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JUDICIAL ACTIVISM (III)
GROWTH OF PUBLIC INTEREST LITIGATION: ACCESS TO AND DEMOCRATISATION OF THE JUDICIAL PROCESS

S.P. Sathe

In the two articles published earlier, the author has traced the evolution and growth of judicial activism in the pre- and post-emergency periods where judicial review was used by the Supreme Court to examine and scrutinise political decisions of the executive. This article situates Judicial Activism within the context of Public Interest Litigation (PIL), to effectively bring out the symbiotic relationship between the two. The courts democratised the judicial process and expanded and relaxed the paradigm of the traditional judicial process and the very parameters of justiciability itself. PIL has changed the character of the judicial process from adversial to polycentric and adjudicative to legislative. The article also brings out the expanding scope of PIL into areas of new and emerging concerns, the innovative techniques employed by the judiciary to address these concerns, as well as the limits of both PIL and Judicial activism. As the use of PIL continues to grow, the article raises pertinent questions regarding the wide acceptance and legitimacy enjoyed by the Supreme Court's decisions and their sustainability. An analysis of these issues will be undertaken by the author in a forthcoming article to complete the series.

TRADITIONAL PARADIGM OF ADVERSARY ADJUDICATION

In the preceding two parts of this paper we saw how the Supreme Court gave liberal interpretation to various provisions of the Constitution and thereby increased its own power along with the expansion of the rights of the people. Along with the growth of the doctrinal law of individual liberty and governance, the Court also liberalised its procedure with a view to facilitating access of the common man and increasing public participation in the judicial process as a means of control over the other organs of government. This required radical changes in the traditional paradigm of judicial process. The traditional paradigm of the adversarial judicial process was designed for adjudication of disputes between private parties over contracts or civil liability or property or matrimonial matters. It was based on the following hypothesis : (1) people were supposed to know the law and their rights, and (2) the judicial process was the least desirable method of settling disputes and had to be used only when other methods, such as inter-party settlement or conciliation or mediation, did not work. The traditional legal theory of judicial process envisioned a passive role for the courts. It postulated: (a) The courts merely found the law or interpreted it but did not make it. (b) If they made the law, they did so only to fill in the interstices left by the statute and only to the extent it was necessary for the disposal of the matter before them. (c) A court will not decide a question of law unless such a decision is absolutely necessary for the disposal of the matter before it. (d) After a matter is dealt with by a court and it has given its decision, such a decision is binding on the parties and the same matter cannot be raised again before the same court or a court of concurrent jurisdiction. An appeal may, however, lie against the decision to a higher court. The decision of the highest appellate court is final and binding on the parties and the questions regarding rights and liabilities decided therein cannot be raised again before any court. This is known as the principle of *res judicata*. (e) Only a person who has suffered an injury or whose right is violated can approach the court and initiate the judicial process. This is known as the requirement of *locus standi*. (f) A person who has a cause of action and *locus standi*

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to raise an issue before a court of law must do so within a prescribed time limit provided by the law of limitation. This paradigm postulated a litigant who is conscious of his rights and is willing to vindicate them by taking resort to judicial process at the earliest point of time. In this paradigm of judicial process, only a person whose interest was prejudiced could activise the court and he had to do so within reasonable time.

The above paradigm of judicial process was based upon the negative concept of judicial function and it applied to the public law adjudication also. It suited the *laissez faire* economy and the minimum state concept which was prevalent during the nineteenth century. Public law was an exception to the generality of private law and the application of the same paradigm to the public law was considered to be compatible with the concept of the rule of law. The concept of judicial function, however, was bound to change when the courts undertook the function of judicial review. In judicial review, the courts were to prevent illegality on the part of the government and thereby also to protect individual liberty. The above paradigm had to change when courts started resolving conflicts between liberty and authority and more so when the concept of the State underwent a change. With transition from *laissez faire* state to welfare state, the nature of judicial review changed and the courts could not continue to remain passive because, unlike in litigation involving private disputes, public law litigation involved greater public interest since the maintenance of the rule of law was its direct concern. Therefore, the courts had to evolve gradually a new paradigm of judicial process for public law adjudication.

PARADIGM OF PUBLIC LAW JUDICIAL PROCESS

In England, the king's courts exercised the power of judicial review over all subordinate courts and administrative authorities with a view to ensuring that they acted within the limits drawn upon their powers by law. The courts were endowed with the power to issue prerogative writs such as *habeas corpus, certiorari, mandamus,* prohibition and *quo warranto* for enforcing such limits. If a person was illegally detained or arrested, the writ of *habeas corpus* was issued to set him free; if a tribunal or an administrative authority acted illegally, it could be stopped from proceeding by the writ of prohibition or its decision could be quashed by the writ of *certiorari. Mandamus* was a writ issued for compelling an authority to do what it was legally bound to do or to forbear from doing what it was forbidden by law to do. If a person occupied a public office illegally or by usurpation, he could be asked to vacate it by issuing the writ of *quo warranto.* It was because of the efficacy of these writs that Dicey said that liberty of an individual emanated from the remedies provided by the courts [Dicey, 1952, p. 195]. The courts for a long time followed the rules of private law adjudication while exercising the above jurisdiction. But realising that larger public interest is involved in a public law litigation, exceptions began to be made. In England, for example, the earlier provision was that an application for a writ could be made only by a person who had suffered an injury or whose right had been violated. The writ of *habeas corpus,* however, could be sought by a friend or even a stranger on behalf of the person who was illegally detained. Subsequently, the rule of *locus standi* was liberalised in respect of other writs also. The Law Commission of the United Kingdom suggested that *locus standi* be given to any person who had 'sufficient interest' in the matter. This was incorporated in the Supreme Court Act of 1981 [Wade and Forsyth, 1997, p. 680].

The Supreme Court of India has been evolving its own paradigm of public law adjudication by

making a number of innovations quite unorthodox to the traditional legal theory. The incorporation of a bill of rights in the Constitution and the vesting of special responsibility for protecting the rights on the courts must have inspired the courts to be less technical and more informal. The law making function of the court was never in disguise. The traditional rules of prematurity, *locus standi* and *ratio decidendi* were not strictly followed. These three concepts would be explained in the course of this discussion.

PREMATURITY

The rule of prematurity is that a court interprets a statute or discovers a common law in so far as it is absolutely necessary for the disposal of a matter. If a matter can be disposed of without deciding the question of law, the court should do so. A court will not decide a question of law if the matter can be disposed of on a preliminary issue like the lack of jurisdiction. A court will not decide the constitutionality of a statute if it is not absolutely necessary to do so. This rule is known as the rule of prematurity or ripeness. Abstract or hypothetical questions are not answered by a court. The Supreme Court of India has not been too fussy about the doctrine of prematurity [Sathe, 1975, Pp. 23-47]. In a country where majority of the people are poor and are ignorant of their rights, the court thought that it was better to decide such questions about fundamental rights before any actual invasion thereupon takes place. That would prevent unnecessary prolongation of litigation also. In *Basheshar Nath* v. *Commissioner of Income Tax* [AIR*, 1959, SC, p. 149], the Court decided whether fundamental rights could be waived, even though the contested matter could have been decided without going into that question. From a strict positivist standpoint, such going into the wider question of waiver of fundamental rights was unnecessary and undesirable. Seervai [1976, Vol. 1, p. 194] said:

> But this case also furnishes an example of extreme undesirability of a court pronouncing on large constitutional questions which do not directly arise.

The Court, however, went into that question (of waiver of fundamental rights) because it wanted to protect people against themselves. In a right-conscious society, the doctrine of waiver was quite relevant because there was a level playing field. But in a society where rights had been given to people who for generations had been powerless and exploited, such waiver could be dangerous and could make the entire bill of rights meaningless. The rights were not mere individual's entitlements but constituted the societal commitment to a new social order and, therefore, could not be left to their assertion by the individuals for whose benefit they had been guaranteed. A pro-active judicial process was a condition precedent to the enforcement of fundamental rights.

WRIT JURISDICTION OF THE SUPREME COURT AND THE HIGH COURTS

The Constitution confers power on the Supreme Court under Article 32 and the High Courts under Article 226 to issue writs and orders in the nature of *habeas corpus, mandamus, certiorari,* prohibition, and *quo warranto* The Supreme Court can issue these writs for the enforcement of the fundamental rights and, the High Courts can issue them for the enforcement of the fundamental rights and for 'any other purpose'. The Supreme Court held that 'for any other purpose' meant for the enforcement of any statutory as well as common law right [*Calcutta Gas Co.* v. *State of West Bengal,* AIR, 1962, SC, p. 1,044; Sathe, 1998(a), p. 355]. Further, the Constitution is far-sighted in using the words 'in the nature of' because it liberates our writs from the technical constraints with which the writs in England were hedged. In one of its earliest judgments, the

* Full forms of abbreviations are listed alphabetically at the end.

Supreme Court made it clear that it would not stand on the formality of the petitioner having asked for a specific remedy. If the petitioner establishes the case of violation of his right, the court would issue an appropriate remedy irrespective of what remedy has been prayed for [*T.C. Basappa* v. *T. Nagappa* AIR, 1954, SC, p. 440]. Since the Constitution uses the words 'in the nature of' it does not make our writs identical with those in England but only draws on analogy from the latter. Secondly, our courts can issue directions, orders or writs other than the prerogative writs. This helps the courts in India to mould the relief to meet peculiar requirements of this country and leaves to the courts a good deal of elasticity to deal with the problems in hand. It enabled the courts in India to use the private law remedies of injunction and stay orders given by the Code of Civil Procedure in the discharge of its public law function [Sathe, 1998(a), Pp. 353-55]. Processual activism was therefore inherent in the provisions of the Constitution. The Supreme Court has observed that the scope of the writs under the Indian Constitution is wider than that of the prerogative writs in England.

Although the Constitution does not expressly say so, the courts have made a distinction between issuance of writs for the enforcement of fundamental rights and the issuance of writs for other purposes. The courts insist that alternative remedies should have been exhausted by the applicant before coming to court with a request for a writ 'for other purposes'.

DELAY: GROUND FOR REFUSAL OF JUDICIAL REVIEW

Although Article 32 confers a fundamental right to move the Supreme Court for the enforcement of fundamental rights, the Supreme Court held that such a right was not absolute. A person could lose his right if he came to court after a long delay [*Trilokchand Motichand* v. *H.B. Munshi* AIR, 1970, SC, p. 898]. That decision was severely criticised in academic writings [Baxi, 1975, p. 559; Jacob, 1974, p. 352]. The law of limitation applies to ordinary suits and its purpose is to give finality to transactions. It is premised on the principle that no one should sleep over his rights and no one should be kept in uncertainty about his legal position indefinitely. Although the law of limitation is not applicable to the writ jurisdiction, the courts have held that one must come to the court for the enforcement of his right within a reasonable period.

However, in a recent decision in *Dr. Kashinath G. Jalmi* v. *The Speaker [SCC,* 1993, Vol. 2, p. 703], it was held that where public interest was involved, a court would be slow to reject an application for a writ of *quo warranto* on the ground of delay. The Tenth Schedule of the Constitution, which was inserted by the Constitution (Fifty-Second Amendment) Act, 1985, contains provisions against defection of a member of the legislature from one party to another. Under the Schedule, what is defection has been defined and the decision as to whether a member of the legislature has incurred such disqualification is to be given by the Speaker. The Speaker of the Legislative Assembly had given a ruling disqualifying certain members from membership on the ground of defection. Subsequently, the Speaker was removed and the Deputy Speaker acted as Speaker. In his capacity as Speaker, the Deputy Speaker reviewed the decision given by his predecessor and held that those members had not incurred such disqualification. A petition against that decision of the Deputy Speaker was made by Kashinath Jalmi eight months after that decision. The High Court rejected the petition on the ground of delay. In the Supreme Court, on appeal, it was held that the petition was not barred.

Justice J.S. Verma surveyed the case law on the subject and found that all those decisions in which petitions were rejected on the ground of delay were such in which enforcement of a personal right was sought, and they did not relate

to the assertion of the right of the people against the illegal occupation of a public office. The relief claimed in the instant case was not of any personal benefit to the petitioner but of vacation of a public office held illegally by some persons. The learned judge pointed out that the principle of laches (delay) as a ground for not entertaining a petition was based on sound policy of protecting public interest. Where, however, not entertaining a petition caused greater harm to public interest than the harm caused by the entertainment of a delayed petition, it must be entertained. So a petition would not be thrown out on the ground of delay if the petitioner could prove that perpetuation of illegal occupation of a public office would cause greater harm to public interest than the harm caused by the entertainment of the delayed petition. Where a person occupies a public office illegally, a petition seeking *quo warranto* against him was not in the interest of any individual but was in the interest of the general public. Delay is a valid ground for rejecting a petition when one individual asserts his right against another individual but it may not be a valid ground for rejecting a petition where public interest in the occupation of a public office by a right person is involved. A person who has illegally occupied such an office would benefit by the Court's refusal to entertain the petition on the ground of delay. So when a writ is sought for preventing an illegality in the occupation of a public office, delay would not bar the petition.

The above case was decided in recent years when the jurisprudence of public interest litigation has developed and the Court has developed a new paradigm of judicial process consistent with the rights discourse which it has generated through judicial activism. The new paradigm envisioned an affirmative, pro-active role of the Court for facilitating access to justice for those who did not possess either the know-how or the resources for invoking the judicial process on their behalf and for ensuring greater public participation in the judicial umpiring of the constitutional government. The new paradigm was for a Court which had to protect the rights of the poor and illiterate people of India and to ensure that the rule of law was observed by citizens as well as the rulers. The doctrinal activism which the Court developed needed to be supported by the processual activism. Such activism aimed at (a) bringing the redressal of grievances of the victimised sections of society within the purview of the Court, (b) making processual innovations with a view to making justice less formal, cheap and expeditious, and (c) making the judicial process more participatory, polycentric and result-oriented.

LOCUS STANDI

One of the important methods by which courts saved themselves from spurious or vicarious litigation was of ascertaining that the person who petitioned the court had the *locus standi* to do so. Who had the *locus standi*? A person must show that he is adversely affected by the impugned action or his own right has been violated. Further, the issue raised by him must be a justiciable issue. An issue is justiciable when it is capable of being resolved through judicial process. This rule of private law adjudication was also applicable to public law adjudication. The only exception was in the case of the writ of *habeas corpus*. This writ is issued to liberate a person from illegal detention. It may happen that the person held in such illegal detention may not be in a position to move the court and therefore a stranger or the next of friend is given *locus standi* to move the Court for such a writ. Such a stranger or friend can trigger the judicial process after showing that the impugned action or the law has resulted in denial of the liberty of a person.

The rule of *locus standi* was based on sound policy. However, it presupposed that the people were conscious of their rights and had the resources to fight against the violations of their rights Even in England, the rule of *locus standi* was widened to allow persons with 'sufficient interest' to challenge the government action. When the rules of *locus standi* which were conceived for more efficient functioning of the judicial process inhibited genuine claims from reaching the court, exceptions to the rule became necessary. According to S. A. de Smith [1980, p. 409],

> All developed legal systems have had to face the problems of adjusting conflicts between two aspects of public interest - the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging the professional litigant and the meddlesome interloper to invoke the jurisdiction of the courts in matters that do not concern him.

If public duties are to be enforced, and the public interest subserved by the enforcement of such public duties is to be protected, the public spirited persons or organisations must be allowed to move the Court and act in furtherance of the group interest even though they may not be directly injured in their own rights or interests. Both, in the United States and in the United Kingdom, such liberal view of *locus standi* had come to be adopted.

The Supreme Court of India is the protector and guarantor of the fundamental rights of the people of India, majority of whom are ignorant and poor. The liberalisation of the rule of *locus standi* came out of the following considerations: (a) to enable the Court to reach the poor and the disadvantaged sections of society, who are denied their rights and entitlements; (b) to enable individuals or groups of people to raise matters of common concern arising from dishonest or inefficient governance; and (c) to increase public participation in the process of constitutional adjudication. This litigation came to be known as public interest litigation (PIL). PIL is, really speaking, a misnomer. All public law litigation is inspired by public interest. In fact even the private adjudication subserves public interest because it is in public interest that people should honour contracts, should be liable for civil wrongs and should honour rights in property or status. But whereas public interest is served indirectly in private litigation, the main focus being on private interest of the litigants, public interest is served more directly by the public law litigation because the focus is on the unconstitutionality arising from either lack of power or inconsistency with a constitutionally guaranteed right. Public interest litigation is a further narrower specie of public law litigation. The term public interest litigation was used in the United States, and the public interest litigation in India differs from the American public interest litigation in substantial ways [Cunningham, 1987, p. 494]. Baxi pointed out that the American public interest litigation was funded by government and private foundations and its focus was, not so much on state repression or government lawlessness, as on public participation in governmental decision making. He, therefore, insisted that the Indian phenomenon described as PIL should be described as social action litigation (SAL) [Baxi, 1985, Pp. 289-90]. I am using the term PIL because of its acceptance and familiarity at the popular level. That term is now used in judgments of the courts, and cells under that title have been set up in the Supreme Court as well as various High Courts. PIL is also used in media. PIL is different from the normal writ jurisdiction litigation in the following aspects: (a) the Courts allowed informality of procedure by entertaining letters written to judges or to the Court as petitions or took cognisance of matters on their own (*suo*

moto) and substituted inquisitorial processes in place of the adversary processes wherever necessary for the disposal of a matter; (b) the rules of *locus standi*, which meant the rules regarding the eligibility of a person to invoke the jurisdiction of the courts, were relaxed; and (c) new reliefs and remedies were developed to do justice. In addition, PIL brought about radical metamorphosis in the nature of the judicial process imbibing in it polycentric as well as legislative characteristics. The conceptual difference between public law litigation (which means constitutional law and administrative law litigation) and the public interest litigation will be explained later after fully describing the evolution of the latter.

The Court responded in *Sunil Batra* v. *Delhi Administration* [AIR, 1978, SC, p. 1,675] to a letter written by Sunil Batra, a prison inmate drawing its attention to the miserable lot of a fellow prisoner who was being subjected to unbearable physical torture by the prison authorities. The prisoner had scribbled the letter on a piece of paper and managed to have it sent to Justice Krishna Iyer, judge of the Supreme Court. The learned judge responded to that letter and from that response emerged the first judicial discourse on the prisoner's rights [*Sunil Batra* v. *Delhi Administration,* AIR, 1980, SC, p. 1,579]. On the other hand, Justice Bhagwati, while dealing with a petition filed by advocate Kapila Hingorani regarding inordinately long periods of undertrial detention suffered by some accused criminals, obtained information about a large number of people who suffered from such long period of pre-trial detention, which sometimes far exceeded the longest period of imprisonment prescribed as punishment for the offence they were charged of, and took up the issue of undertrial detention and held in *Hussainara Khatoon* v. *Bihar* [AIR, 1979, SC, p. 1,360] that the right to a speedy trial was part of the right to be governed by the procedure established by law, guaranteed by Article 21 of the Constitution and gave directions to courts and the governments regarding how trials should be speeded up.

Since then several letters were written to individual judges, who took cognisance and inquired into the matter. Since such letter writers rarely possessed the lawyer's expertise, the facts mentioned in the letters needed to be verified. This could be done by appointing commissioners who investigated the facts on behalf of the letter writers and submitted their reports to the Court. Such innovations in procedures were justified by Justice Bhagwati in *Bandhua Mukti Morcha* v. *India* [AIR, 1984, SC, p. 803]. First of all, the learned judge justified the liberal rule of standing which the Court was articulating. The learned Judge said [AIR, 1984, SC, Pp. 803, 813]:

> There is no limitation in the words of Clause (1) of Article 32 that the fundamental right which is sought to be enforced by moving the Supreme Court should be one belonging to the person who moves the Supreme Court nor does it say that the Supreme Court should be moved only by a particular kind of proceeding.

The learned Judge observed that wherever there was violation of a fundamental right, anyone could move the Supreme Court for the enforcement of such fundamental right. This was, however, further qualified by the following words [AIR, 1984, SC, Pp. 803, 813]:

> Of course, the Court would not, in the exercise of its discretion, intervene at the instance of a meddlesome interloper or busybody and would ordinarily insist that only a person whose fundamental right is violated should be allowed to activise the Court.

This was the rule but exceptions had to be made where the actual victim either lacked the knowledge of his rights or the resources for approaching the Court and some public spirited person or a social action group moved the Court on his behalf. The Court could not close its doors to genuine complainants of violations of rights in order to keep 'a meddlesome interloper' or 'a busy body' out. That amounted to throwing the baby with the bath water. A victim of oppression or exploitation may not be in a position to come to the Court on his own. He may be ignorant of his rights and ignorant of the remedy provided against denial of his rights. He may lack resources for coming to the Court. Therefore, another person motivated by altruistic considerations might approach the Court on his behalf.

How does such an altruistic person activise the Court? The judge said that he could do so by writing a letter 'because it would not be right or fair to expect a person acting *pro bono publico* to incur expenses out of his own pocket for going to a lawyer and preparing a regular writ petition for being filed' [AIR, 1984, SC, Pp. 803, 814]. Thus, the Court seems to have been actuated by the desire not only to provide access to the less advantaged persons but also to deprofessionalise the system of justice. Two reforms were undertaken: (a) to allow a public spirited person to move the Court on behalf of the victims of injustice who were poor, illiterate or socially and educationally disadvantaged; and (b) to activise the court through a letter instead of a formal lawyer-drafted petition. Public interest litigation was therefore seen as an instrument of bringing justice to the doorstep of the poor and the less fortunate people. Justice Bhagwati said in *P.U.D.R.* v. *India* [AIR, 1982, SC, Pp. 1,473, 1,476]:

> We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the Court not for the purpose of enforcing the rights of one individual against another, as happens in the case of ordinary litigation, but is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of a large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed.

The Court observed that the courts did not exist only for the rich and the well-to-do but also for the poor, the downtrodden and the have-nots. It was only the moneyed who had, so far, held the key to unlock the doors of justice. Now, for the first time, the 'portals of the Court are being thrown open to the poor and the downtrodden', said the Court [AIR, 1982, SC, Pp. 1,478]. In *Bandhua Mukti Morcha* v. *Union of India* [AIR, 1984, SC, p. 803], Justice Bhagwati pointed out that Article 32, Clause (2) required the court to enforce the fundamental rights through 'appropriate proceedings'. Appropriate proceedings meant such proceedings as would meet the ends of justice. Justice Bhagwati further stated how the processual innovations which the Court was making were meant to make justice more meaningful. He said [AIR, 1984, SC, p. 815]:

> It is not at all obligatory that an adversarial procedure, where each party produces its own evidence tested by cross examination by the

> other side and the judge sits like an umpire and decides the case only on the basis of such material as may be produced before him by both parties, must be followed in a proceeding under Article 32 for enforcement of fundamental right. . . . (I)t may be noted that there is nothing sacrosanct about the adversarial procedure.

On letter petitions as well as *locus standi*, however, there was another viewpoint, which was forcefully put across by Justice R.S. Pathak in *Bandhua Mukti Morcha* v. *Bihar*. Regarding letter petitions, the judge said [AIR, 1984, SC, p. 840]:

> I see grave danger inherent in a practice where a mere letter is entertained as a petition from a person whose antecedents and status are unknown or so uncertain that no sense of responsibility can, without anything more, be attributed to the communication. There is good reason for the insistence on a document being set out in a form, or accompanied by evidence, indicating that the allegations made in it are made with a sense of responsibility by a person who has taken due care and caution to verify those allegations before making them.

Justice Pathak Judge was apprehensive that an unverified communication received through the post by the Court might have been employed mala fide, as an instrument of coercion or blackmail or other oblique motive, against a person who holds a position of honour and respect in society [AIR, 1984, SC, p. 840]. The judge warned that the process of the Court should not be allowed to be abused and it was necessary to follow such formalities as would ensure that the extraordinary remedy provided by the Constitution was not used to serve partisan private interests or on inadequate consideration. Justice Sen in his judgment agreeing with Justice Pathak also said that letters should be addressed to the Court.

Anonymous letters were seldom entertained. In most of the cases the petitioner was a known person, either Sunil Batra [AIR, 1978, SC, p. 1,675] or Vasudha Dhagamwar a social activist [*Kadra Pahadiya* v. *Bihar*, AIR, 1981, SC, p. 939] or an organisation like the Bandhua Mukti Morcha [AIR, 1984, SC, p. 803] or People's Union for Democratic Rights [AIR, 1982, SC, p. 1,473]. Further, the judge said that letters should be addressed only to the Court and not to a judge. The practice of letters being addressed to the individual judges had received criticism from various quarters. So far as letter petitions are concerned, in later years, they have become rare and the Court has taken recourse to appointing lawyers as *amicus curie* (friend of the Court) and asking them to draft a regular petition on the lines of the letter and insisted on the drafting of a regular petition. Similarly, letters to the individual judges also became rare. In fact, questions regarding the validity of such informal procedures were referred by a bench of two judges (Justice S.M. Fazl Ali and Justice Ventkatramiah) to a larger bench for consideration [*Sudipt Mazmudar* v. *State of M.P.* SCC, 1983, Vol. 2, p. 258]. The larger bench, however, never took up that matter perhaps because, by then, those questions had become academic.

When the Judges spoke against the adversary procedure, they did not mean that any evidence would be believed without giving an opportunity to the other party to show that it was false. To that extent, the adversary procedure could not be dispensed with. However, what the Courts expected from the respondent, which was the State in most of the cases, was that instead of taking an adversary position and merely denying the allegation, it should help the Court to find out

the truth. The litigation was not against the respondent but against the illegalities committed on its behalf. The State would benefit from such judicial inquiries because it would know what was lacking in its administration and would be able to improve its performance. It was in this sense that Justice Bhagwati said that it was not an adversary proceeding. Justice Bhagwati said in *P.U.D.R.* v. *India* [AIR, 1982, SC, Pp. 1,473, 1,478]:

> Public interest litigation, as we conceive it, is essentially a co-operative or collaborative effort on the part of the petitioner, the State or public authority and the Court, to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the Court.

Even the reports of the commissioners are open to cross examination by the respondents. They merely help the Court to form a *prima facie* opinion. The Supreme Court is careful in appointing responsible persons as commissioners [Justice Bhagwati in *Bandhua Mukti Morcha* v. *India,* AIR, 1984, SC, Pp. 803, 816]. What the Court has meant is that in public interest litigation, the judges need not take a neutral position as they take in an adversary litigation but can examine complaints of violations of human rights or subversion of the rule of law or disregard of environment with greater care and through a pro-active inquiry. They need not wait for the petitioner to prove everything letting the respondent take recourse to mere denials, as is done in the adversary proceedings but can order investigations and could employ inquisitorial methods for finding the truth.

A good example of such cooperative or collaborative effort was the decision in *Azad Rikshaw Pullers' Union* v. *Punjab* [AIR, 1981, SC, p. 14]. The Punjab Cycle *Rikshaw* (Regulation of *Rikshaws*) Act, 1975 provided that licenses to ply *rikshaws* could be given only to those owners who run the *rikshaws* themselves. Licenses could not be given to those who owned but rented them out for plying to other persons. This Act threatened to cause unemployment among a number of *rikshaw* pullers who did not own their *rikshaws* and leave many *rikshaws* owned by the non-driving owners idle. The Act was challenged on the ground that it would affect the right to carry on any trade or business or occupation guaranteed by Article 19 (1) (g) of the Constitution. Justice Krishna Iyer, instead of striking down the law, provided a scheme whereby the *rikshaw* pullers could obtain loans from the Punjab National Bank and acquire the *rikshaws*. The scheme provided for the repayment of the loan over a period of time. So the intention of the legislature to abolish the practice of renting the *rikshaws* from the owners was achieved without causing any suffering to the *rikshaw* pullers.

The liberal rule of *locus standi* helped the social action groups to come to the Court on behalf of the disadvantaged sections of society. Groups, like People's Union for Civil Liberties, People's Union for Democratic Rights, Bandhua Mukti Morcha, Akhil Bharatiya Shoshit Karmachari Sangh, Banwasi Sewa Ashram and the Common Cause (a registered society), and individuals, like M.C. Mehta, Sheela Barse, Sivsagar Tiwari and Upendra Baxi were able to come to the Court because their standing to move the Court on behalf of the disadvantaged people was conceded. Similarly, victims, such as under-trial prisoners

[*Hussainara Khatoon* v. *Bihar,* AIR, 1979, SC, p. 1,360], prison inmates [*Sunil Batra* v. *Delhi Administration,* AIR, 1978, SC, p. 1,675], unorganised labour [*P. U.D.R.* v. *India,* AIR, 1982, SC, p. 1,473], bonded labour [*Bandhua Mukti Morcha* v. *India,* AIR, 1984, SC, p. 803], pavement dwellers [*Olga Tellis* v. *Bombay Municipal Corporation,* AIR, 1986, SC, p. 180; *Sodan Singh* v. *New Delhi Municipal Corporation,* SCC, 1998, Vol. 2, Pp. 727, 743], children prosecuted under the Juvenile Justice Act [*Munna* v. *State of U.P.,* AIR, 1982, SC, p. 806], children of the prostitutes [*Gourav Jain* v. *India,* SCC, 1997, Vol. 8, p. 114] and women in protective custody [*Dr. Upendra Baxi* v. *U.P.,* SCC, 1983, Vol. 2, p. 308] were able to receive the Court's attention. Public interest litigation of the late seventies and the early eighties was dominated by petitions on behalf of the oppressed people and the main issue was the human rights. The Court's liberal interpretation of Article 21 of the Constitution enabled the Court to include various human rights within the scope of the fundamental rights guaranteed by the Constitution. The liberal rules of access from which public interest litigation emanated enabled the Court to reach the victims of injustice, which so far had remained invisible. The processual activism ran complementary to the substantive activism which we surveyed in the earlier part of the Article [Sathe, 1998(b), p. 603-40].

PETITIONS AGAINST VIOLATIONS OF FUNDAMENTAL RIGHTS

The liberal rule of *locus standi* allowed claims against violations of human rights on behalf of the victims of political oppression, social tyranny and economic exploitation to be made by public interest motivated persons or organisations. The Court went into the allegations of the killing of innocent people or suspected accused through false encounters [*Chaitanya Kalbagh* v. *U.P.,* SCC, 1989, Vol. 2, p. 314], or the death of persons in police custody because of torture [*Dilip K. Basu* v. *West Bengal,* SCC, 1997, Vol. 6, p. 642]; or the cases of the blinding of prisoners by the police [*Khatri and Others* v. *Bihar,* SCC, 1981, Vol. 1, Pp. 493, 623, 627, and 635]. Through PIL, the Court's intervention was sought against inhuman working conditions in stone quarries [*Bandhua Mukti Morcha* v. *India,* AIR, 1992, SC, p. 38], for controlling occupational health hazards and diseases of workmen working in asbestos industry [*C.E.R.C.* v. *India,* AIR, 1995, SC, p. 922], or banning import, production and distribution and sale of forty named insecticides which caused health hazards and which were banned in the United States [*Dr. Ashok* v. *India,* SCC, 1997, Vol. 5, p. 10] and to get the Central Bureau of Investigation (CBI) to inquire into the Gajraula nuns' rape case [*Gudalure M. J. Cherian* v. *India,* SCC, 1992, Vol. 1, p. 397], or into alleged police atrocities [*Arvinder Singh Bagga* v. *U.P.,* AIR, 1995, SC, p. 117]. The Supreme Court took cognisance of a complaint by a legal aid committee regarding the uncivilised practice of chaining the inmates of a mental hospital. The Court found that some inmates had been kept in naked condition. It asked the government to implement the report of a committee of physicians given in that regard [*Supreme Court Legal Aid Committee* v. *M.P.,* AIR, 1995, SC, p. 204]. The Supreme Court entertained a petition against the sexual exploitation of the children in flesh trade. The Court asked the CBI to inquire into that matter [*Vishal Jeet* v. *India,* AIR, 1990, SC, p. 1,412].

Even a cursory glance at these cases shows the change in the clientele of the Court from its pre-emergency clientele. The pre-emergency clientele was essentially of the landlords, whose lands were sought to be taken away under the land reform legislation, industrialists whose business was sought to be nationalised, higher caste elite opposing reservations in educational institutions or civil services, government servants bringing in complaints about seniority, discrimination or

arbitrary dismissals, and political dissenters. Political dissenters like Ram Manohar Lohia [*Ram Manohar Lohia* v. *Bihar,* AIR, 1966, SC, p. 740] or Madhu Limaye [*In re Madhu Limaye,* AIR, 1969, SC, p. 1,014] had invoked the jurisdiction of the Court in defence of their rights. But Kanu Sanyal [*Kanu Sanyal* v. *District Magistrate,* AIR, 1973, SC, p. 2,684] could not secure the relief. The poor and the disadvantaged could never reach the Court. Therefore, while there was so much case law on right to property, there was none on the right to freedom from traffic in human beings and forced labour guaranteed by Article 23 of the Constitution. That Article was interpreted for the first time in *P. U.D.R.* v. *India* [AIR, 1982, SC, p. 1,473] decided in 1982. Referring to the changed clientele of the Court, Justice Bhagwati said in *Bandhua Mukti Morcha* v. *India* [AIR, 1984, SC, Pp. 803, 815]:

> It must be remembered that the problems of the poor which are now coming before the Court are qualitatively different from those which have hitherto occupied the attention of the Court and they need a different kind of lawyering skill and a different kind of judicial approach. If we blindly follow the adversarial procedure in their case, they would never be able to enforce their fundamental rights.

Not only the class of the people whose grievances came to the Court changed but the Court's approach also changed. Under the traditional paradigm, a court would not have gone into how the inmates were being treated in a mental hospital or it might not have asked the CBI to inquire into the allegation of exploitation of children in flesh trade. This shows the pro-active judicial strategy, which became the most distinguishing characteristic of judicial activism. This was a subtle shift from neutralist adversarial judicial role to inquisitorial, affirmative judicial role. The judicial process changed from adversarial, bilateral process to polycentric conflict resolving process. A process is polycentric 'when it involves a multiplicity of variable and interlocking factors, decision on each of which presupposes decisions on all the others [Freeman, 1996, p. 1,259]. Drawing from Fuller's theory, Baxi points out that polycentric matters fall more adequately within the realm of legislation. He says [Baxi, 1983, p. 211]:

> Such matters involve negotiations and trade-offs between a variety of social interests, and are best left to politically representative institutions rather than to judges.

Therefore, interests and parties other than those who are strictly petitioners and respondents or plaintiffs and defendants are required to be heard. This means wider public participation in the judicial process.

PUBLIC PARTICIPATION IN JUDICIAL PROCESS: RECOGNITION OF GROUP RIGHTS

The traditional judicial process is concerned only with the parties to the litigation. In an adversary procedure, all the parties to the litigation have to be joined either as plaintiffs or as respondents. There is a provision for intervention by interested parties with the permission of the court (First Schedule, Order I, Rule 8A, Code of Civil Procedure, 1908). Permission to intervene was granted if the applicants fulfilled the requirement of having substantial interest in the outcome of the suit. With the liberalisation of the *locus standi*, came up for consideration the question of allowing people, who had a stake, direct or indirect, in the outcome of a suit but who did not have the *locus standi* in strict terms, to be represented in the judicial proceedings. In *Fertiliser Corporation Kamgar Union* v. *Union of India* [AIR, 1981, SC, p. 344], the workers of a public sector company challenged the sale of a plant by the management, which in their opinion had caused colossal loss to the public treasury and consequently to the citizens of India of which

those workers were a part. An objection was taken to the maintenance of the petition on the ground that the workers lacked the *locus standi*. Workers were citizens also and as citizens they could certainly raise questions about the conduct of the management of a public sector corporation which, in their opinion, acted against public interest. Since they were workers, they had also a stake in the financial well-being of the concern. But the traditional rule of *locus standi* would not have allowed such a claim to be made by the workers. Strictly speaking, it was a matter between the Corporation and the buyer of its plant. Since it was a public corporation, it was subject to the control of the legislature as well as the Central Government. In view of the fact, however, that neither legislative nor governmental control had been effective in preventing waste of public money, the only place where the workers could go for preventing such abuse was the Court. In a Constitution, which in its preamble proclaims that India is a democratic, secular and socialist republic, a restricted view of *locus standi* would have been totally unsustainable. Chief Justice Chandrachud, while rejecting the objection to the *locus standi* of the workers to raise the question, observed [AIR, 1981, SC, Pp. 344, 350]:

> The question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated. But, in an appropriate case, it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus to initiate a proceeding, be it under Article 226 or under Article 32 of the Constitution. ... If public property is dissipated, it should require a strong argument to convince the Court that representative segments of the public or at least a section of the public which is directly interested and affected would have no right to complain of the infraction of public duties and obligations.

In *National Textile Workers' Union* v. *P. R. Ramakrishnan* [AIR, 1983, SC, p. 75], the Supreme Court held that although the Companies Act did not provide for the participation of the workers in the winding up proceedings of a company, they were held to be entitled to be heard in those proceedings. The traditional law gave standing only to the shareholders and creditors of the company but the workers had a direct stake in the continuance of the company. Justice Bhagwati, while speaking on the question of *locus standi* said [AIR, 1983, SC, Pp. 75, 87]:

> We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values. . . . We cannot therefore mechanically accept as valid a legal rule, which found favour with the English courts in the last century when the doctrine of *laissez faire* prevailed.

This was the beginning of allowing interests to be represented even when they were not entitled to do so under the strict provisions of the law [Sathe, 1984, p. 1]. In the above cases, the workers were given *locus standi* because they had stakes in the outcome of the actions proposed to be taken, namely, of the selling of the plant of a public sector company or the winding up of a company. This was the beginning of allowing persons who are interested in the disposal of a matter by a court to participate in the judicial process even though they might not technically be the parties to that litigation. This was not in reality as much an extension of *locus standi* as the extension of the right to be heard to the workers in matters raised by the management in which their interests were vitally involved. The Court drew from a directive principle of state policy which enjoined upon the State to facilitate workers' participation in management (Article 43-A, Constitution).

In *Municipal Council, Ratlam* v. *Verdhichand* [AIR, 1980, SC, p. 1,622], the residents of Ratlam, a city in Gujarat, moved the magistrate under Section (s.) 133 of the Criminal Procedure Code (Cr.P.C.) asking him to compel the municipality to save them from stench and stink caused by open drains and public excretion by nearby slum-dwellers. The Municipal Corporation pleaded that it had no money to construct drainage. The magistrate rejected that plea and ordered the Municipality to build drainage within six months. On appeal, the Sessions Court reversed the magistrate's order. The High Court reversing the decision of the Sessions Court affirmed the order of the magistrate.

The Supreme Court on appeal, from the decision of the High Court rejected the objection to the standing of a person to take proceedings under the criminal law on behalf of the entire residents of Ratlam. Justice Krishna Iyer, speaking for himself and Justice O. Chinappa Reddy asked whether by affirmative action a court could compel a statutory body to carry out its duty to the community by constructing sanitation facilities at great cost and in a time-bound basis. In Ratlam, prosperity and poverty lived as strange bed fellows, the judge observed. The rich had bungalows and toilets, the poor lived on pavements and littered the streets with human excreta because they used roadsides as latrines in the absence of public facilities. Justice Iyer described this collective petition as a path finder in the field of 'public involvement in the judicial process' [AIR, 1980, SC, Pp. 1622, 1,623]. Here the petitioner's injury was not specific. He shared it with all the citizens of the town. It was a diffused injury but together all the citizens were deprived of the quality of life. Such collective loss of quality of life was what the Court considered as a threat to public interest. Such collective loss became justiciable because it resulted in the loss of the right to live with dignity which every person has been guaranteed as a fundamental right by Article 21 of the Constitution [Sathe, 1998(b), Pp. 603, 613].

This was the wider concept of *locus standi* which allowed public participation in the judicial process against malfeasance of the Municipality. Justice Krishna Iyer said [AIR, 1980, SC, Pp. 1,622 1,623 (para 1)]:

> At issue is the coming of age of that branch of public law bearing on community actions and the courts' power to force public bodies under public duties to implement specific plans in response to public grievances.

The Judge further said [AIR, 1980, SC, Pp. 1622, 1,628 (para 14)]:

> Social justice is due to the people and therefore the people must be able to trigger off the jurisdiction vested for their benefit in any functionary like a magistrate under s. 133 Cr. P.C. In exercise of such power, the judiciary must be informed by the broader principles of access to justice necessitated by the conditions of developing countries and obligated by Article 38 of the Constitution.

In *Ratlam Municipality,* for the first time it was recognised that the people could approach the court against violations of their collective rights and that the judicial process could be invoked for the enforcement of the positive obligations which such public bodies have under the law This was seen as specially suited to Indian conditions. In *Akhil Bharatiya Shoshit Karmachari Sangh (Railway)* v. *Union of India,* Justice Krishna Iyer said [AIR, 1981, SC, Pp. 298, 317]:

> Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envisions access to justice through 'class actions', 'public interest litigation' and 'representative proceedings'. Indeed, little Indians in large numbers seeking remedies in courts through

> collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdictions.

Here objection was taken to the *locus standi* of the Akhil Bharatiya Shoshit Karmachari Sangh, which was an unregistered organisation, to maintain the writ petition. The Court rejected that objection. Any member of the public having sufficient interest can maintain an action for judicial redress against public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such a public duty and the observance of such a constitutional or legal provision. Collective actions was seen as a means of using judicial process against governmental misfeasance.

It is important to note that this was the first case on enforcement of the collective rights of the people and it originated in a magistrate's court and not in a High Court. It is unfortunate that the Supreme Court has held that the liberal rule of *locus standi*, which it has accepted for proceedings before the High Courts and the Supreme Court in public interest litigation would not be available for claims made in subordinate courts or tribunals [*Duryodhan Sahu* v. *Jitendra Kumar,* SCC, 1998, Vol. 7, p. 273; *Northern Plastics Ltd.* v. *Hindustan Photo Films Co. Ltd.,* SCC, 1997, Vol. 4, p. 452]. In our opinion, there is no reason why liberal rule of *locus standi* should not apply to those courts also. It is necessary from the point of view of access.

PIL AGAINST GOVERNMENT LAWLESSNESS AND ABUSE OF POWER: *LOCUS STANDI* FURTHER EXPANDED

The entire litigation against government lawlessness or environmental degradation grew out of such liberalised rule of *locus standi*. Although in *Wadhwa's case* [*D.C. Wadhwa* v. *Bihar,* AIR, 1987, SC, p. 569; Sathe, 1998(c), which we have discussed earlier, the Court did not discuss the question of *locus standi*, it did so in *S.P. Gupta* v. *India* [AIR, 1982, SC, p. 149], popularly known as the *Judges' case*. S.P. Gupta, Tarkunde and Iqbal Chagla were the practising advocates who had filed writ petitions under Article 226 of the Constitution before the High Courts of Delhi and Bombay seeking the Court's opinion on how judges of the High Courts and the Supreme Court should be appointed and transferred, how additional judges appointed for a period of two years initially should be made permanent, and whether the government had the discretion not to make them permanent even when the workload in the courts demanded the additional strength. All petitions filed in the High Courts of Delhi and Bombay were transferred to the Supreme Court under Article 139-A of the Constitution. That case came to be known as *S.P. Gupta* v. *India*. This case arose out of a circular issued by the government headed by Indira Gandhi seeking the consent of the judges to their transfer. Earlier, where a transfer was challenged by a judge himself, the Court had held by majority of three against two that a judge could be transferred without his consent [*Union of India* v. *Sankalchand,* AIR, 1977, SC, p. 2,328]. In that case, the judge who had been transferred had approached the Court. So no question of standing arose. *S.P. Gupta* came as a sequel to the action of not continuing some judges who had been appointed as additional judges for two years and the threat of transfer given through the above circular. Since long, a practice has grown that persons are appointed as additional judges who are later confirmed as permanent judges when the vacancies occur. The main question for the Court's consideration was whether the petitioners, who were lawyers had the *locus standi* to file the petitions. Two judges, who had been discontinued, had also joined as petitioners. The bench consisted of seven judges, namely, Justices

Bhagwati, A.C. Gupta, Murtaza Fazl Ali, V.D. Tulzapurkar, D.A. Desai, R.S. Pathak and E.S. Vekatramaiah. The standing of the lawyers was admitted by all the judges except Justice Venkatramaiah. All the judges were unanimously of the view that independence of the judiciary was an aspect of the basic structure of the Constitution. The supersession of 1973 hanged on the minds of the lawyers as well as the judges when they raised the question of the independence of the judiciary [Sathe, 1998(b), Pp. 399, 424]. Subsequently, the Court entertained another petition by an association of lawyers on the same question [*Supreme Court Advocate on Record Association* v. *India*, AIR, 1994, SC, p. 268]. And of late, the same question was referred by the President for the opinion of the Court under Article 143 of the Constitution [*In re Presidential Reference,* AIR, 1999, SC, p. 1]. In *Gupta* as well as *Advocates' Association,* the lawyers' standing to challenge actions violative of the independence of the judiciary was conceded. But do only lawyers have such a standing? Justice Bhagwati said in *S.P. Gupta* v. *India* [AIR, 1982, SC, Pp. 149, 194 (para 22)]:

> We would therefore hold that any member of the public having sufficient interest can maintain an action for judicial redress for public inquiry arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision.

The Judge further said [AIR, 1982, SC, Pp. 149, 189, (para 17)]:

> But we must hasten to make it clear that the individual who moves the court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activised at the instance of such person and must reject his application at the threshold.

The Judge further added that as a matter of prudence and not as a rule of law, 'the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons' [AIR, 1982, SC, Pp. 149, 189, (para 17)], and not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal aid organisation which can take care of such cases. There may be cases where the State or a public authority may act in violation of a constitutional or statutory obligation or fail to carry out such obligation resulting in injury to public interest. Any member of the public would have the standing to trigger the judicial process in such cases. The Judge said [AIR, 1982, SC, Pp. 149, 192]:

> In public interest litigation - undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, diffused rights and interests or vindicating public interest, any citizen who is acting *bona fide* and who has sufficient interest has to be accorded standing. What is sufficient interest to give standing to a member of the public would have to be determined by the Court in each individual case. It is not possible for the Court to lay down any hard and fast rule or any strait-jacket formula for the purpose of defining or delimiting sufficient interest.

The Judge was cautious in distinguishing *public interest litigation* in which *locus standi* would be accorded to any member of the public from *public law litigation* in which *locus standi* would be restricted to a person who has suffered an injury. For example, all cases of dismissal, removal or reduction in rank or discrimination

filed by civil servants are public law cases in which only the aggrieved civil servant can be the petitioner. But when the government decided to adopt the recommendations of the Mandal Commission to reserve 27 per cent of the jobs for the backward classes in addition to 22 per cent already reserved for the Scheduled Castes and the Scheduled Tribes, a petition was filed by a journalist Indra Sawney [*Indra Sawney* v. *India,* AIR, 1993, SC, p. 477; Sathe, 1993, Pp. 201, 209]. Her petition was admitted because whether so much reservation was constitutionally valid and how should backwardness be determined were questions concerning larger public interest. While the cases against dismissal or removal or seniority of government servants are public law cases and are, therefore, governed by the traditional principle of *locus standi*, the case against reservation for the backward classes involved public interest far wider than that of any individual litigant. All cases of promotion or selection on the basis of the reservation contested by a beneficiary of the reservation are public law cases in which the individual litigant has to satisfy the test of *locus standi*. He must be a person entitled to reservation and he must show that he has been denied what he was entitled to get. But Indra Sawney was not interested in a reserved post. She was interested in raising the question of constitutionality of the quantum of reservation and the criteria chosen for identifying the beneficiaries of reservation. This was a public interest litigation and therefore a more liberal rule of *locus standi* was applied. Where a tenderer whose tender is not accepted challenges the grant of a contract to another person on the ground that the government had not applied its mind or had acted mala fide, it is a *public law litigation* [*R.D. Shetty* v. *International Airport Authority,* AIR, 1979, SC, p. 1,628]. But where a person who is not an applicant challenges the allotment of petrol pumps by minister to his favourites, it is a case of *public interest litigation* [*Common Cause, A Registered Society* v. *India,* SCC, 1996, Vol. 6, p. 530]. Both are cases of abuse of discretion but in the former case, the issue was whether the petitioner should have got the contract in preference to the respondent (other tenderer) whereas in the latter case the issue was whether the minister had violated the public interest by distributing largess in an arbitrary manner. The line dividing the public law litigation from the public interest is thin. The most important difference is that in PIL, the petitioner has no personal interest and is personally not going to gain from the decision of the Court. He does it only in public interest, though many a time his own interest may be included in the public interest.

With such liberal rule of standing, various issues of governance and environment were bound to appear in court through PIL. *Wadhwa's* case [AIR, 1987, SC, p. 569; Sathe, 1998(c)] belonged to this category. Unlike in *Ratlam Municipality* [AIR, 1980, SC, p. 1,622], where the petitioners could show at least some injury to themselves in common, the petitioner in *Wadhwa* could not show any injury to himself, except his interest in sustaining the rule of law.

Since the late eighties and in the nineties, the rule of law and the environment have been the main concerns of public interest litigation. It may be that after the establishment of the National Human Rights Commission (NHRC), the Court preferred to leave the human rights issues to the NHRC and gave a helping hand to the Commission. The NHRC does not have any teeth under the Protection of Human Rights Act, 1993. It cannot take any action on its own against the violations of human rights. But we find from reports of the NHRC that it has been awarding compensation to the victims of human rights violations and the state governments seem to be complying with those orders. It seems that the NHRC also approaches the Supreme Court for a

mandamus to get its awards implemented [Sathe, 1998(a), p. 293]. The Supreme Court has been referring to the NHRC certain cases for investigation. Its reference to the NHRC on the question whether violations of human rights had taken place in Punjab during the period of terrorism was opposed on the ground that the NHRC being a statutory body, its powers were circumscribed by the provisions of the Protection of Human Rights Act, 1993 and, therefore, it could not investigate events which had taken place before the enactment of that Act. The Supreme Court while rejecting that contention observed that when it referred any matter to the NHRC, the NHRC acted *sui generis* and was not bound by the limitations imposed by the Protection of Human Rights Act, 1993 [*Paramjit Kaur* v. *Punjab,* AIR, 1999, SC, p. 340]. I have reservations about the doctrinal soundness of this judgment but since a critique of that judgment might take us away from the main theme of this discourse, I would not undertake it here. But what is relevant is that the Supreme Court is relying heavily upon the NHRC for investigating cases of alleged violations of human rights.

The main focus of the public interest litigation since the late eighties seems to have shifted towards prevention of government lawlessness and sustenance of the rule of law [Dhawan, 1994, Pp. 302, 310]. *S.P. Gupta* v. *India* [AIR, 1982, SC, p. 149] was the decision in which several issues of good governance were raised and decided. In a real sense that was the case which articulated various aspects of the public interest litigation jurisprudence.

CONCEPT OF JUSTICIABILITY EXTENDED

The PILs raising the questions of governance asked the Courts to compel the government to do what it was its duty to do or to prevent the government from doing what it was legally forbidden to do. This is the function of the writ of *mandamus*. The difference between the traditional *mandamus* and the *mandamus* under PIL is this that under PIL the scope of *mandamus* increased. Under PIL, *mandamus* was issued to compel the government to do what was entirely within its discretion to do or not to do. *Mandamus* was issued under traditional administrative law only to compel the State or a public authority to do what it was legally bound to do. If there was discretion to do or not to do, no *mandamus* could issue. Under PIL, it is issued to mandate acts which were within the discretionary power of the government and which, therefore, did not fall within the purview of the traditional writ of *mandamus*. For example, it was issued where the petitioner alleged that there had been violation of human rights and the CBI should be asked to investigate them [*Paramjit Kaur* v. *Punjab*, SCC, 1996, Vol. 7, p. 20; *Secretary, Hailakandi Bar Association* v. *Assam,* SCC, 1995, Supp. 3, p. 736] or where a petition sought directions from the Court to entrust to the CBI the inquiry into sexual exploitation of children in flesh trade [*Vishal Jeet* v. *India,* AIR, 1990, SC, p. 1,412] or in issues like failure of government hospitals to provide timely emergency medical treatment to persons in need, which resulted in violation of their right to life [*P.B. Khet Mazdoor Samity* v. *West Bengal,* AIR, 1996, SC, p. 2,426] or on petitions against the management of hospitals for mental diseases [*S.R. Kapoor* v. *India*, AIR, 1990, SC, p. 752; *B.R. Kapur* v. *India,* SCC, 1989, Vol. 3, p. 387; *Rakesh Chandra* v. *Bihar*, AIR, 1989, SC, p. 348; AIR, 1995, SC, p. 208] or on a petition seeking enforcement of measures to ensure public health and safety against municipal corporations [*K.C. Mathur* v. *M.P.*, AIR, 1994, M.P., p. 48] or on a petition against non-functioning of medical equipment in government hospitals [*PUCL* v. *India,* AIR, 1997, Del., p. 395] or on a petition against mosquito menace which jeopardised the right to life [*India* v. *S.J. Pandit,* AIR, 1997, Ker., p. 152]. A petition asking for education of the

children of the prostitutes [*Gourav Jain* v. *India,* SCC, 1997, Vol. 8, p. 114] or a petition impugning a provision in the Jail Manual providing that the body of an executed convict be kept suspended for half an hour after death on the ground that it violated the right to dignity included in the right to personal liberty [*Pt. Parmanand Katara, Advocate* v. *Union of India,* SCC, 1995, Vol. 3, p. 248], were responded with suitable *mandamus* and other orders. Petitions for improving the conditions of service of the members of the subordinate judicial service [*All India Judges' Association* v. *India,* SCC, 1998, Vol. 2, p. 204], filling up vacancies of the judges of the Supreme Court and the High Courts [*Subhash Sharma* v. *India,* SCC, 1991, Supp. 1, p. 574], seeking a ban against judges for taking up post-retirement jobs in government or plunging into politics [*Nixon M. Joseph* v. *India,* AIR, 1998, Ker., p. 385], or seeking directions from the Court for expediting the disposal of pending cases so as to reduce the period of under-trial detention [*Common Cause, A Registered Society* v. *India,* AIR, 1996, SC, p. 1,619; AIR, 1997, SC (Supp.), p. 1,539] or a petition by a Bar Association seeking contempt proceedings against the police for conniving at and patronising a *bandh* organised by a political party [*Supreme Court Bar Association* v. *U.P.,* SCC, 1995, Supp. 3, p. 602] or a petition seeking permission of the Court to allow non-lawyers to appear in court during the strike of the lawyers [*Common Cause A Registered Society* v. *India,* SCC, 1994, Vol. 5, p. 557], are examples of PILs in judicial matters. Wadhwa could raise question about re-promulgation of the ordinances [*D.C. Wadhwa* v. *Bihar,* AIR, 1987, SC, p. 569], Common Cause, a registered society founded by H.D. Shourie, could raise questions about blood transfusion [*Common Cause* v. *India,* SCC, 1996, Vol. 1, p. 753], arrears in courts [*Common Cause* v. *India,* AIR, 1996, SC, p. 1,619; AIR, 1997, SC Supp., p. 1,539] appointment of consumer courts [*Common Cause* v. *India,* SCC, 1992, Vol. 1, p. 707] and abuse of power to distribute largess like petrol pumps [*Common Cause* v. *India,* SCC, 1996, Vol. 6, p. 530], Shiv Sagar Tiwari could raise a question about arbitrary allotments of houses [*Shiv Sagar Tiwari* v. *India,* SCC, 1996, Vol. 6, p. 558] and Vineet Narain could obtain orders from the Court directing the CBI to conduct fairly and properly the investigations into the alleged acts of corruption and breach of foreign exchange regulations and to complete them and report to itself regarding the investigation [*Vineet Narain* v. *India,* SCC, 1996, Vol. 2, p. 199]. He could also by another petition obtain directions as to how the CBI could be reorganised so as to ensure its independence as an investigating agency [*Vineet Narain* v. *India,* SCC, 1998, Vol. 1, p. 226]. The Court took up the work of monitoring the investigation of corruption cases since the CBI and the revenue authorities had failed to investigate matters arising out of seizure of the Jain diaries, which contained detailed accounts of vast payments made to various high-ranking politicians. Chief Justice Verma speaking for the Court observed that 'none stands above the law' [*Vineet Narain* v. *India,* SCC, 1996, Vol. 2, p. 236] and monitoring had to be done so that the investigation progressed while ensuring that the Court did not direct or channel those investigations or in any manner prejudiced the right to a full and fair trial of those who might be accused. The Court made it clear that monitoring was taken over only because the superiors to whom the investigating authorities were supposed to report were themselves involved or suspected to be involved in the crimes to be investigated, and it would end once a charge sheet was filed. The Court called this a continuing *mandamus.* Similar continuing *mandamus* was issued in the *Fodder Scam case* in Bihar where the Court issued guidelines as to how and to whom the CBI authorities should report about the offences under investigation [*India* v. *Sushil Kumar Modi,* SCC, 1997, Vol. 4, p. 771; SCC,

1998, Vol. 8, p. 661]. A petition was filed by a member of Parliament in conjunction with non-governmental organisations (NGOs) praying for the disclosure of the Vohra committee's report on corruption [*Dinesh Trivedi* v. *India,* SCC, 1997, Vol. 4, p. 306].

PILs complaining of non-implementation of a ban imposed on import, manufacture and sale of certain drugs by a notification issued under the Drugs and Cosmetics Act, 1940 [*Vincent* v. *India,* SCC, 1987, Supp. p. 90], inadequacy of safety precautions in army's ammunition test firing range near Itarsi in Madhya Pradesh resulting in death of tribals who strayed into the range for collecting metal scraps of exploded/unexploded ammunition [*Sudipt Muzumdar* v. *M.P.,* SCC, 1996, Vol. 5, p. 368], storage of hazardous and non-hazardous chemicals [*M.C. Mehta* v. *India,* SCC, 1987, Supp. p. 131], inhuman working conditions in stone quarries [*Bandhua Mukti Morcha* v. *India,* AIR, 1992, SC, p. 38], and highlighting serious deficiencies and shortcomings in the matter of collection, storage and supply of blood by blood banks [*Common Cause* v. *India,* SCC, 1996, Vol. 1, p. 753] were entertained.

The Communist Party of India went in appeal to the Supreme Court against the decision of the Kerala High Court [*Bharat Kumar K. Palicha* v. *State,* AIR, 1997, Ker., p. 291] on a writ petition filed by a citizen holding that *bandh* organised to close down all business on a particular day and enforced through coercion was violative of the right to freedom of movement guaranteed by Article 19(1)(d) and the right to personal liberty guaranteed by Article 21 of the Constitution. The Supreme Court affirmed the judgment of the Kerala High Court [*Communist Party of India (M)* v. *Bharat Kumar,* AIR, 1998, SC, p. 114]. In another petition, it was contended that demonstrations and processions conducted in the city area caused obstruction to free movement of pedestrians and vehicular traffic. The Court issued directions [*People's Council for Social Justice, Ernaculam* v. *State,* AIR, 1997, Ker., p. 309]. Where, however, an allegation that the government did not take action against the culprits of the communal riots held in Mumbai in December 1992 and February 1993 was made, the Court did not find substance in it [*Committee For the Protection of Democratic Rights* v. *Chief Minister of State of Maharashtra,* SCC, 1996, Vol. 11, p. 419].

Petitions, seeking improvement in the management and control of the road traffic [*M.C. Mehta* v. *India,* AIR, 1998, SC, p. 186], construction of a new bridge over a river in place of a wooden bridge, which had collapsed due to negligence of the authorities, where such a bridge formed the lifeline for the villagers [*B. Sakarama* v. *Asst. Commissioner Kundapura D.K.,* AIR, 1992, Knt., p. 364], and provision of separate schools with vocational training and hostels with regular medical check up for the children of lepers [*S. Rathi* v. *India,* AIR, 1998, All., p. 331], were successfully made. In *M.C. Mehta* v. *India* [SCC, 1998, Vol. 8, p. 711], the Court asked the Government of India and the Government of Uttar Pradesh to file an affidavit explaining why a large part of the toll tax and the visitors' fee received from the tourists visiting the Taj should go to the Agra Development Authority when such amount should be spent on the preservation of the Taj and the cleaning of the city of Agra?

Employees of a non-aided private educational institution were held to possess standing to claim enforcement of their right to equal wages with the employees of a government institution as there was an element of public interest involved since education was a matter of public interest [*K. Krishnamacharyulu* v. *Sri Venkateshwara Hindu College of Engineering,* AIR, 1998, SC, p. 295].

A petition to remove an advocate general [*Ponnudwamy* v. *Tamil Nadu,* AIR, 1995, Madras, p. 78], and a petition challenging appointment of lecturers in a college, because they did not fulfill the prescribed qualifications, by a professor of the same college who had no personal animosity against those persons and who had genuine interest in the standards of education [*Meera Massy* v. *S.R. Mehrotra,* AIR, 1998, SC, p. 1,153] were held to be admissible. A students' council was held not to possess standing to challenge the decision of the Vice-Chancellor to allow certain students to appear for examination because it had failed to show (1) whether it was authorised to file such litigation; (2) if so, by whom; (3) whether it had sufficient funds to indulge in such litigation; and (4) what public purpose was subserved. [*Bharatiya Homeopathy College* v. *Students' Council,* AIR, 1998, SC, p. 1,110]. When liberalisation of *locus standi* takes place on such a large scale, consistency is often a casualty. We see unequal application of the rules of *locus standi* and justiciability, depending upon the personal inclinations of judges or the circumstances in which the petitions are heard.

PIL AGAINST DEGRADATION OF ENVIRONMENT

The cases raising questions of environmental degradation were really speaking the cases against inaction of the State or wrong action of the State. The Court made it clear that petitions alleging environmental pollution caused by private industrial units were not as much against those private units as against the Union of India, the state government, and the pollution control boards established under the Environmental Protection Act, 1986 which were supposed to prevent environmental hazards. Their failure to perform their statutory duties resulted in violation of the right of the residents to life and liberty guaranteed by Article 21 of the Constitution [*Indian Council for Enviro-Legal Action* v. *India,* AIR, 1996, SC, p. 1,446]. The Court had to actually take up the work of monitoring the restrictions on mining operations which were hazardous to the health of the people living in the surrounding areas by appointing a committee to oversee the implementation of the Court's directions [*Tarun Bharat Sangh* v. *India,* SCC, 1993, Supp. 1, p. 4]. The Court has dealt with environmental issues such as pollution by tannery industries [*Vellore Citizens Welfare Forum* v. *India,* AIR, 1996, SC, p. 2,715], protection and conservation of forests [*T.N. Godavarman Thiru Mulkpad* v. *India,* SCC, 1997, Vol. 2, p. 267; Vol. 3, p. 312; Vol. 7, p. 440; 1998, Vol. 2, p. 341], urban and solid waste management [*Almitrah Patel* v. *India,* SCC, 1998, Vol. 2, p. 416], vehicular pollution [*M.C. Mehta* v. *India,* SCC, 1991, Vol. 2, p. 137; SCC, 1998, Vol. 6, Pp. 60, 63], environmental pollution in Delhi due to location of mechanised slaughter houses [*Buffalo Traders Welfare Association* v. *Maneka Gandhi,* SCC, 1996, Vol. 11, p. 35] and protection and conservation of wild life [*M.C. Mehta* v. *India,* SCC, 1997, Vol. 3, Pp. 32, 715]. The Supreme Court was also approached against degradation of the Taj Mahal [*M.C. Mehta* v. *India,* AIR, 1997, SC, p. 734], pollution of the river Ganges by the Calcutta tanneries which discharged untreated noxious and poisonous effluents into it [*M.C. Mehta* (Calcutta tanneries matter) v. *India,* SCC, 1997, Vol. 2, p. 411; *M.C. Mehta* v. *India,* SCC, 1998, Vol. 1, p. 471; Sathe, 1998(a) p. 416], and protection of the people from stone quarrying in the Dehradoon region [*Rural Litigation and Entitlement Kendra* v. *U.P.*, AIR, 1985, SC, p. 1,259; AIR, 1985, SC, p. 652; AIR, 1987, SC, p. 359, AIR, 1991, SC, p. 2,216]. The Court also laid down against the polluting industries the principle that 'the polluter pays for the pollution' [*M.C. Mehta* v. *India,* AIR, 1987, SC, p. 982].

In environmental cases, the Court has had to balance the competing claims of environment and development. Objections that a development

scheme was approved by the government without taking into consideration the environmental hazards [*D.L.F. Universal Ltd.* v. *Prof. A. Lakshmi Sagar,* SCC, 1998, Vol. 7, p. 1], or without providing for the rehabilitation and relief to the people displaced by such a scheme [*Narmada Bachao Andolan* v. *India,* SCC, 1998, Vol. 5, p. 586; *Banwasi Sewa Ashram* v. *U.P.*, AIR, 1992, SC, p. 920] or without considering its probable adverse effects on the rights of the tribals or *adivasis* [*Animal and Environment Legal Defence Fund* v. *India,* SCC, 1997, Vol. 3, p. 549] were considered in PILs. Where lands were acquired for the construction of a dam resulting in eviction of the tribals, it was held that no possession could be taken until the tribals were given an alternate land and compensation [*Karjan Jalasay YAS Samiti* v. *Gujarat,* AIR, 1987, SC, p. 532]. Often development has resulted in impoverishment of the weaker sections of society and degradation of the environment. The judicial relief has, however, been limited to providing protection against decision-making by government without taking into consideration all the relevant aspects. This is a well-known principle of judicial review of administrative action. The Courts have ensured that all relevant aspects of environment are considered and the persons likely to be adversely affected are heard. The Court has, however, said that the scope of judicial review in such cases is limited. The courts, it seems adhere to the *Wednesbury's principle* [*Associated Provincial Pictures Ltd.* V. *Wednesbury Corporation,* K.B., 1948, Vol. 1, p. 223] under which a court does not substitute its own judgment for that of the authority to whom the power of taking decision is entrusted by the legislature. A court cannot go into whether a policy is right or wrong. It only goes into whether the decision has been taken after considering all the relevant factors and without considering any irrelevant factors and whether the persons likely to be affected were heard and provided against the loss, if any. In *Dahanu Taluka Environment Protection Group* v. *Bombay Suburban Electricity Supply Co. Ltd.,* Justice Rangarajan while explaining the scope of judicial review observed [AIR, 1991, SCW, p. 910]:

> It is sufficient to observe that it is primarily for the governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people, on the one hand, and the necessity for preservation of social and ecological balance, avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution, on the other, in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance between these two conflicting objectives. The Court's role is restricted to examining whether the government has taken into account all relevant aspects and has neither ignored or overlooked any material considerations nor been influenced by extraneous or immaterial considerations in arriving at its final decision.

This judicial restraint of not undertaking a review of the policy is subject to one caveat that such policy should not result in the violation of any of the fundamental rights. Whether it violates a fundamental right is a question for the Court to decide and being a value judgment is subject to the vagaries of judicial sensitivity and predilection.

In environmental litigation, the courts are at times faced with difficult policy choices. The running of the factories may be hazardous to the health of the people in the surrounding area but the closure of the factories may result in unemployment of the workers engaged in those factories. In *M.C. Mehta* v. *India* [AIR, 1999, SC, p. 291], the Court directed the closure of 168

industries and their relocation to another place. The workers of the industries were given an option to either take up employment at the relocated place or be retrenched. If they chose to continue to be the employees at the relocated place, they were to get their wages during the period of shifting of the industries and one year's wages as shifting bonus. Those who opted not to continue at the relocated place were to be considered as retrenched within the meaning of Section 25(f)(l) of the Industrial Disputes Act (IDA) and were to get one year's wages plus retrenchment compensation as provided under the IDA.

The Court ordered that all vehicles which were older than fifteen years should be discarded because of their polluting potential. It was, however, argued that such banning of vehicles older than fifteen years caused harm to the existing vehicle owners. The Court therefore amended the directions and provided how they could be gradually got rid of [*M.C. Mehta* v. *India,* AIR, 1999, SC, p. 291].

PUBLIC PARTICIPATION IN CRIMINAL JUSTICE

Criminal justice, however, still continues to be adversary in nature. Normally, it is an adjudication between the State and the accused. A private person has no right to intervene or appeal against acquittal or conviction [*Satvir Singh* v. *Baldeva,* SCC, 1996, Vol. 8, p. 593]. Such an appeal is required to be preferred only by the state. The Court has made some exceptions. In *PSR Sadhanantham* v. *Arunachalam* [SCC, 1980, Vol. 3, p. 141], the Supreme Court allowed a private citizen, who was the brother of the deceased, to appeal against the acquittal of the accused. The Court observed [SCC, 1980, Vol. 3, Pp. 141, 142]:

> We think that the Court should entertain a special leave petition filed by a private party, other than the complainant, in those cases only where it is convinced that the public interest justifies an appeal against the acquittal and that the State has refrained from petition for special leave for reasons which do not bear on the public interest but are prompted by private influence, want of bona fide and other extraneous considerations.

Thus, participation of the people other than the accused or the State is exceptional in criminal cases and not allowed where normal trial under the Criminal Procedure Code is available There is a great need to improve the system of criminal justice and to lend it a participatory character. While the Court may be choosy in conceding standing to the strangers, it should not stand on formalities. It is surprising that the Supreme Court did not allow the National Commission for Women (NCW) to intervene in an appeal against the conviction and sentence to death of a woman who was the mother of a sucking child [*Panchhi* v. *U.P.*, SCC, 1998, Vol. 7, p. 177]. If the function of the Women's Commission is to protect the interests of women, the Court should have listened to its plea. In fact, the Supreme Court should give as much credibility to the NCW as it gives to the NHRC.

The democratisation of the criminal justice system started when four professors of the Delhi University wrote an open letter to the Chief Justice of India [Baxi, et al., 1979, p. 17] against the decision of the Court in *Tukaram* v. *Maharashtra* [AIR, 1979, SC, p. 185], popularly called the *Mathura* case by the name of the tribal girl Mathura who had been raped in police custody by two constables. Although the Sessions Judge had acquitted the accused, the High Court reversing the trial judge convicted them. The Supreme Court again reversed the High Court's decision and acquitted the accused. The judgment reflected a strong patriarchal bias and the black letter law approach of the judges and that was the main criticism of the professors who wrote the above

letter. That letter catalysed the women's movement against the law of rape. The women's organisation filed a review petition against the decision and although the decision remained unchanged, the debate paved way for legal reform and change in judicial attitude [Sathe, 1993(a); 1999]. The criticism of the Supreme Court's decision has had salutary effect on the rape jurisprudence of the Supreme Court. The public criticism of the Supreme Court by four professors had opened up one more dimension of public participation in the judicial process. In India, there has not been any strong tradition of juristic critiquing of the judicial decisions. Whatever critical writing has taken place, it has been analytical and critical of the judicial decisions from the standpoint of legal logic such as whether the judge has correctly interpreted the law, whether he has followed all the relevant precedents and whether his interpretation is in accordance with the well established rules of statutory interpretation. Criticism of a judicial decision on the ground that it reflected class or gender bias was unknown until recently. The strong influence of the black letter law tradition among Indian lawyers and judges and academics was responsible for such an approach. In the United States, where the realist school of jurisprudence has dominated juristic thought for a long time, such critiquing of the judicial decisions even from the perspective of the judges' social philosophy has not been unknown. American legal scholarship has adopted behavioural approach to the study of judicial decisions [Dhawan, 1997, p. xxi]. The above letter written by four professors shook the legal world because it criticised the Court in unprofessional language which could be understood by the common man and thereby demythologised the Court. It blamed the judges for their insensitivity to the woes of a rape victim and thereby challenged the assumption widely shared among the people that the judges had no personal responsibility for their decisions, an assumption which was implicit in the slot machine theory of judicial process which had been popularised by the legal fraternity till then. A decision of a court could be subjected to public criticism and such public criticism as a method of public advocacy of the reform of the law (legislative as well as decisional) was indeed a new leaf in the Court-People relationship.

ADMISSIBILITY OF PILS

While entertaining a public interest petition, a court has to make sure that the person who petitions is not a busybody or a meddlesome interloper and that the issue raised is justiciable. An issue is justiciable when it is capable to being resolved through judicial process. The concept of justiciability has itself undergone a metamorphosis under the public interest litigation. We have described above how the Court used the *mandamus* or similar remedy to compel the government or public authorities to do what they were not strictly bound by the law to do but which fell within the discretion of the government. This has expanded the meaning of justiciability. The concept of justiciability widened as the role of the Court as an expounder of the Constitution became more positive. Many issues such as repromulgation of ordinances or asking the CBI to make an inquiry would not have been considered as justiciable issues under the traditional paradigm of the judicial process. Some would have been avoided under the doctrine of political questions, some on the ground that they were academic and did not give rise to any cause of action, and some because they could better be dealt with by another organ of government. The concept of justiciability was very much governed by the doctrine of separation of powers. Liberalisation of *locus standi* and expansion of the categories of justiciability have been simultaneous. A petition was filed by a journalist raising objection to the expenditure incurred by a state government on the hospitality to a former President of India. It was

entertained though it was not upheld because the money was spent from a head of account which was a voted expenditure [*I.K. Jagirdar* v. *State of Karnataka,* AIR, 1992, Knt., p. 175]. Similarly, it was held that an objection that the state government had incurred expenditure on a function to mark the second anniversary of assumption of office by the chief minister could not be considered since it was for the legislature to consider that matter [*K.N. Subba Reddy* v. *Karnataka,* AIR, 1993, Knt., p. 66]. Here the Court refused to entertain the objection because it was a matter to be looked into by a co-ordinate organ of the State, i.e. the legislature. So what is within the exclusive domain of another organ of the State is not justiciable. But it is for the Court to decide what is within the exclusive domain of another organ and in many cases the Court has gone into those issues, despite their being clearly within the exclusive domain of either the legislature or the executive.

The Court refused to entertain a petition alleging that the government collected court fee in excess of the amount of money it spent on the administration of justice. This was held to be a question of fiscal policy into which a court ought not to go [*Secretary to Govt. of Madras* v. *P.R. Sriramulu,* SCC, 1996, Vol. 1, p. 345]. Where a petition asked the Court to allow non-lawyers to appear in courts when lawyers went on strike, the Court refused to entertain the petition because before any such decision could be taken, a public notice would have to be given to all lawyers associations so that the opinion of a cross section of the members of the bar could be obtained [*Common Cause, A Registered Society* v. *India,* SCC, 1994, Vol. 5, p. 557]. A petition asking the Chief Justice of India to declare any place as seat of the Supreme Court was filed under Article 226 before a High Court. The Supreme Court held that the High Court should not have entertained that petition since the matter lay outside its jurisdiction [*India* v. *S.P. Anand,* AIR, 1998, SC, p. 2,615]. A writ petition seeking direction to the Union of India and a particular state government to carve out part of the state as a separate state from the existing state was held to be not maintainable [*Machineni Kishan Rao* v. *India,* AIR, 1997, A.P., p. 275]. A writ petition successfully filed before the Karnataka High Court to impose severe restrictions on the state government from providing security and other facilities to organisers of a women's beauty contest was held by the Supreme Court to be abuse of the judicial process [*Amitabh Bacchan Corporation Ltd.* v. *Mahila Jagron Manch,* SCC, 1997, Vol. 7, p. 91]. There have been petitions which were premature [*Ramsharan Autyanuprasi* v. *India,* AIR, 1989, SC, p. 549] or which sought to mandate a government to enforce a policy such as the policy of total prohibition [*B. Krishna Bhat* v. *India,* SCC, 1990, Vol. 3, p. 65]. These were not entertained. Similarly, the courts reject PILs which are, in reality, petitions for serving private interests. In *Raunaq International Ltd.* v. *IUR Construction Ltd.* [SCC, 1999, Vol. 2, p. 492; also see *Environment Society of India* v. *Administrator, Chandigarh,* AIR, 1998, P&H., p. 94], Justice Sujata Manohar speaking for a bench consisting of herself and Justice Kirpal said that when a petition was filed as a public interest litigation, the Court must satisfy itself that the party which has brought the litigation is litigating *bona fide* for public good. The public interest litigation should not merely be a cloak for attaining private ends of a third party or of the party bringing the petition.

PIL is often criticised for its potential to obstruct genuine plans of development through stay orders or injunctions. The Supreme Court has emphasised the inadvisability of issuing interim orders which had the effect of depriving the State of the revenues legitimately due to it. Generally,

a stay order or an interim order should not be granted unless, after considering the balance of convenience, it is found that the loss likely to be caused to the petitioner would be irreversible if the contemplated action were found to be illegal [Sathe, 1998(a), p. 377]. In a public interest litigation, the Court has to weigh the advantage to the public of staying a project against the advantage in getting it implemented. In *Raunaq International Construction Ltd.* v. *IUR Ltd,* discussed above, Justice Sujata Manohar imposed a most onerous condition on the public interest litigant. The Judge said [SCC, 1999, Vol. 2, Pp. 492, 503]:

> The party at whose instance interim orders are obtained has to be made accountable for the consequences of the interim order. The interim order could delay the project, jettison finely worked financial arrangements and escalate costs. Hence the petitioner asking for interim orders in appropriate cases should be asked to provide security for any increase in cost as a result of such delay or any damages suffered by the opposite party in consequence of such interim orders. Otherwise public detriment may outweigh public benefit in granting such interim orders.

It is submitted that while a Court should take maximum care in granting interim orders, imposing liability for reimbursement on the public interest litigant, in case the Court ultimately finds that its contention could not be upheld, would act as a terrible deterrent against genuine PILs. Public interest litigants are mostly social action groups, which are short of resources and have no personal axe to grind. They are often pitted against strong adversaries like the governments or the big industrial companies. Mostly such petitions raise questions of proper application of mind by the authorities or even *mala fide* exercise of power by the authorities, which are difficult to prove in a court of law. If the litigant is to be penalised if ultimately its contention is not upheld, it will mean a death blow to public interest litigation against corruption and abuse of power. It is submitted that the above view is entirely against the ethos of public interest litigation. In fact, the Court has in the past held that a PIL continues even if the petitioner who initiated it withdraws from it. Sheela Barse had initiated a litigation against state governments on behalf of the children who were languishing in remand homes and the litigation prolonged because of the delays caused by the state governments in filing their affidavits. The state governments could make the litigation most expensive for Sheela Barse by merely asking for adjournments. Exasperated at such delaying tactics, Sheela Barse threatened to withdraw from the litigation. The Supreme Court held that even when she withdrew, the PIL would not abate [*Sheela Barse* v. *India,* SCC, 1988, Vol. 4, p. 226]. It would continue until finally disposed of. Once a public interest litigation was brought to the notice of the Court, it could not be withdrawn unlike a private litigation which could be withdrawn at the sweet will of the litigant. To hold the initiator of the PIL liable for any loss caused by the admission or stay order given on such a petition, is in my opinion, against the public character of such litigation. If such a litigant has committed any fraud to obtain a stay order or an interim relief, he could certainly be punished but not an honest litigant for having obtained an interim relief in a matter which ultimately goes against him.

COMPENSATORY JURISPRUDENCE

The Courts have taken advantage of the open textured wording of Articles 32 and 226 of the Constitution. These Articles give freedom to the Courts to mould the remedies and even invent new remedies for the enforcement of the rights. Traditionally, the writ jurisdiction was supposed to be an exercise only for stopping or preventing a

mischief, not for providing relief for the mischief already done. If a person was illegally detained, a court could set him free but could not provide compensation for wrongful confinement or punishment for the wrong-doer. The concerned person had to prosecute or sue the police or any other authority responsible for such illegal detention. In India, there has been a very weak tradition of tort litigation. This has been due to various reasons such as delays and expensiveness (high court fee) and tradition of awarding meager compensation among the Indian judges, The Supreme Court rightly felt that mere release of a person from illegal detention would not be an adequate relief for the person deprived of his liberty or would not deter irresponsible police officers from riding rough shod over people's rights. Therefore, the Court used the writ jurisdiction for awarding token compensation to the aggrieved person. The first case where such compensation was awarded was *Rudal Sah* v. *Bihar* [AIR, 1983, SC, p. 1,086]. Rudal Sah had been arrested on the charge of murder in 1953 and was acquitted in 1968. He, however, continued to languish in prison until 1982. The jail authorities said that he had been insane but could not show on what basis he had been adjudged as insane and what measures had been taken to cure him. It was obviously a case of illegal imprisonment due to sheer carelessness and callousness. The Court not only set him free but asked the State to pay him Rs 30,000 as compensation. Since then compensation has been awarded in a number of cases [Sathe, 1998(a), p. 466]. Such compensation was, however, different from the compensation for the wrong suffered. In *Nilabati Behera* v. *Orissa* [AIR, 1993, SC, p. 1,960], the Supreme Court held that the compensation under the writ jurisdiction was different from the compensation awarded in a civil suit for tort. In a tort case, the compensation would be commensurate with the loss suffered whereas in a writ petition, the compensation would be a mere tokenism. In fact, the loss complained of in a writ petition is of a fundamental right and no amount of compensation is worth the value of that loss. A token compensation award, howsoever paltry, symbolises the protest against the denial of fundamental right. The right to sue for tort remains, despite the award of compensation, under the writ jurisdiction. Unfortunately, the Supreme Court of India has yet not expressly overruled its decision in *Kasturilal* v. *U.P.* [AIR, 1965, SC, p. 1,039] given 35 years ago in which it had been held that the State in India was not liable for the torts of its servants committed in exercise of the sovereign functions of the State. That decision was based on the theory of sovereign immunity which is totally unsuitable for a democratic polity. Even in England, the Crown was made liable for the torts of its servants by the Crown Proceedings Act, 1947. Since the Indian Parliament has not legislated to provide for liability of the State, the Court ought to lay down the law of State liability in unreserved terms. Although the Court has not overruled the above decision, it has been holding various public authorities liable for the torts of its servants [Sathe, 1998(a), p. 419]. That, however, is done on the premise that those functions are not sovereign functions and therefore the State is liable, even according to the *Kasturilal* decision.

JUDICIAL PROCESS: FROM ADVERSARIAL TO POLYCENTRISM

Public interest litigation has changed the character of the judicial process from adversarial, to polycentric and adjudicative to legislative. Polycentricity is an essential characteristic of the legislative function [Baxi, 1990, Pp. 9-15]. Order 1, Rule 8 of the Code of Civil procedure states that a judicial decision is binding only on the parties to the litigation. This is known as *res judicata.* A decision is binding and final on the parties to the litigation and no party can raise a question regarding rights or liability on which the decision has been given, except before an

appellate court if appeal is provided by the law. Where appeal is provided, the decision of the highest appellate court is final and binding on the parties. A decision is effective *in personam*, which means between the litigants. A decision in a PIL may, however, become effective on persons who have not been actual litigants. A PIL is not dealing with a dispute between two parties but often involves conflict resolution, the solution of which affects many people who are not parties to the litigation. The decision may become effective *in rem*. Such quasi-legislative character of the public interest litigation became manifest in a recent litigation in which the orders of the Court, banning certain type of shrimp culture in coastal area, issued in a case were challenged on the ground that they were not binding on those who were not parties to that case. In *Jagannath* v. *India* [AIR, 1997, SC, p. 811], the Court had issued orders prohibiting the setting up of shrimp culture industry in the ecology-fragile coastal area because of its ill-effects on mangrove eco-system, depletion of casuarina, pollution of potable water and plantations, reduction in fish catch and blockage of direct approach to seashore. In *Gopi Aqua Farms* v. *India* [AIR, 1997, SC, p. 3,519; Sathe 1998(a), p. 419], the petitioners argued that the above decision was not binding on them since they had not been parties to the litigation in *Jaggannath*. They argued that they should be heard against that decision. Technically they were right because a judicial decision is supposed only to be final and binding on the parties to the litigation. This rule of private adjudication, if applied to public interest litigation, would have made the entire PIL toothless. The Court held that Order 1, Rule 8 of the Code of Civil procedure, was not applicable to a PIL. The Court said [AIR, 1997, SC, p. 3,520]:

> The case of *Jagannath* had received widest publicity. Various investigations into facts relating to shrimp culture were carried out, reports were obtained from various sources like NEERI, (National Environmental Engineering Research Institute), Central Board for Prevention and Control of Water Pollution and various other authorities. It is difficult to believe that the petitioners were unaware of all these events. A large number of shrimp farmers and organisations representing them appeared in Court and placed their points of view about the dispute... A large number of them appeared and the case was argued at great length for very many days and the decision was ultimately given. Now, a few persons cannot come up and say that they were not made parties in that case or that they were unaware of that case altogether and, therefore, the judgment does not bind them and the case should be heard all over again. If this practice is allowed, there will be no end to litigation.

