

HUMAN RIGHTS IN INDIA

A MAPPING

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Discussions with D.J.Ravindran and Muralidhar helped to set the agenda for a preliminary mapping of human rights issues in India. We also thought that there should be a shy at extracting a definition of human rights, but that was dropped as being perhaps not quite relevant in a 'preliminary' work. Ravi also found a way for me to shrink the period of work from a projected three years to six-nine months.

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I. INTRODUCTION

A. Emergence of Civil Liberties Movements

In India, the last quarter of the 20th century has been witness to a growing recognition of the place and relevance of human rights. It is axiomatic that this interest in human rights is rooted in the denial of life and liberty that was a pervasive aspect of the Emergency (1975-77). The mass arrests of the leaders of the opposition, and the targeted apprehension of those who could present a challenge to an authoritarian state, are one of the dominant images that have survived. The involuntary disappearance of Rajan in Kerala is more than a symbol of the excesses of unbridled power.¹ Forced evictions carried out in Delhi in what is known as ‘Turkman Gate’ conjures up visions of large scale razing of dwellings of those without economic clout, and of their displacement into what were the outlying areas of the city. The catastrophic programme of mass sterilisation is an indelible part of emergency memory.

The civil liberties movement was a product of the emergency. Arbitrary detention, custodial violence, prisons and the use of the judicial process were on the agenda of the civil liberties movement.²

B. Women’s Movement

The same period also saw the emergence of a nascent women’s movement. In December 1974, the Committee on the Status of Women in India submitted its report to the Government of India preceding the heralding in of the International Women’s Year in 1975. The Status Report, in defiance of standard expectations

- set out almost the entire range of issues and contexts as they affected women. Basing their findings, and revising their assumptions about how women live, on the experiences of women and communities that they met, the Committee redrew the contours of women’s position, problems and priorities.
- gave a fillip to the re-nascent women’s movement.

The women’s movement has been among the most articulate, and heard, in the public arena. The woman as a victim of dowry, domestic violence, liquor, rape and custodial violence has constituted one discourse. Located partly in the women’s rights movement, and partly in the campaign against AIDS,³ women in prostitution have acquired visibility. The question of the practice of prostitution being considered as ‘sex work’ has been variously raised, while there has been a gathering unanimity on protecting the women in prostitution from harassment by the law. The Uniform Civil Code debate, contesting the inequality imposed on women by ‘personal’ laws has been resurrected, diverted and re-started. Representation, through reservation, of women in parliament and state legislatures has followed the mandated presence of women in panchayats. Population policies have been contested terrain, with the experience of the emergency acting as a constant backdrop. ‘Women’s rights are human rights’ has demanded a re-construction of the understanding of human rights as being directed against action and inaction of the state and agents of the state. Patriarchy has entered the domain of human rights as nurturing the offender.

C. Public Interest Litigation

In the late ‘70s, but more definitively in the early ‘80s, the Supreme Court devised an institutional mechanism in public interest litigation (PIL). PIL opened up the court to issues concerning violations of rights, and non-realisation of even bare non-negotiables⁴ by diluting the rule of *locus standi*; any person could move the court on

1 Another instance from the Emergency era is reported in *Niyamavedi v. CBI* (1999) 1 Ker LT 56, where the confessions of a police officer who pulled the trigger in a fake encounter a quarter of a century ago reopened hitherto unresolved questions.

2 *A.D.M. Jabalpur v. Shiv Kant Shukla* (1976) 2 SCC 521 had been a blow to civil liberties. But while the court as an institution that could speak on the side of civil liberties stood discredited, the decision did little to staunch the tide of resistance and protest.

3 About this linking up of prostitution as a high-risk group and AIDS, *infra*

4 As witnessed in cases concerning bonded labour, undertrial prisoners including women in ‘protective’ custody, for instance, *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161; *Hussainara Khatoon v. Home Secretary, State of Bihar* (1980) 1 SCC 81 et seq.

behalf of a class of persons who, due to indigence, illiteracy or incapacity of any other kind were unable to reach out for their rights. In its attempt to make the court process less intimidating, the procedure was simplified, and even a letter to the court could be converted into a petition.⁵ In its early years, PIL was a process which

- recognised rights and their denial which had been invisibilised in the public domain. Prisoners, for instance, hidden amidst high walls which confined them, found a space to speak the language of fundamental and human rights.
- led to 'juristic' activism, which expanded the territory of rights of persons. The fundamental rights were elaborated to find within them the right to dignity, to livelihood, to a clean environment, to health, to education, to safety at the workplace....The potential for reading a range of rights into the fundamental rights was explored.

Individuals, groups and movements have since used the court as a situs for struggle and contest, with varying effect on the defining of what constitutes human rights, and prioritising when rights appear to be in conflict.

D. Struggle Against Pervasive Discrimination

Dalit movements have kept caste oppression, and the oppression of caste, in public view. Moving beyond untouchability, which persists in virulent forms, the movement has had to contend with increasing violence against dalits even as dalits refuse to suffer in silence, or as they move beyond the roles allotted to them in traditional caste hierarchy. The growth of caste armies in Bihar, for instance, is one manifestation. The assassination of dalit panchayat leaders in Melmazzhuvur in Tamil Nadu is another. The firing on dalits by the police forces when they were seen to be rising above their oppression in the southern tip of Tamil Nadu is a third. The scourge of manual scavenging has been brought into policy and the law campaigns; there have been efforts to break through public obduracy in acknowledging that untouchability exists. In the meantime, there are efforts by groups working on dalit issues to internationalise deep discrimination of caste by influencing the agenda of the World Conference Against Racism.

E. Resisting Displacement Induced By 'Development' Projects

There has been widespread contestation of project-induced displacement. The recognition of inequity, and of violation of the basic rights of the affected people, has resulted in growing interaction between local communities and activists from beyond the affected region, and the articulation of the rights and the injuries has been moulded in the process of this interaction.

Resource rights were agitated in the early years of protest in the matter of forests; conservation and the right of the people to access forest produce for their subsistence and in acknowledgment of the traditional relationship between forests and dwellers in and around forests. Environmentalists and those espousing the dwellers' and forest users' causes have spoken together, parted company and found meeting points again, over the years. The right to resources is vigorously contested terrain.

F. Communalism

The 1980s, but more stridently in the 1990s, communalism has become a part of the fabric of politics. The anti-Sikh riots following Indira Gandhi's assassination was a ghastly reminder that communalism could well lurk just beneath the surface. The Bhagalpur massacres in 1989 represent another extreme communal manifestation. The demolition of the Babri Masjid on December 6, 1992 is an acknowledged turning point in majoritarian communalism, and impunity. The complicity of the state is undeniable.

The killing of Graham Staines and his sons in Orissa was another gruesome aspect of communalism. The questioning of conversions in this climate is inevitably seen as infected with the communal virus. The forcible 're-conversion' in the Dangs area in Gujarat too has communal overtones. Attacks on Christians are regularly reported in the press, and the theme of impunity is being developed in these contexts.

⁵ Called 'epistolary' jurisdiction.

G. New Movements and Campaigns

The professionalising of the non-governmental sector has had an impact on finding public space for certain issues and in making work on the issues sustainable. Child labour, AIDS-related work, the area of devolution and aiding women's participation in panchayat institutions, and battling violence against women have found support and sustainability in funding infrastructure development and support. These have existed alongside civil liberties groups and initiatives, grassroots campaigns such as the Campaign for the Right to Information based in Rajasthan, the development struggle which has the Narmada Bachao Andolan at its helm, or the fishworkers' forum that has combated, sometimes successfully, the encroachments by the large-scale and capital-intensive into the livelihoods of traditional fishing communities.

Movements for self-determination, militancy, dissent and the naxalite movement have provoked various extraordinary measures which have, in turn, prompted human rights groups into protest and challenge. The Terrorist and Disruptive Activities (Prevention) Act (TADA) is an instance.⁶ The Armed Forces Special Powers Act (AFSPA) continues. Encounter killings, disappearances and the ineffectiveness of the judicial system in places where 'extraordinary' situations of conflict prevail, characterise the human rights-related scenario. A jurisprudence of human rights has emerged in these contexts.

Networking, and supporting each other through conflicts and campaigns, is not infrequent. There are glimmerings of the emergence of, or existence of a **human rights community** in this. This has had groups and movements working on tourism, forest dwellers rights, civil liberties, displacement, women's rights and environment, for instance, finding a common voice in protesting the nuclear blasts in May 1999, or in condemning the attacks on the filming of 'Water' which had undisguised communal overtones. There has also been a building of bridges across causes and the emergence of an inter-woven community of interests.

As the vista of rights has expanded, conflicts between rights have begun to surface. There has been a consequent prioritisation of rights. The determination of priorities has often depended on the agency which engages in setting them- sometimes this has been environmental groups, at others workers, and yet other times, it has been the court, for instance.

In this general setting, we embarked on a mapping of

- human rights issues
- responses – state and non-state – to human rights situations
- conflicts between rights and prioritisation of rights, and
- a miscellany of issues including the treatment, and the place of state and non-state violence, and the question of who speaks for whom, and the relationship between the advocate of an interest and the persons or classes of persons affected by the advocacy.

II. THE STUDY

The mapping exercise involved travel to the states of Maharashtra, Andhra Pradesh, Kerala, Karnataka, Rajasthan, West Bengal, Orissa, Tamil Nadu, Uttaranchal and Delhi. We travelled to Mumbai in Maharashtra, Calcutta in West Bengal, Bhubaneswar and Konarak in Orissa; Ernakulam, Neyyali, Thrissur, Kottayam, Tiruvananthapuram and Calicut in Kerala; Bangalore in Karnataka; Ajmer District in Rajasthan; Hyderabad, Nalgonda District, Puttur, Chittoor and Tirupati in Andhra Pradesh; Chennai, Poonamallee District, Tuticorin, Tiruchendur (Nadunaalumoolai Kinaru village), Madurai and Chingleput in Tamil Nadu; Dehradun, Almora and Nainital in Uttaranchal. The work done in documenting a human rights network in Orissa in July 1999 by one of us, and visits to Bhopal and Chattisgarh while researching common property resources in Madhya Pradesh in 1998-99 were also drawn upon. On a visit to Dhaka, human rights groups, lawyers and affected people were met with in May 2000, as part of a regional study on human rights. That experience too has been inducted into interpreting the human rights arena in India.

⁶ This Act was first enacted in 1985, reenacted in 1987 and for further periods of two years each time, till it lapsed in 1995. Interestingly, the National Human Rights Commission (NHRC) was among the TADA's most vocal opponents.

In an attempt to understand the role, and influence, of the courts in the context of human rights, the law reports covering cases from all the High Courts and from the Supreme Court were comprehensively researched from 1994 to 2000. The Annual Reports of the NHRC have also been analysed.

We met movement people, campaigners, persons from NGOs, community based groups, civil libertarians, political activists, journalists, academics, government functionaries, panchayat leaders, bureaucrats and lawyers, among others. We also met victims of human rights violations.

As far as possible, we did not predetermine the people we would meet in the states we visited, but allowed a flexibility which would take us from lead to lead. We also attended workshops and conferences which would give us insights into issues, as well as what people thought about them. In Konarak, therefore, one of us attended a Dialogue Among Activists, where arrest, detention and firing on protesters was under discussion among activists working among communities who were resisting their displacement from areas being taken over for projects, particularly mining. Within a week of the meeting, in December 2000, firing claimed the lives of three tribals in Koraput district when they were protesting mining incursions into their area, standing testimony to the legitimacy of the concern of the activists at the meeting. Again, one of us attending a planning meeting for conducting a census of the practice of untouchability; this was in January 2001, in Hyderabad, where dalit activists helped a funding agency set the terms of the study. We attended a workshop to discuss how to stall the changes being proposed in the bureaucratic circles, to Schedule V of the Constitution - which would deprive tribal areas of protection from alienation of land to non-tribals. One of us attended the meeting of the Campaign against Death Penalty where campaigners from across the country participated. There were, further, meetings on slums and demolitions, the women's movement in the last 25 years, the International Criminal Court (in Mumbai, and in Dhaka, after Bangladesh had signed on to the statute), juvenile justice, proposed changes in labour law and on strategising for participating in the World Conference against racism. We also organised a discussion-meeting on a Code of Conduct for Corporations, which is in a draft form before a committee set up by the Office of the High Commissioner for Human Rights in Geneva.

In the succeeding sections in this report, it will be our endeavour to set out the issues, responses and conflicts that we encountered, especially during the period of enquiry, viz. May 2000 to February 2001.

III. A MAPPING OF HUMAN RIGHTS ISSUES

This section sets out the issues which inhabit the human rights landscape in areas of ordinary governance.

A. Custodial Violence

Custody death, torture in custody and custodial rape have been subjects of much concern. Custodial violence has been on the agenda of civil rights groups for over two decades, and reports documenting instances of violence and its systemic occurrence, have been instrumental in the campaigns against custodial violence. Although custody deaths have found an acknowledgment from the state, and the NHRC has issued directions to the states

- to report of the NHRC any death in custody within 24 hours of the occurrence, and
- to videotape the post-mortem proceedings,

it is difficult to assess if this has resulted in any reduction in the incidence of custody deaths. NHRC reports show a marked increase in the reported cases of custody deaths each year. This is attributed, by the NHRC, to increased reporting and not to increased incidence of the crime; this, however, needs to be further investigated.

The incidence of custody deaths demonstrates more undeniably the brutalisation of the processes of law enforcement by the police and armed forces. However, custodial torture (not resulting in death) is not at the focus of campaigns to reduce custodial violence. There are few places which have taken up the treatment of the victims of torture as victims of torture. The Indian state, in the meantime, has resisted attempts (including that of the NHRC) to have it ratify the Torture Convention.

In recent reported cases from the Gauhati High Court, it is 15 and 16-year olds who are found to have been victims of state violence, and the defence of the state has been that they were hardened militants.⁷

Custodial rape has found an expanded definition - in terms of power rape - in the Penal Code, 1860.⁸ However, these provisions have hardly been invoked. In the meantime, most often, judicial perceptions of the victim of custodial rape have in significant measure, discredited the victim's version, and blamed the victim resulting in reduction of sentence for policemen convicted of rape to less than the minimum prescribed in law.

From Mathura to Rameeza Bi to Maya Tyagi to Suman Rani - these women have become symbols of patriarchal prejudices. Campaigns in the matter of custodial rape have invoked their name, and they are now names that are etched into the history and legend of the women's movement. In the meantime, the legal dictum that the identity of a victim of rape be not disclosed to protect her privacy has been set in place.

B. Project displacement

Project displacement, for the construction of large dams or for power projects, for instance, have led to protest movements directly involving the affected people. The NBA has utilised strategies and tactics of protest - including *jal samarpan*, human chains, working on the funders and the contractors to withdraw, participating in the proceedings before, and surrounding, the World Commission on Dams - which have refused to let the issue be drowned out. This has also seen the manufacturing of conflicting forces, such as the pro-dam lobby which is believed to be largely state-sponsored.

Human rights issues that arise include

- displacement, per se
- the poverty of rehabilitation, and often, the impossibility of rehabilitation
- the impoverishment that results from displacement
- the non-reckoning of cultural and community identity and of rights.

What constitutes development has come into severe question in this arena.

The Land Acquisition Act 1894 has been at the centre of protests. Among the strategies adopted to deal with the coercive nature of the law has been the drafting of alternative legislation. The obduracy of the state in not approving a policy for rehabilitation of the displaced has also been cause for protest.

C. The internally displaced due to conflicts

The large-scale internal migration caused by political violence has created classes of internal refugees. During the years of militancy in the Punjab, after the anti-Sikh riots in 1984, and the movement of Kashmiri Pandits out of the valley have provided visible evidence of such migration. While the violence that preceded the migration has been squarely addressed in human rights terms, the rehabilitation and return of the migrants after displacement appears to have been only on the margins of the human rights movement.

D. Refugees

India has not ratified the 1951 UN Convention on Refugees, nor has it signed the 1967 protocol. The Indian state has generally resisted visits from the UNHCR to camps where refugees are housed. Activists say that the Indian state has been relatively benign towards refugees. According to one non-governmental source, in 1999, India

⁷ *Smt.Kangujam Thoibi Devi v. State of Manipur* 1999 Cri LJ 3584; *Smt.Narayani Sharma v. State of Tripura* 1999 Cri.L.J 3642.

