its orders.

The clarification was all the more urgently needed as PUBLIC had taken the issue to court. On 9 August 1995, it filed an affidavit (CC No. 44 of 95, High Court of Calcutta, Special Civic Jurisdiction [Contempt]), accusing several leading officers, most of them of the state government, of having 'failed and neglected to maintain the nature and character of the wetlands in the form subsisting on the date of the order and judgement dated September 24, 1992'. This would amount to contempt of court, a criminal offence.

There had been cases of conversion and encroachment. The affidavit demanded that there should be an injunction against all such ongoing activities. The respondents should be found guilty of contempt of court and punished accordingly.

The affidavit particularly mentioned the proposal to set up the leather complex at Karaidanga at the eastern end of the protected area. It also complained about the ongoing construction of an eye hospital, sponsored by the Ballygunge Lions club, south of the road from

Bantala to Karaidanga. Other charges of specific land-use changes were not made in this affidavit.

The evidence supplied in the annexures included copies of maps that suggest (but do not prove) that the leather complex would be inside the Waste Recycling Area. Also included were photographs of the sites concerned. There was no reference to the ongoing proceedings in the Supreme Court.

On 12 December 1995, PUBLIC filed another affidavit, repeating the charges of contempt of court. This document included more details concerning the eye hospital and the leather complex. PUBLIC submitted that two state government ministers had been present during the ceremony in which the foundation stone was laid for the eye hospital on 19 March 1995. Additionally, a signboard approximately 300 yards west of the eye hospital's construction site indicated that the Lions Club was also planning to set up an old age home there.

By October 1997, both projects had been abandoned. PUBLIC's lawyers saw this as a result of the litigation. PUBLIC had understood these supposedly charitable projects to be an attempt of real estate promoters to urbanize the area. Had these complexes become operational, the promoters would have been in a position to state that the area was no longer agricultural. According to a leading officer, several other small-scale projects in the wetlands had also been stopped, for instance a cemetery for pet animals sponsored by the then Environmental Minister, Maneka Gandi. There is little doubt that fear of the judiciary has played a role in this, and that PUBLIC's contempt petition was effective in imposing the 'threat' of judicial punishment.

Concerning the leather complex, page 11 of the second contempt accusation stated that a new map had been prepared by the Remote Sensing Application Laboratory. PUBLIC understood the map to have been 'deliberately distorted so that the leather complex is shown to be situated outside the periphery of the area protected by the said judgements and orders' (p. 12). This is the map, already mentioned above, called 'The East Calcutta Wetlands (Based on Waste Recycling Region)'. According to the map, the wetland area is basically the same as the Waste Recycling Region except for its south-eastern border. That border is indicated farther west.

PUBLIC expressed the suspicion that the map was meant to confuse the Supreme Court. By designing the map and equating it with the term 'East Calcutta wetlands', the state government might

have tried to gloss over the fact that current plans were in conflict with the High Court judgement of September 1992.[2] The contempt affidavit of December again made no reference to the tanneries case in the Supreme Court. It did state, however, that the road from Bantala to Karaidanga was to be widened to allow more traffic. This was understood as change of land use in the Waste Recycling Region.

The matter only rarely came up for hearing. It was still pending in early 1999. The issue remained disturbingly unresolved. Basically, there were three possibilities:

1. Karaidanga might indeed be on the border of the Waste Recycling Region with the leather complex not encroaching on its territory. This was the government's line.
2. The upcoming leather complex might partly overlap with the protected area. This seemed plausible, to say the least.
3. All of Karaidanga might be covered by the High Court judgement of 1992. This is what PUBLIC and other environmentalists believed to be true.

Adding to the confusion, the place 'Karaidanga' is not mentioned on either of the two maps in official use. However, there is an IWMED document of 1988 that includes a map of the Waste Recycling Region explicitly spelling out the name Karaidanga outside this area. However, the fact that the locality named Karaidanga is shown outside the Waste Recycling Region offers no evidence that a large-scale industrial complex in this area will not overlap with the legally protected territory.

In the High Court, the second map was said to be based on satellite monitoring and therefore scientifically correct. However, according to Ashis K. Ghosh (who was not heard in court on this matter), it would be no problem to prove with soil samples that the area in dispute is seasonally flooded and therefore qualifies as wetlands.

[2] The genesis of this map may be completely unrelated to the leather complex project. Chances are that it was prepared in the context of governmental conservation initiatives discussed in section 4.7. There had been official suggestions to have the wetlands recognized as areas of both 'national' and 'international' importance. For these proposals the state government had to come up with yet another map. I was told that, for some trivial reasons not linked to the leather complex, the officer responsible had decided this area would be of 5000 hectares, compared to the 5500 hectares of Waste Recycling Region. Indeed, a short glance at this map will verify that the area concerned amounts to roughly 90 percent of the Waste Recycling Region.

The confusion shows that the original judgement of Justice Banerjee was insufficient. The scale of the map used was inadequate for immediate implementation. The High Court was neither decisive nor assertive in picking up this important issue. Rather, the matter remained judicially unresolved in early 1999. According to PUBLIC advocate Siddharta Mitra, the NGO approached the Supreme Court in 1997 hoping to settle the question of the maps. However, after the retirement of Justice Kuldip Singh, there seemed to be little enthusiasm in the Supreme Court about following up on his judgements. The matter was not heard.

5.6 *Surojit Srimani v the State of West Bengal*

This section deals with a public interest litigation that is closely related to the original wetlands case. It was based on similar arguments and drew upon the same sources of expertise. At stake were those parts of Calcutta's eastern fringes not protected by the High Court ruling. The petitioners demanded adequate urban planning and stringent implementation along the Eastern Metropolitan Bypass. These areas are highly interesting to real estate speculators. However, the case of Surojit Srimani v the State of West Bengal (W.P. No. 918 of 1996) must in retrospect be considered a total failure.

The only result was an order to check levels of methane in the air on the site of a former garbage dump. This measure was considered useless by technical experts. After all, methane is dispersed quickly in the air, whereas it poses a serious risk of fires and explosions if it builds up underground. Such possible phenomena remain unchecked even after the court intervention. A major convention and exhibition centre called 'Science City' has been built on this former landfill. According to the petitioners, the High Court ruling appeared technically inadequate to prevent the danger of explosions. Moreover, the petitioners had been concerned about urban planning for the entire East Calcutta area and not only about the safety of Science City.

The procedural history of the case seems haphazard. By the end of 1998, it was still pending before the Green Bench of the High Court, without having come up for months on end. There had earlier been a brief episode involving the Supreme Court and hearings of the case before another High Court bench.

In early 1995, Mohit Ray and Debaprasad Bhattacharya drafted a letter to the Chief Justice of the Supreme Court, asking him to stop several inadequately planned development projects along the Eastern Metropolitan Bypass. Mohit Ray recalls that they had been motivated by prior incidents of successful environmental litigation in the Supreme Court. They did not formally set up an NGO. The letter carried the date 2 May 1995 and was four pages long. Twenty-two friends and colleagues of Mohit Ray and Debaprasad Bhattacharya had signed it. The first signature was that of Surojit Srimani, hence the name of the case.

The letter stated that East Calcutta up to then had been mostly open space and wetlands. Seven major development projects were now under way: (1) the Science City convention centre and exhibition hall, (2) a crafts village, (3) a film training centre, (4) a satellite township called 'New Calcutta', (5) a five star hotel, (6) an industrial estate in the Kasba neighbourhood, and (7) a state transportation garage. The letter referred to the CMDA's document of 1990, which had declared this area to be unsuitable for urbanization. As the Supreme Court had under similar conditions stopped constructions in Utter Pradesh, the letter begged for such an intervention in East Calcutta.

According to Mohit Ray, an environmental engineer, it was clear that none of the above-mentioned projects infringed upon the area protected by the High Court ruling. Nevertheless, there were no publicly available planning documents and least of all the obligatory outline development plan. Rather, these projects were in conflict with metropolitan planning as elaborated in earlier documents of the CMDA (1990) and the State Planning Board (1990).

The matter was never heard in the Supreme Court. The Chief Justice's office ordered the WBPCB to report and then passed the relevant documents on to the Calcutta High Court. The High Court was directed in a letter dated 14 December 1995 to take 'appropriate action'.

In March, Mohit Ray and Debaprasad Bhattacharya wrote another letter, this time to the Chief Justice of the High Court. This three-page document was signed by fourteen persons and was dated 25 March 1996. It pleaded for the first letter to be treated as a writ petition and for litigation to be started. According to this letter, no environmental impact assessments had been carried out as demanded by law. No clearances had been given for the various development projects along

the bypass. The letter also stated that the WBPCB was corrupt and under political pressure. As Mohit Ray recalls, this had been apparent from newspapers in early 1996.

The matter was soon after heard by the single bench of Justice Bhagabati Prasad Banerjee. On the first occasion (30.4.1996), he asked for a longer, written document on the matters concerned. Mohit Ray and Debaprasad Bhattacharya filed a fourteen page report. The copy I was given does not carry a date.

Once again, this report stated that Calcutta's urban dilemmas stem from inadequate planning and unmanaged growth of the city. The second paragraph read:

> The most part of this huge city-cum-semi-urban complex is outdated. Civic amenities like water supply, power supply, roadways, parks and open space, and transport system are totally inadequate in relation to the people's need.

The report referred to many of the documents already quoted in the case *PUBLIC v The State of West Bengal*, such as Ashis K. Ghosh (1991), CMDA (1990), State Planning Board (1990) and yet another journal article by Dhrubajyoti Ghosh. It also referred to a publication by M.N. Buch, the chairman of the National Centre for Human Settlement and Environment in Bhopal, stressing the relevance of urban planning. It summarized all the arguments of the first wetlands case, but did not emphasize those related to garbage disposal and sewage treatment. The Waste Recycling Region was, after all, at that time quite successfully protected by the High Court ruling.

The report stated that the suggestions of all these publications were not being followed in practice. Rather, 'in the name of quick development, unscientific and unplanned growth of human habitation and industrial/commercial complexes are being allowed to come up, violating almost all the norms of town planning'. The report made the point that the government had been 'systematically violating the norms laid down by itself'.

The report listed additional projects in the East Calcutta area, including the Ruby General Hospital and an Energy Park. It also pointed out that the CMDA had recommended other areas as urban growth centres in its 1990 paper, mostly to the north and west of the agglomeration.

As far as Science City is concerned, this document came up with a totally new reasoning. The complex was being built on a former garbage dump in Dhapa. The report stressed that such locations are

nothing but bioreactors with the slow process of biodegradation leading to the conversion of waste into methane, carbon dioxide and other gases. Without any 'post closure management strategy' of the landfill, there would be a constant risk of fire and explosions. Permanent structures should therefore be built only ten to fifteen years after the closure of the dumping site. An adequate management plan would have to include grading, landscaping and systems of gas management, leakage and drainage control.

None of these measures had been taken. Rather, the site of Science City had to be considered a 'raw garbage dump'. The paper accused the agents responsible of 'neglecting even the minimum norms for construction' on reclaimed garbage land.

As it turned out, this was the issue that caught the court's attention. After receiving the report, Justice Bhagabati Prasad Banerjee passed an interim order stopping any construction along the bypass that did not have either clearance by the CMDA or permission from the WBPCB. This did not make much sense as the main point of the argument was that the CMDA was not applying its own rules and that the government itself was thus involved in developments not in accordance with its own urbanization legislation.

Soon after, the case was transferred to the newly established Green Bench, which was to deal with the environmental matters in the High Court. The judges told Mohit Ray (who up to then had been appearing in person) to find an advocate. Mohit Ray's personal account of this episode suggests that while the formal legal performance of his party definitely benefited from the change, the technical sophistication of his argument may have suffered. Neither judges nor lawyers command the technological expertise of an engineer.

The charge of unplanned development was countered by the CMDA. It stated that its 1990 document was not legally binding. It further submitted that there was a Land Use and Development Control Plan for the Calcutta Corporation (CMDA, 1996). The plan, however, explicitly excludes the eastern fringes. Only an unpublished, draft version existed for this area (CMDA, undated a). During the litigation, the CMDA was ordered to submit the draft version, which was then apparently accepted by the court as legally binding.

The petitioners thus gained access to the draft plan. In court, they challenged its validity by stating that it had only been drafted to serve as a retroactive basis for development projects already under way.

They also demanded that the CMDA should explain why its programmatic statements of 1990 were no longer being applied. Mohit Ray made these points in his affidavits of August and December 1996, reacting to submissions of the CMDA. However, the Green Bench did not let the matter come up for hearing again in 1997.

As far as Science City was concerned, the court passed an order on 11 October 1996. It directed NEERI to measure the methane level in the air of the Science City complex every six months in order to prevent fires and explosions. The risk was considered to be minimal, as the central government's Council of Scientific and Industrial Research (CSIR) had ruled out any danger stemming from methane in a submission to the Green Bench. The court order referred to this submission stating that

- methane emissions in Science City were quite low,
- pipes in the building's basements would take out any gas from the complex, and
- the exposure to low concentration of methane did not pose any harmful effects.

To environmental experts, the order is unsatisfying for two reasons. As stated in the beginning of the section, methane is not dangerous once it is dispersed in the atmosphere. The real risk is that of gas accumulating underground and then catching fire. That risk remains unchecked. However, there still was no officially published Outline and Development Control Plan as demanded by law.

Photo: 'Science City'

By the end of 1997, Science City had been inaugurated. A new CMDA-designed neighbourhood, now called 'East Calcutta Township', the Satyajit Ray Film and Television Institute and the Ruby General Hospital were operational. Other projects were still coming up, some of them rapidly. The legally recommended outline and Development Control Plan for the eastern fringes had not been published until December 1997.

5.7 Conservation Initiatives of the State Government

Immediately after the first High Court judgement in 1992, it became apparent again that there were forces in the state government that wanted to protect the wetlands. The state assembly passed an amendment to the Fisheries Act, making it illegal to reclaim and convert any fish ponds larger than $350m^2$.

The state government also agreed to declare a wetlands area as being 'of national importance', which would legally imply conservation. The Urban Development Department also further suggested that some wetlands should be listed as being 'of international importance' according to the International Ramsar Convention. Finally, the CEMSAP in 1997 produced a new report on the complex matter of East Calcutta. The implementation of these initiatives, however, was again ambiguous.

The West Bengal Inland Fisheries (Amendment) Bill, 1992, was published in the Calcutta Gazette on 1 December 1992. The destruction of fisheries could now be punished with up to twelve years' imprisonment and fines of 200,000 rupees.

Ashih K. Ghosh is a member of the National Committee on Wetlands, Mangroves and Coral Reefs. He remembers suggesting the East Calcutta area wetlands to be declared as being of national importance at a meeting of the committee shortly after the first judgement. This was a breach of normal proceedings. Normally, it is up to the state government to come up with proposals. To Ghosh's surprise, however, West Bengal's Environment Secretary Kalyan Biswas had no objection when the committee met next. The government's agreement with the committee's proposal was substantiated by a letter of West Bengal Development Minister Buddhadev Bhattacharya to the Government of India Environment

Minister Kamal Nath, dated 30 November 1992 (D.O. No. 272/M/92):

> It will be in the fitness of things to declare these wetlands as the wetlands of national importance and subsequently pursue with the Ramsar Convention for getting listed as the wetlands of international importance for its unique wise use criterion.

In the following months there were attempts to get foreign aid in order to devise a management scheme for the Waste Recycling Region. The strategy was in principle supported by both the state and the cen-tral governments, as becomes evident in a letter from Dr. C.L. Trisal of the central Ministry of Environment and Forests (MoEF) to the deputy secretary of the central Department of Economic Affairs. It is dated 17 May 1993 (Do. NO. J-22021 (20) 93-W). This letter mentions a CMDA project with the title 'Conserving the Wetland System of Calcutta'. The National Committee of Wetlands, Mangroves and Coral Reefs was said to be in favour of the project. The MoEF now recommended the project for bilateral assistance. However, management plans with foreign financial support never materialized.

It remains relevant that, again according to Ashis K. Ghosh, the state government agreed to have 5000 hectares declared wetlands of national importance. There had apparently been no scientific assessment. Rather, the figure was uttered at the whim of a bureaucrat, as another bureaucrat recalled. The original figure was supposed to be 5500 hectares basically covering the entire Waste Recycling Region. However, the CMDA as the responsible agent never publicly presented a management plan or an official map.

Similarly, the plans to declare the East Calcutta wetlands, or at least parts of it, as wetlands of international importance according to the Ramsar Convention were never finalized. This proposal seemed to gain momentum in early 1996, according to the *Telegraph* (9.1.1996). The IWMED was said to have devised a map based on satellite surveys, probably the same map mentioned in sections 5.4 and 5.5. However, this initiative was also never followed up.

The last state government effort until 1999 to protect the wetlands was a rapid action plan, devised by the Calcutta Environment Management Strategy and Action Plan. It was an undertaking of the West Bengal Department of Environment with the support of the

British Overseas Development Administration. Ashis K. Ghosh was put in charge of the working group on canals and wetlands.

In early 1997, Ghosh seemed optimistic that this time something would come of the effort. He again involved the various NGOs and drew upon all government data available. Some new surveys were undertaken. He was particularly pleased to be treating Calcutta's canals and the wetlands together, as the wetlands are fed with canal water. However, soon after finalization of this report the momentum was lost. The CEMSAP office was dissolved in late October 1997. So far there seems to be no follow-up. Environment Secretary Kalyan Biswas had been known to take personal interest in the CEMSAP until he retired. His successor in office, Kalyan Bagchi, did not appear to do so.

5.8 The Wetlands Six Years after the First Judgement

To conclude this chapter, the current state of East Calcutta wetlands is assessed. This section examines the achievement due to litigation and then turns to troubling trends in the Waste Recycling Region and its surrounding areas. The final paragraphs then evaluate the role of the various actors and agencies involved.

By the end of 1998, the future of the East Calcutta wetlands remained threatened. However, the High Court had undoubtedly given considerable protection to the area called the Waste Recycling Region. So far, the World Trade Centre was not being built in this area. Various CMDA schemes by and large respected the ban on land-use changes. Private projects sites such as the Ballygunge Lions Club's welfare schemes had been abandoned. This was remarkable. After all, Calcutta was witnessing an unprecedented building spree along the Eastern Metropolitan Bypass.

Nevertheless, the dispute over the Calcutta Leather Complex showed that the High Court order was not sufficiently detailed. The map used to outline the Waste Recycling Region had not been of adequate scale to be practically applied. Neither the High Court nor the Supreme Court had clarified the issue of the map in a satisfying manner. This was particularly frustrating as there was a reasonably well-founded suspicion that the state government might have deliberately manipulated the map submitted to the Supreme Court.