The public interest litigation has changed this traditional character of the judicial process and made its decisions effective even against those who were not parties to the litigation. In such litigation, various aspects of public interest are canvassed before the Court and the court has to strike a balance between the competing interests. We saw earlier how in cases involving environmental issues, the Court had to strike a balance between competing interests. In fact such conflict resolution has been an aspect of Indian judicial process since long. In *Express Newspapers* v. *India* [AIR, 1958, SC, p. 578], Justice N. H. Bhagwati had dealt with three concepts of minimum wage, fair wage and living wage, and had tried to reconcile the obligations to pay such wages with the capacity of the industry to pay. The Court had held that while minimum wage had to be paid irrespective of the capacity of the industry to pay, fair wage and living wage could be made obligatory only in the light of the capacity of the industry to pay. In Mumbai, commuters by local trains as well as passengers travelling by

through-trains have been victims of stone pelting by anti-social elements. Some travellers died and some were injured seriously. It is believed that this happens because there are slums very close to the railway tracks and, therefore, a writ petition has been filed in the Bombay High Court seeking *mandamus* against the State of Maharashtra and the Central Government asking them to remove such slums from within 40 yards from the railway tracks. To counter act this, permission was sought on behalf of the slum dwellers to intervene and they have prayed that unless alternative arrangement for their habitation was made, they should not be removed from their dwelling places [*Times of India,* dated February 5, 1999; February 25, 1999].

DIRECTIONS: A NEW FORM OF JUDICIAL LEGISLATION

Article 32 and Article 226 confer on the Supreme Court and the High Courts, respectively, the power to issue 'directions, orders or writs' for achieving the objectives of those articles. The Courts have issued directions for varied purposes. In public interest litigation, the Supreme Court and the High Courts have issued directions for appointing committees or for asking the government to carry out a scheme. They may constitute specific orders to the parties to do or not to do something. For example, directions in the *Azad Rikshaw Pullers'* case [AIR, 1981, SC, p. 14] asked the Punjab National Bank to advance loans to the rikshaw pullers and contained a whole scheme for the repayment of such loans. Directions in *Common Cause* v. *India* [SCC, 1996, Vol. 1, p. 753] provided for how blood should be collected, stored and given for transfusion and how blood transfusion could be made free from hazards. Directions to the government to disseminate knowledge about environment through slides in cinema theaters or special lessons in schools and colleges were given [*M.C. Mehta* v. *India,* AIR, 1992, SC, p. 382]. The Supreme Court laid down directions as to how children of the prostitutes should be educated [*Gaurav Jain* v. *India,* AIR, 1990, SC, p. 292], or what should be the fee structure in private medical or engineering colleges [*TMA Pai Foundation* v. *Karnataka,* AIR, 1995, SC, p. 2,431] or to prepare a scheme for the housing of the pavement dwellers or squatters [*Sodan Singh* v. *New Delhi Municipal Corporation (NDMC),* SCC, 1998, Vol. 2, Pp. 727, 743] or how the CBI should be insulated from extraneous influences while conducting investigations against persons holding high offices [*Vineet Narain* v. *India,* SCC, 1998, Vol. 1, p. 226]. When workers engaged as contract labour in the Food Corporation of India sought extension of the Contract Labour (Regulation and Abolition) Act, 1970 so as to be applicable to them, the Court issued directions to the concerned governments to constitute committees under Section 5 of that Act to make necessary inquiry and to submit reports as to whether contract labour should be abolished in the Corporation [*Food Corporation of India Workers' Union* v. *Food Corporation of India,* AIR, 1985, SC, p. 488]. In another case [*Vishal Jeet* v. *India,* AIR, 1990, SC, p. 1,412], the Court was asked to institute an inquiry against police officers under whose jurisdiction the red light areas as well as *devdasis* were flourishing and to bring all victims of flesh trade from there and provide them with remedies. The Court could not undertake such a roving inquiry but gave directions to the government. In *Kishen* v. *State of Orissa,* the Supreme Court gave directions to the government regarding measures to be taken for preventing starvation deaths due to poverty [AIR, 1989, SC, p. 677]. These directions were in the nature of specific orders from the Court to the government. They had administrative character.

Some of these directions have legislative effect. The law-making by the Supreme Court through directions has belied the legal theory regarding *ratio decidendi* and *obiter dictum.* Any

legal principle that becomes the basis of a decision and without which such a decision could not have been rendered is called *ratio decidendi.* Such a legal principle or ratio is binding on that Court and on all courts subordinate to it in future litigation involving a similar question. Such *ratio* is the law laid down by the Court and that alone is binding on the subordinate courts in future litigation. Any legal principle, which the Court may elucidate but which may not be necessary for the disposal of a case does not enjoy the status of a *ratio.* Such extraneous judicial observations on the principles of law are known as *obiter dictum.* The *obiter dictum* is merely of persuasive value. It may be cited by lawyers while arguing a case and may become a binding precedent only if it is accepted by Court as a *ratio in* that case. While a decision is binding on the actual parties (*res judicata*), the ruling (*ratio*) is binding on the courts while deciding future cases. The doctrine of *stare decisis* means that every court is bound by the decision of a higher court. This principle applies to various benches of the Supreme Court also. Therefore, a bench of a higher strength of judges of the Supreme Court is constituted if a previous decision of a bench is to be reconsidered. The doctrine of precedent means that a court is bound by its own previous decision and the lower courts are bound by the decision of a higher court. Article 141 of the Constitution says that the law declared by the Supreme Court shall be the law of the land. Here in terms of strict legal theory, only the *ratio* constitutes the binding law. But the High Courts have held that they were bound by even the *obiter dicta* of the Supreme Court [Jain, 1978, p. 143]. Strictly speaking, the dicta of the Supreme Court in *Golaknath* v. *Punjab* [AIR, 1967, SC, p. 1,643] that Parliament could not amend the Constitution so as to take away or abridge the fundamental rights was not a *ratio* because the actual decision of the Court was that the impugned constitutional amendments which protected the laws by which the petitioner's properties had been taken away were valid. Since the Court had applied the doctrine of prospective overruling, all those constitutional amendments which I. C. Golaknath, the petitioner had challenged had been held to be valid. So the actual decision in the case had no direct connection with the futuristic mandate of the Court that Parliament shall not amend the Constitution so as to take away or abridge the fundamental rights. That amendment was to be applicable only in the future. Since the traditional legal theory of positivism did not conceive any law-making function to be performed by the courts, such futuristic mandate saying that parliament shall not do this or that was preposterous. Therefore, in strict positivist terms, the *Golaknath dicta* was not the law. In reality, it was treated as law not only by the Court itself but also by Parliament. Parliament took steps to amend the Constitution to overturn that *dicta.* The Court itself held in *Kesavanand Bharati* [AIR, 1973, SC, p. 1,460] that *Golaknath dicta* was wrong and, therefore, it was overruled.

Since then the *ratio-obiter* distinction has become inconsequential in respect of constitutional law litigation in general and public interest litigation in particular. In public interest litigation, the Court has started legislating through giving directions. Such directions are overtly legislative and they are considered binding not only by the Court and the subordinate courts but also by the governments and the social action groups. In *Laxmikant Pandey* v. *India* [AIR, 1987, SC, p. 232; also see *S.C. Kamdar* v. *Asha Trilokbhai Saha,* AIR, 1995, SC, p. 1,892; *Laxmi* Kant Pandey v. *India (II),* AIR, 1992, SC, p. 118], the Supreme Court gave directions as to what procedures should be followed and what precautions should be taken while allowing Indian children to be adopted by foreign adoptive parents. There was no law to regulate inter-country adoptions and such lack of legal regulation could cause incalculable harm to Indian

children. Considering the possibility of child trade for prostitution as well as slave labour, such legal regulation of adoption was absolutely necessary. When the Court was approached, it did not throw its hands in despair and say that since there was no legislation it could do nothing. Justice Bhagwati laid down an entire scheme for regulating the inter-country adoptions and also intra-country adoptions. For last twenty years, the social activists have taken recourse to these directions for protecting children and promoting desirable adoptions.

In *Vishaka* v. *Rajasthan* [AIR, 1997, SC, p. 3,011] the Supreme Court was asked to lay down directions for the effective implementation of gender equality, which was threatened by sexual harassment of working women. The genesis of the case bears mention. A woman named Banwari, who worked as a social worker in the service of the Government of Rajasthan was raped by some well-placed persons. They did so in retaliation of her effort to expose the child marriages that had taken place in their relations. The accused were tried for the offence of rape but were acquitted. An appeal against their acquittal was filed by the state. The rape and the acquittal had been severely criticised by women's organisations. Vishaka, a social action group approached the Supreme Court with a request to lay down guidelines for protecting working women from sexual harassment at the workplace So the petitioners went to the Court for obtaining the law on the subject and the Court entertained the petition and laid down the guidelines. Since there was no legislation against such sexual harassment, the Court felt that it was necessary to fill in the gap. Chief Justice A. S. Verma said [AIR, 1997, SC, p. 3,011]:

> The primary responsibility for ensuring such safety and dignity through suitable legislation and the creation of a mechanism for its enforcement, is of the legislature and the executive. Where, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.

The Government of India also consented to such judicial legislation which is obvious from the following statement of the Chief Justice [AIR, 1997, SC, Pp. 3,011, 3,012]:

> The progress made at each hearing culminated in the formulation of guidelines to which the Union of India gave its consent through the learned Solicitor General, indicating that these should be the guidelines and norms declared by the Court to govern the behaviour of the employers and all others at the work places to curb this social evil.

These directives were issued "in exercise of the power available under Article 32 of the Constitution for enforcement of fundamental rights" and the judge further emphasised that "this would be treated as the law declared by this Court under Article 141 of the Constitution" [AIR, 1997, SC, Pp. 3011, 3,013]. These directions were not mere orders but they constitute the law applicable in the future to all cases of sexual harassment of working women in government and semi-government services. The Court also asked the government to include them in the Standing Orders made under the Industrial Disputes Act so as to be applicable to the private industry. The Court through its directions defined what was meant by sexual harassment. In that definition, 'physical contact and advance' was mentioned as an essential ingredient of sexual harassment. In a subsequent case [*Apparel Export Promotion Council* v. *A.K. Chopra*, AD, 1999, Vol. 1, SC, p. 217, January 20, 1999], where the

High Court had acquitted a person on the ground that he had tried to molest but did not molest, the Court observed [*Apparel Export Promotion Council* v. *A.K. Chopra,* AD, 1999, Vol. 1, SC, p. 239, January 20, 1999]:

> The behaviour of the respondent did not cease to be outrageous for want of an actual assault or touch by the superior officer.

The Court observed [*Apparel Export Promotion Council* v. *A.K. Chopra,* AD, 1999, Vol. 1, SC, p. 239, January 20, 1999]:

> In a case involving charge of sexual harassment or attempt to sexually molest, the Courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or dictionary meaning of the expression 'molestation'. They must examine the entire material to determine the genuineness of complaint.

It is to be hoped that the lower courts will heed this message while dealing with cases involving women in general and, particularly, with cases involving the offence of rape.

Directions are either issued to fill in the gaps in the legislation or to provide for matters which have not been provided by any legislation The Court has taken over the legislative function not in the traditional interstitial sense but in an overt manner and has justified it as being an essential component of its role as a constitutional court. In *M.C. Mehta* v. *State of Tamil Nadu* [SCC, 1996, Vol. 6, p. 756], although the actual petition was in respect of child labour in Sivakasi in Andhra Pradesh where a large number of children were engaged in the hazardous work of match box manufacture, the Court thought it fit to 'travel beyond the confines of Sivakasi' and to 'deal with the issue in wider spectrum and broader perspective taking it as a national problem (of child labour)' [SCC, 1996, Vol. 6, p. 765]. The Court therefore, decided to address itself to the question, 'how we can, and are required to, tackle the problem of child labour, solution of which is necessary to build a better India' [SCC, 1996, Vol. 6, p. 765]. The wider conception of its own role is also obvious from the observation that the judiciary could not merely watch the effort of the other organs of government to bring about social transformation visualised in the directive principles of state policy contained in Part IV of the Constitution in a detached manner but has to be an active participant in the process of such social transformation. Referring to the directive principles of state policy in general and the principle enjoining upon the State to provide free and compulsory education for children below the age of 14 years contained in Article 45, Justice Hansaria said [SCC, 1996, Vol. 6, p. 766]:

> (I)t is the duty of all the organs of the State (*a la* Article 37) to apply these principles. Judiciary, being also one of the three principal organs of the State, has to keep the same in mind when called upon to decide matters of great public importance. Abolition of child labour is definitely a matter of great public concern and significance.

Among various directions which the Court gave, the most important were that (i) the offending employer (i.e. one who engages prohibited child labour) must be asked to pay Rs 20,000 as compensation for every child employed in contravention of the provisions of the Child Labour (Prohibition and Regulation) Act; (ii) the government must either provide job to an adult member of a family in lieu of the child belonging to that family who has been employed in any factory, mine or other hazardous work or it must deposit Rs 5,000 for every child; (iii) where such alternative employment is not given, parent/guardian of the child would be entitled to be paid per month the income earned on the corpus

of Rs 25,000 (Rs 20,000 contributed by the employer and Rs 5000 contributed by the state) for each child; (iv) all amounts received from the employers as well as the governments should be deposited in a fund called the Child Labour Rehabilitation-cum-Welfare Fund; (v) the *alternative* employment given as per above direction or the interest on Rs 25,000 payable to the parent/guardian of a child worker shall be stopped if the child is not sent to school; and (vi) the inspectors appointed under Section 17 of the above Act shall ensure compliance with the provisions of the Act.

While the intentions as well as the meticulous scheme laid down by the Court is admirable and shows the genuine concern for human exploitation in the form of child labour, the judgment also points out the limitations of judicial activism in solving such socio-economic problems. The Court observed that it could not ask the state 'at this stage to ensure alternative employment in every case covered by Article 24' of the Constitution. Article 24 says that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. This is a fundamental right. This fundamental right has been enforced by the Child Labour (Prohibition and Regulation) Act. What the Court contemplated was not mere prohibition of child labour in hazardous industries but prohibition of child labour *per se*. This could be achieved by making primary education free and compulsory and providing right to work to every adult. Both of these have been provided in the directive principles of state policy. The right to work provided by the directive principles of state policy is to be provided 'within the limits of the economic capacity and development' (Article 41). The right to work can become a reality only through appropriate economic policies of the state. If abolition of child labour is linked to employment of adult population, and the Court cannot provide right to work, it also means that the Court cannot abolish child labour. The provisions such as those which the Court has recommended could, on the other hand, provide further lease of life to the practice of child labour. Considering the market conditions of labour it may be worth while for an employer to engage child labour by paying Rs 20,000 per child to the Child Labour Rehabilitation-cum-Welfare Fund. Another question that may arise is that if the state has to pay Rs 5,000 per child on its failure to provide work for an adult member of the child's family, from where is that money to come? The Court is indirectly undertaking the work of prioritising the allocation of resources. Will child labour be abolished even by doing all this? We have our doubts.

In *M.C. Mehta* v. *India* [AD, 1998, Vol. IX, SC, p. 37], the Supreme Court gave directions for protecting environment from pollution caused by vehicular traffic and for protecting people from road accidents. These directions laid down that the vehicles should be equipped with speed control devices and that the goods vehicles should go by a maximum speed of 40 kilometers per hour, that they shall not overtake passenger vehicles and that they shall be driven only by an authorised driver. The Court also laid down qualifications for drivers of buses belonging to or hired by educational institutions for transporting children. Obviously, these directions were given because of the ghastly accidents that had taken place resulting in the death of several school children due to callousness of the drivers.

The Court has insisted that it undertook law-making through directions only to fill in the vacuum left by the legislature or the executive, and that its directions could be replaced by legislation enacted by the legislature or, where no legislation was required, by executive whose

power was coterminous with the legislature. In *Vineet Narain* v. *India,* Chief Justice Verma once again reiterated [SCC, 1998, Vol. 1, Pp. 226, 266]:

> (I)t is the duty of the executive to fill the vacuum by executive order because its field is coterminous with that of the legislature and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions (Article 32 and Article 142 of the Constitution) to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field.

How are these directions enforced? The Supreme Court has made it clear that these directions are the law laid down by the Supreme Court under Article 141 of the Constitution. In *M.C. Mehta* v. *India,* the Court said [AD, 1998, Vol. IX, SC, Pp. 37, 42]:

> We wish to emphasise that the directions issued by this Court from time to time, which are in the general public interest, are required to be complied with and it is the obligation of the State to ensure that those directions are complied with. We are considering the appointment of Court officers with a view to see (sic) that the directions issued by us are complied with and in the event the Delhi Administration has any suggestion to make about the appointment of such Court officers, they shall be at liberty to file a list of such persons in the Registry within four weeks.

I have not come across any empirical data on how far the directions are enforced. We know that directions in respect of inter-country adoption and sexual harassment of working women have been taken seriously by the governments and semi-government institutions as well as the social action groups. What sanctions are available for the enforcement of these directions? According to Agrawala, 'such directions do not serve much useful purpose' [Agrawala, 1985, p. 31]. This was said 15 years ago and was not based on any empirical study. I am not aware of any empirical studies of the effectiveness of judicial directions. What happens if the directions are not obeyed? The only sanction for the enforcement of the directions is a petition for contempt. Since such a petition will have to be filed in the Supreme Court, it may seldom be resorted to. I have not come across any case in which the Court has invoked the power of contempt of court against disobedience or non-obedience of the directions. What appears to be happening is that the implementation of the directions is being insisted upon by the social action groups in their fields of operation. Even the governments do not seem to be challenging the status of these directions and are cooperating in the enforcement of those directions. In *Vineet Narain* v. *India* [SCC, 1998, Vol. 1, p. 226], Chief Justice Verma appreciated the cooperative attitude of the counsels who appeared on behalf of the State and the *amicus curie* for the petitioners who did not adopt 'the adversarial stance' [SCC, 1998, Vol. 1, p. 234].

CONCLUDING OBSERVATIONS

This has been a survey of the decisional law of the Supreme Court of India on public interest litigation. It shows the expansion in the activity of the Supreme Court, change in the class of the users of its process and the varied interests that were espoused by the public interest litigants during the last twenty years. The fact that so many people and social activists have invoked the Court's jurisdiction shows that there has been greater reliance on the legal/judicial method for redressing people's grievances and for bringing in greater accountability of the governing institutions. Public interest litigation has not been a panacea for all evils of the legal and political system. Even the original purpose of PIL, which was to facilitate access to court, seems to have been only partially successful. In the absence of

a system of legal aid, PIL is bound to face the problem of funding. Social activists like MC Mehta or Common Cause have acquired good infrastructure for PIL. But although individual lawyers have volunteered to work free, a PIL costs a lot of money. A news item in the *Times of India* [dated February 5, 1999] describes that residents of Dadar in Mumbai, who wanted to resist the construction of a fly over gave up their effort and also chose not to go to court because a PIL would cost them Rs 2 lakh and they were not able to raise that much money. So access depends upon the chance of a lawyer taking up a brief without charging fees or on the collective strength of a group of people.

An audit of the PILs to find out how many of them ended in giving the desired relief to the petitioner needs to be done. PIL may not in all cases be undertaken for achieving final results. It may be undertaken as an additional method of political mobilisation, or to obtain temporary respite from an adverse action or to highlight the abuse of power by the authorities or to obtain immediate relief for a person suffering from violation of human rights. In all such matters, PIL seems to have been successful. It does not seem to have been successful where over-ambitious aims, such as reform of the prison system, reform of the criminal justice system or relief from poverty which depend upon radical changes in the economy, were aimed.

Unlike PIL in Canada and the United States, PIL in India was initiated by the judiciary. It has, however, been sustained by social activists and individuals who have found its use more fruitful than the use of political methods such as demonstrations, *satyagraha* or mass protest. PIL has created a class of consumers who have now developed vested interest in its use. It may not be possible for the Court to revert from the high profile role which it has projected through its decisions. The Indian PIL is the offspring of post-emergency judicial activism which was premised on a more affirmative and dynamic judicial role. A foreign observer rightly feels that the Court is trying to achieve the impossible [Cassels, 1989, p. 495]. PIL has been severely criticised but most of the criticism is from the perspective of the paradigm of the adversary judicial process [Hidayatullah, 1983; Agrawala, 1985, p. 31].

Even from the perspective of the new paradigm of public law judicial process, the Court has doubtless exceeded the limits of judicial function, and some of its decisions were populist. Why has the executive or the legislature not protested against such usurpation of their functions by the Court? During the years of Nehru, the political establishment had assigned a limited role to the judiciary and within that limited sphere, it was respected and held in high esteem. But it was insisted that the judiciary should not become the third chamber of the Parliament. Since 1989, it is the political establishment which is referring more and more questions for determination by the courts. It has not protested even when the Supreme Court laid down how the CBI should be structured. In recent days, the Courts have started mediating between the employees and the government institutions to bring about peaceful settlement of their disputes. A strike by senior physicians of the All India Institute of Medical Sciences in Delhi was called off at the instance of the Delhi High Court and the Court ordered the government to pay to those physicians salaries according to the recommendations of a committee appointed for that purpose until final settlement was reached between them and the government. At times, there have been protests but only when judicial activism seemed to impinge on the discretionary area of the politicians or civil servants. Clandestine moves to clip the wings of the courts by imposing restrictions on the eligibility of

persons to file PIL were made but withdrawn when there was public protest. There has been talk of streamlining judicial activism but the political establishment has not had either moral courage or political strength to strip the Court of its newly acquired power. This is because the Court has carved for itself a niche in the hearts of the people. Why have people gone to court for the redressal of grievances which they should have known were beyond the power and function of the judiciary? Although the system of justice continues to be inegalitarian and inaccessible to a large number of people and hence PIL seems to be nothing more than tokenism, the people have reposed greater faith in the judges than in the politicians. There have been disappointments with the Court, for example with its authorship of the settlement between the Union Carbide and the victims of the Bhopal gas tragedy which included the quashing of all civil and criminal cases against the Union Carbide [*Union Carbide Corporation* v. *Union of India,* SCC, 1989, Vol. 1, p. 674; for criticism, see Baxi et al., 1990] or with its decision during emergency in *A.D.M. Juubbalpore* v. *Shiv Kant Shukla* [AIR, 1976, SC, p. 1,206] which we have discussed earlier [Sathe, 1998(c), p. 603]. Yet, neither the political establishment nor the lay people have raised any objections against judicial activism. Criticism against individual decisions have been made but not against judicial activism. Why has judicial activism received such strong public support? Why has judicial activism acquired such strong social legitimacy? Is it out of the helplessness of the people, escapism of the political elite or the intrinsic merit of the judicial process as a check on democracy? We shall attempt to answer these questions in the next part of this article.

ABBREVIATIONS

A.C.	*Appeal Cases*
A.P.	Andhra Pradesh High Court
AIR	*All India Reporter*
All.	Allahabad
ATC	*Administrative Tribunal Cases*
C.A.	Civil Appeals
Cal.	Calcutta High Court
Co. Rep.	*Coke's Reports*
Del.	Delhi
G.L.R.	*Gujarat Law Reporter*
H.C.	High Court
H.P.	Himachal Pradesh
I.L.R.	*Indian Law Reports*
JT	*Judgments Today*
K.B.	*Law Reports of the House of Lords, King's Bench*
Ker.	Kerala
Knt.	Karnataka
L.Ed.	*United States Supreme Court Reports, Lawyers' Edition*
L.R.	*Law Reports*
M.P.	Madhya Pradesh
Ori	Orissa High Court
P&H	Punjab and Haryana
Patna	Patna High Court
PLD	*All Pakistan Legal Decisions Journal*
SC	Supreme Court
SCC	*Supreme Court Cases*
SCW	Supreme Court Weekly Notes
Supp	Supplement
U.S.	*United States Supreme Court Reports*

REFERENCES

Agrawala, S.K., 1985; *Public interest Litigation in India,* K.M. Munshi Memorial Lecture, Second Series, Indian Law Institute, New Delhi.

Baxi, Upendra, 1975; 'Laches and the Right to Constitutional Remedies : *Quis Custodiet Ipsos Custodes'*, in Alice Jacob (Ed.), *Constitutional Developments since Independence,* Tripathi, Bombay.

Baxi, Upendra, 1983; 'How Not to Judge the Judges: Notes Towards Evolution of the Judicial Role', *Journal of the Indian Law Institute,* Vol. 25.

Baxi, Upendra, 1985; 'Taking Suffering Seriously : Social Action Litigation in the Supreme Court of India', in Rajeev Dhavan, R. Sudarshan and Salman Khurshid (Eds.), *Judges and the Judicial Power,* Sweet and Maxwell - Tripathi, Bombay.

Baxi, Upendra, 1990; 'On the Problematic Distinction Between "Legislation" and "Adjudication": A forgotten Aspect of Dominance', *Delhi Law Review,* Vol. 10.

Baxi, Upendra, Lotika Sarkar, Raghunath kelkar and Vasudha Dhagamwar, 1979; 'An open letter to the Chief Justice of India', SCC (Jour), Vol. 4.

Baxi, Upendra and Amita Dhanda, 1990; *Introduction to Valiant Victims and Lethal Litigation: The Bhopal Case.* Indian Law Institute, New Delhi.

Cassels, James, 1989; 'Judicial Activism and the Public Interest Litigation in India : Attempting the Impossible?', *American Journal of Comparative Law,* Vol. 37.

Cunningham, Clark D., 1987; 'Public Interest Litigation in Indian Supreme Court: A Study in the Light of American Experience', *Journal of the Indian Law Institute,* Vol. 29.

Dhavan, Rajeev, 1994; 'Law as Struggle: Public interest Litigation In India', *Journal of the Indian Law Institute,* Vol. 36.

Dhavan, Rajeev, 1997; 'Introduction', to Marc Galanter, *Law and Society in Modern India,* in *Law in India Series,* Oxford University Press, New Delhi.

Dicey, A.V., 1952; Introduction to the Study of the Law of the Constitution, Edition 9, Macmillan & Co. Ltd., London.

Freemen M.D.A. (Ed.) 1996; Lloyd's Introduction to Jurisprudence, Edition 6, Sweet and Maxwell, International Students Edition, London.

Hidayatullah, M., 1983; *Highways and By-lanes of Justice,* Justice B. D. Bal Memorial Lecture delivered at the ILS Law College, Pune.

Jacob, Alice, 1974; 'Denial of Judicial Relief Under Article 32 and 226', *Journal of the Indian Law Institute,* Vol. 16.

Jain, M.P., 1978; *Indian Constitutional Law,* Third Edition, Tripathi, Bombay.

Sathe, S.P., 1975; 'Avoidance of Premature Constitutional Questions by the Supreme Court', *Yearbook of Legal Studies,* Madras.

Sathe, S.P., 1984; 'Public Participation in the Judicial Process: New Trends in Law of *Locus Standi* with Special Reference to Administrative Law', *Journal of the Indian Law Institute,* Vol. 26.

Sathe, S.P., 1993; 'Constitutional Law I', *Annual Survey of Indian Law,* Vol. XXIX.

Sathe, S.P., 1993(a); *Towards Gender Justice,* Research Centre for Women's Studies, SNDT, Women's University, Bombay.

Sathe, S.P., 1998(a); *Administrative Law,* Edition 6, Butterworths India, New Delhi.

Sathe, S.P., 1998(b); 'Judicial Activism (I)', *Journal of Indian School of Political Economy,* Vol. X, No. 3, July-September.

Sathe, S.P., 1998(c); 'Judicial Activism (II) - Post-Emergency Judicial Activism: Liberty and Good Governance', *Journal of Indian School of Political Economy,* Vol. X, No. 3, July-September.

Sathe, S.P., 1999; 'Gender, Constitution and the Courts', in Amita Dhanda, Archana Parashar (Eds.), *Engendering Law: Essays in Honour of Lotika Sarkar,* Eastern Book, (Forthcoming).

Seervai, H.M., 1976; *Constitutional Law of India,* Second edition, Tripathi, Bombay.

Smith, S.A. de, 1980; *Judicial Review of Administrative Action,* Edition 4, Stevens and Sons, London.

Wade E.C.S. and Forsyth, 1997; *Administrative Law,* Seventh Edition, Clarendon Press, Indian Reprint, Oxford University, Delhi.

INVESTMENT IN HUMAN CAPITAL IN INDIA: AN INTER-STATE ANALYSIS OF STOCK AND FLOW OF HUMAN CAPITAL*

Jandhyala B G Tilak

This paper presents an inter-state analysis of the stock and flow of human capital in India, broadly focusing on the levels of schooling of the population, and the rate of enrolment/attendance in schools. The stock of human capital is estimated in terms of an index of education, with the help of literacy and mean years of schooling of population in 1981 and 1991/92-93, that facilitates temporal comparisons in the performance of the states. In terms of the stock of human capital and also the current rate of attendance in schools, better and poor performers among the several states have been identified. Besides, some correlates of the stock and flow of education development have been briefly analyzed. Household poverty and State Domestic Product (SDP) per capita have been found to be the most important factors from demand side, contributing to non-enrolment in and drop-out of children from schools. Among the supply side factors, provision of adequate teachers in each school, provision of access particularly to (elementary) upper primary schools within the habitations, and provision of adequate level of schools (integrated secondary schools) have been found to be very important, in addition to public expenditure on education. To argue that the problem of under-achievements in education is essentially a problem of poverty and economic backwardness is not totally correct. Provision of schooling facilities of good quality and quantum that could attract and retain the children in schools is also equally, if not more, important. In fact, this may be treated as an essential basic condition for improving the educational status of population.

1. INTRODUCTION

Investment in human capital has long been recognised by many as critical for achieving development goals - economic and social as well. Looking at the contribution of human capital to rapid economic growth in some countries, development in these countries is aptly described as 'human resource led development' [Behrman, 1991]. Accumulation of human capital takes place through investment in human beings in education and other areas such as health and nutrition. Of the several components of human capital, education is the most important one. As investment in human capital, particularly education, has been found to be a very important factor in the economic miracles including economic growth, alleviation of poverty, and income distribution in other countries [Tilak, 1989], education has been receiving serious attention of policy planners and researchers in India.

That education occupies an important place in the development of the Indian society needs no emphasis. The Government of India has recognised the pivotal role of education in development. The Constitution of independent India has resolved to provide elementary education free to every one. It stated:

> the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years (Article 45).

Recently efforts are being initiated to make education a fundamental right of every citizen in the country [see Ministry of Human Resources Development (MHRD), 1997]. The need for development of education in India in the wider perspective of human rights is also being increasingly felt [Ayyar, 1997, Pp. 67-88; also Chanana, 1996, Pp. 361-81].

Elementary education is also an important component of National Minimum Needs Programme of the Five Year Plans. The Five Year Plans and the Annual Plans of the Government of India and of various states periodically spell out

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their strategies towards fulfilling the educational aspirations of the people. The Government of India had formulated a *National Policy on Education* in 1968 and another in 1986. Both policies laid stress on the promotion of education in the country. Specifically, both policies stressed the need for eradicating illiteracy altogether and to provide universal elementary education to all in the shortest possible time. They also laid special emphasis on vocational and technical education at secondary level, and on improvement of quality and relevance in higher education. The policy goals remained the same over the years, though some of the strategies adopted in the earlier decades and currently are different, and the target dates of achievement of the goals have been changed.

Indian education system is identified with an educational miracle and paradoxically with great failures at the same time. This paper begins with a brief outline of some of them, giving a panoramic view of the current education situation in India as a whole (Section 2). The achievements and the failures have not been uniform across all the regions. Regional differences are indeed striking. Inter-state analysis of progress in education is the major focus of the paper (Section 3). The paper does not attempt at an exhaustive treatment of the problems relating to education in India. It only tries to describe the current level of education development and the growth in the recent past, concentrating on the stock and flow of human capital in various states. Section 4 presents a brief discussion on correlates of education development and the paper concludes with a short summary of main conclusions and policy implications (Section 5).

2. AN OVERVIEW OF EDUCATION SITUATION IN INDIA

Education system in India is characterised by a paradox: a fantastic growth of the system on the one hand, and several conspicuous failures on the other. There has been a remarkable growth in the development of education in India during the post-Independence period. The enrolment in education has increased from about 2.4 crore in 1950-51 to about 19 crore in 1996-97, as per the official statistics. The number of students in educational institutions outnumber the total population of the united Germany, England and Canada taken together. The education system in India is the second largest one in the world with 9.1 lakh schools, more than 9,000 colleges and 250 universities. Schooling facilities at primary level are accessible to 95 per cent of the population. There has been a very significant improvement in education with respect to inter-regional inequalities, and inequalities by gender, caste, religion, etc., during the post-Independence period. Thus the education system in India got deepened, and widened as well, during the post-Independence period.[1]

At the same time, the unfinished tasks in education also seem to be gigantic. Rate of literacy is the most generally used indicator of educational development in any country. According to the Census 1991, the effective literacy rate (of the population in the age-group 7 and above) in India in 1991 was 52.2 per cent. It was 43.7 per cent in 1981 (Table 1). The increase in rate of literacy between 1981 and 1991, thus, was very modest at the national level. The increase is less than one per cent point per annum on average. Despite various efforts initiated by the government, such as total literacy campaigns, formal centre based adult education programmes, the launching of the National Literacy Mission, and expansion of school education, including non-formal education, still half the population is illiterate. Due to rapid growth of population, the country is increasingly becoming illiterate, with the number of illiterates in 1991 (19.6 crore) being higher than in 1981 (18.1 crore). Gender and spatial disparities in literacy are high. For example, the rate of literacy among rural females in 1991 was only 30.3 per cent, while it was 81 per cent among urban males. Also, many literates are feared to be relapsing into illiteracy, in the absence of sustainable literacy programmes on a continuous basis. Though universal literacy has been the overall objective, concerted efforts are getting confined to increasingly smaller groups of population - starting from total population, to all adults (15 + age group), working adults (15-59 age group), working adults of productive age group (15-45 age group), and further down to just

young adults (15-35 age group). From the beginning, adult literacy has been 'criminally neglected' [Naik, 1965, p. 23] and the pattern of allocation of public resources to literacy and adult education programme has been quite unsatisfactory. On the whole, it is feared that India is nowhere near achieving a high literacy rate, like China, in the near future [Drèze and Loh, 1995, Pp. 2,868-878].

Table 1. Growth in Literacy in India (Age-Group 6+)

(Per cent)

(1)	1981 (2)	1991 (3)	Improvement (4)
Rural			
Males	49.7	57.8	8.1
Females	21.8	30.3	8.5
Total	36.1	44.5	8.4
Gender Disparity Index*	0.4318	0.3573	
Urban			
Males	76.8	81.0	4.2
Females	56.4	63.9	7.5
Total	67.3	73.1	5.8
Gender Disparity Index*	0.2006	0.1613	
Total			
Males	56.5	64.2	7.7
Females	29.8	39.2	9.4
Total	43.6	52.2	8.6
Gender Disparity Index*	0.3519	0.2876	

Note: * Sopher's index.
Source: *Census of India, 1991* - Paper 2 of 1991.

With respect to universalisation of elementary education, while official estimates on *gross* enrolment ratios (unadjusted for over and under aged children) are 91 per cent in case of primary education and 62 per cent in case of upper primary education in 1996-97, both of which together constitute the constitutional goal of universal elementary education, in which the overall gross enrolment ratio was 80.7 per cent, according to various surveys, the actual enrolment ratio (also known as *net* enrolment ratio - i.e., exclusive of over and under aged children) is estimated to be much lower - between 60 and 70 per cent. According to a recent survey [IIPS, 1995], in 1992-93 only 68 per cent of the children in the age-group 6-14 were reported to be attending schools (Table 2). Earlier, the National Sample Survey [1991] had estimated that more than 7 crore eligible children were still outside the school system in 1986-87. The problem is acute in rural areas. Among the non-participants, girls dominate the boys (Table 3). The under-achievement in case of elementary education represents the most conspicuous failure of the Indian education system.

Table 2. Attendance in Schools of the Population of the Age-Group 6-14, 1992-93

(Per cent)

	Age-Group		
(1)	6-10 (2)	11-14 (3)	6-14 (4)
Males			
Urban	86.2	84.2	85.3
Rural	71.4	73.4	72.2
Total	75.0	76.3	75.5
Females			
Urban	81.8	75.7	79.2
Rural	55.0	47.9	52.2
Total	61.3	55.3	58.9
Total			
Urban	84.1	80.1	82.4
Rural	63.5	61.2	62.6
Total	68.4	66.2	67.5

Source: IIPS, 1995, p. 56.

Table 3. Number of Children Currently Not Enrolled and Never Enrolled in Schools, 1986-87

(million)

	Age-Group 6-11			Age-Group 12-14		
(1)	Boys (2)	Girls (3)	All (4)	Boys (5)	Girls (6)	Total (7)
Currently Not Enrolled						
Rural	18.4	24.6	43.0	8.8	12.6	21.4
Urban	2.4	2.8	5.2	1.6	2.0	3.6
Total	20.8	27.4	48.2	10.4	14.6	25.0
Never Enrolled						
Rural	16.4	22.7	39.1	5.9	9.4	15.3
Urban	2.0	2.5	4.5	0.7	1.1	1.8
Total	18.4	25.2	43.6	6.6	10.5	17.1

Source: NSSO, 1991; see Tilak, 1996a, Pp. 275-82 and 355-66.

Universal and compulsory education also includes universal provision of facilities. But the school facilities are also not evenly spread. According to the *Sixth All-India Educational Survey* [NCERT, 1995], only 50 per cent of the habitations had a primary school/stage in 1993. The corresponding proportion was marginally higher in 1986 (Table 4). Upper primary schooling facilities were available only in 13 per cent of the habitations. In other words, many children have to walk long distances to reach a school. For the same reason, earlier studies (e.g., Tilak, 1996a, Pp. 275-82, and 355-66) found significantly high correlation between provision of free transport facilities (or at concessional prices) and enrolment of children in primary and upper primary schools in rural areas. Percentage of 'children never enrolled' in schools was also found to be significantly and negatively correlated with availability of transport facilities free or at concessional prices.

Table 4. Availability of Schooling Facilities in India

(Figures in thousands)

(1)	1986 (2)	1993 (3)
Total Number of Habitations	981.86	1,059.19
No. of Habitations Having Primary Schooling Facilities	502.343	532.96
Per cent of Total No. of Habitations	51.2	50.3
No. of Habitations Having Upper Primary Schooling Facilities	128.95	145.82
Per cent of Total No. of Habitations	13.1	13.8
No. of Habitations Having Secondary/ Higher Secondary Schooling Facilities	52.48	65.13
Per cent of Total No. of Habitations	5.3	6.1

Source: NCERT, 1995.

Universal elementary education includes not only universal enrolment, but also universal retention and universal achievement. The retention rate of the school system is also at a very low level. Though in the recent past, improvements are said to have taken place, the rates of drop-out are still alarming: 36 per cent of the children enrolled in Grade I drop-out out before completing primary level and 53 per cent before the completion of upper primary level. Further, recent studies reveal that children in the final grade of the primary level of education often have mastered less than half the curriculum that they were expected to master [World Bank, 1997]. There are also significant disparities between different regions, and social and economic groups of population. The recently launched District Primary Education Programme [Government of India, 1993] aims at reducing drop-out rates in primary education to less than ten per cent, to increase achievement levels by 25 per cent points over and above the current levels and to reduce disparities of all types to less than five per cent.

The constitutional goal of universal elementary education has been repeatedly postponed. For example, the *National Policy on Education 1968* stated that 'strenuous efforts should be made for the early fulfilment of the Directive Principle of the Constitution'. *The National Policy on Education, 1986* resolved that 'by 1995, all children will be provided free and compulsory education up to 14 years of age'. Now it has been further postponed to the end of the Ninth Five

Year Plan. But it is generally feared that the goal might remain elusive for at least another quarter century.

Even in case of secondary and higher education, despite seemingly impressive growth, the size of enrolment is not proportionate to the population. For instance, only 33 per cent of the children of the age-group 15-18, according to official estimates, are enrolled in secondary education in 1994-95, compared to above 90 per cent in developed countries and 40-50 per cent in several other developing counties. The most significant setback in secondary education refers to vocational and technical education. While the government desired to offer vocational and technical education to 10 per cent of the students in higher secondary education by 1990 and to 25 per cent by 1995, the actual performance is far below the mark. When vocational education did not progress well at higher secondary level, attempts are being made to introduce vocational courses in higher education.

Higher education in India has expanded very fast during the post-Independence period, though in the recent past, the relative growth rates have fallen. India has an elaborate network of higher education institutions. But inequalities in access to higher education by gender, by caste and religion are high. Inter-institutional variations in quality of higher education are also striking, some institutions being comparable to the best in the world, and many suffering from serious erosion in every respect. Further, the 60 and odd lakh students enrolled in higher education constitute only six per cent of the population age-group 17-23, while about 20 per cent enrolment ratio seems to be a threshold level for any country to become a developed country [Tilak, 1997, Pp. 7-21].

In short, the problems of education in India include inadequate quantitative expansion, poor quality of education, and a high degree of inequity in education - regional, gender and by socio-economic groups of population. All levels of education - primary, secondary and higher - suffer from all these problems.

To summarise, of the total population in India nearly half are illiterate; 18 per cent were just literate with no (or incomplete) formal primary schooling; and 15 per cent had completed primary schooling in 1992-93. Less than five per cent of the population had schooling above high school level. In rural India, the higher educated population consisted of less than two per cent of the total population (Table 5). In short, though the mean years of schooling of population[2] in India has increased from 1.78 in 1971 to 2.35 in 1981 [see Tilak, 1994, Pp. 243-54] and to 3.7 years in 1992-93, it is still very low, as in quite a few advanced countries the corresponding figure is above ten; and in many other developing and developed countries it is above five [UNDP, 1992]; and the variations in the mean years of schooling are also high between rural and urban areas and they are more striking between males and females (Table 6).

Celebrating 50 years of Independence, and on the eve of entering the next millennium, the Planning Commission [1997] has once again reiterated the national goals with respect to education: universalisation of elementary education, eradication of illiteracy, modification and diversification of curricula in secondary education in favour of vocational and technical education, consolidation and optimum utilisation of infrastructure facilities in higher education, etc. It also spelt out some of its important strategies for the Ninth Five Year Plan period: decentralised and disaggregated planning with the participation of Non-governmental Organisations (NGOs), the corporate sector and other groups for the completion of universal elementary education, in addition to the national programme of nutritional support to primary education (mid-day meals); total literacy campaign of the National Literacy Mission for spread of literacy; earmarking of substantial funds for vocational and technical education; improved methods of grants-in-aid and mobilisation of non-governmental resources for higher education; and above all allocation of six per cent of Gross Domestic Product (GDP) for education sector by 2000.[3] But regional disparities in education development, a very important issue, has not been given adequate attention.

Table 5. Educational Levels of Population in India (Per cent Distribution), 1992-93

(1)	Illiterate (2)	Literate Pry Incom (3)	Pry Comp (4)	Mid. Comp (5)	Secy comp (6)	Above High Sch (7)	Mis sing (8)	Total (9)
Males								
Urban	15.9	18.3	17.0	14.2	20.6	13.9	0.1	100
Rural	37.1	21.0	16.8	11.0	10.9	3.1	0.1	100
Total	31.2	20.1	16.8	12.0	13.6	6.1	0.2	100
Females								
Urban	32.7	17.2	16.6	11.3	14.4	7.7	0.1	100
Rural	65.7	14.2	10.4	5.1	3.7	0.7	0.2	100
Total	56.9	15.0	12.0	6.8	6.6	2.6	0.1	100
Total								
Urban	23.9	17.8	16.9	12.8	17.6	10.9	0.1	100
Rural	51.1	17.7	13.7	8.2	7.4	1.9	0.0	100
Total	43.7	17.7	14.5	9.4	10.1	4.4	0.2	100

Note: Pry - Primary; Incom - Incomplete; Comp - Complete; Mid - Middle School; Secy - Secondary; Sch - School.
Source: IIPS, 1995, Pp. 49-55.

Table 6. Mean Years of Schooling of Population

	1992-93			1981		
(1)	Male (2)	Female (3)	Total (4)	Male (5)	Female (6)	Total (7)
Urban	6.585	4.863	5.758	..	..	4.27
Rural	4.053	1.957	3.036	..	..	1.75
Total	4.757	2.742	3.767	3.12	1.52	2.35

Source: Based on IIPS, 1995 for 1992-93 and Tilak, 1994, Pp. 243-54 for 1981.

3. INTER-STATE ANALYSIS OF EDUCATION DEVELOPMENT

An important aspect in the development of education in India relates to uneven development across different states. All-India average picture presented in Section 2 conceals more than what it reveals. A few states are in a fairly advanced stage with respect to literacy and elementary education and, in fact, with respect to many indicators of development in education; but many states lag far behind. Regional inequalities with respect to every indicator of educational development are very wide and they are analysed here with the help of a few selected stock and flow indicators.

Literacy

Literacy is the most commonly used and a standard indicator of the level of educational development in any given society. This is considered as an important, though crude, indicator of the stock of human capital accumulated in the population over time. Table 7 presents the available data on literacy in India in 1981 and 1991, by major states and union territories in India. These data are based on Census estimates and they are regarded as the most reliable estimates.[4] Based on the level of literacy in 1991 the various states could be grouped into three categories: high literacy states (with above 75 per cent literacy), medium literacy states (above national average but below 75 per cent literacy) and low literacy states (below national average).[5] As shown in Table 8, of the 24 states and union territories, on which data have been presented here, as many as eight have a literacy rate below the national average. It is only in four states, viz., Kerala, Mizoram, Goa and Delhi where the literacy is rather fairly high (above 75 per cent). In the remaining 12 states the rate ranges between 53 and 65 per cent.

Table 7. Literacy in India (Per cent) and Index of Deprivation, 1981 and 1991

		Literacy			Index of Deprivation		
	(1)	1981 (2)	1991 (3)	Change (4)	1981 (5)	1991 (6)	Change (7)
1.	Kerala	81.6	89.8	8.3	0.248	0.166	-0.08
2.	Mizoram	74.3	82.3	8.0	0.346	0.288	-0.06
3.	Goa	65.7	75.5	9.8	0.461	0.398	-0.06
4.	Delhi	71.9	75.3	3.4	0.377	0.402	0.02
5.	Maharashtra	55.8	64.9	9.0	0.593	0.571	-0.02
6.	Himachal Pradesh	51.2	63.9	12.7	0.656	0.587	-0.07
7.	Tamil Nadu	54.4	62.7	8.3	0.613	0.607	-0.01
8.	Nagaland	50.3	61.7	11.4	0.668	0.623	-0.04
9.	Gujarat	52.2	61.3	9.1	0.642	0.629	-0.01
10.	Tripura	50.1	60.4	10.3	0.670	0.643	-0.03
11.	Manipur	49.7	59.9	10.2	0.676	0.652	-0.02
12.	Punjab	39.7	58.5	18.8	0.810	0.674	-0.14
13.	West Bengal	48.7	57.7	9.1	0.690	0.688	0.00
14.	Karnataka	46.2	56.0	9.8	0.722	0.715	-0.01
15.	Haryana	43.9	55.9	12.0	0.754	0.718	-0.04
16.	Assam	52.9				0.766	
17.	Meghalaya	42.1	49.1	7.1	0.778	0.827	0.05
18.	Orissa	41.0	49.1	8.1	0.793	0.828	0.03
19.	Madhya Pradesh	34.2	44.2	10.0	0.883	0.907	0.02
20.	Andhra Pradesh	35.7	44.1	8.4	0.864	0.909	0.04
21.	Uttar Pradesh	33.4	41.6	8.3	0.895	0.949	0.05
22.	Arunachal Pradesh	25.6	41.6	16.0	1.000	0.949	-0.05
23.	Rajasthan	30.1	38.6	8.4	0.939	0.999	0.06
24.	Bihar	32.1	38.5	6.4	0.913	1.000	0.09
	All-India	43.7	52.2	8.5			
	C.o.V.	0.29	0.23		0.2748	0.3135	

Source: Registrar General of India, 1991.

Table 8. States Grouped Based on Literacy in 1991

High Literacy States (> 75 per cent) (1)	Medium Literacy States (50-75 per cent) (2)	Low Literacy States (< 50 per cent) (3)
Kerala	Maharashtra	Meghalaya
Mizoram	Himachal Pradesh	Orissa
Goa	Tamil Nadu	Madhya Pradesh
Delhi	Nagaland	Andhra Pradesh
	Gujarat	Uttar Pradesh
	Tripura	Arunachal Pradesh
	Manipur	Rajasthan
	Punjab	Bihar
	West Bengal	
	Karnataka	
	Haryana	
	Assam	

Table 9. States Classified on the Basis of Change in the Index of Deprivation in Literacy between 1981 and 1991

Deprivation Increased (1)	Deprivation Decreased (2)
Bihar	Kerala
Madhya Pradesh	Tamil Nadu
Rajasthan	Karnataka
Uttar Pradesh	Maharashtra
Orissa	Gujarat
Andhra Pradesh	Himachal Pradesh
Delhi	Haryana
Meghalaya	Punjab
	West Bengal
	Arunachal Pradesh
	Manipur
	Mizoram
	Nagaland
	Tripura
	Goa

Source: Based on Table 7.

Interestingly, the eight states whose rate of literacy was below the national average in 1991, viz., Meghalaya, Orissa, Andhra Pradesh, Madhya Pradesh, Uttar Pradesh, Rajasthan, Bihar and Arunachal Pradesh were at the bottom as per the rate of literacy in 1981 as well (in 1981 Punjab was also in the bottom group); so is the case with the top four states, though there is a minor change in the rank order among the several states within each group. The change in literacy is also below the national average in six out of the eight low literacy states; it is the lowest in Bihar.[6] Significant increases have been confined to medium literacy states. It is only Punjab that could move from the bottom group in 1981 to the group of medium literacy states in 1991, the maximum gain being nearly 19 per cent points. On the whole, inter-state disparities seem to be declining, as the coefficients of variation suggest. The coefficient of variation (C.o.V.) marginally declined from 0.29 in 1981 to 0.23 in 1991.

An index of deprivation in literacy,[7] a relative measure of inequality, is found to vary between 0.166 for Kerala and 1.0 for Bihar in 1991. Madhya Pradesh, Andhra Pradesh, Uttar Pradesh Arunachal Pradesh, Rajasthan and Bihar are characterised with a severe degree of deprivation, with the value of the coefficient being above 0.9. Even in 1981 these states had the maximum level of deprivation. Based on the index of deprivation in 1991 the various states could be grouped into three categories: states suffering from maximum deprivation (with the index being more than 0.8) which can be called 'highly deprived' states, states with medium level of deprivation (the value of the index ranges between 0.5 and 0.8) and states with low deprivation (the value of the index being less than 0.5).[8] Table 9 shows the changes between 1981 and 1991 in the Index of Deprivation for various states.

Gender Disparities in Literacy

Literacy is not only uneven among several states, but disparities by gender are also very high. For example, in Rajasthan the rate of literacy among females is less than half the literacy among males in 1991, and less than one-third in 1981. A simple index of gender disparity in literacy, known as Sopher's index[9] is estimated here and the states are arranged in Table 10 on the basis of the index. One can note that there is a close correspondence between the level of literacy and level of gender disparities. For example, gender disparities are found to be the maximum in those very states that are grouped as low literacy states. Except Meghalaya, all the other seven low literacy states figure at the top of the list of states based on gender disparities. However, gender disparity in literacy in Haryana, a medium literacy state is also high.

There is not much change in the relative position of the low literacy states between 1981 and 1991 with respect to gender disparities. Among the other states, Punjab deteriorated with respect to gender disparities, both in absolute terms - the disparity index in 1991 being about double the index in 1981, and in relative terms - the disparity is the lowest in Punjab of all states in 1981 (rank was one), and the rank of Punjab had increased to 7 in 1991. Punjab is also the only state where the index has increased, while in all other states it has declined between 1981 and 1991. Not very surprisingly, the rapid growth in literacy in Punjab is also associated with a steep increase in gender disparities, suggesting the need for specific focus on female literacy to reduce gender disparities. Overall increases in literacy of total population do not necessarily reduce gender disparities.

Table 10. Gender Disparities and the Sopher's Index in Literacy in India

		Literacy, 1981			Literacy, 1991			Change in the Index
	(1)	Male (2)	Female (3)	Index (4)	Male (5)	Female (6)	Index (7)	(8)
1.	Mizoram	79.4	68.6	0.1003	85.6	78.6	0.0629	-0.037
2.	Kerala	87.7	75.7	0.1087	93.6	86.1	0.0658	-0.043
3.	Meghalaya	46.7	37.2	0.1247	53.1	44.9	0.0973	-0.027
4.	Nagaland	58.6	40.4	0.2140	67.6	54.8	0.1320	-0.082
5.	Delhi	79.3	62.6	0.1588	82.0	67.0	0.1399	-0.019
6.	Goa	76.0	55.2	0.2066	83.6	67.1	0.1535	-0.053
7.	Punjab	55.6	48.2	0.0837	65.7	50.4	0.1615	0.078
8.	Assam			..	61.9	43.0	0.2132	..
9.	Tripura	61.5	38.0	0.2769	70.6	49.7	0.2179	-0.059
10.	West Bengal	59.9	36.1	0.2888	67.8	46.6	0.2280	-0.061
11.	Tamil Nadu	68.1	40.4	0.3087	73.8	51.3	0.2284	-0.080
12.	Himachal Pradesh	64.3	37.7	0.3090	75.4	52.1	0.2343	-0.075
13.	Maharashtra	69.7	41.0	0.3163	76.6	52.3	0.2432	-0.073
14.	Karnataka	58.7	33.2	0.3203	67.3	44.3	0.2501	-0.070
15.	Manipur	64.2	34.7	0.3525	71.6	47.6	0.2520	-0.101
16.	Gujarat	65.1	38.5	0.3072	73.1	48.6	0.2538	-0.053
17.	Andhra Pradesh	46.8	24.2	0.3474	55.1	32.7	0.2890	-0.058
18.	Arunachal Pradesh	35.1	14.0	0.4511	51.5	29.7	0.2981	-0.153
19.	Haryana	58.5	26.9	0.4245	69.1	40.5	0.3182	-0.106
20.	Orissa	56.5	25.1	0.4370	63.1	34.7	0.3418	-0.095
21.	Madhya Pradesh	48.4	19.0	0.4833	58.4	28.9	0.3888	-0.095
22.	Uttar Pradesh	47.5	17.2	0.5195	55.7	25.3	0.4259	-0.094
23.	Bihar	46.6	16.5	0.5281	52.5	22.9	0.4399	-0.088
24.	Rajasthan	44.8	14.0	0.5834	55.0	20.4	0.5226	-0.061
	All-India	56.4	29.9	0.3497	64.1	32.3	0.3894	0.040
	C.o.V.	0.212	0.450		0.1645	0.3473		

Source: *Registrar General of India 1991*, Sopher, 1974, Pp. 389-92.

To sum up the situation on literacy, with respect to all the four dimensions of literacy - (a) total literacy levels in 1981 and 1991, (b) relative deprivation in literacy, (c) improvement in literacy between 1981 and 1991, and (d) gender disparities in literacy, Orissa, Madhya Pradesh, Andhra Pradesh, Uttar Pradesh, Arunachal Pradesh, Rajasthan and Bihar are found to be at the bottom of the scale of 24 states/union territories. These seven states account for 62 per cent of illiterates in the country. These states deserve serious attention.

Distribution of Population by Educational Levels

Literacy is regarded as a crude measure of level of educational development, as people with different levels of education are treated alike in measuring literacy. No differential weightage is given to the people, say with no formal education but are just literate and the people with very high levels of education. It considers all people equal, whether they have mere literacy or very high level of education. Hence, one might look at the distribution of population by educational levels.

Census publications provide data on the distribution of population by educational levels. However, 1991 Census data on distribution of population by educational levels are not yet available. NSSO made a few estimates for 1986-87. But the national survey of the IIPS [1995] provides similar information for a more recent period, 1992-93, which is used here. Data are available separately for males and females and for the total population and by states. These are given in Table A.1 in the Appendix.

Apart from the extent of illiteracy, these data present an idea of the educational levels of the

population and the extent of variation between several states. In general, the distribution of population is skewed in favour of lower levels of education. The higher educated population constitutes a very small fraction of the total population. It is only in Delhi the higher educated (above high school level) population constitutes a double digit: 14 per cent in 1992-93. On the other side, in Rajasthan it constitutes less than 3 per cent. In case of women, the corresponding figure is less than 1.5 per cent. Primary school completers among the adult population form in Rajasthan 12 per cent and in Bihar 10.4 per cent only of the total population. In Rajasthan, Bihar, Orissa, Madhya Pradesh and Uttar Pradesh more than 65 per cent of the population had not completed even primary education. In Rajasthan and Bihar not even 20 per cent of the women had completed primary education. The distribution of population can be summed up statistically in terms of a single measure, familiarly known as mean years of schooling (as defined earlier; see Note 2).

Mean Years of Schooling

The data given in Table A.1 in the Appendix on distribution of population by educational levels for 1992-93 are used here to estimate the mean years of schooling of population. In India, the duration of each level of education is not the same in all states. Primary education in many states is of five years duration, but in some states it is only of four years duration; similarly upper primary education in some states is of seven years duration, while in many states it is of eight years duration, etc. Hence, the duration of different levels of education (YRS_j in the Equation in Note 2) is defined for each state separately, based on MHRD[10] [1993] data. For comparative purposes, corresponding estimates of mean years of schooling of population made earlier on the basis of 1981 Census [Tilak, 1994, Pp. 243-54] are used here. Both sets of estimates are given in Table 11. However, the results may be compared with caution, since the Census data and the IIPS survey data may not be strictly comparable.

Table 11. Mean Years of Schooling of Population

	(1)	1992-93 (2)	1981 (3)	Improvement (4)
1.	Delhi	6.302	5.07	1.2
2.	Nagaland	5.683	2.64	3.0
3.	Manipur	5.283	2.78	2.5
4.	Goa	5.279	3.54	1.7
5.	Kerala	5.115	4.07	1.0
6.	Mizoram	4.859	2.95	1.9
7.	Gujarat	4.621	2.87	1.8
8.	Tamil Nadu	4.469	2.98	1.5
9.	Himachal Pradesh	4.427	2.69	1.7
10.	Tripura	4.405	2.47	1.9
11.	Punjab	4.209	2.84	1.4
12.	West Bengal	4.153	1.81	2.3
13.	Haryana	4.091	2.38	1.7
14.	Maharashtra	4.027	2.92	1.1
15.	Meghalaya	3.483	2.25	1.2
16.	Karnataka	3.411	2.37	1.0
17.	Andhra Pradesh	3.379	1.95	1.4
18.	Orissa	3.314	2.02	1.3
19.	Uttar Pradesh	3.301	2.47	0.8
20.	Assam	3.236		
21.	Madhya Pradesh	3.215	1.82	1.4
22.	Arunachal Pradesh	3.153	1.27	1.9
23.	Bihar	3.081	1.77	1.3
24.	Rajasthan	2.826	1.56	1.3
25.	Jammu	4.472	1.89	2.6
	C.o.V.	0.2163	0.3186	-0.1

Note: Jammu includes only the Jammu region of Jammu and Kashmir.
Source: Based on IIPS, 1995; and Tilak, 1994, Pp. 243-54.

The mean years of schooling is estimated to be 3.8 years for all-India in 1992-93, compared to 2.35 in 1981, thus registering a 60 per cent increase during the 12 years, as already shown in Table 6. The increase is relatively higher in rural areas than in urban areas, though, in absolute values, the mean years of schooling in urban areas is nearly double the same in rural areas in 1992-93.

The states are grouped into three categories as 'advanced states', 'average states' and 'backward states' based on the mean years of schooling in 1992-93 (Table 12). While one does not find a systematic correspondence between the states ranked in terms of mean years of schooling and based on literacy, we do find quite a few similarities: Rajasthan, Bihar, Madhya Pradesh, Uttar Pradesh, Orissa and Andhra Pradesh figure in the list of backward states, while Kerala and Delhi figure in the advanced states, just as in case of classification of states based on literacy. But for this, there are many differences. Secondly, significant changes could also be noted in the rank order of many states between 1981 and 1992-93, though at the extreme levels, there is not much change, in the sense that Kerala, Bihar, and Rajasthan stay more or less at the same relative levels.

Table 12. States Grouped Based on Mean Years of Schooling

Advanced States (1)	Average States (2)	Backward States (3)
1992-93		
(Above 5)	(4-5)	(Below 4)
Delhi	Mizoram	Meghalaya
Nagaland	Gujarat	Karnataka
Manipur	Jammu	Andhra Pradesh
Goa	Tamil Nadu	Orissa
Kerala	Himachal Pradesh	Uttar Pradesh
	Tripura	Assam
	Punjab	Madhya Pradesh
	West Bengal	Arunachal Pradesh
	Haryana	Bihar
	Maharashtra	Rajasthan
1981		
(Above 3)	(2 - 3)	(Less than 2)
Delhi	Tamil Nadu	Andhra Pradesh
Kerala	Mizoram	Jammu
Goa	Maharashtra	Bihar
	Gujarat	Rajasthan
	Punjab	Arunachal Pradesh
	Manipur	West Bengal
	Himachal Pradesh	Madhya Pradesh
	Nagaland	
	Tripura	
	Uttar Pradesh	
	Haryana	
	Karnataka	
	Meghalaya	
	Orissa	

Gender differences were also marked in the mean years of schooling (Table 13). In general, men have 73 per cent higher mean years of schooling than women in 1992-93. In 1981, the difference was more than double in favour of males. In this sense, gender differences have declined during this period. Among different states, the coefficient of discrimination[11] is maximum in Rajasthan, Bihar and Uttar Pradesh and it is minimum in Kerala. The relative position of these states did not change even with respect to gender discrimination between 1981 and 1992-93. However, the degree of discrimination seems to have reduced more in Bihar, Uttar Pradesh and Rajasthan than in other states (except in Arunachal Pradesh).

Table 13. Mean Years of Schooling of Population, by Gender

		1992-93			1981			Change in the Coef. of Discri.
		Male	Female	Coef. of Discri.	Male	Female	Coef. of Discri.	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Kerala	5.353	4.890	0.0947	4.40	3.75	0.1733	-0.08
2.	Nagaland	5.988	5.261	0.1382	3.23	1.96	0.6480	-0.51
3.	Mizoram	5.176	4.537	0.1408	4.48	2.79	0.6057	-0.46
4.	Meghalaya	3.785	3.165	0.1959	2.59	1.89	0.3704	-0.17
5.	Delhi	6.962	5.510	0.2635	5.76	4.22	0.3649	-0.10
6.	Goa	5.956	4.616	0.2903	4.22	2.84	0.4859	-0.20
7.	Punjab	4.759	3.603	0.3208	3.38	2.22	0.5225	-0.20
8.	Tripura	5.102	3.734	0.3664	3.13	1.78	0.7584	-0.39
9.	Manipur	6.197	4.389	0.4119	3.71	1.83	1.0273	-0.62
10.	Tamil Nadu	5.327	3.640	0.4635	3.81	2.13	0.7887	-0.33
11.	Assam	3.865	2.583	0.4963				
12.	Himachal Pradesh	5.388	3.538	0.5229	3.54	1.82	0.9451	-0.42
13.	West Bengal	5.004	3.227	0.5507	3.43	1.85	0.8541	-0.30
14.	Gujarat	5.587	3.592	0.5554	3.65	2.03	0.7980	-0.24
15.	Maharashtra	4.921	3.099	0.5879	3.71	1.83	1.0273	-0.44
16.	Arunachal Pradesh	3.892	2.407	0.6170	1.81	0.65	1.7846	-1.17
17.	Karnataka	4.221	2.585	0.6329	3.10	1.61	0.9255	-0.29
18.	Andhra Pradesh	4.283	2.477	0.7291	2.65	1.22	1.1721	-0.44
19.	Haryana	5.127	2.910	0.7619	3.24	1.39	1.3309	-0.57
20.	Orissa	4.260	2.332	0.8268	2.86	1.16	1.4655	-0.64
21.	Madhya Pradesh	4.254	2.058	1.0671	2.61	0.99	1.6364	-0.57
22.	Uttar Pradesh	4.501	2.055	1.1903	2.64	0.87	2.0345	-0.84
23.	Bihar	4.344	1.807	1.4040	2.67	0.82	2.2561	-0.85
24.	Rajasthan	3.983	1.529	1.6050	2.35	0.70	2.3571	-0.75
	C.o.V.	0.162	0.321	0.6420	.249	0.486	60.550	-0.567

Source: Based on IIPS, 1995, for 1992-93; Tilak, 1994, Pp. 243-54 for 1981.

Index of Education

UNDP [1992] has developed a measure that integrates literacy and mean years of schooling, the two most important indicators of status of human capital. The index of education (IOE) is a weighted measure of literacy and mean years of schooling of population.[12] It is estimated as follows:

$$IOE_i = 0.6666 * (LIT_i) + 0.3333 * (SCH_i)$$

where IOE_i: the Index of education of the i-th state; LIT_i: Literacy of the i-th state; and SCH_i: Mean years of schooling of the population of the i-th state.

Based on literacy in 1981 and 1991, and mean years of schooling estimated for 1981 and 1992-93, the index of education has been estimated by states in India for 1981 and 1991/92-93, as shown graphically in Figure 1. Since data on literacy are available and the mean years of schooling of the population could be estimated separately for males and females and for the whole population, the index of education is also estimated separately for males and females. The unavailability of data, on distribution of population by level of education by rural and urban regions, for the later period constrained us to examine the rural-urban disparities. The estimates on index of education are given in Table 14. In 1991/92-93 the index of education for all-India is estimated to be 36.1. The value of the index ranges between 27 for Rajasthan and Bihar, and 62 for Kerala, the national average being 36.1.

Table 14. Index of Education in India, by States

		1981			1991/1992-93		
	(1)	Male (2)	Female (3)	Total (4)	Male (5)	Female (6)	Total (7)
1.	Kerala	59.98	51.71	55.76	64.19	59.04	61.57
2.	Mizoram	54.42	46.69	50.51	58.79	53.91	56.46
3.	Goa	52.10	37.74	45.01	57.74	46.26	52.09
4.	Delhi	54.80	43.16	49.67	56.99	46.49	52.29
5.	Maharashtra	47.69	27.96	38.21	52.68	35.91	44.58
6.	Himachal Pradesh	44.05	25.77	35.03	52.03	35.93	44.04
7.	Tamil Nadu	46.66	27.68	37.27	50.94	35.43	43.26
8.	Nagaland	40.15	27.59	34.42	47.07	38.25	42.99
9.	Gujarat	44.66	26.33	35.78	50.61	33.62	42.40
10.	Tripura	42.06	25.95	34.25	48.75	34.34	41.76
11.	Manipur	44.02	23.73	34.05	49.81	33.19	41.68
12.	Punjab	38.18	32.87	27.43	45.36	34.80	40.41
13.	West Bengal	41.12	24.67	33.05	46.87	32.11	39.85
14.	Karnataka	40.21	22.66	31.61	46.24	30.42	38.49
15.	Haryana	40.11	18.43	30.06	47.77	27.95	38.59
16.	Assam				42.53	29.54	36.34
17.	Meghalaya	31.98	25.42	28.80	36.67	30.95	33.89
18.	Orissa	38.60	17.15	28.00	43.48	23.89	33.83
19.	Madhya Pradesh	33.17	13.00	23.44	40.36	19.92	30.54
20.	Andhra Pradesh	32.12	16.52	24.43	38.18	22.64	30.52
21.	Uttar Pradesh	32.53	11.76	23.07	38.65	17.56	28.83
22.	Arunachal Pradesh	24.03	9.57	17.46	35.59	20.59	28.77
23.	Rajasthan	30.64	9.57	20.60	37.98	14.13	26.64
24.	Bihar	31.97	11.29	21.97	36.44	15.86	26.68
	All-India	38.64	20.42	29.91	44.33	22.44	36.06
	C.o.V.	0.212	0.450	0.294	0.163	0.345	0.228

Based on the index of education in 1991/92-93, the several states are grouped arbitrarily into three categories (Table 15): 'better performers', 'average performers' and 'poor performers'. The better performing states are those that have an index whose value is above 50; the average performers are those whose index is in the range of 35 and 50 (the upper limit is actually 45, as there is no state with the index being above 45 and less than 50); and if the value of the index is less than 35, the corresponding states are classified as poor performers. Of the 24 states and union territories, on which the estimates of index of education have been presented in Table 14, as many as eight have an index value of education which is below the national average. It is only in four states, viz., Kerala, Mizoram, Delhi and Goa, where the level of education development is fairly high. In the remaining 12 states the value of the index ranges between 36 and 45.[13]

The eight states that figure at the bottom in the index of education (below the national average) in 1991/92-93, viz., Meghalaya, Orissa, Andhra Pradesh, Madhya Pradesh, Uttar Pradesh, Rajasthan, Bihar and Arunachal Pradesh, were at the bottom as per the index in 1981 as well (in 1981 Punjab was also in the bottom group); so is the case with the top four states, though there is a minor change in the rank order among the several states within each group.[14]

All the states have registered a significant improvement in their performance between 1981 and 1991/92-93 (Table 16). But the gains in performance are not uniform across different

states. It seems that the increase has no relation to the base values, i.e., the value of the index of education in 1981. It is only Punjab that could move from the bottom group in 1981 to the group of medium level states in 1991, the maximum gain being 13 per cent points, followed by Arunachal Pradesh with 11 per cent points. On the whole, inter-state disparities seem to have only marginally declined, as the coefficients of variation suggest.

Table 15: States Ranked based on Index of Education in 1991/1992-93

Better Performers (1)	Average Performers (2)	Poor Performers (3)
Kerala	Maharashtra	Meghalaya
Mizoram	Himachal Pradesh	Orissa
Delhi	Tamil Nadu	Madhya Pradesh
Goa	Nagaland	Andhra Pradesh
	Gujarat	Uttar Pradesh
	Tripura	Arunachal Pradesh
	Manipur	Bihar
	Punjab	Rajasthan
	West Bengal	
	Haryana	
	Karnataka	
	Assam	

Table 16. Improvement in the Index of Education in India (1992-93 minus 1981)

	(1)	Male (2)	Female (3)	Total (4)
1.	Kerala	4.2	7.3	5.8
2.	Mizoram	4.4	7.2	5.9
3.	Goa	5.6	8.5	7.1
4.	Delhi	2.2	3.3	2.6
5.	Maharashtra	5.0	7.9	6.4
6.	Himachal Pradesh	8.0	10.2	9.0
7.	Tamil Nadu	4.3	7.8	6.0
8.	Nagaland	6.9	10.7	8.6
9.	Gujarat	5.9	7.3	6.6
10.	Tripura	6.7	8.4	7.5
11.	Manipur	5.8	9.5	7.6
12.	Punjab	7.2	1.9	13.0
13.	West Bengal	5.8	7.4	6.8
14.	Karnataka	6.0	7.8	6.9
15.	Haryana	7.7	9.5	8.5
16.	Meghalaya	4.7	5.5	5.1
17.	Orissa	4.9	6.7	5.8
18.	Madhya Pradesh	7.2	6.9	7.1
19.	Andhra Pradesh	6.1	6.1	6.1
20.	Uttar Pradesh	6.1	5.8	5.8
21.	Arunachal Pradesh	11.6	11.0	11.3
22.	Rajasthan	7.3	4.6	6.0
23.	Bihar	4.5	4.6	4.7
	All-India	5.7	2.0	6.1

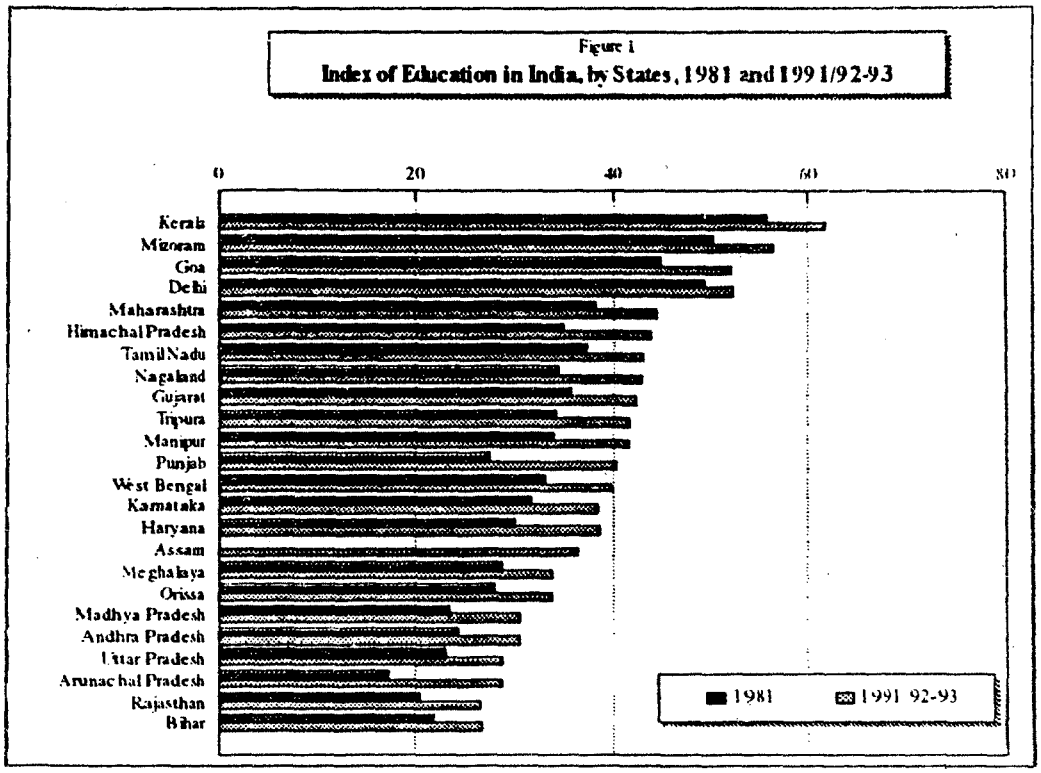
Source: Based on Table 14.

States are classified in Table 17 into three groups based on the level of improvement in their performance in 1991/92-93 over 1981. The improvement is modest and less than national average in not only educationally advanced states like Kerala and Delhi, as expected, but also in four of the eight educationally backward states that we have identified above, viz., Bihar, Meghalaya, Uttar Pradesh and Orissa. In Rajasthan and Andhra Pradesh, the improvement is just about the same as at all-India level. Though these six states seem to have made impressive improvement, it should be noted that these states are still at the bottom with respect to absolute levels of education development. The other two states, viz., Arunachal Pradesh and Madhya Pradesh have registered a significant improvement. That improvement in advanced states such as Kerala, Delhi and Mizoram is small need not be a matter of serious concern.

Table 17. States Classified by the Extent of Improvement in the Index of Education (1991/92-93 over 1981)

High Improvement (Above 7 Per cent Points) (1)	Modest Improvement (6-7 Per cent Points) (2)	Least Improvement (Less than 6 Per cent Points) (3)
Punjab	Karnataka	Mizoram
Arunachal Pradesh	West Bengal	Orissa
Himachal Pradesh	Gujarat	Kerala
Nagaland	Maharashtra	Uttar Pradesh
Haryana	Andhra Pradesh	Meghalaya
Manipur	Rajasthan	Bihar
Tripura	Tamil Nadu	Delhi
Madhya Pradesh		
Goa		

Source: Based on Table 16.



Gender Discrimination in Education: The level of education development is not only uneven among several states, but disparities by gender are also very high. For example in Rajasthan, Bihar, Uttar Pradesh and Madhya Pradesh the index of education among females is less than half that of the males in 1991. In Rajasthan the index for the females was less than one-third of the index of the males in 1981 (Table 14). On the basis of the coefficient of discrimination given in Table 18, the several states are grouped into four categories in Table 19. There is a close correspondence between the level of education development and level of gender discrimination in education development. For instance the index of gender discrimination is the least in Kerala, Mizoram, Delhi, etc., and the highest in Rajasthan, Bihar, Uttar Pradesh and Madhya Pradesh. Gender disparities are also extremely high in those very states that are grouped as educationally backward states, viz., Madhya Pradesh, Uttar Pradesh, Bihar and Rajasthan. In all these states the value of the coefficient of discrimination is above 1.0, implying that the level of education of females is less than 50 per cent of the level of education of men. In other states such, as Andhra Pradesh, Arunachal Pradesh and Orissa also, the discrimination is high. In fact, five of the educationally backward states are those that figure at the top of the list of states in case of gender discrimination. However, gender disparity in the index of education in Haryana, an educationally average performer, is also high!

Table 18. Coefficient of Gender Discrimination in Education in India

		Coefficient		Change in the Coefficient
	(1)	1981 (2)	1991/92-93 (3)	(4)
1.	Kerala	0.160	0.087	-0.073
2.	Mizoram	0.166	0.091	-0.075
3.	Meghalaya	0.258	0.185	-0.073
4.	Delhi	0.270	0.226	-0.044
5.	Nagaland	0.455	0.231	-0.224
6.	Goa	0.380	0.248	-0.132
7.	Punjab	0.162	0.303	0.141
8.	Tripura	0.621	0.420	-0.201
9.	Tamil Nadu	0.686	0.438	-0.248
10.	Assam		0.440	
11.	Himachal Pradesh	0.710	0.448	-0.261
12.	West Bengal	0.666	0.460	-0.207
13.	Maharashtra	0.706	0.467	-0.239
14.	Manipur	0.855	0.501	-0.354
15.	Gujarat	0.696	0.505	-0.191
16.	Karnataka	0.774	0.520	-0.254
17.	Andhra Pradesh	0.944	0.687	-0.258
18.	Haryana	1.177	0.709	-0.467
19.	Arunachal Pradesh	1.511	0.728	-0.783
20.	Orissa	1.250	0.819	-0.431
21.	Madhya Pradesh	1.551	1.026	-0.524
22.	Uttar Pradesh	1.767	1.201	-0.566
23.	Bihar	1.831	1.297	-0.534
24.	Rajasthan	2.202	1.687	-0.515
	All-India	0.893	0.976	0.083

Table 19. States Classified on the Basis of Index of Gender Discrimination in the Index of Education 1991/92-93

Low Degree of Discrimination (Less than 0.3) (1)	Moderate Level of Discrimination (Above 0.3 and Below 0.65) (2)	High Degree of Discrimination (Above 0.65 and below 1.0) (3)	Very High Degree of Discrimination (Above 1.0) (4)
Kerala	Punjab	Andhra Pradesh	Madhya Pradesh
Mizoram	Tripura	Haryana	Uttar Pradesh
Meghalaya	Tamil Nadu	Arunachal Pradesh	Bihar
Delhi	Assam	Orissa	Rajasthan
Nagaland	Himachal Pradesh		
Goa	West Bengal		
	Maharashtra		
	Manipur		
	Gujarat		
	Karnataka		

Source: Based on Table 18.

Even though gender discrimination has decreased in 1991/92-93 from the level of discrimination in 1981 in every state except Punjab, the relative position of the states remained mostly unaltered.[15] In Punjab, the coefficient of discrimination has marginally increased, even though the absolute level of the coefficient is not high. Among the states where the relative rank position worsened, Gujarat and West Bengal are important.

Enrolment/Attendance Rate

So far the discussion is concentrated on the stock of human capital. Now, we shall briefly examine enrolment of children in schools, a flow variable. However, unfortunately data on enrolments in India are subject to serious problems. That there are wide differences between the data on enrolments provided by the MHRD and National Council of Educational Research and Training (NCERT) on the one hand, and by the Census, National Sample Survey Organisation (NSSO) and other surveys such as National Council of Applied Economic Research [NCAER, 1994] and International Institute for Population Sciences [IIPS, 1995] on the other, is well known.[16] The differences are accounted by two factors: (i) MHRD/NCERT figures refer to *gross* enrolment in schools, while NSSO/Census and other surveys refer to *net* enrolments, and (ii) fictitious enrolments are reported by MHRD/NCERT as against supposedly correct enrolments estimated by NSSO, Census, etc.[17] Earlier studies [e.g., Kurrien, 1983] have revealed that there is a 25-40 per cent difference between the two sets of enrolment figures in case of primary and elementary education, the figures of the MHRD being higher.[18] It is also important to note that Census/NSSO and other surveys fail to make any distinction between 'enrolment' and 'attendance', while MHRD/NCERT take note of it, but concentrate more on enrolments in the context of planning education in general.[19]

Among the several surveys, one of the most recent surveys that provides statistics on attendance rates, is the *National Family and Health Survey* [IIPS, 1995], though it did not provide all the details. In view of the unreliability of official statistics on enrolment, and given the general acceptance of the data provided by household surveys as more reliable than official estimates on enrolments, the data provided by the IIPS (1995), that provides estimates on attendance rates in schools by gender and by states in 1992-93, are used here.[20] The use of IIPS survey data restricts us not to make any temporal analysis. Secondly, the survey is confined to atten-

dance in primary plus upper primary levels. Hence, the analysis is also confined to elementary education.

According to the IIPS estimates given in Table 2, 75 per cent of the male children and 59 per cent of the female children in the age-group 6-14 were attending schools in 1992-93. The overall rate of attendance is 68 per cent (for boys and girls together).[21] Earlier, NSSO [1991] has provided more detailed estimates on enrolment, non-enrolment, etc. The data refer to 1986-87. According to the NSSO estimates, 7.3 crore children were found currently not attending schools. In fact, more than 6 crore children never enrolled in any school.

According to the IIPS survey, half the children in the age-group 6-14 in Bihar were not in the schools; next comes Rajasthan, followed by Uttar Pradesh and Madhya Pradesh (Table 20). On the other side of the list, Kerala is on the top with 95 per cent of the children attending schools. Inter-state variations are indeed very large, as shown in Figure 2. No state has been found to have attained universal enrolment of 100 per cent children in elementary education. Probably, Kerala, Goa, Himachal Pradesh and Mizoram are the only four states that may be able to accomplish the task by the end of the Ninth Five Year Plan. Others might take quite some time. In states, such as Bihar, Rajasthan, Uttar Pradesh, etc., it may take quite a few decades. Further more, from among the poor performers with respect to index of education (Table 15), the three states of Andhra Pradesh, Orissa and Arunachal Pradesh follow Uttar Pradesh and Madhya Pradesh.

Inter-state variations in attendance rate among girls is higher than in case of boys. The coefficient of variation in case of girls is 0.22, and in case of boys it is 0.11. With respect to gender disparities (measured with the help of Sopher's index) also, Rajasthan, Bihar and Uttar Pradesh (in the same order) are at the top; such disparities are nil in Kerala (Figure 3); and in Meghalaya rate of attendance among girls is higher than among boys. Thus, the problem is severe in case of girls, and it is too severe in case of girls in rural areas. For example, in Bihar and Rajasthan the attendance rates among girls in rural areas is only 33 per cent, while in urban areas, the corresponding rate is about double the same. In almost every state and in case of both girls and boys, the attendance rates in rural areas are less than those in urban areas.

Based on attendance rates of all the children, and then by gender and region, the several states are classified into three categories in Table 21: states with low, medium and high attendance rates. But for marginal deviations in relative rank orders, a few states figure at the bottom of the list whether the reference is to boys' attendance or girls' attendance, or attendance in rural or urban areas, or attendance of all children. However, it can also be noticed that if 70 per cent rate is considered as the level of attendance for a state to be categorised as medium/high attendance rate state, all the states belong to the group of medium or high attendance rate states, if we concentrate on urban areas only. In case of classification based on attendance in rural areas, as many as nine states should be regarded as educationally backward; and if the basis of classification is changed to girls' enrolment, 11 states are backward. Thus, girls' education may continue to haunt the educational planners as the most serious problem.