⁸ s. 376A, et seq IPC.

hosted more than 2,92,000 refugees; which includes more than 16,000 persons from Afghanistan, 65,000 Chakmas from Bangladesh, 30,000 Bhutanese of Nepali origin, 50,000 Chin indigenous people from Myanmar and about 39,000 pro-democracy student activists from Rangoon and the Mandalay region, 1,10,000 Sri Lankan Tamils of whom 70,000 are in camps and 40,000 outside, 1,10,000 Tibetans and around 7000 persons from other countries.⁹

The assassination of Rajiv Gandhi in 1991 has reportedly altered the treatment meted out to the Sri Lankan refugees. According to a fact-finding report of a civil liberties organisation in Tamil Nadu, Sri Lankan refugees fall into three categories: those who are in the 133 refugee camps; refugees who maintain themselves outside the camps; and those who have been identified as belonging to militant groups who were kept in virtual rigorous confinement in the three special camps. In August 1995, 43 inmates of the Special Camp at Tippu Mahal, Vellore escaped and a one-man commission set up by the state describes the structure and administration of the camps. The refugees were found to be prisoners in these camps and, as even the state appointed commission had remarked, 'admittedly these inmates or most of them are in rigorous confinement in the special camps for five or six years continuously.' The testimony of the two inmates to the fact-finding team also revealed that the camp in Vellore had among its inmates at least 12 disabled persons.

The Government of India does not appear to have any policy on how to deal with refugee-prisoners in their camps.

The protection of Chakma refugees in the state of Arunachal Pradesh, and their right to have their claim for citizenship considered, was canvassed by a civil liberties group before the NHRC. The Supreme Court, approached by the NHRC, directed that the threats held out to the Chakmas by the local citizens be dealt with by the state. It also asserted that their applications for being granted citizenship be considered under the Citizenship Act. The difficulties besetting refugees even after long years of residence in a state, with state acquiescence, were in evidence here.

E. Land Alienation

The loss to communities of right over land is widespread, and various movements to recover control over land and related resources have been active particularly in the past decade and a half, though some movements go back many decades.

The issue of tribal land alienation was linked with that of displacement, and the judicial system was used to get an order declaring unconstitutional the transfer of land from a tribal to a non-tribal through the medium of the state (in its land acquisition capacity).¹⁰ Recent efforts to delete this constitutional protection given in Schedule V of the Constitution are being resisted as a denial of basic protection given to tribals, paving the way for their displacement and impoverishment.

The issue of land alienation was one of the primary issues in the struggle for separate statehood for Uttaranchal, and till today is identified as one of the main rights violations occurring in the state.

In Kerala, the issue is differently positioned. While the loss of land to the tribal is viewed as a violation of their rights and protection of those rights, the settlers are largely people who are themselves on the economic margins. While groups from within the tribal communities have been demanding restoration of alienated land, and the High Court has supported their stand, other human rights advocates maintain an uneasy silence since the contest appears to be between two vulnerable communities.

F. Right Over Resources

The right of the forest dwellers to reside in forests, and for those dependent on forest produce to have access to forests, is contested terrain. Till recently, there were conservation groups which demanded that removing tribals from within forest areas was necessary in the interest of conservation. This stand has softened somewhat, and a more symbiotic relationship between the forest and the dweller recognised as possible. The problems are now spoken of in terms of overpopulation, and over-grazing, in the forest area.

⁹ The same source also discloses that there are more than 5,20,000 people internally displaced due to political violence, including about 3,50,000 Kashmiris and over 1,70,000 others of various ethnicities displaced in the north-east.

¹⁰ *Samatha v. State of A.P.* (1997) 8 SCC 191.

State policy is, however, widely perceived as being inimical to the continuance of the forest dweller within the forest. 'Settling' of rights and interests is therefore met with deep suspicion, as is happening in Madhya Pradesh. Activists have therefore been mobilising the grassroots - in MP, it was through a *padayatra* over a period of six months - to resist the conservation projects which may end up pauperising the dwellers, and, further, may denude the forest too.

There have been attempts in the early '90s to prepare a new Forest Bill that will contain within it the interests of conservation, and of the people. Efforts such as this have stalled the legislation proposed by the state which groups and movements see as being opposed to rights - including the right to livelihood, to culture, to security, to shelter, among others - even while the alternative bills have hardly ever been adopted.

An activist identified the problem of land and resources being related to how possession and ownership of land are perceived. There are three kinds of property he said:

- private property
- public property
- common property

What is held as 'public property' by the state, he said, has been treated as property owned by the state, and not held in trust by the state. It is the notion of common property that has to be resurrected and advanced.

The entry of mining interests into Orissa has, for instance, brought into the open the problem that is inherent in globalisation when it comes into conflict with local interest. The unequal, triangular contest between multinational mining interests, the state which binds itself to protecting the multinational interest on Indian territory, and the local dwellers - in the case of mining, it is often tribals - manifests itself as a human rights issue.

Aquaculture, which brings in corporations to exploit resources through prawn culture, for instance, has been resisted on grounds of loss of livelihood, long-term destruction of marine life and consequent degradation of the environment. Corporatised aquaculture and shrimp farms have been banned.¹¹ Deep-sea trawlers have also been banned, and the livelihood and lives of fisher communities salvaged. So, too, with prawn culture. Human rights activists see setbacks to these efforts at preservation of community livelihoods and of the environment in the Aquaculture Bill that has been presented to the Parliament in 2000.

The Aruvari Sansad (Water Parliament) in Ajmer district in Rajasthan, which, with the help of the Tarun Bharat Sangh, an NGO, has wrested control over the river, the check dams it has built along it, the revived rivers and the fish that have sprung into being in the river is an uncommon assertion over water and water resources to the exclusion of agencies of the state.

The issue of land reforms and the redistribution of land was encountered in Andhra Pradesh. The Peoples War Group, for instance, avers that land reform is at the root of their attacks against the state. The problem of professional land grabbers, and the response of land invasion to take possession of land which should rightly belong to the invading community, was also seen in Andhra Pradesh. State response has been to treat the attacks, and invasion, as public order, or law and order, problems.

The loss of tribal land through land alienation - something that the law limits - has raised other issues in Kerala, for instance. The land had been bought from the tribals by settlers who are themselves economically and socially marginalised. A prolonged legal battle, where the court had directed the return of the land to the tribals, has not seen a solution to the contending interests of two communities, each in need of protection from expropriation.

G. Urban Shelter and Demolition

There has been a routinising of the emergency visible in the matter of cleaning up of the cities. In 2000-2001, Delhi has seen a spate of demolitions of 'slums'. The slum dwellers have been divided up into eligibles and

¹¹ *S.Jagannath v. Union of India* (1997) 2 SCC 87.

ineligibles, with the eligibles being given very small plots of land on which they are required to construct houses within six months on a licence basis. The size of the plot ensures that it is only a 'slum' that develops. The 'ineligibles' are not thereafter considered by state policy. Housing rights activists too do not appear to have been able to identify what happens to the ineligible when demolition occurs.

In Bangalore, housing rights groups have been attempting to demonstrate the effort and money that 'encroachers' expend on the land on which they settle; and that they have worked for their entitlement to alternative plots.

In Bombay, and to a lesser extent elsewhere, there have been attempts to involve the slum dwellers in reconstructing the area in a manner which will let the slum disappear, while they are given places in high-rise tenements in the same area with the rest of the space to be used commercially.

In Patna, an order of the High Court in a PIL, requiring the municipal corporation to demolish encroachments, resulted in a demolition spree that an embarrassed court had to step in to stop.¹²

The illegal status of the urban dweller who cannot afford to purchase legality has been aggravated by B.N. Kirpal, J saying:¹³ 'Establishing or creating slums, it seems, appears to be good business and is well organised... Large areas of public land, in this way, are usurped for private use free of cost... The promise of free land, at the taxpayers' cost, in place of a jhuggi, is a proposal which attracts more land grabbers. *Rewarding an encroacher on public land with free alternate site is like giving a reward to a pickpocket.*'

Unlike South Africa, where the state's obligation to provide shelter **before** destroying even an illegal habitat was recognised, drawing upon international law,¹⁴ there is no such recognition in Indian law or judicial decisions. Activists and campaigners therefore face an unenviable, if unavoidable, task of combating the anti-poor stand of the state.

Pavement dwelling, and houselessness, was raised in the '80s¹⁵ and, though it may never really have disappeared, it has resurfaced more rigorously since the demolitions have begun in Delhi.

Migrant workers living on pavements have been particularly vulnerable to random attacks in areas of militant violence. Newspapers have reported such occurrences in the '90s. This issue affecting migrant labour particularly needs to be addressed.

The 'clearing' of pavements by removing hawkers has been a phenomenon visible in most cities. Eviction of hawkers, and of dwellers, is a significant issue, and the demands include recognition not only of shelter, land and monetary compensation, but of livelihood too.

H. Livelihood

Apart from issues of rights over resources, and in the context of displacement and relocation, the death of cotton farmers has, for instance, raised questions about protection of livelihood. Liberalisation has resulted in loss of jobs to large numbers in the workforce, and we hear of deaths among the working classes. This is an area that seems to demand closer attention. The withdrawing of protective labour legislation, which is proposed, such as the 'abolition' part of the Contract Labour (Prohibition and Regulation) Act 1970, or the prohibition of night work for women except where specifically attempted, it is feared, is likely to shrink the rights of workers to a great degree. Freedom of association is also being re-cast in a new Trade Unions Bill, which labour leaders and activists believe is meant to stifle the powers of labour to group together and be heard. The casualisation of labour which the changes portend are expected to drastically reduce the bargaining power of labour.

In 1989, a PIL filed by two social/political activists from Orissa, led to the express recognition of starvation as a violation of fundamental rights.¹⁶ In 1994, the NHRC acknowledged that starvation is a violation of human rights

12 *Bhola Sah v. State of Bihar* (1999) 3 BLJR 1820 and *Parmottam Pd.Singh v. State of Bihar* (1999) 1 BLJR 716.

13 *Almitra Patil v. Union of India* (2000) 1 SCALE 568 at 570 (*emphasis added*)

14 *Govt. of the Republic of South Africa v. Irene Grootboom* Case CCT 11/2000 decided on October 4, 2000.

15 See for e.g., *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545; *K.Chandru v. State of Tamil Nadu* (1985) 3 SCC 536.

16 *Kishen Pattanayak v. State of Orissa* 1989 Supp 1 SCC 258

and ordered the state to pay compensation to the families of victims of starvation in Kalahandi in Orissa.¹⁷ In March/April 2001, academics/researchers from the Delhi School of Economics and the Madras Institute of Development Studies have asked for distribution of buffer stocks that the government has stored in its godowns, to stem the tide of hunger among those with low purchasing power.

The juggling with the public distribution system, and the defining and re-defining of the poverty line and consequently of 'below poverty line' is causing particular concern.

The death of 17 protesters chased by the police into the Tamaraparani river, and over 200 injured in the incident has been compared to the killing of innocent persons by the British at Jallianwallabagh 80 years ago. On July 23, 1999, a solidarity procession organised by several political parties proceeded to the Collectorate in Tirunelveli Town in South Tamil Nadu, demanding an early solution of the wage dispute that had been the cause of discontent and agitation among tea workers in the Manjolai Tea Estate. They also demanded the immediate and unconditional release of 652 tea estate workers who had been kept in the Tiruchi jail for six weeks following a demonstration before the same Collectorate on June 7 and 8, 1999. Talks on the labour dispute having failed, the political parties decided to present a charter of demands to the Collector. As the processionists neared the Collectorate, the police attempted to prevent the jeep which had the leaders of the agitation in it from proceeding further. As the crowd milled around, the events that ensued included a lathi charge by the police, the lobbing of tear gas and the police also opened fire. A video footage shows an injured person, bleeding, being carried away by four policemen. This injured person remains unaccounted for.

The police then chased the people down the banks of the river Tamaraparani forcing the people to jump into the water to save themselves from the police force. Photographs graphically reveal the pursuit of the people by the police into the river, even pushing the people back into the water. 17 people drowned. There were injuries on the person of the drowned victims, testifying to ante-mortem police brutality.

This episode constitutes a new threshold to police violence and brutality in labour related agitation and protest.

The 'clearing' of pavements by removing hawkers has been a phenomenon visible in most cities. Eviction of hawkers, and of dwellers, is a significant issue, and the demands include recognition not only of shelter, land and monetary compensation, but of livelihood too.

I. Sexual Harassment at the Workplace

This issue acquired visibility with the decision of the Supreme Court in *Vishaka*.¹⁸ Earlier efforts at having the problem addressed, as, for instance, in the Delhi University, has drawn strength from the guidelines set out in the judgment. It was widely reported, however, that it was still proving difficult to get institutions to adopt the guidelines and act upon it. The Madras High Court, for instance, was reportedly averring that the guidelines did not apply to the court; and allegations of sexual harassment by a senior member of the Registry were given short shrift. The process of setting up a credible grievance redressal mechanism was reportedly being watered down in the recommendation of a committee to the Delhi University. In Kerala, a Commission of Inquiry was set up after Nalini Netto, a senior official of the Indian Administrative Service, pursued her complaint of sexual harassment against a serving minister of the state cabinet - which is seen as a diversion from a representative investigative and redressal forum. P E Usha, in Kerala, faced hostility in her university when she followed up on her complaint of sexual harassment. There have been allegations of sexual harassment of women employees by senior persons within institutions working on human rights, and in progressive publications, which too have shown up the inadequacy of the redressal mechanisms.

- Translating the guidelines into norms in different institutions and workplaces;
- finding support systems for women who are sexually harassed
- breaking through thick walls of disbelief

¹⁷ NHRC, Annual Report 1994-95 at 39.

¹⁸ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.

are reckoned to be the priorities. This has also been introduced into programmes on gender sensitisation for judicial officers.

Sexual harassment accompanied by violence has become a common feature with cases of acid throwing where there is unrequited love,¹⁹ and harassment which has culminated in the murder of a hounded girl.²⁰

J. Rape

In the '80s and into the early '90s,

- the definition of rape
- the meaning of consent in the context of rape
- marital rape

was widely discussed, and alternative drafts and definitions essayed. While following *Tukaram and Ganpat's* case,²¹ 'power' rape was partially introduced into the law. The definition of rape, consent and the status of marital rape in law has however not been altered. Again, while the campaign's gains are witnessed in the Supreme Court holding that, as a rule, the victim's version should not require corroboration and that it should be given credence

- the trauma of the trial continues,
- the law's sanction to delving into character evidence concerning the victim remains in the Evidence Act²² despite the flood of criticism and protest it has provoked.

In Uttaranchal, an issue not uncommon in investigations into, and trial of, rape surfaced. It was reported that women who were raped at Muzaffarnagar are being pressurised not to testify in the criminal cases not only by the police but also by their own community and political leaders, particularly since monetary compensation has been paid.

In 1994, the National Commission for Women (NCW) was asked by the Supreme Court to propose a scheme for establishing Rape Crisis Centres, and for a Criminal Injuries Compensation Board, which could care for victims of crime.²³ This is yet to materialise. In the meantime, the women's movement in Rajasthan has got the administration to provide monetary relief to victims of rape, unconnected with trial and conviction. Though this has, at least occasionally, resulted in the veracity of the accusation being challenged as having been made so as to obtain the sum in compensation,²⁴ it is seen as a move to helping the woman recover.

Rape as reprisal was symbolised in Bhanwari Devi's experience. Bhanwari Devi, a *saathin* working in Rajasthan in and around her village, was part of a wider network of women who were involved in a state-sponsored programme of empowerment particularly of women and girls. Her intervention to thwart the practice of child marriage in the community around her is commonly acknowledged as having resulted in the gang rape that was inflicted on her - as punishment, by men of the dominant community who were outraged by her intervention. The acquittal of the alleged rapists, more especially the reasoning of the court, based on caste and hierarchies of belief, accentuates the re-victimising of the woman.

The low rate of conviction for rape, and the protest from women's groups, were held out to justify a proposed amendment to criminal law to provide death penalty for the offence of rape. The conflict between provisions of the

19 *Students of Andhra Pradesh Agricultural University v. Registrar, Andhra Pradesh Agricultural University* 1997 AIHC 2671 (AP)

20 As happened when Priyadarshini Mattoo, a law student, was followed by another student. She was killed in her house, all leads pointed to the university pursuer, but he was acquitted, with the judge castigating the prosecution for not having done its work adequately though the judge professed to being otherwise convinced of his guilt.

21 They were the convicted policemen in what is commonly referred to as the *Mathura* case: *Tukaram v. State of Maharashtra* (1979) 2 SCC 143.

22 s.155(4)

23 *Delhi Domestic Working Women's Forum v Union of India* (1995) 1 SCC 14.