By early 1999, the tanneries had not yet moved to Karaidanga as ordered by the Supreme Court. However, the construction of the Calcutta Leather Complex was advancing at a high pace. A handful of tanneries were already operational at the new location.

Even if the Calcutta Leather Complex might not encroach on the boundaries of the originally protected Waste Recycling Region, it must be expected that it will have some impact on the wetlands. Contrary to the perception of Calcutta's local environmentalists, the impact will not necessarily be entirely negative. If the common effluent treatment plant should turn out to operate well, water (and food) contamination would be reduced. And even if this scheme turned out to be ineffective, at least the massive agricultural and piscicultural activities in the Waste Recycling Region would no longer be affected by tannery effluents. However, the effluents would then affect the settlements further downstream.

On the other hand, the Calcutta Leather Complex will need either surface or ground water, and it will attract additional traffic. All this may well affect the core Waste Recycling Region as feared by Calcutta's environmentalists. In 1997, the widening of the road through the wetlands was already under way. There had been no systematic assessment of the complex's probable environmental impact on the wetlands, I was told by bureaucrats.

In Calcutta, there are rampant rumours about informal encroachments on and conversions of wetlands. Also, it appears to be quite popular to speculatively buy real estate property in the Waste Recycling Region. It is hard to verify such stories. One promoter told me he was convinced he would be making very good weals in a couple of years as he was now buying agricultural and piscicultural land. He was convinced he would be able to bribe the relevant panchayat people to get documents affirming that these areas were neither ponds nor fields.

In early 1998, the issue remained confusing. No detailed, reliable map of the area was available. There was no trustworthy list of fisheries.[3] The existing data were not publicly available. There was

[3] The CEMSAP report of 1997 compared two lists of fishery ponds. One was provided by the Government of West Bengal on 28 January 1997. The other was prepared by IWMED in 1984-85. However, the government's list does not include eighteen ponds that figured on the IWMED list and includes four ponds not listed by the IWMED. I have been told that distortions probably stem from the fact that the people surveying the area were told different names for the same ponds on different occasions. Also, there are apparently different opinions about which pond belonged to which larger complex of water bodies

reason to believe that land use was constantly changing without official notice.

Such concern is even documented in official papers, such as the status report of the CEMSAP (1995: 5.20): 'There is unplanned growth even within CMD notified areas and in the southern and eastern fringes of CMD contrary to the proposed growth areas to the north and west'. Agricultural lands were said to be converted and tanks and ponds illegally filled up as encroachment on the East Calcutta wetlands went on largely unchecked (1995: 5.15): 'Actual data on land prices in Calcutta has not been easily available. However, there are indications of a steep rise of prices, of between 25 to 40 percent in rates of residential and commercial build-up areas in Calcutta'.

After having visited most of the disputed parts in the Waste Recycling Region several times in 1996, 1997 and 1999, I do not have the impression that the situation is changing rapidly. The exception, indeed a major one, is the leather complex at Karaidanga. This assessment fits in well with observations of a leading environmental bureaucrat in early 1998. In an interview for this project, he said that a new fish pond had been dug in the Waste Recycling Region. Before, he had always complained that there had been a tendency to convert ponds to fields, which would then be sold as real estate for new construction projects.

Accordingly, it remains impossible to make an accurate assessment of how much pond area has really been converted. It is clear, however, that there has not been a single major new construction project in the Waste Recycling Region since 1992 (again with the noteworthy probable exception of the leather complex).

What makes the estimate even more difficult is the fact that the wetlands remain a socially troubled area with rampant labour unrest (*Statesman*, 13.1.1997, 3.2.1997, 18.2.1997, 11.10.1997). The fishery owners' association complained about excessive trade union demands that supposedly deprive them of their profits. The spokesman also accused the trade unions of regularly going on strike and stealing fish from the ponds at night. In interviews for this book, they claimed that this was an attempt to drive them out of business so that ponds might give way to real estate speculation.

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under the same name. In any case, these government papers do not convincingly document the area.

The CPM-backed trade union (CITU) was said to be playing a dubious role in the wetlands. On the one hand, it claimed to defend the workers' interests, which is primarily to keep their jobs and make the most of them. On the other hand, the CITU was said to serve the interests of the real estate promoters. While it is impossible to verify any of this, there can be little doubt that the CPM was divided on the issue of real estate development. According to *Statesman* of 24 February 1997, district party leaders were complaining about corruption within the party ranks and a 'promoter-partymen nexus'.

In any case, the law and order situation in the wetlands was perceived to be bad. According to the *Asian Age* (4.12.1997), political parties were involved in the sometimes violent disputes: 'Almost 30 clashes were reported last year and eight people were murdered. In addition, 200 acts of vandalism were also reported.' It is remarkable that these disturbances were never made an issue of during the legal proceedings.

As a matter of fact, there were additional questions about the future viability of the Waste Recycling Region in 1997. The CEMSAP report stated that chemical pollution of the ground water in the region had increased seriously. A recent survey at Dhapa had revealed that concentration of phenolic components ranged from 0.2 to 2.6 mg/1, as compared to a permissible limit of 0.001 mg/1. Both chloride and dissolved solid concentrations went up to around twice the permissible limit, rendering the water 'unsafe for human consumption' (p. 89). This contamination was attributed to unchecked industrial pollution in the city. Such data, according to the CEMSAP team, called for a thorough investigation of the possible contamination of food production in the area. The actual accumulation of non-biodegradable chemicals had 'never been fully analysed'.

Concerning the city's sewage water, the report left little doubt that pollution from (mostly small-scale) industries had increased and was likely to affect the quality of food production in the wetlands. Particularly, chromium-rich effluents from the tanneries were mentioned. It was also pointed out that sludge at Bantala had high levels of lead and cadmium contamination.

Therefore, the foreword of the CEMSAP report (1997) summarized:

The resource recovery of East Calcutta has its limitations; the present practice of disposal of mixed solid waste and untreated domestic and industrial effluent are found to have changed soil and water characteristic, challenging the very concept of wise use. Mitigatory measures are to be enforced.

The report, nevertheless, stated that the existing practices would have to continue for the time being. The solution would, in the long run, have to be the separation of domestic and industrial waste waters with immediate effluent treatment for the latter. Indeed, it was suggested that more fish ponds be provided with sewage water as this increased their productivity.

The CEMSAP report of 1997 is bleak in another respect. A recent study had shown that the biodiversity of birds had been dramatically reduced since the early 1960s. At that time over 248 species had been counted, and now only 40 to 43 were found. All this shows that the High Court judgement was not enough to protect the wetlands. It had paid no attention to overall management and conservation strategies. Implementation problems were not taken into account, data concerning the ground reality remained inadequate and publicly unavailable. Important questions, such as that of pollution affecting food security, were not considered.

The failure to deal with the social strife in the wetlands was another serious flaw of the rulings–all the more so, as these conflicts were again linked to the lack of good maps and proper landholding records. These issues seemed to call out for legal intervention, and they are vital for the future of the wetlands. Overall, the greatest shortcoming of the High Court is the fact that it did not base its judgement on a map of adequate accuracy.

It must also be stated that by protecting the Waste Recycling Region the High Court left the adjoining areas of East Calcutta open to rapid development. That development has taken place. The judiciary has not interfered, although it was asked to do so and although the quality of urban planning for these projects remained highly dubious. As far as Calcutta's east is concerned, the judiciary has not tackled the most serious governmental shortcoming, that of neither devising nor implementing adequate urban planning.

Judicial activities were not coordinated. Proceedings appeared to be erratic. Documents considered binding in one case–such as the CMDA paper of 1990 in the PUBLIC case–were no longer considered so in later proceedings (Science City). Given its location on a former garbage dump, one would in retrospect wish Science City had gained

as much judicial attention as the World Trade Centre, which involved apparently much lower environmental risks. Expertise relevant in the PUBLIC case was not considered by the Supreme Court in the tanneries issue. Experience also showed that seemingly urgent issues might only rarely come up for hearing once the momentum of public interest litigation was lost.

Nevertheless, the High Court has played a predominantly positive role. It protected the core area of the wetlands with some success and it did stall the plans to expand Salt Lake City. The plans for the World Trade Centre, apparently a pet project of the chief minister, have been considerably reduced in scale and delayed for at least five years.

These achievements are not merely symbolical. Except for the possible infringement on its remote eastern side, the Waste Recycling Region so far has been spared Calcutta's fast expansion. It is also worth emphasizing that some 90 percent of the Waste Recycling Region would still be protected even if, eventually, the 'second map' was by judicial order defined as the legally binding one.

Similarly, the Supreme Court has highlighted the issue of tannery effluents in a general effort to have national water pollution legislation enforced. This, of course, is a valid cause in its own right that had not been paid due attention in the High Court.

All summed up, it is clear that the judiciary was muddling through. However, it had been helpful to occasionally bind the state government to its own principles. This was not enough in the sense of enforcing good governance, but it was better than no intervention at all.

The state government, in turn, was also obviously muddling through. Various agencies appeared to be pursuing sometimes competing agenda. As a whole, the government seemed disorganized. Its policy announcements were not to be trusted. Its own legislation was not necessarily implemented. Overall, the bureaucracy remained unaccountable to the public–that is, unless the judiciary happened to interfere, making certain issues public.

This was made more likely by activists from civil society. The NGOs enjoyed considerable support, particularly in the first phase of the PUBLIC case, from the media and from bureaucrats frustrated with the inadequate performance of their own administrations. All these actors shared the same social background. They were educated, upper caste, English-speaking Bengalis. The poorer sections of West

Bengal's population did not play a role in the judicial proceedings or in the public discourse accompanying the litigation.

Those NGO activists who were involved in public interest litigations had to face a daunting task, making and proving their cases, later monitoring the results and possibly returning to court with complaints of contempt of court. The sheer volume of the task served as a disincentive to become active. Nevertheless, and in spite of its unpredictable nature, public interest litigation was giving civil society some leverage over government institutions. This appears to have been particularly so whenever the NGOs enjoyed the support of the local media and of individual government officials who themselves were frustrated with the course of current events.

CHAPTER
SIX

The Howrah Matter

Howrah is the oldest industrial town in India. Academics and bureaucrats in Calcutta consider the town on the other side of the Hoogly River 'a hopeless case' or 'horrible place'. According to a report in the *Asian Age* (17.3.1998), the town tops the official list of 'critically polluted areas' in India. Howrah is generally known to be the most troubled section of the Calcutta agglomeration.

The *Howrah Matter* is the legal culmination of a single NGO's long struggle. It has, to some degree, been successful is using the judiciary to make the government more accountable. The court rooms have (although to a limited extent) given rise to a sense of public sphere in Howrah. Some improvements have been achieved in Howrah's civic condition. They are modest compared to what was demanded and, by most international standards, would seem necessary. But they are, in the words of NGO leader Subhas Datta, 'a good beginning'.

The case has also been a good beginning in the sense of raising the general public's awareness that administrations have duties to fulfil. Following the example of the *Howrah Matter*, there have been several minor cases of litigation. The local authorities have also

begun to act somewhat more responsibly under the mere threat of litigation.

Before turning to the Supreme Court in 1995, the Howrah Ganatantrik Nagarik Samiti (GNS) had been involved in many local struggles for the protection of public parks, regular clearance of garbage, and other issues related to the poor state of Howrah's civic amenities. In several instances the High Court had been moved in the 1980s and 1990s, but with unsatisfying results even when judgements had been in favour of the NGO's petitions. In 1995, the GNS summarized such complaints in a single writ petition to the Supreme Court of India, thereby constituting the *Howrah Matter*.

Unlike PUBLIC and other NGOs involved in the wetlands dispute, the GNS did not, during my research period up to January 1998, enjoy systematic support from members of the bureaucracy. It lacked qualified scientific and engineering expertise. It had little in common with the typical environmental NGOs in Calcutta. The GNS included rickshaw wallahs and handcart pullers and thus commanded grassroot contacts of the kind desired by most Calcutta NGOs. Tellingly, this NGO is known by its Bengali name 'Ganatantrik Nagrik Samiti' meaning 'Democratic Citizens' Association'.

The GNS revolves around a small core of activists, of whom Subhas Datta is the undisputed leader. The legal activities are his brainchild, with the GNS providing a public platform. Initially, public interest litigation followed street agitation, but then the focus shifted to rallies serving as means to emphasize the legal struggle.

This chapter first assesses the environmental situation of Howrah and then, in the second section, gives a brief overview of the history, structure and activities of the Howrah GNS. The third section deals with the procedural aspects. In 1995, the GNS filed a writ petition in the Supreme Court summarising complaints about Howrah's desolate civic condition. The court took up this matter but later decided it could not adequately deal with issues so complex and so far from Delhi. The case was transferred to the High Court with the order to establish a specialized environmental bench. Since then, the High Court, the rulings of which had so far been ignored by the authorities, has had some impact on *Howrah.*

The fourth section of this chapter examines some of the individual issues dealt with by the High Court's Green Bench in the context of the *Howrah Matter*. It illustrates to what extent the Green Bench has been more effective than High Court justices in dealing with the same

or similar issues before the intervention of the Supreme Court. The last section then assesses the ground reality in Howrah and the changes in the local polity brought about by the litigation up to the winter of 1997-98.[1]

6.1 The Civic Situation in the Howrah Corporation

Howrah is Calcutta's sister city on the other side of the Hoogly river. It has always been a 'town of shanties' compared to the 'city of palaces', as Calcutta was called in colonial times. In the mid-19th century, Howrah was the nucleus of industrialization in India.

According to the CMDA (1992: 1, 9), the population of Howrah is expected to grow from 947,000 in 1992 to 1.4 million in 2012. Howrah provides the industrial base for the metropolis and serves as a major transportation node. In 1990, the State Planning Board reckoned there were over 570 large units of metal- and steel-based industries in Howrah. Other important industries included plastics, paints and jute. There are also many small-scale industries, which are basically unregulated in India. According to the State Planning Board, the estimated number of small-scale units in 1988 was 32,000, compared to only 42,000 in the much larger Calcutta corporation area and a total of 150,000 in the metropolitan district.

The available data on pollution levels in Howrah are even poorer than for Calcutta. As ODA-Consultant Fiona McCluney told me, the CEMSAP project, which compiled all existing government reports of environmental relevance, did not come upon any specific papers concerning Howrah (McCluney, interview).

Howrah's desperate situation has so far gone largely undocumented, apart from sensationalist accounts of Third World deprivation such as Dominique La Pierre's best-selling novel *The City of Joy*. In general, the description of this urban drama must therefore remain more impressionistic than supported by toxicological and

[1] I was able to spend the winter semesters of 1996-97 and 1997-98 in Calcutta. In February 1999, I returned to present my results at a seminar at the Max Mueller Bhavan and at an environment conference hosted by the state government. On this occasion, I was able to update some of my data, but not to do any more systematic research. This is the reason some of my data presented here are of early 1999 rather than early 1998.

other scientific data. Anybody visiting the city for the first time will be appalled by stagnant water in open drains even along major streets. Heaps of garbage are piled up just above anywhere. Tiny, light-deprived workshops operate wall to wall with residential houses on one side and slum hutments on the other.

In Howrah the industrial revolution set in at the same time as it did in the Ruhr area. However, development in Howrah appears to have stopped in its tracks. The living conditions of the vast majority of people are obviously still very similar to what Friedrich Engels described in his assessment of working class quarters in England in the 19th century.

Indeed, the dismal appearance of Howrah is by no means a new phenomenon. Howrah is historically known for squalor and urban misery (Bonnerjee, 1955: 32):

> In 1889 the Sanitary Commissioner, who inspected the city, remarked: 'Of all the municipalities of Bengal which I have inspected and I have inspected nearly all of them, Howrah is without exception the dirtiest, most backward and badly managed'…. In 1893 another Sanitary Commissioner endorsed the above views: 'One is met by violent breaches of ordinary hygienic laws. I have never in fact seen a town in such dangerously insanitary condition, and I should be very sorry to live in it myself'.

As early as the 1830s, the western bank of the river had become a congested mix of industries, slum hutments, low-lying swamps and marshes (Chaturvedi, undated). According to this high-ranking Indian Administrative Service bureaucrat, Howrah in the late 1980s could not 'provide the minimum amenities of urban living' and is considered a 'town planner's despair' (chapter 1.6). Likewise, the Howrah Improvement Trust as early as 1966 (p. xi) declared the city 'a town planner's headache':

> Acute congestion, lack of adequate drainage system, housing shortage, absence of proper road alignments and other deficiencies in the matter of water supply, sewerage and community facilities, have combined to make the problem of improvement of the City of Howrah one of great urgency as well as complexity.

Howrah Station is the largest railway terminus in India. On top of this, all important access roads leading into the agglomeration from the west and south pass through Howrah. In Calcutta, main thoroughfares have four to six lanes and are reasonably well

maintained. In Howrah, a city with similar (in not more) traffic, they only have two lanes and these are in a sorry state. Even Grand Trunk Road, the main highway leading to northern India and Delhi, is narrow and full of potholes. The CMDA (1992:2) stated categorically:

> In spite of its locational and industrial importance at regional and national levels, the city of Howrah has been deprived of the basic facilities and infrastructure from very early days…. The actions taken in different spheres of physical, social and economic development have been utterly inadequate compared to the needs. … The gap between the need and the supply, therefore, became wider.

Howrah's socio-economic status is desperate: 'About 70 percent of the total population lives in very poor quality houses under extreme deprivation of basic services' (CMDA, 1992: 38). Its civic amenities are in a poor state. According to State Planning Board's Perspective Plan (1990), Howrah only had 25 kilometres of underground sewers. Calcutta, with roughly four times as many people and four times as much space, had 1210 kilometres of underground sewers (48.4 times as much). It was also estimated that an average of 372 tons of solid waste accumulated in Howrah daily, with data on the collected amount and disposal areas declared to be not available. The respective figure for Calcutta was 2072 tons, of which 1500 to 1800 were stated to be collected and dumped at Dhapa.

All summed up, Howrah is environmentally the most troubled area in the Calcutta agglomeration. Accordingly, the CMDA's official Howrah policy (1192: 9) echoes the call for stringently enforced urban planning, for the conservation of parks, open spaces and water bodies, and for massive infrastructure investment:

> If the growth is allowed to occur without any planned intervention it is likely that the spatial structure will be distorted with major deduction of open space, green areas and wetland. This would have very serious effect on the environment. This should be prevented by all means. Unplanned urban growth in future would also aggravate the present damages that are being created by unscrupulous promoters in permitting high rise development with consequential densification of already congested part of the city. This trend should be stopped to save the city.