Table 20. Attendance in Schools of Child Population (6-14), 1992-93

		Attendance Rate (Per cent)				Index of Deprivation		
		Male	Female	Total	Index of Gender Disparity*	Male	Female	Total
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Rural + Urban							
1.	Kerala	94.7	94.8	94.8	-0.0009	0.146	0.084	0.107
2.	Mizoram	92.8	88.5	90.7	0.0377	0.198	0.186	0.191
3.	Goa	94.7	92.5	93.5	0.0192	0.146	0.122	0.133
4.	Delhi	87.5	86.3	86.9	0.0106	0.343	0.222	0.269
5.	Maharashtra	86.2	76.6	81.5	0.0865	0.379	0.379	0.380
6.	Himachal Pradesh	93.8	87.6	90.8	0.0543	0.170	0.201	0.189
7.	Tamil Nadu	86.0	78.7	82.4	0.0655	0.385	0.345	0.361
8.	Nagaland	90.1	89.0	89.6	0.0097	0.272	0.178	0.214
9.	Gujarat	82.4	68.4	75.7	0.1297	0.484	0.512	0.499
10.	Tripura	81.9	76.7	79.4	0.0472	0.497	0.378	0.423
11.	Punjab	83.4	77.8	80.8	0.0506	0.456	0.360	0.394
12.	West Bengal	72.5	62.9	67.7	0.0932	0.755	0.601	0.663
13.	Karnataka	76.4	64.4	70.5	0.1144	0.648	0.577	0.606
14.	Haryana	87.2	74.7	81.3	0.1128	0.352	0.410	0.384
15.	Assam	74.0	66.0	70.1	0.0764	0.714	0.551	0.614
16.	Meghalaya	74.3	75.7	75.0	-0.0130	0.706	0.394	0.513
17.	Orissa	76.8	62.0	69.6	0.1422	0.637	0.616	0.624
18.	Madhya Pradesh	69.0	54.8	62.3	0.1448	0.852	0.733	0.774
19.	Andhra Pradesh	71.8	54.8	63.3	0.1714	0.775	0.733	0.754
20.	Uttar Pradesh	72.8	48.2	61.3	0.2559	0.747	0.840	0.795
21.	Arunachal Pradesh	76.8	65.3	71.0	0.1092	0.637	0.562	0.595
22.	Rajasthan	74.2	40.6	58.8	0.3647	0.709	0.963	0.846
23.	Bihar	63.6	38.3	51.3	0.2942	1.000	1.000	1.000
24.	Manipur	93.4	86.8	90.2	0.0579	0.181	0.214	0.201
25.	Jammu	91.3	79.6	85.7	0.1040	0.239	0.331	0.294
	C.o.V.	0.109	0.216	0.153				
	Rural							
1.	Kerala	94.8	94.3	94.8	0.0044	0.129	0.086	0.098
2.	Mizoram	89.5	84.2	86.9	0.0469	0.261	0.238	0.247
3.	Goa	94.3	93.0	93.7	0.0113	0.142	0.105	0.119
4.	Delhi	89.9	82.8	86.9	0.0629	0.251	0.259	0.247
5.	Maharashtra	83.3	69.2	76.4	0.1301	0.415	0.463	0.444
6.	Himachal Pradesh	93.6	87.1	90.4	0.0570	0.159	0.194	0.181
7.	Tamil Nadu	85.3	74.8	80.1	0.0951	0.366	0.379	0.375
8.	Nagaland	88.0	86.8	87.4	0.0106	0.299	0.198	0.237
9.	Gujarat	78.8	61.7	70.5	0.1636	0.527	0.576	0.556
10.	Tripura	81.0	74.0	77.6	0.0641	0.473	0.391	0.422
11.	Punjab	81.1	73.1	77.4	0.0734	0.470	0.405	0.426
12.	West Bengal	68.6	60.1	64.2	0.0847	0.781	0.600	0.674
13.	Karnataka	72.8	57.3	65.3	0.1539	0.677	0.642	0.653
14.	Haryana	85.9	69.5	78.2	0.1503	0.351	0.459	0.411
15.	Assam	73.4	65.2	69.5	0.0787	0.662	0.523	0.574

(Contd.)

Table 20. *(Concld.)*

		Attendance Rate (Per cent)				Index of Deprivation		
		Male	Female	Total	Index of Gender Disparity*	Male	Female	Total
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
16.	Meghalaya	69.9	71.6	70.6	-0.0161	0.749	0.427	0.554
17.	Orissa	74.7	58.9	67.0	0.1548	0.629	0.618	0.621
18.	Madhya Pradesh	64.3	46.3	55.9	0.1967	0.888	0.808	0.831
19.	Andhra Pradesh	66.8	46.6	56.8	0.2177	0.826	0.803	0.814
20.	Uttar Pradesh	71.7	42.6	58.1	0.3149	0.704	0.863	0.789
21.	Arunachal Pradesh	76.1	64.6	70.3	0.1097	0.595	0.532	0.559
22.	Rajasthan	72.0	33.5	54.4	0.4465	0.697	1.000	0.859
23.	Bihar	59.8	33.6	46.9	0.3248	1.000	0.998	1.000
24.	Manipur	92.1	83.9	88.1	0.0723	0.197	0.242	0.224
25.	Jammu	90.7	77.0	84.1	0.1224	0.231	0.346	0.299
	C.o.V.	0.126	0.251	0.176				
	Urban							
1.	Kerala	94.5	96.3	95.4	-0.0157	0.240	0.115	0.174
2.	Mizoram	96.5	93.0	94.7	0.0305	0.153	0.217	0.200
3.	Goa	95.0	91.8	93.4	0.0279	0.218	0.255	0.249
4.	Delhi	87.3	86.6	87.0	0.0062	0.555	0.416	0.491
5.	Maharashtra	90.7	87.8	89.3	0.0255	0.406	0.379	0.404
6.	Himachal Pradesh	96.4	93.8	95.1	0.0226	0.157	0.193	0.185
7.	Tamil Nadu	87.3	86.4	86.8	0.0080	0.555	0.422	0.498
8.	Nagaland	96.7	97.3	97.0	-0.0052	0.144	0.084	0.113
9.	Gujarat	89.2	81.8	85.7	0.0657	0.472	0.565	0.540
10.	Tripura	86.2	89.9	88.0	-0.0326	0.603	0.314	0.453
11.	Punjab	88.9	89.0	89.0	-0.0009	0.485	0.342	0.415
12.	West Bengal	83.3	71.8	77.9	0.1053	0.729	0.876	0.834
13.	Karnataka	84.6	80.1	82.4	0.0404	0.672	0.618	0.664
14.	Haryana	90.8	88.8	89.8	0.0176	0.402	0.348	0.385
15.	Assam	79.4	72.6	76.1	0.0627	0.900	0.851	0.902
16.	Meghalaya	93.8	92.5	93.1	0.0113	0.271	0.233	0.260
17.	Orissa	88.2	78.6	83.5	0.0858	0.515	0.665	0.623
18.	Madhya Pradesh	84.7	81.6	83.2	0.0277	0.668	0.571	0.634
19.	Andhra Pradesh	85.0	76.3	80.6	0.0786	0.655	0.736	0.732
20.	Uttar Pradesh	77.1	69.5	73.5	0.0711	1.000	0.947	1.000
21.	Arunachal Pradesh	82.4	71.1	76.7	0.1039	0.769	0.898	0.879
22.	Rajasthan	84.2	71.9	78.6	0.1124	0.690	0.873	0.808
23.	Bihar	84.3	67.8	76.7	0.1525	0.686	1.000	0.879
24.	Manipur	96.2	93.5	94.9	0.0235	0.166	0.202	0.192
25.	Jammu	95.2	96.3	95.7	-0.0096	0.210	0.115	0.162
	C.o.V.	0.063	0.111	0.083				

Notes: Jammu includes only the Jammu region of Jammu and Kashmir State.
* Sopher's Index
Source: Based on IIPS, 1995.

Figure 2

Rate of School Attendacne of Children (6-14), 1992-93 (%)

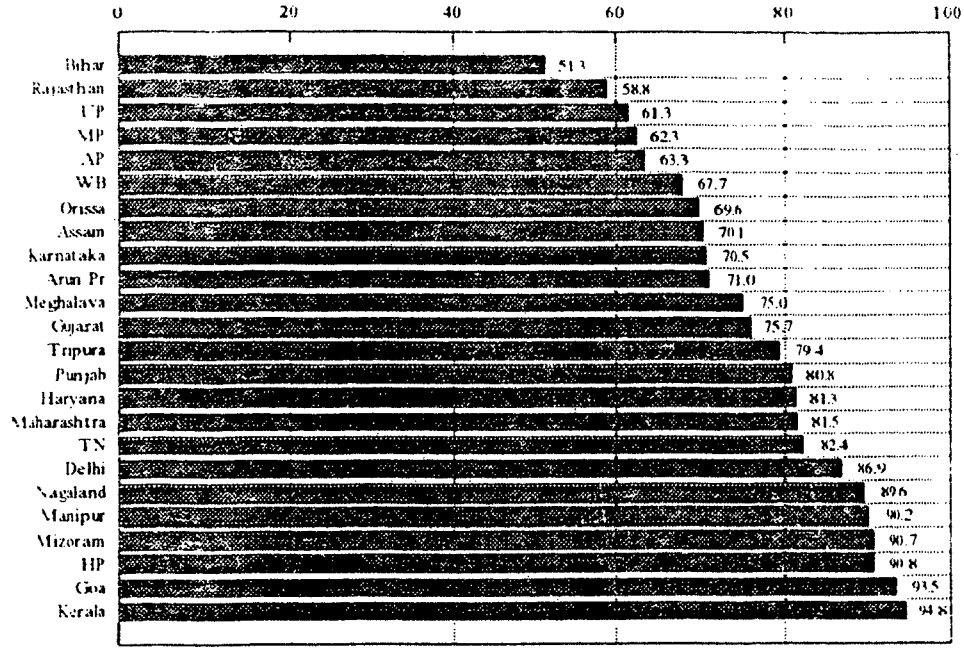


Figure 3

Gender Differences in School Attendance in Selected States, 1992-93

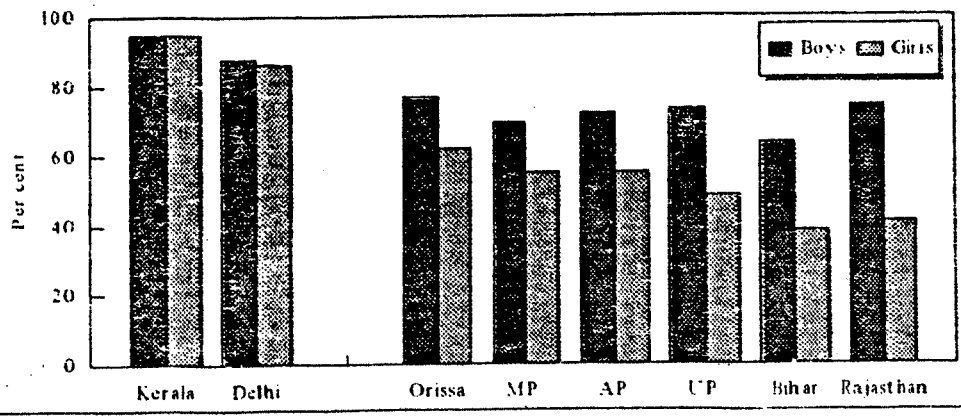


Table 21. States Classified by Rate of Attendance of Children (Age-Group: 6-14) in Schools, 1992-93

High Attendance (> 85 per cent) (1)	Medium Attendance (70-85 per cent) (2)	Low Attendance (< 70 per cent) (3)
All		
Kerala, Mizoram, Goa, Manipur, Delhi, Himachal Pradesh, Nagaland, Jammu	Tamil Nadu, Maharashtra, Punjab, Haryana, Tripura, Gujarat, Meghalaya, Assam, Arunachal Pradesh, Karnataka,	West Bengal, Orissa, Madhya Pradesh , Andhra Pradesh, Uttar Pradesh, Rajasthan, Bihar
Boys		
Kerala, Goa, Himachal Pradesh, Manipur, Mizoram, Nagaland, Delhi, Haryana, Maharashtra, Tamil Nadu, Jammu	Punjab, Gujarat, Tripura, Arunachal Pradesh, Orissa, Karnataka, Meghalaya, Rajasthan, Assam, Uttar Pradesh, West Bengal, Andhra Pradesh	Madhya Pradesh, Bihar
Girls		
Kerala, Goa, Nagaland, Mizoram, Himachal Pradesh, Manipur, Delhi	Tamil Nadu, Punjab, Tripura, Maharashtra, Haryana, Meghalaya, Jammu	Gujarat, Assam, Arunachal Pradesh, Karnataka, West Bengal, Orissa, Andhra Pradesh, Madhya Pradesh, Uttar Pradesh, Rajasthan, Bihar
Rural		
Kerala, Goa, Himachal Pradesh, Manipur, Nagaland, Mizoram, Delhi,	Haryana, Tripura, Punjab, Maharashtra, Meghalaya, Gujarat, Arunachal Pradesh, Tamil Nadu, Jammu	Assam, Orissa, Karnataka, West Bengal, Uttar Pradesh, Andhra Pradesh, Madhya Pradesh, Rajasthan, Bihar
Urban		
Kerala, Himachal Pradesh, Manipur, Mizoram, Goa, Meghalaya, Nagaland, Haryana, Maharashtra, Punjab, Tripura, Delhi, Tamil Nadu, Gujarat, Jammu	Orissa, Madhya Pradesh, Karnataka, Andhra Pradesh, Rajasthan, West Bengal, Arunachal Pradesh, Bihar, Assam, Uttar Pradesh	

Source: Based on Table 20.

On the whole, there is close correlation between the ranking of the states based on stock of human capital, and on the basis of attendance rates. On the basis of analysis of attendance rates also, we find, more or less, the same states backward that were found in case of the index of education, viz., Bihar, Rajasthan, Uttar Pradesh, Andhra Pradesh, Madhya Pradesh, Orissa, etc., though the relative order is slightly different.

4. CORRELATES OF INDEX OF EDUCATION AND ATTENDANCE IN SCHOOLS

What are the factors that explain low levels of educational development or school attendance in some states and better performance of some other states? There are several factors. According to NSSO [1991], about a quarter of the children in the age-group 6-11 and as many as 70 per cent of the children in the age-group 12-14 not currently enrolled in schools were *economically active*, including actively participating in domestic chores. Looking at similar evidence, Weiner [1991] concluded that child labour had been one of the most important factors associated with the unaccomplishment of universal elementary education. While it may not be exactly correct to conclude, based on NSSO [1991] evidence, that economic factors are important in explaining non-enrolment,[22] such an interpretation may not be altogether wrong. Long ago the Education Commission [1966, p. 269] found that 65 per cent of the drop-outs were due to poverty. Recently, NCAER [1994] also found that economic factors were more important than any other factor in explaining non-enrolment and drop-outs in elementary education in several states in India.

Economic factors and lack of interest in education were found to be the two major reasons for non-enrolment of children in schools by the NSSO in the 35th round [Visaria, et al., 1993, Pp. 13-62]. According to the 42nd round of NSSO, more than 50 per cent of the non-enrolment of boys and about one-third among girls was due to economic factors; and lack of interest in schooling accounts on the whole for 30 per cent (Table 22).

Table 22. Percentage of Children (Age: 6 and above) Never Enrolled, by Reasons for Non- Enrolment, 1986-87

Reason for Non-Enrolment (1)	Boys (2)	Girls (3)	All (4)
Rural			
Economic Factors	50.0	32.6	39.6
Domestic Chores	1.3	9.9	6.4
No Schooling Facilities	9.9	10.5	10.3
Not interested	25.2	32.3	29.5
Urban			
Economic Factors	51.9	29.4	37.4
Domestic Chores	0.9	10.7	7.2
No Schooling Facilities	5.9	9.0	7.9
Not interested	23.5	32.9	29.6

Source: NSSO, 1991; see Tilak, 1996a, p. 280.

Thus, the quantity and quality of schooling facilities that determine the interest or lack of it on the part of children/parents in education, which can be referred to as supply side factors and socio-economic factors such as poverty and income levels, which can be referred to as demand side factors are the two important sets of factors that mutually interact with each other and influence the level of education of the population. Specifically, we may examine how far the index of education or the rate of attendance in schools, that we have discussed above, is influenced by school-related factors and by socio-economic factors. For this purpose, a select few factors are identified. Though coefficients of correlation do not explain any causal relationship between any two variables, they might nevertheless indicate the association between the two.[23]

School Related Factors

With respect to supply side factors, the following may be important:

Infrastructural Facilities: Provision of school facilities is critically important in the development of education. These facilities include schools, buildings, classrooms, furniture, equipment, learning material, and other facilities such as drinking water and toilet facilities, and so on. Earlier evidence [NCERT, 1991, 1998] has revealed that these facilities were very unevenly distributed in different states. According to the *Sixth All India Educational Survey* [NCERT, 1998], a sizeable number of schools in various states do not have even minimum facilities required to attract and retain the students in the schools. More than forty thousand primary schools and six thousand upper primary schools in the country were run in open space or in tents or in thatched huts in 1993. In Uttar Pradesh, for example, the number of classrooms available in 1986 was less than 70 per cent of the requirements. A good proportion of schools in the backward states did not have blackboards even. As high as 62 per cent of the primary schools/sections in Bihar did not have even blackboards; while in case of Kerala the corresponding proportion was only three per cent. On average, in India 38 per cent of the primary schools/sections did not have blackboards [NCERT, 1991].[24]

While a comprehensive index of infrastructural facilities may be necessary to examine the uneven distribution of these facilities and their relationship with the level of education development, in the absence of recent data, we may

look at only the number of schools available in different states. Number of primary schools per one lakh population has, in fact, decreased in India from 71.1 in 1980-81 to 63.5 in 1993-94. In other words, the spread of schools has not been commensurate with the growth in population. This seems to have happened in several states as shown in Table 23. The Table includes similar data for not only primary and upper primary schools, but also secondary schools and colleges. With respect to every level of education, the facilities are quite unevenly distributed between different states.

Table 23: Number of Schools in India, 1980-81 and 1993-94 (Schools Per One Lakh Population)

		1980-81					1993-94				
	(1)	Pry (2)	Up. Pry (3)	Sec (4)	Colleges* (5)	Total (6)	Pry (7)	Up. Pry (8)	Sec (9)	Colleges* (10)	Total (11)
1.	Andhra Pradesh	75.5	8.5	7.7	5.2	92.2	69.4	8.9	12.3	5.7	91.1
2.	Assam	120.4	23.2	11.0	7.3	155.4	120.7	28.1	15.2	9.7	165.0
3.	Bihar	72.8	15.6	4.6	4.2	93.4	57.6	14.5	4.5	6.1	77.2
4.	Gujarat	32.6	39.3	8.9	5.8	81.4	32.5	41.9	12.7	6.5	87.8
5.	Haryana	38.2	6.8	11.4	7.6	57.2	32.0	8.0	14.9	7.9	55.7
6.	Himachal Pradesh	142.3	24.1	15.5	6.3	182.6	137.9	19.5	21.1	8.2	179.3
7.	J and K	123.7	34.2	13.6	3.7	171.8	117.4	32.0	15.3	3.8	165.2
8.	Karnataka	61.4	33.2	7.2	6.8	102.5	49.5	35.2	12.5	13.0	98.5
9.	Kerala	27.1	10.7	7.8	5.0	46.1	22.1	9.6	8.6	5.7	40.9
10.	Madhya Pradesh	105.6	19.2	4.2	4.6	129.5	97.0	21.3	6.4	6.3	125.4
11.	Maharashtra	55.0	24.7	10.3	6.5	90.6	47.5	23.3	14.8	8.9	86.5
12.	Manipur	206.8	31.0	20.5	14.8	259.7	155.0	32.9	26.1	14.6	215.5
13.	Meghalaya	273.2	29.2	14.2	9.7	317.6	216.0	37.5	19.2	11.9	273.9
14.	Nagaland	147.6	39.1	14.3	9.0	201.9	102.0	30.3	17.5	11.6	150.9
15.	Orissa	123.6	27.7	9.3	3.5	161.0	124.4	35.5	16.0	12.9	177.2
16.	Punjab	73.7	8.9	12.9	9.6	96.6	58.2	6.7	13.3	8.2	79.0
17.	Rajasthan	65.6	15.2	7.2	3.6	88.4	69.3	20.2	9.3	3.6	99.2
18.	Sikkim	101.6	13.9	11.7	3.2	127.5	121.3	27.0	19.6	2.3	168.2
19.	Tamil Nadu	57.2	11.7	7.0	3.9	76.3	51.8	9.6	9.4	4.0	71.3
20.	Tripura	78.1	13.9	8.5	4.4	101.0	68.5	14.3	16.0	4.6	99.3
21.	Uttar Pr	64.0	12.1	4.7	3.5	81.1	53.4	10.4	4.5	2.9	68.6
22.	West Bengal	78.8	5.8	9.3	4.9	94.4	70.1	4.3	9.2	4.2	84.1
	All-India	71.1	17.0	7.6	5.0	96.1	63.5	17.3	9.8	6.2	91.2

Notes: (i) For full forms of abbreviations, see Table 5.
(ii) * Arts and Science Colleges per one million population.
Source: Based on *Selected Educational Statistics* (relevant years).

Does the number of schools have any relationship with the level of education in a state? Number of schools per ten lakh population (at any or all levels of education) is not found to have a significant relationship with the index of education, as the coefficients of correlation suggest. However, the rate of attendance in primary and upper primary schools is significantly related to number of secondary schools per ten lakh population (r: 0.6337). This suggests that the likelihood of continuing schooling beyond elementary level in future might influence the current level of demand for primary and upper primary education.[25]

Another indicator of the schooling facilities

available is percentage of habitations having primary/upper primary school, data on which are available for 1993 [NCERT, 1995] and they are given in Table 24. The range of variation is very high: only 21 per cent of the habitations have a primary school in Himachal Pradesh, while it is as high as 90.7 per cent in Gujarat. The variation with respect to upper primary schools is more severe. The coefficient of variation is 0.63 in case of upper primary schools, compared to 0.31 in case of primary schools. While the variable, viz., percentage of habitations having primary schools, is not significantly correlated with either the index of education or with the attendance rates, percentage of habitations having upper primary schools is significantly correlated with the index of education (r: 0.487) and with the rate of attendance in 1992-93 (r: 0.371).

Teachers: Provision of teachers is generally regarded as very crucial both for meaningful quantitative expansion and for improvement in quality in education. But even with respect to this, there are significant differences between several states and even between several schools within a given state. In 1986, as many as 29 per cent of the primary schools were single teacher schools; and 0.4 per cent of the schools did not have even a single teacher.[26]

Generally pupil-teacher ratio (number of pupils per teacher) is taken as an important variable to measure the adequacy and quality dimensions of school education. However, given the problem with enrolments,[27] an alternative variable like number of teachers per school may be appropriate in this context. Available data on this variable are given in Table 25. It appears that there are significant variations between different states. While, on average, there are three teachers in every primary school in India, in states like Bihar, Rajasthan, Orissa, Andhra Pradesh, Assam, etc., the corresponding figure is below the national average; while in Kerala it is the highest, 7.2 teachers per school. Even with respect to upper primary and secondary schools, similar inter-state variations can be noted.

Table 24. Percentage of Habitations Having Primary/ Upper Primary School Facilities, 1993

(1)	Primary (2)	Upper Primary (3)
1. Andhra Pradesh	69.2	12.2
2. Arunachal Pradesh	34.6	8.7
3. Assam	62.7	15.4
4. Bihar	51.2	11.9
5. Goa	76.7	24.6
6. Gujarat	90.7	49.3
7. Haryana	81.2	32.0
8. Himachal Pradesh	21.0	5.7
9. Jammu and Kashmir	58.5	15.1
10. Karnataka	62.4	25.1
11. Kerala	62.9	34.4
12. Madhya Pradesh	64.3	12.6
13. Maharashtra	54.2	20.9
14. Manipur	48.8	20.6
15. Meghalaya	57.7	11.4
16. Mizoram	87.9	56.2
17. Nagaland	85.6	21.6
18. Orissa	49.6	13.7
19. Punjab	86.8	23.6
20. Rajasthan	50.1	14.1
21. Sikkim	54.1	15.0
22. Tamil Nadu	62.0	14.8
23. Tripura	39.3	11.7
24. Uttar Pradesh	30.1	8.2
25. West Bengal	40.4	6.7
All-India	50.3	13.8

Source: Based on NCERT, 1995.

There is a significant positive relationship between number of teachers (per school) and the index of education. The coefficient of correlation was 0.80 in 1981; though it declined it was still high in the later years, 0.76. The attendance rates are also significantly related to the number of teachers, the coefficient of correlation being 0.568 (Table 27).[28]

Public Expenditure on Education: Among the other factors, the level of public expenditure on education is considered, which is expected to represent to a great extent, the availability of physical and human resources in schools in a summary form. The level of public expenditure on education could be measured in quite a few ways: as a proportion of state income (SDP), as

a proportion of the total government budget, and expenditure per capita. In addition, we have also considered, real growth in total and per capita expenditure on education. The available data are given in Table 26. While there is a stated goal of spending six per cent of national income (accordingly of SDP in each state), there are many states, where the actual level of spending is much below this target. Particularly in economically better off states, it is the lowest: 3.1 per cent in Punjab and Haryana and 3.3 per cent in Maharashtra (1993-94).[29] In fact, it was earlier [Tilak, 1988, Pp. 25-42] found that there was no significant relationship between the level of economic development of states (SDP per capita) and their level of spending on education (per cent of SDP). Even with respect to other indicators, there are similar significant variations. For example, while Punjab spent Rs 109 per capita on education (in 1992-93), many economically not so well off states spent higher amounts.

Table 25. Average Number of Teachers per School in India, 1980-81 and 1993-94

		1980-81				1993-94			
	(1)	Primary (2)	Middle (3)	Secy (4)	All (5)	Primary (6)	Middle (7)	Secy (8)	All (9)
1.	Andhra Pradesh	2.0	7.8	15.7	3.7	2.2	6.1	13.0	4.0
2.	Assam	2.2	5.3	9.7	3.4	2.7	6.4	13.1	4.3
3.	Bihar	2.2	7.2	11.0	3.5	2.2	7.3	11.2	3.7
4.	Gujarat	2.1	7.8	5.1	6.0	2.6	7.7	11.8	6.4
5.	Haryana	3.1	9.9	19.1	7.6	3.3	9.0	19.8	8.6
6.	Himachal Pr	2.5	5.1	9.8	3.8	0.7	5.1	12.0	2.5
7.	Jammu and	1.4	6.5	14.7	3.8	1.9	6.9	17.2	4.3
8.	Kashmir	1.5	6.1	8.2	3.7	2.1	5.5	9.6	4.3
9.	Karnataka	7.8	18.8	35.2	15.1	7.2	17.6	35.9	15.8
10.	Kerala	2.2	5.8	0.0	3.2	2.9	5.5	12.9	3.8
	Madhya Pradesh								
11.	Maharashtra	2.9	8.0	13.0	6.0	3.4	0.8	18.4	5.3
12.	Manipur	3.4	5.8	10.6	4.4	3.7	10.6	20.2	6.7
13.	Meghalaya	1.6	4.8	10.7	2.3	1.6	4.7	10.0	2.6
14.	Nagaland	4.8	9.3	15.3	6.4	4.6	10.0	19.8	7.5
15.	Orissa	2.5	3.3	9.2	3.0	2.5	3.3	8.8	3.3
16.	Punjab	3.9	7.0	13.9	6.1	3.9	6.3	18.7	6.6
17.	Rajasthan	2.1	8.4	9.9	4.3	2.5	7.8	15.5	4.8
18.	Sikkim	3.4	10.7	16.3	6.2	6.2	13.6	25.7	9.7
19.	Tamil Nadu	4.1	12.2	9.6	7.3	3.9	11.1	21.3	7.2
20.	Tripura	2.9	10.6	12.6	5.8	5.3	11.1	23.1	9.0
21.	Uttar Pradesh	3.5	5.1	21.6	4.8	3.4	6.2	15.0	4.6
22.	West Bengal	3.5	5.5	11.9	4.9	3.8	6.7	17.9	5.5
	All-India	2.8	7.1	12.7	4.7	3.0	6.9	15.9	5.1

Source: Based on *Selected Educational Statistics* (relevant years).

Table 26: Budget Expenditure on Education (Revenue Account)

		Per cent of SDP		Per cent of Total Budget		Rs Per Capita (in 1980-81 prices)*			Real Growth in Total Expenditure on Education (1980s)
		1985-86	1993-94	1985-86	1993-94	1984-85	1992-93	Growth (per cent)	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	Kerala	6.5	7.7	31.7	30.1	91.98	114.57	2.78	3.52
2.	Maharashtra	3.5	3.3	22.4	23.2	90.82	118.65	3.40	8.77
3.	Himachal Pradesh	7.2	8.0	18.2	20.8	114.04	180.70	5.92	8.59
4.	Tamil Nadu	4.8	4.7	27.4	24.9	77.50	118.31	5.43	8.03
5.	Gujarat	5.4	4.0	28.3	20.7	93.55	107.18	1.71	8.96
6.	Punjab	3.3	3.1	23.9	18.8	100.53	108.79	0.99	7.24
7.	West Bengal	3.5	3.5	25.8	25.8	53.14	71.43	3.77	7.29
8.	Karnataka	5.2	4.5	22.0	22.7	70.26	91.20	3.31	8.04+
9.	Haryana	3.3	3.1	22.3	15.7	89.07	107.73	2.41	9.86
10.	Assam	4.8	6.1	23.1	29.1	66.38	117.29	7.38	10.36+
11.	Orissa	4.7	5.7	22.2	23.6	49.82	79.60	6.03	8.31
12.	Madhya Pradesh	4.2	4.6	21.0	23.7	..	75.56	..	9.51
13.	Uttar Pradesh	3.3	4.2	21.8	21.3	49.50	71.03	4.62	9.97
14.	Andhra Pradesh	4.7	4.4	25.6	24.3	73.98	74.94	0.16	6.32-
15.	Rajasthan	4.9	5.7	26.4	22.9	58.37	94.15	6.16	9.05-
16.	Bihar	4.2	5.2	27.9	23.2	39.18	56.35	4.65	10.46
17.	J and K	6.7	5.0	19.4	13.9	..	84.72	..	7.59-
	*All-India***	4.6	4.2	24.0	13.2	66.27	101.19	5.43	8.33

Notes:* based on SDP deflators. ** includes centre, all states and union territories. Growth in 1980s refers to 1980-81 to the latest year for which data were available (mostly upto 1989-90); (+) upto 1991-92; (-) upto 1988-89. 1992-93 and earlier: actual; others as given in the source 1992-93 to 1994-95.
Source: Based on *Analysis of Budgeted Expenditure on Education* (various years); see Tilak [1994, Pp. 243-54; 1995a].

Table 27: Simple Coefficients of Correlation between

IOE81 and		*IOE91/92-93 and*		*ATTEND and*	
(1)	(2)	(3)	(4)	(5)	(6)
TRS81	0.8040	TRS94	0.7602	TRS94	0.5682
SecySCH81	0.2423	SecySCH94	0.2866	SECYSCH94	0.6337
per cent SDP86	0.4854	per cent SDP94	0.2828	PCEDEXPR93	0.8051
per cent BUD86	0.4003	per cent BUD94	0.2863	TOTEDEXGR	-0.5131
PCEDEXPR85	0.5376	PCEDEXPR93	0.5868	per cent SDP	0.2608
POVERTY78	-0.1547	POVERTY88	-0.3986	HABPRY	0.1491
		CHLDLAB-B91	0.3060	HABUPRY	0.3711
		CHLDLAB-G91	0.1117	CHLDLAB-B	0.0066
		SDP/PC93	0.3072	CHLDLAB-G	-0.0548
		HABPRY	0.1534	POVERTY88	-0.6637
		HABUPRY	0.4869	SDP/PC93	0.453

Note: See the adjacent table for notation of the variables.

Notation of the Variables Used

ATTEND93	Attendance Rate in Elementary Education 1992-93 (per cent)
CHLDLAB-B	Per cent of Full Time Male Child Workers as a Proportion of All Children, 1987-88
CHLDLAB-G	per cent of Full Time Female Child Workers as a Proportion of All Children, 1987-88
Coll81	Colleges per 10 Lakh Population 1981
Coll94	Colleges per 10 Lakh Population 1994
HABPRY	Per cent of Habitations having Primary Schools 1993
HABUPRY	Per cent of Habitations having Upper Primary Schools 1993
IOE81	Index of Education 1981
IOE91/93	Index of Education 1991/92-93
IOEGR	Change in IOE between 1991/92-93 and 1981
PCEDEXGR	Growth in per Capita Expenditure on Education (1984-85 to 1992-93) (per cent)
PCEDEXPR85	Real Per capita Expenditure on Education 1984-85 (Rs)
PCEDEXPR93	Real Per Capita Expenditure on Education 1992-93 (Rs)
per cent BUD86	Per cent of Budget allocated to Education 1985-86
per cent BUD94	Per cent of Budget allocated to Education 1993-94
per cent SDP86	Per cent of SDP allocated to Education 1985-86
per cent SDP94	Per cent of SDP allocated to Education 19993-94
POVERTY78	Poverty Ratio (1977-78) (per cent)
POVERTY88	Poverty Ratio (1987-88) (per cent)
PryS94	Primary Schools per one Lakh Population 1994
PrySch81	Primary Schools per one Lakh Population 1981
SDP/PC 93	State Domestic Product Per Capita, 1993
SecySch81	Secondary Schools per 1 Lakh Population 1981
SecySch94	Secondary Schools per one Lakh Population 1994
TOTEDEXGR	Real Growth in Total Expenditure on Education (1980s) (per cent)
TotS81	All Schools (including Colleges) per one Lakh Population 1981
TotS94	All Schools (including Colleges) per one Lakh Population 1994
TRS81	Teachers per School 1981
TRS94	Teachers per School 1994
UPrySch94	Upper Primary Schools per one Lakh Population 1994
UPySch81	Upper Primary Schools per one Lakh Population 1981

Budget expenditure on education per capita turns out to be the second most important factor (after number of teachers) as far as its correlation with the index of education is concerned. Both in 1981 and 1991, the coefficient of correlation is positive and high. Even with the rate of attendance, the same variable is found to be the most important. As budget expenditure on education per capita increases, the rate of attendance of children in schools tends to increase (Figure 4). The coefficient of correlation is as high as 0.8. Other variables of expenditure on education are not so important. The coefficient of correlation between per cent of SDP allocated to education and attendance rate is also positive, though small: 0.2608 (Table 27).

Socio-economic Factors

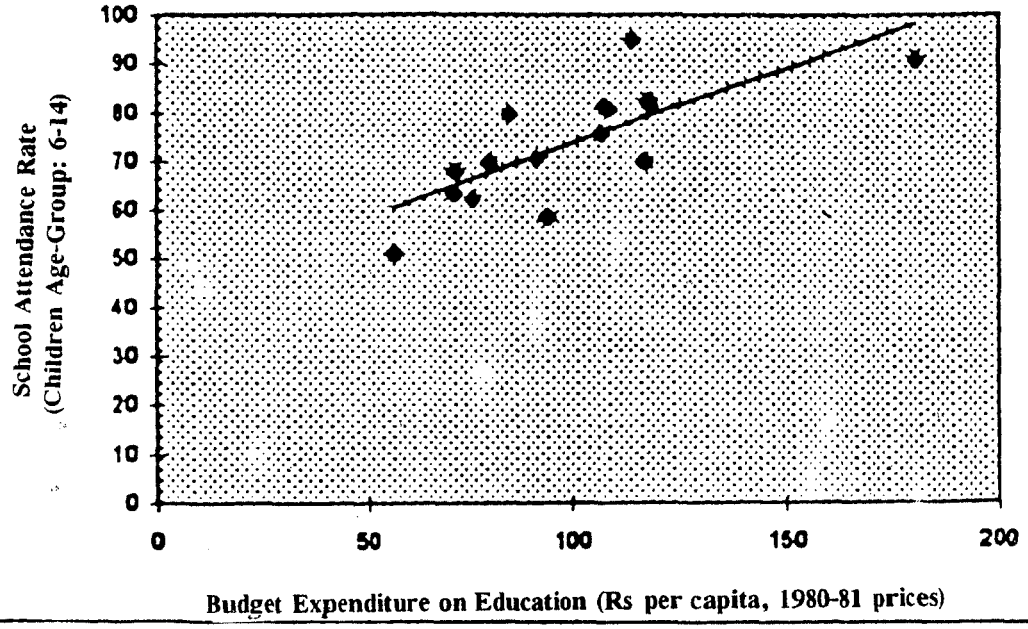
We have also tried to examine the relationship between education development and certain socio-economic structural factors: child labour (percentage of full time 0-14 age-group child workers as a proportion of children) in 1987-88;[30] SDP per capita in 1992-93 [Ministry of Finance, 1997]; and poverty per cent of people below the poverty line in 1987-88 [Planning Commission, 1997].

Contrary to general beliefs, child labour is not significantly related to the level of education development. The coefficients of correlation between child labour and the index of education are small and surprisingly positive. The coefficients of correlation between the index of education and economic development (SDP per capita) and also poverty are marginally higher: 0.307 in case of SDP per capita, and -0.399 in case of poverty.

Figure 4

Public Spending on Education and Attendance Rate (1992-93)

(Coefficient of Correlation: 0.759)



While the index of education, a stock indicator is not much related to child labour, one expects a stronger relationship of child labour with current attendance rates in schools. But the coefficients are too small: 0.007 in case of male child labour and -0.05 in case of girl child labour. After all, the number of children in schools and the number of children in labour market do not add up to the total number of children. Perhaps there is a large bulk of 'missing children' [Chaudhri, 1996b]. A large proportion of these missing children could be those engaged in household chores. Hence, child labour, so defined to restrict to full time formal wage workers, may not be related to the attendance rates or the index of education.

The relationship between SDP per capita and rate of attendance is significant: 0.453. As expected, poverty is strongly and inversely correlated with attendance rates, the coefficient of correlation being -0.66. Thus, economic conditions measured in terms of poverty and SDP per capita have a strong relation with the level of education and the rate of attendance in schools, suggesting the need for improvement in socio-economic conditions of households to enhance their participation in schooling.

The estimated coefficients of correlation are given in Table 27.[31] To sum up, to the extent the coefficients of correlation suggest the extent of relationship of several factors with education, both sets of factors - poverty and economic conditions, on the one hand, and school related characteristics, on the other - are important. Economic conditions of the population have to be improved to boost the demand for schooling. But probably equally important, if not more, important factor - indeed an essential condition - is provision of good schooling facilities with teachers and other facilities.

5. SUMMARY AND CONCLUSIONS

This paper has been a modest attempt to analyze the stock and flow of human capital in India, broadly focusing on the levels of schooling of the population, and the rate of enrolment/attendance in schools. There are several other indicators of educational development, but it can be hoped that these two capture most of the dimensions of education, and give us a fairly good idea of the level of education situation. First, the stock of human capital is estimated in terms of an index of education, with the help of literacy, a crude but extensively used indicator of educational development, and mean years of schooling of population. The mean years of schooling of population is estimated based on data on distribution of population by educational levels provided by one recent national survey, the *National Family Health Survey,* 1992-93. The index of education is estimated for two points of time, 1981 and 1991/92-93, which facilitates temporal comparisons in the performance of the states. Secondly, the same survey provided data on current attendance of children (age- group: 6-14) in schools in 1992-93. These two indicators, viz., the index of education and rate of attendance in schools formed the basis of analysis in the present paper. While the database, the *National Family and Health Survey,* may be subject to a few weaknesses (particularly as the main purpose of the survey is different), the weaknesses may not be particularly different from those associated with other household survey-based data on education in India. Official data on enrolments are found to be associated with serious problems. Since the analysis is based on survey data, the analysis of this flow variable, viz., enrolment/attendance is restricted to a single year of reference, 1992-93 and this is also confined to elementary education.

Inter-state analysis of educational development is the principal focus of the present study. In terms of the stock of human capital and also the current rate of attendance in schools, better and poor performers among the several states have been identified. Besides, with the help of data on a select few supply side factors such as availability of schooling facilities including number of schools, teachers, and public expenditures on education, and a few demand side factors such as state income per capita, poverty and child labour, some correlates of the stock and flow of education development have been briefly analyzed. However, the factors that explain better or worse performance of the states are not probed in detail, nor are the correlates exhaustively identified. There are several other factors including state specific policies that might considerably explain the variations in education development between different states. But they could not be considered here. This is a serious limitation of the study. Most of the results here are not surprising; they in fact confirm the earlier findings and provide some more insights in details.

After briefly analyzing the literacy levels, and growth in literacy and also mean years of schooling and the growth in the same between 1981 and 1991/92-93, the analysis focused on the index of education, which is a weighted sum of literacy and mean years of schooling. With respect to all the three measures -- literacy, mean years of schooling and the index of education, a few important dimensions have been analyzed: (a) inter-state variations, (b) improvement among the different states between 1981 and 1992/92-93, (c) gender discrimination, and (d) change in gender discrimination over time. Similarly concentrating on attendance rates, inter-state variations, gender discrimination and rural urban differences are briefly highlighted.

Quite strikingly, we find that there is a common group of states, whose performance has been poor with respect to almost every aspect of education that we have analyzed - both stock and flow forms. Major states that belong to this category are: Bihar, Rajasthan, Madhya Pradesh, Uttar Pradesh, Orissa and Andhra Pradesh. Their level of stock of human capital is the lowest both in 1981 and in 1991/92-93; improvements in the same recorded by these states is of the lowest order; and they are also associated with a very high degree of gender discrimination against females. These states also figure at the bottom of the list of states with respect to current level of

enrolment of children in schools, whether one classifies the states on the basis of boys' enrolment, girls' enrolment, or enrolment of rural children or enrolment of all children. They have a long way to catch up with the educationally advanced states, even before reaching goals such as eradication of illiteracy and universal elementary education. These states deserve utmost attention of the policy planners.

At the other end, there is a small group of states that could be regarded as best performers. Among them Kerala and Himachal Pradesh are the major ones. It is of particular importance to note that the performance of Himachal Pradesh is so impressive that in a few years from now, its level of educational achievement could equal that of Kerala.

A short attempt has been made to examine the factors that explain high/poor performance of the various states. Despite the well-known inadequacies of coefficients of correlation, they are estimated here to find the correlates of performance in education. Two bunches of factors have been identified for this purpose that indicate the supply of education on the one hand, and demand forces on the other. Though it is very difficult to neatly disentangle them, as supply factors also influence demand side factors and vice versa. Among the supply side factors, provision of adequate teachers in each school, provision of access particularly to (elementary) upper primary schools within the habitations, and provision of adequate level of schools (integrated secondary schools) have been found to be very important, in addition to public expenditure on education.

Among the factors that are likely to constrain the demand for schooling, important ones include primarily poverty and state income per capita. Surprisingly, child labour (measured in terms of full time wage workers) has not been found to be an important variable (the coefficient of correlation is statistically not significant between child labour and stock and flow of education development). Perhaps in the literature exaggerated emphasis is placed on child labour as a factor hindering the demand for education [see Bhatty, 1998, Pp. 1,731-740 and 1,858-869]. Before we conclude, a few important policy implications may be underscored.

According to the Constitution of India, elementary education of eight years duration has to be provided free to all by 1960. This elementary education, considered as a basic need in many countries, and as a minimum need in India, has neither been compulsory in all the states in India, nor is it provided free to all. Despite significant quantitative expansion, the goal of universal elementary education still eludes the Indian society even after fifty years of Independence. Serious efforts are called for to realise this goal in the shortest possible time.

Household poverty and other economic factors have been found to be the most important factors from demand side, contributing to children's non-enrolment in and drop-out from schools. Earlier analyses [e.g., Bhatty, 1998, Pp. 1,731-740 and 1,858-869] have revealed that it is the direct costs of schooling which impose a substantial burden on families and reduce their demand for schooling. Further, Tilak [1996a] found that enrolment in primary schools in rural areas was very significantly correlated with provision of noon meals and transport facilities, which reduced household costs of schooling. These two deserve serious attention.

To achieve the goals with respect to universal elementary education, it is necessary that elementary education, if not the whole phase of school education up to grade X as suggested by the Education Commission [1966], is provided free to all. Free education should include not only tuition fee-free, but also free of all kinds of fees and charges, and it should include free provision of textbooks and reading/writing material, uniforms, and noon meals to all. In addition, monetary scholarships may have to be given at least to the students of the economically weaker sections of the society whose opportunity costs of schooling seem to be high. This will mitigate to some extent the effects of household economic

constraints, including poverty, on the participation of children in schooling. Liberal financial incentives may have to be provided in such a way that the need for household expenditure on elementary education does not arise and lack of the same does not constrain participation of the poor in schooling.

To argue that the problem of under achievements in education is essentially a problem of poverty and economic backwardness is not totally correct. Provision of schooling facilities of good quality and quantum that could attract and retain the children in schools is also equally, if not more, important. In fact, this may be treated as an essential basic condition for improving the educational status of population.

Schooling facilities seem to be both quantitatively and qualitatively inadequate, as about 50 per cent of the habitations do not have a primary school/stage. At least primary schooling facilities need to be provided within every habitation, rather than expecting primary school children to walk 1-1.5 km every day to the school and the same distance back. In fact, the analysis suggests that it would be better to provide good elementary (primary plus upper primary) school facilities, and even integrated secondary school facilities, rather than providing facilities just for primary schooling. Provision of free and compulsory schooling should gradually cover the whole school cycle of 10-12 years duration.

Schooling facilities also include teachers. Adequate provision of teachers is critically important. This has not only direct effect on the quantity and quality of schooling, but teachers are also associated with externalities, in the form of providing a learning environment in the villages.

The level of government expenditure on education is found to be strongly correlated with the level of education of the states. Hence there is a strong need for the states to substantially increase their spending on education. Bias should be in-built in the mechanism of allocation of resources in favour of rural children and girls, as the crux of the problem lies with these groups.

Above all, it may be noted that without financial resources, many of the education goals remain as distant dreams, though provision of financial resources does not serve as a sufficient condition for development. Suitable norms may be developed in such a way that a minimum proportion of the state and central budgets are allocated to education, consistently.

NOTES

1. See Tilak [1996b, Pp. 85-136] for a detailed account of the achievements and failures of the Indian education system during the post-Independence period.

2. Mean years of schooling of population is estimated, by assigning different weights to different levels of education (higher weights to higher levels of education). Mean years of schooling of population is regarded as a more valuable summary statistics of the stock of human capital in a society and is being extensively used [e.g., UNDP, 1992]. This is estimated as a weighted sum of population with different levels of education [Psacharopoulos and Arriagada, 1986, Pp. 561-74]. Algebraically,

$$SCH_i = \left(\sum_j POP_{ij} * YRS_{ij}\right)/100$$

where SCH_i: mean years of schooling of the population of i-th state; POP_{ij}: proportion of population with j-th level of education in the i-th state; and YRS_{ij}: duration (years) of j-th level of education in the i-th state. See a later section for more details on Mean Years of Schooling.

3. The six per cent of national income was a goal originally set up by the Education Commission [1966] and approved in the *National Policy on Education 1968* for accomplishment by 1986.

4. Another source of data on literacy is the NSSO. There are differences in the estimates on literacy made by the Census and the NSSO for 1991. NSSO estimates are a little lower than the Census estimates. For example, NSSO [1995] estimated rate of literacy in India (age-group 7 and above) to be 51.2 per cent, as against 52.2 per cent by the Census. While at the all-India level, the difference is marginal, the differences in the estimates at state level are substantial (more than ten per cent points in a good number of states).

5. See Saldanha [1996] for a similar classification and detailed analysis on the problem of residual illiteracy in India.

6. The only exception is, however, Delhi a high literacy state, where literacy has increased from 71.9 per cent in 1981 to 75.3 per cent in 1991.

7. The index is a measure of current level of development in relation to (a) the target, i.e., universal literacy, and (b) the level of development of the most backward state (with respect to the same indicator). The index of deprivation is estimated as follows:

$$IOD_i = \frac{(TAR\ RATE - ACTRATE_i)}{(TAR\ RATE - MIN\ RATE)}$$

where IOD_i: Index of Deprivation of i-th state; TAR LIT: Target rate of literacy (100 per cent); ACT $RATE_i$: Actual rate of literacy of i-th state; and MIN RATE: Minimum level of literacy among the states.

Since the target literacy rate is universal literacy, that is, 100 per cent (however, in some cases, e.g., Government of Madhya Pradesh [1995] used 80 per cent as the target literacy), the above equation in case of literacy can be rewritten as follows:

$IOD_i = (100 - LIT_i) / (100 - MIN\ LIT)$.

It may be noted that the index is similar to the human development index developed by the UNDP. However, the human development index is an indicator of *development*, but the index of deprivation measures the degree of relative *deprivation*, relative to the target rate of literacy and that of the most backward state. The higher the value of the index, the higher is the level of deprivation. The value of the index ranges between zero (no deprivation at all) and one (maximum deprivation). Among others, see Dutta, et al., [1995] who have used this index in a similar analysis of human development in India. The same index can also be calculated in case of enrolment rates.

8. The classification of the states based on index of deprivation could be the same as that based on absolute levels of literacy. For example, high literacy states (the literacy rate being above 75 per cent) correspond to those with low deprivation, medium literacy states (above 50 per cent and below 65 per cent) with medium level of deprivation and low literacy states (below national average rate of literacy) with highly deprived states.

9. The index (SI) is defined as follows:

$SI = \log (LIT_m/LIT_f) + \log [(Q - LIT_f) / (Q - LIT_m)]$

where $LIT_m \geq LIT_f$ (e.g., LIT_m and LIT_f are male and female literacy rates, respectively); and $Q = 100$.

Kundu and Rao [1986, Pp. 435-66] found that a modification such as Q = 200 would provide better results, the index becoming sharper at lower levels than at higher levels. The index is found to be highly useful whenever inequality is to be measured of a variable between two groups of population only, i.e., when inequality is to be measured between binomial elements. This index is also found to be satisfying a number of interesting axioms, such as the axiom of additive monotonicity, axiom of redistribution, axiom of repetitive transfers and axiom of multiplicative monotonicity. However, the index can be used only in case of those binary variables, whose sum is additive (they add up to 100). In other words, such an index cannot be used to measure, say, gender disparities in mean years of schooling or the index of education, discussed later, which are absolute measures. Further, the limits of the value of the index cannot be defined. If there is perfect equality, the value of the index becomes zero; and if there is perfect inequality, i.e., LIT_f or LIT_m being zero, the index cannot be computed.

10. For a majority of states, it is as follows (the figures in brackets refer to the duration in a few states): illiterate: zero; literate/primary incomplete: 4 (3); primary complete: 5 (4-6); middle complete: 8 (7); secondary complete: 10; and above high school: 13. It may be noted that 'above high school' is a category with a wide range - open ended (with incomplete senior secondary which is of 11 years duration, to doctoral studies which might be of a total duration of above 20 years). Since the distribution of population, in general, is skewed in favour of lower levels of higher education, the weight for this category is arbitrarily fixed at 13.

11. Originally proposed by Becker [1957] to measure wage discrimination between men and women, the coefficient of discrimination in schooling is simply defined as a ratio of male and female levels of schooling. It is defined as follows:

COD: $(SCH_m/SCH_f) - (SCH_m^*/SCH_f^*)$

where COD: coefficient of discrimination; SCH_m: actual mean years of schooling of males; SCH_f: actual mean years of schooling of females; SCH_m^* and SCH_f^*: mean years of schooling of males and females, respectively, in case of no discrimination. Since in case of no discrimination SCH_m^* and SCH_f^* should be equal, the above equation can be rewritten simply as $COD = (SCH_m / SCH_f) - 1$. The higher the value of the coefficient of discrimination, the higher is the discrimination against females, and vice versa. The minimum value of the coefficient is zero; but it does not have any limit on upper value.

12. The weights assigned by the UNDP [1992] are: 2/3 to literacy and 1/3 to mean years of schooling. The rationale for giving higher weightage to literacy is not, however, clear. The limits of the value of the index can vary between zero (if all illiterate) and 70 (approx) if all are higher educated (assuming 13 years of duration for higher education). If the duration of higher education is defined as 20, the upper limit will be 72.6.

13. That there is a close correspondence between the rank order of the states based on the index of education and that on literacy is essentially due to higher weightage given to literacy in the estimation of the index of education.

14. The coefficient of rank correlation between the index in 1981 and 1991/92-93 is as high as 0.975.

15. The rank correlation coefficient of the index in the two years is 0.96.

16. There are also differences, though of a lesser magnitude, between MHRD and NCERT figures on enrolments and also between the estimates of the NSSO, Census, IIPS, NCAER and other such surveys.

17. Though in principle, educational institutions should be in a better position to correctly report the enrolments as compared to households, household surveys are generally regarded as more reliable than data provided by institutions, particularly in case of primary and upper primary education.

18. Few studies are available that could decompose this 25-40 per cent into the above two factors.

19. There is another important category, viz., 'enrolled but not attending' on which little information is available. NSSO has probably collected data on this category in its 52nd round (1996).

20. Like other household surveys, the IIPS survey also ignores the distinction between enrolment and attendance. So the attendance rates estimated by IIPS can as well be treated equivalent to enrolment rates.

21. What is puzzling with the IIPS data is that: difference between attendance rates of the children of the age-groups 6-10 and 11-14 is not significant, while according to official statistics, there are significant differences. NSSO also, however, reported a similar picture.

22. The above quoted evidence [NSSO, 1991] only refers to activity status of the non-enrolled children, not exactly to causes of non-enrolment. I am grateful to Pravin Visaria for highlighting this point.

23. In the context of estimation of coefficients of correlation, data on various factors selected do not exactly correspond to the year of reference of the index of education or rate of attendance. The choice is made keeping in view the ready availability of data. Table adjacent to Table 27 gives the required details.

24. The 'operation blackboard' programme launched after the *National Policy on Education 1986* was formulated, aimed at provision of minimum facilities to all primary and upper primary schools and hence it can be expected that the problem is not so severe now as was in 1986. According to official claims, most of the targets of the 'operation blackboard' programme, in terms of coverage of the number of primary schools, have been fulfilled. See Tilak [1995b, Pp. 387-407]. Detailed information based on the *Sixth All-India Educational Survey* conducted in 1993 is not yet available.

25. It was earlier found that drop-outs in primary education were lower in upper primary and secondary schools than in just primary schools; accordingly the effective costs of primary education in upper primary and secondary schools were lower than the effective costs in primary schools [Tilak, 1992].

26. Again with the launching of the operation blackboard programme, many schools are perhaps better-off today than in 1986, as all the then existing single teacher schools were transformed into two-teacher schools, though new single teacher schools seemed to have come up in large numbers in recent years.

27. For the same reason, Drèze and Sen [1995, Pp. 1-26] have used 'teachers per age-group population', in stead of pupil-teacher ratio.

28. However, the significant relationship in both cases is confined to teachers per school (all levels of schooling combined). Separately, teachers in primary, middle or secondary schools do not have any significant relationship with the index of education or with the rate of attendance.

29. This may be partly due to their higher levels of SDP. But it may have to be stressed that the level of expenditure on education in these states is also not sufficient to fulfil the modest goals in education.

30. They are available separately for girls and boys. Source: NSS 47th Round (1987-88); secondary source: Chaudhri [1996a]. Census data for 1991 are not yet available.

31. We have found no meaningful and significant relationship between the growth in the index of education and growth in any of the school related variables. Only a few important ones are given in the Table 27.

Appendix: Table A.1: Educational Levels of Population (Per cent Distribution), 1992-93

	(1)	Illiterate (2)	Literate Pry Incom (3)	Pry Comp (4)	Mid. Comp (5)	Secy Comp (6)	Above High Sch (7)	Missing (8)	Total (9)
Male									
1.	Delhi	14.3	16.1	15.9	14.4	23.3	15.7	0.3	100
2.	Haryana	27.7	18.4	18.6	12.0	17.6	5.7	0.0	100
3.	Himachal Pradesh	20.7	22.0	21.7	13.7	16.9	4.9	0.1	100
4.	Jammu	25.8	17.1	16.7	18.7	15.8	5.9	0.0	100
5.	Punjab	34.1	14.4	17.5	10.9	18.9	4.2	0.0	100
6.	Rajasthan	39.7	18.9	15.5	11.4	10.2	4.0	0.3	100
7.	Madhya Pradesh	36.2	19.0	18.4	10.3	11.0	5.0	0.1	100
8.	Uttar Pradesh	36.4	16.8	15.2	12.5	13.8	5.3	0.0	100
9.	Bihar	39.5	17.4	13.5	8.9	13.9	6.7	0.1	100
10.	Orissa	31.2	26.3	18.3	8.9	10.2	5.0	0.1	100
11.	West Bengal	24.6	28.3	15.8	12.8	10.7	7.6	0.2	100
12.	Arunachal Pradesh	38.1	25.2	14.3	9.2	9.0	4.1	0.1	100
13.	Assam	30.1	28.6	14.1	13.3	9.4	4.4	0.1	100
14.	Manipur	14.8	25.9	14.8	16.6	17.8	10.1	0.0	100
15.	Meghalaya	33.2	29.3	14.5	11.2	9.1	2.6	0.1	100
16.	Mizoram	6.6	32.7	25.2	16.5	14.6	4.4	0.0	100
17.	Nagaland	20.1	26.5	18.9	13.2	16.5	3.8	1.0	100
18.	Tripura	18.7	32.0	18.1	17.3	8.7	5.1	0.1	100
19.	Goa	11.7	23.6	17.7	14.9	22.1	9.9	0.1	100
20.	Gujarat	24.6	22.0	20.2	10.9	15.5	6.7	0.1	100
21.	Maharashtra	20.5	24.3	18.9	13.2	15.5	7.4	0.2	100
22.	Andhra Pradesh	39.7	15.4	12.3	12.0	13.8	6.4	0.4	100
23.	Karnataka	31.9	21.3	17.6	8.0	14.6	6.6	0.0	100
24.	Kerala	10.0	24.1	24.2	20.9	15.1	5.3	0.4	100
25.	Tamil Nadu	23.0	18.3	23.3	14.3	14.8	6.2	0.1	100

(Contd.)

Appendix: Table A.1. ***(Concld.)***

	(1)	Illiterate (2)	Literate Pry Incom (3)	Pry Comp (4)	Mid. Comp (5)	Secy Comp (6)	Above High Sch (7)	Missing (8)	Total (9)
Female									
1.	Delhi	29.2	15.8	15.1	11.1	16.1	12.5	0.2	100
2.	Haryana	54.1	15.1	14.5	6.2	7.6	2.5	0.0	100
3.	Himachal Pradesh	42.6	17.8	20.3	8.8	8.6	1.9	0.0	100
4.	Jammu	48.2	13.3	14.4	11.2	9.3	3.6	0.0	100
5.	Punjab	48.0	11.1	16.9	8.8	12.2	3.0	0.0	100
6.	Rajasthan	74.6	9.8	7.3	3.5	3.1	1.4	0.3	100
7.	Madhya Pradesh	65.7	13.2	10.6	4.5	3.8	2.0	0.2	100
8.	Uttar Pradesh	68.5	10.2	8.9	5.2	5.0	2.2	0.0	100
9.	Bihar	71.4	11.0	7.3	3.6	4.8	1.8	0.1	100
10.	Orissa	58.6	18.2	12.4	4.8	4.4	1.6	0.0	100
11.	West Bengal	44.8	25.9	12.5	8.9	4.9	2.8	0.2	100
12.	Arunachal Pradesh	57.9	19.2	10.9	6.5	4.7	0.8	0.0	100
13.	Assam	49.3	22.2	11.3	10.3	5.1	1.8	0.0	100
14.	Manipur	37.0	21.8	11.9	10.9	11.4	7.0	0.0	100
15.	Meghalaya	39.8	27.9	14.9	9.0	6.7	1.6	0.1	100
16.	Mizoram	11.1	35.6	23.1	17.0	11.6	1.5	0.1	100
17.	Nagaland	28.2	24.5	19.2	12.9	13.7	1.5	0.0	100
18.	Tripura	35.6	28.6	16.4	12.4	4.4	2.6	0.0	100
19.	Goa	26.9	21.8	16.3	12.4	16.1	6.4	0.1	100
20.	Gujarat	48.7	17.2	15.0	6.6	9.1	3.2	0.2	100
21.	Maharashtra	44.1	19.7	16.2	7.7	8.4	3.7	0.2	100
22.	Andhra Pradesh	61.5	11.8	9.2	7.9	6.8	2.4	0.4	100
23.	Karnataka	53.5	15.9	14.1	5.7	8.2	2.5	0.1	100
24.	Kerala	17.6	21.7	23.0	19.1	14.1	4.4	0.1	100
25.	Tamil Nadu	43.9	14.9	18.9	10.1	9.4	2.7	0.1	100
All									
1.	Delhi	21.0	15.9	15.5	12.9	20.0	14.3	0.4	100
2.	Haryana	40.1	16.9	16.7	9.3	12.9	4.2	0.0	100
3.	Himachal Pradesh	32.1	19.8	21.0	11.2	12.6	3.3	0.0	100
4.	Jammu	36.9	15.2	15.6	15.0	12.6	4.8	0.0	100
5	Punjab	40.8	12.7	17.2	10.5	15.2	3.7	0.0	100
6.	Rajasthan	56.1	14.6	11.6	7.6	6.9	2.8	0.4	100
7.	Madhya Pradesh	50.2	16.3	14.7	7.5	7.6	3.6	0.1	100
8.	Uttar Pradesh	52.0	13.5	12.1	8.9	9.5	3.8	0.2	100
9.	Bihar	55.4	14.2	10.4	6.3	9.3	4.3	0.1	100
10.	Orissa	44.8	22.3	15.4	6.9	7.4	3.3	0.0	100
11.	West Bengal	34.4	27.1	14.2	11.0	7.9	5.3	0.1	100
12.	Arunachal Pradesh	47.9	22.3	12.7	7.8	6.9	2.4	0.0	100
13.	Assam	39.5	25.5	12.8	11.8	7.3	3.1	0.0	100
14.	Manipur	26.0	23.8	13.4	13.7	14.6	8.5	0.0	100
15.	Meghalaya	36.4	28.6	14.7	10.2	7.9	2.1	0.1	100
16.	Mizoram	8.9	34.2	24.1	16.7	13.1	3.0	0.0	100
17.	Nagaland	24.1	25.5	19.0	13.6	15.1	2.7	0.0	100
18.	Tripura	27.2	30.3	17.3	14.8	6.5	3.8	0.1	100
19.	Goa	19.4	22.7	17.0	13.6	19.0	8.2	0.1	100
20.	Gujarat	36.3	19.7	17.7	8.8	12.4	5.0	0.1	100
21.	Maharashtra	32.1	22.0	17.6	10.5	12.0	5.6	0.2	100
22.	Andhra Pradesh	50.6	13.6	10.8	9.9	10.3	4.4	0.4	100
23.	Karnataka	42.6	18.6	15.8	6.9	11.4	4.6	0.1	100
24.	Kerala	14.0	22.9	23.6	20.0	14.6	4.8	0.1	100
25.	Tamil Nadu	33.6	16.6	21.1	12.1	12.1	4.4	0.1	100

Notes: (i) For full forms of abbreviations, see Table 5.
(ii) Jammu includes only the Jammu region of the Jammu and Kashmir State.
Source: IIPS, 1995, Pp. 49-55.

REFERENCES

Ayyar, R.V.V., 1997; 'Basic Education and Human Rights', *Journal of Educational Planning and Administration* Vol. 11, No. 1, January.

Becker, G.S., 1957; *Economics of Discrimination,* 2nd Edition, 1971, Chicago University Press, Chicago.

Behrman, J.R., 1991; *Human Resource-led Development,* ILO-ARTEP, New Delhi.

Behrman, J.R. and Ryan Schneider, 1992; 'Indian Human Capital Investments in the Past Quarter Century: An International Perspective', *Indian Economic Review* (Special Number).

Bhatty, Kiran, 1998; 'Educational Deprivation in India: A Survey of Field Investigations', *Economic and Political Weekly,* Vol. 33, Nos. 27 and 28, 4-10 and 11-17 July.

Chanana, K., 1996; 'Gender Inequality in Primary Schooling in India: The Human Rights Perspective', *Journal of Educational Planning and Administration* Vol. 10, No. 4, October.

Chaudhri, D.P., 1996a; *A Dynamic Profile of Child Labour in India: 1951-1991,* ILO, New Delhi.

Chaudhri, D.P., 1996b; 'Female Child Labour and Gender Bias in School Education in Indian States 1961-1991', Paper presented in Seminar on *Gender and Employment in India,* Indian Society of Labour Economics and Institute of Economic Growth, Delhi, 18-20 December.

Drèze, J., and A.K. Sen, 1995; 'Basic Education as a Political Issue', *Journal of Educational Planing and Administration,* Vol. 9, No. 1, January.

Drèze, Jean and J. Loh, 1995; 'Literacy in India and China', *Economic and Political Weekly,* Vol. 30, No. 45, November 11.

Dutta, Bhaskar, Manoj Panda and W. Wadhwa, 1995; *Human Development in India: An Interstate Analysis,* (mimeo), UNDP New Delhi, July.

Education Commission, 1966; *Education and National Development: Report of the Education Commission, 1964-66,* Chairman: D.S. Kothari, Government of India, New Delhi.

Government of India, 1993; *District Primary Education Programme,* Ministry of Human Resource Development, New Delhi.

Government of Madhya Pradesh, 1995; *Madhya Pradesh Human Development Report 1995,* Bhopal.

IIPS, 1995; *India: National Family Health Survey 1992-93,* International Institute for Population Sciences, Mumbai.

Kundu, A. and J.M. Rao, 1986; 'Inequity in Educational Development', in M. Raza (Ed.), *Educational Planning,* Concept/National Institute of Educational Planning and Administration, New Delhi.

Kurrien, J., 1983; *Elementary Education in India,* Vikas, New Delhi.

MHRD, 1993; *Selected Information on School Education in India, 1992-93,* Ministry of Human Resource Development, Government of India, New Delhi.

MHRD, 1997; *Report of the Committee of State Education Ministers on Implications of the Proposal to Make Elementary Education a Fundamental Right,* Government of India, New Delhi, January 15.

Ministry of Finance, 1997; *Economic Survey, 1996-97,* Government of India, New Delhi.

Naik, J.P., 1965; *Educational Planning in India.* Allied Publisher, New Delhi.

NCAER, 1994; *Non-Enrolment, Drop-out and Private Expenditure on Elementary Education: A Comparison across States and Population Groups,* (mimeo), New Delhi, September.

NCERT, 1991; *Fifth All-India Educational Survey,* National Council of Educational Research and Training, New Delhi.

NCERT, 1995; *Sixth All-India Educational Survey: Provisional Statistics,* New Delhi.

NCERT, 1998; *Sixth All-India Educational Survey: National Tables Vol. II,* New Delhi.

NSSO, 1991; 'Participation in Education (NSS 42nd Round, July 1986-June 1987)', *Sarvekshana,* Vol. 14, No. 3, Issue no. 46, January-March.

NSSO, 1995; *Literacy in India,* (mimeo) NSS 42nd Round July-December 1991, Report No. 394, New Delhi.

Planning Commission, 1997; *Approach Paper to the Ninth Five Year Plan (1997-2002),* New Delhi.

Psacharopoulos, G. and A-M. Arriagada, 1986; 'The Educational Composition of the Labour Force: An International Comparison', *International Labour Review,* Vol. 125, No. 5, September-October.

Saldanha, Denzil, 1996; *Residual Illiteracy in the Contexts of Uneven Development: Implications for Basic Education* (mimeo), Tata Institute of Social Sciences, Mumbai, August.

Sopher, D., 1974; 'Measurement of Disparity', *The Professional Geographer,* Vol. 26, No. 4, November.

Tilak, J.B.G., 1988; 'Costs of Education in India', *International Journal of Educational Development,* Vol. 8, No. 1.

Tilak, J.B.G., 1989; *Education and Its Relation to Economic Growth, Poverty and Income Distribution: Past Evidence and Further Analysis,* Discussion Paper No. 46. (World Bank Comparative Studies: *The Political Economy of Poverty, Equity, and Growth*), World Bank, Washington D.C., February.

Tilak, J.B.G., 1992; *Educational Planning at Grassroots,* Ashish Publication, New Delhi.

Tilak, J.B.G., 1994; 'Schooling Levels of the Population in India', *Indian Journal of Labour Economics, Vol.* 37, No. 2, April-June.

Tilak, J.B.G., 1995a; *Costs and Financing of Education in India: A Review of Issues, Trends and Problems,* Discussion Paper 5, Studies on Human Development in India, UNDP Research Project on *Strategies and Financing of Human Development,* Centre for Development Studies, Thiruvananthapuram.

Tilak, J.B.G., 1995b; 'Elementary Education in India in the 1990s: Problems and Perspectives', *Margin*, Vol. 27, No. 4, July-September.

Tilak, J.B.G., 1996a; 'How Free is "Free" Primary Education in India?', *Economic and Political Weekly*, Vol. 31, Nos. 5 and 6, February, 3 and 10.

Tilak, J.B.G., 1996b; 'Education in India: Towards Improving Equity and Efficiency', in V.L. Kelkar and V.V. Bhanoji Rao (Eds.), *India: Development Policy Imperatives*, Tata McGraw-Hill, New Delhi.

Tilak, J.B.G., 1997; 'The Dilemma of Reforms in Financing Higher Education in India', *Higher Education Policy*, Vol. 10, No. 1, March.

UNDP, 1992; *Human Development Report 1992*, Oxford University Press, New York.

Visaria, P., A. Gumber and L. Visaria, 1993; 'Literacy and Primary Education in India 1980-81 to 1991', *Journal of Educational Planning and Administration*, Vol. 7, No. 1, January.

Weiner, M., 1991; *The Child and the State in India*, Princeton University Press, Princeton, N.J.

World Bank, 1997; *Primary Education in India*, World Bank, Washington D.C.

POVERTY, FOOD SECURITY AND LEVELS OF LIVING: MAHARASHTRA

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This study attempts to understand the magnitude of poverty, inequality and food security in rural and urban Maharashtra and the changes in them since the 1960s. Rural and urban poverty, as measured by different measures, increased in Maharashtra till the mid-60s and declined thereafter; similar to the findings for all-India. But the frequency and range of fluctuations in poverty were higher for Maharashtra than for all-India. The limited growth that took place since the 1970s was inequitous. With improvement in economic entitlement, the poor have diversified their consumption basket without impairing their nutritional security. Data for 1972-73 and 1983 show an improvement in calorie, protein and fat intakes for all the decile groups in rural Maharashtra and only in calorie intake for the bottom nine decile groups in urban Maharashtra. Yet a majority (exceeding 80 per cent) suffer from shortfall of calorie intake in both rural and urban areas, calling for appropriate public policies towards nutrition security.

Maharashtra is the third richest, in terms of per capita State Domestic Product (SDP),* state in the Indian Union [Government of Maharashtra (GOM), 1997; p. xv]. It is one of the most industrialised and urbanised states.[1] Yet, its performance in rural poverty reduction during 1958-59 to 1990-91 has been found to be the worst among the Indian states [Datt and Ravallion, 1996]. While its economic structural features and the development process would only support such findings, public policies pursued about them would raise questions.

There is marked skewness in the distribution of resource endowments and levels of development across space.[2] Agriculture accounted for 80.30 per cent of total employment in 1977-78 [Vaidyanathan, 1986, Pp. A-130-A-146]. Maharashtra has the highest percentage number of landless households. Wage employment as a proportion of total employment was only 39.70 per cent, more than half (55.60 per cent) of which was casual in 1977-78.[3] Its agriculture is predominantly rainfed and about 60 per cent of the net sown area is accounted for by drought prone districts.[4] Its soil, topography and climate are not conducive to agriculture and the levels of yield of the major crops are very low. The levels of yield per hectare (triennial average for 1992-93 to 1994-95) of cereals (1,070 kg) and total foodgrains (941 kg) are the second lowest across states in the country [GOM, 1997; p. xvi]. The state is deficit in respect of foodgrains production. Further, the rural economic structure is not diversified but consists of agriculture with low yield and livestock sector. 82.90 per cent of the operational holdings are devoted to crop production and 13.00 per cent of the holdings to livestock in rural Maharashtra in 1991-92 [Government of India (GOI), 1997, p. 37]. This, combined with the fact that it is one of the most urbanised and richest states, would mean marked rural-urban disparities and high degree of inequality and rural poverty across regions at a point of time.[5]

Over time, average size of the operational holding has decreased: it was 4.28 hectares in 1970-71, 3.11 hectares in 1980-81, 2.64 hectares in 1985-86 and 2.21 hectares in 1990-91 [GOM, 1998] accompanied by an increase in the inequality in the distribution of operational landholding, the Gini coefficients being 0.526, 0.571 and 0.598 in 1970-71, 1981-82 and 1991-92, respectively [GOI, 1997, p. 26].[6] Being a rainfed state, Maharashtra is characterised by 'medium growth and high instability' in foodgrains production [Dev, 1987, Pp. A-82-A-92]. The growth and instability in food and non-food production has also varied across regions since the 1960s [Mitra, 1990, Pp. A-146-A-164]. Further, its agricultural performance with respect to the foodgrains sector has been uneven over time.[7] The secondary and tertiary sectors, on the other

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* The list of all the abbreviations with their full forms is given at the end.

hand, registered increasing growth rates during the three successive decades since the 1960s. But the urbanisation and the non-agricultural growth do not seem to have served as a cushion to mitigate the adverse implications of unstable agricultural growth for the rural poor. In fact, food prices and wages for male and female agricultural labourers in Maharashtra are not cointegrated suggesting that wages do not adjust with food prices [Ghiara, 1996, Pp. 43-56].[8] As regards female agricultural workers, their wages do not seem to adjust even with productivity improvement. The short-run elasticity of female workers' real wages with respect to yield being 0.38 is one of the lowest among the Indian states; the long-run elasticity estimate shows an inelastic response of female agricultural workers' wage rates to changes in agricultural growth. The degree of gender disparity in real wages is also one of the highest in Maharashtra; female workers' wages were only 74 per cent of male workers' wages during 1982-88 [Singh, 1996, Pp. 89-123]. It is important to understand the implications of these features for temporal changes in poverty and food security since more than two-thirds of the total labour force still depends on agriculture, and further, productivity in agriculture is very low due to low rainfall and poor irrigation infrastructure.

At the same time, Maharashtra has received much acclaim for its public intervention through the Employment Guarantee Scheme (EGS) and its effectiveness in reducing poverty and food insecurity. Since its inception in 1972, the EGS seems to have played an important role in mitigating the adverse implications of the structural features for the poor (i) by reducing the extent of unemployment and underemployment in the state; incidence of person day unemployment has decreased much faster in Maharashtra than in India as a whole [Dev, 1995, Pp. 108-43][9] and (ii) by stabilising income streams.[10] These factors would form the bases for an optimistic assessment of temporal changes in rural poverty suggesting a definite improvement in the economic status of the poor at least since the early 1970s.

Datt and Ravallion [1996] find that there was a trend of decrease in poverty in rural Maharashtra as reflected in the estimates of three different measures of poverty, viz., the headcount index, the poverty-gap index and the squared poverty gap index proposed by Foster, Greer and Thorbecke [1984, Pp. 761-66], for the period from 1958-59 to 1990-91. The study finds that Maharashtra stood fourth in terms of progress in raising average household consumption but the growth process was regressive and, hence, was the worst performer in terms of reducing poverty. Datt and Ravallion explain the poor performance of Maharashtra relative to Kerala in terms of the adverse initial conditions, because of which poverty reduction in Maharashtra (as measured by the headcount index) was lower by 1.6 parentage points: of this, Maharashtra's lower irrigation ratio (5 per cent as against Kerala's 12 per cent) accounted for a deficit of 0.52 percentage points; lower female literacy rate (93 per thousand against Kerala's 375) accounted for 0.78 points and high infant mortality rate (107 per thousand against Kerala's 70) explained 0.29 points [Datt and Ravallion, 1996, p. 20].

These findings, if valid, raise questions about the development process, strategies and public policies pursued in Maharashtra.[11] It is quite possible that the findings on the poor performance of Maharashtra in poverty alleviation are not really supported by data underlying the poverty estimates. In fact, the literature on Indian poverty and its dynamics abounds with studies and interpretations which are not corroborated by a detailed analysis of the underlying National Sample Survey data set [see, for instance, Ahluwalia, 1978, Tendulkar and Jain, 1995, Pp. 1,373-376; Suryanarayana, 1995, Pp. 203-55; 1996a, Pp. 617-24; and 1996c]. Thus, there is a need for a careful disaggregative analysis of consumption and levels of living in Maharashtra. The present study makes an attempt to meet this need and address to some of the methodological issues, subject to the constraints imposed by data availability. The paper is structured as follows. Section 1 deals with the state of poverty and food security in Maharashtra with a current macro-profile in Sub-section 1, and a spatial profile

across rural and urban sectors of six sub-regions of Maharashtra during the drought year of 1972-73 in Sub-section 2. Section 2 presents time series estimates of poverty for rural and urban Maharashtra. Section 3 examines the temporal changes in average levels of living as measured by total consumer expenditure at constant prices. Section 4 deals with the changing consumption patterns and examines the changes in levels of living, as measured by physical cereal consumption, of the poorer decile groups of rural and urban Maharashtra separately and their policy implications. The final section concludes the paper.

1. POVERTY AND FOOD SECURITY

1.1 Aggregate Profile

Food security, as conventionally understood, refers to economic as well as physical access to sufficient foodgrains for an active and healthy life. It has both macro and micro aspects. The economic aspect of food security, in a macro sense, can be examined in terms of per capita income/consumer expenditure or incidence of poverty while the physical aspect can be measured in terms of per capita foodgrains production/availability. Around the time of its formation, Maharashtra had the highest per capita state domestic product (Rs 468, average for 1959-60 to 1961-62) among the Indian states [GOI, not dated, cited in Centre for Development Studies (CDS), 1977, p. 11]; still both rural and urban poverty in Maharashtra in 1961-62 was one of the highest in India [CDS, 1977, p. 11] and was much higher than the corresponding all-India estimates (Table 4). By the physical access criterion, as measured by the corresponding average per capita foodgrains production (167.20 kg), it ranked eighth (in descending order) among the Indian states [CDS, 1977, p. 11]. Accordingly, per capita cereal consumption in 1961-62 in rural (16.07 kg per month) and urban (10.81 kg per month) Maharashtra was one of the lowest in the country [Suryanarayana, 1996b, Pp. 203-65]. As already noted, foodgrains production stagnated in the 1960s, increased in the 1970s and declined in the 1980s. In keeping with this, food security, as measured by cereal consumption, has been fluctuating in Maharashtra [Suryanarayana, 1996b, Pp. 203-65] and the progress (relative to all-India) on the poverty and food security front is not impressive.

Some important comparable estimates of macro measures of both economic and physical aspects of food security in Maharashtra *vis-a-vis* all-India are presented in Table 1. By the late 1980s, Maharashtra ranked second in terms of per capita SDP among the Indian states. The monthly per capita consumer expenditure levels (at current all-India prices) in both rural (Rs 151.47) and urban (Rs 245.56) Maharashtra were much below the corresponding all-India estimates (Rs 158.10 and 249.93, respectively). Further, the inequality in rural consumer expenditure distribution was higher than that in the corresponding all-India distribution while those in the urban distributions were almost similar. Consistent with this picture, rural poverty in Maharashtra was much higher than that in all-India. Thus, economic access aspect of the food security scenario does not appear comfortable *vis-a-vis* that of all-India. Still the Engel ratio for food in rural Maharashtra was lower than that of all-India rural. As regards the physical access aspect, per capita foodgrains production in 1987-88 was 150.80 kg per annum as against the national average of 175.20 kg; per capita foodgrains production in Maharashtra was the eighth highest among those of the Indian states. Per capita cereal consumptions in rural and urban Maharashtra were less than the corresponding national averages. The net result was that the average calorie intakes in both rural and urban Maharashtra were below the corresponding all-India estimates. The inequalities in cereal consumer expenditure distribution were higher and those calorie intake distributions were lower in rural and urban Maharashtra than their national counterparts.[12]

Table 1. Food Security in Maharashtra and All-India: A Profile

	Maharashtra			All-India		
(1)	Rural (2)	Urban (3)	Combined (4)	Rural (5)	Urban (6)	Combined (7)
Per capita net SDP (Rs per annum at current prices) (1987-88)	-	-	4,558	-	-	3,319
Per capita food production (kg per annum) (1987-88)	-	-	150.80	-	-	175.20
Per capita consumer expenditure (Rs per month at current prices) (1987-88)	160.77	279.53	-	158.10	249.93	-
Per capita consumer expenditure (Rs per month at all-India prices) (1987-88)	151.46	245.56	-	158.10	249.93	-
Per capita cereal consumption (kg per month) (1987-88)	13.06	10.23	-	14.54	11.25	-
Per capita calorie intake per diem (Kcal) (1983)	2,144	2,028	-	2,221	2,089	-
Lorenz ratio of per capita total consumer expenditure distribution (per cent) (1987-88)	32.70	35.10	-	29.80	35.30	-
Pseudo-Lorenz ratio of per capita cereal consumer expenditure distribution (per cent) (1987-88)	10.60	10.20	-	9.90	7.10	-
Pseudo-Lorenz ratio of per capita calorie intake per day distribution (per cent) (1983)	10.80	12.40	-	14.10	14.00	-
Absolute poverty (per cent) (1987-88)	54.17	35.64	-	44.88	36.52	-
Engel ratio for food (per cent) (1987-88)	59.83	56.42	-	64.10	56.39	-

Note:- The estimates provided in the table pertain to 1987-88 and not 1993-94. This is dictated by the availability of all the relevant price indices required for estimation of consumer expenditures in Maharashtra at the all-India prices for 1987-88 and not for 1993-94.

Sources:- 1) Estimates of per capita net SDP are from GOI [1991, p. 11]

2) Estimates of state per capita food production are from Chandhok and The Policy Group [1990, Vol. II, p. 707].

3) Estimates of per capita consumer expenditure at current prices are from the National Sample Survey Organisation (NSSO) [1991]. These estimates at current all-India prices are obtained using the relevant price indices from Minhas and Jain [1990, Pp. 346-347], Minhas, Jain and Saluja [1990, p. 229] and Minhas, Jain and Tendulkar [1991, p. 1674].

4) Estimates of cereal consumption are from NSSO [1991].

5) Estimates of per capita calorie intake are from NSSO [1989c, Pp. S-177-S-258].

6) Estimates of Lorenz ratios for consumer expenditure distribution and cereal consumer expenditure distribution are based on NSSO [1991].

7) Estimates of pseudo-Lorenz ratios for calorie intake distribution are based on NSSO [1989c, Pp. S-177-S-258].

8) Estimates of absolute poverty are from Minhas, Jain and Tendulkar [1991, p. 1676].

As regards the present scenario, per capita domestic product in Maharashtra (Rs 19,207) was higher than the all-India estimate (Rs 12,278) in 1996-97 [GOM, 1998]. The triennial average foodgrains production during 1993-94 to 1995-96 was 144.80 kg per capita in Maharashtra as against the all-India average of 266.80 kg; Maharashtra stood a poor 20th rank among 26 states of the union [GOM, 1998]. Per capita monthly cereal consumption levels in rural (11.39 kg) and urban (9.37 kg) Maharashtra were one of the lowest in the country in 1993-94 [Suryanarayana, 1997, Pp. 207-17].

1.2 Regional Profile

The levels of development are not uniform across regions in Maharashtra. Among the 29

districts, (i) Ahmednagar, Amravati, Aurangabad, Jalgaon, Kolhapur, Nagpur, Nashik, Pune, Satara, Sangli and Thane constitute the highly developed segment; (ii) Raigad, Solapur and Wardha are the districts with medium levels of development; and (iii) the coastal districts of Ratnagiri and Sindhudurg, and the inland districts of Akola, Beed, Bhanadara, Buldhana, Chandrapur, Dhule, Gadchiroli, Jalna, Latur, Nanded, Osmanabad, Parbhani and Yavatmal constitute the segment with low levels of development [Prabhu and Sarkar, 1992, Pp. 1,927-937].

The uneven resource endowment and levels of development across regions in Maharashtra get reflected in the marked regional disparities in levels of living, degree of inequality and poverty - incidence as well as severity. This can be examined using the data from NSSO [1983, Pp. S-1-S-88] which provides estimates of consumer expenditure, calorie intake, protein and fat consumption distribution for six regions of rural and urban Maharashtra, namely, (i) Coastal (Greater Mumbai, Thane, Raigarh (Kulaba), Ratnagiri and Sindhudurg); Inland Western (Ahmednagar, Pune, Satara, Sangli, Solapur and Kolhapur); (iii) Inland Northern (Nashik, Dhule and Jalgaon); (iv) Inland Central (Aurangabad, Parbhani, Beed, Latur, Nanded, Osmanabad and Jalna); (v) Inland Eastern (Buldhana, Akola, Amravati, Yavatmal, Wardha and Nagpur); and (vi) Eastern (Bhandara, Chandrapur and Gadchiroli) regions.