24 *Mohanlal Amarji Marwadi v. State of Gujarat* (1996) 1 Guj LH 1059.

death penalty and human rights has surfaced, even if gradually, and the groups we met, as well as the National Commission for Women, have rejected the proposal for death penalty for the offence of rape.

K. Death Penalty

The civil liberties movement has been consistent in its opposition to the death penalty. For a brief while, there were some sections in the women's movement who supported - either vocally, or by their silence - the imposition of death penalty for rape. This too has been retracted, and death penalty for rape opposed. After the period in the early '80s, when the Supreme Court drew up the 'rarest of rare' rule,²⁵ there has been a downward slide, particularly discernible in the 1990s.

- Multiple death sentences,
- death penalty to minors, and
- death sentence while reversing acquittal

are not uncommon.

The campaign against execution of two youths in Andhra Pradesh who had been convicted of burning a bus which killed 23 passengers²⁶ saw concerted action, which resulted in their sentence being commuted by the President. The confirmation of the sentence of death on women is a relatively recent phenomenon. Ramashri's sentence was reduced to life by the Supreme Court, even as the court rejected the right of the NCW to intervene.²⁷ The sentence of death imposed upon Nalini, convicted in the Rajiv Gandhi assassination case,²⁸ has been opposed by human rights groups, along with the sentence of death meted out to three others in the same matter.

Death sentence confirmed despite dissent among judges of benches of the Supreme Court on the sentence that should be imposed is another, disturbing, occurrence.²⁹ Even doubts about the age of the accused - whether he had been less than 16 years of age and therefore a juvenile - were not sufficient to dispense with death sentence where death was awarded by a majority of judges.³⁰ That the young accused was defended by legal aid lawyers and that 'It is reasonable to presume, in such circumstances, that the amicus curiae or advocate appointed on State brief, would not have been able even to see the petitioner, much less collect instructions from him, during the second and third tiers'³¹ was noticed only by the minority judge.

Dearth of data, and difficulty of access to data is one obstacle to effectively countering the retentionists.

In the meantime, the proliferation of death penalty in recent statutes, viz.,

- the Narcotic Drugs & Psychotropic Substances Act 1985 (and as amended in 1988)
- National Security Guards Act 1986
- TADA 1987 (which lapsed in 1995, but trials under which continue)
- Arms Act 1950 (as amended in 1988)
- Indo-Tibetan Border Police Act 1992
- the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989
- Commission of Sati (Prevention) Act 1987

²⁵ *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, where it was held that death penalty would be the exception, and awarded only in the 'rarest of rare' cases, after considering 'mitigating' and 'aggravating' circumstances.

²⁶ *Gentela Vijayardhanrao v. State of A.P.* (1996) 6 SCC 241.

²⁷ *Panchhi v. State of U.P.* (1998) 7 SCC 177.

²⁸ *State v. Nalini* (1999) 3 SCALE 241.

²⁹ *State v. Nalini, ibid*; *Ram Deo Chauhan v. State of Assam* (2001) 4 SCALE 116.

³⁰ *Ram Deo Chauhan v. State of Assam, ibid.*

³¹ *Ibid* at 123 (per Thomas, J.).

- s.364 A IPC as introduced in 1993 - ‘kidnapping for ransom, etc.’

There has been a deafening silence from the NHRC on the issue of the death penalty.

L. Fake Encounters (Extra-judicial killings)

In India, extra-judicial killings by the police or the security forces are called ‘encounter killings’, meaning that the killing occurred during an armed encounter between the police or security forces and the victim. The killing by the state forces is most often declared to be defensive, cases of attempted murder and other related offences are registered against the victims, and the cases closed without further investigation since criminal cases come to an end upon the death of the accused. Despite being ‘unnatural deaths’, and the victim having been killed, no investigation ensues to determine whether the death was in fact in an actual encounter, nor whether the use, and the extent of use, of force was justified. This is an acknowledged strategy of the state for eliminating certain kinds of opposition to the state and the established order. In Andhra Pradesh, for instance, the naxalites have been the targets; in Punjab, it was the militant; in Mumbai, it is those who are alleged to be part of the underworld.

Civil liberties groups, journalists and lawyers have consistently challenged this practice over the past two decades. The demand as it has been articulated after recent episodes has been

- for doing away with state violence in the form of killings in fake encounters, and
- that all cases of encounter killings ought to be registered as first information reports (FIRs) and investigated before the case is closed. The practice of registering cases against the deceased and terminating the proceedings even before it begins is being vigorously challenged. The NHRC too has issued directions endorsing this recommended practice, but to little effect. These court, and out-of-court, battles have carried on throughout the ‘80s and the ‘90s to the present.

The Committee of Concerned Citizens (CCC), a group of individuals in Andhra Pradesh, has approached encounter killings differently. Addressing both naxalite groups and the state, the CCC has been working at de-escalation of violence. While the naxalite response has taken the CCC to the issue of land reforms as being fundamental in understanding violence of the opposition, the state, it is widely believed, is pursuing the path of unbridled unleashing of the use of encounters. The numbers killed in encounters have increased in the two years when the process of reconciliation was being negotiated by the CCC, making some of them ask if intervention by the human rights actors was actually prompting the state to escalate the violence.

The human rights community has had to contend with the issue of impunity which is immediately seen as arising from the non-registration and the non-investigation of cases.

M. Involuntary disappearances

The Punjab disappearances were brought into the open by two human rights defenders, Khalra and Kumar. Khalra was himself thereafter ‘disappeared’. Investigations into these disappearances - which were uncovered when mortuary records in three districts of the Punjab were scrutinised and ‘unidentified’ and partially identified persons were found to have been cremated without informing the families of the deceased - was handed over by the Supreme Court to the NHRC. The manner in which the matter was reduced to a point where the State of Punjab agreed to pay compensation of Rs. 1 lakh (*without admitting liability*) to the families of 18 persons who had been disappeared and the NHRC’s tolerance of this stand of the state, is striking in the *general denial of the phenomenon of disappearances*. This was after the CBI had found that bodies of several persons had been cremated surreptitiously in the late ‘80s and early ‘90s - 585 persons who had been subsequently identified had been cremated after being labelled as unidentified. Around 330 of them had been partially identified and over 1200 remained to be identified.³²

³² The investigation by the CBI was ordered by the Supreme Court in *Paramjit Kaur v. State of Punjab* (1996) 6 SCALE SP 21. After the CBI’s report was received the court, by an order dated 12.12.96 held that the families of those whose bodies had been identified would be entitled to compensation and that such compensation would be determined by the National Human Rights Commission.

The deficiency of compensation as a measure of reconciliation is also evident.

Disappearances appear to be a pattern where there is militant resistance to the state. Case law speaks of this phenomenon in the Northeast. In fact, the first major case of compensation for disappearance after being picked up by the armed forces was from the Northeast.³³ On February 27, 2001, newspapers reported that it was alleged in the Lok Sabha, without being effectively countered, that the number of persons missing from the custody of the security forces and the police has risen to 2174 in Jammu and Kashmir; 76 cases had been registered and only one person had been challaned so far.

- Acknowledgment of involuntary disappearances
- investigation, and seeking to establish what happened to the disappeared so that families and the community can finally know
- prosecution and punishment, for reasons of deterrence too, and
- compensation as a measure of atonement

are being sought to be worked into the system. It was also reiterated that reconciliation would be impossible to achieve without such acknowledgment, identification of the disappeared and reparation.

That Khalra disappeared even while the matter was being taken to the Supreme Court is a statement on impunity. The theme of impunity was laid out when K.P.S. Gill, the policeman in-charge in Punjab through the waning years of militancy, lashed out in protest when a policeman, Sandhu, committed suicide while facing multiple charges of excesses committed during the years of militancy. The schizophrenic attitude of the process which rewarded him when he killed 'terrorists', and later sought to prosecute him for abuse of power even amounting to murder, stood exposed. Gill

- blamed the judiciary for having been inactive, or of playing safe, when captured terrorists were brought before it, and
- held out the threat that if pursued by prosecution, the police would be unavailable to deal with militancy another time.

N. Extraordinary Laws

These have been one of the means of routinising the enactment of laws that are normally promulgated in an emergency or in extraordinary situations.

The Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA) was contested for

- its denial of fair trial standards - e.g., it reduced the tiers of appeal³⁴
- the provision regarding making confessions to a police officer admissible in evidence
- the broad contours of the law on what constitutes terrorism, and
- potential and proven abuse - for e.g., the largest number of TADA detainees were in Gujarat, where militant activity was not present.

The public condemnation of TADA, political opposition to it, the NHRC's spirited intervention and the state's assessment that it was no longer necessary, led to the law not being reenacted when it lapsed in 1995.

There have, however, been further attempts to revive the law - as in the Prevention of Terrorism Act recommended in 1999 by the Law Commission, for instance. Further, state laws in Maharashtra, Andhra Pradesh and, more

³³ *Sebastian Hongray v. Union of India* (1984) 1 SCC 339 and (1984) 3 SCC 82.

³⁴ The case would only travel from a single judge of a Designated Court directly to the Supreme Court, both for confirmation and in appeal.

recently, in Madhya Pradesh and Karnataka - as a measure against organised crime- have brought the TADA back into their states under a hardly disguised identity. Tamil Nadu has also proposed a Prevention of Terrorism Bill along similar lines.

The Armed Forces Special Powers Act 1958 (AFSPA) is another law which provides extraordinary powers. It has been in force in the Northeast for these years.

The TADA and the AFSPA survived challenge before the Supreme Court in the '90s. This has caused a serious re-think on the courts as a situs for testing the legitimacy of such extraordinary laws that deny fundamental rights, and breach human rights principles. It is evident that it is only vigilance, and resistance, which is keeping the proliferation of these laws in check.

The arrest and detention of civilians under extraordinary laws, like the TADA, also appears to be routine. It has been alleged, for instance, that villagers in the vicinity of Veerappan, the sandalwood smuggler's beat are routinely subjected to harassment, search and detention. In the negotiations for the release of actor Rajkumar who was taken hostage by Veerappan on July 30, 2000, the release of 51 detainees being held under TADA since 1992 on suspicion of having participated in the murder of policemen was in issue. Human rights activists claim that many of them were local people who had been roped in as being 'associates' of Veerappan. When a civil liberties organisation moved the court for release of those so incarcerated, the petition was not entertained. But during the negotiations, the government of Karnataka showed a readiness to release them in the interests of law and order, and also, significantly, since others released on bail earlier 'have not repeated the offences and they have not involved themselves in any similar offences and terrorist activity have not been noticed recently in the area.'³⁵

O. Preventive Detention

When the Constitution came into being in 1950, preventive detention laws were avowedly intended to be a transient measure. During the emergency, the Maintenance of Internal Security Act 1971 (MISA) was among the more infamous laws which allowed for preventive detention of persons in the avowed interest of maintenance of internal security. There are now a number of legislations which permit preventive detention, in the states and at the centre. The National Security Act 1980 (NSA) is an instance of the latter. The A.P Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders & Land Grabbers Act 1986 is an example of the former.

Public protest against the continuance of these laws is almost inaudible despite

- the long periods, sometimes up to two years, that a person may be kept in preventive detention
- the tardiness of the procedure prescribed - e.g., the executive may be given up to three months to get the opinion of the Advisory Board which may effectively have a person in custody under executive order up to ninety days
- the range of activities that are allowed to be covered by preventive detention laws that are unconnected with public order or law and order.

Unlike the challenge to the TADA, preventive detention laws have not engaged the human rights community in any sustained manner.

P. Detention

A range of detentions including those that were plainly illegal came to light during the course of our work:

- The incarceration of persons deemed to be 'non-criminal lunatics' (NCLs) or the wandering mentally ill in jails was investigated in a PIL before the Supreme Court. These are persons picked up under the Police Acts of the states, or under police powers in other laws such as the Indian Lunacy Act 1912, or its successor law,

³⁵ *Abdul Karim v. State of Karnataka* (2000) 7 SCALE 313 at 320.

the Mental Health Act 1987. They are treated as 'nuisances', or bracketed as being dangerous, this providing the rationale for putting them away. The term NCL is in contradistinction to 'criminal lunatics', that is, those accused of crime but found to be mentally ill or suffering from mental disorder. For years NCLs were received in jails as places of 'safe custody' under the Indian Lunacy Act 1912 and later under the Mental Health Act 1987. In the states of West Bengal and Assam, where the Supreme Court sent Commissioners to investigate, it was found that many of those in jails as NCLs were in fact not mentally ill at all, but had been placed there deviously, to serve some completely unrelated purpose. For instance, a 70-year woman was found to have been put away as an NCL apparently because her landlord was using it as a means of evicting her. We heard resonances of this reasoning from a lawyer-activist in Chennai.

- The Supreme Court declared, in August 1993, that using jails as places of safe custody to house non-criminal mentally ill persons (NCMI) is unconstitutional.³⁶ Apart from the state of Assam, which admitted in an affidavit in the Supreme Court to continuing the practice, the NHRC has intermittently reiterated that NCMI should be housed in places other than jails. It is plain that the practice continues.
- This is an area that has not been widely addressed within the human rights community. NHRC's recognition of the issue too has been desultory.
- There is evidence in law reports, and activists have admitted to have knowledge of, the practice of hostage taking by the police where the person to be apprehended is not within reach of the police. Relatives of the person sought are then picked up and kept in custody till he surrenders. This appears to have happened with some regularity in Punjab, but we also heard of it in Delhi and Andhra Pradesh, for instance. This breach of the law needs further investigation and response.
- There have been reports of people spending long years in jail, which could have been averted if prisons were not as inaccessible as they are. *Rudul Sah*,³⁷ the man who spent fourteen years in jail because he had been considered unfit to stand trial, and continued to remain untried despite having been declared fit, is one well-known instance. Recent instances from Bihar³⁸ and West Bengal³⁹ reveal that the neglect that occasions such illegal incarceration continues. The incapacity of a person to follow up on his trial and sentence, and to procure orders in time has been known to keep him in prison long after he was due to have been released.⁴⁰ The inability to furnish bail or sureties was reportedly one such reason for the large undertrial population.
- It is evident that systemic changes are imperative if these questions of personal liberty are to be addressed.
- In custodial institutions other than prisons - in 'protective homes' for women, for instance, the problem of custody versus shelter has been raised. Protective homes are established under the Immoral Traffic (Prevention) Act 1956 (ITPA). Since they are the only statutory institutions that can house women for 'protection' as also for 'correction',⁴¹ they act as places of custody, operating within the executive-magistracy system. We met women in 'protective custody' in the Agra Protective Home, who were witnesses in a case to be tried in Jhansi; they desired to leave and they had been in the institution for nearly two years. But the law would not let them. 'Rescued' women were placed in these institutions, but the purpose of 'rehabilitation' was found to be too inadequate to make the difference.
- Prison jurisprudence since the late '60s recognises that prisoners do not lose all their rights because of imprisonment. Yet, there is a loss of rights within custodial institutions which continue to occur. For instance, it was found that the HIV status of all the women in the Agra Protective Home was public knowledge, and there was no confidentiality attaching to this information. There was segregation within the institutions of those found to be HIV positive, and, for a while, the Supreme Court too endorsed this. The rules governing women in these institutions uncannily resemble prison rules - such as those concerning visitors, letters, and even punishment for conduct within the institutions.

³⁶ *Sheela Barse v. Union of India* (1993) 4 SCC 204.

³⁷ *Rudul Sah v. State of Bihar* (1983) 4 SCC 141.

³⁸ *Serajuddin Ansari v. Home Secy, State of Bihar* (1999) 1 Bihar LJR 670.

³⁹ *R.D. Upadhyay v. State of A.P.* (1999) 7 SCALE 618.

⁴⁰ *Ayodhya Rajbhar v. State of West Bengal* (1995) 2 Cal HCN 82.

⁴¹ The law makes a distinction between the two kinds of institutions but that is obscured in practice - in North India, generally, they would be called 'Nari Niketans', which does not respect the difference.

- Persons working in this area said that this was an area which called for an injection of human rights experience and perspectives.
- The non-release of persons cured of mental illness from institutions was also reported to be a problem. We repeatedly met the need for halfway homes and support services which could help a person be restored to liberty.
- In Delhi, we heard of persons who had been picked up as being persons of Bangladeshi origin, who were kept in custody in a night shelter till they could be repatriated if they were, in fact, found to belong to Bangladesh and the Foreigners Act 1946 could be invoked to effect this move.⁴² There was concern that even the basis of identifying them as possible foreigners was not clear and that dispelling suspicion of nationality could well be more difficult for the poor and the dispossessed.