The same document lists urgent infrastructure needs of 'water supply, drainage and sanitation, solid waste management, transport, shelter,

parks and community open space, health, education and community facilities for urban poor as well as environmental conservation measures' (p.13).

Given the repeated call by the CMDA for stringent urban planning, it seems ironic that the 'Outline and Development Control Plan for the Howrah Corporation' had not been finalized and published till the end of 1997. This document, which is obligatory according to the West Bengal and Country Planning Act of 1979, only existed in an unpublished draft version seven years after the CMDA's Metropolitan Development Plan.

One version of the draft plan was leaked out of the CMDA in early 1997. It lists several policy priorities. Among them are the dispersion of activities from the congested city core, the conservation and preservation of cultural heritage as well as of environmentally relevant areas and a general mix of land use with certain limits for toxic and hazardous industries. It is explicitly stated (p. 14) that 'the existing parks and public open spaces will be preserved and efforts will be made for creation of new parks and public open space'. All in all, urbanization is to be regulated 'with a view to making the area functionally efficient and environmentally acceptable' (p. 15).

These policy statements, once again, are not reflected in the ground reality of Howrah. All summed up, the GNS does not demand anything beyond implementation of the principles outlined in the official documents of the CMDA. Government activities to improve Howrah's infrastructure have basically been limited to the construction of the Second Hoogly Bridge and its connecting roads. This is, no doubt, useful but might serve more to decongest Calcutta than to improve living conditions in Howrah.

In late 1997, the Central Pollution Control Board drew attention to Howrah's situation. It had declared Howrah a 'critically polluted area'. Twenty-four places, all over India, had been officially labelled critically polluted. The central government's goal was to clean them up by the year 2002, R.N. Bhattacharya of the Central Pollution Control Board told me. While one might be ill advised to expect too much of the central government in this respect, the inclusion of Howrah in its list clearly underlined the fact that this city was facing daunting challenges.

6.2 The Howrah Ganatantrik Nagarik Samiti

The Howrah Ganatantrik Nagarik Samiti stands in the tradition of the non-marxist Indian left. It was founded by a veteran socialist leader in the post-emergency era. Its roots are the Jayaparkash Narayan movement of the early 1970s. Initially, the GNS was not a predominantly environmentalist organization. Rather, it has taken up these issues as essential matters in the context of democratic, human and social rights. The recent environmental emphasis evolved from a struggle to protect public parks in Howrah. This led to an increased awareness of issues such as waste water and solid waste disposal.

The GNS has employed many methods to pursue its political goals. It has appealed to holders of public office with letters and memoranda, held seminars, and organized rallies and demonstrations. Good working relations have been established and maintained with the local media. On several occasions, the GNS has moved the Howrah District Court and the Calcutta High Court. However, the legal action became the main mobilizing resource only in 1995, after Subhas Datta, the organization's leader, had filed his writ petition in the Supreme Court, thus constituting the *Howrah Matter*.

In its own words, the GNS (writ petition, 1995: 4) is a 'social and non-party organization having been involved in all social movements in Howrah and Calcutta. … There is not a single public issue in our place on which we do not try to protect the citizens' demands before the appropriate authority.'

An overview of issues highlighted by GNS campaign efforts (1995:5f) listed twenty-six items from A to Z. It included rallies and other activities on a large variety of occasions. Some examples from this list are (a) the visit of a British commerce minister, (b) a newly established family court in West Bengal, (c) support for then Election Commissioner T.N.Seshan, (d) solidarity with Bangladeshi feminist writer Taslima Nasreen, (p) proper development planning in Howrah, (q) poor postal services, (r) the democratic Chinese students' movement in 1989, (x) bad road conditions in Howrah, (y) the organization of a blood donation camp, and (z) police atrocities. Such campaigns might criticize government bodies, such as the police, or support government institutions such as the Election Commission or the judiciary.

This list exemplifies what might be called an 'impressionistic' approach. The cases made are obvious to anybody applying their five senses plus common sense. Agitations focus on single events or grievances that catch the public imagination. They are rarely based on scientific engineering analysis. Rather, 'bad condition of roads' is made an issue, a phenomenon obvious to anyone with eyes to see. Similarly, the GNS does not adhere to any overarching political ideology. Subhas Datta always stresses that he relies on 'common sense'.

Photo: A GNS rally tidying up Howrah Maidan Crossing in early 1998

Environmental campaigns of the GNS have highlighted the piling up of over a hundred decomposing bodies in the Howrah police morgue, the informal transformation of open spaces into garbage dumps or the dismal situation of sanitation by open drains along public streets. The issues of toxic air or water pollution were mentioned only in an unscientific, general sense. Anything more would have required technical expertise that the GNS did not command.

The GNS does not propagate 'anti-imperialism' or 'class struggle', still quite *en vogue* in West Bengal. Rather, the programme is one of fundamental human and democratic rights guaranteed by the Indian constitution without much concern for the intricacies of a multicultural, multi-ethnic and multi-religious society. In fact, the GNS is itself not socially homogeneous. Roughly a quarter to a third

of the followers are not Bengalis. They belong to the Hindi- and Oriya-speaking migrant worker communities in Howrah.

The overall approach of the GNS is pragmatic, drawing attention to obvious grievances. Subhas Datta is a master of catchy slogans, which he tends to repeat whenever they are applicable. Aware of Calcutta's international reputation of severe urban crisis, he often states: 'To us, Calcutta is heaven, Howrah is hell.' His commentary on congested, unplanned growth of high-rise buildings is: 'The sky has been stolen in Howrah.' His one-liner on air pollution goes: 'In Howrah, we breathe not to live but to die.'

The GNS also practises civil disobedience, for instance blocking train tracks to highlight dissatisfaction with transport policies. On another occasion, reminiscent of the Indian independence struggle, members of the GNS dressed in lungis and then gatecrashed the Calcutta Swimming Club. This was a reaction to a newspaper report about the club refusing entry to a celebrity not wearing Western clothes. Such events are regularly covered by the local press. Rallies organized by the GNS normally provide attractive material for reporters and vivid photo opportunities.

Members of the GNS have repeatedly been exposed to lathi-charges and other forms of police harassment. All the core members of the GNS have spent nights in police custody. The police twice filed accusations of attempted murder against Subhas Datta. These were obviously of no substance and never led to legal proceedings.

Datta's life story is one of personal escape from poverty. He was born in 1949. His family moved to Howrah from East Bengal after the partition and had to make a living in a Howrah slum. Today, he enjoys relative economic independence as a chartered accountant running his own business.

The core group of the GNS consists of half a dozen close friends of Datta. They are supported by several dozens of active followers. On short notice, the inner circle can mobilize hundreds of people for demonstrations. With two weeks' preparation, they will assemble around 2000. The GNS is based on a sense of loyalty that is related to the typical patron-client relations in developing countries and largely still operational–if weakening–in the rural areas of Bengal (Mori, 1997). People facing problems ask a powerful patron for help. In case of favourable intervention, they owe him loyalty and, more often than not, economic favours in cash or kind.

Datta serves a similar function. He is regularly approached by new people for help. They may, for instance, face difficulties with their landlord or the bureaucracy. Datta says that he takes up their cases if they seem worthy and he sees a possibility of intervening successfully. Unlike the typical patron, Datta says he does not ask for money. Instead, he obliges his clients to support his public activities.

Subhas Datta is not only secretary of the GNS. He is also president of several cooperatives and trade associations. He thus legally represents, among others, groups of rickshaw wallahs, handcart pullers and taxi drivers. De facto, all these people are affiliated to the GNS. The GNS also has subgroups that are not formally organized. After the Green Bench was established, there were a number of housewife initiatives trying to do something about pollution in their neighbourhoods. Datta assisted them (and other petitioners) in going to court.

Datta's campaigns have earned him some respect within the local administration. For instance, he says that his telephone is never dead for longer than a day. It normally only takes him one call from a public pay phone to restore his telephone service. His interventions in favour of others also tend to be successful. He says he was surprised at his own prominence when he found a letter simply addressed to 'Subhas Datta, Howrah' in his mail. Both 'Subhas' and 'Datta' are, of course, quite common names in Bengal.

The GNS today is a large-scale organism of socio-political support and self-help orchestrated by Datta. Many of his followers genuinely adore him. There is ample evidence that many are prepared to suffer physically from police harassment if the GNS calls them to actions of civil disobedience. The size and cohesion of the GNS, in turn, serve to protect its leader.

In spite of all its ramifications, the GNS was to a certain extent an isolated social body. It was not systematically linked to other NGOs, although some friendly contacts did exist. For some time in the 1980s, it supported the local Congress MP Priyaranjan Das Munshi. According to Datta, the GNS later backed off because it found Munshi's politics disappointing. Nevertheless, this former nexus was well known in Howrah and Calcutta. The GNS was often perceived as an 'organization of the Congress Party', a reputation that also served to distance it from most environmental NGOs on the other side of the Hoogly.

6.3 Moving the Judiciary

The *Howrah Matter* is a multi-issue lawsuit. It consists of several single causes, most of which were initially taken up in the late 1980s and early 1990s. The first court cases dealt with the destruction of park areas in Howrah or with the illegal felling of trees. Only once such isolated, ad hoc complaints were compiled in a comprehensive writ petition did the interrelated issues of inadequate urban planning, insufficient civic amenities and inefficient government in a town of one million people emerge as the scandalous *Howrah Matter*. The petitioners demanded no less than an appropriate infrastructure for the entire city.

In order to make the description of the court proceedings accessible, this assessment does not follow them chronologically. Rather, this section elaborates on the episode in the Supreme Court constituting the *Howrah Matter* and the establishment of the specialized Green Bench in the Calcutta High Court. Single issues of the *Howrah Matter* are then dealt with in section 6.4.

6.3.1 *The Role of the Supreme Court*

In April 1995, Subhas Datta filed the writ petition in the Supreme Court. Besides being impressed by M.C. Mehta's successes in the *Ganga Matter*, he was encouraged by the legal information that he would be permitted to present a public interest matter personally. He did not want to rely on (much less pay for) an attorney. His earlier experience of public interest litigation in the Calcutta High Court had proved frustrating. Datta felt that to an extent his lawyers were to blame for not presenting the cases well. Proceedings, moreover, went on for a long time. Non-enforcement of court rulings was also a major disappointment.

When he appealed to the Supreme Court, Datta had already dealt with ten cases of public interest litigation. Four of these concerned the poor condition of public parks and (overt as well as covert) government policies to transform such areas into shopping complexes. Two petitions dealt with road and sidewalk conditions and one with the construction of multi-storeyed buildings without appropriate legally binding urban planning. All these issues re-emerged in the *Howrah Matter*.

The other three cases had dealt with the alleged mismanagement of the Howrah jail, government policies concerning long distance train lines and, finally, the frequency of foreign trips by the chief minister. The GNS considered such trips a waste of public funds. Only in this matter did the High Court quickly deliver a judgement–in favour of the chief minister. In some of the other cases, there were eventually rulings in favour of the GNS, but most matters had stopped coming up for hearing and were 'delayed in the usual process of High Court'. The Supreme Court writ petition went on to complain (p.8) that 'by the passage of time, permanent obstructions had been caused by the Civic Authorities in our matters'.

The Supreme Court writ petition (p.78) summarized this frustration with the Calcutta High Court, complaining about 'unreasonable delay, high expenses and unscientific system of handling of the cases'. It also stated that 'district administration and civic authorities have shown the attitude of total disregard to the judicial directives given by the High Court.

The GNS had agitated against delays and inefficiencies of the judicial process. The Supreme Court writ petition mentioned two silent demonstrations of GNS members inside the Calcutta High Court on 22 January 1993 and 8 March 1995. The first was a protest against corruption, excessively long proceedings in matters of public interest, and judicial irregularities in general (*Statesman*, 23.1.1993; *Sanmarg*, 23.1.1993). The second was a reaction to a lawyers' strike that had shut down the High Court for almost a month. A memorandum was delivered to the Chief Justice and the Governor of West Bengal that also highlighted other problems such as slow appointments of judges to vacant posts, extended proceedings and the lack of a computerized registration system (*Sanmarg*, 9.3.1995; *Bartaman*, 9.3.1995).

Datta had also repeatedly approached the Chief Justice of the High Court to complain about the dysfunctional judicial system. He had suggested the establishment of a specialized public interest litigation bench. Given this state of affairs, the writ petition of 1995 argued that the GNS had no alternative but to turn to the Supreme Court. It asked the Supreme Court to order the authorities concerned

- to restore all greenery in Howrah,
- to stop the felling of trees,
- to monitor and prevent pollution systematically,
- to cancel illegal allotments of public property to private firms,

- to clear garbage in Howrah (particularly from the fish market),
- to provide wholesome drinking water,
- to stop disposal of untreated sewage in the Hoogly river,
- to maintain all public parks properly, and
- to keep the police morgue clean and hygienic.

The GNS also asked the Supreme Court to order the authorities to submit all relevant documents and to appoint a special officer to assess the environmental situation of Howrah. The petition included an appeal to 'stop any damage and further deterioration of environment' and to 'stop any further high-rises in the City of Howrah illegally sanctioned by the Howrah Municipal Corporation'.

The petition argued its cases over eighty-one pages. The supply of evidence in the annexures was vast and included photocopies of documents related to earlier legal proceedings, extracts from government reports, news clippings and photographs of locations and events in dispute. The entire writ petition was a massive work of 439 pages.

The *Howrah Matter* was first heard on 17 July 1995. Justice J.S. Verma and K. Venkataswami decided that it was an environmental case and should be heard by another bench. They ordered the case to be transferred to that bench. This bench of Justices Kuldip Singh and S. Saghir Ahmad, in turn, apparently felt confused by the mass of material presented in the petition. On 1 September 1995, the judges ordered the bar associations of India, West Bengal, Howrah, the Supreme Court Bar Association and the Bar Council of India to take a look into the matter. The bench argued that environmental matters were becoming too vast for the Supreme Court to handle on its own:

> We are prima facie of the view that the burden in this field of law on this Court is so much that it will not be possible for this Court to deal with the environmental problem in various parts of the country. We are of the view that the Bar Associations which is the largest collectivity of intellectuals in this country must come forward to assist this Court in this field of work.

This statement is from a letter addressed to the bar associations in question dated 5 September 1995 and signed by the assistant registrar of the Supreme Court. The bar associations were ordered to submit reports by 24 November 1995 and to suggest how the Supreme Court might deal with the matter. Their submissions basically supported the claims made by the GNS.

The bar associations also suggested that the Supreme Court might set up a permanent committee of members of the bar to give advice in environmental matters. This committee would establish contact with environment experts of governmental and non-governmental agencies to provide qualified research and expertise.

The committee further suggested that the Supreme Court might transfer environmental matters to High Courts unless cases were considered too complex or demanded more than simple compliance with statutory provisions. The bar association committee would monitor the cases and make the Supreme Court aware of flawed or problematic decisions as well as of issues of national relevance. Thus the Supreme Court would stay in control of the proceedings.

The Supreme Court did not follow this advice, which, it must be stated, does appear to be a barrister's job-creation scheme of sorts. The judges did, however, transfer the matter to the Calcutta High Court, providing some safeguards that the *Howrah Matter* would not be lost in the proceedings again. The order demanded the institution of a specialized bench and requested the parties involved in the *Howrah Matter* to appear in the High Court on 3 June 1996. The decisive passages in the final order of Justices Kuldip Singh and S. Saghir Ahmad, delivered on 16 April 1996, read as follows:

> We are of the view that the environment preservation and pollution control are to be given utmost priority by the courts in the country. Despite various enactments by the Parliament and the State Legislatures regarding pollution control and environment protection, nothing much is being done in this respect. It is common knowledge that all the big cities including Howrah are littered with garbage, household waste, etc. and there are no satisfactory arrangement for collecting and disposing the same. Even the sewage treatment plants have not been constructed. Needless to say that much attention is required to be given in this field of law. This court meets more than once in a week to attend to the environment problems in the country.
>
> We are of the view that it would be appropriate to transfer this petition to the Calcutta High Court for consideration and necessary action. Because of the distance and various other problems it would be better that the matter is dealt with at the high court level. W request Mr. Justice V.N. Khare, Chief Justice of the Calcutta High Court to designate an appropriate Bench to consider and deal with environmental and pollution control matters including the present petition. The Bench can consider and monitor various issues involved in this writ petition and other petitions as and when they are filed before the High Court. We give

liberty to the petitioners to approach this court as and when it becomes necessary for him to do so.[2]

This order set a precedent. Soon after, a second Green Bench was set up in Tamil Nadu. The invitation to return to the Supreme Court again was more of symbolical than practical value. It emphasized that the judges want the matter to be resolved to the satisfaction of the petitioning party. However, as anybody at any time is entitled to appeal to any tier of the judiciary in India, the last sentence quoted above does not constitute any particular privilege.[3]

6.3.2 *Proceedings before the Green Bench*

As Subhas Datta recalls, he initially considered the transfer of the *Howrah Matter* back to the High Court a disaster. He had stated in his petition (p.74) that, in principle, a specialized 'Public Interest Litigation Bench' guaranteeing speedy trial was needed in the High Court. But he had also hoped the Supreme Court would deal with his particular case. Out of experience, he had little trust in the efficiency of the High Court.

The first hearings in the Green Bench seemed to confirm his fears. On 3 June 1996 the case could not be heard because, allegedly, the documents had not arrived from Delhi. The Green Bench of Justices Umesh Chandra Banerjee and Ronojit K. Mitra asked him to explain why these papers were missing. They held the petitioner responsible rather than the High Court administration.

Datta travelled to Delhi, went to the Supreme Court Registrar's Office and then traced the voyage of the *Howrah Matter* documents by mail and rail to the Calcutta High Court. He filed his first sup-

[2] This judgement was widely interpreted as Justice Kuldip Singh's attempt to make sure that his environmental activism would to some extent continue after his retirement in late 1996. In the legal community and in the general media, he was known as 'the environmental crusader' of the Supreme Court. In the words of one advocate in Calcutta, Supreme Court justices must finish what they have started during their time in office for otherwise 'it will never be done'. Their activities thus are perceived rather as personal wielding of almost feudal power than as the fulfilling of official duties according to the law of the land.