A regional profile of poverty and nutrition insecurity can be obtained by estimating Foster, Greer, Thorbecke (FGT) class of poverty measures based on these estimates of consumer expenditure and calorie intake corresponding to a normative minimum of consumer expenditures as given by the conventional poverty lines (Rs 39.04 for the rural and 39.49 for the urban regions) and calorie intake of 2,400 and 2,100 calories, respectively for the rural and urban regions (Tables 2 and 3).[13]

Table 2. Regional Profile of Poverty, Inequality and Food Insecurity: Maharashtra, Rural

Region	Per Capita Consumer Expenditure					Per Capita Calorie Intake Per Diem					Protein: Average Intake (g 0.0)	Fat: Average Intake (g. 0.0)
	Average (Rs)	Lorenz Ratio (%)	Head-count Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)	Average (k. cal)	Pseudo -Lorenz Ratio (%)	Head-count Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Coastal	40.63	29.25	59.78	18.95	8.08	1,783.00	16.72	88.52	27.10	11.35	49.60	19.30
Inland western	43.60	25.82	50.77	13.72	5.16	1,793.00	12.45	93.03	26.42	9.10	53.30	25.80
Inland northern	41.81	27.36	53.87	16.24	7.31	1,878.00	14.95	87.33	23.30	9.19	55.80	27.00
Inland central	47.89	38.25	56.29	17.53	7.54	2,067.00	15.04	79.03	17.86	6.40	59.70	27.80
Inland eastern	41.25	32.62	63.71	20.59	8.78	1,960.00	16.72	83.88	22.60	8.02	56.20	23.00
Eastern	42.56	31.07	62.46	17.69	6.61	1,890.00	13.62	88.63	23.43	7.81	50.80	17.60
All	41.44	31.23	61.39	19.03	8.01	1,895.00	14.55	86.63	23.13	8.22	54.70	24.40

Note: FGT2 index refers to Foster, Greer and Thorbecke measure.
Source: The estimates presented in the two Tables (2 and 3) are based on NSSO, 1983, Pp. S-1-S-88.

The important features are:

(i) Within the rural sector, inland central region had the maximum average monthly per capita total consumer expenditure (AMPCTCE) of Rs 47.89 while the coastal region had the minimum at Rs 40.63. This could be because the inland central region consists of agriculturally and industrially highly developed district of Aurangabad and even the remaining districts, unlike other regions, belong to medium level of development [Prabhu and Sarkar, 1992, Pp. 1,927-937] while the rural costal segment consists of agriculturally underdeveloped districts, like Ratnagiri and Sindhudurg. On the urban front, the coastal region consisting of Greater Mumbai and Thane districts, as could be expected, had the maximum AMPCTCE of Rs 103.55 and the eastern region, with industrially backward districts, had the minimum AMPCTCE of Rs 45.45.[14]

Table 3. Regional Profile of Poverty, Inequality and Food Insecurity: Maharashtra, Urban

Region	Per Capita Consumer Expenditure					Per Capita Calorie Intake Per Diem					Protein: Average Intake (g 0.0)	Fat: Average Intake (g 0.0)
	Average (Rs)	Lorenz Ratio (%)	Head-count Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)	Average (k. cal)	Pseudo-Lorenz Ratio (%)	Head-count Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Coastal	103.55	33.74	7.76	1.76	0.72	2165.00	16.05	49.61	9.97	3.01	58.30	53.00
Inland western	66.31	33.23	27.42	7.72	3.37	1830.00	14.62	79.69	17.25	5.62	52.00	37.20
Inland northern	49.30	27.23	43.79	10.26	3.27	1823.00	11.52	78.31	15.71	4.43	52.00	38.20
Inland central	50.04	32.84	48.33	13.91	5.56	1898.00	13.48	81.46	14.92	3.91	60.30	28.40
Inland eastern	48.84	29.77	46.36	13.06	5.00	1810.00	12.87	82.24	17.04	5.13	52.10	32.30
Eastern	45.45	28.98	53.82	15.31	5.61	1906.00	15.76	70.61	16.27	4.80	50.20	28.40
All	74.89	36.97	26.57	7.44	3.00	1971.00	14.90	70.10	13.46	3.73	55.30	41.90

Note: As in Table 2.
Source: As in Table 2.

(ii) Inequality in rural MPCTCE was the lowest in inland west. This could be because inland west is relatively homogeneous and consists of only highly agriculturally developed districts [Prabhu and Sarkar, 1992, Pp. 1,927-937]. Inequality in rural MPCTCE was the highest in inland central. Inland central consists of both agriculturally developed and underdeveloped districts and hence, inequality could be the highest. As regards urban sector, inequality was the lowest in relatively homogeneous and highly developed inland north and the highest in the coastal urban region consisting of districts from the entire spectrum - low to high levels of development.

(iii) Poverty is a function of both mean and inequality parameters. Largely in keeping with the findings (i) and (ii), (a) rural poverty incidence (P_0) as well severity (FGT2) were the lowest in the inland west and highest in the inland east; (b) urban poverty incidence and severity were the highest in the urban east but lowest in the coastal urban belt.

(iv) Similarly, when it comes to rural nutritional insecurity, inland central was the least adversely affected with the highest calorie, protein and fat intakes and lowest calorie deprivation in terms of all the FGT measures. Coastal region was the worst affected with the lowest amount of calorie intake per capita per diem, highest inequality in calorie intake distribution, calorie intake gap (P_1) and severity of calorie shortfall (FGT2) and lowest protein consumption.

(v) Finally, urban nutrition insecurity was the lowest in the coastal belt with the highest calorie and fat intake and lowest incidence, depth and severity of calorie shortfall. It was the highest in inland east in terms of average calorie intake and incidence of calorie deprivation and in inland west in terms of depth and severity of calorie deprivation.

Thus, in terms of consumption and nutritional measures also, there is considerable heterogeneity across regions in the rural sector. The urban sector throws up at least one consistent profile, that is, the coastal region had the highest AMPCTCE and even with the highest inequality in MPCTCE, had the lowest incidence and severity of urban poverty; correspondingly, nutritional security was also maximum in the coastal urban. But the urban prosperity and security does not seem to have helped in mitigating the miseries and insecurities of the rural sector in the coastal belt. Given such a complex scenario, it would be worthwhile to examine whether there was really any growth in real levels of living, reduction in poverty and, if yes, the proximate explanation for the observed growth. The following sections make an attempt to examine this question.

2. POVERTY SCENARIO: TEMPORAL PROFILE

An important problem that one encounters in any study on poverty involving a long sample period particularly for a developing economy is that of structural changes in consumption, production and other institutional parameters. Hence, simple time series estimates of poverty ratios based on poverty lines with reference to a given base year can be misleading [Suryanarayana, 1995, Pp. 203-55 and 1996d, Pp. 2,487-497]. To circumvent such problems, initially, two alternative estimates of poverty lines are considered for examining the changes in poverty over time. They are:

(i) The all-India rural poverty line of Rs 15 per capita per month at 1960-61 prices and its equivalent of Rs 16 for rural Maharashtra;[15] the all-India urban poverty line of Rs 18 per capita per month at 1960-61 prices which works out to Rs 20.55 at 1961-62 prices for urban Maharashtra;[16] and

(ii) The estimates of poverty corresponding to the poverty lines in (i) are used to work out a time series profile of the poverty scenario in Maharashtra *vis-a-vis* all-India, but these suffer from one major limitation, that is, price indices used for updating the poverty lines have outdated weights and, hence, may not satisfactorily reflect the changes in the cost of a subsistence minimum consumption basket [Suryanarayana, 1996a, Pp. 617-24] and, hence, the recent poverty scenario. Therefore, we also consider the all-India rural poverty line of Rs 49.00 per capita per month at 1973-74 prices and the corresponding poverty line for rural Maharashtra of Rs 50.47 as estimated by the Expert Group [Perspective Planning Division, 1993]. The updated lines for rural Maharashtra and all-India for 1977-78, 1983 and 1987-88 are taken from the Expert Group Report. Similarly, for urban India and Maharashtra the poverty lines of Rs 56.60 and Rs 58.64 per capita per month, respectively, for 1973-74 and the updated poverty lines for the remaining three years, as estimated by the Expert Group, are used. But, the Expert Group approach has some limitation in that it does not consider estimation of distributionally sensitive poverty measure with appropriate corrections for the differential impact of inflation [Suryanarayana, 1995, Pp. 203-55]. Therefore, we supplement the estimates mentioned above with poverty measures by reconstructing the National Sample Survey (NSS) consumer expenditure distributions at 1970-71 prices using the available commodity specific price indices from Jain and Minhas [1991, Pp. 1,673-82] and Tendulkar and Jain [1993, Pp. 267-99] and corresponding poverty lines Minhas and Jain [1990, Pp. 342-81], Minhas, Jain and Tendulkar [1991, Pp. 1,673-682] and Minhas, Kansal and Jain [1992, Pp. 142-70].

The estimates of the three alternative measures of poverty for the rural and urban sectors of Maharashtra and all-India for the period 1961-62 to 1993-94 are presented in Tables 4 and 5, respectively. They bring out the following salient features:

(i) The estimates of all the three types of measures for the rural sectors of both Maharashtra and all-India show an increase in poverty up to 1967-68 and a decline thereafter marked, of course, by fluctuations. The range and frequency of fluctuations were higher for Maharashtra than for all-India (Table 4). A similar picture is obtained for the urban sector, except the fact that the temporal movements for Maharashtra and all-India were similar (Table 5). It is such variations in poverty estimates that have been rationalised in terms of hypotheses like the trickle-down and unanticipated inflation.

(ii) Generally the proportion as well as the severity of poverty had been higher in Maharashtra than in India as a whole. Within Maharashtra, rural poverty incidence as well as severity had been higher than urban poverty.

(iii) Tables 4 and 5 also provide estimates of inequality, as measured by Lorenz ratio, in nominal consumption distribution. One limitation of these Lorenz ratio estimates is that they are obtained without any adjustment for (i) the differential impact of inflation across income groups, and (ii) decile group-wise differentials between sectors within Maharashtra and between Maharashtra and all-India. Hence, nothing much

Table 4. Consumer Expenditure Levels, Inequalities and Poverty Indicators: Rural Maharashtra and All-India, Rural

Year	Maharashtra Rural							All-India Rural						
	Poverty Line (Rs Per Capita Per Month)	Headcount Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)	Lorenz Ratio at Current Prices (%)	Monthly PCTCE at Current Prices	Monthly PCTCE at 1960-61 Prices	Poverty Line (Rs Per Capita Per Month)	Headcount Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)	Lorenz Ratio at Current Prices (%)	Monthly PCTCE at Current Prices	Monthly PCTCE at 1960-61 Prices
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
1961-62	15.70	42.77	10.88	3.90	28.08	19.91	20.32	15.45	38.29	10.10	3.65	31.61	21.73	21.10
1963-64	17.70	47.24	12.48	4.47	29.12	21.72	19.59	17.70	44.76	12.32	4.64	30.01	22.37	18.96
1964-65	24.20	59.22	17.69	7.06	27.29	25.16	16.66	21.30	45.11	12.63	4.91	29.65	26.44	18.62
1965-66	25.44	56.03	16.06	6.21	27.90	27.74	17.45	23.25	47.87	13.54	5.31	30.13	28.40	18.32
1966-67	28.00	61.59	19.30	8.18	28.70	28.53	16.30	28.50	55.77	17.74	7.67	29.69	30.90	16.26
1967-68	29.30	55.88	16.21	6.60	25.84	30.66	23.05	30.90	55.42	17.54	7.51	29.11	33.40	16.21
1968-69	28.30	53.86	15.33	5.80	28.74	32.04	18.10	27.75	50.12	14.71	5.98	30.97	33.29	17.99
1969-70	29.28	52.22	14.04	5.10	27.19	33.22	18.15	28.95	48.80	14.12	5.62	29.83	34.70	17.98
1970-71	30.70	44.03	11.34	4.09	25.12	36.39	18.95	28.80	45.22	12.60	4.86	29.76	35.31	18.39
1972-73	39.04	61.45	19.11	8.06	31.51	41.55	17.03	35.31	46.29	13.23	5.25	30.67	44.17	17.98
1973-74	44.20	46.80	12.52	4.64	26.99	52.27	18.94	42.90	44.16	11.87	4.42	28.19	53.01	18.53
1977-78	51.20	53.88	16.01	6.21	46.86	77.09	24.09	48.45	39.82	10.71	3.97	34.20	69.01	21.33
1983	77.60	34.17	7.45	2.22	28.84	111.00	22.89	76.65	32.82	8.10	2.77	30.10	112.68	22.05
1986-87	92.96	32.22	7.69	2.77	29.87	136.94	23.57	86.70	25.54	5.66	1.92	30.10	141.44	24.47
1987-88	101.28	31.46	6.56	1.87	33.53	160.77	25.40	97.50	25.70	5.34	1.69	30.20	158.10	24.32
1993-94	170.72	27.15	6.03	2.07	30.65	272.66	25.55	172.05	22.65	4.38	1.33	28.54	241.40	24.53

Note: Poverty indicators are based on published NSS consumer expenditure distributions using the conventional all-India norm of Rs 15 per capita per month at 1960-61 prices for the rural sector. The estimates are obtained by price-adjusting only the poverty line with the respective consumer price index for agricultural labourers.

Table 5. Consumer Expenditure Levels, Inequalities and Poverty Indicators: Urban Maharashtra and All-India, Urban

Year	Maharashtra Urban							All-India Urban						
	Poverty Line (Rs Per Capita Per Month)	Headcount Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)	Lorenz Ratio at Current Prices (%)	Monthly PCTCE at Current Prices	Monthly PCTCE at 1960-61 Prices	Poverty Line (Rs Per Capita Per Month)	Headcount Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)	Lorenz Ratio at Current Prices (%)	Monthly PCTCE at Current Prices	Monthly PCTCE at 1960-61 Prices
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
1961-62	20.55	32.26	8.36	2.86	37.73	36.66	35.93	18.72	33.83	9.34	3.47	36.37	30.86	29.67
1963-64	22.31	36.42	10.36	3.86	37.57	37.24	34.30	20.34	36.08	9.48	3.30	36.54	32.96	29.17
1964-65	25.57	35.24	10.44	4.20	39.91	44.48	35.75	22.68	35.22	9.38	3.49	35.52	36.03	28.60
1965-66	27.28	35.93	9.99	3.65	38.97	46.87	35.31	24.30	37.55	10.16	3.79	34.45	36.65	26.93
1966-67	29.70	34.24	9.71	3.75	36.79	49.46	34.23	27.00	36.37	9.74	3.63	34.69	41.54	27.69
1967-68	32.25	37.94	11.75	4.87	36.69	50.34	32.07	29.70	37.35	10.02	3.76	34.50	44.82	27.16
1968-69	32.77	36.06	10.01	3.77	35.79	52.06	32.64	29.88	35.78	9.63	3.59	34.25	46.04	27.73
1969-70	34.27	33.39	9.36	3.64	33.84	54.31	32.57	30.78	33.58	8.66	3.15	35.86	50.39	29.47
1970-71	35.75	29.46	7.40	2.61	36.25	63.30	36.39	32.22	32.20	8.14	2.89	34.69	52.85	29.53
1972-73	39.49	26.72	7.56	3.08	37.08	74.84	38.95	35.64	27.31	6.22	1.91	34.70	63.33	31.98
1973-74	45.80	27.95	6.80	2.23	33.77	79.78	35.79	41.76	24.79	5.16	1.58	30.90	70.77	30.51
1977-78	60.39	26.90	7.47	2.95	37.48	115.46	39.29	55.26	26.51	6.66	2.47	35.53	100.00	31.32
1983	103.93	25.98	6.72	2.45	34.80	192.01	37.97	90.00	22.29	4.96	1.63	34.08	170.46	34.09
1986-87	132.32	24.57	6.22	2.20	35.18	254.83	39.58	114.48	20.69	4.53	1.47	36.74	236.35	37.16
1987-88	143.12	23.50	5.85	2.10	35.59	279.53	40.14	123.48	20.92	4.31	1.27	35.60	249.93	36.43
1993-94	262.60	22.60	5.73	2.06	35.59	529.80	41.46	220.08	18.22	3.65	1.08	34.42	458.04	37.46

Note: Poverty indicators are based on the published NSS consumer expenditure distributions using the conventional all-India norm of Rs 18 per capita per month at 1960-61 prices for the urban sector. The estimates are obtained by price-adjusting only the poverty line with the respective weighted consumer price indices for industrial workers and urban non-manual employees.

can be said about the real trends in inequality or relative inequality levels between sectors. Still, what is to be noted is that rural consumption inequality in all-India did not show any trend while that in Maharashtra showed some rise in 1983. As regards the urban sector, consumption inequality in Maharashtra was markedly higher than that in all-India in the 1960s. While nominal consumption inequality in urban India did not show any trend, that for urban Maharashtra showed a marked decline since the early 1960s and fluctuations around a lower level since the 1970s.

The estimates of poverty corresponding to the poverty lines estimated by the Expert Group are presented in Tables 6 and 7. The findings are as follows:

(i) All the poverty measures show an increase in poverty between 1973-74 and 1977-78 and a decline thereafter in rural Maharashtra and a decline in rural all-India since 1973-74. Urban poverty declined since 1973-74 in both Maharashtra and all-India with the difference that there was a marginal increase in the former between 1983 and 1987-88.

Table 6. Poverty Indicators Based on Expert Group Norm: Rural Maharashtra and All-India

	Maharashtra Rural				All-India Rural			
	Poverty Line (Rs Per Capita Per Month)	Headcount Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)	Poverty Line (Rs Per Capita Per Month)	Headcount Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1973-74	50.47	58.96	17.56	7.07	49.00	55.94	16.63	6.72
1977-78	58.07	63.33	21.07	8.97	55.29	50.50	14.98	6.03
1983	88.24	45.28	11.35	3.85	87.77	43.39	11.90	4.49
1987-88	115.61	42.57	10.34	3.40	112.67	36.93	8.81	2.88

Note: Poverty indicators are based on the all-India norm of Rs 49 at 1973-74 prices for the rural sector.

Table 7. Poverty Indicators Based on Expert Group Norm: Urban Maharashtra and All-India

	Maharashtra Urban				All-India Urban			
	Poverty Line (Rs Per Capita Per Month)	Headcount Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)	Poverty Line (Rs Per Capita Per Month)	Headcount Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1973-74	58.64	43.84	13.93	5.28	56.60	47.40	13.35	5.10
1977-78	74.64	38.75	12.32	5.36	70.08	41.98	12.52	5.18
1983	127.23	37.55	11.32	4.64	15.02	38.08	10.47	4.00
1987-88	184.45	38.12	11.47	4.73	161.87	37.63	10.10	3.62

Note: Poverty indicators are based on the all-India norm of Rs 56.60 at 1973-74 prices for the urban sector.

(ii) The magnitude, both size and severity, of rural poverty had generally been higher in Maharashtra than all-India as a whole. Urban poverty, both incidence and severity, was higher in Maharashtra than in all-India only in 1987-88; for the earlier three years under consideration, the relative rankings differ depending upon the measure used. Within Maharashtra, estimates of all the three measures show rural poverty to be higher than the urban poverty only for the 1970s; during the 1980s, while the proportion of the poor population was higher in the rural sector than in the urban, the squared poverty gap was higher in the latter than that in the former.

As already noted, the estimates of depth and severity measures of poverty are not satisfactory. This is because they are estimated by price-adjusting only the poverty lines; hence, they do not capture the positive aspects of the distributional impact of changes in relative prices. The different measures of poverty with such price-corrections for distributions are presented in Tables 8 and 9 for some years between 1970-71 and 1987-88. They confirm the broad patterns

Table 8. Poverty Indicators Based on Current Price and Price-Adjusted Distributions: Rural Maharashtra and All-India, Rural

Year	Maharashtra Rural						All-India Rural					
	Poverty Line## (Rs Per Capita Per Month)	Headcount Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)	Lorenz Ratio (%)	Monthly PCTCE	Poverty Line## (Rs Per Capita Per Month)	Headcount Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)	Lorenz Ratio (%)	Monthly PCTCE
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
	Estimates Based on Consumer Expenditure Distributions at Current Prices											
1970-71	34.95	56.37	16.08	6.30	25.12	36.39	33.01	57.00	17.52	7.30	28.76	35.31
1972-73	44.02	71.33	24.48	11.01	31.51	41.55	40.22	56.48	17.90	7.62	30.67	44.17
1973-74	50.49	59.00	17.57	7.08	26.99	52.77	49.09	56.10	16.71	6.76	28.19	53.01
1977-78	61.40	67.25	23.47	10.37	46.86	77.09	57.64	53.93	16.50	6.81	34.20	69.10
1983	97.43	54.10	14.97	5.53	28.84	111.00	93.16	48.34	13.87	5.43	30.10	112.68
1987-88	131.31	53.79	14.89	5.48	33.53	160.72	122.63	44.30	11.45	4.16	30.16	158.10
	Estimates Based on Consumer Expenditure Distributions at 1970-71 Prices@@											
1970-71	34.95	56.37	16.08	6.30	25.12	36.39	33.01	57.00	17.52	7.30	28.76	35.31
1972-73	34.95	70.48	24.28	10.91	32.39	33.62	33.01	56.45	17.57	7.38	30.78	36.48
1973-74	34.95	59.14	17.71	7.17	27.43	36.61	33.01	56.11	16.85	6.85	28.78	35.89
1977-78	34.95	65.92	22.20	9.52	46.68	44.92	33.01	54.05	16.17	6.56	33.09	39.02
1983	34.95	52.42	14.47	5.35	28.09	39.97	33.01	48.54	13.74	5.32	29.40	39.48
1987-88	34.95	50.13	12.93	4.48	33.28	44.61	33.01	46.37	11.60	4.11	28.01	40.42

Notes: ## The poverty lines at current prices are from Minhas and Jain [1990, Pp. 342-81] and Minhas, Jain and Tendulkar [1991, Pp. 1,673-682].

@@ The consumer expenditure distributions at 1970-71 prices are obtained by deflating commoditywise expenditures across expenditure classes with the respective commodity group price indices from Jain and Minhas [1991, Pp. 1-21] and Tendulkar and Jain [1993, Pp. 267-99].

Table 9. Poverty Indicators Based on Current Price and Price-Adjusted Distributions: Urban Maharashtra and All-India, Urban

Year	Maharashtra Urban						All-India Urban					
	Poverty Line## (Rs Per Capita Per Month)	Headcount Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)	Lorenz Ratio (%)	Monthly PCTCE	Poverty Line## (Rs Per Capita Per Month)	Headcount Ratio (%)	Poverty Gap Index (%)	FGT2 Index (%)	Lorenz Ratio (%)	Monthly PCTCE
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Estimates Based on Consumer Expenditure Distributions at Current Prices												
1970-71	41.54	39.02	11.15	4.35	36.24	63.30	39.04	45.35	13.51	5.43	34.69	52.85
1972-73	50.70	40.84	13.38	6.01	37.08	74.84	47.31	46.49	13.84	5.46	34.70	63.33
1973-74	58.80	44.02	13.28	5.33	33.77	79.78	56.64	47.45	13.38	5.11	30.90	70.77
1977-78	72.90	37.36	11.71	5.04	37.48	115.46	68.08	40.00	11.69	4.76	35.53	100.00
1983	126.05	36.99	11.07	4.52	34.80	192.01	111.25	35.79	9.57	3.58	34.08	170.46
1987-88	177.25	35.67	10.43	4.21	35.59	279.53	158.31	36.13	9.50	3.34	35.57	249.93
Estimates Based on Consumer Expenditure Distributions at 1970-71 Prices@@												
1970-71	41.54	39.02	11.15	4.35	36.24	63.30	39.04	45.35	13.51	5.43	34.69	52.85
1972-73	41.54	40.35	13.48	6.15	38.13	62.97	39.04	45.08	13.45	5.31	35.50	53.97
1973-74	41.54	43.69	13.53	5.57	34.81	57.45	39.04	46.54	13.38	5.11	32.86	50.93
1977-78	41.54	35.14	11.03	4.77	38.21	69.35	39.04	38.41	11.03	4.45	35.61	58.80
1983	41.54	31.70	9.27	3.71	35.63	70.63	39.04	33.82	8.93	3.32	34.44	62.01
1987-88	41.54	34.00	9.96	4.04	36.82	68.96	39.04	34.33	8.59	2.87	35.41	63.15

Notes: ## The poverty lines at current prices are from Minhas and Jain [1990, Pp. 342-81] and Minhas, Jain and Tendulkar [1991, Pp. 1,673-82].

@@ The consumer expenditure distributions at 1970-71 prices are obtained by deflating commodity-wise expenditures across expenditure classes with the respective commodity group price indices from Jain and Minhas [1991, Pp. 1-21] and Tendulkar and Jain [1993, Pp. 267-99].

observed above. The estimates based on distributions at current prices and price-adjusted/reconstructed distributions at 1970-71 prices differ with respect to magnitudes: For rural Maharashtra, FGT2 measure based on current price distribution showed a decline of about 13.02 per cent in severity of poverty while the estimates based on reconstructed distributions show the decline to be 28.89 per cent. For urban Maharashtra, the price-adjusted FGT2 measures show marginally higher reduction in poverty. The picture is just the opposite for all-India. Current price and price-adjusted estimates of FGT2 measures do not much differ in the extent of reduction in severity of rural poverty; for urban India, price adjusted estimate show a greater reduction in poverty than the current price estimates.[17]

Thus, the different estimates of poverty show a general improvement in the economic status and, hence, in economic access to foodgrains, of the population in both rural and urban Maharashtra. However, this finding needs further verification since it is quite possible that, as observed at the all-India level [Suryanarayana, 1995, Pp. 203-55], there was virtually no growth in consumer expenditure till the mid-70s but only a decline till the mid-60s and a recovery by mid-70s. When it comes to the implications for actual food and nutrition security of the poor, these results have to be interpreted only after careful scrutiny since the methodology followed even for deflating consumer expenditures is valid in a stationary context and not in a developing economy undergoing structural changes in production structure and consumer preferences [Suryanarayana, 1996d, Pp. 2,487-497].[18] But, there are studies [see, for instance, Ahluwalia, 1978] which have found a statistically significant negative relationship between agricultural output per head and the incidence of poverty, *inter alia,* in Maharashtra which is interpreted to confirm the 'trickling down' of growth benefits to the poor. The following two sections attempt a disaggregate analysis of the consumer expenditure and consumption patterns over time of the total and five bottom decile groups of population of rural and urban Maharashtra, respectively.

3. TRENDS IN PER CAPITA CONSUMER EXPENDITURE

The NSS reports provide information on estimates of MPCTCE by different expenditure groups as well as for the total population. Tables 4 and 5 provide these estimates for the total population by rural and urban sectors for both Maharashtra and all-India at current and at 1960-61 prices. The estimates of AMPCTCE at 1960-61 prices for the rural sector are obtained by price adjustments with the respective CPIALs and those for the urban sector are obtained using a base-year weighted price index of CPIIW and CPIUNM for urban Maharashtra and urban all-India. This is one possible approach considered in the paper. Of course, we could have tried several other options as done in Suryanarayana [1995, Pp. 203-55] but we have not done so partly because the additional insights provided are not substantial and partly because appropriate price indices are not available for the entire period considered here. However, we have obtained MPCTCE at 1970-71 prices, for the five poorest decile groups and also the total population of rural and urban Maharashtra, as part of our exercise to examine the changes in consumption patterns at 1970-71 prices using the representative price indices estimated by Minhas and colleagues.[19] The important findings (see Tables 10 and 11) are as follows:

(i) As observed for all-India, there was not at all any growth in MPCTCE in both rural and urban Maharashtra till 1973-74 (Tables 4 and 5). The MPCTCE of the total population declined till the mid-60s and recovered to the initial level in 1961-62 only by the mid-seventies. It is only after 1983 that we observe increases in MPCTCE of the total population. Thus, the evidence for Maharashtra also does not show any growth in MPCTCE during the 1960s and early 1970s and thus invalidates the kind of 'trickle down' exercises carried out by Ahluwalia [1978] and many other studies.

(ii) The estimates based on 1970-71 prices for the period 1970-71 to 1987-88 also show some increase in consumption (Tables 10 and 11). One important feature of this growth process, which is marked *vis-a-vis* the all-India experience [Suryanarayana, 1995, Pp. 203-55], is that the poorer decile groups have not experienced as much

Table 10. Growth in Monthly Per Capita Consumer Expenditure (At 1970-71 Prices) by Select Decile Groups: Rural Maharashtra (Percentage Increase in 1987-88 over that in 1970-71)

Decile Group	Cereals & C. Sub-stitutes	Pulses & P. Prod-ucts	Milk & M. Prod-ucts	Edible Oils	Meat, Fish & Egg	Fruits, Veg. & Nuts	Sugar	Salt & Spices	Beverage & Refts.	Food : Total	Pan, Tob. & Intox.	Fuel & Light	Clothing & Foot-wear	Durables & Misc. Goods & Services	Non-food: Total	Total Consumer Expendi-ture
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)
0 - 10	(-) 0.60	1.03	1.54	1.19	(-)0.63	2.26	1.78	(-)0.42	1.37	7.53	1.48	(-)2.87	0.32	5.29	4.28	11.81
10 - 20	0.35	0.35	0.45	0.76	0.01	1.41	1.17	(-)0.25	0.76	5.00	0.43	(-)2.72	0.95	5.01	3.72	8.72
20 - 30	(-)3.28	(-)0.23	1.30	0.80	(-)0.69	1.25	0.92	(-)0.50	0.41	2(-)0.01	0.85	(-)1.43	(-)0.28	3.99	3.12	3.12
30 - 40	(-)2.84	(-)0.33	1.64	0.64	(-)1.36	1.15	0.91	(-)0.51	0.46	(-)0.24	0.74	(-)1.40	(-)1.19	4.44	2.63	2.39
40 - 50	(-)0.29	(-)0.91	1.92	0.32	(-)2.14	0.62	0.94	0.16	0.81	1.46	0.75	(-)1.56	(-)2.57	5.13	1.79	3.25
0 - 100	(-)0.25	(-)0.36	0.82	0.91	(-)0.93	0.77	0.77	0.16	1.79	3.68	0.66	(-)1.24	(-)0.80	13.11	11.76	15.42

Note: c. = Cereals; p. = Pulses; M = Milk; Veg. = Vegetables; Refts = Refreshments; Misce = Miscellaneous; Tob = Tobacco; Intox = Intoxicants.

Table 11. Growth in Monthly Per Capita Consumer Expenditure (At 1970-71 Prices) by Select Decile Groups: Urban Maharashtra (Percentage Increase in 1987-88 over That in 1970-71)

Decile Group	Cereals & C. Sub-stitutes	Pulses & P. Prod-ucts	Milk & M. Prod-ucts	Edible Oils	Meat, Fish & Egg	Fruits, Veg. & Nuts	Salt & Spices	Sugar, Beverage & Refts.	Food: Total	Pan, Tob. & Intox.	Fuel & Light	Clothing & Foot-wear	Durables & Misc. Goods & Services	Non-food: Total	Total Consumer Expendi-ture
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
0 - 10	(-)8.93	0.15	1.47	1.29	0.07	2.75	(-)1.41	0.13	(-)4.49	0.04	(-)0.71	(-)0.80	7.56	6.15	1.66
10 - 20	(-)6.42	(-)0.36	2.37	1.77	(-)0.21	2.92	(-)1.56	(-)2.26	(-)3.73	(-)0.22	(-)0.90	(-)0.74	6.53	4.66	0.94
20 - 30	(-)6.46	(-)0.45	2.97	1.26	(-)0.09	3.37	(-)1.37	(-)1.66	(-)2.47	(-)0.31	(-)0.65	0.24	10.98	10.28	7.81
30 - 40	(-)4.01	(-)0.39	3.39	1.09	(-)1.35	3.54	(-)1.03	(-)2.25	(-)1.03	(-)0.03	(-)0.91	1.71	10.50	11.28	10.24
40 - 50	(-)3.75	(-)0.54	5.41	1.36	(-)0.47	3.85	(-)0.96	(-)2.82	2.07	(-)0.93	(-)0.72	0.48	8.18	7.03	9.09
0 - 100	(-)1.34	(-)0.21	1.47	0.66	(-)0.82	2.34	(-)0.65	(-)4.68	(-)3.21	(-)0.87	(-)0.71	3.16	10.57	12.15	8.94

Note: As in Table 10.

growth as the general population. For instance, between 1970-71 and 1987-88, while the MPCTCE of the total rural population increased by 15.42 per cent, the corresponding increases were only 11.81, 8.72, 3.12, 2.39 and 3.25 per cent, respectively for the five bottom decile groups of the rural population (in ascending order). Much worse was the experience of urban Maharashtra, with the poorest two decile groups hardly enjoying any increase in consumption; the increase in MPCTCE of total urban population was 8.94 per cent but only 1.66, 0.94, 7.81, 10.24 and 9.09 for the bottom five decile groups (in ascending order). These findings raise questions about the success and role of programmes like the EGS in promoting social security in Maharashtra. This is because EGS is supposed to have (i) mitigated the misery of the poor by providing job and, hence, economic security to the rural landless poor; and (ii) this, in turn, minimised migration of the rural poor to the urban centers and, hence, reduced the threat to economic opportunities to the urban poor.

The question that would follow now is: How far such increase in MPCTCE ensured increased food security measured in terms of increases in cereal consumption? Since Maharashtra is predominantly a coarse cereal consuming state, it would be interesting to examine the changes in cereal consumption patterns that accompanied the changing crop composition along with the limited green revolution.

4. CHANGING CONSUMPTION PATTERNS

One important measure of poverty, food and nutrition security in particular, is cereal consumption. This is because cereals account for a substantial portion of the calorie intake of the population. In 1983, cereals accounted for 73.41 per cent of calorie and 73.1 per cent of protein intake of the rural population in Maharashtra; the corresponding estimates for urban Maharashtra being 55.84 and 59.39, respectively [NSSO, 1989c, Pp. S-177 - S-258]. Therefore, we examine the changes in poverty and food security scenario in terms of changes in physical consumption of cereals. For this purpose, we consider available NSS estimates of average per capita quantities consumed per month of three different types of cereals, viz., rice, wheat and other cereals (comprising coarse cereals like jowar, bajra, maize, barley, small millets, ragi and gram) by the five poorer decile groups and the total population in rural and urban Maharashtra (Tables 12 and 13). The important findings are as follows:

(i) There had a been a perceptible decrease in cereal consumption in rural Maharashtra in relation to the initial consumption level in 1961-62. For the rural population as a whole, the decline has come about largely because of a decline in the consumption of the cheaper coarse cereals. Total monthly per capita cereal consumption declined from 16.07 kg in 1961-62 to 11.41 kg in 1993-94 which was accounted for largely by the decline in coarse cereal consumption which was of the order of 29.25 per cent. The decline in total cereal consumption (32.63 per cent) was more than the average, for the poorest decile group. Simultaneously, there was also a change in the consumption pattern of the superior cereals involving a decline rice consumption and an increase in wheat consumption; but the increase in wheat consumption was not sufficient to make up for the decline in the consumption of rice and coarse cereals.

(ii) Urban cereal consumption has virtually been stagnant during the period as a whole. A comparison between the terminal years shows that per capita total cereal consumption of urban Maharashtra declined by 12.95 per cent, accounted for mainly by the decline in coarse cereal consumption. The decline in total cereal consumption was less than the average for the poorest two decile groups of urban Maharashtra.

(iii) Similar to the all-India experience [Suryanarayana, 1995, Pp. 203-55], the decline in cereal consumption was more in rural (29.25 per cent) than in urban (12.95) Maharashtra. Unlike the all-India experience of a progressive substitution of coarse cereals by superior cereals in both rural and urban sectors, the decline in total cereal consumption was brought about by a decline in the consumption of both rice and coarse cereals in rural Maharashtra and largely by a decline in coarse cereal consumption in urban Maharashtra. However, nothing much can be inferred by such comparisons since the all-India experience is the

Table 12. Monthly Per Capita Cereal Consumption (Kg) by Decile Groups: Maharashtra, Rural

Decile Group	0-10				10-20				20-30			
Year	Rice	Wheat	Other Cereals	Total	Rice	Wheat	Other Cereals	Total	Rice	Wheat	Other Cereals	Total Cereals
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1961-62	2.78	0.60	9.98	13.36	2.67	0.65	8.29	11.61	2.34	0.52	9.73	12.59
	(20.80)	(4.48)	(74.72)	(100.00)	(23.02)	(5.61)	(71.37)	(100.00)	(18.60)	(4.16)	(77.25)	(100.00)
1972-73	0.65	2.19	4.88	7.72	1.10	2.53	6.56	10.19	1.79	2.46	7.30	11.55
	(8.39)	(28.41)	(63.19)	(100.00)	(10.78)	(24.82)	(64.40)	(100.00)	(15.48)	(21.35)	(63.18)	(100.00)
1973-74	0.92	0.71	7.88	9.50	1.26	0.56	9.39	11.20	1.75	0.76	9.57	12.08
	(9.67)	(7.46)	(82.87)	(100.00)	(11.21)	(4.97)	(83.82)	(100.00)	(14.49)	(6.31)	(79.20)	(100.00)
1977-78	0.73	0.42	8.46	9.61	1.24	0.62	9.28	11.15	1.72	0.85	9.52	12.09
	(7.62)	(4.35)	(88.02)	(100.00)	(11.14)	(5.59)	(83.27)	(100.00)	(14.20)	(7.05)	(78.75)	(100.00)
1983	0.81	0.47	9.78	11.06	1.28	0.67	10.29	12.24	1.70	0.87	10.22	12.80
	(7.36)	(4.27)	(88.37)	(100.00)	(10.44)	(5.48)	(84.08)	(100.00)	(13.29)	(6.82)	(79.89)	(100.00)
1986-87	1.63	1.06	5.23	7.92	1.99	1.21	7.06	10.27	2.18	1.42	7.20	10.80
	(20.58)	(13.40)	(66.02)	(100.00)	(19.37)	(11.81)	(68.82)	(100.00)	(20.23)	(13.11)	(66.67)	(100.00)
1987-88	1.50	0.98	7.88	10.36	2.03	1.37	8.18	11.57	2.33	1.55	8.48	12.37
	(14.46)	(9.44)	(76.10)	(100.00)	(17.51)	(11.83)	(70.67)	(100.00)	(18.85)	(12.56)	(68.59)	(100.00)
1993-94	0.80	0.68	7.55	9.03	1.79	1.15	7.02	9.96	2.10	1.49	7.01	10.61
	(8.88)	(7.48)	(83.65)	(100.00)	(17.92)	(11.55)	(70.53)	(100.00)	(19.79)	(14.08)	(66.13)	(100.00)

Decile Group	30-40				40-50				0-100			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1961-62	3.58	0.73	10.24	14.55	2.80	1.11	10.05	13.96	3.79	1.35	10.93	16.07
	(24.60)	(5.00)	(70.39)	(100.00)	(20.05)	(7.95)	(71.99)	(100.00)	(23.58)	(8.42)	(68.00)	(100.00)
1972-73	1.95	2.51	7.63	12.09	2.09	2.54	7.90	12.53	2.02	2,74	7.88	12.64
	(16.13)	(20.76)	(63.11)	(100.00)	(16.69)	(20.26)	(63.05)	(100.00)	(15.98)	(21.68)	(62.34)	(100.00)
1973-74	2.16	0.95	9.73	12.84	2.07	1.03	10.43	13.53	2.39	1.32	9.77	13.48
	(16.82)	(7.40)	(75.78)	(100.00)	(15.30)	(7.61)	(77.09)	(100.00)	(17.73)	(9.79)	(72.48)	(100.00)
1977-78	2.14	1.06	9.61	12.82	2.31	1.14	9.62	13.07	2.59	1.66	9.32	13.57
	(16.69)	(8.31)	(75.00)	(100.00)	(17.67)	(8.72)	(73.60)	(100.00)	(19.09)	(12.32)	(68.68)	(100.00)
1983	1.99	1.03	10.06	13.08	2.59	1.25	10.01	13.85	2.69	1.59	9.55	13.83
	(15.21)	(7.87)	(76.91)	(100.00)	(18.67)	(9.02)	(72.31)	(100.00)	(19.45)	(11.50)	(69.05)	(100.00)
1986-87	2.43	1.77	7.77	11.97	2.93	2.31	7.12	12.37	2.99	2.39	6.51	11.88
	(20.30)	(14.79)	(64.91)	(100.00)	(23.71)	(18.68)	(57.61)	(100.00)	(25.17)	(20.12)	(54.71)	(100.00)
1987-88	2.57	1.71	8.66	12.94	2.96	2.10	8.29	13.35	2.83	2.26	7.97	13.06
	(19.86)	(13.21)	(66.93)	(100.00)	(22.17)	(15.73)	(62.10)	(100.00)	(21.67)	(17.30)	(61.03)	(100.00)
1993-94	2.49	1.66	6.95	11.10	2.77	1.90	6.60	11.27	2.97	2.21	6.23	11.41
	(22.44)	(14.92)	(62.64)	(100.00)	(24.58)	(16.89)	(58.53)	(100.00)	(26.03)	(19.37)	(54.60)	(100.00)

Note: Figures in parentheses are percentage shares in total cereal consumption.

Table 13. Monthly Per Capita Cereal Consumption (Kg) by Decile Groups: Maharashtra, Urban

Decile Group Year	0-10				10-20				20-30			
	Rice	Wheat	Other Cereals	Total	Rice	Wheat	Other Cereals	Total	Rice	Wheat	Other Cereals	Total Cereals
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1961-62	2.20	0.97	6.40	9.57	1.95	2.02	6.10	10.08	2.90	2.10	6.22	11.22
	(23.03)	(10.13)	(66.84)	(100.00)	(19.39)	(20.09)	(60.52)	(100.00)	(25.88)	(18.71)	(55.41)	(100.00)
1972-73	0.59	3.89	3.23	7.71	0.84	4.75	3.86	9.42	1.18	4.83	3.73	9.77
	(7.66)	(50.43)	(41.91)	(100.00)	(8.89)	(50.26)	(40.85)	(100.00)	(12.11)	(49.60)	(38.29)	(100.00)
1973-74	0.64	1.71	6.39	8.74	0.78	2.20	6.88	9.86	1.07	2.77	5.79	9.63
	(7.29)	(19.54)	(73.16)	(100.00)	(7.96)	(22.29)	(69.75)	(100.00)	(11.07)	(28.81)	(60.12)	(100.00)
1977-78	0.84	1.88	6.61	9.32	1.69	3.06	5.70	10.44	2.23	3.95	4.14	10.32
	(8.99)	(20.14)	(70.87)	(100.00)	(16.16)	(29.30)	(54.54)	(100.00)	(21.59)	(38.28)	(40.13)	(100.00)
1983	1.16	1.73	6.38	9.27	1.97	3.00	4.82	9.79	2.28	3.70	4.17	10.15
	(12.54)	(18.63)	(68.83)	(100.00)	(20.09)	(30.64)	(49.27)	(100.00)	(22.47)	(36.47)	(41.06)	(100.00)
1986-87	1.64	2.37	4.26	8.27	2.49	3.18	3.01	8.68	2.55	3.48	3.09	9.12
	(19.85)	(28.69)	(51.47)	(100.00)	(28.73)	(36.63)	(34.64)	(100.00)	(27.96)	(38.13)	(33.91)	(100.00)
1987-88	1.11	2.18	6.70	9.99	2.07	3.96	4.53	10.56	2.48	4.29	3.71	10.48
	(11.08)	(21.83)	(67.09)	(100.00)	(19.57)	(37.52)	(42.91)	(100.00)	(23.69)	(40.92)	(35.39)	(100.00)
1993-94	1.69	2.45	5.28	9.43	2.67	3.78	3.10	9.54	3.09	4.30	2.36	9.75
	17.98)	25.96)	(56.06)	(100.00)	(27.94)	(39.60)	(32.46)	(100.00)	(31.70)	(44.11)	(24.19)	(100.00)

Decile group	30-40				40-50				0-100			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1961-62	2.93	2.52	5.97	11.41	3.46	3.18	4.63	11.27	3.61	3.08	4.11	10.81
	(25.65)	(22.05)	(52.31)	(100.00)	(30.72)	(28.20)	(41.09)	(100.00)	(33.42)	(28.50)	(38.08)	(100.00)
1972-73	1.42	5.00	3.12	9.54	1.56	5.11	2.78	9.45	1.64	4.93	2.42	8.99
	(14.87)	(52.46)	(32.67)	(100.00)	(16.48)	(54.12)	(29.40)	(100.00)	(18.24)	(54.84)	(26.92)	(100.00)
1973-74	1.32	3.07	4.92	9.31	1.57	3.28	4.50	9.35	1.57	3.45	4.24	9.26
	(14.18)	(32.94)	(52.88)	(100.00)	(16.79)	(35.08)	(48.13)	(100.00)	(16.95)	(37.26)	(45.79)	(100.00)
1977-78	2.65	4.43	3.17	10.26	2.93	4.81	2.69	10.43	2.65	4.42	2.94	10.01
	(25.88)	(43.24)	(30.88)	(100.00)	(28.06)	(46.14)	(25.80)	(100.00)	(26.47)	(44.16)	(29.37)	(100.00)
1983	2.41	4.05	3.77	10.23	3.05	4.42	2.64	10.11	2.82	4.21	2.97	10.00
	(23.57)	(39.56)	(39.86)	(100.00)	(30.17)	(43.72)	(26.11)	(100.00)	(28.20)	(42.10)	(29.70)	(100.00)
1986-87	2.62	4.73	2.85	10.20	2.63	4.90	2.81	10.34	2.84	4.28	2.17	9.29
	(25.64)	(46.39)	(27.97)	(100.00)	(25.44)	(47.39)	(27.18)	(100.00)	(30.57)	(46.07)	(23.36)	(100.00)
1987-88	2.77	4.30	3.56	10.63	3.25	4.51	2.21	9.98	2.90	4.59	2.74	10.23
	(26.07)	(40.42)	(33.51)	(100.00)	(32.59)	(45.22)	(22.19)	(100.00)	(28.35)	(44.87)	(26.78)	(100.00)
1993-94	3.14	4.54	2.15	9.83	3.54	4.45	1.45	9.44	3.16	4.43	1.82	9.41
	(31.92)	(46.17)	(21.91)	(100.00)	(37.46)	(47.13)	(15.40)	(100.00)	(33.58)	(47.08)	(19.34)	(100.00)

Note: Figures in parentheses are percentage shares in total cereal consumption.

average of different state experiences which are heterogeneous in terms of production structure, consumption patterns and changes in levels of development and poverty reduction. But what is surprising is that while the changing cereal consumption pattern at the all-India level is consistent with the estimates of corresponding crop-specific growth patterns, consumption of rice and coarse cereals in Maharashtra declined even though their per capita production and hence availability has increased in Maharashtra since the mid-1960s [Suryanarayana, 1996b, p. 246). Rice is costlier than wheat which, in turn, is costlier than coarse cereals. For the rural population as a whole, the increase in wheat consumption between 1961-62 and 1993-94 was only 5.35 per cent even after a decline of 5.10 and 29.25 per cent in rice and coarse cereal consumption, respectively. If the increase in economic entitlement as reflected in MPCTCE at constant prices were genuine, this finding of a decline in total cereal consumption in the context of increased per capita availability of cereals of all types could only mean changing consumer preferences in favour of non-cereal items.[20]

(iv) Finally, what is most important is that the level of cereal consumption in rural Maharashtra in 1993-94 was much below the levels reported for the drought years of 1972-73 and 1973-74 and that of urban Maharashtra was almost the same as those for the drought years. Given the importance of cereals for calorie adequacy, this finding calls for a detailed analysis of the changes in consumption patterns ever since the drought years and their implications for nutrition security.

The question of changes in consumption patterns can be addressed in several ways. One approach could be to estimate a complete demand system and statistically test for changes in preferences. However, there are many data related questions which complicate such verifications [Suryanarayana, 1996d, Pp. 2,487-497]. Available estimates of Engel elasticities and Engel ratios at current prices for all the individual cereals, edible oils and sugar for 1961-62, 1972-73, 1983 and 1987-88 [Suryanarayana, 1996b, Pp. 203-65] show:

(i) A decline in nominal Engel ratios for total cereals, increase for edibles oils in both the rural and urban sectors, decline for sugar in the urban, no such changes but fluctuations for sugar in rural Maharashtra. Part of such variation could be due to changes in relative prices, which can be verified with deflation by disaggregated commodity groups, which is attempted in this section.

(ii) A decline in Engel elasticities for almost all items considered. Sugar, which was a luxury in rural Maharashtra in 1961-62, became a necessity by 1987-88. Engel elasticity for wheat, which was a luxury in 1961-62 and 1983, was small at 0.447 in 1972-73. This could be the result of the government's efforts to promote food security in a drought year in Maharashtra through various employment generation programmes along with public distribution of, largely, wheat imported from other states.[21] Engel ratio for wheat of the rural population was 7.34 per cent in that year but less than four in the remaining three years considered. Wheat consumption of even the poorest two decile groups was high and comparable to the average of the total rural population in 1972-73 (Table 12). This is further confirmed by our estimates of pseudo-Lorenz ratio which is 0.333 for 1961-62, 0.347 for 1983 and 0.261 for 1987-88 but only 0.138 for 1972-73. A similar picture of declining Engel elasticity for almost all the items considered here is obtained for urban Maharashtra. Engel elasticity for wheat at 0.169 in 1972-73 was quite low. As in rural Maharashtra, in the urban sector, the Engel ratio for wheat as also for bajra was high in that year; wheat consumption by the poorer decile groups was also high (Table 13) and our estimates of pseudo-Lorenz ratios are 0.235 (1961-62), 0.178 (1983) and 0.183 (1987-88) but only 0.062 for 1972-73.

(iii) Only jowar and bajra are inferior cereals consumed largely by the poor in urban Maharashtra. This is confirmed by estimates of Engel elasticities as well as our estimates of decile group-wise shares in consumption of cereals by types.[22]

(iv) A decline in Engel elasticity for calories between 1972-73 and 1983 in both rural and urban Maharashtra, possibly indicating pursuit of variety in consumption rather than calorie *per se,* was found for all-India [Suryanarayana, 1995, Pp. 203-55].

Even the findings based on estimates of Engel elasticities are not free from limitations. These estimates get affected by changes in relative prices, production structures, systemic factors like race, occupation, age and level of education of the head of the household. Therefore, we supplement the above exercise by verifying how far the observed changes in consumption patterns (measured in terms of data at current prices) are due to changes in relative prices. For this purpose, we measure commodity-wise growth monthly per capita consumer expenditures at constant 1970-71 prices for rural and urban Maharashtra for the period 1970-71 to 1987-88 (Tables 10 and 11).

Much of the observed change in consumption patterns based on data at current prices is due to changing relative prices. The proportion of consumption expenditure (at current prices) of the rural population on cereals decreased from 40.41 per cent in 1972-73 to 19.60 per cent in 1987-88; at constant prices, the decline is much less, that is, from 37.21 per cent in 1972-73 to 28.67 per cent in 1987-88. Thus, changing relative prices have exaggerated the observed decline in the proportion of consumer expenditure on cereals. The commodity groups for which expenditure proportions both at current and constant prices registered some increase are (a) milk and milk products, (b) edible oils, (c) fruits, vegetables and nuts, (c) beverages and refreshments, and (d) durable and miscellaneous goods and services. MPCTCE of rural Maharashtra increased by 15.42 per cent between 1970-71 and 1987-88; but its distribution was not progressive, with the five poorer decile groups enjoying much less increases. With increases in income and entitlement, the rural poorest decile group experienced an increase in the consumption of all the commodity groups, except cereals, meat, fish and egg, salt and spices and fuel and light. In sum, what seems to have happened is that the poor have gone in for quality and variety in their consumption basket. For instance, for the poorest decile group's total consumption at constant prices increased by 11.81 per cent between 1970-71 and 1987-88. The commodities which largely accounted for this increase were (i) durable and miscellaneous goods and services (5.29 per cent), (ii) sugar (1.78 per cent), (iii) milk and milk products (1.54 per cent), followed by (iv) pan, tobacco and intoxicants (1.48 per cent), and (v) edible oils (1.19 per cent). A similar picture is obtained for other decile groups and also for the entire population in the rural sector.

The estimates for the urban sector (Table 11) reveal a picture similar to that for the rural. Between 1970-71 and 1987-88, urban MPCTCE at constant prices increased only by 8.94 per cent while it was 15.42 per cent in the rural sector. Unlike in the rural sector, the poorest two decile groups in urban Maharashtra did not benefit from any growth in MPCTCE; the increases, being 1.66 and 0.94 per cent, respectively, were marginal. These two decile groups re-allotted their limited budgets in favour of milk and milk products, edible oils, fruits, vegetables and nuts, durable and miscellaneous goods and services. The preferences of the five poorer decile groups seem to have changed primarily in favour of milk and milk products, edible oils and fruits, vegetables and nuts; for these items the increases in consumer expenditure of these decile groups exceeded that of the population averages. The estimates of changes in composition of consumption baskets should be taken as approximate since we have made price adjustments using only retail price indices. We have not price-adjusted the data for dual valuation of consumption which is likely to be serious for the cereals group in the rural sector in the 1970s with an increase in the market dependence of the poor.

Consistent with the decline in cereal consumption, there was a reduction in calorie intake per capita per diem from 2,280 and 1,916 in 1961-62 [Centre for Development Studies, 1975, p. 15] to 1,895 and 1,971 in 1972-73 in rural and urban Maharashtra, respectively. Unlike the all-India experience, there was some improvement in calorie intake in Maharashtra between 1972-73 and 1983 [NSSO, 1989b, Pp. S-1 - S-176]. The average per capita intake increased to 2,144 in rural and to 2,083 in urban Maharashtra. The calorie intakes of all the decile groups (except the

urban richest decile group) increased between the two years (Table 14). Still a majority, about 80 per cent in rural Maharashtra and about 70 per cent for urban Maharashtra, had a calorie intake level less than the normative minimum (2,400 calories for the rural and 2,100 calories for the urban sector) considered in the estimation of the poverty lines by the Expert Groups [Perspective Planning Division, 1979 and 1993]. The average intake of protein and fat per diem increased for all the decile groups in rural and only for the richest decile group in urban Maharashtra. For the urban bottom nine decile groups, intake of protein and fat declined. Both in rural and in urban Maharashtra more than 50 per cent of the poorest had protein and fat intake levels less than the respective sectoral averages.

Table 14. Estimates of Per Capita Intake of Calories, Protein and Fat Per Diem by Decile Groups: Rural and Urban Maharashtra

Decile Group	Rural Sector						Urban Sector					
	Calorie		Protein		Fat		Calorie		Protein		Fat	
	1972-73	1983	1972-73	1983	1972-73	1983	1972-73	1983	1972-73	1983	1972-73	1983
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
0-10	1,063.41	1,540.19	32.12	45.31	10.28	15.13	1,197.00	1,400.22	32.43	14.24	41.34	18.03
10-20	1,420.23	1,737.43	43.14	50.34	14.26	18.89	1,513.24	1,592.57	59.15	22.82	47.35	24.06
20-30	1,588.21	1,851.14	47.35	53.58	15.44	21.19	1,676.00	1,719.90	51.10	28.60	50.01	29.02
30-40	1,695.00	1,920.00	49.70	56.00	17.70	23.00	1,726.91	1,788.68	51.42	30.91	52.03	32.12
40-50	1,818.82	2,064.21	52.42	59.78	22.48	25.27	1,778.39	1,886.00	51.61	33.17	54.00	39.00
50-60	1,959.00	2,155.86	55.50	61.75	27.90	27.89	1,919.00	1,999.84	52.00	39.30	57.48	44.21
60-70	2,056.27	2,230.00	58.47	63.00	28.56	31.00	1,993.75	2,049.21	53.95	43.41	58.53	47.12
70-80	2,152.00	2,337.80	61.40	66.46	29.20	34.46	2,181.97	2,217.71	58.81	53.27	61.47	58.04
80-90	2,370.71	2,544.24	67.87	72.82	31.92	41.50	2,609.00	2,695.69	69.20	66.90	70.22	75.03
90-100	2,826.35	3,059.13	79.03	90.96	46.27	61.68	3,114.74	2,930.16	73.34	86.39	67.55	83.35
All	1,895.00	2,144.00	54.70	62.00	24.40	30.00	1,971.00	2,028.00	55.30	41.90	56.00	45.00

5. CONCLUSION

The preceding analysis has made an attempt to understand the magnitude of poverty, inequality and food security in rural and urban Maharashtra and the changes in them since the 1960s with the available NSS estimates of consumption. Maharashtra is one of the most urbanised and developed states of the Indian Union. Yet, rural poverty, both in terms of incidence and severity, is higher in Maharashtra than in all-India. Within Maharashtra, rural poverty is higher than the urban one. Rural and urban poverty, as measured by different measures, in Maharashtra increased till the mid-60s and declined thereafter; similar to the findings for all-India. But the frequency and range of fluctuations in poverty was higher for Maharashtra than for all-India. The fluctuations and the decline in poverty can hardly be attributed to the 'trickle down' mechanism of the growth process as there was not at all any growth in total consumer expenditure till the mid-70s; but only a decline and a recovery. The limited growth that took place since the 1970s was inequitous, as reflected in that the growth rates of consumer expenditure for the poorer decile groups were less than the average observed for the rural and urban populations. With improvement in economic entitlement, the poor also seem to have opted for a diversified consumption basket without impairing their nutritional security. The limited evidence available for 1972-73 and 1983 shows an improvement in calorie, protein and fat intakes in rural Maharashtra for all the decile groups, and only in calorie intake for the bottom nine decile groups in urban Maharashtra. Yet a majority (exceeding 80 per cent) suffer from shortfall of calorie intake in both rural and urban areas, calling for appropriate public policies towards nutrition security.

NOTES

1. For instance, average daily factory employment and per capita value of gross output as well as per capita value

added in industries are the highest in Maharashtra [GOM, 1997, p. 22; GOM, 1992, p. 45]. Urban population as a proportion of total population was 38.70 per cent (highest) in Maharashtra as against the all-India average of 25.70 per cent as per the 1991 Population Census [GOM, 1997, p. 7].

2. See, for instance, Drèze [1990], Oughton [1982] and Prabhu and Sarkar [1992].

3. In fact, the incidence of male wage labour declined from 53.50 to 47.40 per cent between 1972-73 and 1983 [Vaidyanathan, 1986, p. A-135].

4. The Fact Finding Committee on Regional Imbalance has identified 12 drought prone districts. They are Ahmednagar, Solapur, Pune, Nashik, Sangli, Satara, Aurangabad, Beed, Osmanabad, Dhule, Jalgaon and Buldhana [GOM, 1984]. Only 15.40 per cent of the gross cropped area is irrigated in Maharashtra as against the national average of 35.70 per cent in 1992-93 [GOM, 1997, p. 31].

5. However, industrialisation does not seem to have really benefitted in the form of growing employment opportunities relative to population. Total factory employment (covered under the Factories Act, 1948) per lakh of population increased from 1,886 in 1960-61 to 2,031 in 1970-71 but declined thereafter to 1,958 in 1980-81, 1,483 in 1990-91 and 1,463 in 1996-97 [GOM, 1998].

6. An operational holding is defined by the NSSO as 'a techno-economic unit used wholly or partly for agricultural production and is operated (directed or managed) by one person alone, or with the assistance of others without regard to the title, size or location' [GOI, 1997, p. 15].

7. Foodgrains production virtually stagnated during the 1960s and increased substantially during the 1970s, the weather adjusted growth rates being 0.23 and 9.36 per cent per annum, respectively [Dev, 1987]. Agricultural performance, foodgrains production in particular, declined again during the 1980s [Sawant and Achuthan, 1995, Pp. A-2 - A-13].

8. This is surprising given the fact that the Employment Guarantee Scheme (EGS) has played a major role in assuring employment. This should have strengthened the positive impact on wages of increased food prices through derived demand for labour.

9. Its role in reducing seasonal malnutrition has also been highlighted [Subbarao, 1992, Pp. 231-58].

10. Walker, et al., [1986] find that the coefficient of variation in income stream of landless agricultural households in two villages with EGS was less than half of that in agroclimatically similar villages but where EGS did not operate. This may largely be due to the fact that EGS employment peaks during the summer when little other employment is available [see, Ravallion, 1991, Pp. 153-75].

11. For instance, Oughton [1982, Pp. 169-97] shows that the Maharashtra famine of 1970-73 was 'at different times and different levels' both of demand and supply. On the supply side, the blame rests primarily on the foodgrains policy and the management's failure to ensure physical access to foodgrains at reasonable prices. On the demand side, food exchange entitlement turned unfavourable for the labour and market-dependent net-buyer households. The problem only became worse due to highly skewed wealth distribution. On the other hand, Drèze [1990, Pp. 13-122] lauds the role played by income generating public employment programmes in mitigating the adverse consequences of the drought.

12. The NSS sample design is such as to obtain unbiased estimates of average per capita consumption and total consumer expenditure. Towards this end, cooked meals provided to the employees and/or others are recorded against consumption of the employer households since it would be difficult to estimate the quantities and values of individual items used in the preparations of meals served to employees or to others. This would result in distorted estimates of inequality, poverty and nutritional intakes since the proportions of donors and recipients of free food are likely to vary in opposite directions over the expenditure classes [NSSO, 1989a, Pp. 5-26]. Such distortions would vary over time across sectors. These limitations have to be kept in mind while interpreting inter-sectoral and inter-temporal variations in inequality and poverty estimates.

13. The FGT class of poverty measures are as follows [Foster, Greer and Thorbecke, 1984, Pp. 761-66]. Let N be the total number of individuals in the society.

Let $Y = (y_1, y_2,...,y_N)$ be a vector of N individual consumption expenditures arranged in ascending order; z be the exogenously determined poverty line; q be the number of individuals with consumption less than z; y_p be the mean consumer expenditure of the poor; and C_p^2 = squared coefficient of variation of consumption distribution among the poor.

Then, H = q/N, that is, the headcount ratio; $R = z-y_p/z$, that is, poverty gap ratio; $g_i = z-y_i$ is the consumption shortfall of the i-th individual from the normative subsistence minimum. The Poverty Gap Index is given by

$$PGI = \frac{1}{NZ}\sum_{i=1}^{q}(z - y_i) \qquad (1)$$

That is, the Poverty Gap Index is a measure of depth of poverty given by the ratio of the aggregate consumption shortfall of all the poor to the normative consumption expenditure of the entire population. The severity of poverty can be captured by taking into account relative inequality among the poor. The P_α poverty measure is given by

$$P_\alpha(y;z) = \frac{1}{N}\sum_{i=1}^{q}\left[\frac{g_i}{Z}\right]^\alpha \qquad \alpha \geq 0 \qquad (2)$$

where α is the poverty aversion parameter. The formula for the P_α measure is general in the sense that it nests the Headcount ratio and Poverty Gap Index measures. That is to say, it reduces to Headcount ratio, that is a poverty prevalence measure, when $\alpha = 0$ and to Poverty Gap Index, that is a measure of depth of poverty, for $\alpha = 1$. For $\alpha = 2$, it becomes an overall severity measure encompassing headcount ratio, poverty gap index and relative inequality among the poor. This property of the measure comes out explicitly when it is expressed as:

$$P_2(y;z) = H\left[R^2 + (1-R)^2 C_p^2\right] \qquad ...(3)$$

Estimation of P_2, or FGT2, measure based on the NSS data becomes difficult since the NSS data are in group form and do not reveal any information regarding intra-group distribution. One approach could be to fit a distribution function to grouped data. But it has its own limitations which are well documented in the literature. An alternative approach could be to base it on parameterized Lorenz curves. The two possible functional forms for Lorenz curves considered in the estimation of poverty measures are the General Quadratic Lorenz curve [Villasenor and Arnold, 1984, 1989, Pp. 327-38] and the Beta Lorenz curve [Kakwani, 1980, Pp. 437-46]. The parameters of these two forms of Lorenz curves for the NSS data and the poverty measures based on them are estimated using the POVCAL programme prepared by Shaohua Chen, Gaurav Datt and Martin Ravallion. The choice between the two forms for the Lorenz curves considered has been made on the basis of goodness-of-fit criteria.

The tables also provide estimates of pseudo-Lorenz ratios. The term pseudo-Lorenz ratio refers to, what is called in Indian literature, specific concentration ratio. The difference between Lorenz and pseudo-Lorenz ratio lies in the variable used to rank the population. For instance, Lorenz ratio (or concentration ratio) in total consumption distribution is estimated using cumulative population proportions and corresponding consumption shares where the population has been ranked as per total consumption. On the other hand, pseudo-Lorenz ratio (or specific concentration ratio) for any sub-component of total consumption, say, food consumption, is obtained in exactly a similar way with the difference being that the population is ranked by total consumption and not food consumption.

14. Of course, one has to consider the regional variations in prices while making such comparisons, which we are not in a position to do for lack of information.

15. The poverty line for rural Maharashtra is obtained by price-adjusting the all-India rural poverty line using inter-regional price indices from Chatterjee and Bhattacharya [1974, Pp. 337-69]. The rural poverty lines for rural Maharashtra and rural all-India for subsequent years are updated using their respective Consumer Price Index for Agricultural Labourers (CPIAL).

16. The all-India poverty line is updated for subsequent years using a price index as a weighted sum of Consumer Price Index for Industrial Workers (CPIIW) and Consumer Price Index for Urban Non-manual Employees (CPIUNM) as suggested by Minhas, et al., [1987, Pp. 19-49]. It works out to Rs 18.72 for 1961-62 which with appropriate price adjustments for regional price variations with price indices from Minhas, et al., [1990, Pp. 207-39] works out to Rs 20.55 for urban Maharashtra. This poverty line is updated for the subsequent years in the same way as for urban all-India. For this purpose, the CPIIW for urban Maharashtra is obtained as a weighted sum of the corresponding price indices for Mumbai, Nagpur and Solapur and that of CPIUNM as a weighted sum of the price indices for Mumbai, Nagpur and Pune, with the weights from the same published tables.

17. These results seem to imply that households have responded to changes in relative prices by changing the composition of their consumption basket. This is an important factor that has to be considered in any analysis of poverty and its policy implications as can be seen in the following sections.

18. The NSS estimates of consumption from homegrown stock are valued at ex-farm prices and those from market purchases are valued at retail prices. The estimates from the 19th Round for July 1964-June 1965 show the share of homegrown stock (valued at ex-farm prices) in total consumption to be 43.71 per cent for rural and only 5.29 per cent for urban Maharashtra [Government of India (GOI), 1972, Pp. 42 and 83]. With development and commercialisation, these proportions would change and, hence, distort the estimates of poverty and inequality based on conventional statistical procedures.

19. It may be noted that methodologically the estimates of MPCTCE at 1970-71 prices obtained after commodity-wise deflation using the representative price indices are quite different from the estimates in Tables 2 and 3 since the former is equivalent to estimates obtained by deflation by Paasche price indices.

20. This is because the increase in wheat consumption has not been sufficient.

21. See Drèze [1990, p. 75]. This indeed seems to be the case. The NSS data for 1972-73 is from the 27th round covering the period October 1972 to September 1973. Supplies of wheat from the Central pool to Maharashtra was one of the highest in 1973. Actual supplies of rice, wheat and other cereals from the Central Pool to Maharashtra for the early 1970s were as follows:

(1)	1970 (2)	1971 (3)	1972 (4)	1973 (5)	1974 (6)	1975 (7)	1976 (8)
Rice	218	200	272	171	179	112	196
('000 tonne)	(13.25)	(9.76)	(11.32)	(9.97)	(9.79)	(7.42)	(9.35)
Wheat	971	631	974	1,533	994	1,419	1,130
	(18.71)	(14.73)	(13.86)	(21.75)	(17.36)	(19.15)	(24.97)
Others	9	11	66	572	401	85	126
	(7.69)	(17.74)	(17.74)	(55.00)	(41.77)	(33.07)	(62.69)
Total	1,198	842	1,312	2,276	1,574	1,616	1,452
	(17.23)	(13.17)	(13.39)	(23.22)	(18.49)	(17.61)	(21.28)

Notes: i) These figures refer to total of actual supplies of foodgrains from the Central pool to the State Government, direct sales to fair price shops and roller flour mills in thousand tonnes.
ii) Figures in parentheses are percentage shares of Maharashtra in total all-India allocation.
Source: *Bulletin on Food Statistics* (various issues).

22. The impression that cereals are an inferior commodity in urban Maharashtra [Drèze, 1990, p. 88] is not correct. Even in 1972-73, the Engel ratios of the only two inferior cereals, viz., jowar and bajra were 3.06 and 0.79 per cent, respectively while that of total cereals was 16.33 per cent [Suryanarayana, 1996b, Pp. 203-65].

ABBREVIATIONS

AMPCTCE	Average Monthly Per Capita Total Consumer Expenditure
CDS	Centre for Development Studies,
CPIAL	Consumer Price Index for Agricultural Labourers
CPIIW	Consumer Price Index for Industrial Workers
CPIUNM	Consumer Price Index for Urban Non-manual Employees
EGS	Employment Guarantee Scheme
FGT	Foster, Greer, Thorbecke
MPCTCE	Monthly Per Capita Total Consumer Expenditure
SDP	State Domestic Product

REFERENCES

Ahluwalia, M.S., 1978; 'Rural Poverty and Agricultural Performance in India', *The Journal of Development Studies,* Vol. 14, No. 3.

Centre for Development Studies, 1977; *Poverty, Unemployment and Development Policy,* Indian Edition, Orient Longman, Mumbai.

Chandhok, H.L. and The Policy Group, 1990; *India Database : The Economy, Vol. I and II,* Living Media India Ltd., New Delhi.

Chatterjee, G.S. and N. Bhattacharya, 1974; 'Between States Variation in Consumer Prices and Per Capita Household Consumption in rural India', in Srinivasan, T.N. and P.K. Bardhan (Eds.), *Poverty and Income Distribution in India,* Statistical Publishing Society, Calcutta.

Datt, Gaurav and Martin Ravallion, 1996; *Why Have Some Indian States Done Better than Others at Reducing Rural Poverty?,* Policy Research Working Paper 1,594, Poverty and Human Resources Division, The World Bank, Washington, D.C.

Dev, S. Mahendra, 1987; 'Growth and Instability in Foodgrains Production: An Inter-State Analysis', *Economic and Political Weekly,* Review of Agriculture, Vol. XXII, No. 39.

Dev, S. Mahendra, 1995; 'India's (Maharashtra) Employment Guarantee Scheme: Lessons from Long Experience', in von Bruan, Joachim (Ed.), *Employment for Poverty Reduction and Food Security,* International Food Policy Research Institute, Washington, D.C.

Drèze, Jean, 1990; 'Famine Prevention in India', in Drèze, Jean and Amartya Sen (Eds.), *The Political Economy of Hunger, Volume 2, Famine Prevention,* Clarendon Press, Oxford.

Foster, J., Greer, J. and Thorbecke, E., 1984, 'A class of Decomposable Poverty Measures', *Econometrica,* Vol. 52.

Ghiara, Ranjeeta, 1996; 'Determinants of Wages in Rural India: A Cointegration Analysis', *Journal of Quantitative Economics,* Vol. 12, No. 1.

Government of India, 1972; *The National Sample Survey, Nineteenth Round: July 1964 - June 1965,* Number 192, Tables with Notes on Consumer Expenditure, Delhi.

Government of India, 1991; *Estimates of State Domestic Product and Gross Capital Formation,* Central Statistical Organisation, Department of Statistics, Ministry of Planning, New Delhi.

Government of India, 1997; *Operational Land Holdings in India, 1991-92, Salient Features,* National Sample Survey Organisation, Department of Statistics, Ministry of Planning and Programme Implementation, New Delhi.

Government of India (n.d.): *Distribution of national Income by States, 1960-61,* National Council of Applied Economic Research, New Delhi.

Government of Maharashtra, 1984; *Report of the fact Finding Committee on Regional Imbalance,* Planning Department, Mumbai.

Government of Maharashtra, 1992; *Selected Indicators for Districts in Maharashtra and States in India 1989-90,* Maharashtra Shasan, Mumbai.

Government of Maharashtra, 1997; *Economic Survey of Maharashtra 1996-97,* Directorate of Economics and Statistics, Planning Department, Mumbai.

Government of Maharashtra, 1998; *Economic Survey of Maharashtra 1997-98,* Directorate of Economics and Statistics, Planning Department, Mumbai.

Jain, L.R. and B.S. Minhas, 1991; 'Rural and Urban Consumer Price Indices by Commodity groups', *Sarvekshana,* Vol. XV, No. 1.

Kakwani, N., 1980; 'On a Class of Poverty Measures', *Econometrica,* Vol. 48.

Minhas, B.S., L.R. Jain, S.M. Kansal and M.R. Saluja, 1987; 'On the Choice of Appropriate Consumer Price Indices and Data Sets for Estimating the Incidence of Poverty in India', *Indian Economic Review,* Vol. XXII, No. 1.

Minhas, B.S., L.R. Jain and M.R. Saluja, 1990; 'State Specific Urban Consumer Price Differentials Relative to All-India for Middle Fractiles and Total Population: 1961-1983', *Indian Economic Review,* Vol. XXV, No. 2.

Minhas, B.S., L.R. Jain and S.D. Tendulkar, 1991; 'Declining Incidence of Poverty in the 1980s. Evidence versus Artefacts', *Economic and Political Weekly,* Vol. XXVI, Nos. 27 and 28.

Minhas, B.S., S.M. Kansal and L.R. Jain, 1992; 'The Incidence of Urban Poverty in States (1970-1 to 1983)', in Harriss, Barbara and S. Guhan (Eds.): *Poverty in India: Research and Policy,* Oxford University Press, Mumbai.

Minhas, B.S. and L.R. Jain, 1990; 'Incidence of Rural Poverty in Different States and All-India: 1970-71 to 1983', in Indian Society of Agricultural Economics (Ed.) : *Agricultural Development Policy: Adjustments and Reorientation,* Oxford and IBH Publishing Co., Pvt. Ltd., New Delhi.

Mitra, Ashok K., 1990; 'Agricultural Production in Maharashtra: Growth and Instability in the Context of New Technology', *Economic and Political Weekly,* Review of Agriculture, Vol. XXV, No. 52.

National Sample Survey Organisation, 1983; 'Tables on Per Capita Per Diem Intake of Nutrients: Derived from Consumer Expenditure Survey, NSS 27th round, October 1972 September 1973', *Sarvekshana,* Vol. VI, Nos. 3 and 4.

National Sample Survey Organisation, 1989a; 'Monthly Per Capita Consumption of Cereals for Various Sections of Population: NSS 38th Round (1983)', *Sarvekshana,* Vol. XIII, No. 2.

National Sample Survey Organisation, 1989b; 'Results on Per Capita Consumption of Cereals for Various Sections of Population : NSS 38th round (1983)', *Sarvekshana,* Vol. XIII, No. 2.

National Sample Survey Organisation, 1989c; 'Results on Per Capita and Per Consumer Unit Per Diem Intake of Calorie, Protein and Fat and Perception of the People on Adequacy of Food', *Sarvekshana,* Vol. XIII, No. 2.

National Sample Survey Organisation, 1991; 'Results of the Fourth Quinquennial Survey on Consumer Expenditure (sub-sample 1): NSS 43rd round (July 1987 - June 1988), *Sarvekshana,* Vol. XV, No. 1.

Oughton, Elizabeth, 1982; 'The Maharashtra Droughts of 1970-73: An Analysis of Scarcity', *Oxford Bulletin of Economics and Statistics,* Vol. 44, No. 3.

Perspective Planning Division, 1979; *Report of the Task Force on Projections of Minimum Needs and Effective Consumption Demand,* Planning Commission, New Delhi.

Perspective Planning Division, 1993; *Report of the Expert Group on Estimation of Proportion and Number of Poor,* Planning Commission, New Delhi, 1993.

Prabhu, K. Seeta and P. C. Sarkar, 1992; 'Identification of Levels of development: Case of Maharashtra', *Economic and Political Weekly,* Vol. XXVII, No. 36.

Ravallion, martin, 1991; 'Reaching The Rural Poor Through Public Employment: Arguments, Evidence, and Lessons', *The World Bank Research Observer,* Vol. 6, No. 2.

Sawant, S.D. and C.V. Achuthan, 1995; 'Agricultural Growth Across Crops and Regions: Emerging Trends and Patterns', *Economic and Political Weekly,* Review of Agriculture, Vol. XXX, No. 12.

Singh, Ram D., 1996; 'Female Agricultural Workers' Wages, Male-Female Wage Differentials, and Agricultural Growth in a Developing Country, India", *Economic Development and Cultural Change,* Vol. 45, No. 1.

Subbarao, K., 1992; 'Interventions to Fill Nutrition Gaps at the Household level: A Review of India's Experience', in Harriss, B., S. Guhan, and R.H. Cassen (Eds.), *Poverty in India: Research and Policy,* Oxford University Press, Mumbai.

Suryanarayana, M.H., 1995; 'Growth, Poverty and Levels of Living: Hypotheses, Methods and Policies', *Journal of Indian School of Political Economy,* Vol. 7, No. 2.

Suryanarayana, M.H., 1996a; 'Economic Reforms, Nature and Poverty', *Economic and Political Weekly,* Vol. XXXI, No. 10.

Suryanarayana, M.H., 1996b; 'Food Security and Calorie Adequacy Across States: Implications for Reform', *Journal of Indian School of Political Economy,* Vol. 8, No. 2.

Suryanarayana, M.H., 1996c; *Trickle Down Debate: Missing Methodological Links,* Indira Gandhi Institute of Development Research, (mimeo).

Suryanarayana, M.H., 1996d; 'Poverty Estimates and Indicators: Data Base', *Economic and Political Weekly,* Special Number, Vol. XXXI, Nos. 35, 36 and 37.

Suryanarayana, M.H., 1997; 'Food Policies: Need for an Integrated Perspective', *Productivity,* Vol. 38, No. 2.

Tendulkar, Suresh D. and L.R. Jain, 1993; 'An Analysis of Inter-State and Inter-Commodity group Rural-Urban Consumer Price Indices in India: 1983 To 1988-89', *Journal of Indian School of Political Economy,* Vol. V, No. 2.

Tendulkar, Suresh D. and L.R. Jain, 1995; 'Economic Reforms and Poverty', *Economic and Political Weekly,* Vol. XXX, No. 23.

Vaidyanathan, A., 1986; 'Labour use in rural India: A Study of Spatial and Temporal Variations', *Economic and Political Weekly,* Review of Agriculture, Vol. XXI, No. 52.

Villasenor, J. and B.C. Arnold, 1984; 'The General Quadratic Lorenz Curve', Technical Report, Colegio de Postgraduados, Mexico.

Villasenor, J. and B.C. Arnold, 1989; 'Elliptical Lorenz Curves', *Journal of Econometrics,* Vol. 40.

Walker, Thomas S., R.P. Singh, and M. Asokan, 1986; 'Risk Benefits, Crop Insurance, and Dryland Agriculture', *Economic and Political Weekly,* Review of Agriculture, Vol. 21, Nos. 25 and 26.

HOW INFLATION DEFEATS EQUITY OBJECTIVES? THE POLITICAL ECONOMY OF COMMODITY TAXATION

Jose Sebastian

Contributing nearly 60 per cent of own tax revenue, sales tax is the mainstay of the finances of most Indian states. Besides revenue mobilisation, states also seek to pursue equity objectives through sales taxation by maintaining a differentiated rate structure. Based on the data on price movements and sales tax rates of selected commodities from the State of Kerala, this paper attempts to show that inflationary price increase vitiates the progressive features which rate differentiation seeks to achieve and renders the tax structure regressive. The paper also raises apprehensions about the commitment of the policy makers to equity objectives and argues that the differentiated rate structure partly reflects the administrator's preference for revenue mobilisation in an ad-hoc manner.

1. INTRODUCTION

Commodity taxes in general are considered regressive and sales tax is no exception. It is held that regressivity can be reduced to a large extent by levying different rates depending upon the nature of the commodities. Accordingly, basic necessities are either exempted or levied low rates, comforts at somewhat higher rates and luxuries at the highest rates. However, in most Indian states various commodities falling under these three categories are levied different rates, which results in excessive[1] number of rate categories. This has rendered the sales tax systems of Indian states extremely complex thereby causing higher administrative and compliance costs. It has been pointed out that multiplicity of rate categories opens avenues for evasion through misclassification of commodities [Sebastian, 1996]. Several Taxation Enquiry Commissions/Committees and Study Teams which looked in-depth into the sales tax systems of states recommended fewer rate categories [see, for example, Government of Gujarat, 1980; Government of Uttar Pradesh, 1974; Chelliah and Reddy, 1988; Govinda Rao, et al., 1991]. Despite all these, most state governments continue to have several rate categories, presumably, due to their concern for equity.

2. METHODOLOGY AND DATA SOURCE

In this paper we seek to examine whether it is possible to achieve this objective in an inflationary setting when prices of taxable commodities increase at varying rates. Since sales tax is an *ad valorem* tax, the rates remaining the same, changes in tax burden on commodities will be, more or less, in proportion to the changes in prices. This is most likely to vitiate the equity objectives underlying the nominal rate structure because changes in prices and in turn tax burden differ between commodities. If the policy makers are committed to equity, they will have to revise the rate structure on a continuing basis taking into account the price movements. Though this may not be very effective in retaining progressivity to the full extent, it can definitely prevent the tax structure from becoming more regressive. By analysing the movement of prices and sales tax rates of 25 commodities for the period 1987-88 to 1996-97 from the State of Kerala, we try to examine whether tax rates are actually revised thus and, if not, why. The period of our analysis is significant for its sharp price rise. It has been pointed out that inflation during the 1990s was phenomenal and is marked by sharp increases in the prices of basic consumption goods and, consequently, in the cost of living indices relevant to vulnerable sections of society [Radhakrishna and Ravi, 1992; EPW Research Foundation, 1995].

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Table 1. Yearly Average Retail Prices of Selected Commodities - 1987-88 to 1996-97

(In Rupees)

Sl. No.	Commodities	Unit	1987-88	1988-89	1989-90	1991-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1.	Rice	kg	4.47	5.15	5.39	5.36	6.39	7.65	7.50	8.74	9.88	11.29
2.	Green gram	kg	7.42	10.18	10.99	10.72	11.84	15.50	16.11	17.88	21.10	24.85
3.	Black gram	kg	7.04	9.70	11.96	12.91	14.16	14.06	13.75	24.60	31.05	29.43
4.	Red gram	kg	6.72	6.92	7.44	8.10	9.20	10.05	13.42	13.62	15.20	17.99
5.	Dhall	kg	11.88	12.33	12.08	15.59	19.32	19.16	19.99	21.35	30.95	32.07
6.	Tea	.5 kg	20.56	18.36	22.58	29.50	29.52	31.71	34.70	34.91	38.13	43.38
7.	Coffee powder	.5 kg	17.03	16.83	15.10	20.81	23.36	24.82	29.72	51.63	61.47	55.77
8.	Baby food	kg	47.29	55.88	59.61	60.00	70.30	80.31	82.23	83.51	97.58	112.07
9.	Coconut oil	kg	33.66	33.57	26.11	34.02	46.90	49.68	39.43	36.68	41.40	54.59
10.	Groundnut oil	kg	27.56	25.45	27.14	36.82	43.34	40.56	38.48	45.64	45.57	46.20
11.	Refined oil	kg	41.21	40.87	41.71	50.59	63.97	62.83	54.71	58.18	62.97	63.99
12.	Gingelly oil	kg	29.69	25.84	28.78	37.39	41.94	40.47	38.92	45.18	50.09	47.90
13.	Coriander	kg	19.14	10.64	11.75	13.42	16.25	18.28	18.07	19.33	23.45	39.96
14.	Chillies	kg	17.93	29.72	21.21	19.32	45.51	44.17	22.90	36.31	53.10	49.47
15.	Tamarind	kg	9.53	11.01	10.54	12.10	11.94	13.09	15.44	17.13	20.55	22.35
16.	Tobacco	kg	15.25	16.32	21.59	23.25	23.46	25.18	28.54	30.17	40.62	60.96
17.	Washing soda	kg	5.91	6.20	6.82	7.23	8.10	9.17	10.99	12.05	13.76	15.71
18.	Washing soap	.5 Bar	3.90	3.84	3.78	3.83	4.63	4.99	5.21	5.49	5.92	6.77
19.	Toilet soap	one	4.01	4.25	4.12	4.31	4.81	5.32	5.70	6.10	6.72	8.00
20.	Tooth paste	100 gm	N.A	N.A	9.47	9.88	11.03	12.84	14.17	15.58	17.60	18.52
21.	Razor blade	5 Nos.	2.21	2.38	2.58	3.47	3.95	4.31	5.01	5.33	5.92	5.80
22.	Electric bulb	one	5.05	5.91	6.16	6.88	7.93	8.84	9.43	9.38	9.52	9.66
23.	Torch battery	one	3.51	3.94	4.29	4.46	5.13	5.74	5.77	6.00	6.38	6.89
24.	Paper	24 Sheets	3.09	3.08	3.77	4.13	4.58	4.84	5.17	5.78	7.13	8.12
25.	Cement	50 kg	79.72	79.36	83.44	99.94	106.86	120.77	127.84	141.59	162.74	180.52

Note: N.A denotes 'not available'.