It is also found that it is common practice to pick up people for questioning, and not record their presence in the police station till the police is ready to present them before a magistrate - a way of thwarting the constitutional requirement that every person taken into custody be produced before a magistrate within 24 hours. Apart from the illegality of such detention, it also makes difficult proving torture in custody during the period of illegal, unrecorded, detention. Human rights activists suggest that telegrams be dispatched to the Chief Minister, the Director General of Police, the Superintendent of Police, and the Governor for instance, when information about such illegal detention is obtained, to establish the time of detention.

The conditions of persons with mental illness in institutions have been cause for human rights concern. In Gwalior Mental hospital, for instance, it was found that persons with mental illness were left in nakedness; the explanation was that they tore their clothes if they were given them. The press raised the issue. Chaining of mentally ill patients was also a practice, and this was outlawed by an order of the court.⁴³

One difficulty in ensuring that such violations do not occur, and in getting the law implemented, is **access**. The human rights community has not engaged with the problems faced within the walls of custodial institutions. Imaginative answers which will make open institutions of what are now bureaucratic, and closed, institutions is an imperative.

The hysterectomy controversy in the early 1990s in Pune represents another aspect of the control and decision-making within custodial institutions. The hysterectomy of girls below 18 years of age, who were mentally retarded, raised controversy about the decision made by the professionals. The professionals involved in making the decision neither denied that the hysterectomy was being done, nor did they see it as a violation. It was justified as being in the best interests of the hygiene of the mentally retarded girl, as making practicable the care of the mentally retarded. The response did not rule out the possibility of sexual abuse when within the institutions, but said it would protect the girls from pregnancy in the event of such an encounter. The persons responsible for the decision responded angrily to the charges of human rights violations. The Medical Council of India, however, distanced itself from this position, and declared the practice as being against their norms. The intervention of the media and the human rights community precluded further hysterectomies from being done.

Q. Missing Women

There are various situations which throw up the issue of 'missing' women. The lopsided sex ratio in many states, and the juvenile sex ratio in even a state such as Kerala (which is held out by planners and economists as the model performer on the population front), is one area where women, and girls, go 'missing'.

In Orissa, we heard of the phenomenon of 'Jhansi' marriages and 'Gwalior' marriages. Girls from very poor homes were escorted by a 'broker' to be married to men in Jhansi or Gwalior, and he would bring back a bride price of Rs.10,000 to Rs.25,000 to be given to the girl's family. While some of these marriages had been found to be genuine, the possibility of some of these women being trafficked was not ruled out. Also, what a girl/woman did if deserted or ill-treated was not clear. There was therefore an attempt by activists to keep track of women who had not been heard from for over a period of three months, so that their whereabouts could be verified and their safety ascertained. In July 1999, activists had begun the process of documenting the 'missing' woman.

⁴² *Akbar & Ors.v. Union of India* AIR 2000 Del 374.

⁴³ *Supreme Court Legal Aid Committee v. State of M.P.* (1994) 5 SCC 21.

In Delhi, we were informed that missing persons reports when women go missing from their marital homes were hardly ever related with unidentified bodies of women who were declared to have committed suicide by drowning, for instance.

The paucity of information, and the difficulties in follow up, has kept this issue in the margins of human rights concerns.

R. Homicide in the Matrimonial Home

Often identified as being dowry-related deaths, unnatural deaths of women in their marital home has acquired prominence. Like encounter killings, acknowledgment has not led to a reduction in the incidence of such homicide. In Andhra Pradesh in 1990 a civil liberties organisation raised the issue of violation of women's rights as a human rights issue by comparing the number of dowry deaths and the number of encounter killings during one time period - about 2000 dowry deaths, and 300 deaths in encounters.

In Bangalore, a women's group keeps a watch in the Burns Ward of the leading government hospital, and also scrutinises newspapers for reports of deaths of young women, which they then follow up. They also had a 'Truth Commission' where a tribunal heard the narratives of the families of girls/women who had been the victims of dowry deaths.

The inadequacies of investigation, and the many slips in the judicial process which results in a low rate of prosecution and a lower rate still of conviction, was observed everywhere.

The definition of 'dowry death' in the Penal Code, based on preponderance of probability and a shifting of onus represents a significant shift in criminal law and jurisprudence.

In the meantime, the Dowry Prohibition Act has been hardly at all implemented. Most states still have no Dowry Prohibition Officers. The maintenance of list of things given and received is still not mandatory. S.498 A, which was brought in to deal with cruelty in the matrimonial home, has suffered criticism as being abused, sending the family of the man to prison till bail is procured. Some women's groups, however, contended that the abuse was only marginal, and that this was the only provision in law which could hold the perpetrator of domestic cruelty accountable. Some also spoke of bringing into law the notions of right to matrimonial home and matrimonial property as other approaches of protecting women on whom cruelty is practised.

S. Domestic Violence

In locating domestic violence in the terrain of human rights, one point of view was that it is not the identity of the perpetrator alone which can be allowed to determine whether a victim has been subjected to a human right violation or not: that it is a man or his family who exercises their power to harass, assault and injure a woman, and not the state which is the perpetrator, should then make no difference to the place for this violence in human rights discourse. Also, it is state practice, and endorsement, of patriarchy that keeps such violence in the home, we were told.

- Crime against women cells in police stations
- counselling centres
- help lines
- short stay homes - which, though, are few in number

have been set up in many cities. There has also been a concerted effort to bring in a law to deal with domestic violence. A Bill prepared, debated and presented to the government by a women's organisation has been adopted by Parliament for discussion, which is a significant step in a non-governmental role in law making.

S.498 A was introduced into the Penal Code in 1983. It makes cruelty to a woman within the matrimonial home punishable with imprisonment up to three years and fine. It is a cognisable, non-bailable, offence. Widespread

violence against women, and increasing evidence of women dying unnatural deaths in the matrimonial homes provoked the women's movement to demand a change in the criminal law.

The offence is non-bailable, that is a complaint under s.498 A, once registered as an FIR, would result in the arrest of the members of the matrimonial family of the woman. They would have to be granted bail by a court before release, and this could keep them in custody for varying periods of time. In matters of remission of sentence, too, offenders convicted under s.498 A may be excluded.⁴⁴

On the one hand, there have been complaints of the misuse of this provision, and the consequent harassment, often incarceration, of many members of the family complained against. On the other, there is little scope to deny that the incidence of cruelty, including physical cruelty, which leads even to death, is extraordinarily high. This is an issue yet unresolved; the Domestic Violence Bill may have some impact on it. In the meantime, an activist lawyer asserts that the phenomenon of violence and death in the matrimonial home should not need to be linked invariably with the phenomenon of dowry; violence and cruelty are independent entities within many homes.

An activist also told us: when a man beats his wife regularly, and the wife gets him soundly thrashed by the police, civil liberties groups are sometimes confused on what stand to take.

T. Sati

The burning of Roop Kanwar on the pyre of her husband in Rajasthan in 1986, has reintroduced sati into mainstream discourse. Questions of volition, custom and communal pride have been raised justifying the practice. State inaction has been at issue. In 1987, the Commission of Sati (Prevention) Act was enacted making abetment of sati an offence; and the death penalty was introduced as an alternative sentence. The attempt to commit sati was made punishable with imprisonment for a term up to six months or with fine, or both; this has been contested ever since its inception as punishing the victim. The 'glorification' of sati, where a temple is constructed and a dead woman worshipped bringing in money to the family, has also been made punishable. This last is constantly under contest - as denying the right to practise a religion. Women's groups in Rajasthan see this as a particularly important provision in taking away the material incitement in the commission of sati.

The communal violence of much of the protest against this law, and of the practice itself, is a telling statement of the capacity of patriarchy to deny a place for human rights.

U. Child Marriage

Though a law prohibiting child marriage has been in the statute books since 1929, it is still performed in many parts of India. For instance, the practice of performing child marriages on *Akas Teej*, it is reported, has not stopped in Rajasthan. It is widely believed that the gang rape of Bhanwari Devi was intended as a lesson, since she was active in preventing child marriages.

Another aspect of child marriage was revealed when Ameena, a girl of about 12 years, was married to an old man from Saudi Arabia who was to take her out of the country as his bride.

V. Child Labour

Apart from the employment of children in work, including those classified as hazardous, it was reported that

- children continue to be sold into labour. The parents of a young girl from Assam were paid a sum of money for the girl to be brought to Delhi as a domestic worker. Her plight came to light when she ran away from the ill-treatment she suffered, and she was given shelter by a social activist.
- child workers employed in homes and in commercial workplaces, were subjected to ill-treatment. The chaining of bonded child labour in the carpet industry near Varanasi so that they could not escape was reported. Injuries

⁴⁴ *N.Krishnaiah v. Govt. of A.P.* (2000) 4 Andh LT 393.

on the person of domestic child workers in Delhi sometimes resulting in death, have been reported intermittently in the press. In Maharashtra, a civil liberties organisation took the state and a contractor to court when the latter ill-treated, resulting in death, one of the young boys he had brought with him from Tamil Nadu.⁴⁵

These manifestations of violence against the child disguised as child labour calls to be addressed.

The vulnerability of the child has also been seen in Delhi, for instance, where child domestic workers have been accused of killing their employers, or in being accomplices to outsiders.

The 'social clause' on child labour does not result in doing away with child labour, we were told, but causes segregation.

There were dissenting voices on the ILO Convention on the Elimination of the Worst Forms of Child Labour. The provisions which speak of child prostitution and child pornography as labour are unacceptable, they said. 'These are crimes, not labour,' we were told. Further, when Indian law is so strict that it says that non-payment of minimum wages amounts to bonded labour - a provision that is not found in any international convention - what use is one more convention, we were asked.

In 1993, the Supreme Court declared that education is a fundamental right till a child reaches the age of 14 years. Education for the child has got tangled with the issue of child labour; sending the child to school is projected as a necessary step to ending the practice of child labour. In Andhra Pradesh, an organisation working in the area of education for children has done away with the uncertainties of definition by working on the premise that every child out of school is child labour. They have therefore arrived at a non-negotiable: that every child must belong in a school. In this view, NFE (non-formal education) centres, for instance, would be a means of perpetuating child labour. So, too, with the adjusting of school timings to accommodate the working child.

In the meantime, this 1999 Convention is being canvassed for signature, and ratification by the Indian State. The convention defines 'the worst forms of child labour' as comprising:⁴⁶

'(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, forced or compulsory labour, debt bondage and serfdom; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children.'

This is in consonance with the recent trend among UN organizations (e.g., WHO) to directly involve human rights in standard-setting, and the creating of binding obligations of states in their area of operation.

W. The 'neglected' child

Street children have their peculiar vulnerability. In Bangalore, a study reveals that almost every street child has been sexually violated at some time or another. They are also specially susceptible to drugs. Street children, however, take care of themselves, and often of each other. It does not appear that institutionalising them is an answer to their needs, nor do they seem willing to trade their liberty for a life off the streets. In Bangalore, Bombay and Delhi, we heard of drop-in centres: places where children could drop in for a wash, some lessons, to keep their savings and to discuss their problems with others, if they so chose. They were, however, reported to be vulnerable to being 'rounded up' and sent periodically into state institutions from where they would need help to emerge, or from where they would 'escape'.

Women in prostitution have faced the possibility of their children being forcibly separated from them, following an order of the Supreme Court in *Gaurav Jain v. Union of India*.⁴⁷ A 'raid' conducted by Delhi Police in 1990 (a year after the first *Gaurav Jain* order), in which 112 'children' were picked up from the GB Road area was an indication of what such a power being given to the police could mean to the women and their children. The recent changed law on 'children in need of care and protection' even prescribes adoption as an option that may be enforced by the state.

⁴⁵ *PUCI v. Union of India* (1998) 8 SCC 485.

⁴⁶ Article 3.

⁴⁷ 1990 Supp SCC 709.

X. Child Abuse

There has been increasing evidence of child abuse, and more particularly child sexual abuse, being pervasive. The perpetrator is often a near relative or someone close to the family. This adds to the vulnerability of the abused child, and, apart from the confusion and sense of shame which the child experiences, it is also that there is a problem with a refuge which the child can access. The dependence on the family as a support structure in times of abuse breaks down when the offending event occurs in the home.

Following what is widely considered as a useful intervention in the Supreme Court in the *Vishaka* guidelines regarding sexual harassment in the workplace, the matter of child abuse has also been taken to the court, and the Law Commission has been inducted into setting the parameters for care and action in cases of child sexual abuse.

Y. The 'unwanted' girl child

The declining sex ratio, particularly the declining juvenile sex ratio, even in Kerala which is celebrated in economic writings and in state policy for having achieved a high rate of literacy and negative population growth, has begun to seriously engage, among others, researchers and women activists. The low status of women continues to be reflected in

- the practice of infanticide including in some parts of Tamil Nadu,
- foeticide,
- sex-selective abortion which the amniocentesis technology has made common, and
- mal-nourishment among girl children.

In Usilampatti Taluk, reportedly, the ratio of female: male is 879:1000. Since 1986, the issue of female infanticide has been in focus in this area. More recently, scanning centres have mushroomed in the area, and female foeticide is rampant among those who are able to afford it. We were told that, in Tamil Nadu, there are around 2000 scan centres, most of which are unregistered.

A researcher reported his encounter with the sale of girl children by communities in Andhra Pradesh to persons who then placed them for adoption. He drew attention to the astonishing fact that there is, as of now, no law to control, or punish, the sale of children. The involvement of adoption agencies in A.P. in what is allegedly the sale of children has since come to public attention, in April 2001.

Z. Prostitution

The fear of AIDS, it is perceived, has given the issue of prostitution a visibility. This has, however, led to attributing to women in prostitution the trait of being a 'high risk group', even as it has been contended that it is high risk behaviour and not high risk groups that should be targeted. It appears that patterns of funding have impacted on this identification of the prostitute woman as belonging to a high-risk group.

The demand for prostitution to be recognised as 'sex work' has been raised, with dignity of the woman in prostitution as its basis.

There are differing perceptions about prostitution - one which sees it as exploitative of women, and another that views it as representing the 'agency' of the women in the profession. There are various shades of meaning given to 'exploitation' and 'agency' which lies in the spaces between these two positions.

Decriminalisation is also proposed, and disputed, on differing understandings of what decriminalising will mean, and do. Most of the people we spoke to on the issue of prostitution, however, felt after a discussion emphasising the difference, that the practice of prostitution should be delinked from the issue of trafficking. In this context, trafficking is seen to be the sale and purchase of women and girls, and, more recently, boys, into prostitution.

While 'voluntariness' is a term with graded meanings, especially since economic compulsions and social exclusion are not uncommon causes for entering into the practice of prostitution, it is the distinctly involuntary nature of trading in human beings that is at the hub of trafficking. Trafficking in minors is a scourge that is commonly referred to as a crime to be curbed.

We encountered the issue of organising women in prostitution in two different ways. In Calcutta, a 'samiti' of sex workers are articulating their position, and taking a pro-active lead in matters of preventing the entry of minors into the profession in their area of operation. They also said that, if trafficking be seriously dealt with, they be allowed to, legally, participate in curtailing trafficking - for who else was more likely than the people already in the profession to know when women and girls were bought and sold, they asked.

In Mumbai, a respondent working among prostitute women for over a decade, advocated 'collectivisation' but had a problem with adopting the norm of forming unions of women in prostitution. While she did find that the state was doing very little about trafficking, she was convinced that if sex work were seen as 'real work' under the law, all efforts to curb trafficking would cease. It was also suggested that 'sex work is real work' is a funder-driven agenda, and, that those who do not adopt this line were being deliberately excluded.

In Kerala, however, a different perspective emerged where a distinction was drawn between the demand that persons in sex work should get all labour rights and the rights based approach. As a feminist, our respondent espoused the rights based approach. There was a recognition that most feminist ideologies oppose commercial sex workers coming together; the commercialisation of the body was identified as the problem. Also, most people do not believe in the agency of commercial sex workers, it was explained. There was an opposition to licensing since that would only lead to further exploitation. The issue has been invisibilised over the years, and with people in high places being involved, it has helped to send it further underground. The *Surinelli* and *Vidhura* cases have however increased confidence to complain; and people are now listening differently. Another women's activist opposed the use of the term 'commercial sex worker': prostitution is not productive work, she said. But her main problem was that she saw prostitution as reinforcing patriarchy, and that endorsing prostitution as work would fall into the snare patriarchy has set for the women's movement.