[3] It has long since been pointed out that the possibility of appealing to different courts in the same matter has the effect of reducing the efficiency of the legal system and its scope for decisive resolution (Kidder, 1973).

lementary affidavit on 14 June 1996. It meticulously documented that the Supreme Court had mailed the documents by registered parcel on 30 April 1996 and that this parcel had been delivered to the High Court on 9 May 1996 by the Calcutta General Post Office. Photocopies of the relevant certificates were included in the affidavit proving that the Supreme Court documents had been misplaced in the High Court.

The next setback was that the court admitted the Forum for Calcutta and Calcutta 36, two NGOs from Calcutta, jointly as parties to the case. They were legally represented by Amal Datta, a former CPM Member of Parliament who happened to be the nephew of the chief minister. The Green Bench, however, did not admit the South Howrah Development Association, an NGO from Howrah, as an additional party. Subhas Datta would have been in favour of doing so.

Subhas Datta disapproved of the interference of people from Calcutta, particularly of a person with a high political profile. He was afraid he would lose control of representing the matter in court and to the general public. Indeed, early newspaper reporting on the matter (*Economic Times,* 13.7.1996) draws heavily on an interview with Amal Datta. The barrister made several points that Subhas Datta considered wrong. In another supplementary affidavit (17.7.96), the activist concluded that this advocate was 'opposing your petitioner'.

As Subhas Datta recalls, the judges reacted in anger to such criticism and even threatened to dispose of the case. This does suggest that they had not carefully read the Supreme Court documents. After all, the Supreme Court had ordered the Green Bench to deal with the *Howrah Matter* and would have been likely to uphold this demand– not least as the justices had rhetorically invited the petitioners to return to the apex body in case of dissatisfaction.

Subhas Datta subsequently managed to reduce the role of Amal Datta and the Calcutta NGO in this case to a minimum.[4] They soon stopped appearing in the *Howrah Matter* in spite of being present in the court room waiting for other cases to come up. The case was since perceived to be Subhas Datta's personal affair again. After such initial difficulties, it has been regularly heard by the Green Bench.

[4] Personally, I have no reason not to believe in the Calcuttans' good intentions even though it does seem irritating that they would have themselves added to the cases and then file affidavits without consulting the GNS.

Early on in the proceedings, on 11 July 1996, the two judges paid an official visit to Howrah. This event was covered extensively by the local media. It made evident that the petition's drastic description of urban life in Howrah was not exaggerated. Subhas Datta soon after gained such a standing in the court room that the two Green Bench Justices hardly insisted on his delivering extensive evidence (beyond the photographs he would invariably present). Whenever they probed his statements, the statements turned out to be accurate. I have personally heard the judges say in the court room that he was 'West Bengal's leading environmentalist' and that his submissions tended to be '200 percent true'.

6.4 Individual Issues

This section elaborates the particular aspects of the *Howrah Matter*. As the case has not yet been settled, and is unlikely to be disposed of for several years to come, it is impossible to give a comprehensive account of the entire matter. This is all the more so as the Green Bench has not taken up all issues listed in the petition so far, and orders have not been passed on every item heard. My assessment covers the proceedings up to January 1998, when I had to return to Germany.

In 1999, the matter was still proceeding slowly, but steadily. Initially, the first Green Bench Judges indicated in court that they intended to clean up Howrah over the long run but were aware it could not be done overnight. The authorities, in this sense, were given time to devise schemes and report on their activities (and difficulties). The case remained a slow and piecemeal process. According to Subhas Datta, this was still the case in the summer of 1999 after several changes in bench composition.

Before my research was over, several orders had been passed.[5] As

[5] As Subhas Datta did not collect the orders and they were not made available by the High Court administration, my assessments are based on a list of the judge's official decisions prepared by the GNS. This document was submitted to the court in my presence on 19 December 1997. It compared the present situation to what had been ordered by the judges. As the judges did not hesitate to accept the details of this list in the proceedings, there is no reason to doubt its validity. These orders are also referred to in the various affidavits and inspection reports relating to the proceedings. Personally, I have visited the locations several times, last in the winter of 1997-98.

will be shown, they have had some result. Adherence to judicial orders was often more symbolical than literal. On the other hand, the civic authorities had, to a certain extent, changed their attitude. They have sometimes taken steps without having been directed to do so by the court.

According to Datta, the mere threat of taking an issue to the Green Bench has lately set the local administration in motion. Also, it is possible that minor issues are mentioned once in the Green Bench and then taken care of by the authorities without explicit order. One instance was that of garbage piling up around the General Hospital in Howrah. Since the complaint was submitted in court in November 1997, garbage has been regularly cleared from the clinic compound (at least until January 1999).

This section deals first with the neglect and abuse of public parks and open spaces, specifically the Howrah Maidan (6.4.1), Bellilious Park and the space underneath the Second Hoogly Bridge (6.4.2). Then the matter of the appalling conditions of the Howrah Police Morgue (6.4.3) and of the Fish and Betel Markets are discussed (6.4.4). The last subsection (6.4.5) is a brief assessment of all the major aspects of the *Howrah Matter* in which the Green Bench had not passed orders by January 1998.

6.4.1 *The Howrah Maidan*

The Howrah Maidan was originally a big park. It is located in central Howrah, behind the railway station. It has, in official documents, repeatedly been called 'the lungs of the city' (Gazeteers on India, 1948; West Bengal District Gazeteers, 1972). It still is the largest open space in central Howrah. However, its size has been radically reduced. There were already complaints that the General Post Office, a church and the Grand Trunk Road has encroached upon it fifty years ago.

Further encroachments were made in the 1980s and 1990s, some of them massive. Government agencies have been building them in spite of the official acknowledgement that open spaces and public parks are of high priority. The GNS has contested these schemes. There have been memoranda to officials, public demonstrations and, not least, public interest litigations in the High Court.

The remaining Maidan is split in two by a road running from east to west. The southern part of the Maidan is called Centenary Park.

Here, government agencies have set up a huge auditorium. The auditorium was subject of a public interest litigation in the High Court. The judgements were initially disobeyed by the authorities. Only after intervention of the Supreme Court and the establishment of the Green Bench was the first High Court judgement of 1991 enforced.

The northern part of the Maidan is called Dalmia Park. Here, a soccer stadium has been built that Subhas Datta considers to be merely a shopping centre in disguise. In the petition, he suggested that it had come up as a consequence of corruption. Up to early 1998, the judges had not dealt with this matter. This subsection first discusses the history of the auditorium on the southern side and then turns to that of the soccer stadium on the northern side.

As Subhas Datta recalls, plans to set up a major auditorium in Howrah became known in the late 1980s. The mayor of Howrah laid the foundation stone on 10 January 1989. The GNS organised a rally in protest on the same day. The police lathi-charged the demonstrators (*Bartaman, Ajkal, Sanmarg,* 11.1.1989).

In the name of the GNS, Datta also filed a writ petition against the construction of the auditorium in the High Court. The matter was heard, and, by the end of January, an injunction had been passed, ordering the maintenance of the status quo until further decisions (*Ajkal,* 29.1.1989; *Ananda Bazar*, 1.2.1989). On 20 September 1989, High Court Justice Mahitosh Majumdar ordered Professor K.J. Nath of the All India Institute of Hygiene and Public Health to report on the environmental feasibility of the auditorium project. This report was submitted one year later, on 25 September 1990. It concluded that there was hardly any greenery left and there was not enough space for an additional building. This was particularly so as a civil defence camp had been set up on the Maidan in the 1960s. Nath suggested the following solution:

> If the existing Civil Defence Barracks could be totally removed from Howrah Maidan area and the place be properly maintained with green plants, in that case the construction of the proposed (auditorium) can be accommodated in the present site without further impairment of the ecology.

Along these lines, Justice Mahitosh Majumdar passed a judgement on 6 March 1991 (Civil order No. 110 (W) of 1989). In the meantime, construction had started and was continued after, and in spite of, the

judgement.

In December 1992, the GNS filed a contempt of court affidavit, accusing the authorities in Howrah of this criminal offence. The matter hardly moved in court even though there had been appeals to the judicial administration and several out-of-court activities to keep public attention on the issue. Only two years after the formal contempt accusation did the High Court deliver a judgement. On 6 January 1995, High Court Justic Nishit Kumar Batabyal decided against the mayor and district magistrate of Howrah:

> The contempnors/respondents are found guilty of conduct amounting to contempt of court. Fix 20.1.1995 for further hearing regarding punishment, till that day further construction… on the disputed land shall remain stayed.

The two high-ranking officials immediately appealed to a division bench. This bench of Justice M.G. Muhkerji and Vidya Nandi gave the government authorities seven days to remove the civil defence camp. They did not, however, consider the issue of contempt of court again. This judgement was again neglected, and construction of the auditorium went on.

During this period, Datta received personal hate mail. A letter dated 24 January 1995 advised him not to 'get involved in problems'. He should withdraw the High Court matter and leave the mayor and 'the party' in peace. Otherwise someone would 'chop off your head and play football with the same'. Datta's reaction to this attempt at intimidation was to file a complaint to the police, with no further consequences.

Datta soon after turned to the Supreme Court. In his writ petition he claimed the authorities had violated the High Court judgement in two crucial aspects:

- Construction work for the auditorium had begun without the civil defence camp having been removed, and
- fifty trees had been cut down for the construction.

On top of this, the government authorities had fenced off the Maidan, completely depriving the public of access to the former park. Finally, a row of shop stalls was being built behind the auditorium, suggesting that the authorities were setting up a commercial complex within a public park.

When the matter was first heard, the Supreme Court passed yet another injunction against the auditorium. The Howrah authorities

had intentionally celebrated the inauguration of the (yet unfinished) auditorium on 27 February 1996, the very day the matter was to be heard in the Supreme Court. Annoyed, the judges stayed all activities concerning the auditorium. This order now intimidated the officials in Howrah. All work on the auditorium was stopped.

The issue of the auditorium was pending until early 1997. I was in the courtroom when the Green Bench delivered its decisive judgement on 17 January 1997. Justices Banerjee and Mitra argued that they had recently visited the unfinished auditorium. According to them, all investment was going to be lost if the project was not finished soon. Too much money had already been spent to allow that to happen. The figure discussed in court was that of 60 million rupees. The judges gave permission to finish the construction of the auditorium.

However, they insisted again that the civil defence camp had to be removed. No commercial activity was to be allowed on the compound. The building should be run by the Howrah authorities and not at any time be used as a cinema. (Datta had argued in court that an earlier city auditorium had been transformed into a privately run cinema hall). The new auditorium should serve only for dramatic, cultural and musical functions. In the back of the auditorium, a children's park was to be established. Access to this park was to be granted free of charge. The green area surrounding the auditorium would have to be opened to the public. All this was ordered to be accomplished within six months. (On 11 July 1997, the Green Bench extended this period by another three months. The Howrah authorities had applied for the extension.)

On 17 January 1997, the judges did not deal with the question of punishment for contempt of court. It was adjourned and then finally disposed of on 7 February 1997. The judges argued they had already given permission to complete the auditorium and considered the matter settled. They did not use this chance to assert their authority over the government bodies that had for so long ignored repeated High Court rulings. The judges legalized a *fait accompli.*

Nine months after the Green Bench's decision, the civil defence camp had been removed. This section of the Maidan had been opened to the public and was now a pleasant public park (with a pond and several big trees). Before 17 January 1997, local officers had submitted that civil defence was not their jurisdiction. After the ruling, they obviously found a way to relocate it nonetheless.

By late 1997, the construction of the auditorium was finished. The area immediately behind the auditorium had, however, not been turned into a children's park nor had the area around the auditorium been opened to the public. The shop stalls behind the auditorium were still unfinished in January 1998. Apparently, the Howrah Municipal Corporation (HMC) had not decided what to do here.

Photo: Reopened park on the former location of the civil defence camp

The history of the soccer stadium in the northern part of the Maidan was as follows: According to Datta's documentation, a management board for the stadium was constituted as early as 1981. The district magistrate gave permission for the scheme in 1984. Construction began in 1986. Originally, this was a project of the state government. Ownership of the compound was passed on to the HMC in 1992. The city authority was supposed to finish the construction. Since then, several commercial shops have opened within the stadium building.

Data submitted in his petition that the tribunes of the stadium were built particularly high so as to provide more space for the shopping complex. The petition also stated that the building is too large because the remaining space of the soccer field is smaller than the international standard.

The GNS argued that other large government stadiums in West Bengal did not house commercial shops. Also, as major soccer events

in the metropolitan area take place at the Salt Lake stadium, there was never a real demand for another such venue in Howrah. Finally, the space within the building might have more reasonably been used for public indoor sports facilities, which do not exist in Howrah. The petition concluded that some people in the government must have had a financial interest in building a commercial complex disguised as sports stadium.

Photo: Commercial complex or sports stadium?

Some of the shopkeepers have later allegedly set up structures on the sidewalk and cut down trees by the roadside. In early 1994, the GNS staged a rally along this stretch. They intended to plant new trees. The police attacked with lathis and arrested GNS members. At the time of the writ petition, the stadium was constantly locked. Citizens did not have access to the sports field.

Up to early 1999, the Green Bench did not rule on the issue of the stadium, except to order that no new construction be undertaken and no new shops let out. The corruption charges have not been scrutinized. However, the litigation was not totally fruitless. The city authorities did open the gate to the stadium, and the sports field is again frequented by the public. Children and teenagers play cricket and soccer here.

The HMC, in its submissions, denied having planned a shopping

complex. Rather, the revenue generated through the shops was said to be necessary to maintain such a large sports facility. Further tribunes were said to be planned. They would include administrative offices, changing rooms and club space. The affidavit of 10 July 1997 implied that so far the sports complex had done without. The HMC denied the soccer field was smaller than the international standard.

There have been other, comparatively minor building encroachments on the Maidan. Only one of them is worth dealing with here because it had a judicial angle. This concerned the south-western part of maidan.

In early 1991, construction work started for what was supposed to become a Red Cross Bhawan. Later, GNS members were told that the ground floor would be rented out to a businessman to raise funds for the building. Datta filed a public interest litigation, demanding that the building occupying space in the central public park should be used only for non-profit welfare purposes, for instance by the Red Cross (*Telegraph*, 17.11.1991).

For some time, the government authorities stated that a computer centre of educational relevance would be set up on the ground floor. According to the writ petition, finally a commercial showroom of the Vimal company was opened there in August 1992. The Red Cross was not using the building. The litigation in the High Court had been long drawn and expensive and eventually got out of hand, as the GNS argued. In this case as well as in the other pre-Supreme Court litigations, the GNS had hired a lawyer.

During this period the GNS had again organized several rallies. On one occasion, police violence escalated. On 18 November 1991, the police accused Datta and others of attempting to murder an officer. This obviously wrong accusation did not lead to a criminal case in court. However, the police referred to it five years later. On 30 December 1996, Datta was arrested and kept in police custody overnight. The police claimed that he had been 'absconding', again an absurd allegation as he had been appearing regularly in the High Court and the Supreme Court. This could only be interpreted as a strategy of intimidation.

To summarize the GNS efforts briefly, the following points are relevant: It took over five years of litigation and an appeal to the Supreme Court to get the first High Court ruling on the Howrah Maidan enforced. To do this, it was necessary to ignore intimidations such as death threats from somebody apparently close to the mayor

and his party and to withstand police harassment. In the end, more trees than permitted had been cut down and up to January 1999, some of the Green Bench's orders, concerning for instance the children's park, had still not been obeyed.

However, the litigation was not fruitless. Some sections of the Maidan are accessible to the public again. These are the former civil defence camp and the stadium's playing field. The process of informally converting the Maidan into a row of commercial complexes has been stopped.

6.4.2 *Bellilious Park and the Second Hoogly Bridge*

In this subsection, two informal garbage dumps will be discussed. Owing to the litigation, waste disposal was discontinued in both cases as had been ordered by the Green Bench. However, civic authorities have not done much to obey the obligations to spruce up the locations involved. The locations are Bellilious Park and the area underneath the Second Hoogly Bridge.

Bellilious Park is a large park in north-western Howrah. It is located in a major industrial area. The land was donated to the municipal authority by Rebecca Isaac Bellilious in 1913 with the obligation to maintain the park. It was traditionally considered 'the beauty spot' of Howrah. Today, this term no longer makes sense.

According to the writ petition, fifty-five shops on an area of 20,000 square feet were built in 1982 on the eastern side of the park. In 1987, a 'beautification project' was announced to the public. An auditorium, a soccer stadium and a boat house were to be built on the shore of the park's pond. Certain areas of the park were to be reserved for women and children. A private promoter would carry out the project. The necessary funds, according to the HMC, were to be raised from a three- to four-storey commercial complex on the park's western and southern sides.

There were several rallies against this scheme. The Congress Party, the BJP and the GNS independently agitated to stop it (*Ananda Bazar*, 5.8.1987; *Ananda Bazar, Ajkal, Jugantar,* 8.8.1987). Datta filed a writ petition in the High Court and appealed to the Minister of Urban Development to stop this project.

The High Court accepted the matter. Justice Susanta Chatterjee passed a stay order and upheld it several times (*Ananda Bazar*, 15.8.1987; *Telegraph*, 26.8.1987; *Ananda Bazar*, 17.9.1987).This

matter was never settled in court. The private promoter lost interest, fearing he might lose the case (and, in the event, any money already invested). According to the writ petition in the Supreme Court, Justice Susanta Chatterjee was eventually transferred to the Gujarat High Court and then the Bellilious Park case 'got lost in the usual process' (p. 50).

In this case, going to court had deterred the private investor and stopped the scheme. However, that did not suffice to save the park. After the High Court's intervention, the civic authorities totally neglected it. The HMC allowed the north-western end of the park to be informally converted into a massive garbage dump. A slum of ragpickers and streets sweepers, some of them allegedly employed by the HMC, was allowed to come up within the park area.

As a consequence of the Green Bench proceedings, a wall has been built to seal off the north-western boundary of the park. It has become impossible to unload garbage trucks here. In November 1997, the park was no longer used as a disposal site for new solid wastes. However, the existing site was not improved in any way. The old garbage was still in place.

In a similar episode, the Green Bench has been more active. During the course of the Green Bench proceedings, Datta and the GNS discovered that the area underneath the Second Hoogly Bridge had also been converted into an informal garbage dump. In an additional affidavit dated 21 November 1996, it was submitted that Howrah's official garbage dump at Belgachia was receiving less than 500 tons of waste on an average daily. According to official estimates, there was more solid waste in Howrah. Several places in the city thus must have become unofficial dumps. The location underneath the bridge was one of them. Originally, there had been plans to set up a sports complex here.

The garbage underneath the bridge was brought up several times in the court proceedings. On 20 December 1996, the HMC representative submitted that this garbage had become 'solid as stone' and could only be removed with explosives.