Source: *Economic Review,* State Planning Board, Government of Kerala, various issues.

Table 2. Annual Increase in the Prices of Selected Commodities - 1987-88 to 1996-97

(In Per cent)

Sl. No.	Commodities	Unit	1988-89 over 1987-88	1989-90 over 1988-89	1990-91 over 1989-90	1991-92 over 1990-91	1992-93 over 1991-92	1993-94 over 1992-93	1994-95 over 1993-94	1995-96 over 1994-95	1996-97 over 1995-96	Annual Average Increase during 1987-88 to 1996-97
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1.	Rice	kg	15.21	4.66	(0.56)	19.22	19.72	(1.96)	16.53	13.04	14.27	11.13
2.	Green gram	kg	37.20	7.96	(2.46)	10.45	30.91	3.94	10.99	18.01	17.77	14.97
3.	Black gram	kg	37.78	23.30	7.94	9.68	(0.71)	(2.20)	78.91	26.22	(5.22)	19.52
4.	Red gram	kg	2.98	7.51	8.87	13.58	9.24	33.53	1.49	11.60	18.36	11.91
5.	Dhall	kg	3.79	(2.03)	29.06	23.93	(0.83)	4.33	6.80	44.96	3.62	12.63
6.	Tea	.5 kg	(10.70)	22.98	30.65	0.07	7.42	9.43	0.61	9.22	13.77	9.27
7.	Coffee powder	.5 kg	(1.17)	(10.28)	37.81	12.25	6.25	19.74	73.72	19.06	(9.27)	16.46
8.	Baby food	kg	18.16	6.68	0.65	17.17	14.24	2.39	1.56	16.85	14.85	10.28
9.	Coconut oil	kg	(0.27)	(22.22)	30.29	37.86	5.93	(20.63)	(6.97)	12.87	31.86	7.63
10.	Groundnut oil	kg	(7.66)	6.64	35.67	17.71	(6.41)	(5.13)	18.61	(0.15)	1.38	6.74
11.	Refined oil	kg	(0.83)	2.06	21.29	26.45	(1.78)	(12.92)	6.34	8.23	1.62	5.61
12.	Gingelly oil	kg	(12.97)	11.38	29.92	12.17	(3.51)	(3.83)	16.08	10.87	(4.37)	6.19
13.	Coriander	kg	(44.41)	10.43	14.21	21.09	12.49	(1.15)	6.97	21.31	70.41	12.37
14.	Chillies	kg	65.76	(28.63)	(8.91)	135.56	(2.94)	(48.15)	58.56	46.24	(6.84)	23.40
15.	Tamarind	kg	15.53	(4.27)	14.80	(1.32)	9.63	17.95	10.95	19.96	8.76	10.22
16.	Tobacco	kg	7.02	32.29	7.69	0.90	7.33	13.34	5.71	34.64	50.07	17.67
17.	Washing soda	kg	4.91	10.00	6.01	12.03	13.21	19.85	9.65	14.19	14.17	11.56
18.	Washing soap	.5 Bar	(1.54)	(1.56)	1.32	20.89	7.78	4.41	5.37	7.83	14.36	6.54
19.	Toilet soap	one	5.99	(3.06)	4.61	11.60	10.60	7.14	7.02	10.16	19.05	8.12
20.	Tooth paste	100 gm	N.A	N.A	4.33	11.64	16.41	10.36	9.95	12.97	5.23	7.88
21.	Razor blade	5 Nos.	7.69	8.40	34.50	13.83	9.11	16.24	6.39	11.07	(2.03)	11.69
22.	Electric bulb	one	17.03	4.23	11.69	15.26	11.48	6.67	(0.53)	1.49	1.47	7.64
23.	Torch battery	one	12.25	8.88	3.96	15.02	11.89	0.52	3.99	6.33	7.99	7.87
24.	Paper	24 Sheets	(0.32)	22.40	9.55	10.90	5.68	6.82	11.80	23.36	13.88	11.56
25.	Cement	50 kg	(0.45)	5.14	19.77	6.92	13.02	5.85	10.76	14.94	10.93	9.65

Notes: N.A denotes 'not available'. Figures in the bracket denote negative.
Source : Table 1.

Data on price movement of these commodities are brought out by the Directorate of Economics and Statistics (DES) of the Government of Kerala. The DES regularly collects the week-end retail prices of nearly 50 commodities from selected centres of the state.[2] Of this, only 25 commodities are taxable as per the Kerala General Sales Tax Act. In order to ensure comparability of data across years, the prices are mostly taken for the same brand of commodities and also on the same units.[3] Our enquiry revealed that the same methodology of data collection has been followed throughout.

The price data of these commodities and the percentage increase in price over the previous year for the period 1987-88 to 1996-97 are given in Tables 1 and 2. The last column of Table 2 gives the annual average increase in prices during the reference period.

Table 2 shows that there is wide variation in price increase among commodities. The annual average price increase ranges between 5.6 per cent in the case of refined oil to 23.40 per cent in the case of chillies. Now, let us examine how inflation has changed the tax burden on various commodities. For this purpose we have to separate the tax element from the retail prices. The retail prices presented in Table 1 are inclusive of sales tax. Though the rates of sales tax on each commodity are known, it is not very easy to separate the tax element from the retail prices. This is because all the commodities under our consideration are levied tax at the wholesale point and retail dealers fix their profit margins on their purchase price which is inclusive of sales tax. The levy of surcharge on the tax paid further complicates the problem. In the absence of reliable data, calculation of the tax burden on the ultimate consumer is extremely difficult.[4] However, the tax element derived by applying the tax rate on the retail price would, more or less, approximate to the actual tax burden. Following this approach, we have worked out the per unit tax burden on these commodities and the percentage increase in tax burden over the previous year in Tables 3 and 4. The last column of Table 4 gives the annual average increase in tax burden during 1987-88 to 1996-97.

As in the case of price increase, in tax burden also the rate of increase differs between commodities. It varies between 3.15 per cent in the case of refined oil to 27.48 per cent in the case of tobacco. In order to bring out the inequity which inflation has brought about, we have to relate the tax burden on each commodity in 1996-97 to the corresponding unit price in the base year, i.e., 1987-88. Through this exercise we try to find out what would have been the tax rates had the tax burden in 1996-97 were applied on the unit prices in 1987-88. In other words, we are working out the tax rates corresponding to the tax burden in 1996-97 assuming the unit prices of commodities to remain at the base year level. The tax rates thus obtained indicate the differences in tax burden between commodities which is attributable mainly to inflationary price increase and to a lesser extent to the increase in nominal tax rates during the period 1987-88 to 1996-97. For analytical purposes we may call the tax rates, thus worked out, 'effective tax rates'. Table 5 presents the effective tax rates for 25 commodities.

We may now compare the effective tax rates with the nominal rates in 1996-97. Though the nominal rates on all items of pulses remained at 4 per cent throughout, the effective tax rates vary between 10.75 per cent in the case of red gram to 16.76 per cent in the case of black gram. Similarly, the nominal rates on coffee powder, washing soap and washing soda are the same, but the effective rates are widely different. The nominal rate on black gram at 4 per cent is lower

Table 3. Tax Burden per Unit of Commodity - 1987-88 to 1996-97

(In Rupees)

Sl. No.	Commodities	Unit	1987-88	1988-89	1989-90	1991-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1.	Rice	kg	0.04	0.05	0.05	0.05	0.06	0.08	0.08	0.09	0.10	0.11
2.	Green gram	kg	0.30	0.41	0.44	0.43	0.47	0.62	0.64	0.72	0.84	0.99
3.	Black gram	kg	0.28	0.39	0.48	0.52	0.57	0.56	0.55	0.98	1.24	1.18
4.	Red gram	kg	0.27	0.28	0.30	0.32	0.37	0.40	0.54	0.54	0.61	0.72
5.	Dhall	kg	0.48	0.49	0.48	0.62	0.77	0.77	0.80	0.85	1.24	1.28
6.	Tea	.5 kg	1.03	0.92	1.13	1.48	1.48	2.22	2.43	2.44	2.67	3.04
7.	Coffee powder	.5 kg	1.70	1.68	1.51	2.08	2.34	3.10	3.72	6.45	7.68	6.97
8.	Baby food	kg	3.78	4.47	4.77	4.80	5.62	8.03	8.22	8.35	9.76	11.21
9.	Coconut oil	kg	1.68	1.68	1.31	1.70	2.35	1.24	1.18	1.10	1.24	1.64
10.	Groundnut oil	kg	1.65	1.53	1.63	2.21	2.60	3.24	3.08	3.41	1.82	1.85
11.	Refined oil	kg	2.49	2.45	2.50	3.04	3.84	5.03	4.38	4.65	2.52	2.56
12.	Gingelly oil	kg	1.78	1.55	1.72	2.24	2.52	3.24	3.11	3.61	2.00	1.92
13.	Coriander	kg	1.53	0.53	0.59	0.67	0.81	1.10	1.08	1.16	0.94	1.60
14.	Chillies	kg	1.43	1.49	1.06	0.97	2.28	2.65	1.37	2.18	2.12	1.98
15.	Tamarind	kg	0.57	0.66	0.63	0.73	0.72	1.05	1.24	1.03	1.23	1.34
16.	Tobacco	kg	0.76	0.82	1.08	1.16	1.17	2.01	2.28	1.81	2.44	4.88
17.	Washing soda	kg	0.47	0.50	0.55	0.58	0.65	0.92	1.10	1.21	1.38	1.96
18.	Washing soap	.5 Bar	0.31	0.31	0.30	0.31	0.37	0.50	0.52	0.55	0.59	0.85
19.	Toilet soap	one	0.20	0.34	0.33	0.34	0.38	0.43	0.46	0.61	0.67	0.80
20.	Tooth paste	100 gm	N.A	N.A	0.76	0.79	0.88	1.28	1.42	1.56	1.76	1.85
21.	Razor blade	5 Nos.	0.11	0.12	0.13	0.17	0.20	0.34	0.40	0.32	0.36	0.46
22.	Electric bulb	one	0.51	0.59	0.62	0.69	0.79	1.11	0.94	0.94	0.95	0.97
23.	Torch battery	one	0.35	0.39	0.43	0.45	0.51	0.72	0.72	0.75	0.80	0.86
24.	Paper	24 Sheets	0.25	0.25	0.30	0.33	0.18	0.19	0.21	0.23	0.29	0.32
25.	Cement	50 kg	7.97	7.94	8.34	9.99	10.69	15.10	15.98	17.70	20.34	22.57

Note: N.A denotes 'not available'.

Source: Worked out using the data in Tables 1 and 6.

Table 4. Increase in Tax Burden over the Previous Year - 1987-88 to 1996-97

(In Per cent)

Sl. No.	Commodities	Unit	1988-89 over 1987-88	1989-90 over 1988-89	1990-91 over 1989-90	1991-92 over 1990-91	1992-93 over 1991-92	1993-94 over 1992-93	1994-95 over 1993-94	1995-96 over 1994-95	1996-97 over 1995-96	Annual Average Increase during 1987-88 to 1996-97
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1.	Rice	kg	25.00	0.00	0.00	20.00	33.33	0.00	12.50	11.11	10.00	12.44
2.	Green gram	kg	36.67	7.32	(2.27)	9.30	31.91	3.23	12.50	16.67	17.86	14.80
3.	Black gram	kg	39.29	23.08	8.33	9.62	(1.75)	(1.79)	78.18	26.53	(4.84)	19.63
4.	Red gram	kg	3.70	7.14	6.67	15.62	8.11	35.00	0.00	12.96	18.03	11.92
5.	Dhall	kg	2.08	(2.04)	29.17	24.19	0.00	3.90	6.25	45.88	3.23	12.52
6.	Tea	.5 kg	(10.68)	22.83	30.97	0.00	50.00	9.46	0.41	9.43	13.86	14.03
7.	Coffee powder	.5 kg	(1.18)	(10.12)	37.75	12.50	32.48	20.00	73.39	19.07	(9.24)	19.40
8.	Baby food	kg	18.25	6.71	0.63	17.08	42.88	2.37	1.58	16.89	14.86	13.47
9.	Coconut oil	kg	0.00	(22.02)	29.77	38.24	(47.23)	(4.84)	(6.78)	12.73	32.26	3.57
10.	Groundnut oil	kg	(7.27)	6.54	35.58	17.65	24.62	(4.94)	10.71	(46.63)	1.65	4.21
11.	Refined oil	kg	(1.61)	2.04	21.60	26.32	30.99	(12.92)	6.16	(45.81)	1.59	3.15
12.	Gingelly oil	kg	(12.92)	10.97	30.23	12.50	28.57	(4.01)	16.08	(44.60)	(4.00)	3.65
13.	Coriander	kg	(65.36)	11.32	13.56	20.90	35.80	(1.82)	7.41	(18.97)	70.21	8.12
14.	Chillies	kg	4.20	(28.86)	(8.49)	135.05	16.23	(48.30)	59.12	(2.75)	(6.60)	13.29
15.	Tamarind	kg	15.79	(4.55)	15.87	(1.37)	45.83	18.10	(16.94)	19.42	8.94	11.23
16.	Tobacco	kg	7.89	31.71	7.41	0.86	71.79	13.43	(20.61)	34.81	100.00	27.48
17.	Washing soda	kg	6.38	10.00	5.45	12.07	41.54	19.57	10.00	14.05	42.03	17.90
18.	Washing soap	.5 Bar	0.00	(3.23)	3.33	19.35	35.14	4.00	5.77	7.27	44.07	12.86
19.	Toilet soap	one	70.00	(2.94)	3.03	11.76	13.16	6.98	32.61	9.84	19.40	18.20
20.	Tooth paste	100 gm	N.A	N.A	3.95	11.39	45.45	10.94	9.86	12.82	5.11	11.06
21.	Razor blade	5 Nos.	9.09	8.33	30.77	17.65	70.00	17.65	(20.00)	12.50	27.78	19.31
22.	Electric bulb	one	15.69	5.08	11.29	14.49	40.51	(15.32)	0.00	1.06	2.11	8.32
23.	Torch battery	one	11.43	10.26	4.65	13.33	41.18	0.00	4.17	6.67	7.50	11.02
24.	Paper	24 Sheets	0.00	20.00	10.00	(45.45)	5.56	10.53	9.52	26.09	10.34	5.18
25.	Cement	50 kg	(0.38)	5.04	19.78	7.01	41.25	5.83	10.76	14.92	10.96	12.80

Notes: N.A denotes 'not available'. Figures in the bracket denote negative.
Source: Table 3.

Table 5. Comparison of Nominal Tax Rates and Effective Tax Rates

(in per cent)

Sl. No.	Commodities	Unit	Retail Price in 1987-88	Nominal Tax Rates in 1996-97 (in per cent)	Tax Burden in 1996-97 (in Rs)	Effective Tax Rates in 1996-97 (in per cent) (Col. 6/Col. 4 x 100)
1	2	3	4	5	6	7
1.	Rice	kg	4.47	1	0.11	2.46
2.	Green gram	kg	7.42	4	0.99	13.34
3.	Black gram	kg	7.04	4	1.18	16.76
4.	Red gram	kg	6.72	4	0.72	10.71
5.	Dhall	kg	11.88	4	1.28	10.77
6.	Tea	kg	20.56	7	3.04	14.79
7.	Coffee powder	kg	17.03	12.5	6.97	40.93
8.	Baby food	kg	47.29	10	11.21	23.70
9.	Coconut oil	kg	33.66	3	1.64	4.87
10.	Groundnut oil	kg	27.56	4	1.85	6.71
11.	Refined oil	kg	41.21	4	2.56	6.21
12.	Gingelly oil	kg	29.69	4	1.92	6.47
13.	Coriander	kg	19.14	4	1.60	8.36
14.	Chillies	kg	17.93	4	1.98	11.04
15.	Tamarind	kg	9.53	6	1.34	14.06
16.	Tobacco	kg	15.25	8	4.88	32.00
17.	Washing soda	kg	5.91	12.5	1.96	33.16
18.	Washing soap	.5 Bar	3.90	12.5	0.85	21.79
19.	Toilet soap		4.01	10	0.80	19.95
20.	Tooth paste	100 gms.	N.A	10	N.A	N.A
21.	Razor blade	5 Nos.	2.21	8	0.46	20.81
22.	Electric bulb		5.05	10	0.97	19.21
23.	Torch battery		3.51	12.5	0.86	24.50
24.	Paper	24 Sheets	3.09	4	0.32	10.36
25.	Cement	Bag	79.72	12.5	22.57	28.31

Note : N.A denotes 'not available'.
Source : Tables 1 to 6.

than tea at 7 per cent or for that matter tamarind at 6 per cent. However, the effective tax rate on black gram is higher than both these commodities. Baby food and washing soap, and toilet soap and tobacco are such similar pairs of commodities. Thus we find that the nominal rates present only a facade of progressivity.

It is here that the commitment of the policy makers is called into question. If policy makers are committed to progressivity, the tax rates should have been periodically revised taking the year to year price movement into account. We may compare the price movement and the year to year tax rates to see whether this is actually done. Table 6 presents the general sales tax (GST) rates of commodities under our consideration during the period 1987-88 to 1996-97.[5]

Though inflationary price rise was very pronounced in the case of most of the commodities during the period 1987-88 to 1991-92, the tax rate of not a single commodity was reduced. In

1992-93 the rates of 17 commodities were increased while the rate of only one commodity was lowered. Of course, in 1995-96 the rates of 5 commodities the rates of which were increased, have been subsequently reduced below the rates that prevailed in 1992-93. The overall trend is one of rate increase and only in rare cases rates are lowered.

Table 6. Rates of Sales Tax on Selected Commodities - 1987-88 to 1996-97

(Per cent)

(1)	Commodities (2)	1987-88 (3)	1988-89 (4)	1989-90 (5)	1990-91 (6)	1991-92 (7)	1992-93 (8)	1993-94 (9)	1994-95 (10)	1995-96 (11)	1996-97 (12)
1.	Rice	1	1	1	1	1	1	1	1	1	1
2.	Green gram	4	4	4	4	4	4	4	4	4	4
3.	Black gram	4	4	4	4	4	4	4	4	4	4
4.	Red gram	4	4	4	4	4	4	4	4	4	4
5.	Dhall	4	4	4	4	4	4	4	4	4	4
6.	Tea	5	5	5	5	5	7	7	7	7	7
7.	Coffee powder	10	10	10	10	10	12.5	12.5	12.5	12.5	12.5
8.	Baby food	8	8	8	8	8	10	10	10	10	10
9.	Coconut oil	5	5	5	5	5	2.5	3	3	3	3
10.	Ground nut oil	6	6	6	6	6	8	8	8	4	4
11.	Refined oil	6	6	6	6	6	8	8	8	4	4
12.	Gingelly oil	6	6	6	6	6	8	8	8	4	4
13.	Coriander	8	5	5	5	5	6	6	6	4	4
14.	Chillies	8	5	5	5	5	6	6	6	4	4
15.	Tamarind	6	6	6	6	6	8	8	6	6	6
16.	Tobacco	5	5	5	5	5	8	8	6	6	8
17.	Washing soda	8	8	8	8	8	10	10	10	10	12.5
18.	Washing soap	8	8	8	8	8	10	10	10	10	12.5
19.	Toilet soap	5	8	8	8	8	8	8	10	10	10
20.	Tooth paste	8	8	8	8	8	10	10	10	10	10
21.	Razor blade	5	5	5	5	5	8	8	6	6	8
22.	Electric bulb	10	10	10	10	10	12.5	10	10	10	10
23.	Torch battery	10	10	10	10	10	12.5	12.5	12.5	12.5	12.5
24.	Paper	8	8	8	8	4	4	4	4	4	4
25.	Cement	10	10	10	10	10	12.5	12.5	12.5	12.5	12.5

Source: Collected from the Board of Revenue (Taxes), Government of Kerala.

The question why this happens leads us to the political economy of commodity taxation. Sales tax being an indirect tax, the impact of inflationary price rise on tax burden and the consequent erosion of purchasing power do not attract much public attention. What the media and people in general are concerned with is the nominal tax rates and its progressivity. On the other hand, price rise, in general, and that of essential commodities, in particular, results in substantial broadening of the tax base. In an inflationary setting, strict adherence to equity objectives would necessitate rate reduction in the case of a wide range of essential commodities. It will not be feasible from the political angle to compensate the probable revenue loss by increasing the rates on other commodities. It appears that on the pretext of providing progressive features to the

tax structure, differentiated sales tax rate structures of Indian states actually facilitate the administrators to mobilise revenue in an *ad-hoc* manner. This is because if the objective is distributional equity, it is perhaps possible to achieve it with less number of rate categories [Rao and Tulasidhar, 1986, p. 292]. And this would have helped to free the sales tax systems of Indian states from many of its present day ills.

3. CONCLUDING OBSERVATIONS

The results we have obtained in this paper have implications for tax policy formulation at the state level. First, the efficacy of providing progressive features to the tax structure through rate differentiation needs in-depth study. Considering the problems it creates, it may be examined whether it is possible to achieve the same objectives through subsidies or targeted public distribution system. If these are found to be infeasible, administrative and infrastructural arrangements will have to be made on a permanent basis for systematic monitoring of price movements of taxable commodities and periodic revision of tax rates.

NOTES

1. It has been shown that despite minute rate differentiation and exemptions, Indian sales taxes are only proportional [Ahmed and Stern, 1983].

2. According to DES, these are essential commodities whose price movements are taken for calculation of cost of living indices for different occupational groups. It is not known exactly what criteria has been adopted for determining the 'essentiality' of these commodities. The fact that rates ranging from 1 per cent to 12.5 per cent have been levied on these commodities shows that the perception of tax administration is different from that of DES.

3. In the case of commodities, like toilet soap and electric bulb, the problem of non-comparability arises in certain years due to the inclusion of different brands although the unit remains the same. But the price difference between the brands is not significant enough to influence our conclusions.

4. There exists a misconception that due to wide prevalence of sales tax evasion, the actual tax burden on consumer will be less. The fact is that sales tax is mostly levied at the wholesale point and is passed on to the retailer and subsequently to the consumer. In a highly competitive wholesale market an evading dealer may engage in a price competition with his/her competitors by passing the benefits of tax evasion to the subsequent dealer and the benefit may ultimately reach the consumer as well. However, in practice, wholesale markets of most products are oligopolistic wherein a handful of dealers act in collusion and agree on a uniform price. This explains the fact that there is no significant price difference between retail dealers in the case of most consumer goods though there is high degree of sales tax evasion at the wholesale point.

5. Broadly, there are two types of sales taxes in Indian states. General sales tax (GST) is levied as per the Act passed by the state legislatures on the transactions taking place inside the jurisdiction of a state. Central sales tax (CST) on the other hand, is levied as per the Act passed by the Parliament on inter-state transactions. However, Central sales tax is collected and retained by the states.

REFERENCES

Ahmed, Ehtisham and Nicholas Stern, 1983; *Indirect Taxes and Prices in India: The Calculation of Effective Tax Rates Using Input Output Method,* Discussion Paper No. 14, University of Warwick, England.

Chelliah, R.J. and K.N. Reddy, 1988; *Sales Tax System in Delhi,* National Institute of Public Finance and Policy, New Delhi.

EPW Research Foundation, 1995; 'Myth of Inflation Control: Essential Commodities Worst Affected', *Economic and Political Weekly,* Vol. 30, No. 1.

Govinda Rao, M., Balasubramanian K.N and V.B. Tulasidhar, 1991; *Sales Taxation in Madhya Pradesh,* National Institute of Public Finance and Policy, New Delhi.

Government of Gujarat, 1980; *Report of the Gujarat Taxation Enquiry Committee,* Government of Gujarat, Gandhi Nagar.

Government of Uttar Pradesh, 1974; *Report of the Uttar Pradesh Taxation Enquiry Committee,* Government of Uttar Pradesh, Lucknow.

Radhakrishna, R and C. Ravi, 1992; 'Does Inflation Hurt the Poor More?', *Economic and Political Weekly,* Vol. 27, No. 4.

Rao, M.G. and V.B. Tulasidhar, 1986; 'Economic Analysis of Sales Taxation In India', *Bulletin for International Fiscal Documentation,* July 1986.

Sebastian, Jose, 1996; 'Legal Disputes Relating to Commodity Classification for Sales Taxation in India, *International VAT Monitor,* May-June 1996.

'ENVIRONMENTAL' MOVEMENTS IN INDIA: A CRITIQUE AND A NOTE

Subodh Wagle

[This is an attempt to respond to the paper entitled 'Environmental Movements in India: Some Reflections', by V. Ratna Reddy published in the *Journal of Indian School of Political Economy*, Volume X, No. 4, October-December 1998].

PART I

There are two ways of critiquing a research paper. The first way is to indicate and discuss the shortcomings in the paper after appreciating the positive aspects of the paper. If the critic finds a set of conclusions or arguments problematic, then he or she may point out the exact fault line or fault points and indicate the logically and analytically sound course the argument should or would take. However, the critic is in for trouble when he or she finds faults with basic elements of the paper, such as the underlying standpoint, structure, approach, methodology or framework. In this case, the critic has, first, to articulate the problematic element in the original paper. In most cases, the authors do not articulate these basic elements in clear terms, especially the standpoint or framework of the paper. Then, the critic has to prove/establish/indicate the faults in this element and articulate an alternative proposition on the problematic element. The next step is to undertake a comparative analysis of the pros and cons of both the original and the alternative standpoints. After this exercise, the critic has to go back to the original paper and discuss in the light of the alternative proposition the major arguments and conclusions made and arrived at by the author. This often is a mammoth task and results in a critique much longer than the original paper. This also means expenditure of a lot of time and energy on the part of the critic and expenditure of space on the part of the publisher. Whether the critic is adequately inspired to get into such a time and energy consuming exercise, depends upon a score of factors including the critic's judgement of the quality of the original paper. If the critic is not adequately inspired to take up this task, he or she may adopt the second approach.

The second approach would involve writing an independent note on the issues discussed in the original paper without getting into the exercise of referring to the paper every now and then. This note would systematically begin with explaining the standpoint and/or framework the critic would take and, then, take up the issues in the original paper in an appropriate manner. While discussing these issues, the critic (now the writer of the new note) may choose to refer to the arguments and conclusions in the original paper [Reddy, 1998, Pp. 685-95] without specific mention of the paper.

In the case of this paper, the writer of this note does not feel adequately inspired to provide a paragraph by paragraph analysis of the original paper, though it is necessary to elaborate on a variety of shortcomings. In order to indicate the gravity of shortcomings of the paper, a small section in this critique (Part II) discusses some of these faults. In Part III, the writer of this critique makes use of the 'second' approach described above. The brief note in this section provides a basic argument against the Conventional Standpoint on Development and the conventional understanding of 'environmental' movements. The section also provides an outline of an alternative standpoint and an alternative understanding of 'environmental' movements.

PART II

There are diverse and many shortcomings in the paper. What follows is a brief discussion of some critical shortcomings. The discussion is illustrative and indicative and not claimed to be integrated and exhaustive.

* To begin with it is an old paper. As the introduction to the paper suggests, it was written in 1994. 'Environmental movements', the topic of the paper, is a current issue and has been continuously evolving. Many important developments and changes have taken place in the five years' period between 1994 and today. This requires that the paper

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written in 1994 is updated to take due cognizance of these new developments. That the author has not done a substantial overhauling of the original paper is evident not only from the discussion in the paper but also from the bibliography provided at the end of the paper. If one takes a closer look at the bibliography, out of the total seventeen citations only three are post-1994. Out of these three, two are the author's own publications, and none of the three is directly connected with the developments in the field of 'environment' movements after 1994. It is injustice to the reader that he is asked to read a 1994 paper on such a burning issue. At least, the reader should be clearly warned about this lacunae.

There have been many instances of successful and of failed 'environmental' movements during this period. One of the major movement which should have been mentioned in the paper is the struggle of fisherfolks in India. Similarly, successful struggles, like the one against Thapar-Dupont's 'Nylon 66' project in Goa, struggle against the Sterlite Copper Smelting Plant in Maharashtra, and struggle against Aquafarms on the Eastern cost, are conspicuously absent in the paper. Equally missing are failures, such as the struggle against the Enron Power Plant in Maharashtra.

Second, as its title — 'Environmental Movements in India' — suggests, this paper claims to make a country-wide phenomenon in India as its subject matter. However, on closer scrutiny of the bibliography in particular and the paper in general, it is observed that the author has not conducted any first hand research of these movements — neither in the form of a case-study of one particular movement nor a comparative study of a group of 'environmental' movements. The paper appears to be entirely based on a brief study of five or six 'famous' 'environmental' movements drawing largely from secondary sources. Even the bibliography contains only five references that have connection with particular cases of environmental struggles while there are only thirteen references that have some connection with what could be called as 'environmental movements'. In my view, this material on which the paper appears to be based is not adequate to reflect on the state of environmental movements in India and then pontificate on what they should do and what they should not.

* Third, the paper is full of conclusive and judgmental statements which have not been adequately substantiated. Beginning from the paragraphs carrying the title 'Introduction', many findings and conclusions are delivered and judgements passed without adequate justification and substantiation.

  As an example, consider the following statement. 'Though the extent of local support is vital for the success of any grassroots level movement, one hardly finds that the initiative for environmental protection in India comes from the people concerned'. The author has not explained on what basis such a blanket statement could be made in the case of a vast and politically active country like India.

  The second example relates to the conclusion-cum-advice, the author offers to Indian 'environmental' movements. He exhorts that their approach *'ought to be* (emphasis added) different from that of their counterparts in the developed countries'. However, he never proves in this paper that Indian 'environmental' movements ape their Western counterparts. Nor does he provide any cogent explanation on why some similarity in the approaches between the Western and Southern 'environmental' movements is problematic. Is it just because it is of 'foreign' or 'Western' origin? It is expected that a social scientist would provide a convincing explanation in the matter.

  Even in the last concluding section, there are statements which remain unsubstantiated. For example: 'the anti-dam movements (on environmental grounds) *never* (emphasis added) try to get the support of the beneficiary

population by explaining the long-run linkages of environment and development'. This is precisely what activists involved in both Tehri and, especially, Narmada struggles (both of which have been made subjects of criticism in the paper) have done with considerable seriousness and perseverance.

Fourth, the definition of 'environmental movements', used but not clearly mentioned in this paper, is highly problematic. The author quotes definition of social movements at one place. But nowhere in his paper does he give the exact definition of the term 'environmental movements'. The lack of methodological precision gives rise to considerable confusion. The scheme used by the author in this paper involves comparison of 'environmental' struggles with 'development related experiments' by voluntary activists. What the author does is to draw lessons from two such developmental experiments and then pontificate that the 'struggles' should learn from these 'experiments'. This is one of the major 'reflections' or conclusion presented by the author.

It is highly erroneous to compare these two social phenomena — development experiments and 'environmental' struggles. First, circumstances that spur and shape these two different social phenomena are completely different. The protagonists have different objectives. The challenges and opposition they face, the strategies and techniques they need to adopt to face these challenges are also different. Similarly, their strengths, their weaknesses and limitations are completely different.

Coming to the two development 'experiments' referred to by the author in his paper, while *Pani-Panchayat* is essentially a visionary and path-breaking experiment in equitable water distribution, *Ralegan Siddi* is a success story of villagers who came together and worked on the economic and social ills affecting the village. The author could call both these experiments 'environmental' movements and compare them with 'environmental' struggles such as Narmada struggle only because the definition of the term 'movement' was stretched beyond the limit, making it incompatible with the ground-reality and, hence, irrelevant. It is worth noting that the term 'environmental' remains undefined in the entire paper.

Incidentally, the author seems to have undertaken a first-hand study of *Pani-Panchayat,* but has relied on assorted information and on a single newspaper report for discussion of *Ralegan Siddi* experiment. A serious author needs to be more circumspect in choosing sources to write a paper of serious nature aimed at academic audience.

* Fifth, the author appears to be unnecessarily critical about the Narmada movement.[1] (The reviewer calls it unnecessary because the author does not adequately substantiate his criticism in the paper.) There are claims, comments and statements made in the paper which indicate that there has been no attempt by the author to double-check his facts at the time of writing the paper or to correct these lapses at least before publishing the paper five years after. (Such lapses, especially on country-specific papers, easily go undetected and unchallenged in international conferences). In fact, almost all references to Narmada struggle in this paper, if dissected thoroughly, would throw up a good number of instances of wrong 'facts', faulty arguments, and hasty conclusions. As an example, let us take the following paragraph from the paper.

'But, the popularity received by *Narmada Bachao Andolan* mainly can be attributed to the strategies followed to gain external influence, including foreign NGOs and governments. Though *Narmada Andolan* is considered as a partial success, this does not reflect a healthy trend as far as Indian environmental movements are concerned, at least on two accounts. First, the interference of outside agencies appears to be more

political than ecological as their influence was conspicuously absent in the case of other strident environmental problems like the Bhopal tragedy. Second, unless the pressure for protecting the environment comes from the local people themselves, it is unlikely that they would succeed' [Reddy, 1998, p. 692].

The first sentence in this paragraph is confusing on the face of it. One would think: What exactly is the link between popularity of Narmada struggle and International Non-Governmental Organisations (NGOs)?. International NGOs have no influence on Indian masses, or the Indian media. The confusion probably clears up when one realises that the audience for which the 1994 paper was written was the international audience, and by the term 'popularity', the author means international fame received by the struggle. If this is so, it is highly objectionable that the author, while publishing the paper in an Indian journal (i.e., for Indian audience), has not made the necessary changes in the paper, neither has he tried to explain the popularity of the struggle in India.

Before we go to more serious objections, let us have a look at the last sentence in the paragraph quoted above. In this sentence, the author suggests that the Narmada movement does not enjoy support of local people. First, the author does not provide adequate substantiation for this proposition. Without any first hand research and without making a concrete reference to or providing quotations from secondary sources, it is rather unfortunate that the author makes such statements. Second, the Narmada movement is not a media campaign as the author seems to believe. It involves a series of grassroots mass action programmes which are well documented not only by journalists but even by serious researchers [for example, Fisher, 1995]. Does the author wish to suggest that such mass action programmes could be held continuously for a period of seven to eight years without adequate local support.

The next set of questions that come to the mind of a reader of the paper includes: why does the absence of 'interference' by international NGOs in Bhopal struggle and its presence in 'Narmada' struggle make international NGOs 'political' and not ecological? Has the author considered various possible reasons for this apparent anomaly? How can he jump to this conclusion? What exactly does the author want to suggest by assuming this ambiguous connection? The support of international NGOs received by Narmada struggle and absence of it in the case of Bhopal tragedy could be explained by various factors related to ground conditions such as: (a) overlap between agenda and targets of both, international NGOs and the local struggle; (b) the degree of success of strategising by Indian activists to make effective use of this overlap of agendas in order to defeat the international adversary; (c) lack of necessary strength and appropriate strategies on the part of Bhopal activists and their sympthisers in the other countries; (d) involvement of the government, international and autonomous agencies in the foreign countries (which could be more susceptible to NGO pressures) in the case of Narmada struggle where as involvement of foreign private multinational corporation in the case of Bhopal controversy. When some of the activists from the Narmada struggle took up the cause of communities affected by the Enron power project, they could not secure help and support of international NGOs to fight Enron corporation, a United States (US) company. This is mainly because the international NGOs felt that the Enron power project is less problematic on 'ecological' grounds.[2]

The author, while passing the judgement that the 'partial success' of Narmada struggle is not a 'healthy trend', has made a serious allegation, especially when he suggests that the '*interference*' (emphasis added) of outside agencies appears to be more *political* (emphasis added) than ecological'. Let us go into this in somewhat detail. The author's overall argument seems to be as follows: though there is no support of local people, the Narmada struggle has earned its 'partial success' due to 'political' 'interference' of outside agencies.

The author has not taken the necessary care to clarify what he means by 'political' and 'interference'. By implications, he suggests that the Narmada struggle has at least allowed, if not used, outside 'political' 'interference'. In 'popular' parlance, the outside political interference has certain meaning and the detractors — especially partisan politicians — of the Narmada struggle have used similar terms to hint at 'treason'. The author, while writing a serious academic paper, should have clarified the terms, especially terms which have acquired derogatory meaning in popular discourse. The author has not informed the reader nor has he taken cognizance of the argument and explanation from supporters of the struggle on the issue of help from international NGOs. The line of the argument roughly and briefly is as follows: The Narmada movement had to take help of international NGOs because the Central and State governments had taken help from governments of other countries and the World Bank whose offices are situated outside the country. The Narmada struggle could not have effectively lobbied with these governments and the World Bank without active help from these international NGOs, who were sympathetic to the cause. It needs to be clearly understood that the Narmada movement did not use the help of international NGOs or outside agencies to pressurise governments in India. So there is no question of 'outside' 'interference'. After the withdrawal of the World Bank from the scene, the struggle has not taken any help from these international NGOs and still has been continuing the grassroots political action programme and continues to be 'popular' within the country for the last four years. By not bringing this information to the notice of the readers and by making deceptive judgmental statements, the author may be seen as joining, willingly or unwillingly, the ranks of the vested interests which often make similar allegations against the integrity of honest and serious activists by using deception and disinformation.

As said above, this is just one example. Many other references to Narmada movement in the paper could be analysed in a similar manner to bring out the biases and unsubstantiated criticism of the Narmada struggle. It is understandable that the author, being an economist, does not have adequate understanding and appreciation of the political or social dynamics or the ground reality. And it is certainly not rare that economists, despite their limited understanding of social reality, comment and reflect on complex social phenomena without exercising adequate discretion. But clearly what is highly objectionable is the tendency to make implicit aspersions on the honesty and integrity of other people without providing adequate justification.

* Sixth, the author himself seems to be uncritically accepting what may be described as the 'Conventional Standpoint' imported from the West and applying it to the Indian situation. The point is not that it is imported from the West but that it is not quite relevant to or compatible with the ground-reality in developing countries. The confusion is compounded further because the author does not clearly define the assumptions or concepts he uses in the paper. The author articulates his standpoint neither on development and environment nor on nature-society relationship. This lapse is probably rooted in the constricted view the mainstream social science disciplines take. The mainstream social sciences, and especially the mainstream economics, arrogantly take an absolutist position by assuming that the way it looks at the process of development in particular and at the surrounding reality in general is one and the only way of looking at reality. When one assumes that there could be only one standpoint on social reality, one does not feel the need to define it. (There are, to be sure, many economists who transcend these limitations).

Similarly, the reviewer would like to clarify that he is not suggesting that underlying such unsubstantial and unjustifiable criticism of Narmada struggle are personal agenda or individual lacunae on the part of the author. It is more a matter of the standpoint the author is trained to subscribe to. Unfortunately, the standpoint of the mainstream economics, being absolutist, turns its exponents into strong believers who lose their ability to look

critically and rationally into their own beliefs (paradoxically, the mainstream often calls such strong believers of other standpoints 'indoctrinated fanatics'). The bias of mainstream believers against those who oppose 'development' and their failure to understand 'environmental' movements is presumably rooted in this constricted view of the conventional standpoint of 'foreign' origin which seems incapable of grasping the ground reality in this country. It is no wonder that these indoctrinated believers would instinctively make an all-out effort to protect what they are trained to take as sacrosanct — the dams or 'temples' of modern India enshrining the new deity, viz., development. It is equally understandable if such indoctrinated believers raise doubts about integrity of those who commit the 'sacrilege' of being sceptical about the deity of 'development'.

The next section is an attempt to articulate the Conventional (or Mainstream) standpoint on development and environment, and to understand how it shapes a particular understanding of 'environmental' movements. The note also outlines a standpoint more grounded in conditions here, that would enable a more realistic view of 'environmental' movements in India.

PART III

TWO STANDPOINTS ON ENVIRONMENTAL MOVEMENTS: A NOTE

The Conventional (or Mainstream) Standpoint on Development and Environment: The Conceptual Core

* Whatever may be the theoretical qualifications, the Conventional Standpoint equates development with increase in production of goods and services at the national level. In other words, the central objective of development, in this standpoint, is macro-economic growth.

* Accompanying this is the assumption that either through 'trickle-down effect' or through distributive measures adopted by the state, the generated wealth would reach every nook and corner of the society.

* Though increase in production and productivity in agricultural sector is not dismissed altogether, it is assumed that the major source of macro-economic growth is the phenomenal productivity of the modern, technologically-sophisticated industrial sector, and the subsequent explosion of tertiary/service sector.

* It is also implicitly assumed that the process of industrialisation and the concomitant social processes affecting traditional societies (such as modernisation, spread of education, etc.) would bring about social 'progress' and even political empowerment.[3]

* From the Conventional Standpoint, nature remains a source of raw material and energy mainly for industries and a sink for dumping industrial and urban waste.

* After decades of struggles by 'environmentalists' and people from communities affected by developmental projects and especially after acceptance of the 'environmental' cause by the mainstream institutions in the West, the protagonists of Conventional Standpoint in India started accepting that there exists something called 'environment' out there.[4]

* The understanding of 'environmental' or 'ecological' issues from the Conventional Development Standpoint has remained, because of the Western origin of the Standpoint, primarily Western and largely in terms of 'economic externalities'. Only few protagonists would be ready to go to the extent of accepting or acknowledging that there exist 'ecological dimensions of development', whatever they mean by the term.

Developmental Failures

* For various reasons, during the five-decades-long reign of Conventional Development Standpoint in India (before and after economic reforms), the spread of the process of industrialisation has remained limited. As a result, neither adequate macro-economic growth nor adequate employment is created in the country as a whole.[5]

* The combination of the factors such as emphasis on the macro-economic scale, preoccupation with macro-economic efficiency, top-down planning processes, and centralised decision-making structures, resulted in a skewed distribution of benefits and costs of development efforts among regions.

* The related processes of increasing technological sophistication, increasing capital intensity, and decreasing labour intensity in industrial sector drastically reduced employment potential of the industrial sector.

* Absence of the 'trickle-down' effect and failure of the state programmes for distributive justice resulted in neglect and deprivation of the rural and tribal communities.

* Similarly, commodification of nature as a source and a sink encouraged rapacious, unrestrained and wasteful use of natural resources.

About Environmental Impacts

* After acceptance of the existence of 'environment', the protagonists of the Conventional Standpoint (called hereinafter Conventionalist) agree that, as far as possible, development projects and policies should not create hazards or bad impacts on 'environment'.

* Having said this, it is quickly pointed out that any development effort — even primitive agriculture — does involve some intervention in nature. So there are bound to be some impacts on environment and on people if development is to be undertaken.

* Once inevitability of adverse impacts on nature and people is accepted at the conceptual level, the emphasis, at theoretical and practical levels, remains largely on corrective measures that require superficial/moderate changes and measures rather than on preventive measures that require fundamental and radical changes in the economic system.

* This emphasis gives rise to various arguments and contentions which sanctify and legitimise impacts on 'environment' and people. For example, it is said that 'such impacts are inevitable cost of development' or that 'this sacrifice (of environment and people) is for national cause'.

Conventional Understanding of Environmental Movements

* According to the Conventional understanding of the dynamics of environmental movements, there exists an organised group of urban environmentalists who are swayed by romantic ideologies coming from the West and who end up being instruments in the hands of international NGOs.[6]

* In the perception of a Conventionalist, these 'environmentalists' are going around looking for opportunities to instigate 'environmental' movements and struggle.

* Further, the Conventionalist believe that these environmentalists are attracted to only those environmental causes which are fashionable, which are preferred by their international counterparts, and which are easier to convert into struggle.

* Hence, when victims of development projects start resisting conventional development, Conventionalists find them unreasonable and anti-development. They infer that the development victims are easy prey to the designs of and instigation by the urban, middle-class, elitist, romantic lot of 'environmentalists'.

* Because Conventionalists — like protagonists of all absolutist ideologies — believe that the Conventional development path is the only way for societies to develop, opposition to Conventional development projects/policies is branded by them as anti-development.

* But as they cannot escape accepting 'environmental' causes, they tend to pontificate that 'environmental' movements should try to integrate environment and development.

* Hence, though some Conventionalists are generous enough to accept also that people should be duly compensated, they are furious when 'sacrilege' is committed by the affected people by resisting development.[7]

* However, for Conventionalist, their 'democratic' convictions teach them that people's support provides the ultimate legitimisation to any movement. As a result, they tend to claim that 'environmental' movements do not enjoy people's support, and that the movements are propped up by 'charisma' of the environmentalist leaders, media coverage, and support of international NGOs.[8]

Need for a Different Standpoint

* The fundamental problem with the conventional development standpoint is that it tends to overlook (especially at critical junctures) the vast difference in the ground-realities of Western and Indian situations. The industrialised societies in the West - for certain reasons and through certain processes - have already entered into industrial and post-industrial phases. As a result, people in these societies and their daily, livelihood-related activities have no substantive, material linkage with nature surrounding them. For these people, surrounding nature has become 'environment' which is surrounding but disjuncted from their daily life, except for aesthetic purposes. This 'environment' is then to be protected if one can really afford it and, to the extent, one affords it. The industrial world, rich with land, water and material wealth, can certainly afford to protect 'environment'.

* As against this, in a country like India (starved of land, water and wealth), industrial activity encroaches and impacts — in a direct, immediate and severe manner — on natural resources, on which local communities rely for securing their livelihoods.

* In non-industrialised societies like India, the prime concern of development efforts should be livelihoods of majority of people and not conventional industrialisation which, as experience suggests, benefits a few (and mainly) advantaged people and destroys sources of livelihoods of a large number of disadvantaged people.

* This transformation of concerns cannot be effected simply by reforming or correcting current development practice because the underlying conventional development standpoint is primarily grounded in the experience and history of the Western society. For the same reason either the 'environmental' or the 'ecological' standpoint of Western origin (of any variety) cannot be of any help. So what is needed is a standpoint grounded in the present reality in rural India.

Livelihoods Standpoint on Development and Environment

* As against the Conventional standpoint, the fundamental objective of development is 'guarantee of dignified, secured livelihoods to all'.

* The next set of guidelines for development emerge from acceptance of social, ecological, and political considerations. They require that development should be environmentally enriching, socially just, and politically empowering.

* The emphasis on 'guarantee to all' requires that those whose livelihoods' security is under threat should be given the first priority.

* Considering availability of various resources and practical limitations on implementation of programmes, the emphasis on guarantee of security also requires that, during development, nobody's current livelihood activities are adversely affected, even temporarily, before alternate livelihoods activities are really made available. In other words, nobody, and especially disadvantaged people, should be forced to pay 'cost of development' or to 'sacrifice' for national cause.

* Further, the standpoint also requires that development efforts should begin from where people are and with the aim that their present livelihoods activities are strengthened and invigorated while the natural resources on which these activities are dependent are protected and conserved.

* The livelihoods standpoint does not either commodify nature (as in the Conventional Standpoint), or deify it (as in the case of ecological standpoints of Western origin). It sees surrounding natural resources as permanent and reliable sources for satisfaction of most livelihoods needs.

* Use of the term 'livelihood' does not mean that the standpoint restricts itself to basic or subsistence needs. Rather, it envisages possibilities of creating wealth adequate to achieve reasonable material happiness to all, but obviously without adversely affecting other people and natural resource.

* Hence, it values sustainability, diversity and productivity of natural resources. It seeks simultaneous improvement in all these three attributes of natural resources.

* For the Livelihoods Standpoint, thus, environment and development are intricately linked. People in rural (and tribal) communities and natural resources surrounding them are linked with each other through people's livelihoods activities. These could be called 'Natural Resources-Livelihoods-People' (NRLP) linkages. Thus, what development means is strengthening of NRLP linkages, expanding them, and building a strong local economy around this core.

Key Guidelines for 'Development' Strategies

* Livelihoods standpoint is not anti-growth *per se,* neither is it anti-prosperity. What it does is to link growth, equity and nature (GEN) together.

* It does not denounce anything outright. Whatever is good for NRLP and GEN linkages in the long-run is acceptable.

* As said before, Livelihoods Standpoint does value productivity and prosperity. Similarly, it values quality, reliability, longer life and efficiency. But these entities are seen not in a narrow way as is the case with Conventional Standpoint.

* It is not anti-industrialisation. Instead of the conventional industrialisation that destroys

nature and people, it envisages industrialisation primarily based on local and renewable materials and energy sources, industrialisation which is specially dispersed as well as with decentralised ownership.

* Similarly, it does not dismiss modern technology outright. It takes into consideration the long term destructive impacts of many modern technologies on people and nature. But, it also acknowledges the immense benefits from productivity gains that modern technologies could offer. Hence, the Livelihoods Standpoint envisages strategic and judicious use of some less destructive modern technologies, if and when necessary.[9]

On the Genesis of Movements

* Thus, from the Livelihoods Standpoint, any conventional development project or policy could be seen as an intrusion that has potential to generate positive or negative impacts on the current NRLP linkage and current livelihoods activities as well as potential to spur new livelihoods activities.

* When local people perceive that such an intrusion is going to destroy their current livelihoods without creating new livelihoods activities/opportunities that could compensates their loss, discontent starts brewing in the local community. In this discontent lies the possibility of movement for protection of livelihoods.

* Before going into the dynamics of such livelihoods protection movements, it is necessary to describe another set of livelihoods related 'movements'. Even when there is no intrusion or no immediate threat to their livelihoods, people from rural communities might come together to take up activities that would enhance the scope, productivity, security, and/or sustainability of their livelihoods. Such activities satisfy the broader, academic definition of social movements and, hence, could be called livelihoods enhancement movements.

* But, if the nature of these activities is observed, the terms 'social experiments' or 'development experiments' or 'constructive development projects' (which are used in popular literature) seem to be more fitting and appropriate than the term 'movement' which is normally associated with efforts involving mass-action programmes.

* Because livelihoods activities of rural communities are heavily dependant on surrounding natural resources, enhancement of livelihoods involves enhancement/ improvement in surrounding natural resources.

* As far as dynamics (which includes issues such as popularity/ success/failures) of these two social phenomena (i.e. livelihoods protection movements and livelihoods enhancement 'movements' or constructive experiments) is concerned, these phenomena are vastly different from each other. It is highly erroneous to group them under an alien Western category of 'environmental movements'.

* Often, it is observed that protagonists of livelihoods protection movements clearly see the need for strengthening their adversarial or agitational activities by undertaking 'constructive' activities for enhancement of livelihoods. Whether they find some respite in the momentum of their activities to do so is a different matter.

* In contrast, there have been instances when the livelihoods enhancement 'movements' have to take up, temporarily or otherwise, adversarial or agitational activities for protection of livelihoods.

Dynamics of Livelihoods Protection Movements

* When there is threat to or impact on NRLP linkages there is discontent among the local population. To crystallise into a movement (however small), this simmering discontent in the local community needs a nucleus group of activists (local or outside or both). This nucleus is critical for articulation of

discontent, for strategising the actions and programmes, and for organising local community in order to translate its discontent into a movement.

* In India, there are no well-structured and large organisations fighting for 'environmental' causes. Hence, it is highly erroneous to assume that some environmentalists are waiting to go to the site of every development project and instigate local people into action.[10]

* It is a matter of accident or coincidence that some outside activist/ activists and the discontented community come into contact with each other and a movement or a struggle comes into being.

* The group of activists could act as a catalyst for movement only if members of the group could devote adequate time and energy and could handle various tasks and demands that resistance-oriented movements would make.

* As against this, if outsider activists see some 'environmental' impacts and approach local community, which, for some reasons, is not in a position to respond to the outsider's 'instigations', then a sustainable movement cannot evolve. If some half-hearted attempt is made by either or both of these parties, it is immediately dealt with by the state or established interests, using either stick or carrot or both.

NOTES

1. The critic has been keenly following the Narmada struggle, so criticism here against the paper is restricted to references to the Narmada struggle only. But, this might be true also in cases of the other movements. A person possessing good knowledge and understanding of the other movements would be able to throw more light.

2. The Indian activists in the Enron struggle did not follow the strategy of securing help from international NGOs because they felt that they could fight with their own governments on their own.

3. Learning from experience of India and other developing countries, the role of the state in expanding the reach of educational and health services has been accepted by the protagonists of Conventional Development Standpoint in India.

4. Sometimes they claim this is not a new thing and that many economists including Pigou had highlighted these issues and worked on them.

5. The champions of the economic reforms, the new *avatar* of Conventional Development Standpoint would like us to believe in the miraculous economic progress waiting to happen to India, once the 'shackles on the economy' are removed. However, for a realist, such a rosy future is not coming India's way for a variety of reasons.

6. However, they simply forget that their own development doctrine is increasingly proved to be an ideology and not a 'science' as they would like to believe, and that it is also imported from the West.

7. They, however, fail to understand that in the given social, administrative and political circumstances, plans and promises for fair, just, and adequate compensation is, for development victims, a purely hypothetical sweet-talk. As against this, destruction and displacement due to development are the grave facts of their own life. Refusing to accept this, the Conventionalists — the residents of ivory towers — continue to take judgmental position and effectively side with those whose vested interests lie in continuation of development projects.

8. These ivory-tower pontiffs, who have never experienced the state's repression or terror of anti-social elements (both of which are regularly invoked to support conventional development projects), simply have no idea of what level of commitment and sacrifice is needed on the part of the local communities and of their 'elite' environmentalist friends to sustain such grassroots movements for years.

9. For example, to enhance primary (sustainable without outside inputs) productivity of local ecosystem, green manure is a key resource. Strategic and judicial use of chemical fertilisers to kick-start the process of production of biomass to be used as green manure would be an acceptable use of modern technology from the Livelihoods Standpoint.

10. This also means that one cannot hold activists working with one environmental struggle responsible for not taking up other environmental causes, as is done by Ratna Reddy in his above referred paper (p. 689).

REFERENCES

Ratna Reddy, V., 1998; 'Environmental Movements in India: Some Reflections', *Journal of Indian School of Political Economy*, Vol. X, No. 4.

Fisher, William F. (Ed.), 1995; *Toward Sustainable Development: Struggling Over India's Narmada River*, M.E. Sharpe, Armonk, New York.

DOCUMENTATION

The purpose of this section is to make available to the readers official documents such as reports of committees, commissions, working groups, task forces, etc., appointed by various ministries, departments, and agencies of central and state governments which are not readily accessible either because they are old, or because of the usual problems of acquiring governmental publications, or because they were printed but not published, or because they were not printed and remained in mimeographed form. It will be difficult and probably not worthwhile to publish the documents entirely. We shall publish only such parts of them as we think will interest our readers. The readers are requested to send their suggestions regarding official documents or parts thereof for inclusion in this section.

In the present section we publish:

1. *Report on National Juridicare Equal Justice - Social Justice,* 1977, (Chairman: P.N. Bhagwati) Department of Legal Affairs, Ministry of Law, Justice and Company Affairs, Government of India, New Delhi.
2. *Public Interest Litigation: Some Introductory Readings,* 1982, Committee for Implementing Legal Aid Schemes, Department of Legal Affairs, Ministry of Law, Justice and Company Affairs Government of India, New Delhi.

REPORT ON NATIONAL JURIDICARE: EQUAL JUSTICE - SOCIAL JUSTICE

CHAPTER II

THEMES AND ISSUES

Activist jural order to be paramount principle of State policy.

2.01. 'No law, no order' is basic to the survival of civilised societies and that is why the rule of law has been deeply rooted in the West, and in India *Dharma,* as the source and course of correct *Karma,* has been regarded as the hallmark of a decent human order. That is why what demarcates the Great Divide between Chaos and Cosmos is the dynamic development-oriented rule of law expressing democratic legality. Orderly progress, so vital for developing countries, will mock at governments which do not uphold an activist jural order as a paramount principle of State policy. But what is the dynamic rule of law?

2.02. The most moderate, though not adequately radical, definition is to found in the Delhi Declaration made at the Conference of the International Commission of Jurists way back in 1959. It is as large as life, taking in social, economic and political justice, and reaches out to every area of community welfare. Law initiates, engineers, consolidates and coercively, persuasively and correctionally enforces and fulfils evolutionary norms of societal good. From the cradle to the grave, before and beyond, in sacred and secular life, the individual and society are governed by the law. And absent (in the absence of) law, chaos or tyranny occupy the vacuum.

2.03. Democracy, with its triune facets, emphasised by Dr. Ambedkar in the Constituent Assembly nearly 30 years ago, cannot ignore the social and economic, or for that matter, the political imperatives. India, in its Independence struggle and later in its constitution-making, has struck this fundamental note. 'The flaming phrases of the Preamble to the Constitution highlight this key thought and, while accenting on dignity and equal status and opportunity, hints at the divinity in every man and focuses on the moral principles of fellowship, fraternity and unity of all men. Such is the holistic jurisprudence underlying our constitutional creed'.

Rule of law and Indian Constitution.

2.04. It is desirable to take a close-up of this conceptual complex, called the dynamic rule of law, with special reference to the Indian Constitution. For, the state and its instrumentalities are bound by legal oath, political pledge and national tryst to fulfil the constitutional provisions in letter and spirit. Again, the Constitution not being a mystic parchment to be worshipped but a pragmatic package of mandates, we have to decode its articles in the context of Indian life's tearful realities. Thus, the integral *yoga* of law and life, energised by the solemn imperatives of the supreme law, makes for a society sweetened by justice and a State set on the rails of orderly progress. The perspectives and problems of human law and human justice, guided by the Constitution's goals and rules and geared to the solution of disparities, agues, agonies, despairs, distances, hurdles and handicaps of the weaker, yet larger brackets of Bharat's humanity, is the profound concern of the Janata Programme of Equal Justice through the law. A civil revolution through the law to secure justice to the masses and minorities, to ensure real rights and realisable remedies to the people - such is the object of JPEJL - (Janata Programme of Equal Justice through the Law). Article 14 of the Constitution emphasises the equal justice doctrine by equal protection of the laws. Part IV of the Constitution, especially Articles 38 and 39, bring out the positive content of equal justice even as Articles 15(3) and (4), 16(4), 17, 29 and 30 spell out some manifestations of social justice. Indeed, the history of the provisions relating to Agrarian Reform (Article 31A, 31B and 31C) highlights the commitment of the Constitution to produce an economic revolution whereby the weaker but larger human sectors may participate effectively in the national cake and national life.

Law to fulfil objectives set out in the Constitution.

2.05. Greatness and grandiloquence, of which there is an abundance in the nation's paramount parchment, cannot of themselves glorify the life of the people. Law has to be made to fulfil the objectives set out in the Constitution; the *corpus*

juris so made has to receive benignant construction, with a people's orientation, from the interpreting authority, namely, the judicature. And so the Judiciary must share the socio-economic philosophy of the nation as incorporated in the Constitution. Even these are not enough. Legislations galore and socially sensitive interpretations a plenty may leave considerable implementation gap because law in action is different from law in the books. The actual life of a citizen is affected by kinetic law and so the benefit of social welfare legislation can accrue only if the Administration executes with spiritual vigour, crusade and zeal the laws meant for the weaker sections of the community. An audit on performance becomes essential, lack of which has led to corruption in the public services and political circles, thwarting the legislative hopes and welfare statutes. Land legislation enacted in the various States, Harijan welfare legislation proclaimed in season and out of season in Parliament and elsewhere, labour legislation passed to the accompaniment of socialistic speeches, have left the concerned segments of the people cold and even cynical. The reason is that at the performance level, the laws have failed to protect the socially and economically poor. There are more aspects to it than need be elaborately examined here because all of them add up to the proposition that the active protection of equal laws and the socio-economic equality promised thereby can become a living reality only if free legal services to the weaker sections of the community are guaranteed as a State responsibility. Article 39A of the Constitution gives tongue to this urgent imperative of the rule of law and reads -

'39A. The State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities'.

2.06. Whatever other provisions brought in the Constitution by the 42nd Amendment may be treated as good, bad or indifferent, there can hardly be any doubt that a holistic conception of remedial jurisprudence in a developing country necessarily casts a constitutional obligation under the rubric Equal Justice and Free Legal Aid.

Development of poverty jurisprudence a must.

2.07. If the State is to secure a just social order for the welfare of the people and if legal justice is the root of orderly progress, there can hardly be any doubt that poverty jurisprudence must be developed in our country so that human justice through human law may promote in the people faith in the constitutional order.

Processual justice to the people.

2.08. The *Fourteenth Report of the Law Commission,* the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights have touched upon the norms underlying processual justice to the people. The Universal Declaration reads:

'Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law'.

Article 14(3) of the International Covenant on Civil and Political Rights preserves-

'the right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right; and to have legal assistance assigned to him in any case where the interest of justice shall require, and without payment by him in any such case if he does not have sufficient means to pay for it'.

The Law Commission has found upon equal laws thus:

'.... Equality is the basis of all modern systems of jurisprudence and administration of justice .... In so far as a person is unable to obtain access to a court of law for having his wrongs redressed or for defending himself against a criminal charge, justice becomes unequal and laws which are meant for his protection have no meaning and, to that extent, fail in their purpose. Unless some provision is made for assisting the poor man for

the payment of court fees and lawyer's fees and other incidental costs of litigation, he is denied equality in the opportunity to seek justice'.

The evocative words of the earlier Committee on Legal Aid deserve to be reproduced:

'Such a consummation - a proposition to which we are constitutionally dedicated - is possible only through an activist scheme of legal aid, conceived wisely and executed vigorously. Law and justice can no longer remain distant neighbours if the increasing deficiencies and distortions of the legal system and the challenge to the credibility of the judicature are to be adequately met. The lawlessness of the old original law, judged by the new *dharma*, can be corrected either by radical reform or by surrender to direct action. The choice is obvious and the hour is late. Let us begin'.

The themes and issues that a policy maker, convinced of and committed to the Janata Programme of Equal Justice through the Law, faces may be briefly stated. We are assuming that the goal is justice to the masses; therefore, access to justice without heavy court fee imposts and logistic hurdles and early litigative finality must be ensured. The next theme of equal justice is a system of decentralised judicature. The Father of the Nation believed, as an article of faith, in people's participation and decentralised justice:

'My idea of village *Swaraj* is that it is a complete republic, independent of its neighbours for its own vital wants, and yet inter-dependent for many others in which dependence is a necessity. ... The government of the village will be conducted by the villagers, male and female, possessing minimum prescribed qualifications. *These will have all the authority and jurisdiction required.* Since there will be no system of punishments in the accepted sense, *this Panchayat will be the legislature, judiciary and executive* combined to operate for its year of office. Any village can become such a republic to-day without much interference....'

It is plain that administration of justice, if it is to acquire a people's flavour in the area of little disputes and small claims and local laws which afflict the little Indians, must possess the attributes of involvement of the people and location in villages. The theme of panchayati justice must claim primary attention from those at the helm of affairs, especially since it is integral to the dream of *Swaraj* which Gandhiji has preached to the nation. Rajghat has profounder significance than mere *pranams* on appointed dates.

Justice to be free - court fee an obstacle to justice.

2.09. Courts are regarded as temples of justice. In a country where the bulk of the population lives below the poverty line, justice must not only be cheap but free. The question of court-fee, which is obnoxious in principle and burdensome in practice, is another issue which deserves national attention. Civil justice should never be treated as a source of revenue but, indeed, several States make profit by sale of justice as it were. We regard it as imperative that there should be a considerable reduction in the rate of court fee for all and a blanket exemption from payment of such fee for every one below the poverty line when he seeks redress before a court, tribunal or other authority.

2.10 Another facet of this question is the social penury of certain sections of the people. The economic position of a tribal is no yardstick of his social lot. The financial position on paper of a woman may not reflect her dependency in practice. What we mean to say is that the illiterate and the backward, the socially suppressed and the geographically handicapped must be given special assistance like the economically poor so that the legal processes may be taken advantage of by them. In short, the multi-faceted question of court-fee needs to be tackled by the Legal Aid Task Force.

Need for free legal services to economically weaker sections of society.

2.11 A lively question which looms larger in the context of juridicare is the availability of free legal services to the constitutionally recognised weaker sections of the community. Those, who are economically weak and therefore cannot buy legal service, should not suffer because they cannot hire a lawyer. It is beyond argument that professional legal services help a litigant in presenting his case before a court or tribunal or administrative body, far better. More so when he is an illiterate or otherwise untrained in presentation of his case or he is unnerved by the grave issues involved in the *lis*. Nor can he, on his own, be equal to the over-judicialised procedures and over-technical laws. There is no need to argue that lawyer's services are of value to everyone who seeks remedy or asserts rights in a court. That is precisely why all over the world - be the country socialist or capitalist - we have comprehensive legal aid projects which provide, through autonomous agencies, professional services of lawyers to those whose purses are too poor to pay the price. The organisation of free lawyers' services to the weaker sections - economic and other - is a high priority item on the agenda of State responsibilities. Those who oppose the ideology of provision of free lawyers' services to the weaker sections, perhaps lack legal literacy and are unaware of the egalitarian creed of our Constitution. Indeed, Article 39A of the Constitution is comprehensive enough to cover this issue and obligates the State in the manner we have mentioned.

Consumers of justice.

2.12. Who are the consumers of justice? This is an important theme and the answer depends on each country or region, its socio-economic conditions and the structure of the legal system. What holds good in the United States or the United Kingdom may be inapplicable to India. And within India, what will work well in the cities, may fail in the villages or in the distant islands of our Republic. Even so, broadly speaking, the question of the Scheduled Castes and Scheduled Tribes and their welfare through the law deserves separate and substantial consideration; likewise, the backward classes. We may have to fabricate special schemes to tackle the problem of Legal Aid to the backward agrestic areas and geographically remote regions, such as the Scheduled Areas, the island groups and inaccessible mountain tracts of our vast country. We may even have to consider free legal services to the Jawans' families - not a new idea but not well-worked out as projects or schemes. The working class is a category by itself. The problems arising in the context of Legal Aid to Labour are peculiar and, therefore, deserve independent treatment. They are not just poor but face problems where they find themselves pitted against powerful industrial managements. One need not dilate at this stage on what those problems are, except to state that one of the major issues, which legal aid programmers will be confronted with, relates to workers in the organised and unorganised sectors in the industrial and the agricultural fields and in disputes by individuals and unions *versus* managements. There are other categories and disabled groups such as women and children, religious, linguistic and other minorities. These are also problems which will appropriate subject-matters of special schemes.

Role of voluntary and social service agencies in the implementation of legal services programmes.

2.13. We have mentioned about the involvement of the people and the know-how of legal aid being taken to the people. Legal literacy is an absent commodity among the masses of our people. So much so, rights conferred on them remain dead letter. To educate the masses in their rights and responsibilities, to post them with welfare legislation made for their good, we need to bring into the fold social service organisations, welfare wings and student groups. The role of voluntary professional and social welfare agencies cannot be over-rated in the successful implementation of legal services programmes.

Role of the legal profession.

2.14. The legal profession is the custodian of legal know-how and must, therefore, play a dynamic role to discharge its obligations to the community. The largest clientele of the Indian War is the little, lowly Indian in his millions. The re-orientation of the moral and social basis of the Bar is a matter of concern for the nation, especially because the State has granted to it a monopoly to practise before the courts. Legal Aid and the Legal Profession is a key subject for exploration. Even here we may state that State agencies for legal aid may not be able to deliver the goods by themselves and voluntary wings of the Bar, willing to undertake legal services, must be mobilised so that the totality of the juridicare programme may have the full backing of the Bar. This aspect gains significance when we work out the organisational aspects.

Legal aid and legal education.

2.15. Two other themes, which are vital to the success of the People's Programme, are (i) Legal Aid and Legal Education, including, in this title, research, law reform and evaluation and clinical legal education, and (ii) the financial resources necessary for funding the schemes and how to procure them.

New orientation to law students

2.16. The law schools are recruiting ground for the legal profession and the Judiciary is recruited from the Bar. It follows that for success of any social welfare scheme - and free legal aid to the poor is pre-eminently one - we have to inject a new spirit into the content of legal education and impart a new dimension to the outlook of the law students. In most countries around the world, law students and law schools have played an important role in providing the manpower for working schemes of legal services to the poor. In Asia, Africa, Europe and America, this experience has found expression in clinical legal education. In India too the law schools can fulfil a useful function in the legal aid programme. The All-India Law Teachers' Conference has rightly given consideration for this idea and many legal aid clinics have been started by law schools in the country. A student, who is processed through the legal aid clinics, acquires a new sympathy for the poor, understands the sociological soil of law and realises that law in the books must fulfil itself by performance at the field level.

Financial resources for funding the schemes

2.17. A master-plan of juridicare cannot succeed without sufficient financial resources since all undertakings, as was observed by Kautilya in *Artha Shastra,* depend upon finance. Even so, the expenditure is not likely to be burdensome and every rupee laid out for legal aid is a revolutionary rupee spent on uplift of the poor through law and justice.

2.18 Even now, under the Criminal Procedure Code and the Civil Procedure Code, there are provisions for legal aid. Even in the present budgetary scheme, there is provision for free legal assistance to the Scheduled Castes and Scheduled Tribes. The immense human potential available for free legal services, if the law schools are harnessed, reduces the total expenditure. Social welfare orgnisations will work free in the field and that will be a big saving if only we can integrate their activities with the desiderata of juridicare projects. Many States have already started free legal services projects and all that the Centre may have, therefore, to do, will be to find the funds for the remaining part of the activities. It may also be noticed that expenditure in the shape of aid in civil suits will get automatically recouped because the costs awarded in favour of the poor litigants (in most aided cases they will win) will replenish the funds in due course. Essentially, we need only a revolving fund in civil suits. In the United Kingdom and the United States, in many Commonwealth countries and even developing countries, the State budget makes provision for free legal services to the poor. Indeed, when social welfare legislation is made, expenditure to implement it is implied. And all that the Legal Aid tag means is that schemes for the better implementation of welfare legislation have to be paid for and provided for. Some useful suggestions for financing legal aid programmes have been made in the *Report on Processual Justice to the People.* They can be easily improved upon and the way comprehensive

schemes are working abroad gives us confidence in accepting the monetary burden cast by a comprehensive juridicare programme.

Conclusion

2.19. Mainly, these are the themes and issues apart from the statutory structure of an autonomous body on a national level with hierarchical sub-organs, and the legal aid cadres for working schemes of juridicare. Above all, we have to remember that equal justice under the law is impossible without free legal services to the weak. And this obligation is cast on the State by the Constitution and so if we have document of the nation, the cost, as part of good government, must be borne by the State and the citizenry together.

CHAPTER III

INFRA-STRUCTURE OF THE LEGAL SERVICES ORGANISATION

Preliminary

3.01. There are two main questions which arise for consideration while discussing the legal services programme: the first is what should be the infrastructure and organisational set-up of the legal services programme and the second is what should be its direction and content. We shall discuss in this chapter our proposals in regard to the infra-structure of the legal services organisation and devote the subsequent chapters to a consideration of the question of direction and content of the legal services programme.

3.02 to 3.31 (rest of the chapter) not inserted.

CHAPTER IV

NATURE AND CONTENT OF THE LEGAL SERVICES PROGRAMME

Traditional legal services programme ineffective; absence of public awareness and assertiveness

4.01. The question which then arises for consideration is as to what should be the nature and content of the legal services programme. Now the nature and content of the legal services programme must necessarily depend upon its aims and objectives and these obviously cannot be uniform in all countries. They must vary because the peculiar socio-economic conditions prevailing in each country would demand a different treatment. It must be borne in mind that, as in the case of all social experiments, nothing can foliate and flower if it does not strike root in the national soil and acclimatize itself to the facts of national life. The legal service(s) programme to be introduced by us must, therefore, be framed in the light of the socio-economic conditions prevailing in our country and we should not blindly and mechanically adopt the legal services programme operating in another country where the socio-economic conditions may be different. Now, it can hardly be disputed that in a country like India, where the society is marked by extreme social and economic inequalities and poverty, (and) ignorance and illiteracy are general and pervasive affecting large sections of the community, the traditional legal services programme, which is confined only to giving legal aid or advice to those who come for it, can never succeed. The traditional legal services programme postulates for its success two requirements, namely, awareness and assertiveness. Both these preconditions are markedly absent in our country and their absence will render the traditional legal services programme ineffective and deprive it of meaning and utility. A large part of our population needing legal aid and assistance live in villages about 7 lakh spread over the entire length and breadth of the country. The legal services programme has to extend its protective umbrella to cover these rural have-nots and handicapped and provide legal services to them. Our society is unfortunately still a status-oriented and caste-ridden society with marked inequalities amongst different strata. These social inequalities interact with economic inequalities and in the process each strengthens the other. The result is that even if we set up legal aid offices in taluka towns, it will be difficult for many of the rural indigent masses to take advantage of the legal services programme, firstly, because the distance they may have to travel in order to get to the nearest legal aid office may be beyond their means and capacity; secondly, because, on account of ignorance and illiteracy, they would not know the rights, benefits and privileges conferred on them and would not be able to identify their problems as legal problems - as problems which can be solved by the process of law - and hence they would not think of going to the legal aid office even if they

otherwise could; and thirdly, because, being oppressed and down-trodden for long years, they would not dare to go to the legal aid office in order to oppose a powerful opponent belonging to the dominant section of the society, on account of lack of assertiveness engendered by their weak and deprived position. There would also be psychological and sociological barrier between the poor who belong to the weaker sections of the community and the lawyers who generally come from the upper strata of society or whose minds are at any rate conditioned by their wealthy and middle class clients and who have a middle class image and hence poor would hesitate to go to a lawyer and the lawyer would also prefer to avoid a poor client. And then, in addition, there would also be fear of social, economic and sometimes even physical reprisals from socially higher and economically stronger sections of the community. This is especially true of our rural society where the community life is still traditional, where paternalism, not equalitarianism, is the dominant attitude and where a poor man is either your dependent or your enemy, but never an independent, conscious and assertive individual. This is one of the main factors responsible for the almost insignificant number of complaints against the abominable practice of untouchability filed in our courts though the practice is unfortunately still widely prevalent in the rural areas. The traditional legal services programme, which is essentially court or litigation-oriented, cannot, in the circumstances, meet the specific needs and the peculiar problems of the poor in our country.

Traditional legal services programme, reflecting Western attitudes and ideals, cannot work successfully

4.02 It may also be noticed that our society is full of strange paradoxes. On the one hand, it is culturally a traditional society where religion and custom play a very vital role in the lives of ordinary men; on the other, it possesses a highly sophisticated legal system which can stand comparison with the existing legal system in any other part of the advanced world both in its reach and its complexity. India presents a classic example of the transplantation of a foreign legal system, with its concepts, techniques and ideals, in a country dominated by its own indigenous ideas and concepts. This has created 'the pervading problem of dualism between indigenous custom and popular conviction on the one hand, and the received common law and Western ideals on the other'. This dualism is mainly responsible for the dominant attitudes of the Indian masses towards the law, the law-court, the legal procedure and the legal profession which are not favourable to the promotion of an ideal of a welfare State through legal ordering. The ordinary man looks upon law as irrelevant, regards courts not as courts of justice but as courts of law, whose decisions are based on evidence filtered through technical and incomprehensible rules and guided and influenced by skill and manipulation of lawyers, and views the entire system of administration of justice as impersonal, alien and remote, with a mixed feeling of awe and suspicion or at least with a sceptic eye. The traditional legal services programme, which reflects the Western attitudes and ideals, obviously cannot work successfully in such an atmosphere and surrounding.

Absence of real legal equality - a handicap

4.03. Moreover, the traditional legal services programme can function effectively only if there is real legal equality. That, in its turn, presupposes relative social and economic equality. We find that in our country, unfortunately, legal equality is, to a large extent, only formal, because of extreme social and economic inequalities. There is not real legal equality at all and hence the very foundation on which the traditional legal services programme can function effectively is lacking.

Vice of passive acceptance of poverty

4.04. The traditional legal services programme also suffers from the vice of passive acceptance of the fact of poverty and consequent total absence of, at best inadequate, socio-economic analysis of the nature of poverty and its concomitant injustices. This is a major defect of the traditional legal services programme which is court-oriented or litigation-oriented. Such a programme which looks upon the poor as simply traditional clients without money, which accepts a static view of the law and regards law as a given dictum which the lawyer has to accept and upon which he has to work, which regards the poor as beneficiaries

under the programme rather than as participants in it, and which is confined in its operation to problems of corrective justice and is blind to the problems of distributive justice, cannot possibly be effective in dealing with the problem of poverty and eradicating the injustice which are the necessary concomitants of poverty.

Traditional legal services programme inadequate

4.05. There are also a few other important and significant reasons why we think that the traditional legal services programme in a developing country like ours is inadequate, wasteful, futile and misdirected and is doomed to failure. We may summarise these reasons as follows:

(i) Its underlying philosophy is basically wrong inasmuch as it seeks to provide legal services within the present framework of the legal system and the socio-economic structure instead of challenging the legal and social system;

(ii) It totally misunderstands the nature of poverty and thus seeks to help individually the poor persons as a measure of alleviation or amelioration of their short term problems;

(iii) Such a programme, being based upon one-to-one relationship between a lawyer and a client, cannot provide effective and permanent legal services to the weaker classes qua classes;

(iv) It identifies, consciously or unconsciously, legal justice with social and economic justice and lawyers with law, with the result, that the tasks of the legal aid lawyers are conceived to be aid to law and legal justice only. It fails to recognise that legal justice may conceal and sometimes even help real injustice and that law itself may be unjust, which may have to be resisted and challenged by legal aid lawyers;

(v) Such a programme fails to recognise that 'we cannot translate our new concern (for the poor) into successful action by providing more of the same (legal services)';

(vi) It is totally inadequate and based upon the assumption that 'with adequate financing, legal services can be fully provided within the present structure and organisation of the profession' but, as Gary G. Bellow has observed: 'If all the attorneys in the United States did only legal aid work, the resources would still be inadequate'. Much more so would it be in our country.

(vii) Two major touch-stones of traditional legal practice - the solving of legal problems and one-to-one relationship between attorney and client - are either not relevant to poor people or harmful to them. Traditional practice treats poor people by isolating them from each other and fails to meet their need for a lawyer by completely misunderstanding that need. Poor people have few individual legal problems in the traditional sense; their problems are the product of poverty and are common to all poor people; and

(viii) The entire programme, (whatever its professional goals may be) is bound to degenerate into a programme of charity, because it is conceived to be directed not at the elimination of poverty, but at the alleviation of misery and suffering arising from poverty, with the result that such a programme will be a prop to the status quo and preserve the present establishment, instead of being an aid to Revolution.

Real problem is poverty, which the traditional legal services programme does not understand

4.06. It is apparent that the traditional legal services programme is bound to fail because it does not understand and does not want to attack the basic problems of poverty in India. The real problem of India is the poverty of the vast majority of her people. While more than 50 per cent of the people are living below poverty line, 25 per cent of the rest are just above poverty line. Their basic problems are food, shelter, clothing, jobs, education and health, and the injustices which they suffer directly touch these basic needs. All of their problems, miseries, privations and injustices flew from their poverty - lack of social and material

resources at their command. Their sufferings are so many and at so many points and levels, that it would be impossible to remove even a few of their injustices by providing litigation-oriented legal services.

Legal services programme to be geared in aid of radical transformation of socio-economic structure

4.07 Thus, poverty and its concomitant injustices arise from unjust society and unjust institutions. Because they are economically poor, they are a socially disadvantaged class and they are politically ineffective and powerless. The only solution of poverty is, therefore, not merely more increased production or higher GNP but equitable distribution. It is the gross inequalities of income and wealth which perpetuate their poverty by distorting the production system and by diverting the products and their benefits to those who are already ahead. These gross inequalities can be removed only by radical transformation of the socio-economic structure. This is what is meant by revolution, and it is in aid of this revolution that the legal services programme has to be geared.

Legal profession must recognise relevancy of law as a political instrument to cope with poverty

4.08. We need to bear in mind what one American scholar has observed:

> 'The absence of attorneys for the poor is merely symptomatic of the absence of justice. Providing more lawyers will not necessarily make any changes in the injustices that envelop the poor. Nor can we be satisfied with such a goal. If justice is the responsibility of the Bar, as I think it is, then it is the national problem of poverty, with which we must deal. To deal with this means that the profession will have to be concerned with more than service to more and more people. It will have to recognise the political nature of the problem of poverty and the relevancy of the law as a political instrument to cope (with).

Legal education itself may have to react to the pathology of appalling indigence.

Need for new philosophy of legal services programme

4.09. The poverty of our people on a massive scale, the mass character of the legal injustices to the poor, the stubborn socio-economic structure which generates, perpetuates and deepens poverty, the failure of the existing legal apparatus to touch even the outer fringe of the life of poor and the inadequacy of the resources, legal, material and financial, to cope with the problem, demand a new philosophy of legal services programme and the new philosophy calls for different approach, different organisation and different concept of lawyers' role.

Philosophy, objectives and principles of new legal services programme

4.10 What then should be the basic philosophy of the new legal services programme and what should be its objectives and principles? The answer to this question may be formulated in the form of the following propositions:

(1) The objective of the legal services programmes should not be merely amelioration of poverty but its removal. It should aim at prevention and elimination of various kinds of injustices which the poor as a class suffer and endeavour to launch a frontal attack on the problem of poverty itself with the ultimate goal of its eradication from the society.

(2) As the removal of poverty depends upon radical transformation of the present socio-economic structure, the legal services programme should aim at revolution in this sense, namely, elimination of all those unjust institutions which generate and perpetuate poverty and the creation of a new socio-economic order based upon liberty, equality and dignity of man. The legal services programme would therefore, have to be directed *inter alia* towards providing representation to 'groups of social and economic protest'

and it must encourage group oriented and institution directed approach to the problem of poverty.

(3) The legal services programme should work towards helping the poor to come out of their condition of hopelessness and helplessness through knowledge, organisation and power. It should not degenerate into a programme where the poor are passive recipients of charitable legal services. It must be remembered that 'Poverty will not be stopped by people who are not poor. If poverty is to be stopped, it will be stopped only by poor people. And poor people can stop poverty only if they work at it together'. And, therefore, our programme should aim at self-help by the poor themselves with a view to making them initiators of change and fighters against the whole network of legal, social and economic injustices. The poor should not be the objects of politics but its subjects.

(4) The legal services programme should not identify lawyers with law but should even pose them against law, wherever law is the reflection of an unjust social order, for, after all the objective of the legal services programme should be social and economic justice.

(5) The legal services programme should recognise the inter-relatedness of the social, economic, legal, educational and psychological problems which beset the poor and involve all segments of society in a many-pronged attack on these problems.

This is broadly the philosophy and objective of the legal services programme (*Content of legal services programme*) which must be introduced, if we want to make law an instrument of social change and provide equal access to law and justice to the poor. The content of the legal services programme must obviously be such as would carry out this philosophy and objective. The following are some of the services which may be rendered as part of the new legal services programme:

(i) spreading awareness and consciousness among the poor about the rights, benefits and privileges conferred upon them - not merely legal, but also social, political and economic;
(ii) treatment of class problems of the poor, such as fighting against all laws and institutions which deny to them participation and share in the income and wealth of the community, satisfaction of food and essential requirements, housing problems, allocation of resources for their health and education, criminal law which suppresses them in the name of law and order etc.;
(iii) socio-legal research into the legal and non-legal problems of the poor with a view to bringing about reform in the law and its administration; and
(iv) helping different groups of the poor and the weak to organise themselves so that they can assert their rights. 'The lawyer who wants to serve the poor people, must put his skills to the task of helping poor people organise themselves'. This is what has been advocated recently even by Shri Jaya (Jai) Prakash Narayan who has emphasised the necessity of organising the weaker sections of the community.

Need for social base for law reform and institutional changes: The problem of poverty in our country will never be solved unless participatory democracy is established and unquestionably, without organisation and resulting power and strength, participatory democracy can never become a reality. Moreover, no reform of laws or institutional changes can be permanent and effective unless they have a social base and this social base can be built only by organising the poor who have a stake in these reforms or changes. To quote the words of Professor Charles E. Ares, Dean of the Arizona Law School:

'I think the lesson of the Civil Rights movement is that fundamental reforms come only when the people involved exercise political power. It has been rightly said that we must develop the so-called indigenous leadership in the poor community. But I think we ought not to be naive

about how much leadership they alone are going to provide. They are not trained to it and by the nature of their situation they are inarticulate and politically unskilled. Somebody else, therefore, will have to provide the initial political leadership to organise the poor into an active political force'.

(v) devising of new legal techniques and methods to bring to the court the problems of the poor, like class action, group-interest litigation etc.;
(vi) planning through the legal process to attack unjust institutions and unjust practices and to bring about basic institutional changes so as to secure more just and more equitable distribution of social, economic and political power in the society with a view to making the poor equal participants in the social and material resources of the community; and
(vii) providing relief to groups and classes of poor at various levels, including lobbying in their interest with legislative and administrative agencies.