In the matter of trafficking, it was pointed out that proposals for checking all women travelling on their own, particularly across borders was a move detrimental to the interests of women and could end up curbing their right to free movement and achieve little else.

AA. Prisons

The conditions in jails; solitary confinement; the refusal to make condoms available in Tihar jail on the ground that homosexuality is an offence in law, and this would be seen as fostering an illegality; the inhuman treatment of prisoners, including their being kept in leg irons, for instance; overcrowding of prisons; the right of prisoners, including undertrials, to vote are issues that have been raised repeatedly over the years. The courts have been the arena of contest.

The inadequacy of medical services in prisons, often resulting in the death of prisoners has been much in evidence. Apart from the inconclusive enquiry into the death of Rajan Pillai, when he was in jail, High Courts and the NHRC have been confronted repeatedly with this issue. Statistics in the Annual Reports of the NHRC reveal that there are a much larger number of deaths in judicial custody than there is in police custody. Given the frequency and seriousness of the complaints about medical services in prisons, it would bear investigation to find out how many of the deaths in judicial custody are, in fact, occasioned by medical negligence.

The condition of persons on death row does not appear to have been investigated so far. Nor the effect that execution of prisoners has on their families.

The inaccessibility to legal services that is endemic in most prisons, has been identified as a human rights issue, but has not been resolved yet.

There are reports of prison riots which were allegedly caused by the poor conditions in prisons including insufficient provision of food, and the maltreatment, including the brutalising, of prisoners. On November 17, 1999, for

instance, a riot broke out in Chennai Central Prison. It left at least nine persons dead, and one more succumbed to injuries on November 19, 1999. There were at least seven prisoners with bullet injuries who were referred to the government general hospital. The figures of those injured and dead in the riots varies, but it appears to be around 100 prisoners. The deputy jailor was killed in the riots. The simmering discontent seems to have had to do with inadequate food, the meagre water supplied to the prisoners, and the torture meted out to them by the prison staff. The death of a prisoner tortured and killed in the Central Prison in July 1999, which was explained away without an enquiry as being a suicide, seems to have caused resentment and anger among the prisoners. It was the death of Boxer Vadivel, a prisoner believed to have been tortured for over three days between 12th and 15th of November, and the torture of two other prisoners by the Deputy Jailor which sparked off the riots. Jeyakumar was burned alive. The prisoners claimed to a fact-finding team that the rebellion had already come under control when anti-riot police were brought in and prisoners were indiscriminately targeted. For instance, a prisoner who was physically disabled, and could not have posed any threat to the police, was shot at point blank range.

The anatomy of a prison riot, and what it means in the context of human rights, and of punishment, calls to be investigated in full, and addressed. Prison riots have been erupting sporadically, leaving little reason to doubt that they are symptomatic of a systemic malaise.

The condition of medical care in prisons is woeful, and cases before the High Courts and the NHRC testify to this fact. The inordinately large number of deaths in judicial custody, as reflected in the figures set out in the Annual Reports of the NHRC, is also an indicator. That prisons are death traps becomes apparent. Overcrowding of prisons, with a large population of undertrial prisoners spending extended periods in jail - a recent press report cites a survey conducted by the State (Jail) Department in Bihar which shows 154 undertrial prisoners in Bhagalpur jail for over 20 years awaiting trial and they are now over 70 years old - only strains the system further. Systemic changes and bold initiatives are imperative. So far, the Supreme Court's directive in 1979 to release undertrial prisoners on personal recognisance bonds, and periodic intervention thereafter by the Supreme Court, has provided ad hoc relief. There is little to indicate that there has been any fundamental re-thinking on this matter. On the other hand, recent legislation is severe in matters of bail, and persons arrested under the NDPS Act 1985, for instance, regardless of the nature of their participation in the offence, are not entitled to bail.

In Mumbai, social workers reported that they have been allowed access to prisoners to help them re-establish, and maintain, contact with their families, and to provide related support services to the prisoners. They admitted to shutting their eyes to human rights violations in prisons (and in lock-ups) since any intervention of that nature would jeopardise even the services they are now able to provide. In Chennai and in Mumbai, the '80s and a part of the '90s saw active provision of legal aid to prisoners; in Chennai, the High Court legal aid board was engaged in this process. In Delhi, legal literacy, literacy, meditation and yoga and legal aid has reached Tihar jail. The setting up of the NHRC appears to have had some impact on the accessibility of prisons, as have the many PILs which challenged the conditions within.

BB. Wages to Prisoners

The work that prisoners do has been devalued in a decision of the Supreme Court in *State of Gujarat v. High Court of Gujarat*.⁴⁸ A judge in the case has held that

- prisoners are not entitled to minimum wages, particularly where they have been sentenced to rigorous imprisonment, and it is part of their sentence to do hard labour
- the non-payment of wages in prison will not amount to a violation of the constitutional dictum on the right against exploitation
- where they do earn a wage, apart from deductions for their maintenance in the prison, monies may be taken from it to pay to the victim as compensation.

There is a complete negation of the rehabilitative potential of work and wages, and a re-introduction of the purely punitive in this judgment of the court that human rights advocates and activists will have to contest.

⁴⁸ (1998) 7 SCC 392.

CC. Sexuality

Discrimination against, and harassment of, those with a sexual orientation different from the heterosexual is being more openly addressed in the past ten years than it was earlier. Yet, coming out openly is still an act of courage. And we were told how homosexual couples were susceptible to arrest and extortion. Just the knowledge that a person is a homosexual would render him vulnerable, they said. The lesbian groups that we met spoke about the difficulty of coming out, and the support services that were needed to help resist, principally, the families. One of the ways of providing that support is in the initiation of 'help lines'.

DD. Freedom of Expression

The rise of communalism has been accompanied by an assault on free expression. The vandalising of M.F. Hussain's paintings because he had painted a nude Saraswati many years ago; the destruction of the exhibition organised by SAHMAT in Varanasi because it depicted Rama differently from how the vandals believed he should be depicted; the protests, and their vulgarisation when the protesters paraded in their underwear in front of Dilip Kumar's house, against the film 'Fire'; the concerted attacks on the filming of 'Water' - all these are instances of intolerance, which have denied free expression, with the implicit - sometimes explicit - support of the state. The banning of the play on Nathuram Godse following protests and disturbances are part of a pattern.

More recently, there have been reports of a government circular that conferences, seminars, workshops...which include participants from abroad require clearance from the government, including the External Affairs Ministry. Human rights are specifically in the list. And it is particularly applicable to people from Pakistan, China, Bangladesh, Sri Lanka and Afghanistan.

EE. Dalits

The practice of untouchability has persisted, and dalit activists and unions have been making efforts to demonstrate its pervasiveness and variety, even while they contest its practice. In Andhra Pradesh, in a study done by dalit activists, 46 ways of practising untouchability have been documented. In Kerala, there was collaboration underway between caste groups and dalits in combating caste and brahmanism. In Gujarat, a study of the practice of untouchability has been recently done.

Some groups working among dalits, and including some dalit groups, have been lobbying to place caste as an agenda in the World Conference against Racism. The definition evolving in the conference, which includes discrimination based on descent and occupation is seen as an acknowledgment of caste discrimination. This is an avowed effort to internationalise the issue of caste-based discrimination and oppression.

This issue permits an exploration into the relationship between a movement - in this case, the dalit movement - and groups working with dalits and/or dalit issues in terms of their respective politics and priorities.

Police firing on a group of dalit villagers in Nadunalumoolaikkinaru in Tamil Nadu in 1991 is believed to have occurred to put down a young leadership that was emerging in the village. A chain of circumstances from the support given to the villagers by activists, to filing the matter as a case in the Supreme Court, to three committees which investigated the matter, to the awarding and disbursement of compensation to the injured villagers and the court order which prohibited the indicted policemen from being posted in the vicinity appears to have empowered the village. It has also bolstered their confidence that help could well come from beyond the village.

In Melavalavur it was a different story. This is a panchayat which is reserved for dalit leadership within the panchayat system. When elections were first to be held

- the dalits were chastised, subjected to a community fine of Rs.2000 and warned to withdraw their nominations.
- In the second round, the administration urged the dalits to file nominations, which they did. The ballot boxes were taken away by the non-dalit villagers.

- The third time around, the administration promised protection and conducted the elections amidst threats and tight security. About a month after the elections, the dalit panchayat leader, Murugesan, and five of his comrades were waylaid when they were travelling in a public bus, and brutally hacked to death on the highway.

This was in June 1997. Since then, another election has nominally installed a dalit as panchayat head. But the village lives in a state of permanent terror. A police outpost has been set up, but in that part of the village from where the threat to the dalits emanates.

A memorial has been constructed to the memory of the six dead men.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been on the statute books since 1989. There are however hardly any convictions under this Act. Dalit activists say that there are many loopholes in the law which help offenders slip out of both the Atrocities Act as well as the Penal Code. An activist made particular mention of s. 3 (iv) and (v) of the Act⁴⁹ in illustrating the non-user of this law. Studies on the working of this Act have been started in some states.

Manual scavenging, and the disinterest of the state in putting an end to this inhuman practice which involves the carrying of excreta manually, and which additionally aggravates caste-based exclusion has been identified as a priority for action in Andhra Pradesh and Tamil Nadu.

FF. Medical Research

The connection between abortion, in vitro fertilisation and gene manipulation was drawn to ask how the question of human rights could be considered in this context. The poser was: ought it not to be the primary question whether neo-eugenics through gene manipulation should be resisted, or was it to be asked in terms of the mother's choice to have a 'blue-eyed baby girl'?

Depo Provera, a contraceptive drug, was introduced into the Indian market without conducting Phase IV trials, which meant that the Indian state conducted no research specific to Indian users before deciding to introduce the drug in the market. The issue in Phase IV trials of Net-oen was of informed consent. In the pre-liberalisation phase, we were informed, all research was to be undertaken by the ICMR. But post-liberalisation, there has been a dramatic change, and the trend has been for pharmaceutical companies, or the NGOs funded for the purpose, to conduct research; their agenda is not beyond suspicion.

Pharmaceutical companies have been attempting to dilute the guidelines for scientific research on human subjects. The Nuremberg Code was very strict. The later Helsinki declaration, we were told, relaxed these rules. And efforts are underway to further relax the notion of informed consent for the greater common good. These efforts have been stalled at the international level. But ICMR's 'Ethical Guidelines for Biomedical Research on Human Subjects' has been amended in 2000 to allow proxy consent in some cases, such as in epidemiological situations or in the larger public good.

In 1997, the Indian government signed an agreement with the USA that would allow Indian citizens to be used as research subjects in an international research project on human genome for furthering 'international good'. Since this became known, there have been protests - that the bodies of Indian citizens do not belong to the state that it can sign them away.

Court battles around banned drugs being sold in the Indian market have sometimes resulted in prospective banning. But the plea of the pharmaceutical company that the stocks be not destroyed, but that they be allowed to transport it to another jurisdiction outside India has been allowed.⁵⁰ Sharing information with other potential markets becomes of importance, and ways of doing this may have to be established.

49 S.3: Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, - (iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred; (v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

50 E.g., *Drug Action Forum v. Union of India* (1997) 9 SCC 609.

GG. Population Policies

There has been a deliberate re-introduction of 'incentives' and 'disincentives', and of punitive measures into state policy.

- The birth of a third child beyond a period of gestation from the commencement of state laws on the subject (including Himachal Pradesh, Rajasthan and Haryana) will disqualify a person from standing for elections to the panchayat, or to continue in office.
- Medical termination of pregnancy and tubectomy has been included in the Maternity Benefit Act 1961 (in 1995) for 'benefit' under the law. The threatened denial of 'maternity benefit' for the birth of the third child and thereafter was, however, shelved after concerted protest. The new provision puts an onus on the woman to keep the size of her family low.
- There are private proposals pending in various state legislatures including Delhi and Andhra Pradesh to disentitle the third child to ration under the Public Distribution System, and for the parent to be penalised in their jobs if they hold a government job. The Delhi proposal even included provisions that the family could not be allowed to procure a house if there was a third child! These have not yet become law, but they have not disappeared from the public debate altogether.
- 'Social marketing' of contraceptive drugs, supported in Uttar Pradesh by large grants from funders, has been the subject of protest from, particularly, women activists. Social marketing, which includes across-the-counter sales, would inevitably lead to ill-informed use of the contraceptives, without an understanding of the side-effects, or of the meaning of symptoms that may manifest upon use. The prioritising of reducing population at the cost of women's health is being stoutly resisted.

HH. Organ Transplant

A racket in the sale of kidneys was exposed in Karnataka in the late 1980s and early '90s. There were allegations that the 'donor' was duped and his kidneys were removed and 'donated'; or that the donor had sold his kidneys as a commodity may be sold to raise resources - poverty was the characteristic that distinguished the donor. A series of exposés confirmed that there was a pattern to the sale and purchase of kidneys, which implicated, among others, doctors and hospitals. The donor refused to settle, and in 1994, Parliament enacted the Transplantation of Human Organs Act 1994, which allowed organ donation either only after death, or where the receiver was a near relative of the donor, or it is actuated by 'affection, or attachment towards the recipient.' In the last-mentioned case, an Authorisation Committee has to approve the donation. The Act, in its prefatory text, says it is 'to provide for the regulation of removal, storage and transplantation of human organs for therapeutic purposes and **for the prevention of commercial dealings in human organs.**'

The issue seems to have acquired a subterranean residence since. This may be an area which must be regularly revisited to prevent exploitation, and worse.

In a different context, the issue of surrogacy has entered Indian parlance; but the human rights, and legal, implications have not been pursued with much rigour.

II. Trafficking

While trafficking in women is rampant in many parts of the country, and also across borders, it is Kerala that the sexual exploitation of women and trafficking has been exposed, and the accused brought to trial and conviction. The *Surinelli* case, the *Ice Cream Parlour* case and the -----*Vidhura* case are undiluted narratives of sexual exploitation. In the *Surinelli* case, forty persons, including prominent political figures and persons from the establishment among them, were convicted after a prolonged trial in 2000. They are now on bail while their appeal is pending.

Some women's activists have been studying the issue of migration and trafficking - whether for prostitution, labour in sweat shops, domestic work which is often ill-paid and oppressive, or as mail order brides — while

recognising that while migration makes women vulnerable to exploitation - and violence, migration is often not wholly involuntary. Women, for instance, migrate to escape violent domestic situations too. Shorn of its moral content, activists say, the law regarding trafficking could actually help women trafficked into situations for which they did not bargain.

JJ. Bonded Labour

Though the Bonded Labour Act is of 1976 vintage, it was not till the Supreme Court's judgment in December 1983⁵¹ that the recognition of bonded labour acquired a national reach. As the champion of the bonded labour said it, it is

- minimum wages
- minimum guarantees of employment
- child labour
- land rights and
- alcohol

that needs to be dealt with to get people an experience of human rights.

Identification, release and rehabilitation of bonded labour have happened essentially by court supervision. In Tamil Nadu, there is a separate ministry that has been set up to deal with bonded labour; this was following a report given to the Supreme Court of the extent of bonded labour prevalent in the state.

The issue of bonded labour has been handed over by the court to the NHRC, which has set up a committee including activists, advocates and bureaucrats with experience, to find a means of dealing with the issue.

We watched while a political activist working among bonded labour discoursed with a body of bonded labourers from Rajasthan. They were seeking his help in getting free, and getting land which could help them retain their liberty. The advice was that they get together a mass of similarly positioned people before launching a campaign in their district. The confidence they exuded that bringing together 25,000 people in the district would not be an unmanageable task was an indication of the dimensions of the problem of bonded labour.

KK. Anti-liquor Movements

There is a connection that seems to exist between liquor and violence, particularly domestic violence. Many parts of the country have witnessed anti-liquor movements in assertion of the women's right to be free of violence. This includes Andhra Pradesh, Himachal Pradesh and Orissa. Apart from the factor of state interest - particularly in terms of revenue - in the proliferation of liquor, the liquor mafia also has a long reach. There have been reports of women leading anti-liquor movements being killed, in an apparent attempt to stifle protest and resistance.

Illicit liquor and the deaths of those who drink the brew - the 'hooch tragedy', as it is termed - is oft-experienced, and it is common to find people wielding state power, including ministers, being implicated. Last year, for instance, Kerala reverberated with reports of deaths in just such a hooch tragedy. In Uttarakhand, the demand for prohibition was closely linked to the struggle for statehood and is a challenge before the new government.

LL. HIV and AIDS

The right

- to privacy

⁵¹ *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161.