Sometime after Christmas, I accompanied Datta to the place. Women and girls were loading garbage on to a truck. They said the solid waste would be used to fill up a pond. Apparently, storing and selling garbage in this manner had become an informal industry underneath the bridge. Datta filed another additional affidavit on 9 January 1997 with the details.

Photo: Duke Road has become Dust Road

On 1 August 1997, the Green Bench passed an order concerning this site. In July it had obtained an inspection report by K.J. Nath, the director of the All India Institute of Hygiene and Public Health. He had visited the location and found it had until recently been used as a garbage dump. Apparently, the disposal of new garbage had been discontinued.

The inspection report stated it was technically safe to either remove all the garbage or to grow a park on it. There was only a marginal risk of methane explosions. This question regularly arose in the context of garbage ever since the Science City case mentioned in Chapter 5, section 5.6. The Green Bench subsequently ordered the site to be turned into a children's park within six months. By December 1997, not much had happened. No new waste had been dumped here and the old garbage piles had been levelled with a bulldozer.

In the directly related matter of Duke Road, the Green Bench had already passed an order on 13 June 1997 (*Telegraph*, 14.6.1997). This road passes underneath the Second Hoogly Bridge. Because of the accumulating garbage it had become inaccessible to motor traffic. The Green Bench ordered the Corporation to re-open the road. By October, duke Road has become 'Dust Road', in the words of Datta.

Traffic was now running over bulldozed garbage. The road had only been provisionally stabilized by bricks laid out on the track.

6.4.3 *The Police Morgue*

The Supreme Court writ petition mentioned the unbearable conditions of the Howrah Police Morgue. In the backyard of this centrally located morgue, up to several hundred bodies could be found decomposing under the open sky. As Howrah has the most important train station in eastern India, railroad casualties from as far away as Delhi are brought to this morgue. It is assumed that people looking for a deceased relative are most likely to search near the busiest station.

According to a WBPCB report of summer 1996, the morgue received five to six bodies daily. They were transported on open trolleys. Many corpses were also brought from the General Hospital. The bodies were first kept in the small morgue building and, after a few days, were brought into the backyard. The report described the scenario as 'extremely alarming'.

The fact that dozens, sometimes even hundreds, of dead bodies rotted in the open was well known and well reported in newspapers years before the GNS brought this matter to court. For instance, *Sanmarg* (8.9.1989), the *Telegraph* (7.1.1990) and *Ananda Bazar* (12.11.1990) had run stories.

The morgue is surrounded by multi-storeyed residences and a jail. People in the neighbourhood complained about the stench. Vultures would carry away parts of dead bodies. This unhygienic scenario was understood to be a serious health hazard. There had been organized protests. However, the authorities did nothing to change the situation. Apparently, there were difficulties (and expenses involved) in cremating so many bodies.

The Green Bench judges visited the morgue on their excursion to the sites of the *Howrah Matter* in the summer of 1996. When the issue came up, once again, for hearing on 19 December 1997, they spoke of their vivid recollection of the place. Justice Banerjee said he had found the place too appalling to enter. Justice Mitra stated that the morgue had very obviously been especially prepared for their visit. For instance, fans had been placed before the windows of the building to give the impression of an operational air-conditioning system. But in spite of such preparations, there had been six more dead bodies in

the compound than the officially registered eight. There was no doubt that the morgue was neglected and mismanaged.

The Green Bench took up this case, stating in a preliminary direction on 20 December 1996 that the morgue would have to be relocated. I found it noteworthy during this court session that Justice Banerjee told the lawyers representing the Howrah authorities to impress on their clients that they should consider a new location immediately. The Green Bench would take up the issue of the morgue next and, once the judges started passing orders, the authorities would have only a few weeks to act.

This urgency was not maintained. On 9 May 1997, the Green Bench passed detailed orders: The bodies should be transported to the burning site in a covered van so that no limb could fall on the streets. Bodies would have to be burned at least twice a week. Bodies should no longer be left lying under the open sky. The building in which the bodies were to be kept would have to be air-conditioned.

From an affidavit filed on behalf of the district magistrate's office in August 1996, it resulted that this authority had assumed responsibility for the morgue. Up to then, there had been several authorities involved but 'no coordinating or supervising' activities by any of them. The morgue was to be remodelled and the requisite funds made available, the affidavit stated.

On 26 September 1997, the judges ordered that the new scheme should be operational by 28 November 1997. This did not happen. The Corporation had built a new construction to store dead bodies, but it had too many windows to be air-conditioned. There was no covered van to transport the bodies. Hired workers would carry them by hand or by open cycle rickshaw. However, as the monitoring GNS confirmed, there were no more dead bodies lying out in the open. The corpses were being brought to the funeral pyres regularly.

When the matter was discussed in court on 19 December 1997, the Corporation claimed it lacked funds to implement the orders. However, the mayor and the district magistrate of Howrah had recently appeared personally before the Green Bench. Mayor Swadesh Chakroborty had submitted that additional funds were not needed. The judges displayed their anger and threatened to start contempt of court proceedings after the Christmas break.

The authorities' lawyers then asked for detailed directions. The judges said they would not do the municipality's work. The senior judge, on this occasion, repeated his stance that the Green Bench's

goal was to make the local authorities do their job and thus clean up Howrah. The Green Bench was deliberately moving slowly as the immense problems could not be solved quickly, but this did not mean that the judges were not determined to have them solved.

After the Christmas break, however, the Green Bench did not start contempt proceedings. The judges only asked for another report and granted several more weeks for this purpose. Then it became clear that Justice Banerjee was to be transferred to Hyderabad, where he was to become Chief Justice of the Andhra Pradesh High Court. Again, the issue of contempt of court was postponed. The Green Bench has so far not used this instrument to assert its power.

The issue of the Howrah Police Morgue in the Green Bench triggered some unexpected consequences. Datta was approached by people from the town of Diamond Harbour and two other places. They made him aware of the dismal conditions of the morgues maintained by the local authorities there. Two lawyers also approached the Green Bench to report a similar situation in a village called Gatakpukur. In all of these cases, litigation was started.

Evidently, morgues were neglected in many municipalities. The *Howrah Matter* had set a precedent, acknowledged throughout West Bengal, of such conditions being neither legal nor acceptable. Over time, the Green Bench began to deal with some fifty public morgues in the entire state in the summer of 1998, Datta informed me.

6.4.4 *The Fish and Betel Markets*

The Fish and Betel Markets are located close to Howrah Station, north of the railway tracks that separate them from the Maidan area. They are wholesale markets serving West Bengal and the neighbouring states.

When Subhas Datta filed the petition in the Supreme Court, the Fish Market had, for around two decades, been housed in provisional, makeshift stalls. As there was no appropriate drainage, the place was regularly flooded. The fish sellers use big slabs of ice to cool their merchandise. The ice melts away during the day and is continuously replaced with new slabs. In the rainy season, the provisional market would often be badly flooded. There also was a garbage problem. Solid waste from the Fish Market had, for years on end, been deposited on public space. Mukram Kanoria Road was particularly affected. By 1995, this road was totally blocked (and traffic diverted).

Solid waste from the Betel Market made matters worse. This market was located in the ground floor of an empty, unfinished concrete construction of the Howrah Improvement Trust (HIT) north-west of the Fish Market. The traders had moved into this building years before the writ petition, after a fire in the traditional Betel Market.

As the Howrah authorities submitted to the courts, their core problem with these markets was as follows: The HIT had set up permanent buildings for the Fish Market, allegedly with World Bank funding. However, there had been legal disputes over the allotment of the various stalls. The Fish Market had therefore never shifted to the permanent building west of its provisional site. Apparently, all involved had lost interest in, and hope for, a settlement. Similarly, the authorities had not been able to relocate the Betel Market.

There had been several appeals to the HMC and the HIT to clean up the markets. In 1995, the GNS had filed a petition in the High Court. Subsequently, on 10 April 1995, Justice Ruma Paul had ordered the garbage to be cleared within two weeks (*Statesman*, 21.4.1995). The authorities did not clear it. In the Supreme Court, they submitted that the market vendors were not doing their part of the job. Without their cooperation the markets could not be kept clean.

The Green Bench took up this matter early on. From the submissions of the HIT it became apparent that the old, pending litigation cases were the reason for not relocating the Fish Market. The Green Bench assumed the power to settle all questions of stall allotment. Apparently, it could do so, backed by the authority of the Supreme Court. The Fish Market was afterwards repeatedly ordered to relocate (17.1.1997, 31.1.1997). The Betel Market was also ordered to move (14.2.1997).

By October 1997, the Fish Market had moved to the permanent stalls.[6] A small number of the old fish stalls remained, however. It turned out that the provisional Fish Market had consisted of more stalls than were available at the new site. According to Subhas Datta, the idea was now that these stalls would move to a completely different site. Similarly, the Betel Market would eventually relocate.

[6] I was in Germany from March to September. Therefore, I was not in Howrah to witness the relocation of the fish stalls and do not know the exact dates, which, anyway, are not essential for my argument.

But the new places were not ready, even in December 1997.

The garbage situation, however, had clearly improved. The fish vendors were now regularly cleaning the market after closing their stalls in the evening. Waste had not been blocking traffic for over a year. In the winter 1997-98, new road construction was going on where the provisional Fish Market had been. By February 1999, the road was finished and open to traffic again.

The drainage situation was better than it had been at the provisional site, but still unsatisfactory. The system in the new market complex did not seem to function efficiently. There still were big, stagnant puddles. A huge basement underneath the market complex, originally meant to serve as parking space, was permanently flooded with dirty water, although the Green Bench had several times ordered it to be pumped dry and cleaned up. According to Datta, this had been done once.

During the early phase of the Green Bench proceedings, Datta was somewhat frustrated with the priority given to the Fish Market by the judges. He felt they were doing the government authorities a favour. After all, the HIT, which had built the permanent structures, wanted the market to move and had, so far, been unable to implement its plans. In this sense, the Green Bench had served the HIT by settling the backlog of pending cases.

6.4.5 *Major Unresolved Issues*

As will have become apparent, the Green Bench has intervened in several individual matters. In general, it has ruled in favour of the petitioners. As a consequence, the ground reality of the locations in dispute had changed. However, the enforcement of the rulings was not always convincing, being often more symbolic than effective. Nevertheless, the Corporation, the district magistrate's office, and the Improvement Trust have fulfilled their duties somewhat more reliably within the same troubled setting.

Of course, this is not enough to solve Howrah's environmental crisis. For that to happen, some major challenges would have to be faced, which have also been mentioned in the petition and subsequent additional affidavits. By early 1998, however, the Green Bench had not passed orders. Rather, it had restricted its role to asking for extensive reports on these issues. To a limited extent, the High Court was thus putting the authorities under pressure, making them deal

with these questions at least conceptually.

Particularly, five major issues were at stake: the provision of safe drinking water, adequate disposal and treatment of sewage and waste water, adequate garbage disposal, improvement in the condition of Howrah's roads, and control of the so far inadequately planned mushrooming of high-rise residential housing. This subsection will very briefly comment on these challenges in order to outline their daunting scope.

As the writ petition complained, the authorities in Howrah are only obliged to provide 'filtered' water to the citizens. In Calcutta, 'wholesome' water is required. In order to do this, the HMC would need adequate treatment plants and a reliable system of pipes.

This challenge is all the more problematic as Howrah's drainage and sewage system is insufficient. As described in section 6.1 of this chapter, Howrah basically relies on open drains. These drains become clogged, particularly with garbage, and in severe cases they overflow and flood the surrounding area.

The only sewage treatment plant in Howrah does not work reliably, according to GNS submissions. The problem is exacerbated by the fact that the Hoogly is tidal. Some of the waste water discharged into the river at low tide is carried upstream at high tide and is likely to be channelled back into the filtration system that provides supposedly safe drinking water. This problem was emphasized several times by Subhas Datta and others. The Green Bench had occasionally heard the matter but not passed any orders up to 1998.

The challenge of adequate garbage collection and disposal is another important infrastructure issue. It is clear that the official dumping ground in Belgachia will not suffice in the long run. Datta emphasized that this is partly due to the fact that buildings have been allowed to encroach upon the ground. The Green Bench did not tackle this issue in the first two years of its existence.

The poor condition of Howrah's roads is similarly disturbing. Even major thoroughfares, serving as national highways, are narrow and full of potholes. As Datta argues, this is made worse by the fact that road damages are inadequately repaired. Basically, potholes are simply filled with brick chips. Traffic then grinds down the chips. As a result, Howrah's roads are particularly dusty. Additionally, the permanent disrepair of the roads slows down traffic and thus contributes to air and noise pollution.

In spite of all these problems, Howrah has, over the last decade,

witnessed a building spree. High-rise apartment buildings have come up in central Howrah. It is acknowledged that there is a massive demand for housing in the entire metropolitan area. However, Datta's point is that, if such massive constructions take place unplanned in an already congested city, environmental conditions can only deteriorate. It is the duty of the CMDA to devise implementable planning, but it has not done so. The Green Bench has, so far, not taken up this issue in any judgement.

It is noteworthy that the Green Bench did not tackle issues of urban planning or budgetary matters. Indeed, there has not been much investment made to obey its orders. Some malpractices were discontinued without any measures to repair the damage done. Insiders agreed that the authorities did not have the funds to solve all urgent matters. However, they expressed frustration that there was little consistency in development schemes and that much money was wasted because there was no follow-up to initial investments.

In general, submissions of the authorities (Corporation, District, HIT and CMDA) acknowledged that Howrah's situation was bad. However, according to them, Howrah's infrastructure was more effectively operational than stated by the GNS. Improvements were supposedly planned and under way. Anybody visiting central Howrah would have found ample reason to doubt such statements. The State Pollution Control Board's assessments were mixed. In court, it by and large supported the individual submissions of the GNS while at the same time trying to maintain an attitude of governmental authority according to which basically everything was fine in the Calcutta agglomeration.

Some critics said that the judges proved their incompetence by not giving priority to the big issues. Other environmentalists did not agree. Their point was that the judiciary could not successfully tackle such comprehensive matters. But by dealing with the smaller, locally specific matters, the judges were in a better position to make individual officers responsible. There was a chance of having some impact on the ground reality and on the administration's work culture.

6.5 An Assessment: The Court's Role in Changing the Polity

With respect to the local polity, the Green Bench proceedings in the *Howrah Matter* have had several interrelated effects. They raised the profile of Subhas Datta and the GNS. The case had gained public attention and media coverage, especially since it has to some extent changed the ground reality in Howrah. The Maidan, the morgue, the Fish Market, the garbage situation (in Bellilious Park, under the Second Hoogly Bridge and at the General Hospital) have improved.

Many court orders went in favour of the petitioners and were actually obeyed to a discernible extent by the authorities. This suggested that the general attitude of the government agents in Howrah was slowly changing. The fear of judicial intervention was making them take complaints more seriously. In other words, the Green Bench was making them more accountable.

The mix of legal activism and media coverage was moreover having an impact on what a growing number of people expected of the government. The idea was taking root that government agencies have duties to fulfil. While the Green Bench did not guarantee alleviation of grievances brought to its notice, it definitely did inspire hope of change. This was gaining a circular dynamic, as more and more people were taking matters to court, often with the advice and encouragement of Subhas Datta.

As the GNS leader was, along with the judges, perceived to be the key person in the process, this further strengthened his standing. Moreover, with the scope of his legal action having expanded beyond the city limits of Howrah, he had become a person of state-wide reputation and relevance. Increasingly, political parties tried to get his support and to cooperate with him. Indeed, had he wanted, he would probably have become a member of parliament in 1998.

The Trinamool Congress, a faction split away from the Congress Party with promising electoral perspectives, wanted him to run for the Howrah constituency in the general election. Datta declined to do so, stating he felt he could achieve more as an independent person fighting legal matters. He said he regretted ever having supported a (Congress) candidate in an election as that had for years earned him the reputation of being a party person. Before the Trinamool Congress approached him, the right wing BJP had also offered him its ticket in

Howrah. In the 1998 election, the Trinamool Congress won the Howrah seat.

Finally, Howrah's polity changed in yet another aspect. As mentioned in section 6.1, the Central Pollution Control Board had taken up the issue of Howrah's environmental crisis emphasizing several of the issues mentioned in the writ petition. Datta was personally involved. For instance, he was the only environmental NGO representative at an official meeting of government agencies in Calcutta on 7 November 1997. The Board had invited him to take part in the discussions meant to draft an action plan for Howrah.[7]

It is far too early to determine whether the action plan proposed by the Central Pollution Control Board will ever take off. It was also disappointing that the Board did not publish any of the data it had collected on Howrah's environmental situation. According to R.N. Bhattacharyya of the Central Pollution Control Board, there had been some additional research. Nonetheless, it is interesting that the central government staked a claim in the *Howrah Matter* and that Subhas Datta was considered to be among the people relevant to the issue. Before the Green Bench was established, he had been regarded as a notorious rabblerouser rather than as someone to be taken seriously.

By the end of 1997, the *Howrah Matter* had been dealt with by the Green Bench for one and a half years. Datta expected the struggle to go on for many more years, particularly as there was a general impression among those regularly frequenting Green Bench sessions that the judges had, so far, shied away from the big issues.

Also, it was expected that the point was bound to come when the High Court would have to punish officials for contempt of court in order to assert its authority. The experiences in the courtroom–not only in the cases discussed–suggested that the Green Bench was not yet prepared to do so.

Without resorting to the penal powers they are vested with, it may prove difficult for the judges to move government bodies to tackle the 'big issues' such as provision of safe drinking water or overall road

[7] The WBPCB later sent a letter with the minutes (including a draft version of the action plan) to the participants. This document was dated 4 December 1997. It listed several points of concern, some of which reflected GNS positions. These included the upgradation of sewage collection and treatment and garbage collection. The letter also added that 'proper land use planning' and 'improvement of road conditions' had, among others, emerged in the discussion as important issues to be taken into account.

conditions. However, in these matters, it will be even more difficult to use those powers. Who is to be held responsible in an overall inefficient bureaucratic organization? If the ceremonial inauguration of the public building finalized in spite of court injunctions could go unpunished, who will bear the blame for more anonymous and impersonal government dysfunctions?

The judges' declared strategy of proceeding at slow but steady pace may sound convincing in theory.[8] In the *Howrah Matter*, it did not work too well. The authorities' attitude was a mix of arrogance, symbolical compliance and display of helplessness. Deadlines imposed by the court were regularly missed. Officers claimed the submissions of the petitioning party were exaggerated. HMC Commissioner Basudev Guha Majumdar even said in an interview for this research project that the entire litigation added up to nothing but 'pin pricks' for a 'competent administration'. On the other hand, the authorities asked for detailed directions of the court when the failure of their schemes could no longer be denied.