New legal services programme must adopt a dynamic and activist ideology

4.11. It will, therefore, be seen that the new legal services programme must cast away an elitist approach and adopt a dynamic and activist ideology so as to make the programme a tidal wave of people's legal services. The legal order must become the gravestone of the old and the corner-stone of new - an instrument of the people, for the people, by the people. It is time that we realise that in this land of *Daridrinarayan,* there is a new dimension of poverty compounded by social suppression, not yet properly understood by the politician, not yet harkened to by the judicial process, not yet harnessed by the administrative machinery, namely, Poverty Power. To-day it is beginning to rise from its slumber and let there be no doubt about it that when it wakes up, as it is bound to, it will be *Prometheus Unbound* and it will shake and shape the entire fabric of our social and economic structure. Juridicare is the legal technology of peaceful transformation of society so as to ensure Equal Justice-cum-Social Justice.

CHAPTER VI

NYAYA PANCHAYATS AND LOK NYAYALAYAS

Need for reform of legal and judicial system

6.01. The restructuring of the judicial system at the grass roots level should also form part of an effective legal services programme as we conceive it. Legal service, in its wider sweep, must include every form of legal assistance which brings justice nearer to people, particularly to the rural people. The judicial process must be so reorganised as to make legal relief easily accessible to the indigent and backward in our villages, for as Mahatma Gandhi pointed out 'India lives in her villages and most of the countryside is smeared with poverty and social squalor'. To-day the poor and the disadvantaged are cut off from the legal system - they are functional outlaws not only because they are priced out of judicial system by reason of its expensiveness and dilatoriness but also because of the nature of the legal and judicial system. They have distrust and suspicion of the law, the law courts and the lawyers for several reasons. One is ignorance and illiteracy on their part which prevents them from taking advantage of the legal process. Another is their helplessness and lack of assertiveness which arises by reason of social disabilities and economic dependence and that also places the legal process effectively beyond their reach. But apart from these factors which we have discussed at length in another part of the Report, the functioning of the courts is unfortunately shrouded in mystery for the poor and the underprivileged. There is an air of excessive formalism in law courts which overawes them and sometimes scares them. Often the proceedings are conducted in a language which they do not understand. They do not know what is happening in the court. They sit as helpless spectators, not understanding what is going on in the court in regard to their own case. It is an ironical situation that they who should know most about their case know the least. They are completely mystified by the court proceedings and this, to a large extent, alienates them from the

legal and judicial process. And lastly our system of administration of justice, which is an inheritance from the British is archaic and suffers from obsolescence and obscurantism. It is not at all adapted to our socio-economic conditions and is wholly unsuited to our national genius. The result is that it has failed to inspire confidence in the poor and they have little faith in its capacity to do justice. The failings of this system have been highlighted and criticised even in the country of its origin, namely, England. Sir John Foster, Q.C. (Queen's Counsel), said of this system:

> 'I think the whole English legal system is nonsense. I would go to the root of it, the civil case between two private parties is a mimic battle .... conducted according to mediaeval rules of evidence'.

Lord Devlin also observed in an article in *Daily Telegraph:*

> 'If our business methods were as antiquated as our legal methods, we should be a bankrupt country'.

So also the late Shri Govind Ballabh Pant, an outstanding statesmen and then the Home Minister of India, remarked while speaking at a Law Ministers' Conference:

> 'We have now to overhaul and to modernise .... the antiquated system of judicial administration that still continues and holds the field in our country'.

There can be little doubt that our legal and judicial system is not adequate to meet the needs of the new society which is emerging in our country. It is not effective to provide a solution to the new problems which are coming up and presenting a challenge to contemporary society. It is not sufficiently responsive to the new norms and values which are replacing the old and it does not reflect properly and adequately the new approach which characterises the true purpose and function of law. The legal and judicial system, therefore, needs to be reformed and changed so that it becomes more suited to our socio-economic conditions and can become an effective instrument for delivering justice to the poor and the disadvantaged. It must be realised that a twentieth century service cannot be produced from an unaltered nineteenth century mould. It is, therefore, necessary to consider what alterations and changes must be made in our legal and judicial system so that the end product which comes out of it, the social product that emerges, is justice, not only for a few privileged classes but for the entire mass of poor and underprivileged.

Justice cynical phrase for millions of people

6.02 Indeed, the justice system of India itself is on trial. Justice in this context denotes social and economic justice, apart from individual conflict resolution based on legal norms. It connotes political programmes and developmental strategies and embraces India's metamorphosis into a contented society ready to involve all its citizens in the free pursuit of happiness. To-day for the vast millions of our people justice is a cynical phrase, for a large number of lawyers it is a living out of the law, and for a new (genre of) heart-searching jurists, it is a vanishing point of law. There comes a time in the life of a nation when it looks at itself, reflects on its founding creeds, its achievements and failures in performance, and guided by such constructive self-criticism, it changes its course and resolves to launch on its future with a sense of conviction and experience. We have, after 30 years of independence, arrived at such a stage when an audit of our justice system must be done and we must try to bring about changes with a view to make our delivery system of justice cheap, expeditious and easily accessible to the millions of our people who are living in conditions of poverty, hunger and destitution in the rural areas.

Adequate and effective delivery system of justice needed

6.03. It is incontrovertible, and the emphasis of the present Government of India on rural reconstruction bears it out, that national reconstruction without rural regeneration is socio-economic jugglery and developmental jurisprudence without taking account of the little man and his village life is unrealistic and meaningless, and justice to the small man means nothing less and nothing else

than assurance of a fair and equitable share in the developmental gains of the national and the social resources of the community. The delivery of justice is, therefore, clothing the little man with economic rights, removing his social disabilities and restoring to him dignity of personal life. It means not mere rights but remedies. A jurisprudence of remedies for the peasant, artisan and bonded labour must be a high priority. The search for an adequate and effective delivery system of justice must be directed towards this end.

6.04. The soul of good Government is justice to the people and that is why the Preamble of our Constitution highlights it in its triple aspects, namely, political, social and economic. The question naturally arises as to how we can redeem this tryst with justice on behalf of our teeming millions in rags and tatters. The success of any project consists in an effective infrastructure, manpower with sympathy and scientific planning. Therefore, we in India need a new legal technology, new judicature models and men, a poverty and remedy-oriented jurisprudence and a juridicare project that is designed as a pervasive and potent delivery system of law and justice to the people in the rural remoteness.

Radicalising the justice system

6.05. Who are our people? Where is their habitat? What, in human terms, does justice mean to them? How can law and its administration, through conventional court processes, fulfil the hunger of the common man for simple and quick justice which assures to him a fair share of the good things of life? Why can't we abolish the causes of litigation and build a new way of life or legal order? How can the gap between the lawyer's law and the rule of life be bridged? These are the basic themes and radical issues which social scientists, law makers and creative jurists must ponder to find an answer. This entire Report is a humble but sincere effort to provide an answer to these themes and issues.

6.06. When we think of restructuring of our legal and judicial system, we must bear in mind that the new system which we want to build is meant for 'We, the people of India'. To-day, unfortunately, the 'people of India' have became almost irrelevant and our legal and judicial system revels in legal subtleties and processual technicalities, resulting often in the casuality (casualty) of truth and justice. Law is being administered by our courts for laws sake and not for justice and often the small man sitting behind in the well of the court is forgotten and ignored. It is tragic but true that we have inherited a legal culture and judicature system, a legislative apparatus and enforcing bureaucracy with a colonial texture and feudal values. The establishment still has the flavour of insensitive statism and elitism. What is, therefore, necessary to inject is social dynamism and adaptational activities in our justice organs. Unfortunately, our legislative processes are still of Victorian vintage, babel-style and archaic. Our executive machinery is pre-Curzon model, file-fed and dehumanised in its procrastinating perfection. Our judicial instrumentality is a British-Indian make, prudential exoticism. Of course, considerable changes have been wrought and great progress has been made but even so we have 'miles to go' and 'promises to keep'. We have an awesome responsibility in radicalising the justice system, because we are accountable to the justice constituency and it is our duty to see that the justice system becomes the machinery for fulfilling the developmental aspirations of vast numbers of our people and securing distributive justice to them.

6.07. If we want distributive justice to become a reality for those who now share stark deprivation and poverty, one of the basics should be easy access to institutions of justice through village-level delivery of justice. Having regard to the smallness of the subject-matter of village litigation and the considerable bad blood that may be generated by unproductive and cantankerous legal battles, and remembering that petty cases are mostly where at least one party is a small man,

we must create mini-courts which save the poor from litigiousness. An eminent proponent of small claims tribunals has observed[1]:

'If a way can be found for administering justice in small causes, which is ideally prompt and inexpensive, we must adopt it or stand convicted as people who are less concerned with justice than with litigiousness'.

Nyaya Panchayat at the village level only answer: It is common knowledge that a litigation civil or criminal whichever party wins or loses, results in bad blood and financial ruination for both, apart from interminal delays and frustration. For a country like India, for a land which lives in its villages mostly, for a people of diverse languages and religions where unity for the nation is a great end, any divisive tendencies at the micro level must be nipped in the bud by well-thought out and imaginative procedures. Therefore, law and justice at the panchayat level with a conciliatory methodology is an imperative necessity for our country. The finest hour of justice is when foes compose their fight through fair settlement to become friends. This can be achieved only by having a non-judicialised forum for conciliation and adjudication involving little cost and no delay, with an informal procedure conforming only to the requirements of natural justice, where the keynote would be justice rather than law. The Nyaya Panchayat at the village level is the only answer as pointed out by one of us - the only '*Neeti Marg*'.

6.08. The institution of Nyaya Panchayats is indeed one of the oldest institutions in this country. References to Nyaya Panchayats abound in ancient literature and later historical accounts. The Nyaya Panchayats, in the structure of the society as it existed in those days, were the creation of villagers themselves and were composed of persons who were generally respected and to whose decisions the villagers were accustomed to give unqualified obedience. The Nyaya Panchayats exercised a great measure of authority and commanded the willing allegiance of the people. If we may quote from *Bhagwati Committee's Report in Gujarat*:[2]:

'There is a short but graphic account of the working of the Nyaya Panchayats in olden days given in an excellent report prepared by the Congress Gram Panchayat Committee set up by the Congress Working Committee on 23rd May, 1954. This Committee consisted of eminent public leaders and Shri Shriman Narayan who is presently the Governor of Gujarat acted as its Secretary. The terms of reference of the Committee were to examine (the) question of setting up a Panchayat Raj in the country and in a well considered report, the Committee examined various aspects or Panchayat Raj including administration of justice by Nyaya Panchayats. The Committee pointed out in the opening part of Chapter XII which dealt with the work of administration of justice by Panchayats, how Nyaya Panchayats were functioning in pre-British days and rendering cheap and expeditious justice to the villagers in rural areas. We give below an English translation of what the Committee said in this connection, the original being in Hindi:

Judicial, Functions of Panchayats

'In India, by way of tradition, village panchayats have been playing an important role in solving disputes of the village. Sitting on the Panchayats, the elders of the village used to solve disputes arising between the village folk. These elders used to live in the village itself and by virtue of their being from the village, they were well-acquainted with local conditions and knew the habits and customs and practices of the people very well. Almost every individual of the village was known to them. It was for these very reasons that they could easily come to know the reasons behind the disputes that arose. Thus, they proved to be very good *panchas* and they used to solve the disputes while sitting in front of the entire village. Public opinion of the village used to act as a powerful influence on the parties to the disputes and because justice used to be meted out at the very

1. Expert Committee's Report, p. 137.
2. *Bhagwati Committee's Report in Gujarat*, Pp. 205-206.

place where the dispute took place and not at a place away from the place of dispute, it used to be inexpensive and immediate. One direct advantage of this was that no attempt could be made to concoct false evidence, and, even if an attempt to do so was made, the same could be easily defeated. When the elders took over on themselves the duty of solving disputes, it used to have very good effect on both sides and disputes and quarrels arising out of groupism used to come to an end and not drag on. In fact, all used to have faith and trust in the village elders which gave them strength to solve the disputes objectively and impartially.

It will be seen that Nyaya Panchayats were functioning fairly satisfactorily in the villages during the pre-British days. They were in fact the base on which the entire superstructure of indigenous system of administration of justice was founded. But on the coming of the British rule, an alien system of administration of justice was implanted on our soil and Nyaya Panchayats which were till then administering justice in rural areas gradually lost their authority and influence and fell into disuse'.

Panchayat justice is, thus, not a novel idea but an ancient institution having its deep roots in the ethos of our country. It is village self-government in action at the justice level. It is democracy on the plane of justice administration. It is at once involvement of the people in dealing with law and justice and institutionalisation of expeditious local resolution of disputes.

Ideological Justification

6.09. There is also an ideological justification for Nyaya Panchayats since that makes for democratic decentralisation and people's participation in one great branch of government, namely, dispensation of justice. 'It was Mahatma Gandhi, who first saw the great potentiality of reviving the system of village justice and at the time of the Non-co-operation Movement, in 1920-21, when he advocated boycott of law courts, he made the setting up of Panchayats in villages for settling disputes a fighting militant slogan'. He passionately believed in the ideal of self-sufficient village communities and observed in the issue of *Harijan* dated July 22, 1946:

'The Gram Panchayats shall be entrusted with the dispensing of justice, no separate judicial panchayats are necessary. The poor peasant need not go out of his village, spend hard-earned money and waste weeks and months in towns on litigation. He can get all the necessary witnesses in the village and fight out his own case without being exploited by lawyers. When intricate points of law arise, Sub-Judge from the Taluka, or District could come down to the village and assist the Panchayat in deciding difficult cases. The Sub-Judge shall also act as guide, friend and philosopher to the ignorant villagers by acquainting them with the laws of the State. Such a judicial system will not only be simple, prompt and cheap but also 'just' because the details of civil and criminal cases will be, more or less, open secrets in the village and there shall be hardly any scope for fraud and legal juggleries'.

Lenin said over 60 years ago - and this has been quoted with approval by a Study Team on Nyaya Panchayats appointed by the Government of India in October 1960 under the chairmanship of Shri G.R. Rajagopalan,

'Every representative of the masses, every citizen must be placed in conditions which would enable him to participate in the discussion of the State laws, in the election of his representatives and in putting the laws into practice'.

'The court is an instrumentality to attract every individual member of the poorest classes to State administration'.

The Law Minister of the Government of India also expressed the same view in 1959 on the floor of the Rajya Sabha:

'There is no doubt that the system of justice which obtains today is too expensive for the common man. The small disputes must necessarily be left to be decided by a system of panchayat justice - call it the people's Court, call it the popular court, call it anything - but it would certainly be subject to such safeguards as we may devise - the only means by which for

ordinary disputes in the village level, the common man can be assured of a system of judicial administration which would not be too expensive for him and which would not be too dilatory for him'.

Advocated by Law Commission, Study Team and Bhagwati Committee

6.10 The Law Commission of India, in its *Fourteenth Report,* discussed at length the question of setting up of Nyaya Panchayats in villages and advocated the establishment of Nyaya Panchayats. The conclusion reached by the Law Commission on the subject may be stated in its own words:

'Having given full weight to the various criti- (Line missing in the original) them. It was for these very reasons that they we feel justified in reaching the conclusion that, with safeguards designed to ensure their proper working and improvement, these courts are capable of playing a very necessary and useful part in the administration of justice in the country'.

The Study Team on Nyaya Panchayats under the chairmanship of Shri G.R. Rajagopalan also examined this question thoroughly and exhaustively and arrived at the same conclusion in the Report submitted by it to the Government of India in 1962. The *Bhagwati Committee's Report in Gujarat* also strongly supported revival of Nyaya Panchayats as part of the legal services programme and, likewise, the *Expert Committee's Report on Processual Justice to the People* endorsed the vitalisation of the defunct institution of panchayati justice. It will, thus, be seen that so far as critical opinion in the country is concerned, it is preponderantly in favour of establishment of Nyaya Panchayats in the villages. Indeed, Article 40 of the Constitution mandates the State to organise village panchayats and invest them with the necessary authority and power. We regard this provision as more than a sanction - indeed, as an obligation - for organising Nyaya Panchayats at the grass roots level.

Advantages of Nyaya Panchayats

6.11. The institution of Nyaya Panchayats would not only be in conformity with the ideal of democratic decentralisation and ensure public participation in the administration of justice at the lowest level but it would also help in delivering justice to the poor and the backward in rural areas without any delay and at practically no cost. It would save them from the inconvenience and expense to which they would necessarily be subjected, if they have to approach the regular court of law situate in taluka or tehsil and sometimes, even district town. If they have to go to a regular court of law, they would be required to travel quite a long distance - sometimes as much as 30 or 40 miles - to go to the court from their village and there they would have to engage a lawyer and then they would have to waste considerable time in going to and from their village to the court whenever any date is fixed by the court and this happens several times because, notoriously enough, there are frequent adjournments - and they would also have to take their witnesses to the court and back on every date fixed by the court for hearing of the case. This would involve considerable waste of time and money which the poor can ill-afford. The delay in disposal of litigation in the court may also be ruinous, because the poor have no staying power and with their back broken by poverty and suffering they cannot wait for justice. It must be given to them promptly and speedily. Moreover, they would also suffer loss of wages and income on each occasion on which they have to go to the court and this may happen quite often. The institution of Nyaya Panchayats would, indeed, be a great boon to them, because it would bring justice to their door-steps and make it cheaply, easily and expeditiously available to them. The Nyaya Panchayats would also inspire confidence in the poor because they would be informal, their proceedings would be in language which the common man can understand and they would not be encumbered by intricate and sophisticated rules of procedure. The establishment of Nyaya Panchayats would considerably assist the poor villager in asserting his legal rights against those who are inclined to violate them. Where courts

are far away and difficult of access, villagers who are poor and low in the social scale are denied an opportunity of fighting injustice through resort to the legal process. Not having the means and the opportunity to obtain redress of their grievances by reason of want of financial resources and also helplessness and lack of assertiveness arising on account of social disabilities and economic impoverishment, they suffer silently injustice done to them without taking any action. If Nyaya Panchayats are established in villages so that access to the legal process becomes easily available to them, the poor villagers would be able to take necessary proceedings for redressing the wrong done to them.

6.12. Nyaya Panchayats would be able to remove many of the defects of the British system of administration of justice since they would be manned by people who would have knowledge of local customs and habits, attitudes and values and who would be familiar with the ways of thought and living of the parties before them. Drastically low cost, informal atmosphere, absence of technicalities, nearness - both geographical and psychological - community of shared attitudes and values and a greater scope for compromise would be some of the definite advantages of the system of Nyaya Panchayats and they would make the system of administration of justice more relevant and meaningful to the poor masses and thereby generate greater confidence in them. The poor would feel that the authority which is administering justice to them is their own and it is not part of an alien system which they neither understanding nor trust.

Moreover, Nyaya Panchayats would be able to discover the truth much more easily than ordinary courts. It is self-evident that the possibility of perjury is largely reduced if the venue of the inquiry is nearer the place of the occurrence and in the presence of the fellow citizens. The witness may, without such reluctance, perjure himself in the witness-box in a court some distance away from his village but he would hesitate considerably to tell an untruth in the presence of his fellow citizens who all know what, in fact, has happened. Untruthfulness often springs from difficulty in detection and distant trial, both in time and place, and is inhibited by on-the-spot and instant hearing by men who know the thoughtways and mores of the local folk.

6.13. More than all, in an ordinary court, the parties join issue and the fight becomes fiercer at the end of the litigation. However, in the Nyaya Panchayats, the whole emphasis is on conciliation and promotion of better relations. Footprints of goodwill are left behind, not stains of blood feud. Parties come as foes but return as friends. And not the least of the benefits would be the educative influence of the Nyaya Panchayats on the villagers. As the administrative panchayats would gradually train them in the area of self-government and enable them to look after the affairs of their village, so would Nyaya Panchayats, where they would be doing justice between their fellow citizens in the village, instill in them a growing sense of fairness and responsibility.

6.14. We are, therefore, definitely of the view that Nyaya Panchayats should be established at the grass roots level for administering justice in the rural areas.

Composition of Nyaya Panchayats

6.15. The question then arises as to what should be the composition of the Nyaya Panchayats. Should they consist of elected members as at present in some of the States? We do not think it would be advisable to have Nyaya Panchayats composed wholly of elected representatives of the village. We issued a questionnaire in regard to Nyaya Panchayats to the State Governments, High Courts, Bar Councils and Bar Associations of various States in the country and the uniform answer which we got from them in regard to the composition of the Nyaya Panchayats was that it would be dangerous to adopt the elective principle in the constitution of Nyaya Panchayats. They pointed out that if Nyaya Panchayats were to be elected, they would become highly politicised and lead to factionalism and groupism and the village people would have no confidence in their capacity to do justice. The Maharashtra and the Rajasthan

Governments stated in no uncertain terms that the experiment of Nyaya Panchayats had failed in their respective States because of the elective principle. The State of Maharashtra, in fact, abolished Nyaya Panchayats with effect from 1st August, 1975 on the basis of the recommendation contained in the report made by the *Evaluation Committee on Panchayati Raj,* set up by the State Government. We think there is force in this point of view and it cannot be said to be outside the realm of probability that if Nyaya Panchayats were to be elected, party politics would enter in the constitution of Nyaya Panchayats and that would seriously cripple its credibility in rendering justice to the people. It is also possible that factionalism and groupism, which vitiate the life in the village, would be reflected in Nyaya Panchayats and Nyaya Panchayats may also come to be dominated by caste and communal considerations. The elective process may also result in the stronger and more powerful sections of the community or the rich and well-to-do or the vested interests or anti-social elements acquiring control over Nyaya Panchayats. And if that happens, there will be no hope for the poor and weaker sections of the community to get justice.

6.16. It would not, therefore, be advisable, in the present social and economic conditions prevailing in the villages, to adopt the elective principle in the composition of Nyaya Panchayats. The Study Team also expressed the same opinion:

> 'The method of indirect election seems to afford for the time being the best solution and of various possible methods of indirect elections, the best seems to be the type in which each of the *gram panchayat* in the Nyaya Panchayat circle elects a specified number of persons to serve on the Nyaya Panchayat.'

The Bhagwati Committee in Gujarat also reached the conclusion that 'Nyaya Panchayats should not be composed wholly of elected representatives of the village'. We endorse the same opinion.

6.17 We are of the view that having regard to considerations of geographical contiguity and administrative convenience, five or more villages should be grouped together and a Nyaya Panchayat should be constituted for each such group of villages. The Nyaya Panchayat should consist of three members. One of them should be a person having knowledge of law. He would be the chairman of the Nyaya Panchayat and he may be called the Panchayat Judge. The Panchayat Judge, who will be the legal member, must be regarded as absolutely indispensable to the constitution of the Nyaya Panchayat. The advantage of having a person trained in law as chairman of the Nyaya Panchayat would be that it would eliminate the possibility of arbitrary or irrational decision and ensure that justice is done objectively and dispassionately, without any predilections or prejudices. There may be one Panchayat Judge for each taluka or tehsil or even a Block and he would preside over all Nyaya Panchayats within the taluka, tehsil or Block. The State Government may constitute a new cadre of Panchayat Judges and the Panchayat Judge for each taluka, tehsil or Block may be drawn from this cadre. If it is found inexpedient to form a new cadre of Panchayat Judges or for some reason or other it is not possible to appoint a Panchayat Judge from such cadre, the State Government may appoint a retired judicial officer or where a retired judicial officer is not available, a social service minded senior practising lawyer who is prepared to devote a part of his time to this work, as Panchayat Judge in a particular area. The remuneration and conditions of service of a Panchayat Judge may be such as may be fixed by the State Government. It would be desirable to assimilate the cadre of Panchayat Judges to that of the junior most judicial officers in the State, so that Panchayat Judges have the same avenues of promotion in the judicial hierarchy.

6.18. So far as the other two members of the Nyaya Panchayat are concerned, they should be laymen but, as pointed out above, their appointment should not be based on the elective principle. There are two possible methods of appointment of lay members of the Nyaya Panchayat and either of them may be adopted. One method is that a

panel of qualified persons for the group of villages in question may be prepared by the District Judge in consultation with the Collector or Deputy Commissioner and out of that panel, four persons for each village comprised in the group may be chosen by majority vote of the *gram* or village panchayats or *gaon sabhas* acting together as the electoral college. The persons so chosen would constitute the Nyaya Panchayat panel. The other method is that each *gram* panchayat or *gaon sabha* may elect eight members from amongst the residents of the village who are not members of the gram panchayat or *gaon sabha* and out of them, four persons may be selected by the District Judge in consultation with the Collector or Deputy Commissioner and the persons so selected from each village may constitute the Nyaya Panchayat panel for the group of villages in question. It would be advisable to prescribe certain minimum qualifications for membership of the Nyaya Panchayat panel. Literacy must be an indispensable qualification except perhaps in the case of Scheduled Castes and Scheduled Tribes. The persons selected on the Nyaya Panchayat panel must also possess reputation for integrity and impartiality and they must enjoy the confidence of the people. There must also be a provision that at least one of the persons selected on the Nyaya Panchayat panel from a village should be a member of Scheduled Caste or Scheduled Tribe and two should, as far as possible be drawn from women and the working class, from actual tillers or marginal farmers. It must be insisted that no member on the Nyaya Panchayat panel should have been guilty of conviction for moral turpitude and as far as possible, he must have background of social service. We would consider holding of considerable wealth and property as a disqualification for being on the Nyaya Panchayat panel. This last consideration becomes necessary because village justice is often times the resolution of a conflict between the little landless, casteless villager versus the village chief, the high-caste boss or member of the propriet(a)riat or anti-social element, and it would be impossible to hold the scales of justice even between the tiny timorous *dalit* and oppressed people and the big and overbearing vested interests, by making the latter judges in their own class cause. These are some of the considerations which would have to be borne in mind if we want Nyaya Panchayats to succeed as organs of justice at village level. It is from the Nyaya Panchayat panel so constituted that the other two members of the Nyaya Panchayat would be drawn. The Panchayat Judge would have power to select two persons from out of the Nyaya Panchayat panel to act as lay-members of the Nyaya Panchayat in respect of any particular dispute which may come up for decision before the Nyaya Panchayat. Where one of the parties to the dispute is a member of a Scheduled Caste or Scheduled Tribe, one of the lay-members of the Nyaya Panchayat should, as far as possible, be a person falling within that category and so also in a case where a women is a party to the dispute, one of the lay-members on the Nyaya Panchayat should be a woman. The Panchayat Judge, of course, will have to take care to see that neither of the two lay-members selected to act on the Nyaya Panchayat is in any way related to or personally connected with any of the parties to the dispute or is in any manner hostile or antagonistic to him.

6.19. The advantage of this mode of constitution of Nyaya Panchayat is that the Nyaya Panchayat would have, as its chairman, person trained in law and this will ensure that nothing grossly illegal is done on account of innocence of law of the members. The other two members of the Nyaya Panchayat, being selected according to a method which reconciles the elective principle with the anxiety to have competent members on the Nyaya Panchayat, would almost invariably be respected members of the community and hence there would be popular element in the Nyaya Panchayat as well as(?) and this popular element would invest the Nyaya Panchayat with an air of informality which would go a long way towards removing the psychological barrier between the litigant and the adjudicating authorities and it would also considerably assist the Nyaya Panchayat in properly understanding the true nature of the dispute before it and resolving such dispute in a manner satisfactory to both parties. The presence of two lay-members who have their roots in the community, would also help in

bringing about amicable settlement of the dispute between the parties. In fact, the whole emphasis in the proceedings before the Nyaya Panchayat should be on conciliation and settlement rather than on adjudication. It is common experience that whichever party wins or loses in a litigation, it leaves a trial of bitterness and enmity, apart from bringing about financial ruination of both, and the object of panchayati justice must, therefore, be to bring about conciliation so that the litigants part as friends in an atmosphere of harmony and good relations. The advice of Abraham Lincoln bears repetition in this connection. He said: 'Discourage litigation, persuade your neighbours to compromise whenever you can, point out to them how the nominal winner is often the real loser - in fees, expense and waste of time'. It may be noted that Mahatma Gandhi throughout his carrier as a lawyer tried to promote settlement between parties. This would be easy to accomplish on account of the presence of lay-members on the Nyaya Panchayat. The Nyaya Panchayat would also provide good training ground for the people of the village and this training will not be at the cost of justice, because Panchayat Judge would always be there to guide the lay-members to see that no injustice results to anyone. We are hopeful that, in course of time, once traditions are established and administration of justice by Nyaya Panchayat becomes a way of life, it will be possible to do away with the presence of Panchayat Judge and to have our panchayats manned wholly by lay-members.

Orientation course to lay-members of Nyaya Panchayat

6.20. It would be advisable that in the interest of proper functioning of Nyaya Panchayat, the lay-members on the Nyaya Panchayat panel in the district should have some training in the rudiments of judicial procedure, judicial objectivity, judicial reasoning and the like. They should be given orientation course and some idea of the law - substantive and procedural. A short period of training and orientation of about 15 days might be regarded as sufficient.

Office and procedure of Nyaya Panchayat

6.21. Every group of villagers which if formed for the purpose of constitution of Nyaya Panchayat must have an office of the Nyaya Panchayat at a central place which is easily accessible to the residents of the villages. Whenever any person comes to the office of the Nyaya Panchayat with a grievance, he may give a statement in writing of his grievance to the officer in-charge who may be a Sarpanch or other panchayat officer or some other Government officer stationed there or he may narrate his grievance orally in which case the officer must record it in writing and give a copy of such writing to the person concerned. The original of the statement must be kept by the officer at the Nyaya Panchayat office and a copy of it must be immediately forwarded by him to the Panchayat Judge at his headquarters. The Panchayat Judge would then visit the centre once a week or once in 10 days according to the exigencies of work, after giving previous intimation in writing to the office of the Nyaya Panchayat and also requiring the officer in-charge to give intimation of the date appointed for his visit to the persons who have lodged their grievances with the Nyaya Panchayat as also to the opposite parties requesting them to remain present on the date. The Panchayat Judge would then select two persons out of the Nyaya Panchayat and the Nyaya Panchayat so constituted would hear the two parties on the appointed date. The Nyaya Panchayat would first try to bring about settlement between the parties and if they find it necessary, they may decide to shift the venue of the hearing to the village from which the dispute comes and hear the dispute in the presence of the residents of that village. The Nyaya Panchayat may also visit the site in respect of which the dispute has arisen between the parties and try to bring about settlement on the spot. And it is only if the efforts at settlement fail that the dispute should be adjudicated. The administration of justice by Nyaya Panchayat should not suffer from the same vice of frequent adjournments which has been the ruination of the system of administration of justice by our regular courts. Of course, if it is necessary to have a short adjournment in order to bring about settlement between

the parties, the Nyaya Panchayat may not grudge it. But in any event not more than one adjournment should be granted. We are anxious that the case should be disposed of on the date which is fixed for hearing and it should not be adjourned, except for the most compelling and unavoidable reasons.

6.22. So far as the procedure of Nyaya Panchayat is concerned, it should not be governed by the Code of Civil Procedure or the Code of Criminal Procedure. The Nyaya panchayat may follow a procedure of its own so long as it conforms with the basis of natural justice and rules of fair play. There should be no formal prescription of procedure for the Nyaya Panchayat, except perhaps laying down some broad guidelines and within such broad guidelines, it should be left free to comply with the rules of conscience, fairness and natural justice with an amount of flexibility depending on the circumstances of each case. The Nyaya Panchayat need not adopt an adversary system of administration of justice which characterises Anglo-Saxon jurisprudence. It may follow an informal procedure of questioning both parties and their witnesses without any set rules of procedure, except requirements of natural justice. The only guiding factor in the inquiry must be the search for truth. The Nyaya Panchayat may take all such steps as it may consider necessary for the purpose of finding out the truth and for this inquiry, there should be no procedural fetter on its power. The Nyaya Panchayat should not confine itself to playing the passive role which a judge does in Anglo-Saxon courts, but it should adopt a more activist approach in its operations. If available evidence which bears on the truth and helps the happy solution is not produced by either party, the Nyaya Panchayat may try and get such material on its own initiative. It must adopt an inquisitorial approach and no technicality should be allowed to stand in its way in discovering the truth.

6.23. The rules of evidence contained in the Indian Evidence Act need not apply in relation to a proceeding before Nyaya Panchayat, although the search for truth will not be any the less serious. It is not unusual to find the Anglo-American obsession with technical rules of evidence defeating the cause of truth and justice. Nor is the exclusion of the sophisticated law of evidence a calamity. Administrative Tribunals, which handle subject matter, immensely more significant in terms of person and property, do not act according to the technical rules of the Indian Evidence Act and still their decisions do not offend fair play and justice. In the European countries, the accent is more on being convinced on the materials rather than on the exclusionary rules of evidence. While care should certainly be taken to see that verdicts are not swayed by prejudices and polluted by irrelevances, surrender to technicalities of proof and artificial canons may prove counter-productive to the cause of truth. The Nyaya Panchayat would be entitled to take into account all produced material, unfettered by technical rules of evidence, and decide the matter on the basis of free evaluation of the entire material placed before it. This procedure may appear to be radical and unorthodox and lawyers accustomed to traditional mode of justice may not favour it, but we do not apprehend any danger in its adoption by Nyaya Panchayat, because the cases which come before the Nyaya Panchayat would be small cases affecting the rural poor and the Panchayat Judge who is a trained person with a judicial outlook would always be there to see that justice is not prejudiced. The decision of the Nyaya Panchayat should be the decision of the Chairman as well as the other two members and if there is difference of opinion, the decision of the majority should prevail. It would be advisable that brief reasons may be given by the Nyaya Panchayat in support of the decision taken by it, so that the parties know what are the main considerations which have weighed with the Nyaya Panchayat in giving decision.

Lawyer not to appear before Nyaya Panchayat

6.24. We may then consider the question whether representation should be allowed to parties in cases before the Nyaya Panchayat. We are of the view that the parties may appear before the Nyaya Panchayat either themselves or through relations or friends but they should not be allowed to be represented by a lawyer. If legal

representation is permitted, many of the evils which to-day exist in administration of justice by our regular courts of law would enter the administration of justice by Nyaya Panchayats. Justice would cease to be cheap and expeditious, parties would have to pay the fees of the lawyers and once lawyers are engaged, they would indulge in legal gymnastics, wholly unworthy of the small nature of the case, and try to protract the litigation in a misguided attempt to protect the interests of their clients. We are, therefore, firmly of the opinion that no lawyer should be allowed to appear before the Nyaya Panchayat. If any question of law is involved and, having regard to the nature of the dispute it is bound to be a simple question, the Panchayat Judge who is trained in law can always decide it. And if the Panchayat Judge goes wrong in the decision of such question, the District Judge in revision can set it right.

Nyaya panchayat to have wider view of village harmony

6.25. It is also necessary to emphasis that the Nyaya Panchayat should not confine itself to the actual dispute as in an ordinary court of law; but it should also go into the social, economic and family circumstances which have given rise to the dispute, the socio-economic pathology which has manifested itself in the particular dispute. It must be remembered that Nyaya Panchayats are intended to be promoters of Justice, individual and social, and must therefore have a wider view of village harmony rather than a narrow focus on actual legal dispute. The Nyaya Panchayat must, therefore, inquire into other features of the case, the circumstances of the victim and the causes which have led to the litigation and collect all material which bears not only upon the resolution of the individual conflict but also upon the promotion or satisfaction of social justice. It should, like the People's Court in the socialist countries, have the power to issue supplemental direction in addition to giving judgements on issues directly arising in the case. Where a case has revealed shortcomings on the part of parents, public organisations or other institutions, the person or organisation responsible may be ordered to take appropriate steps to prevent their recurrence. The Nyaya Panchayat may be clothed with the power to satisfy itself that such supplemental directions are not neglected.

Civil and criminal jurisdiction may be exercised in the same proceedings

6.26. There may be a class of cases which have both civil and criminal aspects. For instance, the victim of an offence may be entitled to claim damages from the offender and in such a case, jurisdiction can be given to the Nyaya Panchayat while convicting the accused also to award damages. This will reduce litigation and mitigate the injury. Such flexibility may also be applicable in cases where a man's property has been stolen. It may well be that the alleged thief is acquitted but the articles may still be stolen ones and in such a case, even if the thief is not punished, the victim may be given back the property by the Nyaya Panchayat. Similarly, a prosecution may be malicious and where it is found to be so, it need not be necessary to file a civil suit later for damages, but the Nyaya Panchayat can itself award compensation.

Jurisdiction of Nyaya Panchayats

6.27. If faith in the commonsense of the common people furnishes the rationale for Nyaya Panchayats, there is no reason why civil and criminal jurisdiction up to a certain level should not be granted to these rural organs of judicial power. But to start with, the jurisdiction conferred upon Nyaya Panchayats may be a limited one and it may extend to those types of civil and criminal cases which are at present broadly within the jurisdiction of Nyaya Panchayats under different State legislations, with this difference that, since under the present recommendation a professional judge is to be the chairman of the Nyaya Panchayat, the pecuniary limit of the jurisdiction in civil cases may be raised to Rs 1,000 and in criminal cases, the Nyaya Panchayats may have the same powers as those of a Third Class Magistrate. The Nyaya Panchayats should, in addition, be given jurisdiction to try and dispose of land reforms litigation as also cases arising out of legislation in regard to small cultivators and form

(farm) labour, rural artisans and backward classes such as Minimum Wages Act, Untouchability (Offences) Act, 1975 and other local laws having limited rural impact. The Nyaya Panchayats should also have jurisdiction to hear applications or suits for maintenance by destitute women and children so that quick and expeditious relief can be granted to them. We would also suggest that there should be no court-fee payable in respect of civil actions in Nyaya Panchayats. If it is found, as a result of experience gained from the working of this new type of Nyaya Panchayats, that the Nyaya Panchayats are functioning efficiently and the jurisdiction of the Nyaya Panchayats can be increased without jeopardising the interest of justice, the State Government may suitably increase the jurisdiction both in civil and criminal cases. That would go a long way towards lifting a sizeable portion of the workload - civil and criminal - which is at present overburdening the regular courts of the law. There are some State statutes which give option to a litigant to approach either the Nyaya Panchayat or the regular court of law but we are of the view that no such option should be given and the Nyaya Panchayats should not be allowed to be bye-passed and they must have exclusive authority in regard to cases legislatively entrusted to their jurisdiction.

No appeal from decision of Nyaya Panchayat - but revision to District Judge

6.28. There should be no appeal against the decision of the Nyaya Panchayat as that would be incompatible with the informal nature of the inquiry and would also have the ill-effect of protracting the proceedings. But there may be a provision for exercise of revisional jurisdiction by the District Judge. The District Judge may *suo motu* or on application of the aggrieved party, call for the record of the case before the Nyaya Panchayat and revise the decision of the Nyaya Panchayat if he finds that it is contrary to law. There should be a District Registrar of Panchayat Courts of the status of Sub-Judge or Civil Judge, Senior Division, who would periodically visit some villages within the district for the purpose of finding out how the Nyaya Panchayats are functioning and carry out audit on the working of the Nyaya Panchayats and where he finds any problems or difficulties, drawbacks or deficiencies, he would draw the attention of the District Judge to the same. He would also inspect, at random, records of Nyaya Panchayats and if he finds that in any case, gross injustice has been done, he would report the matter to the District Judge so that the District Judge can *suo motu* take action, if he so thinks fit.

Nyaya Panchayats to have power to execute their orders, decrees and sentences - but where they involve immovable property or imprisonment, power of execution to be with District Registrar of Panchayat Courts

6.29. In none of the present statutes relating to Panchayat Courts, the power to execute decrees and orders in civil and criminal cases is given to the Nyaya Panchayats, as if the common people could not have the competence to enforce their own verdicts. This serious omission makes panchayati justice ineffective. There is absolutely no justification why the power to execute their own orders and decrees and the necessary mechanism in that behalf should not be made available to Nyaya Panchayats. We are of the view that execution of degrees and orders and sentences must be made by the Nyaya Panchayat itself, except where immovable property on the civil side and imprisonment on the criminal side are involved, in which case the District Registrar of Panchayat Courts may be given the power to execute the same.

Nyaya Panchayats to bring justice to door-steps of poor and under-privileged

6.30. This is the broad structure and jurisdiction of Nyaya Panchayats which we strongly recommend to the Government of India. We think it would carry out the objective of democratic decentralisation and bring an element of popular participation in the adjudicatory process and at the same time ensure that justice is done fairly and objectively to people generally and to the poor and the disadvantaged in particular. The institution of Nyaya Panchayats can be a veritable blessing to the poor and the under-privileged, for

it would bring justice to their door-steps, and equal justice under law would no longer remain a distant dream or a teasing illusion but would become a promise of reality.

Criticism of Nyaya Panchayats answered

6.31. It is true that there are quite a few lawyers and judges in our country who are critical of the system of administration of justice by Nyaya Panchayats on the ground that those who sit on Nyaya Panchayats are often motivated by extraneous considerations and it would be unsafe to entrust the administration of justice in their hands. This criticism is more often elitist and impressionistic and empirical observations have proved the contrary. The system of honorary magistrate prevalent in England and of People's Courts in the Soviet Union and other socialist countries shows that laymen can be entrusted with dispensing legal justice provided certain safeguards are written into the scheme. We have great faith in the innate commonsense of our people and we have no doubt that our people can be trusted to do what is right and just. We have an ancient tradition of panchayati justice and we do not see why we cannot make the Gandhian vision of self-supporting village communities a reality and actualise his ideal of village justice. It is a matter of great satisfaction that after a break of about 30 years we are once again beginning to realize the importance and relevance of Gandhian thought and way of life and no greater homage can be paid to him by the nation than to translate his teachings into action.

Lok Nyayalayas and Legal Aid Camps

6.32. We may also point out that Nyaya Panchayats are not the only method of mobilising and involving the people in the judicial process at the grass roots level. Experiments in Lok Nyayalayas and Legal Aid Camps have been inspiring and hold great promise for the future. Two legal aid camps were organised in Thana District in the State of Maharashtra, one in Kalyan and the other in Bhiwandi. Lok Nyayalayas were set up at these legal aid camps, each Lok Nyayalaya consisting of one social service minded lawyer and two social workers, respected in the community. Disputes were brought before these Lok Nyayalayas and after hearing both sides, settlements were brought about as a result of the efforts of the Lok Nyayalayas and they were reduced to writing and signed or thumb-marked by the disputants and they went away as friends after embracing each other. Similarly, a legal aid camp was organised at Gopalpura near Kota where out of 31 disputes brought before the Lok Nyayalayas, 28 disputes were settled to the mutual satisfaction of the parties. Out of these 28 disputes which were settled, there were some which could never have been brought to the court, because the persons aggrieved were too poor and too helpless to carry it to the court and there were some others which would have gone to a court and consumed considerable amount of time and money in adjudication. One legal aid camp was also organised in a place in Haryana through the good offices of the Chief Justice of Punjab and Haryana where a retired Chief Justice and a retired judge of the High Court participated and they brought about settlements in some cases which were pending in courts and which would have involved considerable waste of time and money for the litigants, if they had been fought to the end. Indeed, it would be highly advantageous and beneficial to the poor and the under-privileged segments of the community, if the State Legal Services Board or the legal aid committees constituted under it, could periodically organise legal aid camps in rural areas, slums and backward colonies for resolving, on a voluntary basis, disputes which are creating friction amongst the people and impairing the harmony of the area. Legal aid lawyers and social workers led by some judicial officer and accompanied by revenue officers may, on pre-arranged dates, hold camps in villages and backward areas. Disputes may be brought to their notice and the opposite parties may be invited to attend on the appointed dates for the purpose of effectuating settlement of the disputes. The Lok Nyayalayas consisting of one or two legal aid lawyers and one or two social workers may, after hearing both parties, try to bring about settlement of dispute to their mutual satisfaction and the settlement can be recorded in writing and signed or thumb-marked by both parties. The judicial

officer of course would not take any part in the settlement of disputes but he would watch the proceedings and his presence would land dignity and solemnity to the process. The experience in the past shows that settlements of old disputes have been achieved in such legal aid camps. It would greatly assist in the achievement of this objective of bringing about settlement of disputes if Lok Nyayalayas could be given legislative support and the settlements brought about by them could be given the status of arbitration awards which, if not carried out by one party or the other, can be converted into decree or order by an application to the Nyaya Panchayat or the appropriate court. The Lok Nyayalayas being voluntary in character, would not have the power to adjudicate upon disputes, but their whole emphasis would be on conciliation, mediation and resolution of disputes by settlement, in short, they would be an instrument of preventive justice. ...

Commitment to social justice

6.33. The suggestions which we have made in this chapter may appear radical and unconventional but it must be realised that for a long number of years, justice has been denied to large millions of our people. Justice is a word which has no relevance or meaning to them. It is a word which hardly reaches their hearths and homes. They have almost become dead and insensitive to wrong and injustice. It is to such millions of people, poor and down-trodden, ignorant and illiterate, destitute and needy, that we have now to give justice - social justice. We have to throw open the doors of the temple of justice to those who have so far been untouchables due to poverty, ignorance, illiteracy, distance and helplessness arising on account of social disability and economic destitution. We have to mould a new era of Indian justice. The country is today facing a justice crisis. Commitment to social justice is constitutional. Its fulfillment is political. Its life blood is legal. We have been shown the way of participative processes of decentralised popular institutions by Mahatma Gandhi. It is for us to crusade for his New Testament.

CHAPTER XI

WEAKER SECTIONS AND LEGAL AID - WITH SPECIAL REFERENCE TO WOMEN, SCHEDULED CASTES AND SCHEDULED TRIBES

Protection of weaker sections of society

11.01. 'To wipe every tear from every eye' has been the compassionate bequest to our nation by Gandhiji and the Constitution has made special provisions directing the State to protect the weaker sections of society such as women, children and minorities - linguistic, cultural and religious. Even apart from these, there are other disabled groups such as handicapped and retarded persons for whom even total revolution counts for nothing unless the State legislatively commiserates with them and enforces programmes for their well-being.

Special protection needed for women and children

11.02. Women are our sacred source of perpetuation of the race and children our line of immortality, carrying the torch from generation to generation but notwithstanding the considerable numbers they constitute, they remain the victims of injustice - legal and illegal. These vulnerable categories cannot be treated on a par with other weaker sections of the community but need *specialised* and sensitive measures of protection through the law apart from the constitutional declaration of gender equality and juvenile justice. Law reform in the area of protection of women has been dealt with in extenso by the Commission on the Status of Women. What we would like to highlight is that the legal aid movement, when it receives legislative recognition, must deal with women - their rights and remedies - on a separate footing. Their problems are different. Remedies for their problems also are different and so a functionally satisfactory project of legal aid to women must be aware of this pathological peculiarity and be designed to reach relief in a manner readily realisable.

11.03. Family law in the various regional and religious communities in the country shows glaring discrimination between the sexes. There is no good reason for the perpetual survival of this apparent injustice. Likewise, equal wages for equal work, notwithstanding a recent legislation by Parliament, remains a distinct female wish. The dowry system is still an oppressive burden on the female of the species. Crimes against women, especially attributable to their weaker sex, are a special misfortune. Illiteracy and unemployment are far worse among females than among males. Protective legislation regarding age of marriage is dead law in the rural recesses of our vast country. Likewise, in agrestic regions, the women (woman) is a domestic slave, and surprising though it may be, even in 1977 the *purdah* system prevails in many places to banish womenkind from the sight of the sun. Remembering that half of India's humanity is made up of women, the dimension of the problem of female destitution and sex-discrimination is appalling. It is a pity that even the new Criminal Procedure Code, 1973, does not provide for free legal aid for women and children, who are destitute, in proceedings for subsistence maintenance from their husbands or the fathers, as the case may be. Divorces are on the increase and the future of a young married woman is uncertain if her husband is unjustly unhappy with her. Even in divorce proceedings, there are no free legal service tags for women. The women's day in court remains murky. The women in the professions being disproportionately small, justice even at that level has not reached a fair measure. Naturally, the confidence of the weaker half of Indian humanity does not have adequate hope from the rule of law. To change this situation by progressive measures - legislative and implementatory - is part of the social mission of juridicare.

11.04. Women's organisations have been showing concern, even consternation, at escalating crimes against the weaker sex. Every day the newspapers confirm, by reports of factual crime against women, the truth of this apprehension. Likewise, the increasing number of divorces and ill-used wives, of deserted women driven to prostitution, of broken homes, discrimination in intestate succession, disparity in wages, inequality in service conditions and the brooding masculine domination in the home and outside, in socio-economic and cultural affairs, in husbands going abroad and bigamously marrying, offer a challenge to Legal Aid's conscience to end legalised inequality, illegality with impunity and crimes induced by the misfortune of sex. Even the police lock-ups and the prison cells have a touch of barbarity where women is (are) involved. Substantive and procedural fairness to women in civil and criminal matters also calls for the aider's activism.

11.05. The Constitution is alive to the consequence of the material and moral abandonment of children but legislation to protect youth of tender age in civil and criminal areas, in education and work, in correctional treatment and relief from handicaps, has not been happily abundant. What is worse, even the existing legislation protective of tender age is hardly implemented. A campaign to educate the authorities, including the police and the judiciary, is overdue if children are to receive tender justice at the hands of the law. Little beggars, waifs, strays, victims of family break-ups, abducted children, ill-treated apprentices, physically and mentally handicapped boys and girls - these considerable groups are the first concern of social justice. Their problems have special features; legislation affecting the youth and its welfare is different from ordinary laws. Sensitive enforcement is of the essence. There is, therefore, every justification for a specialised legal service concerning the non-aged, even like children's medicine and paediatrics. Juvenile criminology and legal processes have been virtually kept in cold storage. In the earlier Report, which was the precursor to the creation of the present Committee, the question of legal aid to women and children has been dealt with. We require special courts, special justice personnel; special organisations and homes to deal with women and children who go astray. It is a pity that there are many States where there are not even Children Acts and it is a greater pity that neither lawyers nor judges nor prosecutors nor administrators are even aware, in practice, of specialised

legislation for these sociologically and biologically weaker groups. There is hardly any doubt that research in this area is overdue and separate schemes of legal aid must be evolved in dealing with these categories.

Activist legal aid to Scheduled Castes and Scheduled Tribes

11.06. There are other consumers of justice and other clients of legal aid apart from women and children, industrial workers and rural labour. We may briefly advert to a few of them, not with a view to be exhaustive but purely to be illustrative. The most notoriously victimised category who require activist legal aid are the Scheduled Castes and Scheduled Tribes. Passing legislation or making constitutional declaration or including hopeful assertions in political manifestoes, produce no direct results. These thirty years after Independence testify to the inadequacy of national legal policy in the amelioration and equalisation of Harijans and Girijans with the rest of the broad community. Day in and day out, we read stories of cruelties, ostracism, oppression and vulgar violence of which the Scheduled Castes and the Scheduled Tribes, who constitute 130 million Indians, are the victims. For whom do the bells of justice toll? If it is for these utterly backward sections, for the socially lowly and economically lost, militant legal aid programmes to help them get up and march with the rest of the nation are an urgent item on the national agenda. Land reforms, bonded labour abolition, penalising of untouchability, restoration of civil rights, education and employment, are some of the things on which effort must be concentrated. It is important to note that these are the concerns of Legal Aid; for, if the law does not hold out hope for these maltreated millions, still suffering handicaps and humiliations over the centuries, struggle against the law becomes legitimated by history. If democracy is a promise and not an illusion, free legal services in their multiform aspects are a '*must*' for the suppressed social groups, who are euphemistically described as Harijans. In a sense, the legal aid movement emerges with the social evolution and class struggle with one difference. Ordered progress is assured if social change is wrought through the law. Disorderly protests are the other alternative.

Legal aid to minorities

11.07. There are other minorities in our nation of diverse cultures, languages and geographical immensity. For the constitutional protection of these minorities to become effective, more legislation, including law reform, is necessary, and availability of legal services for enforcement of legislated rights also is essential. Linguistic, cultural and religious rights of minorities are important even from the point of view of peace and progress. Social reform and cultural diversity and religious tolerance are not mere slogans nor charitable rhetoric nor romantic boldness. Minorities, wealthy or otherwise, in times of riots tremble, be they religious upheavals or linguistic clashes. In such situations, the balance of justice and the availability of rights should depend on valiant legal aid cadres and mechanisms which will create confidence for these groups by bringing law and justice within their reach. This is a great function of legal aid movement. We contemplate a juridicare project where special responsibility will be vested in the organisation to take care of these categories and situations.

Special projects for geographically handicapped

11.08. Our country is vast and our people live spread over in rural darkness, in remote islands and in mountainous terrains. Geographical handicaps affect them in the matter of securing justice. They have special problems in the field of equal justice and access to legal service. Some of these extensive areas do not have even lawyers' presence or courts, with the result that the rule of law and the due process of law remain mock phrases and idle words, not practical propositions. Therefore, special projects of legal service must be innovated to meet the needs of such people. We may need legal aid bureaux in the islands, public defenders in the remote regions, para-legal services to be drawn up to cope with the problems - social and legal - of these special areas. Research studies of the peculiar legal problem(s) which

impinge upon social and economic conditions may have to be undertaken so that realistic projects of legal services may be evolved. The legal systems in the backward parts of India, especially the islands, are fragile, even unfair. The judiciary in these places is hardly effective and the people remain alienated from the mainstream of law and justice. It is a patriotic gesture of a progressive people that radical reforms of a comprehensive nature in the field of Free Legal Services must focus on the Scheduled Areas as well as backward districts of our far-flung country. A master-plan for national legal services for the weaker segments of the Indian people will assign a high place for schemes devoted to processual and substantive justice whose consumers will be backward regions and the backward people.

CHAPTER XII

PUBLIC INTEREST LITIGATION AND LEGAL AID

Need to undo pervasive pessimism

12.01. We have injustices, inherited and acquired, colonial, feudal, industrial, political, bureaucratic and economic. The victims are large numbers of the community who console themselves in their privations muttering fatalistically 'it is no use mumbling, it is no use grumbling. Life just isn't fair'. Even so the patience-mileage of the Indian poor is running out and the political fuel of the leadership in government can no longer keep impatience under control. There is already a feeling, widespread among the organised and unorganised sectors of the Indian people, that 'only wealth will buy you justice'. To undo this pervasive pessimism, we require public interest litigation and class actions and representative proceedings for redressal of wrongs and assertion of rights.

Class action in cases of collective wrongs

12.02. The collective community suffers the hardships. Each one cannot afford to go to court, because it is not worth the candle. In our expensive court system, it is impossible for the lower income groups and the poor sections to enforce rights. For instance, environmental pollution causes insidious injury to the health but it is beyond any individual to start a legal proceeding. Drug adulteration and food adulteration - why, poisonous alcohol - kill large numbers of people. The purse of a particular person cannot afford to litigate on this score. The poor people of a village may be prevented from walking along a public pathway by a feudal chief, Harijan workers may be denied fair wages, women workers as a class may, in breach of the equal wages statute, be refused equal wages. Collective wrongs like this call for class action.

Representative suits when one man's wrong is typical

12.03. There may be representative suits necessary when one man's wrong is typical or consumer protection is called for. Each one being driven to court on his separate cause of action is itself a public wrong or martyrdom for a traditional rule of individual cause of action. The rule of *locus standi* requires to be broad-based and any organisation like a consumer protection society must be able to start such legal action. Indeed, civil rights litigation in the United States has been of this category and in India, with untouchability laws and the Civil Rights Act, the same forensic situation will arise. Even in criminal cases, where a particular offence will affect a large number of people, we cannot drive each one to file a complaint. Community proceedings, public interest litigation, class action and the like before courts, tribunals and other authorities must be financed and/or undertaken by legal aid organisations and public interest lawyers. Minorities - religious, linguistic and other - have common problems. When their rights are violated, it is beyond them to go to court on their own. There again the legal aid organisation must come to their rescue.

Rights of mentally retarded; protection of fundamental and other rights of citizens

12.04. Personal and civil rights of mentally retarded citizens is another category. They also share the same characteristics as community welfare litigations. There are many fundamental rights and other valuable statutory rights which

call in the legal aid process. If a tenant or other weaker member is sought to be harassed by a landlord or other stronger party and a certain interpretation of a statute or a certain challenge to the *vires* of a legislation arises in the case that follows in court - it may even be a notification on price fixation - it is an unequal battle, because on the one side a rich man, engaging extremely competent counsel, is pitted against a weak man who cannot buy competent lawyer's services. In such cases, it must be possible for public organisations, aided by legal aid units, to intervene and champion the public cause. We do not say that there should be reckless interventions regardless of merit, but once satisfied about the merits and the public good and the collective nature of the litigation and the community benefit to accrue, it must be within the jurisdiction and powers of the legal aid organisation to undertake or intervene, by way of prosecution or defence, civil or criminal proceedings, to establish rights of the many and wrongs by the few. The legal aid authority must become the community sword in prosecution of right and as a shield against wrong.

CHAPTER XIV

LEGAL AID *VIS-A-VIS* LEGAL LITERACY

Need for strengthening rule of law

14.01. We have dealt at some length with the strategy of delivering justice to people of low income or no income who will ordinarily be priced out of the judicial market or knocked down in the legal bout, but legal assistance exceeds and is not merely coextensive with litigative assistance. While it is true, as the *Fourteenth Report of the Law Commission* long ago emphasised, 'in so far as a person is unable to obtain access to a court of law for having his wrongs redressed or for defending himself against a criminal charge, justice becomes unequal and laws which are meant for his protection have no meaning and to that extent fail in their purpose', there are other problems of magnitude which have to be attended to if the welfare-oriented rule of law is to be strengthened in the consciousness of the community. What we mean is that among such problems is the importance of creating legal literacy among the people, as part of access to the law, so they may be aware of their rights and responsibilities and not be scared by ignorance into submission. Making citizens cognisant of their rights and creating the confidence that such rights can be realised in practice alone can clothe the due process of law with realism. In a sense, this is a crusading job, a campaigning point and a mobilisation of law's militancy. The participation of the weaker communities in the very administration of justice gains a new educative dimension and meaning in this context. The creation of para-legals, who will be a conduit pipe between the law and the people in the villages, is another aspect. Despatch of law students from the law colleges, in numbers, into the urban poverty pockets and into agrestic areas of social squalor, as vehicles of the message of the law to the under-privileged and down-trodden(?). Specialised courses on welfare legislation aimed at target groups conveyed by public meetings and through the mass media, also may figure as separate weapons in the legal literacy armoury. When the masses of the people become conscious of the law, many little tyrannies, browbeating bossisms, feudal oppressions and exploitative malpractices, without the backing of the law, may beat retreat. Indeed, the dismal failure of many laws, enacted by the legislatures in the country to help the suppressed sectors of people, can be attributed, in a large measure, to legal illiteracy on the part of the potential beneficiaries. The inaction of the legal process continues even today and so it is what we emphasise that the 'third reading' of a Bill and the 'assent' to it by the Governor or the President, the upholding of its *vires* by the highest court and the inclusion thereof in the Ninth Schedule mean nothing if we do not organise, as part of legal aid, publicity campaigns to bring home the new light into the mind of the community - both of the violator and the victim. Law becomes a potent weapon to protect the weak, not when it is merely lawyers' law or text book teaching, but when its intended consumers know its existence and possess the know-how to claim it.

Price of justice - continual legal literacy

14.02. If the price of liberty is eternal vigilance,

the price of justice is continual legal literacy. Towards this *pro bono publico* programme and informational system, activist lawyer pickets and citizen mobilisation organisations are necessary. Simplification of the law is essential if people are to understand it. The mystique of *legalese*, the lacunae in legal draftsmanship, the graphic explanation techniques for statutes, the Latin in lawyers' vocabulary and the complexities and prolixities and over-formalities of court methodology are villains of the piece scaring the common man away from justice according to law. Legal expertise, so far as ordinary persons and their rights are concerned, must be amenable to popularisation. Statutory provision must be made in the forthcoming legislation on juridicare so that law becomes community property and not the monopoly of a profession. If our legal sub-culture is to radiate more justice and humanism, common education must have a legal literacy component, selectively used for particular groups. It is essential, from this angle, that whenever a social welfare legislation or law conferring economic benefits or other ameliorative measures is enacted, projects must simultaneously be fabricated whereby the design and details of the law so enacted are carried to its prospective consumers through competent lawyers who have made a special study of the subject and possess socially benignant disposition. This scheme should be systematised and not remain sporadic. This concept must be treated as an inalienable ingredient of the legislative outfit. This people-oriented programme must be the responsibility of the Bench and the Bar, of the State and the community. In short, the fiction that every man is deemed to know the law should be translated into a fact that every man knows to ask for his right and justice through the law.

Legal knowledge to be spread

14.03. Our legal system should be able to use even the court and the case process as educative medium between the law and the public. Once judges become conscious of their promotional roles *vis-a-vis* legal literacy, the court-hall can well be converted into a class-room for rights and duties, without detriment to proper hearing and dispensation of justice. This happens in the socialist countries. Indeed, in the United States, radical judges have played their role, while on the Bench, as promoters of legal education, clinical in relation to the law students, and operational, for the public attending the court. Every Bar Association must have a small nucleus of lawyers who will make special studies of new legislation, calculated to abolish old disabilities or confer new rights and this Cell must be financed by the National Legal Services Authority to go into literacy action so that no man eligible as beneficial consumer of such legislation shall be kept in ignorance of what the legislature has awarded to him. We may add that even the legal services programme will be immobilised unless adequate mass publicity is given to it. In short, it is a notable necessity in any rule-of-law community that laws are not only made by the Houses but made known to the people. Having regard to the juridical darkness in which most Indians live and the twilight or poor visibility areas in which even the middle classes move, the best of Civil Rights Acts and community welfare statutes may remain *purdah-nashin* unless legal aiders lift the veil and spread the knowledge.

Law should be accessible to people

14.04. Even advanced countries have begun to discuss the subject of access to law as of grave concern. The search for legal information has turned the focus on formulation of questions: Where do people turn for legal information? How successful is the public in obtaining information? What are the sources of information? Can members of the public receive literacy in law in their localities? What can the legal aid and assistance movement do to activise this phase? Can we start community information centres, information branches of service agencies, lay or para-legal advocacy centres? Can public libraries in the villages and towns with law sections, be an answer? How can legal language be understood by the lay? How can law communicate with the poor? What delivery systems can prove effective? Legal Aid Clinics? Community Information Centres? Subsidised Lawyers in private practice? Can legal literature about 'poverty legislation' be

produced in capsule form, simple language, understandable by non-lawyers and distributed free? If so, what organisation can undertake this task or can such pamphleteering be done by mail service to village libraries? Can we organise workshops for the lay and the legal participants in rural areas, focusing on local legislation affecting the poor? The State has an obligation to ensure that its laws are understandably available to laymen. This proposition, though self-evident, has suffered in reality. While all the attention in various reports and programmes has been on legal aid schemes to make *courts accessible,* all the emphasis in future should be placed on making *law accessible.* Not only is it in the interest of the layman to have access to the law, but the legal system itself benefits from informed commitment by the layman to it. If dynamic Law communicates, the community will have stakes on the law.

CHAPTER XVI

ROLE OF VOLUNTARY AGENCIES AND THE SOCIAL SERVICE ORGANISATIONS

Social service bodies have an important role in promoting legal justice

16.01. Sociologically viewed, law is social service of a specialised type. Its goal is social engineering, its end-product justice, but the raw reality is that the legal system does not offer easy access to the common people. So much so, the service setting goes into the background and the people, particularly of poorer means, become alienated from the system. We have, therefore, to take considerable initiative to infuse in the masses faith in legal justice. The fact is that while law is a profession in theory, it is a monopoly in fact. Only through lawyers can the layman win, in fact, the rights the law purports to give him. The journey from injustice to justice has to be undertaken with the assistance of other agencies dedicated to poverty-legality(?). The citizens have little knowledge of lengthy precedents and abstract principles. To them, a landlord, a policeman, a lawyer in gown, and a judge wielding gavel are all symbols of the same mystified and often menacing authority (of) the law. Thus, between the clients, namely, the little Indians scattered all over the country, and the courts located in selected places, between the rights and benefits which the legislature have distributed to the weaker sections of the community and the actual consumption of those benefits or even awareness of their existence, there is a big gap which can be bridged by effective legal and para-legal service agencies, voluntary and official. It is a hang-over of colonialism to look up to Government to solve every problem. Indeed, it is an attitude of subjection to lose societal initiative and seek official solution for every disability or for the rendering of every service. This philosophy leads us to the role of voluntary agencies in the legal aid scheme, the statutory infra-structure apart. There is scope and need for social service bodies operating outside governmental orbit, and through their good offices a vital nexus can be established between organs of free services and those in need thereof.

Scope and need to mobilise legal profession into a service oriented organisation

16.02. Such organisation, springing up from amidst the communities, may be professional or non-professional. The Bar in India has acquired a monopoly. The legitimation of a monopoly lies in its offering better service. If this holds good of the Bar - and it does - the condition of monopoly, namely that it serves society better, must be fulfilled. A new orientation for the Bar Association to function not as a trade association but as a service organisation becomes emphatically its obligation in Indian conditions. The jibe of George Bernard Shaw that 'all professions are conspiracies against the laity' has to be dispelled by the Indian advocate moving towards voluntary legal service overtures. It is heartening that there are dotted on the vast geography of the country some lawyers' organs of free legal service. It is fair to state several State Bar Councils have schemes of legal services to the poor. It is auspicious that the Indian Bar has taken some interest in this subject. Even so, the law teachers and students who have set legal aid clinics(?). There is no doubt that the free legal services movement has been catalysed by lawyers in the cities but an objective assessment will easily convince an

impartial observer that, as yet, what has been rendered is scanty and what remains to be done is colossal. We, therefore, consider that notwithstanding the few voluntary lawyers' agencies in the field of legal aid and the greater attention the topic has commanded in lawyers conferences in recent years, there is considerable scope and need for mobilising the profession into rendering social service by making available legal expertise to the poor who cannot afford to pay. Poverty lawyers, group legal services organisations, the public interest Bar, champions of class actions, public defenders of common people's rights and such like institutionalised expressions of professional enthusiasm in the cause have yet to grow in sizeable dimensions in India. 'Thou shalt not ration justice' is not merely a motto and a message but a militant challenge to the nearly two hundred thousand members of the Indian Bar. Of course, the State must encourage legal service organs emerging from the Bar by giving grants to such bodies, channelled through the statutory authority concerned. Tax exemption for law firms or other agencies which do a substantial volume of free legal service to the deserving poor is another way of State encouragement. Financial subventions to meet, not merely the office expenses but litigative layouts in cases where class actions or other suits and proceedings purely of a *pro bono publico* nature are undertaken by such organs, should be readily given.

16.03. Once the movement catches on and the profession's conscience rises, a transformation in the outlook of the lawyers towards the community and *vice versa* will stimulate the process. The legal problems of the poor will then become a closer concern of the Bar. Many suggestions have been made by eminent men and women that every lawyer must be compelled to do some cases of the poor free. Conscription cannot be a successful strategy and compulsion in this field by legislation will be an ineffectual fait (fare?). Of course, the Bar Council of India may make rules whereby, by inner discipline, its members are called upon to conduct some cases free periodically. While this is understandable, it is pathetic ignorance and impractical in the extreme to consider, as some do, that free legal services to the poor will be fully accomplished by three or four cases a year by every Bar member. Skill and talent must be unstinctedly (unstintingly) offered and not commandeered if the best is to be forthcoming. Nor can mathematics and multiplication statistics be a substitute for crusading spirit and zealous service. Therefore, we regard it as necessary to kindle the legal profession's poverty concern and social consciousness and canalize it into action by starting a movement for formation of voluntary agencies of lawyers to render free legal aid.

Lawyers' wings of social welfare societies

16.04. Professionals alone can render expert assistance in the field of law but between the lawyer and the justice consumer is a long distance. This distance can be bridged by social service organisations and lawyers' wings of social welfare societies. The backward segments of the community, the weaker wings of society and the exploited categories of the nation have organisations of their own. There are Harijans' organisations, backward classes associations, social welfare bodies, women's conferences, and the like which represent the concerned groups. They can function as effective liaison agencies between the official legal services organisation and the people. Even organs which are not specifically representative of any particular community may as well be a conduit pipe to convey grievances in the field to legal counselling bureaus. The Bharat Sevak Samaj is an instance. These days even service clubs like the Rotary Club, the Lions Club, Y's Men's Club, J.C's etc., are forming legal aid wings consisting of their lawyer members and help the poor who have cases and grievances but not the money to secure legal services. Such organisations should also receive recognition by the statutory authority operating in the field of legal aid. In fact, social welfare work itself is a specialised kind of service and clubs and societies

and even individuals may be of immense value in establishing a functional nexus between the laity in need and the lawyers who can deliver the goods.

Voluntary agencies can be catalysts

16.05. In our view, too much governmentalisation and even officialisation may make the programme expensive and inefficient, and voluntary agencies, care being taken to avoid their becoming rackets, can be catalysts. A high place and considerable encouragement may, therefore, be assigned to voluntary agencies in the totality of the scheme. Indeed, there are numerous voluntary agencies in the country working among the lowly, the destitute and the down-trodden. No statutory infrastructure can put out its tentacles to reach out to these low visibility areas of deprivation and denial. On the other hand, a network of voluntary agencies of varied pattern may be an effective supplement and may not cost much. Moreover, there are undeniable advantages in the shape of local confidence, community trust and credentials of service and easy communication posts if such service units which spring from among the people, as distinguished from formal and official organs, are harnessed.

Voluntary agencies have superior capacity in matters of legal education and publicity

16.06. In the matter of education and publicity, voluntary organs have superior capacity in many senses. In the matter of identifying points on which the existing law hurts the poor or is deficient or can prove better by small amendment, local agencies of the people will be able to help. In the matter of promoting settlement of disputes or bringing down tension among groups, organisations like the Gandhi Peace Foundation and their volunteers may be able to utilize lawyers' skill, educate the people in their responsibility and resolve every day conflicts among groups, the victims in all such cases being poor families. When minorities clash, such organisations can go into action and if they have contact with legal aid agencies, tensions can be minimised by offering legal remedies. On the whole, community participation in legal aid and advice work can be best secured through service clubs and people's organisations.

Accreditative and consultative status to be extended to agencies with satisfactory record

16.07. We go further to suggest that accreditative and consultative status must be extended to agencies which have a satisfactory record. Poverty lawyering and lobbying for poverty legislation will receive popular backing if supportive people's organisations are part of the comprehensive project. A total revolution through the law cannot be executed without total commitment of the community through its variform organisations. Institutional recognition of voluntary organisations is at once radical and necessary if we are to foster broader vision and ways to pursue the quest for justice among the clients of the law, namely, the Indian people.

PUBLIC INTEREST LITIGATION: SOME INTRODUCTORY READINGS

CHAPTER 1

INTRODUCTION

1.01. In recent years, there has been a considerable amount of thought given to the subject on legal aid. At national level concern about legal aid programmes has been expressed through two National Committees. The first National Committee was set up under the Chairmanship of Mr. Justice V.R. Krishna Iyer on 27th October, 1972 and submitted a Report entitled *Processual Justice to the People* on 27th May, 1973. The second committee was set up under the Chairmanship of Mr. Justice P.N. Bhagwati on 19th May, 1976 and submitted a Report entitled *Report on National Juridicare Equal Justice - Social Justice* on 31st August, 1977. After an inter-departmental committee had examined the implications of the Bhagwati's Report, the Government of India passed a Resolution on 26th September, 1980 constituting a non-statutory Committee entitled the Committee for Implementing Legal Aid Schemes. The full text of the Government Resolution establishing this Committee is reproduced as Appendix I to this Report [not inserted].

1.02. The Committee for Implementing Legal Aid Schemes was given certain specific functions which were formulated as follows:-

'(1) To formulate in detail and to implement comprehensive legal aid schemes after taking into account the working of the various legal aid schemes in different States;

(2) to monitor the scheme for legal aid and advice in the States and Union Territories with a view to ensuring their effective functioning as a means of securing social justice;

(3) to take or recommend such other steps as are necessary to secure proper working of the legal aid schemes;

(4) to consider and report on, or take necessary action with respect to, such matters pertaining to legal aid as the Union Minister of Law, Justice and Company Affairs may refer to it from time to time'.

1.03. The Committee for Implementing Legal Aid Schemes took the view that quite apart from the establishment of the legal aid programmes, it was a matter of priority that the Committee should examine ways and means in which the legal aid programme could encourage both public interest litigation as well as litigation on behalf of the under-privileged and depressed classes.

1.04. In order to get some feed back on what should be done in respect of public interest and group litigation, the Committee for Implementing Legal Aid Schemes called a meeting of various social welfare and grass roots groups and organisations (listed in Appendix II of this Report) [not inserted] to discuss as to what should be done in this important and crucial area of activity .....

1.05. On 20th July, 1981, when I (Rajeev Dhavan) was Visiting Professor at the Indian Law Institute, the Chairman of the Committee for Implementing Legal Aid Schemes requested me to examine the nature of public interest litigation in India, its difficulties and shortcomings and the manner in which the proper public interest litigation programme could be constituted within the framework of the Committee for Implementing Legal Aid Schemes.

1.06. The framework of the Project assigned to me was as follows:-

'This project is concerned with looking at the manner in which law and the litigation and adjudication system can be used (a) to further the public interest and public causes; and (b) by disadvantaged and other groups in India'.

'Law and litigation is a very important component of public and political life in India. The litigation system in India is designed in such a way that it is vulnerable to random use. Theoretically, any and everybody can use this system to assert private, group and public rights. In actual fact, the system is rather more ruthlessly used by certain advantaged groups far more effectively than it is used by others. Privileged groups, business houses and organised institutions use litigation in a way to win specific and general advantages. Sometimes these groups simply fight for specific relief. Sometimes, these groups fight

general campaigns claiming to fight public campaigns. But the litigation system is used in this to the advantage of some. A large number of individuals, groups and institutions are unable to use the litigation system either to fight their cause or espouse what they consider to be the public interests'.

'In all this, the organisation of legal services in India is such that it is virtually impossible for under-privileged groups to fight for their rights through the litigation system. Rights that have been given to them by law and through the Constitution have, in effect, been taken away because they cannot be fought for. But apart from the private and group rights of the under-privileged, the public interest in various rights and issues also needs to be explored through the litigation system'.

'Legal services in India are not organised so as to be sensitive to this kind of use of the litigation system. Legal services and lawyering are geared to supporting private rights and private causes'.

'How can legal services and the litigation system be designed to meet the rights of the under-privileged and accommodate campaigns in the public interest? The answer must be that given the organisation of legal services in India, lawyers and the litigation system cannot be used for this purpose'.

'The simple provision of legal services is not enough. What is needed is the reorganisation of legal services in such a way that such causes can be dealt with in a relevant and efficacious manner'.

'The purpose of this project is to determine the manner in which this alternative programme can be set up in India. The questions that will be raised are (i) can the group rights of the under privileged and public interest litigation take root in India; (ii) What form of public participation is necessary to set up such a programme? (iii) What institutional form should such a programme take? (iv) What kind of group and litigation is necessary to set this programme in motion? (v) How can we use the existing public machinery for this purpose? (vi) How can we mobilise already existing private and other groups for such a programme? (vii) What is the strategy of such a programme? (viii) Should this strategy be limited to certain areas? (ix) Is the purpose of such a programme merely to assist existing groups, create new groups, or some other form of pro-active activity?

'This list is not exhaustive. In a country of India's size and dimension such a comprehensive schedule of questions may neither be desirable nor feasible. The interest of this project is in evolving and building on practical, feasible and effective strategies of action'.[1]

1.07. The Chairman for Committee for Implementing Legal Aid Schemes requested me to look at both, theoretical and practical, aspects of the problem. It is for this reason that a part of this Report deals with certain theoretical questions which are fundamental to an examination of any public and group interest litigation schemes.

1.08. I was also to meet various people and visit several groups as part of field work associated with this Project.....

This Report is necessarily advisory and exploratory in nature. I was not given a free hand to propose a separate public and group interest litigation scheme. I was merely requested to explore the possibilities of a public and group interest litigation programme within the framework of the Committee for Implementing Legal Aid Schemes. In other words, given the structure of the Committee for Implementing Legal Aid Schemes, I was asked about the problems and possibilities the Committee for Implementing Legal Aid Schemes being able to orient its activities in such a way that it could take the interest in and sponsor public and group interest litigation activities. It has not really been open to me to make wide ranging suggestions about how public

1. Part of a Preliminary submission made to the Government of India on behalf of the Chairman, Committee for Implementing Legal Aid Schemes and Dr. Dhavan.

interest and group litigation should be organised in India. My plan has been to both explore the theoretical problems faced by and group interest litigation as well as to outline some ideas that could be considered by the Committee for Implementing Legal Aid Schemes.

1.10. This Report is, therefore, both theoretical and practical in nature. At a theoretical level, this Report looks at some of the deeper problems that every social welfare scheme sponsored by the State encounters. It also looks at the nature of modern Indian Law and legal institutions and the extent to which such institutions are vulnerable to an extended use by public and group interests activities. I believe that this theorising is either impractical or irrelevant. On my field trips and during my discussion with various people in the field, a large number of people said to me: 'Look at what is happening.....' What followed was their impressions about what was happening. This was not just a routine description of the day to day or case to case difficulties which they had. 'What was happening' was described in a wide ranging way to indicate certain endemic problems which were part of their lives. Members of the depressed classes had an extremely good idea of what the local *sarkar* (state) or the central and state governments meant to them. They also had a reasonably clear idea about what law was and how and why they got caught in the web of legal institutions. Many of them were very vocal. It would be absurd to say that there preoccupations were theoretical. They were talking about their perception of a state of affairs. I believe that much of their perception was both correct and justified. I have tried to represent their perceptions as well as my own when I have looked at concepts like the State, law and social mobilisation. There is little point in examining the viability of a programme without a clear understanding of some of the inherent problems such a programme must inevitably encounter. At a practical level, this Report looks at the prevalent legal aid schemes in India and the extent to which they could or could not be used for public interest litigation project purposes. Some attempt has been made to examine the changing nature of public interest litigation in India and the implications of some of the new style of public interest litigation that has emerged. I have also tried to consider some of the financial implications in respect of public and group interest litigation movement as a whole. Finally, I have made some suggestions about the creation of a public interest litigation cell within the framework of the Committee for Implementing Legal Aid Schemes and outlines some of the activities that it should undertake. The assignment that I was given was a difficult and complicated assignment. Both the theory and practice of public interest litigation in India has taken a very complex shape in India. I have tried my best to discharge this assignment as best as has been possible within the short time available. If this Report is a little unusual, it is because the nature of this assignment and the subject it deals with is both unusual and complex.

CHAPTER II

STATE SPONSORED SOCIAL WELFARE SCHEMES AND THEIR LIMITATIONS

I. The Supply of Social and Legal Services: The Need to Abandon a Top-heavy State Sponsored Approach.

2.01. The Government of India has many social welfare schemes. These schemes cover various areas of activity including the provision of education and health for all, the distribution of all kinds of supportive and enabling facilities to various sections of the community and specific programme for the uplift of the depressed classes. While these schemes vary in more ways than one, they also have certain common features. It is well beyond the scope of this Report to look at the specific problems of social welfare schemes in India. But, it would be useful to look at some of the general difficulties that such schemes have encountered. The provision of legal aid and legal services has a lot in common with these schemes. I would like to begin by presenting some of the anxieties of a former Deputy Chairman of the Planning Commission in respect of the problems of social welfare schemes in general:

'My extremely tentative conclusions on a subject which stirs our deepest emotions as it involves our personal lives, are that, social services in India have fast expanded under our plans'.

'But no proportionate benefits have ensued. Of all the social services sectors, education has been the most debated. Even in the field of primary education where we seem to be within a measurable distance of the goal of universal enrolment, the baffling problem which faces us is that of drop-outs, which deprives much of the value of our enrolment drives. Education leaves us without skills, and the higher percentage of educated unemployed reminds us of the problems of reforming our educational system, of seeing that it expands in directions where the nation needs it and so changing the pace and direction of economic growth that it can make optimum use of our trained manpower. The challenging field of adult education which holds the key to relevant education has hardly been faced. Our scholarship schemes except in the case of the scheduled castes and tribes do not amount to any systematic effort to help the needy or the meritorious, and most of the money is spent on partial subsidies to these who are favourably situated geographically and/or financially'.

'In the vital field of health and medicine the level of public expenditure is much lower than in education. As a result, people especially the rural populace has spent relatively more on the former. What is even more significant, our allocation seems to have gone faulty. Instead of our concentrating on the health and medical needs of the common man, these largely reflect the preferences of the sophisticated professional personnel in charge. Less is, therefore, spent on looking after prevention of common ailments or their cure, the curative aspect is more emphasised and the need of public participation essential for the creation of a proper environment is not stressed. In housing, partly because of the large magnitude of the problem, the role of private investment, and the very difficult remedies, we have made even less of an impact on the situation, and may be added to its unhappiness by setting up examples which were hardly capable of being replicated. If we are really to fulfil our promises of bringing basic public services within the reach of the poorest in the next decade, we shall have to think hard, radically revise priorities and take some harsh decisions'[2]

2.02. Reports on the delivery of social services in India tend to be written with euphoria. There is explicitly stated belief that, somehow or the other, any scheme that is set up will be able to materialise itself into social reality. Latterly this publicly stated belief has not been able to disguise a much more real apprehension that many of the schemes to set up, organise and distribute social services and social benefits have not been successful. Many schemes have simply failed. Many reports have simply been consigned to the Government's amorphous filing system.

2.03. The delivery of social services in India, however, poses many disturbing features. We see around us a genuine failure in the delivery of many of these schemes. There are innumerable examples of schemes which do not get to the beneficiaries they are designed for; which got distorted by administrative entropy or bureaucratic fatigue or which simply get eaten away by a conglomerate of social forces which are so strong that they cannot be ignored and so complex that they cannot be negotiated with alacrity.

2.04. If there is a failure in the delivery of social service schemes in every part of the Indian polity, there is every reason to believe that a similar failure will attend the delivery of the legal services unless we approach this subject with a more rigorous reference to the factors which are likely to sustain or undermine the success or failure of this scheme.

2. D.T. Lakdawala, Deputy Chairman, Planning Commission, 'Planning of Social Services', in N.C. Joshi and V.B. Bhatia (Editors): *Readings in Social Defence*, (Allahabad, 1981, p. 22).

2.05. Fundamental to all this is the position of the State and the extent to which the State itself can be the primary agent of social reform and social change. In India, the state has been given a crucial position as far as social reform is concerned. The major emphasis has been on the creation of social programme using the bureaucracy as a major part of the delivery system. In some cases a specialised corpus is created especially for the purposes of a particular programme. In other cases, the programme is so planned that it is administered by the general administration. In all this, there are undoubtedly many other inputs - inputs that deal with policy initiative, inputs to promote investigation, inputs at double checking devises and finally inputs which are calculated to inculcate voluntary and other patterns of social mobilisation. But the central thrust of all those problems has been to stress the dominance of the State and the centrality of the official initiative, which are regarded as fundamental to the growth, success, and development of the change that is envisaged. The position occupied by the State represents both forms and style of thinking which may well have to be re-assessed in the light of our political and social factors over the past few years.

2.06. Much of the disquiet about the State and its ability to inculcate or catalyze certain patterns of social mobilisation have been expressed earlier. Indeed, most Government programmes speak in terms of the importance of voluntary bodies in assisting the state to achieve common goal. This disquiet is written into the *Report of the Expert Committee on Legal Aid.*[3] The remedy provided in that Report is the induction of certain social welfare agencies so that they can be part of the legal aid programme. But the essential function envisaged for the voluntary agencies is to direct people to the State programme to improve its efficacy apart from providing some assistance to their constituency or beneficiaries - as the case may be. The designated role of the voluntary agencies was depicted as one which could:

> 'alert those working in the legal aid organisation when they tend to fall into a rut and become ossified. The existence of a voluntary agency whose work impinges on that of the legal aid organisation will act as a stimulant aid help the legal aid body to keep in mind that its ultimate aim is one of service and not of mechanical adherence to rules however well intentioned they may be'.[4]

The plan seems to be to absorb and harness the initiative of voluntary agencies with the state bodies playing a pivotal role. A similar attitude is taken by the second (report) *National Report on National Juridicare Equal Justice - Social Justice.* In discussing the importance of lawyers, the Committee, while, perhaps, rightly taking the view that the lawyers were not central of the success of a legal services organisation, stressed that the defect with a lawyer dominated scheme was that it had no 'official element'.[5] Equally, the judiciary was given an extremely important role[6]:

> 'We are firmly of the view that judiciary has a very important role to play in the legal services programme. When we say this, we must, of course, make it clear that we do not, for a moment, wish to say that the judge should placed in a situation in which he may come into direct contact with a prospective litigant or that he should have anything to do with the determination of eligibility for legal services either on the application of the means test of the reasonableness test. But the judge can certainly participate in the legal services programme in a policy making and supervisory capacity and his distant participation in this manner would go a long way towards smooth functioning of the legal services programme. The association of judge with the legal service programme would be highly beneficial, because a judicial officer would bring to bear on the administration of the legal services scheme maturity and wisdom born of long

3. *Processual Justice to the People* (May, 1973).
4. *Processual Justice to the People* (May, 1973) page 196, para 11.
5. Justice Bhagwati's *Report on National Juridicare Equal Justice - Social Justice* (August 1977) para 3.03, page 7.
6. Justice Bhagwati's *Report on National Juridicare Equal Justice - Social Justice* (August, 1977) para 3.08, Pp. 9-10.

experience as judicial officer: he would have a sense of social commitment by reason of deep and abiding passion for justice; he would be able to bring about cohesion between different social interests resulting in harmonious working of the legal services organisation and he would be able to secure maximum cooperation from the members of the Bar in the matter of provision of legal services. Moreover, he would be able to impart prestige and create public confidence in the functioning of the legal service organisation which is very essential if the legal services programme is really to serve the interests of the weaker sections of the community. He would also be able to ensure that the legal services programme retains its non-political character and does not become a tool in the hands of one political party or the other. We are very anxious that the legal services programme remains free from partisan politics and becomes a social movement or, better still, a people's movement which is not concerned with any political party and this, in the present circumstances, can be ensured only by having a sitting or retired judge as the head of the legal services organisation'.