- to confidentiality between doctor and patient
- to informed consent
- against discrimination

have been issues that have been raised in the context of AIDS, particularly since the AIDS Bill which was in circulation in the mid-1980s. The identification as 'high risk groups' or as 'high risk activity' has been considered both in pragmatic and rights-related terms. While categorising people as 'high risk' on the basis of the class to which they belong has been rejected by rights activists, it has in fact been adopted in practice.

The question of confidentiality has been adjudicated in the 'right to marry' case in which the Supreme Court held that the right to marry is not an absolute right. Referring to the provisions in the Penal Code, the court held that, apart from making a person punishable under the law if he marries and transmits AIDS to a woman, there was duty upon him not to marry. And the doctor, aware of the HIV status of the patient had not disclosed it to persons he knew were likely to be affected by it, he would be a participant in the crime,' the court said. Till a disease/condition is cured, the right to marry will be 'suspended', the court has held.

There are two points of view in this position of the court on the 'right to marry'. A rights group advocating the cause of people with HIV/AIDS, and of persons with a positive status, contend that the right to marry is part of the right to life. A woman activist lawyer has taken the stand that the disclosure mandated by the court is necessary to protect the interests of women. The former group contests this expectation, and holds that this will result in denial of rights to positive people without empowering women.

A respondent further located it in the context of 'personhood' - that even while conceding that there may be no right to marry, there would be a violation of the rights of the HIV+ person where there is **disclosure** without any of the protections that an HIV+ person may need, and to which they would be entitled - particularly given the rejection and discrimination that is known to ensue.

The right to treatment, and discrimination - in the workplace, in custodial institutions and in places like hospitals - of positive people are centrally in the human rights arena.

MM. Denotified Tribes

British India notified specified tribes as 'criminal tribes', with all members of the tribe tarred by the same brush, and all of them classed as criminals or potential criminals. The Indian Parliament passed a law in the early years after independence repealing this categorisation of tribes. The 'ex-criminal tribes' are now referred to as 'denotified tribes'. While the status of these tribes has changed in law, the prejudices attaching to treatment of these tribes seems relatively unchanged. The attribution of criminal characteristics to a tribe has not abated. That they continue to be called 'denotified tribes' freezes their status. Rampant discrimination, and criminalisation (different from criminality) was reported. The neglect of land reforms, and of improving their conditions of life, was reportedly allowing for the perpetuation of stereotypes about these communities. The very construction of identity was said to be responsible for the human rights violations that they faced, and was acknowledged as a violation on its own.

NN. Tourism

Tourism's contribution to the violation of human rights has become an area of increasing concern.

- The growth of the sex industry, including the use of children for sexual pleasure, is associated by activists with tourism.
- The displacement and exclusion of people from forest areas, and the introduction of elite tourism is said to be passed off as 'eco-tourism'; activists find this contradictory
- The taking over of agricultural land to create hotel resorts, as is happening in the Diamond Harbour area in West Bengal, is opposed as being inherently unjust and environmentally unfriendly.

- The images of the reservoir in the Tehri and at the Sardar Sarovar being converted into lake resorts, militates particularly against equity.

These instances merely illustrate a point.

Destruction of culture, sometimes through showcasing culture, is another issue. An instance is the Todas in Tamil Nadu. The non-involvement of local communities in making choices about whether, and what kind of, tourism would be brought into their midst was also reported.

OO. Right to Information

A concerted, and effective, campaign for the right to information has been underway in Rajasthan, spearheaded by the Mazdoor Kisan Sangharsh Samiti (MKSS). It has caught the imagination of activists and groups across the country, particularly as a tool for preventing and challenging violations as well as asserting the right to development. A norm of transparency has been given prominence, including transparency of the government as well as the group working in the area. The irresistible force it has generated has moved the government, albeit reluctantly, to table a Freedom of Information Bill 2000.

Meanwhile, the right to information has been introduced into the law following the Bhopal Gas disaster. Among the persons now entitled to receive information about potential hazards in a factory are

- the workers
- the local authority
- people living in the vicinity of the factory

as also the Inspector appointed under the Factories Act 1948. The information is to include the means of disposal of hazardous substances, and the arrangements for their storage or transportation. Information on what should be done to limit damage in the event of a disaster is also to be disseminated; the onus is on those running the factory. We did not, however, hear of anyone having used these provisions. The rights inherent in these provisions demand to be asserted.

PP. Bhopal

Sixteen years after the Bhopal Gas disaster occurred, and Methyl Isocyanate (MIC) leaked from the Union Carbide plant in Bhopal on 2/3rd December 1984, the victims still wait for justice.

- The payments of pitifully small amounts as compensation
- the shrinking of their remedies, including the way the appeals system has been worked to reduce the entitlement of the victims;
- the difficulties in access to medical care
- the disbelief, even all these years later, that they were indeed victims of the disaster⁵²
- the absence of a legal aid system
- the immobility of the state in the matter of the extradition of Warren Anderson of the UCC; the reduced gravity of the charges against the Indian accused; and the snail's pace progress of the trial
- the vanishing corporation, where mergers result in the original corporation pretending to a civil death, and the vanishing liability. The recent takeover of UCC by Dow Chemicals is an instance.

⁵² There are various ways in which this happens, including: denial, where the suspicion of 'bogus' claims taints consideration of all claims; recategorisation of claims, which recognises only a reduced level of suffering; the non-recognition of certain injuries, including that caused to the children born to affected people, or of latent effects which manifest over time.

- the absolving of liability which has been introduced into the law⁵³ and which is reportedly being used by MNCs coming into the country in the liberalised era⁵⁴

The difficulties in bringing an MNC before Indian courts have not yet found answers. Neither has the problem posed by the state often being a tort-feasor itself.

There are also reports of continuing harm to the people in the vicinity, and to water sources, emanating from the plant site, where chemicals continue to be stored in vats.

- Continued care of the victims of Bhopal
- access to the information gathered by ICMR, and
- monitoring and research connected with the Bhopal Gas disaster, at least over a period of fifty years

have been set out as priorities owed to the victims of the disaster.

A Draft Code of Conduct for Corporations was discussed by a group of persons brought together in Geneva by the Office of the High Commissioner for Human Rights on March 30- 31, 2001. The First Draft Code envisages

- social responsibility of corporations, and
- corporations as human rights watchdogs.

These could be difficult roles to reconcile with the experience of Union Carbide in Bhopal, Enron in Maharashtra and with the shadow of corruption and the unviability of the Power Purchase Agreement, Cogentrix in Karnataka and the allegations of corruption and the anxieties about environmental degradation⁵⁵, in Kashipur in Orissa and the dominance given to mining interests, to name a few instances. The introduction of genetically modified cotton where corporations experiment on Indian soil, and take no responsibility for the consequences of use of genetically modified (GM) technology, is another instance. The resistance to the 'terminator' seeds reflects the concern of farmers and others about the destructive power of corporate profit-seeking on their autonomy and self-sustenance. The various, even if failed, attempts to use the international patenting regime to appropriate the use of *haldi*, *neem* and *basmati*, for instance, to serve multinational corporate interest has raised questions of rights of people over resources in contest with the profit motive. Issues of liability are weak in the Draft Code's first version.

The importance of involving persons from jurisdictions of corporate conduct which may have to be accounted for in a code may have to be recognised, and participation in the settling of international standards and making of international law facilitated.

QQ. Environment and Pollution

Environmental litigation has been among the visible aspects of contending with pollution. The courts, particularly the Supreme Court, have been accorded primacy in the matters concerning the environment, by environmentalists as well as the state. The court has used

- closure
- relocation
- clean-up technology

as remedial tools, and

- the polluter pays principle and

⁵³ Factories Act 1948, s. 7 B (5) introduced in 1987

⁵⁴ Du Pont is known to have got an undertaking from their local business partner which would absolve Du Pont of liability in the event of an 'accident'.

⁵⁵ Cogentrix has withdrawn from the power project, but the legacy of the project remains, and is contested by environmentalists and human rights activists.

- pollution fine

as reparative and sanctioning measures.

There has also been an induction of the precautionary principle, and a statement of the acceptance of the norm of sustainable development, including within it the concept of inter-generational equity. The preventive principle does not find similar spaces in judicial dicta.

The loss of livelihood, and the denudation of the resources of land and water, were witnessed, for instance, in

- limestone quarrying in Dehradun, where the court ordered closure of the mines, rehabilitation of mine owners, and afforestation and restoration of the land (1980s)
- tanneries in Kanpur (1980), Vellore and Calcutta (1990s) which were located along rivers, and where the court ordered closure, and the establishment of effluent treatment plants before reopening the units
- a complex of industries in Andhra Pradesh, where the court ordered clean-up technology, and compensation to affected farmers (1990s)
- the Bichhri (Rajasthan) case of hazardous waste negligently disposed on premises of four industries which had been closed down and left after being in operation without requisite environmental clearances; the court set out the polluter pays principle. But the difficulties besetting restoration where toxic damage has occurred was also evident in this matter.

Conservation of forest resources and the right of the tribal to live in, and live off, the forest is set out elsewhere in this report.

The relocation of industries from within Delhi, and the consequent closure and loss of employment of large numbers in the workforce has emerged from within an environmental context. It is related later in this report while dealing with conflicts and the prioritising of rights.

The locating of a nuclear power plant in the Sunderbans is another instance of the anomalies that 'development' is imposing on a people and on the environment.

RR. Political violence by non-state actors

Variously termed as 'militancy', 'terrorism', 'non-state violence', the use of violence in pursuing political ends has been in existence for over a couple of decades at least, in a number of states.

The state response has been varied including

- the enactment of the TADA, and other extraordinary laws, including the treatment of political violence as 'organised crime' as has happened in Andhra Pradesh, Madhya Pradesh and Maharashtra
- the identification of such political activists as 'enemy' of military forces - as in the ITBP Act which defines 'enemy' as including 'all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to this Act to take action.'
- the unleashing of state violence, as happened in the Punjab particularly in the late '80s, and the beginning of the '90s. Or, again, as being witnessed in the encounter killings in Andhra Pradesh.
- the implicit equation of state violence with non-state violence in placing both in the agenda of the NHRC, while yet leaving violations by the Armed Forces beyond the NHRC's direct reach

The question of political violence has gone through phases in the civil liberties movement. In the 1970s, a political journalist told us, he had walked out of a civil liberties organisation because they had taken a decision to focus on state violence, and not speak to condemn violence by non-state actors. In the 1980s, silence about the violence of the militants in Punjab, which included the deliberate and often indiscriminate killing of civilian targets, was held out as evidence of the partial and one-sided image that the civil liberties movement conjured up; there was an

uncertainty that crept in among civil liberties groups too. In the 1990s, there was an open debate, most specifically in the context of Andhra Pradesh, where one point of view held that political violence to overpower and alter systemic violence could not be condemned; and another point of view emerged that revolutionary violence was not equal to, or the same as, people's response, and that sustained violence over decades injured the weak and the vulnerable the most. 'Systematic and calculated violence begins with the enemy, ' a civil liberties activist says, 'but soon turns to agents of the enemy within and among one's friends.' There is also the question of congruence between means and ends, he adds.

The abduction and disappearance of Sanjay Ghosh at the hands of the ULFA in 1997 did lead to re-appraisal of the presumptions about revolutionary violence and the latitude that should be permitted it.

A civil liberties group, for instance, spoke of its position as opposition to 'systematic, significant and sensitive killing by armed opposition groups.' An activist said: 'unless a revolutionary movement develops a tradition of human rights, there is a problem.'

The ranks of 'surrendered' militants (SULFA in Assam, Surrendered PWG in AP) has raised human rights issues - not only in terms of their rehabilitation but also for how they are used by the state. Caught between the cadres that they have walked away from, and the police or security forces who are now their protectors, it has been noticed that an inordinately large number of 'surrendered' militants die violent deaths. It also appeared evident to civil liberties groups that the surrendered militants are set up as stooges to carry out 'executions, which would then be passed off as a clash between the cadres and the deserters. Their position is plainly vulnerable. In Andhra Pradesh, we heard that cases against surrendered naxalites are never dropped, leaving them open to blackmail and to being manipulated. Recent brutal killings of civil liberties activists, often in broad daylight and open to public gaze, are suspected to have been engineered on order of the state government, using surrendered naxalites. Political violence in North Kerala and West Bengal seems to claim victims with regularity. It is an occurrence about which activists in both states spoke. In West Bengal, activists spoke of 140 CPM workers having died in 1999-2000 (over one and half years). This is concentrated mainly in the Hooghly, they said, but had spread to Calcutta too. It has percolated to the grassroots and, they said, it has ceased to have ideological basis. Peace talks, and mediation, seem to be ways in which intervention has been attempted by human rights activists.

SS. Clamping down on protest

Protest, dissent and resistance are most often treated as 'law and order' problems and the state responds accordingly. This not merely reduces matters of development choices, economic and physical displacement and political difference into a case of law and order, but, in the process, it results in employment of aggression in putting down protestors or those who challenge the decision or the authority of the state.

The protests against reservation in educational institutions, and the demand for a separate state in the hill areas of Uttar Pradesh came to a close with the formation of a new state - Uttarakhand. The 'Uttarakhand' movement was accompanied by violence when the state attempted to quell the protests and agitations that took place. The crackdown on the protestors on their way to holding a public rally in Delhi on October 2, 1994 'resulted in a lot of bloodshed including loss of many lives, infliction of injuries on persons belonging to both sides, outraging the modesty of women ranging to ravishments.'⁵⁶ Activists in Uttarakhand refer to it as the 'Muzaffarnagar' happenings (*Kaand*). Approached, the Allahabad High Court had the CBI enquire into the allegations of violations. Prosecution was launched, but the accused officers subsequently discharged. In the meantime, the High Court had given directions for payment of damages and compensation.⁵⁷ On appeal, the Supreme Court set aside this order in May 1999. While castigating the High Court for stepping beyond its brief, the Supreme Court made no observation on the excesses committed by the police.

The clamping down takes many forms.

⁵⁶ These are phrases from the Supreme Court's decision in *A.K.Singh v. Uttarakhand Jan Morcha* (1999) 4 SCC 476 at 479-80.

⁵⁷ Rs. 10 lakhs to the dependants of persons who died in the police firing; Rs. 10 lakhs to each of the victims of molestation. Rs.50,000 each to the 398 persons who had been detained by the police. Also, one rupee per month per person of the population of Kumaon and Garhwal to be paid in equal measure by the State of Uttar Pradesh and the Union of India, as 'repairment'.

- the imposition of prohibitory order under s.144 Cr.P.C.
- the refusal to grant permissions to take out processions⁵⁸
- the arrest of protesters
- implicating protestors in criminal cases.⁵⁹
- tear gas, lathi charge, firing on protesters
- the branding of speech and action of protesters as seditious, or as obstructing development and therefore being against the national interest
- the forcible removal of protesters from the site of protest.
- forcible breaking of hunger strikes

The disappearance of Khalra who, along with Kumar, investigated mass cremations in three districts in Punjab is one of the startling instances of attacks on human rights defenders. Lawyers appearing for naxalites are regularly intimidated and threats held out to them. Anti-liquor activists have been killed, and there is little doubt that the liquor mafia is behind the killings. Organising or supporting people in resisting displacement, and the taking away of land or water resources for mineral exploitation or prawn culture, has led to cases being lodged against activists. The killing of Shankar Guha Niyogi by assassins paid by industry is another attempt at killing the leader to weaken a movement.

The contempt jurisdiction of courts, which has been used liberally particularly in recent years, constitutes a potent threat to free speech, expression and to protest. The conflict between the Supreme Court and the Narmada Bachao Andolan and its members and allies in the matter of contempt has resurfaced after the judgment of the court allowing the raising of the height of the dam. Truth, incidentally, is no defence in a matter of contempt. The device of 'sub-judice' is also often used to still discussion, and to refuse to share information with those seeking access to it.

In the more extreme manifestations of clamping down, there is custodial violence and encounter killings. It is also evident that civilians often get caught in the crossfire. They may be subjected to harassment including body searches, detention, rough questioning by security forces and routinely treated with suspicion. Search and seizure of private dwellings, even of whole villages are common. Reports of fact-finding teams in Kashmir record this in graphic detail. Caught between militants and the security forces, civilians face the dual threat of either being punished by the former for being 'informers', or punished by the latter for harbouring or aiding militants.