The *Howrah Matter* has, moreover, attracted media attention. Its constant coverage has helped turn the Green Bench into a platform serving to raise Subhas Datta's personal profile. He has become a figurehead of public life in West Bengal.

As soon as the Green Bench was established, he started to file additional cases in High Court. By the end of 1997, he was dealing with several other matters, including the maintenance of public parks in south Calcutta and Salt Lake City and the conditions of morgues in Diamond Harbour and Karagpukur. By the end of 1997, he was almost daily approached by people asking him for help, from all over West Bengal.

One important incident concerned plans for a new suburban township. The state government wanted to build a new settlement called 'Rajarhat' that would have dimensions similar to Salt Lake City. The plans bordered on (but did not infringe upon) the northern part of the Waste Recycling Region. Datta was approached by local activists for help in a campaign against the settlement. In January 1998, he intended to take the issue to court. This was a new

[8] Since early 1998, there have been several changes of bench membership. As I have only once been present at proceedings before judges other than Justices Banerjee and Mitra, I am in no position to comment on whether these changes affected the matters heard.

development. Eighteen months earlier, Calcutta's environmentalists had felt he was simply a partisan activist supporting the Congress Party rather than a potentially important ally.

In 1999, his main emphasis was environmental litigation in general with the *Howrah Matter* having become one of many cases he was involved in. The Green Bench had taken up proceedings concerning all public morgues in West Bengal. Datta had also been officially made the representative of M.C. Mehta in all aspects of the *Ganga Matter* still to be dealt with by the High Court.[9]

Increasingly, Datta advised people approaching him for help to go to court themselves. According to him, a dozen such cases had materialized in Howrah since the establishment of the Green Bench by early 1998. Roughly the same number of court cases had been initiated with his advice outside Howrah.

Many of these initiatives brought some relief to the petitioners, partly because some of the authorities, particularly in Howrah, had begum to change their attitude. Whereas complaints had not bothered them until very recently, the threat of going to the High Court might now set them in motion. The visible achievements in the 'small' issues of the *Howrah Matter* have set precedents. The shadow of litigation (Dammann, 1997) is itself becoming a force of change.

To summarize: The litigation in the Green Bench has not solved the environmental crisis in Howrah. Major problems, such as inadequate urban planning and an overall inadequate infrastructure, have not been tackled. However, specific locations have been dealt with and seen undeniably positive results.

After years of almost entirely unsuccessful campaigning, the GNS has achieved some of its goals. It has not been possible to make the government fully accountable. However, the court has given those citizens who are prepared to go to court some leverage over the administration. The judiciary has (in an initial and rudimentary way) forced government agencies to enter into the discourse of the public sphere, making them accountable to agents of civil society.

This is in turn has spawned additional NGO activity, to a large

[9] Datta took up this responsibility only after I left Calcutta. I am in no position to assess what impact it has had on his relation with PUBLIC and other Calcutta NGOs which, with good reasons elaborated before, consider M.C. Mehta more a foe than an ally in the wetlands dispute.

extent gravitating around Datta and the GNS. By taking more and more issues to the Green Bench, this NGO leader has enhanced his political clout. As, in the experience of the judges, his cases were normally well researched and argued, his legal activism also provided opportunity for the Green Bench to further its own reputation in a reflexive process.

CHAPTER
SEVEN

Ethnographic Observations: An Overarching Lack of Trust

It has been clear from the outset that executive and legislative branches of government are not inherently trustworthy institutions. The question at stake in this book is whether public interest litigation can sort things out in the Indian context. This, of course, involves the credibility and legitimacy of the judiciary itself. More generally speaking, the viability of liberal democracy depends on a sense of trust stemming from the accessibility and accountability of government agencies to civil society in a sufficiently transparent public sphere.

In this context, the judiciary is of particular relevance as the branch of government safeguarding constitution, law and rules of democratic conduct. It has to serve as much to check and balance the coercive powers of the state as to resolve disputes among citizens. The case studies presented in Chapters 5 and 6 have shown that writ petitions can lead to more than merely symbolic success. Judges have repeatedly given concerned citizens some leverage over the administration.

Nevertheless, the High Court in Calcutta did not appear as an altogether trustworthy institution to the German sociologist. I heard

many complaints of inefficiency and corruption. Moreover, the judges' competences sometimes seemed doubtful. In spite of public court sessions, many decisions remained non-transparent. The resulting lack of trust was reflected in an equally entrenched sense of suspicion among the NGOs involved in Green Bench proceedings. This was a serious impediment to cooperation. Rampant suspicion and the propensity to believe in conspiracy theories thwarted the potentially much stronger role of civil society.

Very generally speaking, I found that power relations were likely to be considered in personal terms. Factors such as rank in government and civil service, high public profile, media attention or a reputation for getting things done were regarded as expressions of primarily personal power. Many people would try to make a favourable impression on those perceived to be wielding influence and to monopolize such contacts once established. 'Real agendas' were often expected to be hidden. Anything negotiated openly was not normally thought to be of much substance.

This chapter deals with the issue of trust in public life–or, more precisely, the lack of trust in both civil society and public sphere as constituted by the higher judiciary. Before that, it will be necessary to briefly elaborate on ethnographic methodology, because the data presented here are of a more subjective nature than the case studies discussed above. The methods applied up to here have been fairly obvious and need no further elaboration. Basically, I have analysed the relevant documents.[1] This assessment was supplemented by personal memories of people involved in the matters. Finally, I have repeatedly visited locations in dispute to personally assess the ground reality.

The second section takes an ethnographic look at the judiciary, and particularly the Green Bench in the High Court. The third section similarly examines the network of NGO activists and bureaucrats interested in the environment.

[1] To some extent, it is a methodological problem that they are mostly not available to the public. Any researcher will have to deal with this non-transparency of administration and judiciary by relying on the photocopies of photocopies that float around in the NGO networks of civil society after having leaked out of the bureaucracy at one point or another. Of course, the legal files of petitioning parties include many relevant papers and are therefore important sources. It is time consuming but by no means impossible to lay hands on and compare nearly all the documents at stake.

7.1 The Approach of 'Thick Description'

The 'hard' facts of governmental programmes, court judgements, petitions, affidavits and media coverage have dominated the argument in the case studies.[2] The data presented next are, to a large extent, of a 'softer' nature. They are based on my personal observations in the courtroom and among NGO activists in Calcutta. They rely on ethnographic methods used to discover cultures the researcher is not familiar with. I do not pretend to deliver a comprehensive ethnography of the Green Bench or Calcutta's NGO network. Such an endeavour would have to include far more data concerning, for instance, career patterns of those in the legal professions, an assessment of administrative intricacies and a comprehensive survey of the different types of individual, formally organized, and governmental parties appearing in the courtroom.

Even though my ethnography of the Green Bench is far from complete, the lack of trust that I encountered during my research was too pervasive to be simply dismissed as an individual impression without further relevance. Accordingly, some ethnographic observations will be presented here to make the general assessment of public interest litigation more comprehensive.

Clifford Geertz (1973) introduced the idea of ethnographic 'thick description', which attempts to give a strong impression of one particular aspect of social life and to use it to describe specific and essential cultural dispositions of the scrutinized society as a whole. This approach of social science is based on systematic field research including qualitative methods such as participant observation and narrative interview (Spradley, 1979, 1980). Entries in meticulously

[2] Official data from government or court files are not necessarily 'true' in the sense of delivering accurate assessments of reality. Unfortunately, most of these documents are not publicly available and thus not subject to public, critical debate. It remains difficult to establish hard facts as it is, of course, impossible to check all data personally on location. However, these data are 'hard' in the sense that they are included in documents that, in principle, can be checked. Moreover, CMDA plans and similar documents reflect the government's view of affairs that, in turn, may be expected to shape governmental action. It would be fascinating to assess governance by examining the quality of the expertise on which decisions are based. However, as a sociologist, I am in no position to check scientific, technological or legal assessments. What I have done in the case studies is to take official documents as valid government guidelines and then compare them to subsequent official action or inaction. This is of immediate sociological relevance.

kept field diaries are the basic data ethnographers operate with. In so far as the following pages do not quote from other sources, the data presented here result from my personal observations as recorded in my field notes.

In the 'writing culture' debate, it has been acknowledged that such ethnographic work remains highly subjective in spite of elaborate methodological codices (Clifford and Marcus, 1990). This approach implies that the social scientist has to forsake any claim of having a privileged access to social reality that would make his or her observations more true than those of other actors. On a more theoretically abstract level, the approach is acknowledged by recent systems theory (Luhmann, 1997). In this perspective, social sciences have no paramount position to analyse society but rather are only a specific social system observing other social systems according to its own terms.[3]

Given that any individual's subjective observations do not unproblematically reflect 'objective' reality, the person of the observer is highly relevant and becomes responsible for the observations made. This is one reason why it is customary to present ethnographic findings in the first person. Moreover, it is only fair that the researcher explicitly express some of his or her motivations.

My idea of studying public interest litigation in Calcutta arose from the wish to have some personal experience of the reality of a disadvantaged country after having been involved in development journalism at Deutsche Welle, Germany's international broadcaster, for several years. As environmental challenges are among the most difficult any society faces, I found court cases revolving around these matters as interesting topic. I was hoping to discover how the polity of an Indian mega-city deals with conflicting interests in pursuit of the common good, however that might be understood. I had the opportunity to spend two winters in India, which were useful to gather my data.

I kept a field diary to supplement the harder data from the outset, as I would have anywhere else in the world. However, as it was sometimes difficult to gain access to important documents, there were periods in which the ethnographic research was of greater prominence

[3] This also implies that even though certain proceedings in court may be faultless to legal experts, the sociologist may still find them troubling in his or her context.

in my work that I had originally expected.[4]

I understood the task of the researcher to be one of second order observations. Social scientists cannot uncover a somehow 'objective' truth. What they can do is observe how social communication takes place and what is communicated. To access the social reality of environmental litigation in Calcutta, it is relevant to understand how Calcuttans communicate about such issues. This, of course, includes government reports and court rulings, but also personal memories, face-to-face interaction in private and public, seminars and rallies.

Ethnographic research is based on the assumption that members of any particular culture or society are constantly explaining their social reality to one another in everyday interaction. This is directly linked to the various constructivist approaches in sociology that emphasize that this reality is created in the permanent flow of everyday communication (e.g. Goffman, 1959; Berger-Luckmann, 1966; Luhmann, 1986, 1997).

For the researcher, anecdotes, rumours, shop talk and gossip of the communities observed therefore serve as valid guides to understand their particular culture. Ethnography must strive to bypass professional attire, which to a large extent serves to exclude non-members rather than to actually carry out particular skills. In this sense, my 'thick description' of High Court culture will not primarily be supported by 'hard' facts such as quotations from court rulings. Rather, rumours and small talk are evidence of how people in this particular social setting express thoughts and feelings, at once reflecting and creating social reality. After all, anything true in people's mind is likely to have its effect on how 'reality' will eventually turn out.

Such ethnographic research has its place not only in development studies, such as the study of tribal villages in the Narmada valley (Baviskar, 1997). It has also been carried out in scientific laboratories (Knorr-Certina and Mulkay, 1983) among biologists (Latour and Woolgar, 1979; Knorr-Cetina, 1981), physicists (Traweek, 1988) and physicians (Hirschauer, 1993). Similarly, professional life in the media has been subjected to ethnographic research (Altheide, 1976;

[4] Obviously, I personally found the inaccessibility of official documents frustrating. However, governmental non-transparency is of course a greater handicap for all the citizens of Greater Calcutta who wish to engage in democratic deliberation than for the foreign social scientist, who may simply include the phenomenon in his or her final assessment.

Tuchman, 1978; Golding and Eliott, 1979). As this approach is fit to scrutinize such professional cultures, there can be nothing wrong with applying it to Calcutta's Green Bench–even if this 'field' of educated, middle class, urban Bengalis would not normally be the community most likely to come to an ethnographer's mind with regard to India studies.[5]

While ethnographic research may have the disadvantage of not even appearing to be objective, it does have the advantage of discovering aspects of reality that would otherwise not be accessible to the social scientist. The approach aims more to understand a particular culture than to test premeditated sociological concepts. In this sense, I hope to be discovering a lack of trust rather than to be imposing German standards.

On final caveat is *de rigueur* in this context. The following ethnographic sketches are meant to illustrate certain characteristics of Calcutta's polity in the late 1990s. The societal lack of trust is quite strong. However, that does not mean it is an unchanging or unchangeable aspect of Calcutta's political culture, nor that every individual would display these traits in his or her personal behaviour.[6]

7.2 The Judiciary

Several points must be made about the trustworthiness of the High Court. Like other government bodies and branches, the High Court has a reputation of inefficiency and corruption. The course of proceedings could be quite unpredictable. Procedural surprises in the case studies presented in Chapters 5 and 6 included the sudden order of the Supreme Court to establish a specialized bench in the High

[5] For me, it was most beneficial that this community strongly relies on English, I only have a rudimentary grasp of Bengali which, however, is no impediment in following High Court proceedings or the general environmental discourse in Calcutta.

[6] For this reason, there is also the convention of not revealing the personal identities of the people described in an ethnographic text. For the purpose of my book, that has not been entirely possible. First, the case studies required 'hard facts'. Second, some of those involved are highly interested in publicity. Third, it would seem odd in a book the main trust of which is a demand for transparency to obscure individual identities of people who are politically and regally relevant. Nonetheless, in this chapter, some efforts have been made to maintain the anonymity of people not central to the argument. Also, I have chosen an 'alias' for one person still active in government service, not knowing whether the revelation of his identity would be welcome or not, or perhaps even harmful.

Court. More typical was the experience of cases simply not coming up for hearing for months on end, although they had not been disposed of.

I was told several times, that my discomfort with the High Court was due to the fact that I was unfamiliar with common law practices. This is undeniable. However, non-transparency and inefficiency were occasionally of a quality not to be explained by the differences between Anglo-Saxon and European legal traditions.[7] This included, for instance, the episode in which files pertaining to the Supreme Court activities in the *Howrah Matter* were lost in the High Court and the petitioning party, rather than the High Court's administration, was held responsible by the judges to deliver these documents.

For the discussion presented here, the differences between common law and civil law traditions are not of prime relevance. The question at stake is to what extent do judicial practices in Calcutta inspire trust in the legal system and, more generally, in the public sphere? This was not to be taken for granted. Rather, suspicions abounded concerning possible collusion of executive government and the judiciary.

Moreover, phenomena similar to what I have experienced have been described in scholarship for decades (Cohn, 1990; Kidder, 1973). This has been elaborated on in Chapter 3. The following discussion will serve to show how public interest litigation in Calcutta is embedded in problematic aspects of the Indian judiciary. The aim is less to explain their origin than to show that they are having a serious impact on the performance of the judiciary.

It must also be emphasized again that triumph in the courtroom does not necessarily lead to changes on the ground. Deficiencies in enforcement do not inspire trust. Other problematic aspects included the relative non-transparency of the judicial process, a general lack of scientific insight in environmental matters and the fact that regulations were rarely mentioned in the courtroom. The following subsection deals with the issue of non-transparency and rumours of corruption.

To the German sociologist, the technical competence of the judges in dealing with issues of engineering or urban planning seemed doubtful, to say the least. Very often, the judicial process before the

[7] I have sat in on court sessions in the United States, where proceedings did appear more organized. Legal documents were also easily made available.

Green Bench did not primarily seem to revolve around laws or Supreme Court rulings. Rather, the judges appeared to be wielding their considerable discretionary power according to their common sense, or whatever calculations appealed to them personally. The attitudes they displayed in court did not always reflect professional detachment and neutrality. These aspects are discussed in the second subsection.

7.2.1 *Non-transparency and Corruption Claims*

Court sessions are held in public, but it is difficult to follow them concisely. Unless one was exceptionally well placed, it was very difficult to hear the discussion in courtroom number 17, where the Green Bench would sit every Friday. The room was crammed with up to 140 persons. Some twenty cases might be listed. It was unclear exactly at what time individual matters would come up. Most parties involved in any item on the agenda were represented in the courtroom. At most, a quarter of the attending persons were seated. The air was stuffy. Very often, the noise of rotating fans made it difficult to follow the proceedings. There was constant agitation in the room. People would go out to have a cigarette, or come in to see whether their matter was coming up.

The proceedings were held in English. Accordingly, the vast majority of non-English-speaking Indians would not have been able to follow them. On top of that, not all those appearing in court were fluent in English and even some of the professional lawyers' language skills appeared to be limited. At times the debate became agitated with several people speaking at once.

Most matters discussed in court were detailed and involved locations unknown to those not familiar with the cases in question. The court depended on maps, photographs and other pieces of evidence which, of course, only the judges and the parties immediately involved had at hand.

Court documents were not normally accessible. This meant that the public in general had to rely on media coverage of court events. Journalists, however, did not have a privileged access to the court sessions as they have in Germany (where seats and even desks in the front of courtrooms are reserved for the media). Similarly, academic researchers were not granted access to court files–at least I was not, in spite of having personally appealed to the High Court registrar while

being affiliated to the Centre for Studies in Social Sciences, Calcutta, a deemed university.

The judges of the Green Bench did not even allow journalists to take notes during the sessions. This had helped Subhas Datta to assume the role of de facto press spokesperson before the Green Bench.[8] During breaks, he would brief half a dozen journalists in improvised press conferences in the High Court building. The High Court itself had no systematic way of informing the public about the state of pending matters or new decisions. Therefore, Datta could become the main media informant even though he was, of course, an NGO activist and thus partisan. This again, did not contribute to official transparency that would inspire trust in the institution of the High Court.

The High Court, moreover, before the establishment of the Green Bench, had not had a good reputation, particularly as far as public interest litigation was concerned. Its speed in dealing with the wetlands case was not considered typical. PUBLIC and its lawyers had been surprised by their own success. They attributed the initial speed of the proceedings to the originally keen interest of the state government to have the matter disposed of quickly as it did not doubt that the court would rule in favour of the World Trade Centre. For me, the German sociologist, it appeared to be a collusion suspicion, articulated subtly, that PUBLIC would attempt to link court actions with the government's wishes.

