

## PREFACE

India's litigation explosion seems to have become a permanent feature of its social and political landscape. These preliminary explorations try and examine the nature of the explosion in the context of India's political economy. The first two essays are concerned with problems of method. The first essay (Chapter 1) tries to explain that the terrain of disputes is remoulded by the political economy and appropriated to its use. Disputes are trapped and furthered in this re-designed terrain in a way that they create enclaves of power for certain classes and groups. The next essay (Chapter 2) outlines alternative methodologies and makes a plea for more facts and more theory in order that the analysis of the work flow of courts may proceed beyond the normative framework in which India has hitherto discussed its litigational problems.

The case studies (Chapters 3 and 4) partly tread on the already familiar, explaining the pattern of litigation, the problems of management and finance, and the hostility of lawyers to allowing the alteration of the *status quo*. There are suggestions about reorganising the work of the courts. But, it is the next essay (Chapter V), that seeks to reflect on the case studies. The litigation explosion explicates many of the contradictions in an emergent capitalism pursuing its ends through the processes of a liberal democracy. At the hands of an emergent acquisitive class, one part of the State has been turned against itself on a massive scale. This has led to intra-class disputation in a way that has already endangered India's fragile polity. Emergent capitalism in India has collapsed the distinction between the State and civil society, directly and indirectly privatised the processes of government and allowed the proliferation of fratricidal intra and inter class and group disputes. The last essay (Chapter 6) argues that emergent capitalism in a liberal democracy must find a substantive rationality either through the operation of market forces (which has not happened) or allow the State to impose such a rationality upon it (which the State cannot do because of its indiscriminate privatization). The litigation explosion is part of a general appropriation of all the institutions of a liberal democracy by the forces of the market economy operating through its legal and political—professional and unprofessional—power brokers.

I must thank the Indian Council of Social Science Research for a preliminary grant to look at some of the problems of the Allahabad High Court. The Indian Law Institute awarded me a 'visiting Fellowship inviting me to locate this and connected research at the Institute. The Bar Association of India—especially Shri R.K.P. Shankardass—provided an opportunity to update my earlier work on the Supreme

Court and think about some of the problems of the High Courts. Special thanks are due to Shri S.K. Bhargava, Registrar, Allahabad High Court and his staff and Justice Satish Chandra, former Chief Justice of that Court. Shri Ghanshyam Das Chotmurada, a former colleague from the Committee for the Implementation of Legal Aid Schemes, read the manuscript and made suggestions. I am grateful to Shri R. Sudarshan for allowing me to intrude on his time. Ms. Bharati Sapru's collaboration in the Allahabad High Court work was as invaluable as the zest with which she collected information. Shri Pramod Singh of the Library of the Indian Law Institute and the Institute's support staff—especially Shri Thomas Paul—made this project possible. Little Nayana and Mona were, unfortunately, temporarily excluded into inattention as I tried to piece these essays together in a short space of time. For the views, faults and preliminary analysis, I alone am responsible.

This book was completed the day Dr. S.N. Jain, Director of the Indian Law Institute died. His death came as a shock. It is difficult for me to express my feelings of grief at the passing away of a close friend and a much valued colleague. This book is respectfully and affectionately dedicated to his memory.

Rajeev Dhavan  
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