TT. Disability

The 1990s has seen a visibility, and position for the disabled in public spaces. The emergence of disability groups seems definitely to have made a difference. The enactment of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which was received by law persons with a certain scepticism as soft law, has acquired a significance with disability groups activating the law. The 'disability audit' of public buildings and spaces undertaken by the physically disabled in Delhi in April 2001, is an illustration of the potential of the law to help those who can use it.⁶⁰ The introduction of 'disability' into the census is seen as another step ahead for the disabled.

A disability activist in Hyderabad spoke of the trauma that those disabled by accidents experience. He said it was not uncommon that accident victims would call, seeking help from depression and the push to commit suicide caused by the loss of limb or faculty. Those physically disabled from birth would use their experience with disability to help the recently disabled to cope, he said.

⁵⁸ A respondent in Tamil Nadu told us that, in a writ petition opposing particular processions, the High Court had laid down 23 conditions to be followed by the participants. 'If you read them,' he said, 'you would realise that it is humiliating to participate in such a procession.'

⁵⁹ This is pervasive and many grassroots activists, and the affected people, have cases registered against them. Apart from intimidation, this is also a source of harassment and is seen as intended to deflect the energies, and time, of the protestors who now have to attend court hearings, often over years. 'Attempt to commit murder' seems a surprisingly common charge

⁶⁰ See also *Javed Abidi v. Union of India* (1998) 6 SCALE 597.

Even when the First Citizen's Report was produced in 1985, the effect of fluorosis on the people in parts of Nalgonda in Andhra Pradesh was described. In the intervening years, it appears some efforts have been made by a non-state agency to provide 'filters' to the people living in the fluoride-affected areas; a cursory visit was sufficient to reveal that most people have, but don't often use, these filters. The visit was to Mada Yedevally at Narkatpalli Mandal in Nalgonda district. A school teacher who led the way said that it is known to have the highest fluorosis rate in India. There are about 1600 people in the village now, said our respondents. 200 or so have moved out, they said. Till ten years ago, they used to drink the water, they said. Then, when they realised its devastating effects, they started getting water from other areas, where they go to work, for instance. There is a tank where water from another village, Puthurenipalli, is brought, but that is not free of fluoride either; only less so than their village water. There is a defluoridation plant established by the Dutch government in Yellareddigudam gram panchayat, but that is a little way away. The connection between the plant and the village water supply was not evident. And there are still distended limbs, prematurely aged bodies and a range of milder signs of the persistence of fluorosis.

These illustrations of the causing of disability, as a result of accidents or by inadequate attention to public health issues, is accompanied by the absence of state policy to take preventive or reparative steps. There have been some attempts at making easier the securing of an amount in compensation, but there is very little in evidence to deal with the post-accident trauma, or rehabilitation of these victims.

UU. Corruption and Criminalisation of Politics

Corruption has been at the centre of attention in various arenas in public life. The harassment of prostitute women for the policeman's 'hafta',⁶¹ and the endemic problems in filing FIRs and having investigations done are instances of one manner of human rights violations represented in corruption. The Bofors Gun deal, and the exposés in the Tehelka.com case are of another kind. The Enron issue, which had allegations of corruption at its centre is an instance of distorted priorities which can deepen debt, even while re-ordering the priorities in decision-making - the local people's voices were not even heard by those in power, and it is presumed that money exchanging hands had a lot to do with it.

Largesse and abuse of public office was much in evidence. In the Supreme Court, it was seen in the cases of allotment of petrol pumps and gas retail outlets under the charge of one central minister, and the allotment of commercial plots and shops by another. These serve to illustrate.

The criminalisation of politics brought out in the Vohra Committee report (1997), only confirmed what is commonly known to be a fact.

The everyday corruption of the petty potentate will have to be understood in this larger context of institutionalised corruption and crime. The extent to which such corruption leads to every day violations of rights is popular knowledge; documenting instances, and the effect of such corruption, would help understand the human rights dimension of corruption as it affects the everyday person.

VV. 'Natural' Disasters

Earthquakes, floods and droughts have recurred with rigorous frequency. While some of these happenings have indeed been 'acts of God' or 'force majeure', a relationship between land and water use and droughts, for instance, has been drawn by activists and researchers.

The post-disaster treatment of the affected population has given rise to rights issues. The relative neglect of those devastated by the Orissa cyclone in October 1999 is contrasted by development workers with the relatively improved treatment of those afflicted by the Gujarat earthquake in January 2001. The victims of the Uttarkashi earthquake in 1991, in the meantime, have said that they were yet to see anything beyond aid in the immediate aftermath of the earthquake reach them.

The development of a rights perspective in the context of such disasters may shift the emphasis from welfare to rights.

⁶¹ Protection money, or bribe - 'hafta' means 'week' indicating the periodicity of payment

IV. CONFLICT AMONG RIGHTS

The expanded assertion and recognition of rights, and the dimensions to rights that are emerging, have given rise to situations of conflicts **among** rights, and consequently, among rights activists. Choices are being made, and a prioritisation of rights occurring in a range of areas.

The neglect of women's rights in the human rights arena for decades after the Universal Declaration on Human Rights (UDHR), and the Constitution of India, has had the women's movement demanding, and acquiring even if partially, recognition of women's rights as human rights. There were some among our respondents who held that human rights are those which are asserted against state action and inaction. A human rights lawyer, on the other hand, saw human rights as a strategy which ought not to be confined within an inflexible definition. For people in the women's movement, however, human rights are about patriarchy and systemic oppression and violence; domestic violence and death in the matrimonial home could not, clearly, be excluded from the universe of human rights issues. As a civil liberties' activist told us, in a pamphlet they prepared in 1990 (when the debate about whether violence and death in the home should be on their agenda), she compared statistics in dowry deaths with encounter killings: it was 2000:300. Though it stoked a lot of controversy, the women members of the organisation were very happy that the issue had been raised, she said.

The emergence of women's rights in the human rights universe has also brought with it some contradictions which demand to be addressed.

A. A more just deal for women and fair trial standards

In cases of violence against women: registering a case; getting effective investigation underway; the ordeal of trial for the victim, particularly in situations of rape; the difficulty in obtaining evidence in offences within the home, as also in cases of rape; and the low rate of convictions had women's groups, and on occasion, the National Commission for Women, demanding changes in the law to deal with these issues.

Over the years the demand has been for -

- the recognition of certain actions/practices as actionable offences - domestic violence, cruelty in the matrimonial home and 'dowry death'. While the first is under consideration of Parliament, the latter two now find a place in the law. S. 498-A IPC, which makes punishable a 'husband or relative of husband of a woman subjecting her to cruelty' has become contentious. On the one hand the extent of violence in the matrimonial home is undeniable, and restraining the perpetrators and protecting the victim-woman is imperative. On the other hand, the experience of abuses of this provision which defines an offence that is cognisable⁶² and non-bailable, which may land families in prison pending bail, is said to have caused resentment against, and distrust of, this provision. Those who would not drop the provision because of the occasional misuse, point out that there are hardly any other protective measures to help a woman battered in her marital home, nor any other deterrent provision to add caution to offending members of the matrimonial family.
- enhanced punishment for certain offences against women. The introduction into the law of 'minimum sentences',⁶³ and higher sentences has also happened. Implicit in the demand for prescription of higher penalties is the need to secure deterrence - if the low rate of conviction takes away the possibility of deterrence, it is sought to be reintroduced through a higher penalty where conviction does result. It has also been a measure of the state's, and popular, perception of the seriousness of the offence. The conflict lies in this, that it comes at a time when the virtues of imprisonment are in serious question. It is not evident that the conditions in prisons, and the violations of the rights of prisoners which is now common knowledge, has been reckoned with while asking for enhanced sentences. But the conflict became most apparent when death penalty for the offence of rape was mooted. When it was first suggested in the mid-1990s, there was very little by way of

62 'if information relating to the commission of the offence is given to an officer in charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relation, by any public servant belonging to such class or category as may be notified by the state government in the behalf' - First Schedule to the Cr.P.C 1973.

63 For instance, since 1983, a minimum sentence of seven years is prescribed for the offence of rape under s. 376 (1), which may be reduced 'for adequate and special reasons to be mentioned in the judgment'.

audible objections from women's groups; some women's groups extended it support. It was when the issue was raised again in 1998, that there was an avalanche of protest from women's groups. The NCW too released a report of a study it had done which showed that most of their respondents opposed the prescription of death penalty for rape. For some in the women's movement, the opposition to death penalty for rape appears to have been a pragmatic position - since it would only make the women more vulnerable if the penalty were so severe. For others, the pragmatic argument was a means of opposing the spread of death penalty into areas where it is not, already. What is disturbing is the persistence of the Home Minister in holding out the death penalty as a promise to women, as a statement of seriousness about the problem.

In this context the failure to challenge the prescription of the death penalty for offences in the Commission of Sati (Prevention) Act 1987 also becomes an area that needs to be re-visited.

- Shifting the onus of proof. This has already been introduced into the Evidence Act 1872 in 1983 and 1986. S. 113 A raises a presumption as to abetment of suicide by a married woman where she commits suicide within seven years of her marriage, and it is shown that her husband or in-laws or a relative of her husband had subjected her to cruelty. S. 113 B raises a presumption of dowry death where it is shown that soon before her death she had been subjected to cruelty or harassment by the accused for, or in connection with, any demand for dowry. S. 114 A presumes absence of consent in certain prosecutions for rape. A respondent reasoned that she had opposed this shifting of onus of proof because it would open the gates for the state to extend the shifting of onus to other areas; see what has happened in TADA and such laws, she said. Also, while the violations are certainly heinous, the criminal justice system is structured to require the prosecution to prove guilt; it is often not possible for an accused to rebut an accusation, she said, even where the accused may be innocent. Further it is a dilution of fair trial standards. The contrary position is that there are offences where such a presumption is not necessary if justice is to be done to the woman.
- a separate criminal code for women. This was a proposal that emanated from the NCW and was widely discussed in 1995-96. This was intended to make the trial less traumatic for women, speed up the criminal judicial process, and it was expected to raise the conviction rate. There were discussions of making some inroads into the rights given to an accused under the law. This proposal, however, appears to have been shelved.

It was suggested to us that child sexual abuse being of an extraordinary nature, there should be a relaxation of fair trial standards in dealing with it.

B. HIV, AIDS and Disclosure

The two conflicting positions on disclosure by a hospital/doctor about the HIV+ status of a person has been set out *supra* while mapping human rights issues. To that discussion of the issue may be added that the view on disclosure seems to have been influenced by the context of the proposed marriage of the petitioner in that case. It may be appropriate to consider the reach of the principle of disclosure while weighing the rights content of the court's decision.

C. AIDS and High Risk Groups

The AIDS campaign has given visibility to women in prostitution who had so far been unable to requisition public spaces. There are few who deny that women in prostitution need to be empowered to prevent their becoming ready victims of HIV transmission, as also of passing the virus on. However, the programme of intervention to protect from AIDS has re-introduced the idea of high risk groups, and women in prostitution as constituting such a group - a notion that was contested in the 1980s as discriminatory, and with the potential of leading to victimisation of targeted groups.

D. Abortion in the context of Women's Health and Sex Selective Abortion

When Parliament passed the 1971 law legalising abortion under certain conditions, the statement of objects and reasons listed three reasons for passing the law:

- as a health measure - when there is danger to the life or risk to the physical or mental health of the woman;
- on humanitarian grounds - such as when pregnancy arises from a sex crime like rape or intercourse with a lunatic woman, etc.; and
- eugenic grounds - where there is substantial risk that the child, if born, would suffer from deformities and diseases.’

By 1995, when the Maternity Benefit Act 1961 was amended, the insertion of population control provisions into the law was being acknowledged, and resisted. The 1995 amendment, however, did give a renewed emphasis to placing the onus for family size on the woman when it incorporated ‘leave with wages for tubectomy operation’ as a ‘maternity benefit’, even as it gave medical termination of pregnancy the same position in law as miscarriage. This is a statement of the adoption of abortion as state supported policy.

The question of abortion as a right, and abortion as a population control measure may need to be re-visited.

There was also a proposal to limit the provision of maternity benefit under the Act to women workers up to the second child; this however seems to have been dropped, perhaps because of the protest that met the proposal at almost every turn.

The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994, which was modelled on an earlier Maharashtra law, was enacted expressly ‘to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Such abuse of techniques is discriminatory against the female sex and affects the dignity and status of women.’⁶⁴ The punishment for transgressing the prohibition of the law is intended to be deterrent. Yet, in the seven years since the law was enacted, there have been no prosecutions of which any of our respondents made mention.

The conflict inherent in asking for abortion as a matter of right, and believing that sex selective abortion needs to be curbed requires to be squarely addressed.

E. Sexual harassment in the workplace

After the Supreme Court’s *Vishaka* guidelines, demands for translating them into policy and practice are being made. The allegations of sexual harassment by persons in positions of leadership within the human rights community, and the lack of procedures prescribed in *Vishaka* even within the human rights community, has been raised as an area of conflict in the context of human rights.

F. Freedom of Expression, Privacy and Censorship

The depiction of women, as also of violence against women, has raised difficult questions of censorship and of free speech and expression. The control that capital has over the media has been recognised, and it is not the free speech rights of corporations that is in issue here. Feminists worry that the power to determine what is ‘obscene’ or ‘indecent’ could curtail the use of media to interrogate, for instance, rape: for the depiction of rape could be viewed as ‘obscene’ and explicitly addressing the issue proscribed. Even as feminists, and women, find public spaces for their speech and expression, the space could get restricted and reconstructed by censorship.

The Miss World contest organised in Bangalore in 1996 gave rise to similar, uneasily quietened questions.

The responsibility of the researcher, and the impact of publishing research findings, has been in issue in the Almora case, where research published in September 1999 became a subject of singular controversy in April 2000. The research, on AIDS and the local community, used the responses from a sample of respondents who spoke about the sexual practices in the area, from where male migration for work is very high. Promiscuity and adultery were spoken of. The protesters were angry at the depiction of the community in the report. That the research was funded by a foreign donor agency added a dimension to the protest. The NGO later apologised, and withdrew the report. By then, three activists had spent 45 days in jail.

⁶⁴ Statement of Objects and Reasons of the Act.

In the meantime the state had moved in to impose the NSA on them. This last deed was roundly condemned, and much of the human rights community spoke as one to attack the state action.

The questions raised by the research and the report, however, continue to hang in the air.

G. Prostitution

There has been considerable movement in public perception. Most significant though has been the openness with which the practice, proliferation and problems of prostitution are now discussed. Inevitably, perhaps, there have been conflicts that have surfaced in this area of women's rights.

On the one hand is the demand that sex work be recognised as real work. In the mid-'90s this was articulated as sex work being seen as labour. There was also a demand that labour laws be applied to sex work. That appears to have been gradually amended to the demand that sex work be accepted as labour in terms of the dignity that labour commands. A collective of women in prostitution identified three R's - Respect, Recognition and Reliance. The women in the collective also spoke about the right to say 'No' in the course practice of their profession, and said they had to be given the right of 'self-determination'.

While there was no demurring about the need to protect women from exploitation - from the police, the pimp, the madam and the client - there were dissenting voices on recognising prostitution as sexual labour. As one respondent said it: 'Feminists are being included in a much larger agenda. They are giving patriarchy and sexual exploitation a sugar coating by calling it work. Earlier patriarchy oppressed women by calling them 'mother goddess' and curbing her freedom. Today patriarchy oppresses her by calling her the 'bread winner'. She continued: 'I accept that today the state is doing little to stop trafficking. But the day sex work is seen as work under law, that will be the end of all efforts to stop trafficking.'

A woman from the collective, however, said: 'Trafficking can only be stopped by us. Only we know what is happening in our areas. We are telling the government they should give us the right to act.' She however conceded that not all areas where prostitution is practised and trafficking occurs were yet capable of being so monitored. We see ourselves as workers, she said, and we want a union that will give us a base.

A 'mela' which was organised by the collective in Calcutta in March 2001 reportedly met with stiff resistance from some women activists, while others stood up for the rights of the women to organise themselves.

It is sometimes depicted as an issue of 'agency' of the woman as against those who see women in prostitution as victims, and subjects of exploitation.

Six aspects which a woman in the collective adverted to if they were to be considered to be 'labour', and their association recognised, were:

- Police raids would not happen.
- Mental torture in the rescue homes would cease. Also, when the girls are released by pimps, they say they have paid huge amounts when they actually pay far less in bond. Bonded labour is therefore rampant in the present dispensation, she said.
- A self-regulatory examination board, with a multi-sectoral member composition would be able to prevent the entry of minors into prostitution. The two criteria of age and willingness would be applied by them. Now, we don't have even the right to stay where we are, she said.
- The right to say 'No' would get established.
- Teasing to demean women in prostitution would reduce.
- When they retire, they are not even able to go back home; once they are declared to be labour, that will change. That would be real rehabilitation, she said.