Subhas Datta's initial experience in the High Court was said to be more typical. In Chapter 6, I had elaborated how eight of ten public interest litigations filed by the Howrah Ganatantrik Nagrik Samiti (before the *Howrah Matter* was taken to the Supreme Court) were eventually discontinued. They simply did not come up for hearing again. Of the two disputes that led to judgements, one dealt with foreign travels of the chief minister and was ruled in favour of the State. The other case, in which the judges decided in favour of the GNS, concerned the auditorium on the Howrah Maidan. It was enforced only six years after delivery of judgement, after several appeals to the High Court and the Supreme Court. Those who had blatantly ignored the judgements went unpunished in the end.

[8] He normally observed all proceedings before the Green Bench from a strategic position among the lawyers in the centre of the courtroom. This is the best way to follow the proceedings and, as he was one of the main activists before the bench, the lawyers tolerated him in their midst.

Apparently, delay was no isolated experience. On 24 November 1997, the local page of the *Asian Age* ran an article by Kinsuk Basu under the headline 'High Court officer files PIL against corrupt practices'. The clipping stated that the Supreme Court had appointed someone to report on the state of affairs in the High Court. This person had filed a writ petition in the Supreme Court to set matters straight in Calcutta. The *Asian Age* listed the following findings:

- The judicial process in Calcutta High Court is marred by rampant corruption prevalent in the system of listing out cases.
- Thousands of pending case files are missing from the record department and there is no system of recording movement of pending records…
- PIL cases are affected due to administrative mismanagement.
- In contempt cases, the contemnors never appear on time rendering the judicial process futile.

The article also stated:

> Unless litigants pay 'speed money', officials ensure that the files lie untouched for decades. Only the rich litigants or the hard pressed ones, who are aware of the system, get the privilege of superseding those who have waited for months to see their case on the list.

The reporter wrote that this was the first time a special officer had filed a case against a High Court. It is interesting to note that it was due to the initiative of then Supreme Court Chief Justice J.S.Verma, a well-known judicial activist. The suggested measures of reform were professional training and computerization of the registrar's office. The report urged the Supreme Court Chief Justice to pay a surprise visit to the Calcutta High Court.[9]

According to the *Asian Age*, a report on the matter had also been delivered personally to High Court Chief Justice Prabha Shankar Mishra with an appeal to 'save the oldest court in the country'. High Court lawyers told me that the report in the newspaper reflected their experience. However, they did not expect the Supreme Court initiative to be of much avail. It was considered a personal initiative of a Supreme Court Chief Justice who would only be in office for

[9] At the time, efforts to draft reforms for the justice system along similar lines were under way involving judges of the Supreme Court and several High Courts including Umesh C. Banerjee and others from Calcutta (Chodosh et al., 1997). At the local level of the Green Bench, however, such concern for reform was not necessarily to be felt in the courtroom.

another two months. An important issue of law was regarded as a matter of personal involvement of a high-ranking official. Similarly, environmentalism had commonly been considered to be Supreme Court Justice Kuldip Singh's personal affair.[10]

This highly personalized perception of discretionary power was linked to the fact that the judiciary was overburdened. Individual judges could not be expected to do all they were supposed to do, simply because their workload was too heavy. In this situation, they set priorities as they pleased. From a sociological perspective, therefore, the high number of pending cases enhanced the individual discretionary powers of high-ranking judges.

For lawyers, the widely accepted notion that bribes were fair means in official affairs may sometimes have provided an additional source of income. One advocate told me his clients would complain if he took high fees. However, he could rise in their esteem if he asked them for 10,000 to 20,000 rupees to bribe the judge. He would then be seen as someone well enough connected to influence the High Court. In the end, how were the clients to know who had actually kept how much of the total sum of the 'bribe'?

Indeed, accusations of corruption were made not only against the court administration, but also against individual judges. Most prominently, Justice Ajit Sengupta was arrested and put on trial soon after retiring in late 1996 (*Telegraph*, 23.11.1996). I was told that he indeed had had the reputation of being prone to accept personal favours.

Another interpretation, however, was that this was a measure by the state government to intimidate the other High Court judges. Justice Sengupta had apparently ruled against the government on several occasions. His arrest was interpreted to be provoked less by his having taken bribes than by his being a personally assertive member of the bench. After all, the argument went, all judges had skeletons in their closets and could be subjected to corruption charges.

To be very clear, this is gossip. The main evidence was reasoning along the lines of conspiracy theories. However, it did reflect the thinking of legal professionals in the High Court at the time and is therefore relevant to any assessment of the judicial culture. It is also relevant in the sense that these people, if any, might be expected to

[10] As a matter of fact, over a year after Kuldip Singh retired, environmental matters were prominently on the Supreme Court's agenda in 1999–for instance in the judgment demanding fuel emission norms for newly registered cars in the National Capital Region (*Times of India*, 30.4.1999, 17.5.1999).

know about the procedures and manoeuvres experienced in court.

There was also some evidence that Justice Umesh Chandra Banerjee had accepted personal favours from the state government. The magazine *India Today* (8.9.1997) included him (and also Bhagabati Prashad Banerjee, who was later to replace him as a senior member of the Green Bench) in an alleged list of persons who had been allotted attractive real estate in Salt Lake City by the chief minister. According to the magazine, the allotment was illegal. Months earlier I had already been told by advocates that Umesh Banerjee was not likely to rule against the state government as he had been granted personal favours. The location and size of his house were mentioned in this context.

Advocates also told me that the High Court had ruled that such allotment of plots was within the personal discretion of the chief minister. There had been no legal consequence. To my surprise, this did not seem to even raise an eyebrow among the legal community. Eventually, there was another legal episode with members of the Trinamool Congress challenging the chief minister's allocation of property as abusive of discretionary power. This matter was dismissed by the High Court on 5.2.1999. The petitioners then took the case to the Supreme Court in April 1999 (*Telegraph*, 21.4.1999) with, as far as I know, no further consequences.

Among Calcutta's legal community, it was taken for granted that judges wanted to maintain good relations with governments in general. After all, they would want to be eligible for various appointments to well-paid positions in committees or as consultants after retirement.

7.2.2 *Technical Skills and Professional Attitudes*

While the judges thus did not necessarily appear to be entirely independent, there were also doubts concerning their technical competence. It was clear that they could not be expected to have profound insights into the complex field of environmental engineering. Nevertheless, they did not systematically rely on competent advisors. Often they dealt with the issues on the predominantly impressionistic level of the petitions. In doubt, they relied on the reports of the West Bengal Pollution Control Board. These, however, sometimes turned

out to be of rather poor quality.[11]

Unsurprisingly, the WBPCB again had a rather poor reputation. It had been clearly overburdened even before its workload was increased by weekly reports to the High Court. Nonetheless, the Green Bench had made it its investigating body.

According to one officer, the WBPCB had 106 staff members in late 1996, 25 of whom could be considered technical. They were supposed to control pollution in a state with a population as large as Germany's and an industrial base just as old. West Bengal is home to some 70 to 80 million people and was the nucleus of industrialization in Asia.

All industries needed a clearance from the WBPCB. There was much money involved. To me, it seemed inconceivable that twenty-five technical staff could regularly control such a vast industrial landscape. The situation appeared worse if one considered hearsay according to which the WBPCB personnel had initially not been chosen for their technical competence. Rather, the conventional wisdom was that staff had been transferred from other government bodies as appeared convenient to those in charge (for whatever reasons).

To the visiting German sociologist, it came as little surprise that the WBPCB had a reputation for both technical incompetence and financial corruption. Indeed, business people in Calcutta would tell of fixed prices for pollution control certificates, the sum of which would depend on the total investment involved in any single business unit. In line with Renu Khator's (1991) assessment of environmental bureaucracies in India, a black market for the required documents appeared to have been set up within WBPCB. In any case, this institution could not be expected to perform irreproachably.

On several occasions, parties appearing before the Green Bench had suggested establishing a panel of experts to consult the judges. This could, for instance, have comprised professors from the

[11] The following caption will show that it does not always take an engineer to submit some of the Pollution Control Board's reports. It deals with the Jhill (pond) of Belillious Park in Howrah and was submitted to the High Court on 8.1.98: 'The entire boundary of the Jhill inside the park was found to be full of dirty sludge, dead body of pig, leaves of plants, etc. which were being floated on the Jhill on the date of inspection i.e.16.12.97. The water of the Jhill is being polluted by the unwanted activities of the local residents inside the park'. This particular report submitted no further data with respect to the pond. Its elaborations on various other aspects of the *Howrah Matter* were similarly impressionistic.

institutions of higher learning in Calcutta and experts of government bodies such as the National Environmental Engineering Research Institute or the All India Institute of Hygiene and Public Health. While the Green Bench had on rare occasions ordered such institutions to report on environmental matters, the judges had so far not decided to set up such a committee in their support.

In this context, the fact that some (but not all) petitioners were ordered to depend on lawyers was criticized. The feeling had repeatedly been that legal experts did not understand environmental issues well enough and would constantly blunder in court. Procedural surprises also played a role in this context. If one could not even expect cases to follow a predictable, established pattern, then how was one to rely on fair and adequate judgement?[12]

While the technical and management competence in the courtroom thus seemed to be poorly developed, the level of legal argumentation also remained poor. Submissions hardly ever referred to national or state legislation, nor did they elaborate the respective rulings of the Supreme Court. Such sources did not figure prominently in the proceedings I have followed nor in the judgements I have read.

It is true that many of the matters disputed were, in the words of Subhas Datta, 'factual, not actual'. But it would be wrong to believe that impressionistic matters lend themselves easily to impressionistic decision-making. Some orders seemed barely implementable: In January 1997, the High Court ruled that no buses or taxis would be allowed on Calcutta's streets if they emitted 'black or white smoke'. This was a clearly subjective, non-scientific standard.

To summarize the episode briefly: The High Court did not recur to the car pollution control legislation enacted by the central government. Instead, one of the judges complained in the courtroom that everybody knew that car owners could simply buy the certificates without taking any measures to reduce emissions–and thus took recourse to the notion of 'black or white' smoke. Unsurprisingly, the order was not implemented. Citizens who had hoped for relief from the massive air pollution along Calcutta's main roads soon after were tempted to interpret the highly visible clouds of fuel exhaust as a sign of the High Court's lack of authority, rather than of judges having

[12] Individual petitioners who were involved in cases before different benches might not know which courtroom to go to first, ignorant of when (and if) their matter would be heard. While senior lawyers would rely on their aides in such cases, other individuals would run the risk of having their cases disposed of in their absence.

passed an inadequate ruling.

Finally, the personal attitudes displayed in the courtroom were not apt to inspire trust in impersonal, rule-based decision-making. It was not uncommon for the judges to lose their temper and even start shouting in court. They would interrupt petitioners trying to deliver a complex argument with a mere 'what do you want'? Or simply tell a lawyer to 'shut up'. Advocates complained that this behaviour was 'immature' and 'rude'. The widespread perception was that the judges did not want to hear lengthy arguments. Moreover, the agitated debates before the bench, in which several persons might be trying to contribute at the same time, cast doubt on the judges' ability to organize orderly proceedings.

One lawyer observed that judges appeared 'clownish' in such emotional moments. After all, the judges were dealing, among others, with advocates appearing for those holding high-ranking public office. This attorney suggested that the judges would have done better to personally hear the secretaries, commissioners and directors of the administrative bodies concerned, thus holding them responsible and ensuring that the pressure of the investigation acted on the bureaucracy as a whole. He said that this had been the strategy of the Supreme Court, an example the Green Bench should follow to a much larger extent.

Personally, I once observed a High Court judge (neither Umesh Banerjee nor Ronojit Mitra) falling asleep during a public interest litigation session. It is of course only human to do so. However, it would seem advisable for justices to take breaks in such moments of failing concentration if they did not want to undermine the attending public's respect for their professional competence.

It is common knowledge in the sociology of professions that the display of personally uninvolved attitudes along with the use of unemotional, technical terms serve to emphasize an individual's professional competence and reliability. This goes for judges as well as for physicians, architects, engineers and other professionals. Competence and trustworthiness must be symbolically enacted. In a similar vein, it must also be mentioned that the physical state of the High Court compound did not inspire respect for professional competence. For instance, it was quite normal to find piles of old legal files, some of them torn, in a corner of the courtroom or to encounter half-broken furniture.

In early 1998, Umesh Banerjee was transferred to the Andhra Pardesh High Court, where he became Chief Justice. In early 1999, he

was serving as Justice of the Supreme Court. His replacement as senior member of the Green Bench in 1998 was Bhagabati Prasad Banerjee, who also retired later that year. The Green Bench was then reconstituted with two new member judges who were again replaced in the summer of 1999. As far as I have been told, these changes sometimes caused the cases dealt with to gain or lose momentum. It is obvious, however, that the new bench members would practically be novices to the legally, scientifically and socially complex field of environmental problems.

To summarize: The widespread perception of the Green Bench after one and a half years of proceedings, was that it was moving, but very slowly. Many advocates and environmentalists stated that the Green Bench had shied away from ruling harshly against the government and implied that the judges may have had personal reasons to do so. It was also felt that they lacked basic technical competence. For the outsider from Germany, it was surprising to note the absence of legal argument and the highly affective behaviour of the judges.

Nevertheless, the general feeling was that it was 'better to have a Green Bench than not to have a Green Bench', as one activist told me. Even minor progress was considered relevant. And it was felt that the establishment of the Green Bench and constant coverage of it in the media had begun to change people's ideas about governance. The mere institution of the Green Bench implied that government officials had duties and were not inherently beyond the law.

7.3 The Environmentalist Network

I have stated so far that, while litigation was potentially frustrating, it had undoubtedly become an important resource for environmental NGOs in the Calcutta agglomeration. However, as has been shown in the case studies, orders of the High Court were not press-button procedures to solve the problems at stake. Rather, they required constant monitoring to be enforced.

Normally, this burden rested entirely upon the NGO that had taken government agents to court. They were generally not supported by the existing network of environment-oriented pressure groups. Rather mistrust and envy characterized the interaction among the

NGOs. Typically a spokesperson of one NGO would belittle other groups, saying they were 'really incompetent', had 'no grassroots contacts', were just 'secretarial organizations' or 'letterheads', 'angling for foreign funds' or trying to 'raise their profile' for their commercial or political careers.

Among NGOs, any professed goal was often considered a pretext. The person in question might well be pursuing exactly the opposite interest. Take, for instance, a fishery owner saying he wanted the wetlands to be protected. He may well be hoping to raise the speculative value of his property, not necessarily expressing his heartfelt concern over the future of his current livelihood. Prices are generally higher in black markets. Wetland protection may thus make real estate speculation more lucrative.

The next subsection elaborates the conspiracy theories that are heard through Calcutta's environmentalist network. The second subsection then turns to problems of cooperation under such conditions of mistrust.

7.3.1 *Conspiracy Theories*

As far as I can tell, environmental litigation before the Green Bench in Calcutta was not financially rewarding to the petitioners. Subhas Datta, for instance, complained of lack of funds. His campaigns did not earn money. Rather, activism took time in which he might have been doing well-paid, professional work. Nonetheless, rumours abounded concerning financial profits from NGO activism.

Several people told me that they were in a position to tell me what foreign funds any single NGO was receiving. This general statement was, however, never followed up with facts. Rather, in the case of PUBLIC, it would be said that Bonani Kakkar was making money as a development consultant for the World Bank and other donor agencies. In what sense her involvement in a local court case fighting a World Trade Centre would improve her standing with the World Bank was never explained. The hassle and stress of litigation were never accounted for in this kind of discussion.

To me, it defied common sense to believe that anybody who basically earned her income on consultancy missions in other Indian states and abroad would financially profit by binding herself to the High Court with litigation. After all, the media coverage of her cases had peaked years before with the first spectacular wetlands judgement

of 1992. A later case, taken up by PUBLIC, had not captured media attention in the same way. Moreover, the World Bank was not known to be an agency of particularly strong environmentalist leanings in the early 1990s when PUBLIC first took the wetlands matter to court. It only made its U-turn concerning the Narmada Dam in 1993 (Baviskar, 1997).

Nevertheless, people who had no intimate knowledge of the case claimed to 'know' that PUBLIC had no serious interest in the wetlands whatsoever. The most absurd anecdote was one told by two independent sources. One was a High Court lawyer, the other a government official.

The allegation was that PUBLIC had been 'bribed' by Development Consultants Ltd. to take the State to the court with the goal of gaining judicial approval of the World Trade Centre. The mere fact that construction of the centre had begun served as 'proof' for this anecdote. It did not matter that the centre had, so far, not infringed upon the wetlands. PUBLIC had obviously served the goals of the company that was building the centre and therefore must have been 'bribed' by it.

The use of the word 'bribe' in this context is interesting. According to the *Concise Oxford Dictionary* of 1964, to bribe means to 'pervert by gifts or other inducements the action or the judgement'. This would normally mean the neglect or abuse of office. How can an NGO without any official duties be bribed? If it had received money, would it not be more appropriate to simply state that it had been paid?

The government official held on to his theory even when I pointed out that it did not make any sense. Why would a company that already had government approval for a specific project want an NGO to turn it into a matter of litigation? The construction of the World Trade Centre had actually been postponed by five years. How could that be in the interest of the company? I had to discover that the prejudice against the possibility of acting in the public interest was too strong for this official to accept plain arguments of rational choice.

The official in question had a professional stake in the wetlands. Yet he had never read any of the court rulings, not even the one reported in the law journals. He had no clear idea of how the court had defined the wetland area, nor did he know of the 'balance' the court had tried to strike between safeguarding the environment and laying foundations for further economic expansion. There was no

perception of the consistency of the judge's consecutive rulings on the issue.

The truth, according to him, was simple: PUBLIC had claimed to fight the World Trade Centre and now a World Trade Centre was coming up. So it was evident that PUBLIC must have lost the case. And if the NGO lost the case, that was probably what it had intended all along–why else would it have gone to court?

This was the most disturbing case of irrational myth building I came upon. I initially took it to be a case of personal paranoia, but the story was being told by at least one other person as well.

As I found this episode irritating, I discussed it with several other people. What I found even more striking was that their normal reaction would be to spontaneously give some credit to the legend of PUBLIC having been 'bribed'. It would take a lengthy discussion pointing out all the absurdities to convince my partners in these conversations that this particular allegation defied common sense. Interestingly, most people I talked to claimed to 'know PUBLIC personally'. And yet, the conspiracy theory made immediate sense to them.

Other myths spun around PUBLIC were that it was funded by 'the foreign hand' with the goal of keeping the economy of communist-run West Bengal down. This was a version popular among Left Front supporters. Similarly, it was suggested that they were being paid for by the Ananda Bazar publishing company as part of an anti-communist campaign. Yet another theory was that Bombay businessmen were behind PUBLIC. Their interest would be to make sure that Calcutta would never again become a competitor to independent India's commercial capital.