The induction of the judiciary into this process was thus seen as corrective of the State programme so that many of the defects of state programme - arising out of corruption, inaptitude, lack of direction, politicisation and the like - would be kept in check. The judges were a kind of check and balance within the framework of the state in order to deal with some of the dangers inherent in the State programme. At the same time, the Committee seem to realise that the success of any extensive legal aid programme must depend upon the support of the people:[7]

> 'It requires, for is successful implementation, the complete involvement of the people and it is necessary that public-spirited and service-minded people from different walks of life should be associated with this movement. It is extremely important that public and social workers should be involved in the legal services programme, irrespective of their political affiliations, so long as they are dedicated to the cause of legal services to the weaker sections of community. The legal services movement should become a *people's movement* and the entire community should feel a sense of involvement in it'. (emphasis added)

2.07. But it seems strange that this idea of a 'people's movement' was to be achieved simply through the representation of social and public workers on National and State Legal Services Organisations. Such a representation was supposed to transmit the pulse of the 'community' to the Legal Services Organisation and ensure the creation of effective operative policies evolved on the basis of sound community relationships. The social and public workers who would thus be inducted into the legal aid movement were to be chosen from workers organisations, labour organisations, experts and organisations of the weaker sections of the community. This small body of representative, (chosen inevitably, perhaps, through the discreet process of politics) would themselves be hopelessly outvoted in both the national and state body - part from the voting strength of these representatives, it is still essential to consider whether or not the State sponsored body, run with the partial involvement of some voluntary organisations - themselves chosen on a preferential basis - can constitute 'people's movement'.

2.08. What is being envisaged is the creation of a quasi, autonomous body which has a bureaucracy of its own with some kind of corrective in the form of a judicial presence and the selective representation of some social workers. This by itself cannot constitute the people's movement. Nor is it necessarily sufficiently well organised so as to reach the 'people'. Many people - including those working in the field with the 'people' - take the view that a State sponsored people's movement is itself a contradiction in terms and that the attempt to dress up a legal aid programme as a people's programme is really rhetorical in nature. Beneath the rhetoric lies some

7. Justice Bhagwati's *Report on National Juridicare Equal Justice - Social Justice* (August, 1977) para 3.11, p. 11.

very deep questions about the relationship of the State with the people and the ability of the State to be associated with the people's movement given its net-work of social, political and economic relationship. It is essential to examine the fundamental position of the State in relation to the peoples it is indebted to and *really serves*, and its relationship with the people it pretends to serve and for whom multiple schemes are organised. (Para 2.9 missing in the Original)

II. What the Local State Means to the Poor

2.10. Re-evaluating the limitations on effective state action is not an academic point. It goes to the heart of some of the anxieties of those who have to deal with the State. Many of the tribals, adivasis and Scheduled Castes people I met during my brief field trips, had little or no confidence in the local agencies of the State. One of the major issues raised by some *adivasis* in the village of Bakhulia related to very simple delivery of rations to the *adivasis*. Ration cards were either not distributed or distributed at a premium. The rations itself were only very rarely distributed. In one instance, even after several trips to a ration shop, a person managed to get 15 days ration as part of his ration quota for the whole year. There was little room for manoeuvre and an accepted belief that even the officers at the tehsil level could do nothing about, and were party to all this. The most serious problem with most people in the village relates to the ownership and possession of land. Here, the local agencies of the State are feared because they are themselves corrupt. But their corruption is not an episodic activity. It is a systematic corruption which is linked to the stronger local forces in the village. In one instance near Rajpipla in Gujarat the male population of an entire village were locked up by the police. In another instance from the same area, it was feared that the police were responsible for causing the death of a person who, along with others, protested about certain local practices of landowners colluding with the agencies of the State. To many people, the 'State' cannot, at this level, be separated from local social, economic and political forces of which it has become a part. This is not to deny the existence of the possibility of some of the local forces of the State being able to withstand the pressure of local and regional forces. Such agencies are not exactly in abundance. But even where they do exist, local forces are able to use them to their advantage. The local forces of a State are able to influence their administrative masters through a combination of falsifying or distorting the picture and preventing others from placing the correct facts before the powers that be. Thus, near Rajpipla a group of tribals (who were) about to protest their case to local courts were themselves arrested by the police *en masse* until they met a superior police officer on an inspection party by accident and partly through the efforts of a voluntary legal services body. Local political forces have evolved an inevitable network of links which are sufficiently well organised and well placed to constitute a political appeal system which can 'correct' many honest local practises when these practises come up against the repositories of local power. Even the agencies of the judiciary can be by-passed. This is not always done by the direct corruption the lower judiciary - although some of that exists. This is also done because the law and legal institutions have become a part of a cruel game which those who are well placed can play far better than those who are not. At the legal aid camp at Rajpipla, there were many instance of tribals who having won their cases in the revenue courts after many difficult years of tiresome legal wrangles, discovered that they had to immediately face a civil court injunction. In one instance, the civil court injunction was procured even after a High Court order had been obtained by a tribal. This civil court injunction could, itself, not be vacated without further and more expensive legal proceedings. Thus, it was possible for the more powerful locals to corrupt the legal processes if they were able to do so and manipulate the legal process where they were unable to corrupt it. The institutional morality of lawyers in the area was not sufficiently strong - if, it can ever be - for lawyers to give up their fee and influence. We shall return to the contours of the legal process and the litigation game. For the present, a reference has been made to this simply to create a picture of the 'State' as it exists in the minds of those against whom the machinery of the State is either corrupted or manipulated. In the perception

of these people, the State does not emerge as a viable agency for the delivery of benefits concern, mutual aid, help or support. Nor is it seen as an agency which can be relied upon to be fair. It is seen as being too closely linked to - and sometimes identical with - the local forces of privilege. Whatever the position, the local 'State' cannot be ignored. It is something that continuously intrudes into the lives of those who are its declared beneficiaries. The things that concern the poor most are the land that they till, the wages that they receive or do not receive for their labour, the credit facilities that they have to pay for in order to move from one harvest to another, the extent to which they have to sell their labour in bondage for the minor benefits that they might have received, the food that they are supposed to receive from ration agencies, a supply of water for the purposes of drinking and irrigation and protection from the forces of untouchability, social ostracism and brute forces - whether of the police or otherwise - it is on all these crucial fronts that there is a failure on the part of the agencies of the State. The local 'State' - the only 'State' which the poor peasant is aware of - acquires a totally different complexion for *harijans* from Tilonia who found the local forces of the State giving support to caste Hindus by not allowing them to draw water from a handpump which was establishing through funds supplied by the Ministry of Home Affairs and on the basis of a written guarantee that the pump was *sarvajanik* - that is, available for the use of all. The local State is, to them had for large sections of the rural poor, not a separate entity. It is part of the local power. It cannot be understood apart from local power.

III. Problems of Social Reform Proceeding from the Top: The Nature of the Higher State.

2.11. If this is how the local State is perceived and operates, let us consider how the 'higher' State operates. It could, after all, be argued that the local 'State' is really part of a process of social and administrative entropy even if it is the only 'State' that a large number of Indians come in contact with. Many - including the spirit of the *Reports of the Administrative Reforms Commission* (1966-68) - believe that the 'higher State' was capable of achieving autonomous viability so that it could not only evolve schemes of action but also serve as a corrective to the agencies of the local 'State'. The higher 'State' is a very complex conglomerate of forces. Its links with the local 'State' are also very complex. The higher 'State' is both similar to and different from the local 'State'. It is both the expression of direct power influences as well as part of a system which the more powerful and well-connected can use more effectively than others. Equally, it contains many honest initiatives - some of which are successful and some of which fall prey to the many forces that the State is heir to. As the direct expression of social, economic and political power, agencies and personnel of the 'higher' State are themselves open to direct corruption and manipulation. This exists both in respect of the activities of the higher 'State' as well as the activities of the local 'State'. For there is a political appeal system whereby the capacity of the 'higher' State to act as a corrective of the activities of the local 'State' is seriously undermined. But the higher 'State' cannot permit its own once-and-for-all direct corruption. This can only result in a total loss of legitimacy for the state as a whole and of those who are a part of it. And there are many within the State who are not vulnerable to their own corruption or the corruption of the State. The 'higher' State represents a complex set of operations. These processes cannot be negotiated easily by all. Only those who have the inclination, resources, knowledge, skill, access and contacts can mobilise these forces effectively. This applies, *mutatis mutandis,* to both those parts of the higher 'State' that is amenable to direct corruption and these parts of the State which are not. The higher 'State' has acquired many social, political and administrative 'brokers' who know how to find their way through the activities and functions of the higher 'State'. Both in India - and elsewhere - they are crucial to the operation of the higher 'State'.

2.12. But the higher 'State' is not just a conglomerate of *facilitative* power. It is also an important agency which itself initiates many schemes. There is a lot of serious thinking done in the agencies of the higher 'State' about the

progress of the country as a whole and the manner in which the various forces in the State can be done together. This is done for various reasons. The most elementary and obvious one is a direct concern about the country as a whole. This direct concern is both a matter of a genuine ethical concern as well as a matter of political expediency. No State - whether it is dependant on electoral politics or not - can ignore the problems of the country as a whole, the many tensions which these problems give rise to or the anxieties expectations of large sections of the people. Beyond this, the higher 'State' too has to be instrumental in keeping alive some kind of economic delivery system under conditions where alternative parallel economies and parallel delivery systems emerge with ease. Given all these factors we have seen the emergence of many schemes which are designed to keep the social and economic forces of the economy in check. The vast complex of the Planning Commission and the existence of several welfare Ministries are part of this complex.

2.13. Many of the Schemes that are thus put together are paper schemes until they are prioritised and put into action. The priority emphasis on a scheme determines the extent to which the higher 'State' is going to make a determined effort to make sure that that scheme materialises. There are many inputs here. The quantum of finance and resources available plays a crucial role as does the ability of the higher 'State' to ensure that a scheme does not lend itself to its own direct corruption. The scheme itself becomes subject to entropy, a weakening of the impulse of central initiatives and a watering down and transformation by its use and abuse at several levels of the higher and lower 'States'. Many schemes fail because of the non-existence of these inputs. Many schemes fail because extent and intensity of these inputs is itself weak or weakened. *But the real problem is not one of stronger inputs alone. The real problem pertains to the extent to which forces in society mobilise themselves - and are able to mobilise themselves - for or against a scheme. For it is the extent of continuous viable social mobilisation - orapathy,* as the case many be, *Which determines the viability of a scheme.* As it happens, the *putative beneficiaries of schemes are rarely able to mobilise themselves whereas the more powerful opponents of these schemes are* sufficiently *organised and well connected* to be able to undermine or transform a scheme.

IV. The Relationship Between the Top and Local Levels

2.14. It is important to look at the relationship between the higher 'State' and the local 'State'. We have already referred to the net work of political and social links that exist so that those in power at local levels can seek and procure the assistance of agencies and officials of the higher 'State'. This is an important set of links which both isolate the local 'State' and keep it in check. The local 'State' is isolated in that such pressures from the higher 'State' ensure that local forces can do whatever they like and become - as they do become - a law unto themselves. But there is also another relationship between what we have called the higher and the local State. The local 'State' is a peripheral state. It belongs to the edges of the domain of the higher State. As long as it remains *overtly* in a relatively peaceful state and continues to deliver the supply of essential goods and services to the economy of the higher 'State' there is little or no interest in the activity of the local 'State'. The local 'State' only begins to catch the attention of the higher 'State' are mobilised. This may be done as suggested above - because local forces which take the local 'State' over want to remain free to do what they like. This may also happen when - for political or other reasons - the activities of the local 'State' are highlighted. By and large, apart from central concern, the higher 'State' is neither capable of - nor really capable of - mobilising, or assisting in the mobilisation of, the forces of the depressed poor and exploited at local level.

V. Law and Development and the Status Quo
Success of State Sponsored Schemes

2.14. There is a long standing controversy among development theorists and experts on 'law and development' about the nature of the State. In particular some of this controversy is directed to considering whether the State possesses a

'relative autonomy'. I do not really wish to enter into that general debate here. I have merely sought to look at the nature of the Indian State because I believe that such an analysis is fundamental to any discussion about the delivery of social services through the agencies of the State. Without prejudice to these general theories, the Indian State is depicted as being ractured (fractured) in a style of its operation. The local 'State' is the subject of direct control by local forces and manipulation where such direct control is not possible. Such a local 'State' is kept in isolation partly because of a political appeals system which allows local forces to become a law unto themselves. But the local 'State' is also isolated because it is a peripheral 'State' which is kept peripheral as long as it (is) politically possible and as long as it links to the manistream of the economy without too much difficulty. The fact of its isolation actually assists its links with the mainstream economy because it is able to supply certain goods and services to the mainstream economy on a low-cost basis. Interest in the local State is limited to certain key issues. Exploitation is not merely one of these issues. Sometimes exploited groups may be slowly wiped out without the higher 'State' interfering. Sometimes the higher 'State' may not wipe out weaker groups out simply permit their continued exploitation. The higher 'State' is a much more complex creature - which is susceptible to many strains. These strains include its corruption and manipulation as well as the forces of social legitimation and benevolence. To all this, the assistance of voluntary bodies is thrown in as an ancillary device. It is this complex of forces which forms the essence of the delivery system through which social services, social benefits and the movement for social reform is (are) to be achieved.

2.15. The main impetus in State-sponsored schemes comes from certain benevolent conscience brokers who feel very strongly about certain issues and are determined to fight for them as strongly as possible. These consist of a core of people who both exist within the administration and without it. Such benevolent conscience brokers come from various walks of life. Some of them actually belong to depressed communities. Others have assumed this role as part of their social and political activity. Others may have got involved into this kind of activity because of various personal or social reasons. Whatever the reason and background of such conscience brokers, they become an important part of any State sponsored scheme of change. They are themselves part of the sea of troubles that form part of the 'fractured' State we have described above. Some of the forces that surround the State may assist these movements for reform - for some reforms become necessary for various political and economic reasons.

2.16. The burden of much of what has been said so far is that a State-sponsored change can only achieve a partial, controlled and manipulated success. This success depends for its efficacy on the will of a few benevolent conscience brokers and a conglomerate of uneven forces - many of which are calculated to undermine these schemes so that they attain only, what may be called, a *status quo* success. This general model of State sponsored activity starts from the top and moves down. It is submitted that this kind of 'apex initiative' model is the wrong way to go about trying to achieve a genuine social change. A genuine social change needs to start from a totally different premise.

VI. The Alternative of Social Mobilisation

2.17. This Report seeks to work on the assumption that the only way of trying to help the depressed classes and achieving a genuine social reform is by starting with the people who are themselves the putative beneficiaries of such social reform. Since these people are the victims of a conglomerate of forces, they can only fight against these forces if they are themselves able to initiate and mobilise an alternative set of forces and strategies which can combat the pressures posed by the conglomerate of forces of those who are against them. This is by no means an easy task. It entails a fight which had to be fought at several levels, in several ways and through several means. Where such problems enter into the arena of law and are fought through the forum of law a combination of social mobilisation and legal

expertise is needed so that the case may be successfully fought. To take an example. We have earlier talked of an incident from Rajasthan where several Scheduled Castes villagers complained that they were not allowed to drink water from a *sarvajanik* handpump. This was clearly against the law. But a lot of activity had to take place before a legal and litigation battle could be mobilised. To begin with, certain social workers got the Scheduled Castes group together in order to explain their legal and political options to them. The villagers were afraid of social and other reprisals. A certain amount of social mobilisation was necessary to give litigating strength to villagers to give them the strength to agree to testify against their opponents. A certain amount of legal expertise had to be inducted into the campaign, both to determine what information was relevant and also to determine the legal or political forum through which the campaign would have to be fought. Then, the technical process itself had to be out into motion while keeping alive the social campaign at local level. What will happen to this case remains to be seen. Whatever the outcome, a fair bit goes into organising a legal battle and ensuring that the full strength of a community lies behind it.

2.18. Unless there are patterns of social and political mobilisation amongst these communities, their fate will depend on the conglomerate of social forces which have been pitted against these people and the initiative of a few benevolent conscience brokers who are willing to be associated with the cause of the poor.

2.19. The location of the fight for the depressed classes amongst the depressed classes themselves has many advantages. Such a pattern of mobilisation must, perforce, work at a local level. At that level, it comes into contact with the genuine problems that these classes suffer and the real forces that are ranged against them. It is at this level, that several alternative working strategies have to be devised to counter the forces which oppose the depressed classes. The depressed classes will be fighting for their own rights and the solution of their own problems. There will undoubtedly be pressures on many sections of the depressed classes to compromise or give in. Such pressures range from the direct use of brute force - by no means of various kinds of inducements to break up or wean away those amongst the depressed classes who are most able and most willing to fight for their groups as a whole. The mobilisation of the depressed classes involves both the quantitative assembling of the depressed classes as well as the qualitative evolution of strategies that does (do) not compromise the cause of the depressed classes in relation to the forces that are ranged against them.

2.20. Although the fight of the depressed classes is rightly located with them, they cannot always conduct this fight alone. There is a great distance both in terms of social space and time between the initial mobilisation of a threatened group and its achieving sufficient viability to fight its own fights. It is for this reason that these groups have to build up aloiances (alliances) with various people in order to initiate the process of social mobilisation, in order to enable these groups to fight for their own rights. Sometimes the very process of initiating a pattern of social mobilisation is itself begun by an outside group - whether directly or as a catalyst. There are many well-meaning people and groups who are prepared to fight with the depressed classes out of concern, sympathy, conviction and solidarity. These well-meaning people and groups bring as part of their alliances a range of support mechanisms including resources, skills, contacts, an ability to manoeuvre the social and political system and a degree of sustained optimism. Such people and groups consist of both people who work out of passion and conviction as well as those who get involved with the depressed classes to career their own way forward. Many of the depressed groups that I met took the view that the induction of outside support was essential, proper and welcome. The dividing line between control and support can become quite thin. It is important that those who fight on behalf of the depressed classes do not get carried away by the fight and forget the importance of their beneficiaries.

2.21. Patterns of social mobilisation amongst the depressed classes in India has taken many forms. At one level, the patterns of social mobilisation has (have) taken the form of violent attacks on the opponents of the depressed classes - including the State, where the State is either to (the) enemy or in league with the enemy. Such a pattern of mobilisation has presented many problems. Consisting as it does of a direct confrontation with the State and other rich and powerful groups, such mobilisation initiatives are visited with power reprisals. What is done is the creation of low intensity military style operations against this pattern of mobilisation. It is very difficult for such a pattern of mobilisation not to provoke a full use of the power of the State against it. Whether such patterns of mobilisation should be encouraged must inevitably be a pattern of strategy for the depressed classes, the existential situation in which they are placed, the frustrations that they are heir to, the options that are open to them and their chances of success.

2.22. But discussing such patterns of mobilisation is well beyond the scope of this Report. This Report is commissioned on the basis that the analysis and suggestions made in this Report fall within the framework of the Constitution of India and the rule of law. Be that as it may, it is important to recognise that even when the depressed classes have used or tried to use - patterns of mobilisation which are within the rule of law, they have been dealt with quite severely. Many peasants have been beaten and killed by the police and otherwise (others), where they have tried to fight for their rights. Most of the people working with the depressed classes reported that the single most important problem in achieving any successful level of social mobilisation entailed conquering the fear that members of the depressed classes would be physically or economically threatened if they dared to fight for their own legitimate rights or ventilate their legitimate grievances. The fact remains that wherever the depressed classes are effectively mobilised the forces against them become more and more severe. The depressed classes are driven into an unequal fight in which they are forced to act within the rule of the law whilst their opponents manipulate, corrupt and distort the law as well as act outside it with impunity. This is merely part of the strategic condition of the depressed classes under the Constitution and under a system of the rule of law which is within the control of those who oppose them.

2.23. Encouraging the depressed classes to use the processes of law and litigation rests on the assumption that the law and legal institutions are viable theatres of activity where the fight for the depressed classes can be conducted.

VII. Are the Legal Options before the Poor Illusionarry (Illusory)? Do They have a Choice?

2.24. Many of the options before the depressed classes may really be quite illusionary (illusory). They may be invited to conduct their fight through and in many forums in which they cannot really hope to win. This may be particularly true of law courts. Many people belonging to these depressed groups I met during my field trips took the view that the law and legal institutions were traps rather than vehicles of reform and change. They were a kind of institution trap. Attracted by the rhetoric of justice and the declared objective of fairness, many people go to the courts in the hope that justice is possible in judicial institutions. But many tribals, adivasis, Scheduled Castes and other depressed groups felt that the law and legal institutions was (were) like a *jal*. Even where these institutions were not corrupt, these people discovered that there opponents were able to play the litigation game for more successfully than the depressed classes themselves. Cases were deliberately prolonged over a period of time. A case moved from one court to another and one issue to another. The poor unfortunate litigant soon found himself in a labyrinth of activity which gave him no comfort and - in most cases - no tangible results.

2.25. It is important to consider whether or not the options provided by the law and legal institutions are totally illusionary (illusory) or not. To begin with, many of the depressed classes felt that they had no choice but to plan their fight in legal institutions. Even if they did not approach legal

institutions for justice themselves, they were ineluctably drawn to these institutions by their opponents. The effect of the decisions of the law courts in the hands of rich and powerful litigants could become sufficiently conclusive against the rights and interests of the depressed classes. But that is not all. Given conditions where the judiciary and law courts are not directly corrupted, a poor litigant may stand at least a chance of winning in the litigation game. Under those conditions, all that he has to do is to know how to play the litigation game as well as his opponent and mobilise the resources of his community as part of this litigative effort. This does not guarantee success but it provides at least a chance of victory. India still retains some kind of commitment to legal institutions and the manner in which they operate. In many cases, the depressed classes have no other choice but to conduct a part of their fight through law and legal institutions.

CHAPTER III

LAW, LEGAL SERVICES AND LEGAL AID SCHEMES

I. Dealing with Real Law and not a Rhetorical Version of It.

3.01. Both the National Committees on legal aid[8] seek to work on the assumption that the 'law' can be mobilised for the protection of the weaker section of the community and achieve some kind of social justice. At one level, a very traditional view is taken of law and much of both these reports simply call for the further availability of legal aid and legal services for the poor. At the same time, both reports also seem to take the view that the 'law' in India is really something other than it has been and a new kind of 'law', 'legal theory' and 'legal institutions' can be created.[9] The *Report on National Juridicare: Equal Justice - Social Justice* (1977) seems to make very far reaching and high sounding claims on behalf of the law and what it will be able to achieve:

> 'No law no order' is basic to the survival of civilised societies and that is why the rule of law has been deeply rooted in the West and in India. *Dharam*, as the source of the correct *Karma* has been regarded as the hall mark of a decent human order. That is why what demarcates the Great Divide between Chaos and Cosmos is the dynamic development oriented rule of law expressing democratic legality. Orderly progress so vital for developing countries will mock at governments which do not uphold an activist jural order as a paramount principle of public policy.[10]

It then proceeds to ask what the 'dynamic of the rule of law is' and answers that question by talking of the social and economic goals of the Constitution and stating:

> 'The most moderate, though not adequately radical definition is to be found in the Delhi Declaration made at the Conference of the International Commission of Jurists way back in 1959. It is as large as life, taking in social, economic and political justice and reaches out to every area of community welfare. Law initially engineers, consolidates and coercively, persuasively and correctionally enforces and fulfils revolutionary norms of social good. From the cradle to grave, before and beyond, in sacred and secular life the individual and society are governed by the rule of law. And absent law, chaos or tyranny occupy the vacuum'.[11]

Rhetoric apart, we proceed with a totally different concept of law and what it is capable of doing. It is extremely important to try and understand the nature of modern Indian law before we proceed to make extended and extensive demands on it.

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8. *Processual Justice to the People* (May 1973) and *Report on National Juridicare: Equal Justice - Social Justice* (1977).
9. *Ibid.*
10. Justice Bhagwati's *Report on National Juridicare: Equal Justice - Social Justice* (1977).
11. *Ibid.*

3.02. We cannot really talk of modern Indian law in the abstract. If we do, many of the demands that we make of it will also exist only in the abstract. What is the real nature of modern Indian Law? Modern Indian Law has several characteristics which it shares with the law of various other countries. *Firstly,* much of modern Indian Law takes the form of statutes and rules which emerge from the legislature and executive. By itself, much of this law means very little apart from the context of the policy initiatives of the legislative and executive arms of the State from which it emanates. Therefore, much of modern Indian Law represents a set of politically devised policies. The manner in which these policies are devised and executed are subject to the same limitations as much of State is subject at the various levels of its existence and operation. *Secondly,* modern Indian Law has to be associated with the existence of certain adjudicatory institutions or courts of law. These institutions exist at various levels and have different styles of operation. Like the other agencies of the State these institutions are subject to all kinds of tensions. Some of these institutions can - and are - directly corrupted. Most of these institutions, however, are not so easily corrupted. But the incorruptibility of these institutions does not mean that these institutions cannot be strategically used by those who are equipped to use them. Thus, many rich and powerful litigants have been able to use these adjudicatory institutions with consummate skill and ability. These institutions are constantly used to get interim relief, procure stay orders, freeze a particular state of affairs, quicken certain processes, trap one's opponents within the legal processes, block selected forms of governmental and social activity, obtain further and better particulars, and further and better publicity. 'Law' cannot really be separated from the working pathology of these institutions. *Thirdly,* Law represents a form of strategic activity. It represents a series of stratagems - some of which are part of the adjudicatory process and some of which are not. Law is thus a strategic weapon which various private individuals and groups, the agencies of the State and other constantly use to their advantage - both symbolically and by mobilising social, political and administrative forces behind the use of law. *Fourthly,* Law in India is associated with the activity of lawyers. Lawyers provide access to the Law and are a part of it. We cannot really think of Law apart from lawyers, their skills, their abilities, the manner in which they deliver and supply their services, the costs of such services, the people they serve effectively and the people that they are willing to serve. We cannot think of the Law and lawyers as two entities which are separate from each other. They are much too inextricably bound up with each other for us to consider them separately. In social terms, they just be analysed as forming part of the same activity. *Fifthly,* Law is the process of litigation - the manner in which processes (process) is organised, the procedures that are part of this process of litigation, the socio-economic facts of this process of litigation and the manner in which litigation is mobilised by various sections of the community. Litigation is a process which is regarded as distinctly legal. *Sixthly,* Law is also a bureaucracy of judges - professionally trained and operating through the institutional mechanisms of courts. *Finally,* Law represents a hegemony of ideas. At this level, it is associated with certain ideas of justice. The Law and judges are supposed to be fair. A considerable amount of jurisprudence is devoted to the overall aims of the Law and the manner in which judges and judicial institutions must season the other aspects of the Law so that the ideal of justice is maintained. This is not always possible. And it is misleading to think of these principles of justice as constituting Law - independent of the other aspects of the Law which have been outlined above. As a hegemony of ideas, the Law possesses both a symbolic presence and a rhetorical ability.

3.03. It is really very important to know exactly what we are talking about when we talk of 'Law' and using 'Law' for the purpose of achieving social justice. If the above descriptions of modern

Indian Law is correct, then law means the following things: (1) Law is a set of policies declared by the government; (2) Law is the activity of law courts; (3) Law is a strategic weapon which is differentially used by various individuals, groups and agencies of the State; (4) Law is the activity of a professional group of lawyers; (5) Law is a process of litigation and the manner and conditions under which this process of litigation is put into effect; (6) Law is a bureaucracy of judges operating within the context of the institutional framework of law courts; (7) Law is a hegemony of ideas which is both symbolic and rhetorical as well as capable of acting as a corrective in certain limited situations when the pressures on the other aspects of Law is not too great or too subtle.

3.04. We will not try and focus on Law in the grand wide and rhetorical sense in which it has been alluded to by the two National Committees on legal aid. The two National Committees used law in a very wide sense as well as in a very narrow sense. At one level, they seem to refer to the majesty of a dynamic rule of law without really going into the many factors that would give Law this majesty in a society structured by privilege. At another level the National Committees confined many of their practical suggestions to the extremely narrow question of how resources could be made available so that the poor could have access to justice.

3.05. We will take a much more practical view of law and legal institutions that does not attribute any extraordinary quality to the law or raise any extraordinary expectations from it. We treat law as being part of a complex of stratagems, institutions and litigative activity which can be used as an instrument of oppression by the privileged against the depressed classes. But we also recognise that the 'law' and legal institutions can - given the right kind of support and legal institutions - also be mobilised in favour of the depressed classes. But the mobilisation of law in this way is difficult, complicated and requires a considerable amount of social mobilisation as well as an induction of skills and resources. When all is said and done, this is an uphill task because the interface of the law, legal institutions and litigative activity with the poor is much more severe than it is with the privileged and the well off. Those who are well off can deal with legal problems far more easily than those (who) are depressed. The depressed classes neither know their declared rights nor possess the means and the ability to operate the mechanisms and institutions of law with skill. Yet, each time the law intrudes into their lives, it occupies and becomes a major feature of it.

3.06. In this Report we will treat law as a strategic weapon and as a professional and institutional forum of activity, and consider the means that are available to the depressed classes and others to use this forum of activity as a means of public interest and group litigation.

II. Can Lawyers in India Deliver the Goods as far as Public or Group Interest Litigation is Concerned

3.07. Quite apart from the problems of social mobilisation, any group wishing to use the forum of law and litigation activity would immediately encounter the problem of procuring the services of lawyers. The profession of legal services is extremely important to the entire enterprise of 'forum shopping' in legal institutions through the activity of litigation. We are forced, therefore, to ask whether the supply of legal services in India is organised in such a way so as to help or assist those who are involved in public or group interest activity.

3.08. For our purposes, it is not necessary to trace the development of the Bar in India even though very little research has been done on the

growth of the legal profession - whether by way of any private research[12] or in the *Fourteenth Report* of the Indian Law Commission[13] in 1959.

3.09. There is also very little research done on the nature and style of the legal profession and the manner in which it operates.[14]

3.10. We are primarily concerned here with the extent to which the legal profession is sufficiently well organised in order to take on the task of public interest or group litigation. The Indian legal profession is extremely large. The Committee on National Juridicare gave some idea of the amount of lawyers that existed in India. This is shown in Table I below (not inserted).

3.11. Although the Bar is quite large and seems to be growing, it is not so extensive when considered as per capita of the population. Thus a study of 1968 reported that the number of lawyers that India had per million of the population was 183 as compared with 1,523 in Israel, 1,428 in Norway, 366 in Germany, 1,595 in the United States, 507 in the United Kingdom, 764 in Bolivia, 286 plus in Mexico, 149 in Pakistan and 70 in Japan. These figures are old but they paint a broad canvas[15] which tells us that India both has a large number of lawyers as well as does not have a large number of lawyers.

III. Geographical and Vertical Maldistribution of Legal Services

3.12. The reason for this scarcity amongst abundance is the simple fact that there is both a geographic and a vertical maldistribution of legal services. Geographically, lawyers tend to live more in towns rather than villages. The density of lawyers increases greatly in towns where there are High Courts.[16] Thus the village areas tend to be neglected by lawyers. It was clear from my visits to Renukoot, Tilonia and Rajpipla that there was a paucity of lawyers in the tribal areas. Such lawyers as were available were usually monopolised by the privileged sections of the community.

3.13. This takes us to the point about the vertical maldistribution of lawyers. The better and more skillful lawyers tend to move towards servicing clients who can afford to pay for their services. This has a two-fold result. The *first* result is that a large number of under-privileged persons and groups are unable to get good legal services and procure either bad legal services or no legal services at all. This creates conditions of service scarcity. But such a movement - which is inevitable where the supply of legal services is part of a free-for-all market economy - also has a profound impact on the nature of the legal profession itself. This precipitates a *second* result.

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12. See S. Schmitthener: 'A Sketch of the Development of the Legal Profession in India', (1968-69) 3 *Law and Society Review*, Pp. 337-382; P.B. Vachha: *Famous Judges, Lawyers and Cases in Bombay* (1962); M. Galanter: *An Incomplete Bibliography of Indian Legal Profession* (1968-69), 445-462; Dr. Gillian Buckee and Dr. S. Madeson have written dissertations on the growth and development of the Allahabad Bar.
13. Law Commission of India: *Fourteenth Report - Reform in Judicial Administration* (1958) I, Pp. 556-586.
14. Recently, Dr. J.S. Gandhi has done some research on Lawyers in Amritsar which he very kindly discussed and made available to me. Otherwise see R. Kidder's work 'Litigation as a Strategy for Personal Mobility', (1974) 33 *Journal of Asian Studies*, 177; 'Courts and Conflict in an Indian City - A Study in Legal Impact, (1973) 11 *Journal for Constitutional and Parliamentary Studies*, 121; 'Formal Litigation and Professional Insecurity: Legal Entrepreneurship in South India' (1974) 9 *Law and Society Review*, 11 and Charles Morrison: 'Social Organisation in District Courts: Colleague Relationships among Indian Lawyers' (1968) 3 *Law and Society Review* 251; 'Kinship in Professional Relations: A Study of North Indian District Lawyers' (1972) 14 *Comparative Studies in Sociology and History* 100; 'Munshis and Their Masters: The Organisation of an Occupational Relationship in the Indian Legal System' (1973) *31 Journal of Asian Studies*, 309; 'Clerks and Clients: Para Professional Roles and Cultural Identities in Indian Litigation' (1974) *9 Law and Society Review* 39; R.S. Khare: 'Indigenous Culture and Lawyers' Law in India' (1972) *14 Comparative Studies in Sociology and History* 71 and others. I have included such research as is useful for insights into this project.
15. Taken from M. Galanter: 'Introduction: A Study of the Indian Legal Profession' (1968) *3 Law and Society Review* 204-5.
16. See Law Commission: *Fourteenth Report: Reform of the Judicial Administration* (1958), 584-5 and note the distribution of lawyers by status of Advocates, Pleaders Grade I, II, III, Vakils I, II, Mukhtars I and II, Attorneys. The greater number of lawyers tend to be Advocates and Pleaders - even though Mukhtars Class I were to be found in greater abundance in Bihar, West Bengal and Uttar Pradesh. Advocates and Pleaders Grade I tend to conglomerate to the town.

The legal profession itself splits into a higher part which is proficient, well funded, and which serves the privileged; and a lower profession which has to struggle for survival. A judge from Allahabad commented on this situation as follows:

'The present organisation of the legal profession in India is in a deplorable state. Even its scale of values has become out of date and anti-social. To give one illustration, our test of a great lawyer uptil now has been, and still is, the size of his income. A new entrant is encouraged to dream that his income one day may be that of the 'stars', past and present. In clinging to such obsolete values, the legal profession places itself at a disadvantage when compared with other professions in the modern world which make service to society the test of its members' greatness.

The organisation of the profession is also out of date. The profession is orgnised on the principle of a long period of waiting to be followed by a burst of prosperity. A stranger to the profession visiting the High Court on any normal working day will witness an amazing scene. He will see hundreds of lawyers sitting idle. They are doing nothing - literally nothing. They are supposed to be waiting for that day when prosperity will come in shower like the Monsoon. Many of them have received good education in India or abroad. They dislike being idle, and want to do something. But there is nothing to do. This is supposed to be their normal 'period of waiting'. A few, who happen to have a father or a brother in the High Court or touts outside, are busy. The rest are doomed to idleness. The responsibility for this criminal waste of good talent lies on the organisation of the profession and the anti-social values to which the profession still clings.

It also lies on all who could bring about a change but do not care to - upon our statesmen who not only take no interest but by their ill-considered remarks promote a cult of indifference to the vital problems of reform and re-organisation of the bar, upon the legislators who do not take as much interest in the problem of the legal profession as they should, and last (but first in the apportionment of blame), upon the leaders of the bar who have no time for problems affecting the profession but not affecting their personal interests'.[17]

He went on to say:

Due to fierce competition caused by overcrowding, some lawyers are compelled to encourage or even manufacture unnecessary litigation. If the administration of justice is thus perverted, on a large scale, the profession loses its very right to exist. To argue that any restriction of entry based on high qualifications will cause unemployment is to say that the primary function of litigation and the administration of justice is to provide livelihood for lawyers'.[18]

3.14. This kind of analysis of the profession was presented to me from two sources. *Firstly*, people working in rural areas and with the urban poor, as well as many members of tribal communities and Scheduled Castes, told me that:

a. the poor are (and) depressed classes are sometimes so totally geographically, economically and socially isolated that they do not have any idea about their legal rights;
b. the poor and depressed classes usually have no access to lawyers or legal assistance;
c. the poor and depressed classes are unable to purchase the service of lawyers;
d. where such services are made available to them, such services are casual, expensive and exploitative;

17. S.S. Dhavan: 'The Challenge of Communism and the Legal Profession' (1960) 58, *Allahabad Law Journal*, 1-2.
Note when Mr. Dhavan made these comments as Governor of West Bengal in 1970, his home truths were met with an inevitable storm of protest from the Calcutta bar.
18. *Ibid.*, p. 3.

e. the induction of legal aid has not resulted in an extension of legal services to these people. Legal aid tends to attract to lower end of expertise in the bar rather than the higher end;
f. there was no question of supplying legal inputs to the depressed classes on a consistent or comprehensive basis so that they mount a 'legal' campaign and litigation and legal institutions as a form through which they could fight for their rights.

Secondly, lawyers interested in the depressed classes themselves told us that market conditions were such that such services - even with the supply of a modest legal aid programme could not be supplied to these people on any kind of consistent basis. Lawyers took the view that the supply of legal services had to take place on a basis other than either the (a) legal aid fund, or (b) the condition of the market economy in which the services of the profession were bought and sold.

IV. Why the Impetus of Public and Group Interest Litigation must come from Outside the Legal Profession which also has a Role to Play

3.15. There was a distinct feeling that the legal profession - as it stood today - would not be able to reorganise itself or its work or change the market conditions under which it worked so as to make its services available on a comprehensive or consistent basis. And so, any attempts that were - or are - being made to exhort the legal profession to devote their time to this kind of work was not likely to yield much fruit. Some lawyers who were doing some group or public interest litigation at the Supreme Court said that while they were happy to deal with the occasional cases involving the depressed classes free of charge and with a total attention, it was impossible to expect them to supply this kind of service consistently without either increasing the financial and other inputs into this kind of work or organising it on a more systematic basis.

3.16. The simple supply of legal aid is not enough. This may enable either the depressed classes or those interested in public interest litigation to procure the services of lawyers for court or drafting work but it does not provide them the kind of legal services that are required to organise a campaign to fight for public or group rights.

3.17. The supply of such services does not simply start and end with the simple provision of a lawyer. It goes much further than that. What is involved is process of legal mobilisation. It means a supply of legal services to people so that they are conscious and aware of their legal rights, fully aware of the options that are made available to them and are able to maturely assess the strategic path that they should follow. This means the supply and availability of a comprehensive legal service which becomes a part of the working lives of these people.

3.18. Quite apart from the task of legal mobilisation, public and group interest litigation also involves institutional and skill inputs which are far greater and quite different from the run of the mill litigative activity. Public interest litigation cases involve a fair bit of social and economic research. The extent to which such research is needed is evident from the many publications of the Consumer Education and Research Centre. The need for such research also forms an important part of the strategy of litigation. Public and group interest litigation cases involve fighting campaigns which require a great deal of information on the part of those who are fighting such campaigns. Indira Jaising of the *Lawyers' Collective,* Bombay indicated some of the work that had to be put in the *Pavement Dwellers'* case that she was involved in:

> 'I hope you have gone through the affidavit in rejoinder in the *Pavement Dwellers'* case. You will see the amount of research gone into it - the only way to (fight) public interest litigation. Is it the work of one person? Or one discipline? No. We have associated urban town planners and sociologists and economists

on this job. Also lack of information is no excuse - as information is available - you have to look for it'.[19]

Again, in a case involving the *Chamar* community where the Supreme Court had to consider the extent to which the livelihood of this community had been dislocated because of a transfer of certain tenders to other more privileged groups, the Supreme Court had to send out a team to gather social and economic information in order to apprise the court of the true extent of dislocation. Most of the group problems of the rural poor involve transactions concerning land. In order to pursue a group interest litigation in Bakhulia, details were needed of the recorded and *de facto* rights of the whole village. The Banwasi Seva Ashram had to organise a team in order to secure this information. Information in respect of land has been collected and researched by the Social Work and Research Centre, Tilonia. Such information, which has taken a fair bit of time and resources to collect, is now going to be grouped together to consider the feasibility of a litigative campaign. The Free Legal Aid Society, Rajpipla has an impressive docket of land cases which are being grouped together by its lawyers in order to consider the possibility of further group litigation.

3.19. The traditional bar, as it is constituted today is simply unable to meet the demands of public and group interest litigation. The traditional bar neither possesses the time, resources, energy, inclination or ability to initiate a process of legal mobilisation amongst groups or supply the other inputs which are fundamental to the pursuance of public interest of group litigation. Yet its services can, and have, been roped in by public interest and community groups on what is, at present, an episodic basis of voluntary support and participation.

V. Two New Tasks: Legal Mobilisation and Institutional Viability

3.20. So far, we have identified two broad tasks of public and group interest litigation:

(a) The task of legal mobilisation.
(b) The task of creating a comprehensive institutional framework in order to evolve comprehensive litigative and other strategies.

(a) The Task of Legal Mobilisation

This entails making a knowledge of legal rights and legal services available to a community in such a way that they are conscious of their rights and are able to evolve ways and means of mobilising the law and legal institutions to their advantage.

(b) The Task of Institutional Viability

This entails organising the supply of legal knowledge and legal services in such a way that any group or institution involved in public interest litigation can effectively and efficiently mobilise law and legal institutions to their advantage.

Legal mobilisation is concerned with an awareness and ability to know one's options whereas institutional viability is the creation of the technical and other means by which litigative activity can be conducted systematically. The two processes go hand in hand.

VI. New Initiatives in India Considered Later

3.21. In India, various groups have decided not to wait for the legal profession to reorganise itself. Through their voluntary efforts they have themselves established or are seeking to establish new ways and means in order to achieve both legal mobilisation as well as institutional mobility.

3.22. These new groups have also evolved ways and means of using the services of lawyers while retaining the main impetus for public and group interest litigation themselves.

3.23. The new approaches evolved in India are discussed later in Chapter V.

19. Letter by Indira Jaising to R. Dhavan dated 15th September 1981 - No. IJ/301/K/81.

VII. Legal Aid Schemes in India and the Extent to Which They can be Used for Public and Group Interest Litigation

3.24. In recent years, there has been a considerable amount of interest in legal aid.[20] When the Law Commission looked at this subject in 1958. It reported that the view of the Government of India had at one point in time taken the view that provision of free legal aid was primarily a responsibility of the provincial States.[21] Under pressure from the Government of India, some States in 1956 made 'token provisions ranging from Rs 1,000 to Rs 2,000 in their budgets in respect of legal aid'.[22] Some States took this responsibility seriously. The State of West Bengal appointed a Committee under the Chairmanship of Justice Harries and the State of Maharashtra appointed a Committee under the Chairmanship of Justice N.H. Bhagwati. Since then the legal aid movement seems to have gathered a considerable amount of impetus. Some notable reports have been written[23] and there has been the growth of considerable literature. The Central Government has set up two Committees[24] and a Central Committee for Implementing Legal Aid Schemes[25] has also been established.

3.25. Various schemes have been established in various States. Appendix-I (not inserted), to this Chapter contains details of the various schemes that have been set up in the various States, Union Territories and the extent to which they are designed to help the indigent litigant. It will be noticed that the bulk of these schemes simply provide legal aid and assistance on the basis of a means test. The Madhya Pradesh Scheme gives help to landless labour irrespective of means. But, by and large, there is no real attempt to break the pattern of legal aid except on case-by-case basis.

3.26. Some of the reasons for this may be financial. The financial outlay in most cases is not very extensive. No reliable information exists on this. The Krishna Iyer Committee on Legal Aid had collected some statistics on this which were never published and which were collated by me in a strategy Report, (that) I submitted to the Law Ministry in 1977-78.[26] The information gathered in my Report is reproduced in Appendix-II to the Chapter on Finance (not inserted).

3.27. The reason for the legal aid schemes not being used for the purposes of public interest or group litigation is not just financial. The Secretariat of the Ministry of Law in the Government of Gujarat told me that much of money that has been allocated for legal aid has not, in fact, been utilised. Thus, there is money available for the purposes of legal aid but it had not been used in any way other than the traditional case-by-case and individual-by-individual basis.

3.28. These schemes have usually been administered through the High Courts which must, in most cases, deal with individual cases. State Legal Aid Boards have not evolved alternative schemes whereby they can use their resources in ways other than the traditional individual case methods.

VIII. Notable Exceptions to the Traditional Use of Legal Aid Funds

3.29. There are, however, notable exceptions to the manner in which various State Schemes have used legal aid funds. These exceptions exist both in the area of such an exceptional use of legal aid funds by High Court Committees as well as State Legal Aid and Advice Boards.

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20. Law Commission of India: *Fourteenth Report Reform in Judicial Administration* (1958) I, 588.
21. *Ibid.*
22. *Ibid.*, p. 589.
23. *Legal Aid Committee, Government of Gujarat Report, 1971* (Gandhinagar, 1971).
24. *Expert Committee on Legal Aid: Processual Justice to the People* (May, 1973). *Chairman:* Justice V.R. Krishnan Iyer and Justice P.N. Bhagwati's Committee - *Report on National Juridicare - Equal Justice - Social Justice* (1977).
25. Government of India Resolution No. F.6(19)/80-IC dated the 26th September, 1980.
26. R. Dhavan: *On the Problems of Structure and Strategy in Connection with the Bhagwati's Committee*

3.30. I would like to deal first with an interesting use of legal aid funds by a High Court Committee. This involves two campaigns set up by Justice M.P. Thakkar, now Chief Justice of the Gujarat High Court and Chairman, Gujarat State Legal Aid Committee. In two instances, Justice Thakkar sent out a group of lawyers to investigate and prepare papers for litigating the problems of a group of people. (i) The first occasion to do this arose when there was an accident in the Shanti Silk Mills, Surat. A newspaper report showed that several people were injured, 10 people were reported to be dead and another 100 were feared to be dead. A lot of families were affected. In consultation with the Advocate-General, a committee of lawyers - partially to be funded from legal aid funds - was sent out to investigate the accident and provide legal assistance on a group basis in order to resolve the legal problems of the group of people affected as a whole.[27] (ii) Again, when a railway accident occurred, an *ad hoc* Railway Accident Claims Committee was set up in August 1918.[28]

3.30. (Paragraph number repeated as per original) A Resolution of the Legal Aid Committee of the High Court explained that the purpose of these Committees was to minimize costs and hardship and prevent the exploitation of those who were affected by the accident so that they - or claimants on their behalf - were not inconvenienced.[29]

3.31. An exceptional example of a State Board dealing with matters on an issue basis is the Tamil Nadu State Legal Aid and Advice Board which has, over the years, done an impressive amount of work on the specific area of Motor Vehicles Accident Schemes and laid down ways and means in which such claims can be processed quickly. A much closer look at the scheme is necessary in order to gauge the success of the scheme at a social level.

3.32. But, by and large, such use of High Court or State Legal Aid Boards are really quite rare. Most legal aid schemes work on an individual case basis and do not go further than that.

IX. Linking Traditional Legal Aid Programmes with Public and Group Interest Litigation

3.33. The traditional legal aid programme which seeks to provide aid on an individual care (case) basis will, of course, assist in the process of the legal mobilisation of a group. Those who have been working with depressed classes indicate that they have not been able to get legal assistance even in respect of individual cases. This undermines the whole process of legal mobilisation. Such legal aid should be made freely available to these groups without too many complications.

3.34. Apart from this obvious link in the matter of the legal mobilisation of the people(?). It will be noted that legal aid has been rarely used for strategic and public interest or group litigation.

3.35. Very strong submissions were made to me that the legal aid programme should be kept distinct from schemes to further the cause of public interest or group litigation. Examples were quoted of England where the Law Centre movement is funded and monitored by mechanisms quite distinct from the rest of the legal aid programme.

3.36. The purpose of these submissions was not to curb the initiative of the 'Justice Thakkar *ad hoc* Committee' technique. It was felt that this fell fairly and squarely within the scope of an expanded legal aid programme. Thus, High Court and other Court Committees should consider it part of their remit to mobilise lawyers from the courts to deal with *ad hoc* problems which arise as a result of accident or otherwise. Again, the Tamil Nadu scheme to work in a particular area like Motor Accident matters was also seen as something which fell within the scope of an

27. Letter by Mr. Justice Thakkar - 10th July, 1981.
28. Information and papers supplied by Justice Thakkar, August 1981.
29. Resolution of the High Court Legal Aid Committee dated 18th August 1981.

expanded legal aid programme. Where a State Committee has been appraised of a common problem which affects the public, it should consider ways and means in which the solution of that problem could be simplified. Equally, it was also urged that many of the programmes of improving legal literacy fell within the scope of the State Legal Board. *Finally*, where a public interest litigation case is sought for the poor or on a general issue, schemes should be evolved to pay the *costs of this litigation* through the legal aid fund.

X. Keeping Public Interest Litigation Separate

3.37. However, it was argued that public and group interest litigation should be treated as a separate programme which was independently treated. The reason for this is that the emerging pattern of public interest and group litigation in India is such that it has special needs and needs to be separately treated.

3.38. Group interest litigation involves the very difficult task of assisting the growth of legal mobilisation amongst communities. This requires both delicate handling and involves the consideration of special programmes and schemes which have to be locked at quite differently from the rest of the legal aid scheme. What is involved here is not just the induction of resources into the individual case or group of cases, but a consideration of the needs of a community as a whole and the manner in which that community can legally mobilise - or refrain from mobilising - itself both on a specific issue as well as a general basis.

3.39. The same arguments apply *mutatis mutandis* for groups that are involved in public interest litigation. Public interest litigation involves maintaining a campaign of which the litigative process is only a part.

3.40. If the concerns of public interest or group litigation were to be looked at on a separate basis, where should they be located? Several proposals were put forward as far as that is concerned. Some people argued that there should be a public and group interest litigation cell in each State and as part of each State Board. Others took the view that the creation of multiple bureaucracies in separate States would only complicate and throttle the growth of public interest and group litigation.

3.41. An arguable case has been made out to suggest that public and group interest litigation activity in India is a nascent voluntary activity. It should be allowed to grow on its own with a relatively simple and uncomplicated method to assist it on its way. It has, therefore, been suggested that the Committee for Implementing Legal Aid Schemes should itself undertake the responsibility of liaising with public interest litigation groups and assisting them in their individual and joint efforts. Needless to say, Court Legal Aid Committees and State Boards will also be involved in the work of these groups. They may make special funds and assistance available to those groups - at the instance of the special committee or otherwise. They will also pay legal aid to the poor and fund the *costs of litigation* of group and public interest litigation. But the fundamental strategy would be to allow these groups to evolve patterns of their own with - the assistance of each other and the Central Committee.

3.42. It must be made clear that we are not trying to keep the legal aid Bar separate from those in the Bar who will be involved in public interest and group litigation. Clearly, those who are involved with groups will also be involved in programmes of legal aid and try to secure and claw back many of their funds and costs from the legal aid fund. Further, those who are involved in public interest litigation and are fighting issues will also be making claims on the legal aid fund. Indira Jaising of the *Lawyers' Collective* indicated the need both for the institutional funding of public interest collectives as well as a system whereby legal aid funds can be used for group and public interest litigation. Thus, she argued, it was really impossible for her to even attend the hearing of the *Pavement Dwellers'* case unless some of the costs of litigation and out of pocket expenses were

met. It is within the brief of an expended (extended?) legal aid programme to disburse (a) legal aid and assistance to the poor on a case by case or general basis where they fall within the scope of a legal aid programme even though the lawyers acting on their behalf are part of a general group or public interest litigation scheme; (b) the *costs of litigation* in a group interest litigation scheme may also be borne by legal aid funds; (c) the *costs of litigation* in public interest litigation cases may also be borne by various legal aid funds. The term *costs of litigation* drawn from the legal aid fund would almost certainly cover the actual litigation costs. Under an imaginative legal aid programme, provision should also be made for costing such litigation on broader criteria so that some of the research and other inputs of such litigation should also be met.

3.43. The reason why we are trying to create separate institutional arrangements for public and group interest litigation is because we believe that this movement is not primarily located with lawyers but with certain initiatives from society itself. Lawyers are an important part of this movement. They form part of this movement in various ways. Some lawyers who are involved in public and group interest litigation are involved purely in a litigative capacity at higher court levels. Thus, various lawyers explained to me that they were essentially private lawyers who, though not able to involve themselves in the affairs of the group or public issues, would happily make their services available for agitating such cases in the High Courts and Supreme Courts. They have been attracted to such litigation both out of an interest and concern and because such litigation has an attractive news carrying value. But they all argue that they are involved in a special kind of litigation involving special skills. Some lawyers are actually working at grass root level and are either directly responsible for the process of legal mobilisation or responsible for creating a core of people (general social workers or community agents drawn from the community which is being mobilised or is mobilising itself) who are mobilising that group or issue. Some of them will be involved in litigative work and will, therefore, be linked to the legal aid programme as well. But it is important to realise that this task of legal mobilisation is a distinct, intricate and complicated task. It does not involve just the supply of legal advice and rolling up in court to fight a case. It means getting involved with groups and issues in a far more wide ranging way. In that sense the lawyers involved in such group and public interest litigation(?). It is possible that, given time, lawyers involved in legal aid and assistance programmes *simplicitre* might themselves be drawn into the more wider programmes of group and public interest litigation.

3.44. It is the concern and problems of public and group interest litigation as a whole which need to independently looked at and assisted. This kind of legal mobilisation and specialised litigative activity is like a new movement with special requirement and special difficulties. It creates special expectations and requires a very different kind of special support and help.

XI. *Summary* (not inserted)

CHAPTER IV

PUBLIC INTEREST LITIGATION: TRADITIONAL METHODS AND SOME PROBLEMS

I. Group Issues and Public Interest Matters as Part of Private Litigation Cases

4.01. Public interest litigation is not a new activity. Although a large number of cases that are filed before the courts are cases which are overtly concerned with the protection of private interests, many of these cases are, in fact, concerned with matters that concern other individuals, groups or the public at large. This can happen in various ways. In some cases, the case may be concerned with a private right but in actual fact may be part of group interaction. Many cases in the field of criminal law - in respect of public order, public morality or criminal defamation - are often commenced by a person but in actual fact are concerned with all kinds of caste, religious and other social disputes in society. Taking the disputes of a community and fighting them through law courts is a well known activity and used in India with considerable litigative relish. Then, there are also cases where a right may be

claimed by one person but which, if decided, will affect a large number of other people as well. Cases like the Zamindari Abolition, Bank Nationalisation and Privy Purses cases - to take some dramatic example - concern a large number of other people who belong to a group. In such cases, the private rights of the claimant are important; but issues are raised which will affect a definable group. Then, there are cases where although the private right on which the case has been admitted is, of course, important, the more crucial questions are much wider. The *Golak Nath* and *Kesavananda* cases on whether the basis structure of the Constitution can be altered belong to this category. Finally, it is inherent in the nature of an appeal system of the kind that exists in India that the law laid down in any case will affect a large number of people whether they were represented in that case or not.

4.02. We can see that even a lot of private litigation cases fall into various categories where they may be (a) part of the larger disputes of a community; (b) fought by a group through an individual in the knowledge that that case will affect the individual rights of those in the group; (c) fought by an individual on his own with a clearly identified group aware that a decision in that case will affect them; (d) fought by a person or a group on the basis that it affects an individual right with the parties fully aware that larger and more fundamental issues, which affect a larger group or the public at large, are involved. In any event (e) appeal court cases lay down the law of the land and must, per force, affect a large catchment of people. This fact is explicitly recognised by Article 141 of the Constitution of India which lays down that the Supreme Court lays down the law of the land.

4.03. All these ways of agitating group or public issues are well known. Lawyers and litigants have always been sufficiently ingenious to find either some method or some person through whom the causes of the group or the public are fought. Business communities are thus able to protect their wider interests through this type of litigation - as, indeed, have (are) the general public.

4.04. This kind of litigation is really a covert group or public interest litigation activity. It poses many problems. One of these problems relates to the fact that public or group issues are decided without the public really participating in the matters that concern them - either institutionally or in any other shape or form. Institutional and other forms of public participation are discussed later when we consider the role of the Advocate and Attorney-Generals. But it is possible for the public to participate in such matters if their (there) is wide policy of intervention in cases which raise issues which affect a group or the public at large. In a research work, I indicated that the Supreme Court of India has, in fact, permitted interventions in a large number of cases which have been argued before it. Some of these interventions have been by interested parties or by people who have similar suits or petitions pending before the courts. In some of the cases, people have been allowed to intervene because it was felt that they had a general right to do so because of the importance of the issues before them.[30]

4.05. As it happens the policy of permitting interventions is by no means clear. Clear rules should be laid down so as to permit the intervention of interested groups or the public at large when a matter concerning them is raised. I realise that there could be problems in a wide intervention policy - particularly where each intervener would demand the right to oral representation. But rules can be established both about the right to intervention and the manner in which such intervention should be made. A very broad policy of intervention should be considered and detailed proposals should be made in this regard.

4.06. This problem of intervention is a recurring problem that will occur in most public or group interest cases - whether such cases belong to the field of public or group interest litigation on a

30. R. Dhavan: *The Supreme Court of India: A Socio-Legal Analysis of Its Juristic Techniques* (1977) Pp. 105-112 and Appendix Pp. 463-473.

discreet or covert basis, or whether such cases are explicitly and avowedly public or group interest litigation cases.

II. Public or Group Interest Litigation Cases

The Institutional Model

4.07. One model of conducting public interest litigation cases is by designating specified institutions or a particular person *ex-offico* as the person who is entitled to bring public interest causes before the court. Thus, much social welfare legislation often indicates who may initiate certain kinds of public interest causes. In minor crimes, the police may be given a preferred position. In other matters, specialised bureaucracies may be created for certain areas.

4.08. Clearly, this model has certain strategic advantages if it is not exclusive in nature. Some social workers working with the Scheduled Caste communities indicated that they would like to see a special body responsible for untouchability offences and which should have the power to initiate litigation under the Protection of Civil Rights Act, 1955. They recognised that this would mean creating yet another bureaucracy and, therefore, took the view that the rights of this body should not be exclusive. They also took the view that the special body in question should itself have a sufficient amount of community participation in it so that the special body does not become an institution trap but is vulnerable to the pressures of the community. Such a body would not be a buffer but another mechanism through which the community can mobilise its strategic options. This need was marked also in the field of consumer protection. It was felt that in many crucial areas there is just an insufficient number of mechanisms through which group and public interest rights can be asserted. Therefore, the creation of parallel institutional mechanisms could have strategic advantages provided they supported and did not eclipse community and public initiatives.

4.09. The Committee for Implementing Legal Aid Schemes is thus advised to initiate a study of the existing institutional mechanisms by whim (which) group and public rights are exercised in certain crucial areas. Its job should be to

(a) look at existing institutional and non-institutional mechanisms for the enforcement of such rights in specified areas;
(b) consider the ways and means in which the existing mechanisms can be improved;
(c) ensuring (ensure) how an effective and real community participation can be made a part of these mechanisms.

At present, institutional support in a large number of areas is missing because no real attention has been paid to this area. Even where such mechanisms exist, the social and legal mobilisation potential of such mechanisms is weak, impossible or unreal.

4.10. I am not unmindful of the fact that these will be 'State' agencies and, therefore, subject to the many pressures - political and otherwise - that the State will be subject to. That is why it has been suggested that these institutional mechanisms should not be exclusive and they should be structured so that the community can use them. The term 'community' here can be ambiguous. It can include everyone - including those who violate such rights. This term is used here - as it is throughout in this Report - to indicate those sections of the community who are disadvantaged or depressed and whose rights are at stake.

The Attorney-General Approach

4.11. Another approach is to make the Attorney-General the repository of the cause of public interest litigation. This approach has been strenuously followed in the United Kingdom. Not only is the Attorney-General regarded as the repository of the public interest in respect of a large number of issues, but he is also given a virtually absolute discretion as to whether he should interfere in a particular matter or not. In a recent case decided by the House of Lords, the

courts have refused to interfere with the discretion of the Attorney-General if he refuses to 'lend' his name to what is called a relator action.[31]

4.12. Such an approach has generally been regarded as too restrictive for India. The reason for this was explained to me by an Advocate-General of a State. He argued that the Advocate-General does not really have the funds or the institutional help to take on this task seriously. But he also went on to explain that the Advocate-General's office was under too much political pressure for him to really undertake public causes and champion them against either private individuals and groups or the Government itself.

4.13. Prior to 1976, the Advocate-General was called upon to play a more specific role in respect of public nuisance. Section 91 of the Civil Procedure Code stated:

(1) 'In the case of public nuisance, the Advocate-General, or two or more persons having obtained the consent of the Advocate-General in writing may institute a suit though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case.
(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions'.

This provision has been the vehicle of much litigation. On an examination of 77 representative cases from 1883 to 1981, I found that there was no case that had been brought by a public litigation body.[32] Where the Advocate-General took an initiative in one case asking for the demolition of a building, he was asked to reconsider his case.[33] A large bulk of the cases involve disputes between private persons *inter se*, disputes between religious communities or sects of the same communities. There are a large number of cases involving the right of way.[34] Some cases deal with specific public matters like the storage of noxious liquid, an obvious storage of decomposing bones or the existence of slaughter houses.[35] By and large, the way out of these provisions is to show that some private right is involved. In any cases, the existence of this section has not prevented a class of people or a similarly placed group from asserting their rights to a class action under Order 1 Rule 8 of the Civil Procedure Code, 1908.

4.14. In 1976, there has been a significant change in Section 92 (91?). The change was brought about as a result of the recommendation of the Law Commission in its *Fifty-Fourth Report on the Code of Civil Procedure*. The reason for this change was, in fact, to make public interest litigation easier. The Law Commission said:

> 'It appears that the Advocate-General should not be troubled with these questions. It is enough if the leave of the court is obtained. In the coming years, problems of population of water are air and the emergence of new and unknown hazards of health are likely to require considerable attention. And until a full fledged environmental law takes shape, Section 91 could serve a useful purpose in combating these kinds of nuisances..... It also appears to us that the procedure allowed under this section would be usefully extended to wrongful acts other than public nuisance which affect

31. *Gowiet* v. *Union of Postal Workers*, (1977) 3 All E.R. 70.
32. Based on an independent research project conducted for this Report on 'Who used and uses Section 91 for private, public and group litigation and why'?
33. *Advocate-General for Bombay* v. *Esmail Hassan* (1910) 5 Ind. Cas. 213.
34. All these kinds of cases are standard cases cited in the project conducted for this Report: 'Who used and uses Section 91 for private, public and group litigation and why?' But on these matters, these cases may be found in any commentary on the Civil Procedure Code.
35. *Galstaun* v. *Doomia Lal Seal*, (1905) 32 Cal. 697 (factory discharges liquid), *Herckefield* v. *King-Emperor*, (1907) 34 Cal. 73 (a criminal case on the storage of decomposing bones); *Municipal Committee of Saugar* v. *Nilkanth*, *A.I.R.* 1915 Nag. 79 (Slaughter house); see also *Governor-General in Council* v. *Awadhoot*, *A.I.R.* 1946 Nag. 228 (against a railway company).

the public. As illustrations of such wrongful acts, we may refer to fraudulent practice of traders which harm consumers in general'.[36]

While the Law Commission recommended that the Attorney General should not be given any specific responsibilities at all, Section 91 was amended so as to leave the initiative for litigation in this area in the hands of both the Advocate-General or two or more persons with the leave of the Court. The Parliamentary debates do not reveal any discussion on this clause which was added on without any further discussion. The new clause read as follows:

'In the case of public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief, as may be appropriate in the circumstances of the case, may be instituted,

(a) by the Advocate-General, or

(b) with the leave of the Court by two or more persons even though no special damage has been caused to such persons by reason of such public nuisance or wrongful act'.[37]

It is premature to estimate the effect of this amendment. One thing is clear. The Advocate-General is no longer a crucial person in public interest litigation in India.

Implications of Abandoning the 'Attorney General' Approach in India

4.15. It is submitted that this significant shift in the mobilisation of public interest litigation is both significant and proper. Its major implication lies in the fact that the onus of mobilising public interest litigation now falls fairly and squarely on the general public.

4.16. Two questions arise, as a result of the amendment. If the burden of public interest litigation has fallen on the general public, attention has to be diverted to two crucial areas.

4.17. The *first* area is to consider the manner in which the public have themselves created institutional schemes of self-mobilisation. A very significant development in this regard is the development of the Consumer Research and Advice Centre which is the first real mature effort on the part of an institution to look at the cause of public interest litigation not only in the field of consumer law but also in respect of other matters.

4.18. *Secondly,* it is important to note that lessening of the role of the Advocate-General by giving the public a direct right to initiate such cases with the leave of the court must necessarily entail the creation of schemes so that the public has - or be allowed to have - the resources to organise public interest litigation. The shifting of responsibility from the Advocate-General should not imply a shifting a responsibility from public funds. The Committee for the Implementing Legal Aid Schemes should consider even more seriously how resources can be made available to those working in public interest litigation so that they can discharge the obligation that has now been shifted to the public as a consequence of the amendment of Section 92 in 1976.

The Group Rights Approach

4.19. The 'group-rights' approach consists of saying that where certain people have similar rights that are threatened one person can file a representative suit on their behalf.

4.20. This kind of approach is contained in order 1, Rule 8 of the Civil Procedure Code, 1908. Suits have, thus, been possible under this section on behalf of castes and sects, religious communities and economic or social classes, and even a village community.[38] In all this, the permission of a court is necessary and notice was given to the others affected.

36. Law Commission of India: *Fifty-Fourth Report on the Code of Civil Procedure* (1973) 65.
37. See (1974) R.S.D. 109-113 (14.5.1974) reference to Joint Committee) (1976 37 R.S.D. 171-72 (message from Lok Sabha) and detailed consideration (1976) 97 R.S.D. 132-202.
38. Based on a special research for this project: 'Who used and uses the group litigation provisions of the Civil Procedure Code and why'.

4.21. In 1976, various procedural requirements were also more clearly specified. Apart from notice and the rights of others in the groups to participate in the proceeding, it was made clear that the rights of the group could not be abandoned or compromised or negotiated away without the consent of the Court. While a decree would be binding on all the persons on behalf of whom the suit was instituted, a person not suing or defending such a suit with due diligence could be substituted by someone else.[39] It was also made clear - following a recommendation of the Law Commission[40] - that in such cases what was necessary was a kind of community of interest - to use the Law Commission's phrase - rather than the same cause of action.

4.22. Many persons - claiming common religious and village facility rights have tried to by-pass these provisions by claiming that they are suing in their own behalf and not on behalf of the community.

4.23. A sample of the main cases in this area has shown that most of the suits in this area have been used in the matter of religious rights, caste rights and in respect of the group interests of the privileged. This rule has not been used by the poorer sections of the community in order to fight for their rights. The sample of High Court cases looked at from 1882 show a considerably clear pattern as far as that is concerned.[41]

4.24. This brings us back to the general question about the mobilisation of group rights. It is clear from the examination of the manner in which Order 1 Rule 8 that this provision has only theoretical significance for a large number of people who are oppressed as a group. The reason for this is partly due to the fact that these sections are eclipsed by the fact that there are so many delays in the Indian legal system that a civil suit is not really a very effective remedy. Be that as it may in respect of the final (outcome) of a case, interim equitable remedies can still be effective.

4.25. The main problem in respect of the group rights approach has been the simple lack of legal mobilisation amongst the poor and depressed classes. They possess neither the resources, nor the skills, nor the institutional support nor the know-how to put together an effective litigation strategy. The pathology of the use of Order 1 Rule 8 returns us back to the problems of legal mobilisation and institutional viability which had been identified earlier.

General Locus Standi Problems

4.26. Quite apart from civil suits, the problems of who can sue also arises in other aspects of the law. The major areas of involvement are the criminal law and the writ jurisdiction. What is the approach that should be followed in these cases?

4.27. There is no one approach that can be, or has been, followed in these matters. We will, therefore, consider various alternatives.

4.28. The first and widest approach is the *any person* approach. This has been applied on a selected basis. Thus, in respect of the writ of *quo warranto* - where the authority of a public officer to hold his post is questioned - any person may file a suit. Again, in respect of a large number of criminal offences any person can file a criminal charge. This rule in criminal law often works against the interest of the depressed and oppressed classes. They are often involved in criminal cases when they have not committed any offence. They fall prey to the oppression of the police, the vagaries of criminal litigation whereby they might have to await detention before trail (trial) and a very complicated law of evidence and procedure in order to negotiate, bargain deed and fight their way out of their predicament. The *any person* approach is also virtually followed in

39. For these provisions, see Order 1 Rule 8, Section (2) - (6).
40. Law Commission: *Fifty Fourth Report of the Civil Procedure Code* (1973) 114-5.
41. Based on a separate research written for this project 'Who used and uses the group litigation provisions of the Civil Procedure Code and why?'

habeas corpus cases where a person is detained. The usual rule is that the 'next friend' should apply. But this rule has often been ignored and is generally liberally interpreted. The *any person* approach is really very wide. It can only be used on a selective basis. There is no scope for extending it except under the *aegis* of some of other approaches which have been outlined below.

4.29. We now move on to some more *restrictive* approaches. The restrictive approaches can themselves be split up into various varieties. Let us start with the *personal right* approaches. In respect of most writs, India follows the *person aggrieved* approach. A person must, in most cases, show that he is aggrieved. This has been interpreted variously. Ratpayers (Ratepayers) have been included as they are in England. But beyond that the law has not been too systematically developed. A similar approach is followed in England. Theoretically, the rule in matters of *certiorari* is that any person can approach the court, but in actual fact the court has a discretion to refuse relief. It has used principles analogous to the person aggrieved principle. *Mandamus* followed a much more restrictive test in that a petitioner had to show that he had a specific legal right which was affected. Now, a sufficient interest test can be found in Order 53 which has been restrictively interpreted.

4.30. Although the formal rules appear to be quite restrictive, the Courts have usually wavered on a generous policy. Courts in India have been quite troubled about the control that can be exercised on public undertakings. They have also been very generous in allowing cases to be brought before them where such cases have raised issues concerning social justice or gross infractions of principles of humanity. But while all these cases have been admitted for hearing, no clear principle has been established in respect of these cases. The establishment of clear principles still remains to be considered by the court.

4.31. This is a matter that concerns those involved in public or group interest litigation. While these matters may well be *sub judice*, it is proposed to look at some of the problems underlying this problem.

4.32. It is clear that the *person aggrieved* or *specific right* approach is too restrictive and must be formally abandoned. What should it be replaced with? Two kinds of broad approaches have been suggested. The first is a *wide discretion* approach. Here, the major suggestion is to leave the matter in the hands of the courts which will consider what they should take up after looking at the gravity of the case, the circumstances of the case, the importance of the issue to the public, and the extent to which the courts can cope with cases of that nature.[42] We believe that this wide discretion approach really postpones the problem without solving it. It really means that the courts should be left to decide these principles on a case by case basis - evolving precedents as they go along. The second approach that has been suggested is quite similar although some of the factors that have to be taken into account have been specified. Here the emphasis is on the fact that the 'order embodied in the Constitution' should not be allowed to breakdown the fact that the violation and non-enforcement of the Constitution of [or] laws is wrong, the belief that the objectives of specific statutes should be met, the eventual cumulative effects, the inabilities of the litigants on behalf of whom the case is fought and the ability and willingness of a spirited well wisher to be involved in such cases. Many of these factors state that the general problem of prevented[?] a breakdown of 'order' (in the wide sense) and the need to ensure that the objectives of statues are translated into social reality. The more specific suggestions about cumulative effects and the relative inability of people to bring cases are valuable suggestions which have to be considered.[43]

42. Paper by Dr. S.N. Jain, Director, Indian Law Institute on *'Standing and Public Interest Litigation'*.
43. 1. Aide-Memorie by Arun Shourie in a case pending before the Supreme Court.

4.33. Many of those involved in public and group interest litigation expressed a fear that the *locus standi* provisions could be so wide that the entire public and group interest would lose momentum because it could not only be trivialised but also be used against the interests of the groups on behalf of whom wide *locus standi* rule may be created. Examples were cited to me of cases where the rights of a group were taken by a well wisher group but it was felt that the rights of the group had been compromised by the well wisher. Again, illustrations were cited of cases where politicians could start public interest litigation cases to further political rather than any social ends.

4.34. We propose to deal with problems of standing in respect of groups first. We have already seen that Civil Procedure Code has dealt with problem of group rights where the person who begins civil litigation is himself one of the persons affected. Here no problem is posed because the person suing is a person aggrieved as well. The real problem arises in the case of a *well wisher.* There is a case for arguing that some restraints should be imposed on this. Two kinds of restraints can be imposed. The first is that the well wisher should be allowed to intervene either on behalf of groups that are poor or where the circumstances indicate that the group is unable to conceive of, or initiate, litigation. Those working with depressed groups were uncertain with even such a wide *locus standi* group. They wanted to formulate a far tighter rule whereby the person who files a petition on behalf of such a group should be able to show some kind of association with the group. He should be able to demonstrate some kind of tangible involvement with the group. They took the view that some kind of involvement also ensured that the litigation would be commenced and seen through with the consent and participation of the group. This ensured that their fight was not taken away from the group who would retain some control. While I agree with the substance of this view that such litigation must, in most cases, be the product of the legal mobilisation of the group itself, there is still room for leaving a sufficiently wide berth for what have been called

> 'a citizen or a group of citizens not directly affected but motivated by the public interest (who is or are) .... willing to do the homework necessary to assist the Courts'.

We believe that the anxiety of those who work with groups will be met by a second set of requirements which are procedural in nature. These requirements should broadly speaking follow the pattern in Order 1, Rule 8, in that procedures should be adopted to get the feeling and involvement of the community by giving notice and inviting participation. If necessary, a term should be sent out to relate to the group in such cases. There are inevitable problems in this, in that depressed groups are often vulnerable to pressure and this provision could work to their disadvantage. A well wisher could start a good litigation on their behalf which could be defeated because the group feels too threatened to mobilise itself behind the litigative efforts of the well wisher. All this dispose practical problems. The major problem faced in the tribal areas and with Scheduled Castes people was getting them to stand firm and together. But it was felt that these were not unsourmountable (insurmountable). The involvement of groups in the efforts made on their behalf was considered quite important by those who were actually working with some of the depressed groups.

4.35. We can now move on to the problem of public interest litigation. Here, it is easy to deal with a case where a person is himself aggrieved but consciously fights a cause because a wider principle is involved. The more difficult problem is one where there is an institution which seeks to act in the public interest. Here, an *established group and purpose* approach was proposed. Where there is an established group which has been established for specific purposes it should be considered to have the requisite *locus standi.* This would cover, for example, the *locus standi* of Consumer Education and Research Centre as far as consumer matters are concerned. But would it cover its litigation in the matter of the Machchu dam where they demanded a continuance of an inquiry in respect of a dam. That would have to be justified either on the basis of one of the

principles outlines (outlined) in respect of group rights or on some other basis. It has been argued that *locus standi* should not be limited to just established groups. It should also be considered in a wider public interest context. And this is where we enter a very difficult area. It is here that a broad discretionary rule must be left with the courts to admit matters on a wider basis. The factors that the courts should take into account are: the importance and magnitude of the problem, the urgency of the situation and the notice and purpose of the person initiating the litigation. Once again, there should be procedural mechanisms available so that other members of the public can also be allowed to participate. Public interest litigation of this nature should generally proceed on the basis of generous rules of intervention. The exact manner of intervention and the form it should take is something that needs to be worked out in detail any way. We have already explained the need for a wide but well worked out intervention policy earlier.

4.36. To sum up, what we have tried to propose is a combination of specific rules as well as a discretionary system. Persons aggrieved can litigate in both kinds of cases. In group litigation cases, members of the group should be allowed to litigate as should these who have been working with groups. The problem was one of the well wisher. The well wisher should be allowed to litigate where the groups belong to the depressed communities or unable to litigate for themselves. But a group's fight should not be taken away from them. Rules should, therefore, be designed to involve the group itself and means should be found so that the group is not intimidated or pressurised into backing off from the litigation. As far as public interest litigation is concerned, established groups should be allowed to litigate in established areas of their interest. But beyond that the Court should be given a discretion taking into account the factors which have been indicated above. Some mechanisms should also be considered so that the participation of the public is also made possible.

4.37. An attempt has been made to look at the rules of *locus standi* and the social implications of these rules, because there is a growing anxiety that public and group litigation is becoming something of a racket. Some of these criticisms have, of course, been voiced by those who feel threatened by such litigation. But there are also genuine fears that public and group litigation will become freewheeling devices to feed the personal, social and political ambitions of those who will indulge in it. Lawyers, in particular, have expressed an anxiety that they are themselves being by-passed by this recent move towards public interest litigation. Other lawyers have indicated that while they welcome the trend, this whole activity should not become indiscriminate.

4.38. The problem in public interest and group litigation are not confined to the problems of the legal rules. There is the rather deeper problem of social and legal mobilisation and the fact that litigation of this mature requires to be evolved on a nature, organised and strategic basis. Some very interesting patterns have evolved in India as far as public and group interest litigation is concerned.

CHAPTER V

PUBLIC INTEREST LITIGATION IN INDIA: EMERGING TRENDS

I. Previous Report

5.01. Till recently, very little attention has publicly been paid to the emerging trends in public and group interest litigation in India. The National Committee's *Report on National Juridicare: Equal Justice - Social Justice* (1977) (See chapter XII on p. 151 of this issue) devotes a small but brief chapter on this subject. The thrust of the suggestions there is simply to undo what has been called a 'pervasive pessimism'. What has been suggested is the growth of class actions and some concern for the rights of the mentally retarded and weaker sections of the community. After delivering a cautionary note on 'reckless interventions', the Report simply hopes that the 'legal aid authority must become the community

sword in prosecution of right and as a shield against wrong'. No detailed suggestions are made about how this process is going to come about.

5.02. More recently, a foreign observer has also looked at public interest litigation in India and looking at the pressures taken the view that

> '(i) In many ways India is a propitious setting for innovative and aggressive legal services. Government has distributed 'rights' and 'legal entitlements' broadside to the poor and unrepresented. There is no shortage of authoritative policy favourable to these groups but (not) enforced or unimplemented - e.g., land reforms, anti-discrimination measures, food adulteration laws, regulation of the working conditions of contract labourers, etc. The lawyers can thus push for fulfillment of existing legal commitments, without carrying the burden of securing such commitments. The pursuit of such entitlements through legal action is familiar and acceptable - if often inaccessible - to wide sections of the population. Massive governmental legal aid programmes will make it even more familiar'.[44]

The exact emphasis of the Report between the proliferation of State schemes and community mobilisation is not always clear though there has been some attempt to try and look at certain innovative attempts at public and group interest litigation and mobilisation. At least some members working in the field had some misgivings about the description of some of the schemes in this study, but it remains the first - and, really, only - sensitive account of some of the problems.

5.03. An attempt to look at the problems of public and group interest litigation also took place at a seminar organised by the Committee for Implementing Legal Aid Schemes along with a body called the Association for Social Action and Legal Thought (ASALT). The participants to those (the) seminar consisting (consisted) of people actually involved in public interest litigation or with groups. Some of those involved with groups were lawyers whilst the bulk of those present were working with groups and were deeply concerned both with the legal problems faced by these groups as well as patterns of legal mobilisation and non-mobilisation - including the development of alternatives to law.

5.04. There is no doubt that there are, and have been, some very ingenious and unique developments that have taken place in India as far as public interest and group litigation and mobilisation are concerned. While it may be intellectually comforting to compare these developments with developments abroad, it is important not to make such comparisons or treat these developments as adaptations of some imported model. These developments have been set in an Indian context and must be explained in the context of the links that exist between Indian society, the Indian State and the Indian Legal System. This is not to say that there is no conceptual equivalence to the manner in which these problems are handled elsewhere but merely to suggest that such comparisons are misleading and will distort our understanding of what is going on.

II. The Public Interest Litigation Cases

(i) The New Spate of Cases

5.05. The first perceptible sign of an emerging trend has been in the emergence of petitions before the Supreme Court and High Courts which are consciously and professedly exercises in public or group interest litigation. Most of these cases have been filed in recent months. As far as these cases are concerned, the docket of Supreme Court has increased considerably.[45] These cases cover many areas. To begin with, a batch of these cases are concerned with the manner in which

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44. M. Galanter: '*A Program for Support of Innovative Legal Services in India* (1981), Mimeo.
45. The Committee for Implementing Legal Aid Scheme provided me with an incomplete list of these cases which is, nevertheless, useful. A copy of the list has been appended as Appendix I to this Chapter (not inserted).

criminal procedure and the penal system works.[46] These cases were brought to the court through a lawyer and through a legal academic, through a legal aid project and through a fellow prisoner. They cover issues like the length of time those awaiting trial have been waiting in jails,[47] the blinding by the police of those who were in their custody,[48] and the manner and extent those imprisoned in jail are treated.[49] Then there are cases which deal with the plight of a group like *rickshawallahs*[50] which were commenced by their Union. A social worker, (a Central Organizer in the Association of Social Health in India) filed a case relating to the manner in which Nari Niketan (Protective Home under the Suppression of Immoral Traffic in Women) in New Delhi was managed.[51] A petition was also filed by two distinguished academics from Delhi University in respect of the right to human dignity of those living in a government protective home in Agra.[52]

5.06. A journalist was deeply involved in a difficult case involving a girl called Kamla in respect of trafficking in women.[53] A journalist from Bombay has also filed a case concerning the plight of the pavement dwellers in Bombay and has been assisted in this regard by Lawyers' Collective. Another case concerns the dislocation of the livelihood of poor *chamars* as a result of tenders in respect of their trade being given to others. There have also been cases involving the danger to the health of workers as a result of the inadequate precautions in the slate industry and the health hazards resulting from the Delhi Water Supply Scheme. More recently, following my visit to Tilonia, the Director of the Social Work and Research Centre has filed a case concerning violations of the Minimum Wages Act in respect of contract labour hired to build government roads. He is also considering filing a case concerning caste Hindus disallowing untouchable Hindus from drinking water from hand pumps as a result of a governmental scheme to create *sarvajanik* pumps (i.e., pumps for all). Some lawyers in High Courts also filed cases in the matter of telephones and electricity charges.[54]

5.07. All these cases are very significant from many points of view. To begin with, they have, in many instances, been filed by people who were not themselves working with the particular groups. There are notable exceptions to this - both at an individual and institutional level. Many of them come from middle class and upper class backgrounds. This trend of cases can be seen as an expression of consternation and horror at some of the indignities which have [been] imposed upon those who are unfortunate and not so well off. What is happening is a mobilisation of such people in the cause of public interest and group litigation. We have already dealt with the problems of *locus standi* on this in the last chapter and taken the view that the activity of such genuine well wishers should be encouraged. We have also indicated some safeguards to elicit the involvement of the community which is the subject of such litigation. Some of this well wisher litigation has been undertaken by private individuals with the backing of a newspaper office or some other body. But in many cases, such public interest litigation has been commenced and is undertaken by private individuals who have put their own time, effort and resources into such litigation.