M.C. Mehta told me, as mentioned in Chapter 5, section 5.4.3, that he had been to Karaidanga, the place to which the Supreme Court had ordered the tanneries to relocate. He said he had seen no wetlands and he wondered what PUBLIC's real motive was. He implied it might have been to protect the leather industry owners from the threat of shifting.

Interestingly, there was a rumour in the Central Pollution Control Board that stated that Mehta's efforts to relocate small-scale industries from the national capital to reduce air pollution had 'really' been on behalf of real estate promoters. The plots thus vacated would make good business for anyone in Delhi's construction and housing

market and, naturally, Mehta would have already secured his share of the profit.

In the Central Pollution Control Board it was generally said that public interest litigation was beneficial. It had given 'teeth' to the pollution control boards all over India. However, it also had a 'dark side'. And that was that many cases were only filed in order to blackmail industries and then to collect illegitimate financial benefits.

In Calcutta, only those who confessed to be 'friends', 'supporters' or even 'members' of PUBLIC immediately rejected such conspiracy theories concerning this NGO as absurd. The conventional wisdom of Calcutta's educated, English-speaking middle class seemed to rule out the possibility of any serious activity in the public interest.

Ironically, people with a personal stake in an environmental issue were also not perceived to be honest. Weren't people suing a polluting industry in their neighbourhood probably acting in self-interest? If so, they would not be perceived to be speaking on behalf of the environment. Similarly, fishery owners would not be expected to care about biodiversity but 'only' to try and save their livelihoods. To me, this seemed to be a tragic, catch-22 situation. Whoever had a personal interest could not possibly be expected to be honest. And whoever had no personal interest could not possibly be expected to be active. Consequently, any engagement in pursuit of the common good appeared to be next to inconceivable.

7.3.2 *Impeded Cooperation*

During my research, I did not find the notion of bargaining for compromise, building coalitions of several diverse interests and cooperation with other organizations to have deep roots among middle class, urban Bengalis. Such activities were expected to take place secretly and were than apparently viewed as illegitimate incidents of 'corruption'. Conflicts of different interests were seen not so much as being open to negotiation but rather as battles in which only one party could prevail.

Accordingly, there existed a constant fear among Calcutta's environmentalists that someone else might get too much credit. In this sense, someone else's prominence often seemed to be felt as a missed opportunity to enhance one's own standing. Discussing the merit of a certain litigation objective of one NGO with another, I would often be told that the latter's own issues were far more valid. Another person's

or group's gain would always be one's own loss. There seemed to be only a weak notion of acting for the common good or in the public interest.

One government officer, whom I will here give the alias 'Dipankar Basu' because he is still in active service, seemed to be trying to systematically monopolize the issue of wetlands conservation as his personal mission. He had undoubtedly done very much to save the wetlands and was in the words of another environmentalist 'the only one to have paid for it' because his career as a bureaucrat had been slowed down. Apparently, there had been threats to kill him and kidnap his child.

On the other hand,, he was highly acknowledged as one of India's leading environmentalists. He had received international recognition and been invited to conferences abroad. He was also prominently involved in the Indian activities of an international environmental NGO. In the activist network of Calcutta, he was generally considered to be the leading wetlands expert. His bureaucratic career had not been stalled totally. During my research period, he was promoted to a senior position in the state government.

Nevertheless, he seemed to fear that this was not enough. He tended to present himself as the only real wetlands expert. He initially told me that Ashis K. Ghosh was old and 'not doing anything any more' and that PUBLIC was incompetent and did not have the 'necessary grassroots contacts' and 'lacked rudimentary scientific knowledge'.

According to Dipankar Basu, PUBLIC did not understand that the World Trade Centre was not the main issue. Rather, he said, the real threat to the wetlands was the informal conversion of agricultural land to potentially built-up real estate, with the upcoming constructions of the Lions' Club serving as the main example. At this time, PUBLIC had already filed its contempt of court petition, including passages concerning these very construction sites.

Obviously, Dipankar Basu and PUBLIC, at this point, were competing to be perceived as the one and only wetlands savers. PUBLIC's Bonani Kakkar and Dipankar Basu would each say that they didn't know what the other wanted and that, in any case, they did not trust the other's motives. Both PUBLIC and Dipankar Basu had gained much local and even international attention through their pro-wetlands activities. Campaigning for wetlands protection and thus gaining recognition was clearly not a zero-sum game.

Ironically, to the outside observer, their dispute appeared to be one of the factors actually threatening the wetlands. Rather than cooperating, they risked to lose what they had achieved so far in a struggle spanning almost eight years in the case of PUBLIC and more than a decade in the case of Dipankar Basu. The reputation of both would suffer should the wetlands really be lost.

To me, it seemed peculiar that several government officials interested in wetlands protection gloated about PUBLIC's poor 'grassroots contacts'. For this reason, the NGO was said to be unaware of recent construction activities along the road beyond Bantala. Rather than support the NGO's attempt to reinforce its legal approach through a contempt of court petition, bureaucrats jealously monopolized their own information. Only the people living and working in the wetlands could serve as watchdogs, these officials said. The efforts of PUBLIC were supposedly meaningless. To me, it was never made convincingly clear why public interest litigation would get in the way of grassroots mobilization, or, for that matter, why grassroots mobilization would hamper the litigation approach.

PUBLIC and others suggested that one particular officer basically relied on the fish producers union. In turn, a leading member of the union told me that even though this officer was a good friend, he was not of much help. But PUBLIC could not be trusted at all. In his view, the wetlands were lost–if I myself (the foreign sociologist!) didn't step in to save them.

Similarly, the bulk of activitists from Calcutta had no interest in Subhas Datta and the GNS in 1996. Again it was 'known' that he was a Congress supporter whose main interest was to undermine the Left Front's position. Therefore, there could not be much legitimacy to his cause. After all, Congress was considered to be more corrupt than the CPM.

Datta, in turn, asked me again and again who he might turn to for technical advice. He would lose interest as soon as I suggested someone from Calcutta. For him, it seemed clear that anybody from the other side of the river could not have an honest concern for the *Howrah Matter*. Getting them involved would imply losing control of the campaign and becoming exposed to their intrigues and manipulations. On the other hand, he seemed to be quite happy to cooperate with M.C. Mehta, who was not in favour with the Calcuttan NGOs.

One might have expected the Green Bench to serve as a point of crystallization for the environmentalists in the Calcutta area to organize. After all, the court had become a weekly meeting point for many of them, and the proceedings showed certain patterns of government failure and of judicial blind spots. Cooperative monitoring would have lessened the burden for all NGOs involved. However, that sense of cooperation did not exist among them. Rather, one environmentalist pointed out to me that the situation had to be regarded as very positive the way it was. After all, there was no 'back-stabbing'.

This person also emphasized that the initial wetlands campaign had not kept up its momentum because it had taken too heavy a toll on the participants. All were working professionally full time and could not continuously afford to stay up late drafting petitions or organizing rallies for several months. While this undeniably made sense, it did not explain why a campaign that had achieved its goal to a large degree was in retrospect seen cynically as having accomplished hardly anything.

The wetlands campaign had also been plagued by internal dispute over goals and strategy. Some people involved wanted to stop urban development on Calcutta's east side altogether. Others felt it was more realistic to focus on protecting the Waste Recycling Region. Different strategic approaches are likely to split any social movement anywhere. However, it is peculiar how little scope for compromise there seemed to be in this case. After all, without the achievements of the PUBLIC case, large parts of the Waste Recycling Region probably would have had already given way to the extension of Salt Lake City and other projects.

Some individuals did not conform to this culture of near-paranoid non-cooperation. One example was C.R. Datta, a leading member of Calcutta 36, the NGO meant to serve as an umbrella organization. He was one of the few people who instantly suggested I should talk to other activists. He did not try to monopolize my attention for his issues. I have been told that even in his active time as a CMDA officer he had been known to speak his mind in front of superiors and to have generally been very cooperative.

Calcutta 36 was not, however, considered to be performing well according to many member organizations. There was a general complaint that C.R. Datta was only using it as his personal platform. I have heard the suggestion, again unsubstantiated, that he was

preparing to run as a candidate for the West Bengal Legislative Assembly. Consequently, it was said, his interest in environmental issues could not possibly be genuine.

For the German sociologist, these claims seemed odd. Would it not be positive to have legislators who had made their names campaigning for worthy causes? The attitude of well-established middle class Bengalis concerning potential political careers appeared to me to be as dysfunctional and biased as the 'fundamentalist' attitude against emerging prominence in the early days of the Green Party in Germany. However, that had been an expression of a youthful counterculture and not the common sense of middle class professionals, many of whom were even retired.

Another individual who was open to cooperation was Ashis K. Ghosh. After retiring from the Zoological Survey of India, he was doing freelance work and is currently running a Centre for Environment and Development. He was known to get assignments from the Government of West Bengal, for instance during the CEMSAP project. He was also preparing a report for the State Environment Department on the biodiversity of West Bengal. He said he was happy that the government wanted his advice and was even willing to pay for it. This, in his view, enhanced the chances of his papers being used. He also said he could make more money as consultant for large industries, but felt that government assignments were politically more important. Again, all this seemed convincing to me.

It was not so to some environmentalists in Calcutta. To them, it was clear that Ghosh was 'selling out'. He was perceived as only being in it for the money. If he was paid then his intentions could not be good. The argument that only paid advice is likely to be heeded did not convince his critics. Was it not a positive sign that the government was willing to pay for reports, even though it knew from experience, for instance in the case of the wetlands, that his advice was not necessarily comfortable? No, the answer went, a service in the public cause should not involve any payment.

While the spokespersons of the fish producers were constantly asking for support, they were hesitant to cooperate with Ghosh in the CEMSAP context. One of them told me he had reasons not be trust Ghosh's intentions 'knowing' that he had been involved in some kind of prior scam. Another person told me he could not trust Ghosh because, according to a newspaper report years ago, he had demanded that 5000 *acres* (rather than *hectares*) of wetlands should be

protected. Ghosh told me this had been the mistake of the journalist. However, in the eyes of someone else, this report became evidence of Ghosh's intention to cheat. Interestingly, such conspiracy theories were often not supported by any clear idea of the other person's possible motives.

The irony of such negative attitudes was obvious. They were prone to be self-fulfilling because they made cooperation unlikely and served as a constant disincentive to act in pursuit of the public good. To overstate the case drastically, in this view, nobody had any reputetion left to lose. As there could be no compromise between the public interest and individual goals, everybody perceived everybody else to be self-serving in the pursuit of ill-begotten gains. Constant saintly self-denial is, of course, as unlikely in Bengal as anywhere else.

On the other hand, real cooperation was not displayed. A number of times, NGO members told me they had been asked to sue the State by officials who were frustrated with the performance of their own bureaucracy. As exemplified in the wetlands case, there appeared to be a pattern of bureaucrats attempting to mobilize the public when they could not prevail in internal disputes in the administration. This suggests that the dynamics of mistrust and intrigue inside the Government probably resembled those experienced in civil society.

To some extent this actually might be seen as a sign of hope. The governmental bureaucracy is, after, not a monolith. There is scope for dissent. Indeed, some bureaucrats may be expected to try to serve the substantive goals of their office rather than merely exploiting their positions for personal benefits. Indeed, to me as a foreign observer, matters often appeared to be less bleak than expressed in the rampant rumours of NGO, administration and High Court small talk.

While much criticism will be justified, it appears advisable not to make a difficult situation even more difficult by seeing the government, including its judicial branch, in too sceptical a light. After all, public interest litigation has brought about some changes. It may, so far, not justify trust in the institutions of democratic government, but it does inspire hope for the alleviation of grievances. In more theoretical terms, it has served to establish a rudimentary sense of public sphere.

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 secretively 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.

Annexures

Timetable of events concerning the East Calcutta wetlands

1985	M.C. Mehta's *Ganga Matter* is first heard in Supreme Court
1986	The Institute for Wetland Management and Ecological Design (IWMED) of the West Bengal Government is established
1990, August	CDMA document on Calcutta's future stresses importance of wetlands
1990, autumn	State Planning Board Draft Perspective Plan stresses importance of wetlands
1991, August	Bureaucrats mobilize NGOs to save the wetlands
1991, December	Supreme Court demands reports on all industries along the Ganges
1992, January	PUBLIC files writ petition in High Court to save the wetlands

1992, August	Newspaper reports plan for Calcutta Leather Complex
1992, September	First High Court judgement protecting Waste Recycling Region is passed
1992, November	West Bengal government accepts proposal to declare East Calcutta wetlands an area of 'national importance', a plan still not finalized
1992, December	West Bengal Inland Fisheries Amendment Bill rules out conversion of fish ponds
1993, February	Supreme Court begins dealing with Calcutta tanneries
1994, November	Second High Court judgement protecting Waste Recycling Region is passed
1995, March	Foundation stone is laid for Lions Club Eye Hospital in the wetlands (project was abandoned by late 1997
1995, May	Mohit Ray and friends write to Supreme Court asking for intervention in East Calcutta
1995, August	PUBLIC officially accuses government officers of contempt of court, proceedings were still pending in early 1998
1995, December	Supreme Court orders High Court to take action concerning Mohit Ray's submissions regarding East Calcutta
1996, January	West Bengal Government supports proposal to declare East Calcutta wetlands a 'Ramsar site' of 'international importance', a plan still not finalized
1996, March	Mohit Ray and friends write letter to High Court
1996, April	Mohit Ray's case is heard, High Court demands detailed report
1996, June	Mohit Ray's case is transferred to Green Bench
1996, December	Final Supreme Court judgement orders Calcutta tanneries to relocate at Karaidanga within ten months; deadline was not met, construction work was going on at full swing by end of 1997

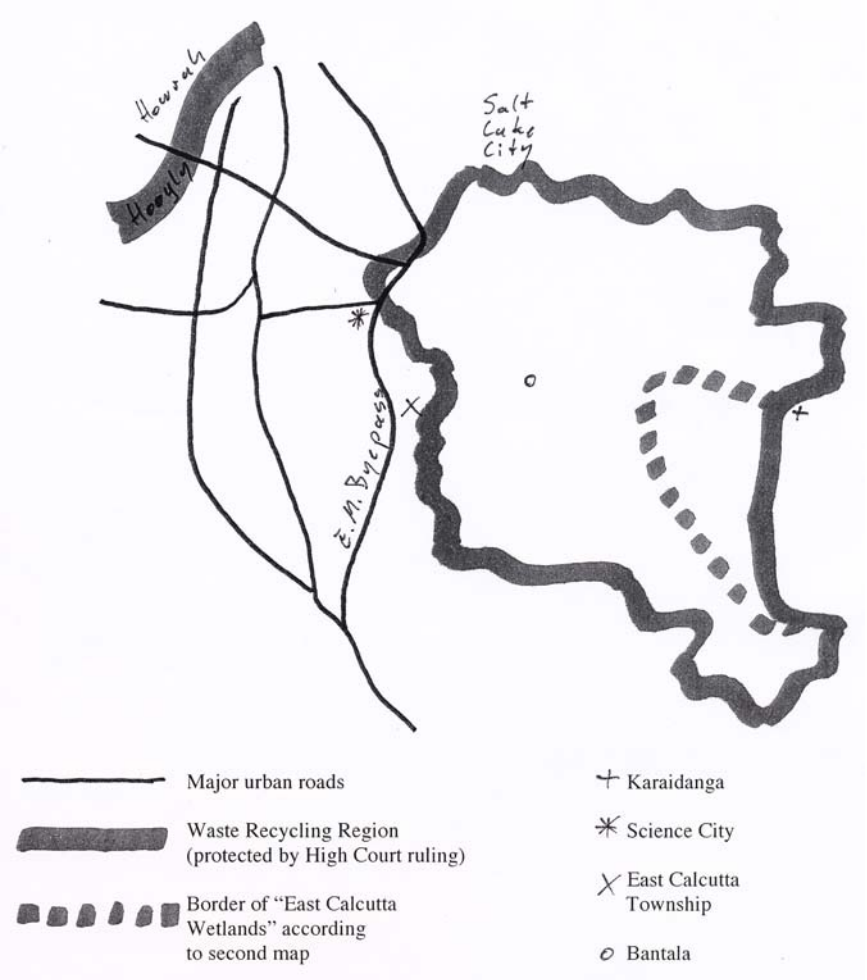
1997, March	CEMSAP releases *Report and Action Plan* concerning wetlands and canal system
1997, November	CEMSAP is discontinued

Timetable of events concerning the *Howrah Matter*

1977	Howrah Ganatantrik Nagrik Samiti (GNS) initiates its first activities
1987, August	Writ petition against shopping complex in Bellilious Park leads to injunction and eventually loss of investor interest; park is subsequently neglected and transformed into informal garbage dump
1989, January	Writ petition is submitted against construction of auditorium on Howrah Maidan
1991, March	High Court orders removal of Civil Defence Camp from Howrah Maidan as condition for construction of an auditorium, order is not obeyed by authorities
1995, January	High Court Single Bench finds Howrah officials guilty of contempt of court, Division Bench revised judgement while reinforcing order to relocate Civil Defence Camp; order disregarded by authorities
1995, April	High Court orders garbage to be removed from Fish Market, order not obeyed
1995, April	Supreme Court accepts writ petition on the GNS, thus constituting the *Howrah Matter*
1996, February	Auditorium is inaugurated and immediate injunction is passed by Supreme Court, order is obeyed, work to finish auditorium stops
1996, April	Supreme Court orders Calcutta High Court to establish a specialized bench (Green Bench) to deal with *Howrah Matter* and other environmental issues
1996, June	Proceedings before Green Bench begin

1996, November	Informal garbage dump under Second Hoogly Bridge and closure of Duke Road are brought to the attention of the *Green Bench*
1997, January	Green Bench orders auditorium to be finalized, Maidan park to be reopened and Civil Defence Camp to be removed; order obeyed as far as auditorium and Civil Defence Camp are concerned
1997, January	Repeated orders are passed to relocate Fish and Betel Markets, obeyed to considerable extent
1997, May	Orders are passed concerning improvement of morgue condition
1997, August	Orders are passed concerning Second Hoogly Bridge area to be converted into park, Duke Road to be opened again; garbage disposal is discontinued, garbage is bulldozed and road is provisionally opened
1997, September	Orders concerning morgue are repeated but not implemented by November deadline; however, corpses no longer pile up under the open sky, cremations are organized regularly; new building remains inadequate
1997, November	Central Pollution Control Board calls meeting to draft an action plan for Howrah after the city has been declared 'critically polluted'

Rough sketch of IWMED map



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