5.08. The question of such resources that are needed for this kind of litigation by this kind of well wisher is really quite important. The *first* problem concerns the cost of the well wisher.

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46. *Hussainara Khatoon and Others.* v. *Home Secretary, State of Bihar, W.P.* (Writ Petition) No. 57/79; *Kedra Pehadiya and Others.* v. *State of Bihar,* W.P. No. 5943/80; *Khatri and Others* v. *State of Bihar,* W.P. Nos. 5670/80 and W.P. No. 6216/80 etc.
47. *Hussainara Khatoon* v. *State of Bihar,* W.P. No. 57/79 and *Kedra Pehadiya* v. *State of Bihar,* W.P. No. 5943/80.
48. *Khatri and Others* v. *State of Bihar,* W.P. No. 5670/80.
49. *Kedra Pehadiya and Others* v. *State of Bihar* W.P. No. 5943 and *Sunil Batra* v. *Union of India,* W.P. No. 165/79.
50. *Azad Rickshaw Pullers' Union, Amritsar and Others* v. *State of Punjab,* W.P. Nos. 839/79 and 563/79.
51. *Chinnamma Sivadas* v. *State (Delhi Admn.)* W.P. No. 2526/81.
52. *Upendra Bakshi* v. *State of U.P. and Anr.* W.P. No. 1900/81.
53. *Mrs. Coomi Kapoor and Others* v. *The State of Madhya Pradesh and Others* W.P. No. 2229/81.
54. *Mr. R.N. Bajpai and another* v. *Allahabad Electric Supply Undertaking,* Civil Misc. Writ Petition No. 7805 of 1981.

Some of these litigants told me that they had to offer considerable inputs of their own. In some instances, they had to procure assistance in order to get some research and information together. The *second* problem relates to the expenses of lawyers, including out of pocket expenses as well as lawyers' fees. Many lawyers while (were) happy to do some cases on an *ad hoc* basis but took the view that if this was going to be a regular feature of the Court's work - some proper arrangements as to how this kind of work could be handled would have to be planned. *Thirdly,* there is the problem of extra resources in respect of the relief asked. Thus, experts were appointed in the *Nari Niketan* case for examining the conditions of the girls. Again, in the *Chamar* case, a team was appointed as part of an investigative mission on the part of the courts. In the *Bihar Blinding* case, a Registrar (Judicial) was appointed to visit the Blind Home run by the All-India Blind Relief Society in order to inquire into the wishes of the blinded prisoners. All this costs money. Who should make the resources available for this kind of preliminary relief in order to assist the Court? Such resources could either come from any of the following sources: the respondent (who would, at that stage of the case, not technically be judged the guilty party) the Court, the petitioner or some legal aid or other source. In some cases, the respondents may be asked to pay. But, otherwise, there would be a great burden on the well wisher petitioner. Some consideration should be given to whether such funds can be made available through the Court or some legal aid Source. These questions of resources will pose problems for the future. Clearly, the legal aid programme at the Supreme Court and High Court must be expended (extended) to meet the expenses of this kind of petition. The danger of the proliferation of irresponsible well wisher litigation can be dealt with by the fact that extended aid in such cases should be made available only after the petition is admitted. Provision should, however, also be made for a Supreme Court or High Court Committee to make legal aid available to assist indigent or other well wisher or groups themselves to cover their preliminary costs in deserving cases.

5.09. It has also been suggested that, at least at the Supreme Court, it is necessary to create a lawyers' chamber - partly or wholly funded through public funds so that it can deal with these (this) kind of cases. The reason for this is the fact that such cases are probably going to be a normal feature of the Supreme Court's docket. Some of the lawyers who fight such cases before the Supreme Court felt that they would like to pool their experience and resources together - whether on a part or full time basis. We shall return to this suggestion later.

5.10. The spate of this kind of litigation before the Supreme Court has also had other effects. We have already noted that this has resulted in the Court creating more ingenious methods of reliefs and remedies. We have already noted how the Court appointed investigative commissions to help them in their work in the *Chamar, Nari Niketan* and *Bihar Blinding* cases. The Court has also added affirmative schemes to the remedies it makes available. In the *Ratlam Municipality*[55] case, the Court considered drainage scheme to deal with the problem in hand. Again, in the *Rickshaw Pullers'* case, an economic scheme was created to safeguard the economic viability of the *rickshaw wallahs.* Such new remedies can only assist the cause of public or group interest litigation. The reason for this is that many of the problems of such litigation cannot just be resolved by the simple expedient of the usual common law (i.e. damages), equitable (i.e. specific relief, declaration or injunction) or other remedies (the prerogative writ). Many of these problems are quite complex. They are difficult to enforce. The creation of new remedies and new options has many possibilities.

5.11. All this has come to mean an expansion in the general thinking and jurisprudence about public and group interest litigation. It must inevitably lead to a growth of thinking in this area. What is needed are further developments in this field. The Committee might consider initiating the establishment of a *Public and Group Interest Litigation Journal.* Such a journal could not only

55. *Ratlam Municipality* v. *Vardhichand A.I.R. 1980 S.C.* 1622.

report all relevant public interest litigation cases, but would also provide a forum for sharing information and ideas amongst those who are involved in the field. The growth of a jurisprudence of ideas in this areas is important. At present, Committee send out a newsletter. This journal could either replace the newsletter or be in addition to it. Alternatively, such a journal could be established through some other agency with some financial assistance from the Committee.

(ii) Litigation from Public Interest and Other Groups

5.12. So far many of the cases that we have looked at come from well wishers who were not institutionally involved in public interest litigation cases. There are some agencies who have consciously and systematically used the courts for public interest and group litigation.

5.13. The most organised example of this is the Consumer Education and Research Centre which has initiated and taken through a great number of cases in a wide number of fields. Its own *Annual Report (1980-81)* lists the kind of cases which it has undertaken. This spans over a considerable area of activity which includes the right (to) reply in a government newspaper or journal, proceedings against Indian Airlines in the matter of fare increases followed by contempt proceedings, a writ petition against the Gujarat Government for winding up the Machchu dam inquiry and a further litigation in respect of a government claim for privilege in respect of certain documents in respect of this inquiry, a writ petition against the Life Insurance Corporation in respect of low cost policies, a writ petition in the matter of telephone services and a suit for damages against Indian Airlines. It has also intervened in the matter of refunding of excessive excise duties to consumers and the problem of an insurance company's third party liability in motor accident cases. An exact description of its court case docket has been extracted from its *Annual Report* and is added as Appendix II to this Chapter (not inserted). This is highly organised and well set up organisation. It is a self-initiating body whose conduct with the general public comes from complainant system and through specific and general publicity. But it is largely dependent on its own motivation for selecting the kinds of courses (cases) which it wishes to take up.

5.14. The Lawyers' Collective, Bombay which started from a trade union background is not as economically viable as the relatively wealthy Consumer Education and Research Centre. The cases it has handled cover the problems of students, police conduct, women, some municipal problems concerning the death of a body in a sewage tank, and some consumer issues. The collective also dealt with the *pavement dwellers'* case. Members of the Lawyers' Collective told me that they were interested in developing urban and rural links as part of their litigation policy. In other words, the groups that they fought for as well as the general public involved in some of their fights which they would conduct publicly. Their basic problem was an acute resource and financial shortage. In the *Pavement Dwellers'* case, the chief spokesman of the Collective explained that she had to considering (?) spending her own money to go by train to Delhi instead of flying there. Later, the costs were ordered by the Supreme Court.

5.15. The difference between these two styles of operations is quite considerable. Some of this difference can be attributed to the fact that the Lawyers Collective follows professedly left wing stance. They seek a different kind of relationship with the people they are fighting for even though they are prepared to take up a wide catchment of causes and issues. But their financial problem spells out some real difficulties. The financial difficulties of the Lawyers' Collective are more representative of the financial difficulties of those involved in public and group interest litigation. Members of the Collective took the view that given the state of the legal profession and its links to the market economy, it was inevitable that the funding of such enterprises must come from some source other than clients or the beneficiaries of such litigation. They took the view that they did not look kindly on funding from some foreign agencies and found it difficult, given the existing

tax incentives to raise money from private sources. Where were they to get money from? They felt that they had a right to the government's money if a fund was set up for this purpose. They took the view - dissented from by the Consumer Centre - that the Committee for Implementing Legal Aid Schemes should fully fund some lawyers' collective or chambers. This model was preferred by them to a model where the lawyers were partly (or almost fully) in private practice and only partly (or negligibly) involved in public interest or group litigation. This view received some support from some junior members of the Allahabad Bar, the Jammu and Kashmir Bar and some lawyers in the Supreme Court Bar. But we shall return to this question later. Funding lawyers' chambers is neither an easy nor an inexpensive task.

5.16. So far, public and group interest litigation cases from active lawyer or other welfare agencies have not yet reached the courts *en masse*. But following multiple camps - and even otherwise - many such groups are contemplating litigation. At the forefront lies the Free Legal Aid Society (Office) at Rajpipla which has already got an impressive docket of cases on a large variety of matters. At a recent camps held for tribals in Rajpipla, lawyers working with the tribals were able to show that they had an impressive docket of cases to which there seemed to be no solution in the maze of courts that existed at local level. The Free Legal Aid Group was not only looking for a solution of these cases in the higher courts but were also able to show that many of these cases belong to certain classes of actions or shared a community (commonalty?) of interest and should be litigated together. There were cases involving the ownership and possession of tribal land. This was a recurring problem. Dockets of such cases were being collected with a view to planning out a litigation strategy. Such a spate of cases will need resources and skill to fight them. Again, five crucial areas were identified by some tribal and Scheduled Caste villagers along with some social workers from the Banwasi Seva Ashram, Govindpur. These concerned land, credit, bonded labour, rations and the closure of schools. A strategic litigation in all these matters was being planned. The Social Work and Research Centre consulted me in respect of a non-payment of minimum wages case and a case of untouchability in the matter of using a hand pump. One of these cases has already been filed before the Supreme Court and the other is at present being researched. Again, the Social Work and Research Centre has also put together an impressive amount of work on the ownership and possession of land.

5.17. It will be noticed that many of these cases are being strategically ear-marked for the Supreme Court and the High Court. The reason for this is a total loss of faith in the local judiciary or a disbelief that the processes of the local judiciary can ever be successfully negotiated. Some of the groups did not at present concern themselves with the problem of raising funds for such litigation. Some of these groups are sufficiently well funded in respect of their other activities. But the problems of litigation emanating from these groups was (were) common. The problem of resources is, of course, omnipresent if this kind of activity is contemplated as a real and effective strategic weapon in the hands of these depressed groups. But, there were other problems. It was felt that this kind of litigation involved skills and work which was quite different from ordinary litigation. There was the problem of organising some momentum and enthusiasm for such litigation amongst the group themselves. This involved explaining such matters to them and ensuring that they would not - as prime sources of evidence and witnesses - back out of this effort. A sustained effort, research and activity was called for. This involvement needs a comprehensive legal mobilisation. But the problems did not end there. There was also the problem of finding forward linkages so that the right kinds of lawyers could take up the case.

5.18. It is clear that in the future the mobilisation of the courts in public interest or group litigation involves a great deal other than the process of litigation itself. At a resource level, funding for this kind of litigation must budget for the requirements of this kind mobilisation need

as well. But, in addition, it is also important to remember that such kind of public interest litigation involves a very delicate social operation because the ultimate strength of such litigation is derived from the community or group on behalf of whom such litigation is undertaken.

(iii) Legal Mobilisation

5.19. The task of legal mobilisation is a very complex one. It involves not just spreading an awareness about the existence of legal rights and options but the transmission of an awareness of how law and the legal system can be strategically used.

IMPROVING LEGAL LITERACY AS A PART OF LEGAL MOBILISATION

5.20. It is for this reason that many people felt that the programme of the Committee for Advancement of Legal Literacy (CALL) though useful in itself was really much too limited. Here the programme consisted of making available professionally produced pamphlets and literature which would explain the rights of people to them. Members of CALL who included senior and distinguished members of the Bar as well as a judge, who is associated with this project, told me that they saw some of the limitation of their own programme. They felt that they would like too expand their programme as well but they had not considered that in-depth at this point in time. There is no doubt that the distribution of literature which would tell people their rights is both useful and necessary. The Banwasi Seva Ashram showed me small pamphlets that they had written called *Jungle Key Kanoon.* Literally translated this means the law of the jungle. This refers, however, not to the social jungle which has become a part of the life of the *Adivasi Gonds* and others. Much rather, it refers to the actual jungle which was very much theirs until recently until it was encroached upon by others. They had, and continue to have, many rights. But these rights have been intruded upon by privileged groups as well as the Forest Department of the government. These pamphlets are necessary both for the depressed classes who themselves can read and pass on information to their colleagues as well as for social workers who work with these groups and, in some instances, belong to these communities.

5.21. Those who were working in the field took the view that the creation of such literature was not just a matter of stating the law as it is shown in the law books and the statutes. Such information was really useless to the depressed communities. What was needed was an extensive research and practical experience before such a pamphlet could be prepared. Each community has very different needs. It was felt that many pamphlets would be irrelevant unless they were relevant to the needs of the community. Therefore, an extensive research was needed into the problems of a community with an identification of the kind of problems that really affected them. The many situations which become a part of their lives have to be clearly identified so that the handbook or pamphlet that is made should be susceptible (suitable?) to practical use. Further, the literature should also give clear and practical advice on how the problems can be solved in that area. This means not just outlining the formal procedures that are available but also indicating the actual support that is available in relation to that problem in that area. The belief that the dissemination of legal literacy involves just the statement of the law is palpably misleading. If the spread of legal literacy is something which is part of a plan of legal mobilisation, it must be problem- and problem-solving oriented. It must relate to the needs of the people in an area as well as provide advice for the pursuance of effective legal strategies.

Methods of Legal Mobilisation: Broad Approaches

5.22. Let us turn then to programmes of legal mobilisation. There are various broad methods by which the task of legal mobilisation can bend, has been attempted. The *first* can be called the *social welfare model.* Here the emphasis of those working with a community or group has been to try and involve themselves in the social problems of the community. Legal mobilisation follows as a result of this involvement. Legal problems crop

up from time to time. The depressed classes and communities find a sharp interface with the law in such a way that it dominates their lives. The legal process frightens, intimidates, paralyses and weakens. Something needs to be done. There are many alternatives some of which involve legal mobilisation whilst others consist of evolving means mechanisms whereby the law can be by-passed and some new solution found. The *second* model is the *legal bi(?) mobilisation model.* Here, the mobilisation of the group or community begins with their legal problems. As the involvement grows, the involvement with further social problems and the quest for new and ingenious solutions also emerges. This model has emerged both in the rural areas and is also being tested in urban areas. The *third* model is a *legal aid model* where a legal group are (is) simply available for legal aid and assistance, and no more. The primary emphasis in this model is to litigate cases in court without too much conscious of (or) strategic emphasis on the legal mobilisation of a community or group. Such a model is usually court centered and belongs more to the movement in the field of legal aid rather than public interest or group litigation. *Finally,* there is the *higher court model.* This consists of creating a group of lawyers who work in higher courts who wish to specialise some or all their efforts in the field of public or group interest litigation. They are a *forward* legal linkage. They are an important service group who take public interest and group litigation causes up in the higher courts either at the instance of groups working at grass roots level or at the instance of motivated well wishers. Finally, there is the *public interest* model where a group or an institution is created which looks at one or several public issues.

5.23. I have not here tried to create an exhaustive list of all the available approaches. What I have tried to do is to look at the existing alternatives which I saw in India and have attempted to put them in descriptive categories. I am aware that nothing as interesting and unique as many of these movements can be contained within the contours of an abbreviated description. It should be borne in mind that these descriptions are merely to assist a process of understanding and not to contain the perception of what is going on or even a glimpse - for it was no more than that - of what I saw.

5.24. I would like to begin with the *social welfare model.* I had the privilege to talking with Shri Hari Vallabh Parikh who works in Rangpur but could only visit the Social Work and Research Centre, Tilonia and the Banwasi Seva Ashram, Govindpur. I also had a brief opportunity to talk to the Jyoti Sangh and even briefer opportunity to talk to some persons working in Self-Employed Women's Association (SEWA). Some Social workers working in urban and rural areas also very kindly explained some of their insights to me. One of the common problems of the social welfare model - if it operates rigorously or threatens social forces - is the problem of politics. Even where groups consciously seek to avoid party politics, it catches up with them. Some people operating in this way openly develop political links. These are well known. Such an approach is not just vulnerable to changes in government - now, perhaps, a not so frequent occurrence - but also to internal pressures from the party to which they are aligned.

5.25. Some social workers who were ideologically motivated took the view that the task of social and legal mobilisation could not take place independent of the political mobilisation of the people. They did, however, state that drastic consequences might follow such an approach. Even some ideologically committed social workers took the view that open political party alliances often hindered rather than increased their strategic options. Any move to politicise a group or community was taken on a non-party political basis. Some of those working in the field also took the view that even where one had no overt or covert links with one particular political group, it was in the interest of the community that a large network of alternative political links should be maintained to procure strategic advantages and block the strategic advantages of others. In most cases, extensive political links are not really available to members of the depressed classes who have to rely on others to mobilise such links in their favour. But even if a group stays

clear of politics, politics may catch up with them where political leaders in an area or region feel threatened by the activities of a group or institution. An interesting example is that of the Banwasi Seva Ashram which was made the subject of legislative inquiry. A distinguished journalist has shown that there was no merit whatsoever in the inquiry and that many of the facts that were presented were either totally misleading or just simply wrong.[56] Political threats - sometimes using the police - immediately follow even more inevitably where there is an effective pattern of legal mobilisation. This is quite apparent from some of the examples that were cited to me in Rajpipla. Politics is just a raw edge that must intrude into all schemes of mobilisation. The fact that a matter is taken to a legal forum does not diminish the politics. In fact, it may have the effect of increasing it. Politics is used to put pressure both on the legal forum and on these who use it. This is just a fact of life, and of social and legal mobilisation.

5.26. The social welfare model takes many shapes. Some of the programmes begin with the concept of a total involvement in the lives of the people of a particular area. The Rangpur experiment involving the personal involvement of Bhai (Shir Parikh) is a notable example of this. While other schemes - such as those in the Banwasi Seva Ashram and Tilonia - planned, and to a great extent had, a wide involvement. They started their involvement on a more specific basis. In both cases, a major initiating factory arose out of scarcity of water in the area. Tilonia dealt with this problem by drilling for establishing hand pumps, wells and the like. The Banwasi Seva Ashram built many dams and reservoirs to enable water to be made available to those who desperately needed it. This produced a considerable involvement in the lives of the people which has grown over the years and widened into a very comprehensive activity and concern.

5.27. Involvement with the community requires the development of linkages with the community that one is working with. This has been done both by training social workers from individuals outside the caste or tribe involved as well as trying to develop some kind of expertise from within the caste and tribal groups themselves. This means extensive training programmes and the maintenance of links in what has become a federated structure. In Tilonia, an attempt was made to leave some of the strategic decisions to the group of the social workers themselves. The aim is to generate activities amongst the groups themselves.

5.28. Let us turn now to the problem of legal mobilisation. The first difficulty is one of trying to get people aware of their rights. Connected with this is the problem of producing legal literature. We have already discussed how this literature should be created and the kind of problems and advice which should be contained in such literature.

5.29. A second difficulty that arises is that many of the social workers simply do not know enough about the interface of the law either. Two solutions have been proposed by both these in the Banwasi Seva Ashram as well as the Tilonia Centre. The *first* lies in the attachment of a lawyer to the activities of the Centre. This would help solve legal problems and the planning of legal strategies. The *second* solution lay in the creation of bare foot lawyers. Tilonia already trains people, who though not engineers, can deal with technical problems connected with hand pumps. The Banwasi Seva Ashram consciously trains bare foot doctors and bare foot engineers. Both feel the need for training bare foot lawyers. The Banwasi Seva Ashram sought to use a retired revenue official for training its workers in revenue cases. The experiment of training bare foot lawyers has been most effectively put into operation by the Rajpipla Free Legal Aid Group. Their very significant document on the training bare foot lawyers is very important and has been appended as Appendix IV to this Report (not inserted).

56. See Arun Shourie: 'A Glimpse of Good Work - I', *Indian Express* 29th September 1980; *Ibid*: 'A Glimpse of Good Work - II', *Indian Express* 30th September 1980.

5.30. A third factor in legal mobilisation is the holding of small discussion groups and large camps. The smaller discussion groups are useful to inform people of their rights and plan legal strategies. During my trip to Tilonia, I joined a small group in the village Deedwara to discuss a problem of untouchability. An immediate strategy was devised on the spot. Again, in the village of Harwara, a meeting of women was called to discuss a minimum wage problem which has - following a group discussion - now been taken to the Supreme Court. In Govindpur, I had the opportunity to go to a nearby village[57] to consider some problems concerning the ownership and possession of land. I also joined a group discussion in Bakhulia where a great number of legal problems were identified. Such group discussions which are consciously brought about to discuss law help to focus on problems, give courage and support to the community and also help to evolve strategies. In such cases, the presence of a lawyer is usually useful.

5.31. The holding of a legal aid camp is another connected factor in legal mobilisation. The presence of a Supreme Court, High Court and other judges and officials lends confidence to the occasion. At a camp near Dehra Dun, many cases were sorted out on the spot. Although it is premature to generalise, these camps are not like panchayats which decide matters. It is not always possible to get the other side there. Thus, the Dehra Dun experience is not always possible. The Rajpipla camp became a one-sided problem solving session with strategies being discussed in individual cases. The camp that is being envisaged by the Banvasi Seva Ashram is being organised on the basis that the campaign will consciously concern itself with legal problems in five selected strategic areas. Such a camp requires more than the music or euphoria of a get-together. A great deal of paper work on individual cases, grouping of cases, preliminary meeting and planning goes into each camp. The Rajpipla camp in August 1981 was an excellent example of how such a task should be undertaken. Both the camps envisaged by Tilonia and the Banwasi Seva Ashram have already planned some of the strategic uses that their camps will be put to. I feel that a preliminary visit by lawyers should precede a camp. That is how my visit to the Banwasi Seva Ashram and Tilonia were partly utilised.

5.32. The *social welfare model* also seeks to create remedies of its own other than the remedies which are provided by the courts of law. A well publicised example of this through the writings of Professor Upendra Baxi is the *Lok Adalat at Rangpur* where cases are resolved by a self-created adalat. A lesser known experiment is the creation of an informal three-tier system by the Banwasi Seva Ashram at the gramsabha (village assembly), section and centre levels. Lok adalats have also been developed. The Banwasi Seva Ashram have used a former revenue official to provide training for workers in legal matters, provide legal aid in 93 cases involving untouchables in which 78 were won, 5 taken in appeal and the rest were pending, settled 453 out of 574 cases through its own sabhas and panchayat system and 120 cases through the police in 1977-79, created a better revenue recorded service and prevented the local harassment of the tribals and untouchables.[58]

5.33. We know from the more or less total failure of the Nyaya Panchayat system that such informal methods cannot be imposed from above.[59] They have to grow out of the community and the strength of the depressed classes in the community. One experiment cannot really be readily duplicated in another area. But more needs to be known about the actual quality of the

57. Kosmaha, Pargana and Tehsil Doodhi, District Mirzapur.
58. See Report of the Agricultural Finance Corporation, *Whole Village Development Programme of Agrindus Banwasi Seva Ashram, Mirzapur, U.P., India: An Evaluation Report:* (1980) 55-7. No research has been done on the quality of the settlements but the Report suggests a certain measure of consumer satisfaction.
59. This is a failure really for the poor. The presence of this system has prevented the growth of others. Thus, the more (mere) presence of a moribund system assists local power.

decision-making and its impact on the lives of the people as well as the pressures that these sabhas and adalats are subject to.

5.34. The social welfare model is not just limited to village area. Agencies like the Jyoti Sangh in Ahmedabad which operates a comprehensive social welfare service have also developed some interesting mechanisms to resolve some of the difficulties that they encounter. One of its unique activities is to act as a conciliator and negotiator in domestic marriage and other disputes. This has gradually developed over the years and acquired enough status to be used by a large number of people. Cases are recorded and field trips also to an uncooperative party. An impressive dossier of cases has been built up which is shown in the Table below (not inserted).

5.35. The Jyoti Sangh has also taken up two new avenues for legal mobilisation. The first being using the services of lawyers for the purposes of taking cases to court. No perceptible pattern is available as far as that is concerned. Further, it has also been involved in the rape campaign - legal campaigning being treated as a legitimate part of its work.

5.36. I was also told by the Self Employed Women's Association (SEWA) that they too had encountered several legal problems in respect of the right to market stalls and so on. They felt open to considering strategic legal options that were open to them.

5.37. In this way, many social welfare groups are discovering ways and means to deal with legal problems.[60] Sometimes this is done by using the strategy of the law and sometimes this is done by inventing ingenious methods of by-passing the mechanisms of institutional and lawyers' law altogether.

5.38. Let us now turn to the legal mobilisation model. The most significant, interesting and unique experiment here is the Free Legal Aid Project, Rajpipla. This is a very ingenious experiment which sets at its objectives the legal mobilisation of the community. It consciously stays clear of politics even though those involved with the projects are often threatened - physically and otherwise by the local economic and political forces in the area. Since its major concerns are in the field of legal mobilisation, this model was unhappily treated by some as being a 'solicitors' model.[61] This description was not considered an apposite one by those involved with and associated with the Rajpipla experiment. The free legal aid work is one of the activities sponsored by a Trust called the Rajpipla Social Service Society. It is mainly concerned with the problems of Broach District which is an area in which 44 per cent of the population is tribal. The tribals are being harassed and exploited. A combination of brute force - including such force that emanates from the agencies of the state - legal techniques and other pressures has been responsible for the tribals' land being slowly taken away from them, a slow exodus, their further exploitation as labour and the imposition of all kinds of physical and economic limitations on their lives. The tribals face innumerable legal problems. Law is thus a *modus operandi* to understand and be involved in their lives. The Free Legal Aid Group has done a fair number of cases - concentrating on the matters which are crucial to the tribals. An estimate of some of the involvements of the scheme is shown in the Table below [not inserted].....

Gross statistics of this nature cannot really tell any kind of story properly. But it will be seen that the sweep of the cases is to look at the special problems of the tribals. It should also be noted that legal strategies are outlined not just at the level of lower courts but on a comprehensive basis so as to encompass wider strategies in the higher courts as well. The dockets of the Group are

60. For a brilliant description of a unique development, see R. Tiwari: 'And Justice for All', *Times of India*, 13 September, 1981, (Sunday Section) - being a peoples' court of Calicut in which an activist group called the *Janakeeya Samskarseka Vedi* were (was) involved.
61. See M. Galanter: *A Programme for Support of Innovative Legal Services in India...*, (1981, *Mimeo.*).

extremely well documents (documented) and the group has written up several collections of cases which present a very clear idea about the work of the group as well as the inhumanity of some of the problems that come to them.[62]

5.39. The scheme at Rajpipla was begun by people who had many years of experience in dealing with depressed communities and were familiar with the area. This experience was useful both to gauge the problems that would be encountered as well provide the basis for making contacts. It also provided a considerable amount of intuitive experience to decide the litigation strategy of cases in respect of whether, when and how they should be litigated. But the emphasis is on concentrating on the problem of legal mobilisation. The group discovered that people have no confidence in the court system. It was necessary to try and get them to believe that this was a forum that was worth using strategically. This was all the more important because many of their problems got locked in this forum through no choice of their own. At the same time, there was a reluctance to deal directly with hired lawyers. The group evolved a programme of legal mobilisation.

5.40. What has been important is the development of what may be called *backward linkages* and *forward linkages*. The *backward linkages* consist of making contact with the community and ensuring their legal mobilisation. The emphasis is not just on solving cases but the legal mobilisation of the community so that they can themselves understand and deal with some of the strategic uses and abuses of the law. The *forward linkages* consist of creating the institutional mechanisms whereby the litigation problems of the tribals have more viability and strength than their opponents. This involves the development of skills, special abilities, institutional resources and the ability to deal with legal problems in any area.

5.41. Let us look at the *backward linkages* . It developed contacts with the tribals. This was done through existing contacts, by field trips and a network of bare foot lawyers. The emphasis here, has been on trying to get the legal mobilisation of the community from within itself by training the tribals themselves. The bare foot lawyers scheme is a well worked out scheme which seeks to seek (select?) a limited number of such lawyers well. The average annual number trained are 20 - out of which about 8 to 10 remain involved with the scheme. Cases emerge which are looked at by the lawyers of the group who then plan out the litigation strategy. The bare foot lawyers scheme in Rajpipla merits further study. The document of the group has been appended as Appendix V to this Report for easy reference (not inserted). Summer camps have also been organised as part of the process of legal mobilisation.

5.42. The *forward linkages* consist of preparing cases, giving advice, working out a strategy and hiring lawyers who will argue the cases. At present, some 48 lawyers are involved in handling the cases that emerge from the *backward linkages*. The office is well organised and the cases are prepared well. A part of the *forward linkage* has been trying to use the higher court more effectively. We have already seen that the group has used the Gujarat High Court and the Supreme Court. It has filed 29 intervenor applications in the Supreme Court and nine matters involving 60 acres of land are pending before the Gujarat High Court. But the problem of forward linkages need to be looked at more closely. Taking cases to the higher courts requires expenses, contacts, finding sympathetic lawyers who will deal with these cases in the right way and an ability to play the litigation game at higher court level. I was told that a consistent net work of lawyers and institutional skill did not exist as part of a higher court *forward linkage*. This is a matter that needs some attention. Lawyers can be found but a consistent and well worked out method of planning forward linkage higher court strategies does not exist. Equally, lawyers doing public and group interest

62. Interesting documents include: *Legal Aid for the Poor* (1980), *Extracts from a Dairy of Free Legal Aid by Rajpipla Social Services Society* (1980), *A Brief Study of the Work of Free Legal Aid at Rajpipla in Broach District* (1981), *A Docket of Cases* (1981). The last *mimeograph* is not titled. I have given this a title for convenient reference.

litigation in the Supreme Court have also taken the view that some kind of forward linkage institutional arrangements are necessary. This problem is all the more necessary because the Rajpipla docket has reached a stage where serious consideration must be given to higher court strategic litigation by grouping cases. This is a matter of some priority and is being examined by the lawyers of the group.

5.43. Despite a considerable amount of sacrifices and economies on the part of those who run the scheme, such project is not easy to run. The budget statement of the project is as follows:

Table. Budget Statement of the Rajpipla Free Legal Aid Group

Year	Total Expenditure in Rupees
1977	114404.00
1978	95731.00
1979	114389.00
1980	266724.00

The total expenditure over five years has been 591,248 rupees. Summer Camps started in 1979, cost Rs 54,000 and Rs 77,881 in 1979 and 1980, respectively. The bare foot lawyers schemes for those years cost Rs 72,000 in 1978 and Rs 89,000 in 1980.

5.44. We can see that such a comprehensive project involves much more than simply setting up a solicitors' office. It is a blue print for the legal mobilisation of an area. The camp which I attended in August 1981 showed both the nature of its contacts and the extent to which the process of legal mobilisation was taking root. The camp itself was done with skill in that each case was thoroughly prepared before it was presented for discussion. If there was something of a pessimism amongst the tribals and the workers, it was only because the social, political and state forces ranged against them were quite considerable.

5.45. It is difficult to say whether such a project can be transplanted. There is a Free Legal Aid Group for Delhi which is to help the *SOSHIT* which has recently been registered and which has partly been inspired by the Rajpipla efforts. It will link itself with *SOSHIT* groups, consider plans for legal mobilisation and plan legal strategies ahead. Again, individuals like Dr. Vasudha Dhagamwar, a lawyer, have worked in certain target areas with skill and ability. She has also taken matters to the Supreme Court.

5.46. The Lawyers' Collective, Bombay is also an interesting example of legal mobilisation. The group that it works with is not as clearly defined as the tribals of Broach. But it has developed rural links with the help of an extremely able member who also works with the tribal community. It has also developed urban links with particular communities. The urban links are still maturing. But the Collective has also tried to concern itself with some urban problems. In this regard it has attracted the talent of some engineers who are examining some of the problems of pollution and health hazards. It also sees itself as a body that campaigns and has published several campaign documents in addition to preparing pamphlets on legal rights.[63] The major problems stem from the fact that it is financially not well funded. Members of the Collective made it clear that if this kind of experiment were to survive it should be funded. And this funding should come from the Committee for Implementing Legal Aid Schemes if the latter were really serious about looking at new methods of initiatising public interest and group litigation.[64] We have already noted their view that the legal profession is too closely allied to the market economy to be able to provide any kind of consistent service. They also felt that it was impossible to treat this kind of litigation in such a way that it was done by lawyers who were half

63. See its documents: *Rape and the Law* (1979); *Rape: Proposed Changes in the Law* (1980); *Audyogick Sambandh Vidhayak* (1979); *Yeh kya hai aur iskey virodh kyon hona chahiya*, (1979-80); Background Papers: *ID Act, BIR Act, MRTU Act, CDS, Bonus, Minimum Wages* (1980).

64. They refused to be driven to accept money from foreign foundation grants. As one of them put it, 'The government is supposed to be ours. It has a duty to provide funds for this sort of work. We do not see this as the task of foreign governments and foreign funding organisations'.

or more (usually more) connected with the market and half or less (usually less) connected with public interest or group litigation. They say this kind of litigation flourishing (flourishes) best with a fully funded centre with lawyers working on modest but fully paid salaries with all the institutional advantages of a proper lawyer's office.

5.47. We will not look in detail at the legal aid model. These are either court centred models or general social welfare models. The court-centred models and models where legal aid schemes are set up on a non-strategic basis without a conscious accent on legal mobilisation have alternatively been described either as a device to transfer funds to lawyers or to provide a good marginal service. There is particularly an increase in the use of legal style models in respect of women's organisations in Delhi. Some of this legal aid service is overtly and frankly linked to a political party.

5.48. Some women's organisations operate a social welfare approach in which legal aid plays a party. In many such cases, campaigning for women's rights in respect of legal matters has also taken a very vigorous shape and form. The success of the 'rape' campaign, begun by some academics who wrote an open letter to the Chief Justice,[65] is an example of such a vigorous campaign which has resulted in considering legislative changes as well. This has led to further campaigns in other areas concerning dowry, divorce and domestic violence. Legal campaigning is becoming an important weapon and strategy, which is slowly maturing as an exercise in legal mobilisation and not just as an adjust (adjunct) of political activity.

5.49. Let us now turn to the *public interest* model. Apart from the Lawyers' Collective which plans some public interest activity, the only institution organised as a public interest group is the Consumer Education and Research Centre. It is an extremely well funded group which has managed to procure grants from industry, get money from the Gujarat Government from the various ministries involved with their work and raise money from its own investments. It operates in a style of its own publishing research, litigating cases, conducting research and taking up campaigns.

5.50. We have already looked at its litigative work - details of which are also appended as part of an Appendix to this Chapter (not inserted). It has also done and published a fair bit of consumer protection, environmental control, the accountability of public utilities, the working of insurance schemes and how they affect weaker sections especially women, the freedom of expression and the right to reply, and the problems of electricity consumers. It has submitted a memorandum to the Monopolies and Restrictive Trade Practices Committee (Commission?), examined the law relating to Trade and Merchandize Marks, looked at the problems of auto-richshaw pullers and pesticides, studied Indian Airlines and gone into the question of the dam disaster - considering why the inquiry was stopped and whether the government's claim of privileged information was justified.[66] It sees itself as the focal point of the Consumer Movement in India, has called for All India Workshop of Consumer and Public Interest Groups in India and set up training programmes.

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65. U. Baxi, V. Dhagamwar, R. Kelkar, L. Sarkar: *An Open Letter to the Chief Justice of India,* 16th September, 1979 commenting on the judgement of the Court in respect of a rape in a police station of a young girl called Mathura aged 14-16. The controversy arose out of the Supreme Court's judgement in this case: *Tukaram* vs. *State of Maharashtra* (1979) *2 S.C.C. 143.*

66. See: *Consumer Protection* (1980); *Role of Law in Consumer Protection* (1980); *Consumerism - A Survey* (1981); *Consumer Safety* (1980); *Public Accountability of Public Utilities* (1980); *L.I.C. and Consumer Safety* (1978); *Light Fixtures or Crystal Chandeliers - Memorandum Submitted to Committee of Independent Actuaries appointed by the L.I.C.* (1979); *Women, A Risky Proposition* (1980); *A Tale of Torture* (1979 - concerning the treatment of women's claims by the L.I.C. and 'rape' campaign); *Corporation Denies Life Insurance* (1980); *Freedom of Expression Against L.I.C. Vindicated* (1980); *Amend Law to Protect Electricity Consumers* (1980); *Memorandum Submitted to the Sachar Committee* (No date - A Committee appointed by the Government of India for review of the Companies Act and the Monopolies and Restrictive Practises Act, 1969); *Longer Arms than the Law* (1979 - on trade marks etc.); *Profile of Auto Rickshaw Operator* (1980); *Pesticides Pollution* (1979); *Government Delays Commission Denies Justice: A Case Study of the Gujarat Government's Inquiry Commission Set up to Probe the Morvi Disaster* (1981); *Government Privilege Claim Rejected* (1980); *A Study.*

5.51. It also runs what is called a pre-litigative service which covers a wide number of items. I was given examples of this pre-litigative service being used from members of the public from other distant states like Tamil Nadu. It feels that this experience has 'been encouraging in terms of results. The manufactures, merchants, and Government authorities respond to the complaints. In many cases, it would have been difficult for an individual consumer to pursue the complaints and get results'.[67]

5.52. It also has run many campaigns in the matter of the supply of cement, misleading and false advertisements, misleading and fraudulent stamping of textiles and for the representation of the consumer interest on the Textile Committee.

5.53. All this general information cannot pin point the fact that the Centre is not just a good campaigner but has learnt to use the litigative process well. It has acquired institutional skills to play the litigation game. It is not short of funds compared with the others. It draws funds from the business community but it has undertaken some campaigns against the people who fund them. Its initial campaigns attracted attention because they were well organised campaigns against public utilities. It has been said that it should widen its campaigns to concern itself more closely with the average poor consumer.

5.54. Its contact and relationship was, in my view, not clear. Clearly, the general public used the Centre. But its basic initiatives and well organised work receives its major inspiration from those who run the Centre. There is a considerable self-generating *tour de force* in its campaign, publicity and self advertisement. This both reaches some sections of the public and carries some of them to give varying kinds and levels of support to the Centre. But its total relationship with the public in terms of direct, indirect and backward linkages is yet to mature. Its work at present is highly spirited work which emanates from its central nerve centre. Its forward linkages with lawyers are good and effective. It is, perhaps, for this reason that it did not feel strongly about the need for fully funded organisations manned by salaried lawyers as too indispensable a forward legal linkage. It did, however, feel the need for some kind of forward linkage (half private, perhaps) to exist.

5.55. There is no doubt that this is a well organised experiment. But its focus has been diluted slightly in that it seems to have taken on extended campaigns like the government inquiry into the Dam disaster. Social workers working in the area of the dam have applauded this activity but others have felt that the Consumer Centre seems to have become a general busy body which picks on the government and public utilities. This is not wholly true. Nor is there anything wrong with the creation of a general body with a wide focus. But the important question of focus needs attention as much as the question of its relationship with the general public and the decision making which follows from the nature of such a relationship.

Conclusions

5.56. It is very difficult to either summarise or draw conclusions about some of the interesting and exciting things that have been occurring in India in the field of public interest and group litigation.

5.57. The spate of public interest and group interest litigation cases which have been taken straight to the Supreme Court by groups, newspapermen, academics and others give us many insights into the workings of the Indian legal system. There is obviously a total lack of faith that remedies lower down the line will be efficacious. Judges are aware of this and have not only admitted such cases but have relaxed the procedure by which the Court can be moved in such cases. Many cases in the field of criminal procedure, jails, the Agra Home, Pavement Dwellers and Minimum Wages have been commenced by a letter to a judge or the Chief Justice. *This has not meant that an appropriate procedure*

67. *Annual Report* (1980).

has not been followed. The judges have scrupulously followed notice and other requirements. The judges also seem to be aware of their lack of knowledge and information of many things and many matters; and have appointed fact finding committees and the like to assist them. Finally, realising the defects in the delivery system of the Indian State, they have invented affirmative and positive action remedies. This has led to a growth of thinking in and about the jurisprudence of public interest and group litigation.

5.58. Fascinating development have taken place in the field of the means of legal mobilisation and the manner in which institutional and other arrangements must be made to deal with the legal system, whether by avoiding it or taking it on. The schemes by which voluntary agencies for negotiation and settlement have been created in rural and urban areas are unique and complex and need to be studied and examined further. Equally, many fascinating programmes have come up which involve the mobilisation of communities and groups. The mechanism for creating linkages are various and varied including contact through workers, irrigation scheme workers, bare foot lawyers, summer camps, roving contacts, general camps and general legal aid and assistance. Multiple strategies have been devised which have operated at local level and been taken to a higher level.

5.59. The problem of forward linkages with lawyers has remained. The legal profession at present runs on a market principle. Such litigation is seen as philanthropy. One way to deal with such a problem is to expand the legal aid fund's activities so as to fund such litigation on a case by case basis. Alternatively, funding could be sought from public interest litigation sources where the funding could take place on an issue basis. Since funds will be provided to mobilise matters on a particular basis, some allowance could be made for litigative costs. Some costs could also be clawed in from an expanded legal aid programme. But, even after all this, there was a feeling that lawyers' chambers specialising in public interest and group litigation were needed. Let me recapitulate the arguments. The Lawyers' Collective wanted a fully funded chamber with salaried lawyers. This was resisted and regarded as unrealistic by the Consumer Centre. Other suggestions included funding lawyers' chambers which were half free for the market forces and half occupied with public and group interest litigation. Finally, a suggestion was made by a Supreme Court lawyer that lawyers must be allowed to play the market fully but he given facilities to develop their public interest and group litigation work. Patterns will emerge and it is impossible to predict whether the market will swallow these lawyers up whilst their public interest litigation work will just become a sideline.

5.60. Ideally, the Lawyers' Collective view is correct. In their case, their views draw sustenance from the fact that they do not think that their work will itself be corrupted by market forces once such a chamber is set up. But, it is possible - even probable - that apart from their own and a few significant exceptions, many fully funded lawyers' chambers could grow in India which could drift towards the market even though fully funded. Nevertheless, the problem of the growth of public interest and group litigation chambers remains. The half-public chamber idea is riddled with the same temptations. The 'facilitative' chambers idea of the Supreme Court lawyer needs to be looked at as a forward linkage. In the end, we cannot really be too sceptical about what can take place and what might happen - even though there is a need to be shrewd. It is important to remember that funding such chambers which will involve developing all kinds of public interest research and other facilities is an expensive basis. It is also a moot question as to what model of legal or political mobilisation would attach to such High Court and Supreme Court Chambers, if they are not just forward linkages. A combination of private charity and public finance may be necessary until more funds are available to plan a mature programme for this. The development of public interest centres and lawyers chambers needs further exploration.

5.61. The whole movement in the field of public interest and group litigation needs its various and diverse participants to keep in touch with each other, to develop strategies, develop contacts, exchange notes and evolve campaigns. All those working in the field liked the idea of the May Seminar and hoped that other mechanisms would be developed which would help them to liaise with each other. They found the newsletter not sufficiently adequate or informative for this. But they were looking for more better and comprehensive liaison.

5.62. Finally, a small work (word) of caution about the relationship of the Committee for Implementing Legal Aid Schemes to these groups. Many of these groups saw this Committee as part of the State and potentially subject to the various pressures that the State was subject to. They saw their relationship with the Committee as optional, where the Committee could help, encourage, assist, support and bring together. It should not make any effort to take over this movement or allow itself to be used to transmit the tensions of the government to these groups.

BOOK REVIEWS

Joseph, K.J., *Industry Under Economic Liberalization: The Case of Indian Electronics*, Sage Publications, New Delhi, 1997, Pp. 245, Price Rs 325/-(cloth).

This study seeks to examine the implications of policies of economic liberalisation on the structure, growth and competitiveness of Indian Electronics industry. The study was originally submitted for Ph. D. degree and is published, after revisions, as a book.

The study is divided into seven chapters. The first introductory chapter provides background to the policies of liberalization and to the electronics industry in India. It also provides some milestones in the policy changes concerning electronics industry. The Electronics Commission was established in 1971. The first phase of policy initiatives, as mentioned by the author, covered the 1970s, when they revolved around 'the development of the industry under protection with minimal recourse to foreign capital and foreign technology on the one hand and large companies and business houses (MRTP - Monopolies and Restrictive Trade Practices - companies) on the other. The 1980s marked the second phase when the government took a number of initiatives in the direction of a more liberal and open electronics policy ... with the emphasis laid on minimum viable capacity, scale economies, easier access ... to private sector capital, including companies covered under MRTP Act and FERA (Foreign Exchange Regulation Act)' (p. 25).

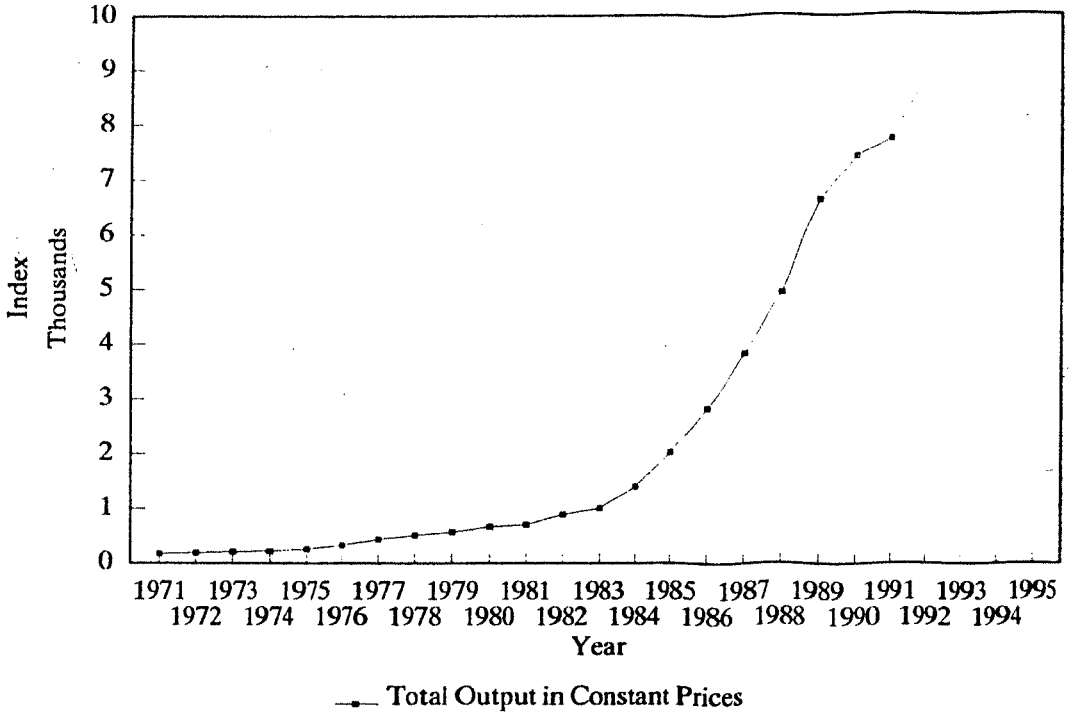
In the subsequent five chapters, the author tries to examine the impact of these measures. In Chapter 2, he analyses the growth and linkages of sub-sectors of electronics. The market structure and performance of computer and television industries are examined in Chapters 3 and 4, respectively; the transfer and technology development is reviewed in Chapter 5, and the employment, location and export earnings of electronics in Chapter 6. The last chapter provides summary of findings and conclusions.

According to the author, the following impact of liberal policies on electronics industry is discernible:

1. Shift in the product structure: Marked increase in the share of electronics consumer products at the cost of electronics intermediates and electronic capital goods. '(T)he growth has been concentrated in sectors with higher linkage in terms of imports, whereas sectors with higher linkages in terms of value added and employment lagged behind in output growth' (p. 218).
2. Removal of institutional barriers to the entry of firms which, for computers, resulted into 'the appearance of a more competitive market structure and the attendant efficiency gains as reflected in price reduction, quality enhancement and output growth' (p. 219).
3. The case study of television indicated that the liberalization policies led to an entry of a large number of manufacturers, but the resultant market structure was not devoid of monopolist characteristics. 'In each of the regional markets, a major part of the sales was accounted for by a few brands; a few firms thus enjoyed some degree of "monopoly power" in the regional market, though their share in the national market was small and diffused' (p. 220).
4. It was also found that 'the technology behaviour of firms under the liberalised policy regime was oriented more towards technology import' (p. 221). This, after liberalization, resulted in increase of foreign collaborations, in cost of technology and 'increasing technological dependence of the Indian electronics industry in the short/medium run' (p. 221).

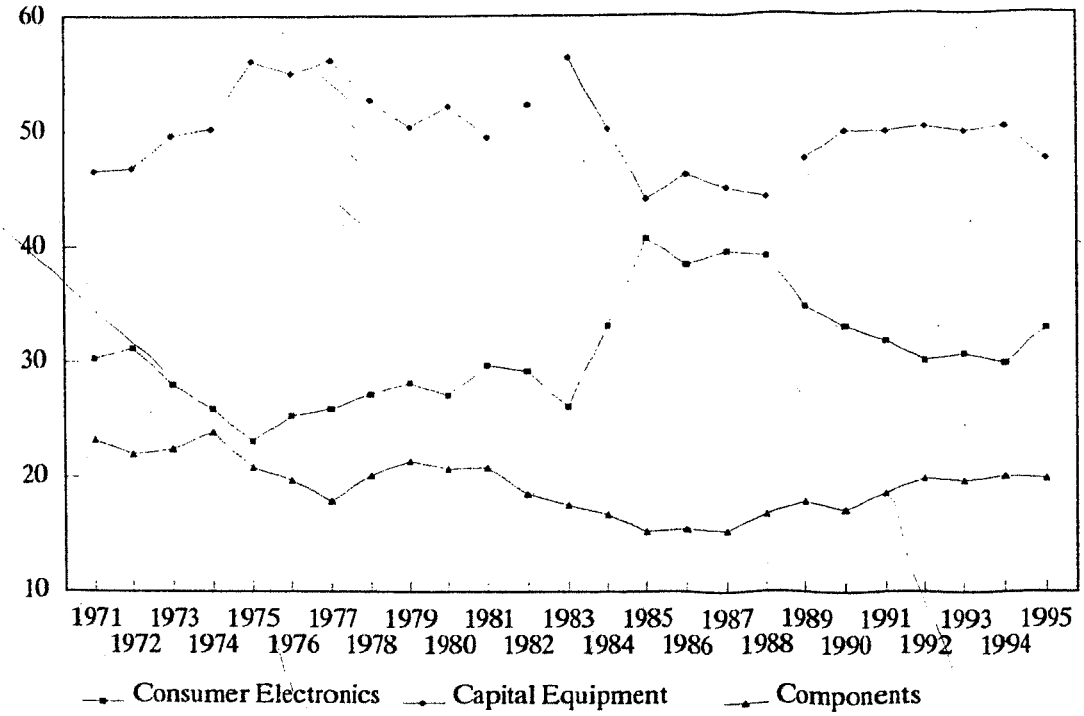
In spite of an unprecedented output growth in the industry, the author observes that 'much of the investment got allocated to the production of quick profit-yielding consumer goods based on imported kits and components' (p. 223). Further, 'adequate investment has not been forthcoming in sectors like electronic capital goods and technology/investment-intensive electronic

Chart 1: Output of Electronics in India
1981 = 100 (Constant Prices)



Source : p.170

Chart 2: Output of Electronics in India
Share of Different Sectors



Source : p.35

intermediates like semi-conductor devices. The consequent imbalance in product structure and lack of integration, along with the market-oriented competitive strategies of firms adversely influenced the macro objectives of industrial development like generation of value added (income) and employment. .... The overall export performance has been far below the potential and import intensity kept an increasing trend so that the increased output growth exerted a pressure on the external balance of the economy' (p. 223).

To analyse data and to reach these conclusions, the author has marshalled the tools like input - output analysis for estimating backward-forward linkages, and correlation and regression techniques. However, the use of this sophisticated analysis has a major limitation in the case of electronics industry in India. The process of liberalisation, which started in the eighties, really received a momentum in the nineties, and it was of a very tentative nature in eighties. The period of analysis considered by the author which terminates in 1992, therefore, does not reveal much of an impact of this liberalisation. There is no doubt that since 1981, the output in electronics industry started showing an exponential growth (Chart 1),[1] but it is not only supply driven (encouraged by liberalisation) but also demand driven (with an increase in application and technology-spread). Both these forces are seen to be mutually supporting each other and it is necessary to devise analytical tools to separate their influences.

Further, the sectoral division of this increased output does not necessarily indicate the kind of changes the author is seriously warning us about. There is a (statistically) significant increased share of consumer electronics in the eighties over the seventies, and it is at the cost of components. But there is no significant decline in the share of capital equipment (Chart 2). More over, since 1987, the share of consumer electronics seems to be declining and that of capital equipment and components seems to be increasing. These trends, then do not support the author's conclusions about the shifts in product structure.

The use of 'linkages' for measuring the impact of differing growth rates of different product groups also raises some questions. Are they stable? In Electronics, it is hardly possible. When the entire industry is changing fast, how is disaggregative analysis helpful? Similarly, how is the regression analysis, which is making use of 'historical' data, justified for analysing this industry?

Electronics is truly a dynamic industry. Because of continuously and rapidly changing technology, the life-cycles of electronic products are extremely short; their application areas also experience unprecedented upheavals. The industry is not just capital-intensive; it is also knowledge-sensitive. The infrastructural requirements of this industry are also unique. The linkages of this industry, with other industries, with employment, with Research and Development and with imports and exports also undergo rapid changes. The analysis of these changes requires a different frame of analysis and different sets of tools. The book under review shows, pointedly, the weaknesses in traditional analytical approaches applied to an ever changing technology-sensitive and all-pervading industry like electronics.

The reviewer does not wish to downplay the painstaking way in which the author has collected data and presented his findings. Yet, not much should be seen, either for policy making or for understanding the growth of electronics industry, in this study. The industry does warrant a different approach of analysis, which, unfortunately, has not yet received attention from the students and researchers.

NOTE

Both these charts draw upon the data given by the author on pages 170 and 35, respectively.

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Epstein, T. Scarlett, A.P. Suryanarayana and T. Thimmegowda; *Village Voices - Forty Years of Rural Transformation in South India*, Sage Publication, New Delhi, 1998, Pp. 242, Price: Rs 375 (Cloth), Rs 195 (Paper).

Survey-Resurvey technique seemed popular in nineteen sixties and seventies especially for village studies in the Agro-Economic Research centres in many parts of India. I was aware of these because of my work at the Gokhale Institute of Politics and Economics, Pune 411 004, where an agro-economic research centre was located. Most of the studies related to changes that were expected due to a variety of agricultural legislations and reforms. They studied the fragmentation of agricultural land with generational changes, indebtedness, the need to work as agricultural labourers due to inadequacy of owned land, etc. Besides economic changes, social changes were also noted.

When I read *Village Voices* I was reminded of the above studies since I was working in that institution as a demographer. I remembered with great interest one of such studies where in 1942 the villagers migrating to Mumbai were asked why they want to go to Mumbai. About 75 of them were asked about their aspirations. Some of them left the village to pay off the debts by making money in Mumbai. Some wanted to dig a well; some wanted to buy more land; some thought of disposing off their sons and daughters in marriage, and so on. Fifteen years later, the same persons were contacted to check whether the villagers achieved their ambitions. Unfortunately they rarely got what they wanted. Often due to bad housing conditions in Mumbai they had tuberculosis or some health trouble and they were just waiting for the next generation to take their place. This is an old story. But it spoke a lot about the strength of the urban centres - here Mumbai city - to attract rural labour. There was a lot of fragmentation of land holdings and many land holders had to work as landless labourers either in their villages or had to migrate to cities for work. Thus survey-resurvey techniques threw enormous light on the economic situations in villages. Noting the changes one often came to the conclusion that urbanisation in India was not healthy enough to pull the population from rural areas so that there was less pressure on land. It was also not possible to use improved technologies to increase productivity of land with irrigation, improved methods of farming, better seeds, etc., for lack of funds.

I myself working as a demographer handled survey-resurvey technique for micro studies such as village surveys. The objective was to study the completeness of vital registration, extent of migration, and completeness of census enumeration. Of course, impact of social legislation on the conditions of living, marrying habits, etc., were of great importance to me as a demographer. Survey-resurvey technique helped qualitative as well as quantitative assessment of the changes that took place in villages.

Epstein a foreigner coming to South India - a strange land with a language totally unknown to her, no doubt, worked under very harsh conditions and came out with three close observations of the villages with a couple of colleagues to help. These observations cover about four decades and the survey-resurvey technique used for two small South Indian villages throws light on what irrigation or its lack can do to the villages in a course of forty or odd years (1954-96). She with her colleagues observes Dalena and Wangala in Mandya district of Karnataka and notes her observations regarding socio-political changes that occurred in the two villages. Wangala was irrigated during this period and with its wet lands became agriculturally very productive and moved in a direction which was quite different from the development in Dalena, the other village. In this publication at least, there is not much of quantitative assessment. However, the discussion on the socio-political changes that took place in the irrigated and non-irrigated villages are ably brought out.

The authors claim that the book is different from others of the same kind. The period covered, namely 1955 to 1996, is no doubt impressive and gives enough room for the socio-economic changes. The authors expect that these will lead to more enlightened rural development policies.

The idea is to employ 'user-friendly style to complement other academic publications in the same field. One of the objectives of the authors in presenting this study is to use the work as a basis for a documentary film. Of course, that does not make this publication to be different in my view as claimed on page ten, bottom line.

Wangala was irrigated and had wet lands and the other village Dalena, though close, was dry. It made a world of difference in the agricultural productivity of land in the two villages. Dalena was smaller than Wangala but in terms of caste compositions and mode of living the villages were similar. In both the villages, peasants (farming class) were the dominant caste. Unlike Wangala, Dalena had access to electricity even in 1954. Wangala placed emphasis on expanding its social amenities while Dalena concentrated on its economic diversification and even began to industrialise by the end of the observation period.

The roles of each individual, family and caste including Scheduled Castes and functionary castes were clearly defined by tradition in the festivities celebrated in the villages. On the whole, it seemed that the progressive rich were becoming richer in the villages while the unenterprising poor were becoming poorer.

Increased interest in education was a slow and phased process. Wangala had in the mid fifties a four-standard school. During forty years, there was a higher secondary school with a government junior college by 1994. There were 15 graduates, 8 post-graduates and 50 undergraduates, and 150 secondary school leaving certificate-holders in a population of about two and a half thousand in Wangala. Every year the number had been increasing and drop-out rate was decreasing. Since 1985, even a hostel for poor students was started. Piped water from bore-well was also available. Primary Health Centre was established and 50 to 100 patients a day from Wangala and near about area were treated in this unit. There was a plan to add maternity unit to the Centre. A veterinary dispensary was needed for the village Wangala, since the cattle population also increased with better economic conditions ensuing from irrigated lands. It treated 10 animals a day. A veterinary visited once a week to examine ailing cattle.

There were many cane crushers in the village due to sugar plantations with irrigation. A commercial bank-branch, opened in mid-eighties, gave loans at 12 to 16 per cent for crops, pump-sets, tyre-carts, small businesses, milking animals, poultry, agricultural implements, tractors, power tillers, etc. A Sub-post office which was set up, offered postal services and savings-bank facilities. Besides these amenities, a library with 800 books was started. A fair price depot for the supply of essential commodities, such as sugar kerosene, rice, wheat, clothes and edible oil, at controlled prices was established. There was also a youth association in the village which was attached to a similar State level body. It organised variety of public functions including competitions of music, etc.

There has been enormous change in the marriage system. Of course, the change is not always in the healthier direction. Earlier the marriage ceremony took place in the bride-groom's place but now it does in the bride's place. Bride's guardians have to pay a lot of dowry in terms of jewellery, scooters, motor cycles, etc. Costs of marriage have gone up and they mean an enormous burden for small income middle class families. Divorces are taking place due to harassment of girls for dowry, etc. *Sanskritisation* and adoption of urban life-styles are getting common. Better food-habits, neat and tidy houses, adoption of family welfare measures, such as family planning, seem common.

Even in Maharashtra, similar changes in marriage system were observed. Before Independence, the poor farming classes paid money to the bride's parents. But *lately*, they started asking for dowry from the parents. Other social changes were also similar in villages in Maharashtra.

There is a move from superstition to rationality, towards human fertility control. Better living conditions have led to better housing but individualism has increased and strength of joint family is reduced. Respect for the elders has been threatened. Consequently, family cohesion and adherence to established social and moral values are adversely affected. Growth of alcoholism has led to family tensions and violence. Dowry menace and alcoholism have devastating effects on family lives. Moral and ethical standards have gone down and there is more social unrest. Unless these are tackled, the problems in all social, economic and political dimensions cannot reach a satisfactory level. On the whole caste barriers are weakening. Untouchability gets reduced with education but Scheduled Castes are still educationally backward.

Dalena and Wangala that were similar in mid-fifties changed in different directions. Dalena though had no irrigation, it participated in the agricultural growth of the nearby region leaving their own dry agriculture to the women folk to look after. They got irrigated land in the region outside their own village. Dalena villagers could start even non-agricultural activities outside their village. They follow very much diversified economic opportunities. Buying strong bullocks for transport of sugarcane, they took to cane-crushing, flour milling, etc. Along with it came the disappearance of traditional patron-client relationships. Dalena's social system did not operate any more on the basis of the hereditary principles. Panchayat membership was no longer based on hereditary elders. Dry land Dalena promoted and provided the irrigated communities with services. With diversification of economy, Dalena's social system had growth of individualism. In Wangala, few read papers and few were aware of political issues while Dalena commuters were members of trade-unions. Dalena *patel*, for instance, was much more interested in wider political and social system in which his economic interests were vested. For, in Dalena, once the range of relations was extended beyond limits of the village, dependence on fellow-villagers diminished and the personal character in the indigenous relationships gave way to an impersonal one.

The impact of irrigation produced unilineal change in Wangala by strengthening the farming economy and reinforced traditional socio-political system whereas Dalena's diversification of economic activities represented multifarious changes and it triggered off a more radical socio-political transformation. Dalena villagers' economic horizon widened and with it the political one.

Agricultural productivity was increased through extension of irrigation and also by higher per acre crop yields. Wangala wet lands increased 69 per cent during 1955-70. Out of this, villagers got 88 per cent and outsiders 12 per cent. By 1970, Wangala land was 80 per cent irrigated while in 1955 a little more than half. Between 1958-71 prices of wet land increased by 330 per cent.

With the competition between sugar cane versus jaggery, jaggery boom brought lasting gains to Dalena than to Wangala because Dalena villagers brought their crushers and rice mills on the Mysore highway. The Mandya district where our two villages were located had integrated development economy which trebled its population between 1951-71. Wangala with its irrigated agriculture had unilineal development as described above. Economic inequality between the castes remained more or less the same since educational facilities among them did not get equally distributed. Scheduled Caste people remained handicapped as before, and they depended on the farmers who belonged to the upper castes. Wangala also did not seem to participate healthily in the village-group Panchayat which, in a way, was a sign of village introversion. Villagers of Wangala did not seem to have increased absorption in the wider society and their interests remained focused on intra-village activities.

On the other hand Dalena looked to the wider economy to improve their standard of living. Epstein called this process village extroversion. In Dalena, Scheduled Castes experienced increased difficulties in 1970. The minimum social security offered by the traditional hereditary labour-relations was lost in the extroversion of Dalena. Their social status had, no doubt, improved but the economic position had deteriorated. The Scheduled Castes complained: 'you cannot eat social status' (p.).

Unlike Wangala, Dalena readily accepted the linkage with three neighbouring villages - when need arose - into group panchayat. In Dalena, there were few occasions which affected all residents alike and would unite them. On the whole, Dalena had interests outside their village, which reinforced village extroversion. Here the villagers realised the importance of education, though importance of education of women was not acknowledged in both the villages!

There was a tendency to mechanise the agriculture in Wangala which could reduce the labour needs. Migrants then might not find the place attractive. Peasants would depend on local labour of the Scheduled Castes. This may strengthen the traditional ties between the castes. Thus, there is less hope for socio-political changes. Intra-village agriculture will remain the dominant economic activity in Wangala which will lead to economic introversion and continued political isolationism.

Population of Wangala was 958 in 1955, 1,603 in 1970 and 2,616 in 1991. In Dalena, it was 707, 1,072, 1,566 in the three respective years. In both the villages the rate of population growth was declining, though it was higher in Wangala.

Dalena realised the value of education better due to extroversion. It also led people to read newspapers. The villagers were good orators and effective councillors. Wangala had grown so that most of the skills needed in the village were available there. Dalena was too small to have that situation. These villagers commuted outside and they turned to work more in secondary than tertiary industry. Sixty-five per cent of men in Dalena were non-agricultural workers outside the village while Wangala villagers aspired for a factory in their own village manufacturing agricultural implements.

Epstein notes that the myth of isolated and self-contained Indian village polity has long been exploded. In my view, it existed only in Gandhiji's dream world, never in reality. One could see the impracticability of the self-reliant village. With social legislation, the attempt in villages was to have social mobility in which the status was not hereditary but depended on individual achievement. In other words, the idea was to have *Homo Equals* replace *Homo Hierarchicus* in India.

Thus, the two villages though changed outwardly, certain things remained unchanged. Wangala could afford to sustain the increased population with its irrigated agriculture and it remained introverted while Dalena was extroverted.

Family planning was getting popular but the son preference continued. Motorised transport changed the life-style. Factions in the villages offered block votes to outside political parties.

In Maharashtra, my observation in those early days was that the leader in the villages got popularity by doing good to the villagers through social work. But later conditions changed. One got popularity by bringing in the funds from outside, maybe, through political parties which depended only on vote-collection techniques, and these funds were not always used properly for the good of the villagers. My impression is that such dealings are common in many regions of the country. As in Wangala and Dalena, social problems, such as alcoholism, gambling, family violence and disruption, have risen to introduce undesired elements.

At the end of the book, the authors pose quite a few questions as to the possibilities of changing future development trends in rural areas. In their view, with education people leave the rural areas

and migrate to urban centres, thus sucking out the brightest from the rural areas. This in our view was the tendency all through in history and cannot be stopped.

The question of how far is it possible to start manufacturing ventures in rural areas is not easy to answer. Attempts have been made but with no success. Where are such developments in other parts of the world? In Indian rural conditions the pressures of poverty and ignorance are too high to change the socio-economic conditions on the lines desired by the authors. It seems that the authors are happy at introversion in Wangala, being unhappy at the same time for continuation of certain accompaniments of introversion. Irrigation is helpful anywhere anytime, in the world; but not necessarily introversion. Extroversion with its out-migration hurts the authors. But what was the other alternative, not only in Dalena but in any other similar situation. Is not extroversion the accompaniment of education for the common man? It is only the exceptional - rare exceptional - that could use their educational equipment for the good of the village.

The question of preserving folk culture is also difficult to understand. What is folk-culture and what is there worth preserving? How can global competition and preserving village folk culture go together? Aren't these isolationism and villagism obstacles in the global competition? The various questions asked indicate that the authors expected something impossible in the caste-ridden, ignorant, water-short village economy with the enormous population pressure.

On the whole, however, the book is a good addition to the village studies in India.

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Pinto, Vivek, *Gandhi's Vision and Values: the Moral Quest for Change in Indian Agriculture*, Sage Publications, New Delhi, 1998, Pp. 176, Price Rs 295/-.

This book appears to be a published version of a doctoral thesis (p. 9). It first delineates Gandhi's vision and values, then describes the very pathetic condition of India's rural masses and argues that Gandhi's own experiments in community living, conducted in Africa and India, and the achievements of people like Anna Hazare in India, show that Gandhi's ideas can solve the present crisis of the rural masses. Since Gandhi gave great importance to the question of food for the rural masses and said that, for the hungry, even God must appear in the form of bread, Vivek Pinto has specially examined the application of Gandhi's ideas to agriculture.

There is no doubt about Gandhi's greatness. Romain Rolland called him a living Christ. Arnold Toynbee, in an article written for the Gandhi centenary celebrations, called him the only person in world history who had a completely integrated personality, surpassing even Jesus Christ, Gautam Buddha and Prophet Mohammad. Gandhi has become a legend because of the intensity with which he loved all humanity and struggled incessantly against injustice anywhere and everywhere.

It is also true that 'even after fifty years of independence' (an expression which almost every political writer loves to use, and variants of which has been used by Pinto also - Pp 18 and 158) there is an unacceptable amount of poverty, malnutrition, child mortality, abuse of the child, exploitation, etc., in rural areas and urban slums.

The important question is how far Gandhi's ideas can be applied in the present circumstances. An even more important question is : Who is supposed to implement these ideas ? The second question is more important because, much as various writers want the state to take up this job and criticise it for not having the political will to do so, Gandhi himself did not visualise the state as an actor of any consequence in shaping the destiny of India. As the author has observed, 'Gandhi envisaged free India as an enlightened

anarchy' (p. 72). It is well known that Gandhi wanted after the attainment of Independence the Indian National Congress to disband itself and its members to engage in what was termed as a constructive programme.

Pinto has listed six 'practical moral and socio-political concepts enunciated by Gandhi .... (which) are: (1) swadeshi, (2) *aparigraha* (non-possession), (3) bread labor, (4) trusteeship, (5) non-exploitation, and (6) equality' (p. 66). These, he says, can be applied in agriculture.

It seems from the concluding chapter, that what Pinto envisages is that the above ideas will be implemented by non-governmental organisations who will 'oblige the elected political representatives to honestly execute the wishes of the poor and oppressed millions' (p. 159). This does not amount to any well considered plan of action for achieving definite physical goals. The 'wishes of the poor' are expressed not in the form of any well considered programmes but only in terms of owning a piece of land or getting an employment or getting the basic necessities of life at affordable prices. How do the non-governmental organisations *oblige* political leaders to give land to all the rural people or to create jobs for them or to provide onions at affordable rates? And how do the leaders satisfy the onion cultivators who also agitate for keeping up the onion price?

It is necessary to make a distinction between the broad moral positions taken by Gandhi, on the one hand, and the way he tackled the immediate problems of the rural population of India, on the other. Pinto has correctly said that Gandhi's ways of thinking and acting were strongly rooted in religion. Now, in religion, Swami Ranganathananda, the foremost exponent today of Vivekananda's philosophy, has said in one of his lectures that every religion consists of two parts, namely, *Sruti* (the broad philosophical part) and *Smriti* (the application of the philosophy to the context of each historical period). Therefore, while the *Sruti* part of religion has validity for all times, the *Smriti* portion does not. In fact, Swami Vivekananda is said to have held that the *Smriti* stage of Indian society represented a degradation from the heights attained during the *Upanishadic* times. As regards Gandhian thought also, while his moral ideas have a validity for all times, being in harmony with the *Sruti* portion of all religions, his model of society and the interpretation of history on which that model was based need not be treated as valid for modern times.

Gandhi obviously did not believe in the abiding existential reality of the modern world. The author has quoted Ashish Nandy as saying that 'Gandhi rejected modernity, not on the grounds of ethics alone, *but also of cognition ...*' and that 'Gandhi reformulated the modern world in traditional terms to make it meaningful to his traditional society...' (p. 20, emphasis added). That means the treating of the traditional world as the real one and the modern world as the passing *Maya*. Little wonder then that people, who believe in the abiding character of the modern world (including its horrors, which nobody denies) and think in term of using the modern state structures for managing that world, don't give serious thought, (as admitted by the author - Pp. 19-20), to Gandhi's visions and ideas. More wonder is that the author claims (p. 158) that Gandhi's ideas are being 'persistently advanced as profound and credible answers to the ever intensifying crisis now confronting India'.

Gandhi treated modernity as a Western phenomenon and wished India to keep away from it. There Gandhi was wrong. What is modern certainly originated in the West, but it originated there only in the thirteenth or fourteenth century. At that time modernism was strange to the West also. The changes that happened to the society thereafter, through the growth of knowledge, industry and trade, were the result of three common traits of all human beings, namely, the quest for knowledge, acquisitiveness and belligerence in support of that acquisitiveness. Violence of the human nature persists. As shown by Van Den Bergh in his book *Nuclear Revolution,* only the integration of large chunks of humanity, their pacification and the growth of trade and industry were facilitated by the simultaneous monopolisation of violence by the state within its territorial extent. Today, we are in a 'modern era', not a 'Western era'. In this era, state power, corporate power, market power, trade

union power and the power of social organisations are all interacting on each other, all with the declared intention of achieving common good.

It is in this world that we have to live and operate. We cannot go back to the stage of self-sufficient villages that Gandhi had in mind. The author agrees that this idea of Gandhi is impractical today (p. 68). He has spoken of the interdependent nature of production (p. 68) but does not seem to have realised its implications. Today, if villages somehow become self-sufficient, having a minimum trade with other communities, as Gandhi envisaged, the urban people, who now constitute 40 per cent of the population, will die of hunger. A time has come for the city people to go to the villages and say to them, 'brothers, we, the city people are dependent on you for our food, so please see to it that you produce enough for us also; and if you are thinking of sending your children to the cities, please arrange to send their tiffin-boxes from the villages'. This reviewer said exactly this when he recently visited a village on behalf of an NGO.

Perhaps, this new society can be rolled back if everybody reduces his wants, but that is an 'if' which will never be met. So we must give up that pursuit and think of how Indian agriculture can provide nourishing food, clothing and other agriculture-related needs of the entire population. Indian agriculture will therefore have to be carried on with the help of scientific knowledge, modern inputs and modern commercial organisation. It cannot be organised on any moral principles.

That does not mean that moral principles have no place in modern society. Moral values and vision have always a place in any society, because without them society will degenerate into a law of the jungle. But morality is needed to put a voluntary check on the rich and powerful, not on the oppressed poor. Gandhi advocated that one should hold one's own money in trust for the society. That is a tall order. But ,at least, people's minds could be so prepared by education that bankers, project-managers, contractors, lawyers, doctors, etc., treat other people's money with respect and care and deliver good value for money received. Society entrusts its most precious treasure - the children - to the care of the teachers. The teachers should treat that trust with great love and care. This involves preparing the minds of people which can be done only through education.

It is in the field of education that the essence of Gandhi's ideas need to be propagated. Pinto could have done better to explore the application of Gandhi's ideas in this field, for a re-formation of the ideals and standards of the relatively affluent sections of Indian society.

B.P. Patankar,

Kabra, Kamal Nayan, *Development Planning in India: Exploring an Alternative Approach,* Sage Publications, New Delhi, 1997, Pp. 251, Price Rs. 295/-.

Kabra's purpose in writing this book is to try to 'explore relatively neglected dimensions of the planning process' (p. 15). He sees that this process has so far been identified with a centralised, state-controlled economy, with an exclusive emphasis on the economic aspect. We should, he says, think of planning in its wider sense, i.e., 'the application of systematic knowledge and reason to the ordering and steering of human social affairs in terms of explicitly articulated social concerns...' (p. 7). He feels that only 'an integrated social science approach can hope to do justice to the complex tasks and framework of planning' (p. 17). At the same time, he also acknowledges that 'advances in integrated social science capable of providing adequate means for systematic and planned use of planning have not gone far enough' (p. 25) and that there are 'limitations in being able to apply an integrated social science approach in a really effective and adequate manner' (p. 15). The author agrees that, so far, such an 'approach has hardly been in evidence and that it would be an uphill task to evolve it' (p. 232). What is more important is that, he says, '(i)t is unlikely to be evolved prior to its application, i.e., its emergence and evolution have to go hand in hand with its practical adoption' (p. 232).

The book limits itself to a consideration of methodology rather than 'the substantive issues of planning like strategy (content), priorities, policies, problems of implementation, etc.' (p. 17).

As regards identification of the planning process with a centralised, state-controlled economy, Kabra shows in Chapter 3 that an economy can have many types of partitioning. Consuming units are always partitioned; production in the capitalistic economies of the West has always been partitioned into competing units; the planning function can also be partitioned into several units. Thus, the degree of centralisation or decentralisation appropriate to a particular context can always be open to choice.

Kabra says that in India, only a small circle of private industrial houses has wielded the decision-making power in the industrial sector and, in the absence of an interface between the public and private sectors, there has occurred 'a wide chasm (between) the declared (planned) objectives and the actual outcomes" (p. 51). In the agriculture sector also which is a finely partitioned sector, planning decisions have remained centralised in the bureaucracy; the rural poor have never been able to participate in the process. In fact, a Planning Commission Working Group has remarked that 'if we wish to plan for the weak, the plan may have to be imposed from above and cannot be a product from below in which the below is dominated by the rich and the strong' (p. 52).

Kabra points out that the existence of a large public sector has not made much difference to the nature of Indian economy, which remains capitalistic inasmuch as the public sector itself 'continues to follow basically the logic of the market in its major decisions' (p. 81). 'A large part of Indian agriculture is (also) capitalistic in terms of use of wage labour, surplus value, generalised commodity exchange, real subsumption of labour, interaction with the state, monopoly and international capital, etc.' (p. 72) and also inasmuch as over one-fourth of the area under cultivation is held in 4 per cent of the land-holdings (p. 58); this capitalistic form of production had, at the time of Independence, very poor linkages with the rest of the economy.

Kabra finds (along with other scholars) that the model of planning introduced in India in this context has 'failed'. He attributes this failure to the plan's strategy being one-sided, i.e., designed only to raise per capita incomes through capital accumulation and industrialisation (p. 90-91). The non-economic aspects of social existence were ignored (p. 93). The state's efforts at capital accumulation and at directed investment resulted only in the growth of a black economy without benefiting the masses. Unemployment and poverty increased with the result that resources were required to be diverted to mitigate these problems, which reduced the surplus available for accumulation and output growth. The strategy thus failed not only in reaching its growth objectives, it also distorted the socio-economic frame-work—the quality of our democratic polity steadily declined, making the 'trampling of human rights of the ordinary citizens a daily occurrence' (p. 111). Kabra has also noted 'the failure (of the whole system) to develop strong backward and forward linkages within the economy in the spheres of labour use, material goods and natural resources' (p. 66).

It seems that the plan's failure referred to here is a theoretically perceived failure on the basis of what is called X-efficiency, i.e., the difference between what theoretically was attainable and what actually was attained (p. 135; also see Pp. 131, 150 and 179). Failure in this sense should not blind us to the fact that in terms of production and technological ability, India has made advances in many spheres and it is only the uncontrolled growth of population which has robbed the masses of the benefits of this material growth. Moreover, Kabra himself acknowledges that the social science approach on the basis of which, apparently, the level of 'attainable' has been estimated, is not a well developed discipline. Therefore the word 'failed' written by scholars on the report-cards of the planners need not unduly unnerve the latter. We can take this

judgement as a constructive dissatisfaction about whatever we have achieved and an indication that we can and ought to do better.

Coming back to the centralisation-decentralisation question, Kabra has examined the state of district planning. He has correctly identified the three difficult areas connected with district planning, namely, the weakness of regional and local bodies (p. 190), the paucity of data on economic flows specific to a district, and lastly, the problems of resource-allocation (p. 191). It is presumably because of these difficulties that micro-level planning or 'bottom-up planning' has not made much head-way and, as late as the Eighth Plan period, micro-level planning was proposed to be taken up only on an experimental scale (p. 200).

The question of the meaning of district planning needs to be examined more thoroughly than has been done in this book. The economic problems faced by every district are, more or less, similar. For example, the problems of water-shed development, literacy, family planning, etc., apply equally to every district of India. That makes a strong case for centrally designed schemes, refined from time to time as a result of the experience gained in the field. How far the concept of bottom-up planning is really feasible needs to be considered prior to advocating that type of planning.

Kabra finds that plan-implementation is the weakest link in India's planning process (p. 127 and 134). 'Working of national level planning was not integrated with the functioning of the major departments and ministries of the central and state governments' (p. 116). 'The relationship between planning and the finance ministry/departments remained uneasy' (p. 116). 'Adequate and effective measures could not be devised for ensuring that the private sector followed the plan's social priorities' (p. 117). Kabra has brought out the importance of planning the implementation process, since such planning would not only make implementation easier but will also ensure the formulation of implementable plans (p. 150).

It would, however, appear from the neglect of this subject in the Western academic circles also (p. 151) that no general theories can be put forward for the planning of the implementation process, except saying that one should analyse the experience in each field and learn appropriate lessons. The experience gained in a programme of mid-day meals in schools can hardly be made use of in the area of social forestry, which again is different from organising road transport.

India has now opted for the policy of liberalisation. Kabra describes this new policy as 'basically a response to the external forces and the needs of the creditor (donor) nations' (p. 194). This description may be literally correct but does not imply that it is wrong on that account or that there was any alternative available at that particular juncture of time. A discussion on planning in the new context will have to be limited to how best now to achieve the original objectives of planning. The Planning Commission did realise, while formulating the Eighth Plan, that the new need was to dovetail the market mechanism and planning (P. 198). Kabra describes this approach as 'undoubtedly sensible and perhaps the only realistic, realisable possibility' (p. 198). He, however, doubts whether the Planning Commission has any clear perceptions about the line of action, because he argues that the further plan-formulations were of 'less than scientific character' and were implemented in the form of 'ex-post regulations and licensing of a few large private investment proposals without ex-ante attempts to direct and facilitate private investments' (p. 199). This last criticism may be true in some cases but one finds that the clearance of foreign-funded power projects or the opening of the insurance sector to foreign capital is being done after a good deal of ex-ante deliberation. The present government also seems to be conscious of the need for ex-ante attempts to direct and facilitate private investments, as shown by the reported move to revamp the Planning Commission and to have more interface with private industry (*Hindu*, December 21, 1998).

One question crops up after reading the book. Whom is it addressed to? The principle of planning and the planning function should be applicable even to the planning of a book. The planning of this book unfortunately leaves something to be desired.

Firstly, the language used in this book is not lucid enough for a student. Some examples are given below:

1. The author, while discussing the importance of paying attention to non-economic parameters of planning and to the planning of plan-implementation, says: 'The question is whether the social, political and economic differentiation can be taken as capable of being homogenised and taken to higher levels indirectly (ignoring the issue of alternative directions) through an aggregative approach and transformed keeping in mind the desired time-frame, speed and costs' (p. 93). One can hardly make out from this passage what the author wants to convey.
2. See another sentence: 'It is observed in principle and to a large extent even in reality, that planning agencies are different from implementing agencies' (p. 128). One wonders what is this 'observation in principle'.
3. Or take yet another sentence: 'But a *clear perception* (emphasis added) of existing interconnections and their planned, gradual modification with demarcation of strategic and tactical questions could be avoided only with an unhelpful impact on the effectiveness of planning' (p. 118). The author has tried to pack too much meaning in this sentence which has, consequently, become abstruse. Secondly, it shows that the author is taking a remote position and just making a pronouncement, without himself trying to offer us any 'clear perception'.

The book lays great store by the social science approach. But that approach is as yet uncharted and untested. Planners and politicians would have much liked to have a more detailed charting of the social-science approach with some well-argued prescriptions, rather than a daunting array of several factors which have to be analysed before any prescription can be arrived at.

In sum, while this book has dealt with the methodological aspects of planning in a scholarly way and has expressed what we may call a constructive dissatisfaction about the outcomes of India's planning process, it would have been a more useful book had it been written in a simpler language and contained more analysis of the interface between socio-political factors and the planning process, with reference to the Indian context.

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FORM IV

(See rule 8)

Statement about ownership and other particulars about newspaper (Journal of Indian School of Political Economy) to be published in the first issue every year after the last day of February.

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I, R.M. Honavar, hereby declare that the particulars given above are true to the best of my knowledge and belief.

Date: May 1, 1999

R.M. Honavar
Signature of Publisher

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Maital, S., 1973; 'Public Goods and Income Distribution', *Econometrica*, Vol. XLI, May, 1973.

Chakravarty, S. 1987; *Development Planning: The Indian Experience*, Clarendon Press, Oxford.

If a Reference is cited in a Note, the Note may use the shortened reference form:

4. For a critique of recent industrial policy proposals, see Marshall [Marshall, 1983, Pp. 281-98].

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All tables, graphs, figures, and illustrations should be numbered and amply spaced on separate sheets of paper indicating in a marginal note in the text where such material is to be incorporated. Mathematical equations should be typed on separate lines and numbered consecutively at left margin, using Arabic numerals in parentheses. Use Greek letters only when essential. The word *per cent*, not the symbol %, should be used in the text and the tables.

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