There was some conceptual confusion about ‘decriminalising’ and ‘legalising’ prostitution. While most of our respondents saw a need to decriminalise to prevent them from being a vulnerable group, the mix up with legalising prostitution - which many among our respondents were unable to accept - dogged our discussion.

A proposal that the travel of single women across political borders be controlled, which was under discussion with the NCW, was dismissed by some respondents as being a prescription for obstructing freedom of movement of women and as likely to serve no other end.

The children of women in prostitution are seen by the law as being potentially in ‘moral danger’. The Juvenile Justice Act 1986 and its successor legislation - the Children in Need of Care and Protection Act 2000 - allow for their children to be taken over by the state. A judge of the Supreme Court had even said that the women should be ‘coaxed, cajoled or coerced’ to give up their children.⁶⁵ This clash of a complex of rights and of perceptions needs to be more fully understood.

H. Environment

In the past fifteen years, environmental concerns have acquired a dominance which, it seems, have re-prioritised, and sometimes dislodged, rights.

Reduced pollution and hazards v. Workers’ livelihood

The issue was most starkly represented in the Delhi Relocation case. When 168 industries in the first instance, and thereafter all ‘hazardous’ industry in Delhi, were ordered to be closed or relocated, the conflict between the right to reduced pollution and hazards, and workers’ jobs exploded into prominence. The matter arose out of a PIL filed by an environmental lawyer. The condition in which such an order would leave the workers - whether the industries closed down or relocated - was not considered till after the decision was made. The order, coming from the Supreme Court, has had an effect of finality and narrow negotiability which has pushed workers’ rights very low in the hierarchy of rights into a residuary position.

In Kerala, the Grasim industries pollution case has engaged the environmentalists since the 1970s, and the workers from even earlier. Between 1985 and 1988, the industry closed down for reasons unconnected with the pollution. Environmentalists and workers then fought on the same side to have the industry re-started; the loss of jobs was then the primary concern. Since it re-started in 1988, the environmentalists have been gradually moving away from an appreciation of labour’s concerns, since they do not see that environmental concerns and workers’ jobs can be accommodated in a single solution. The environmentalists have voted for battling the pollution at all costs, even as they are chagrined at having to leave labour out of the reckoning.

In Trivandrum, we heard of people whose livelihoods had been dislocated by the pollution of the coastal waters demanding that either the industry close down, or they be absorbed into the industry in replacement of livelihood lost due to the pollution.

In Tuticorin in Tamil Nadu, among the salt pans is located a chemical industry. A drying pond stands mute testimony to the potent pollution being caused by the industry. The salt workers’ cooperative is maintaining a stoical silence about the pollution, since any protest from them may result in loss of jobs for about 1800 workers employed in the industry.

In Vellore in Tamil Nadu, when the Supreme Court ordered that tanneries be closed, around 8000 workers were reportedly laid off.

On the one hand, a labour activist said that it is time that workers developed a position which takes public health, pollution and environmental issues into account. On the other, the practice of using the court system, in PIL, to project a uni-dimensional view of the issue by environmentalists was attacked. The present priority accorded to environmental issues was seen as allowing the environmentalists to get away without having to reconcile conflicting concerns.

⁶⁵ *Gaurav Jain v. Union of India* (1997) 8 SCC 114.

Shelter v. Conservation

The displacement, by court order, of residents of slums bordering, and encroaching in some measure, into the Borivili National Park in Mumbai has raised similar concerns. The clash between environmentalists and those espousing the cause of the slum dwellers has been violent, and the positions apparently irreconcilable.

Shelter v. Beautification

A petition asking for garbage disposal in Delhi has allowed the Supreme Court to order demolition of slum dwellings. While doing so, the court has likened giving land for rehabilitation to 'an encroacher' to 'rewarding a pickpocket'. In this vein, there has been a mass-scale illegalising of structures which house the poor. In the same order, the court has directed that garbage disposal being a public purpose, land should be released to the municipal corporation, free of cost.

The court has been re-working priorities, and groups approaching the court increasingly recognise that environment, as expansively defined, is likely to take precedence over other rights such as shelter and workers' livelihood. There has been greater scope for negotiation, however, when the survival of an industry is concerned - clean-up technology (particularly ETPs and CETPs) which, at best, is recognised to be a partial answer, have been accepted as an answer to the charge of pollution.

Tribals v. Forests

The presenting of the conflict in these terms, i.e., tribals vs. forests, has tended to marginalise the tribal communities. There has been denudation of the rights of tribals who habitually reside in forests and live off forest produce. The creation of national parks and sanctuaries has led to installing the concept in law of exclusion of the tribal from the forest. Where they are being allowed access, their rights are severely circumscribed - by identity cards, timings, numerous checkpoints and a very limited range of permitted activity - leaving them often at the mercy of the forest officer. A distinct school of thought has emerged which advocates against the exclusion of tribals, and which sees a role for tribal and forest dependent communities in the conservation of forests. The reconstructing of the rights of tribal communities is, largely, except for the rare exception, being done without the participation of the affected communities.

Anti-smoking law v. Workers

The workers in the tobacco industry have found their jobs threatened by the anti-smoking legislation that has been introduced in some states. Trade unions find themselves impelled to oppose the ban because it will cause reduced sale of beedis and, consequently, reduced employment. They also argued that it was a ploy by large tobacco companies to snuff out the beedi industry since it is the class which smokes beedis which will have difficulty in finding spaces which are not public and where they may smoke legally. Yet, this would present workers as self-centred and anti-health. The conflict defies easy solution.

I. Tribal Land Alienation

The law, generally prohibits the transfer of land from a tribal to a non-tribal in agency areas, or scheduled areas, except for reasons recognised by law, and by procedure prescribed therein. While this is usually respected as fair and legitimate protection extended to scheduled tribes, and to prevent exploitation of the tribal by the non-tribal, the situation in Kerala has been somewhat complicated. In 1975, the state legislature enacted the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act 1975. The law has had a chequered career, with the government attempting to dilute the effect of the law, by amendment, and the courts demanding its implementation in its 1975 guise. The question of alternative land rather than restoration has also been mooted - but it is not clear that such alternative land exists. While tribal activists have been campaigning for enforcing the 1975 law, others have been muted in their reactions. The reason, our respondents say, is because the land appears to have been transferred for a price to settlers who are themselves only marginalised populations. It would be unjust and iniquitous to dislodge them from lands for which they have paid as much as they can afford, it was said. This was represented as a case of conflicting interests, but of two equally, if differently, affected communities. Rehabilitation of the already displaced adivasi community appears to be one way of resolving the issue - a view with which tribal activists do not concur, considering it as an erosion, even a denial of the right against alienation of land.

J. Dalit movement and the Caste as Race representation

The effort by NGOs to get caste on the race agenda at the Conference for the Elimination of Racial Discrimination has been an attempt to internationalise the issue of caste. Some activists and leaders in the dalit movement have also been involved. While some of them have got on board as in Gujarat, the dalit activists/leaders in Andhra Pradesh and Tamil Nadu have been consulted but have chosen not to enter the arena themselves. This is how a dalit activist leader explained it: 'We need international pressure. So far we have treated it as an internal matter. This will help the issue get focus.... This has been raised by NGOs, not by the movement. I don't know about donor politics. We only tried to get some control by putting some of our academicians in it. But we are not sure what it means.'

A Dalit leader who had not heard of this move objected to the caste-as- race representation. Race is not our politics, he said. Our fight is against brahmanism and casteism, he said.

Even if it were to be considered that NGOs may not be able to consult with *all* affected or concerned persons, groups, organizations or movements before espousing causes, the conflict that could exist where the NGO position and that of movement politics do not converge has to be addressed.

K. Speedy Disposal of Cases v. Open Criminal Justice Process

Overcrowding in prisons has been partly attributed to the problem of transporting undertrials to the courts, and of finding police escort to perform this task. In response there is an emerging practice of magistrates holding court within prison premises. This reportedly happens in Delhi and in Bangalore, for instance. The prison is patently a closed premise, as also beyond the beat of the persons who make the judicial process an open system, including lawyers, reporters and observers.

In a different context, the virtues of in camera trials in cases of rape to protect the interests of the victim of rape has also been debated, inconclusively.

L. Human Rights Lawyering

In approaching the court, or when an activist is drawn into the judicial process, a question of representation of a political or an ideological position often rises. Illustratively, a feminist litigating for getting custody of her child may be faced with two choices: either to assert the stereotype - the mother as the primary carer of the child, and the child needing the care and attention that only the mother can give - and increase the probability of getting custody, or staying within the politics of feminism and reject such stereotyping which, in turn, may drastically reduce the chances of getting a favourable order from the court. An instance, again, is in matters of contempt of court, where activists may be advised to tone down their honest opposition to a court order which is patently unjust, even unconstitutional, or perhaps to tender an apology which would serve the requirement of the court, but which may compromise the politics of the contemnor. Difficulties abound where activists are picked up by the police, and there are apprehensions that they may be subjected to torture, or even be killed in a fake encounter - does politics stop at the doorstep of the courtroom? Is it necessary to get the consent of the activist before taking a position in court, in a habeas corpus petition, for instance? And what is to be done where the activist is unreachable?

V. STRATEGIES AND RESPONSES

Some responses have been indicated while setting out the issues in Chapter III. In this chapter, a listing of strategies and responses of state and non-state actors is attempted. Those attempted by non-state actors is inevitably more exhaustive, since a large proportion of our respondents belong to this description of person.

Organising People

This may be for effective and informed protest, as has been done by the NBA, for instance. Or in getting people to re-capturing control over their resources, as in the Aruvari Sansad in Alwar District in Rajasthan. Or to form collectives, as with the Durbar Mahila Sammanvaya Committee.

Working on the Right to Information.

Led by the MKSS in Rajasthan, it has caught the imagination of activists across states, and fields of activity. It has also resulted in bureaucratic and political acknowledgment of the right/freedom.

One aspect of this right is explored by activists who gain access to 'top secret' documents and share them with grassroot level workers as also with the rest of the interested community. This happened with the Land Acquisition (Amendment) Bill, for instance, exploding thereby the unsustainable position that proposed legislation of this kind may need to be kept secret from the people it is likely to affect.

The use of information technology to gather facts about offending enterprises, for instance, and disseminating them is another facet of the interpretation of this right.

Iconisation.

The changing of a victim into a symbol, as in Mathura (custodial rape), Bhanwari Devi (in defiance of rape and oppression), Dominic D'Souza (AIDS), Budhan (denotified tribes) are some instances.

Some places where the violations occurred also lend their names to a construction beyond immediate incident: Muzaffarnagar - the scene of killing and molestation of the Uttarakhand agitators; to activists it appears to epitomise the struggle against odds, but also of an isolation of the struggle from the human rights communities in other parts of the country. Or the 'Stchundur' treatment in Andhra Pradesh, where landlord retaliation against dalit assertion, inadvertent in this case, took place amidst police protection; this is now referred to as a phenomenon.

'Broken People' researched and written by Smita Narula for Human Rights Watch is said to have catalysed dalits into forming a national organisation. There were references to Masanabu Fukuoka's One Star Revolution having helped shape perspective.

Bringing in the Media

While press briefings are frequent, taking the press along to witness an event is not unknown, e.g., the Disability Rights Group being accompanied by press persons while doing a disability audit of public buildings in Delhi in April 2001. The presence of empathetic persons within the press establishment was also said to make a difference, as when dalits were professional journalists.

Fact-finding, People's Tribunals and People's Commissions

This is a process by which a state tactic has been co-opted by non-state actors. Previously human rights activists would demand judicial enquiry into incidents of violations of human rights. The use of judicial inquiry sometimes in the form of Commissions of Inquiry, to diffuse situations, or the inconclusive, or, sometimes, unfairly exculpatory, nature of the findings where judicial enquiry culminated in a report, discredited this state response. There is also the capacity of the state to scuttle such inquiry once the immediate need to set them up is past. The Srikrishna Commission is a rare instance of a report which commanded credibility, and it too had to go through the vicissitudes of winding up and re-starting.

Peoples' Tribunals and Peoples' Commissions of Inquiry have made the shift from legality to legitimacy. With the state privileging retired judges in appointment to commissions of inquiry, People's Tribunals and People's Commissions too have on their panel retired judges, who, in addition, carry the aura of integrity and competence. The panels may also have other public figures including among them journalists, lawyers, academics and activists.

There were two instances of attempts to thwart the functioning of People's Tribunals/Commissions which we encountered. The first was when a panel was constituted to hold public hearings on disappearances in Punjab. In keeping with the demands of 'natural justice', notices were issued to policemen, among others. The state contested the right of the people's tribunal to hold hearings, contending that that is a judicial function which the Tribunal cannot usurp. The activists' position was that this was a process in which participation was voluntary, and this was not an alternative to the judicial process. The High Court, and later, the Supreme Court, upheld the state view, and the tribunal was not allowed to function. The enquiry into the Srikrishna Commission was similarly threatened by the judge who issued notices for contempt to the People's Tribunal. Extra-mural intervention led him to set aside the notices. The People's Tribunal also explained that their inquiry was intended to facilitate the official inquiry, and was not an act of defiance.

Fact-finding missions, which generally follow soon after an episode of violation, are also increasingly used where human rights defenders are subjected to harassment. The issuing of a statement by persons with credibility in the activist universe and generally after a visit to the site, and after meeting with as many of the actors as is possible, is meant to provide an alternative to self-serving versions that may emerge from the state or its agencies. It is also intended to highlight an event to prevent further violations. It is important to ensure that the accusation of pre-judgment which discredits state reports do not taint such non-governmental fact-finding missions.

The report of a lawyer who visited Coimbatore to investigate the anti-Sikh riots in 1984 was the basis of a significant petition in the Madras High Court. This constitutes a turning point when 'culpable inaction' by the state was recognised, where injury to person or property could have been anticipated, but the state did not act to prevent such injury.

Visiting Zones of Conflict and Violence

The cutting off of a free flow of people between areas of conflict and violence and the rest of the country also cuts off the possibility of understanding what the people experience, of information being shared, of extending solidarity and support. The report of the Women's Initiative in 1994, 'Women's Testimonies from Kashmir: The Green of the Valley is Khaki' is testimony and photographic depiction of the women in Kashmir. Uma Chakravathi and Nandita Haksar's 'Delhi Riots' is a testimony collected even while curfew made it difficult to reach the victims and witnesses of the anti-Sikh riots in Delhi.

People to People Dialogue

This has been held, for instance, in the North East to break the barriers of distance and incomprehension. This also helps in exploring, in areas where the issue is of self-determination or autonomy, after the conflict, what is to follow.

The meeting of Naga women and Kashmiri women, both caught in situations of conflict, organised in Delhi in April 2001 is another instance.

Negotiating Conflict

The efforts of the Committee of Concerned Citizens in Andhra Pradesh to reduce the violence practised by the state and the naxalites is documented in 'Report of the Committee of Concerned Citizens (1997-2000)'. Comprising persons with whom both the state and the PWG would not be unwilling to speak, the CCC started its correspondence with asking the state for a cessation of 'encounter' killings, and asking the PWG to desist from killing its adversaries. While the state response has been more formal than substantive,⁶⁶ the PWG has had the CCC recognise the fundamental nature of land reforms and land re-distribution before violence ceases. The openness of this process of talks and dialogue, and the establishing of credible persons as dialogists, is a significant aspect of this process.

Truth Commission

This was organised in the context of deaths of young women in their matrimonial home in Karnataka. A panel heard the parents and relatives of the murdered woman, giving the victim's version a space that it is not able to find in the systems of the state.

Dissemination

A group of disabled persons working among the disabled in Andhra Pradesh, and producing a newspaper and running a press, said they had printed and disseminated 3000 copies of the 1995 Disabilities Act. The response, they said, was excellent.

They also spoke of sending out 10,000 letters to motivate handicapped people.

The CEDAW too has been widely discussed, disseminated and translated and training modules developed for understanding, and using, the CEDAW.

⁶⁶ In fact, the number of killings in encounters has risen in these years. But the channel of communication has, at least, stayed open, and the state cannot refuse to listen.

The widespread use of posters setting out the rights of the accused as ordered in *D.K. Basu's case* and in *Joginder Kumar* has been taken into police stations too. This has also been translated into the local language in many states.

Use of information technology, films, reports, magazines and newsletters, both to gather and to share information. Video films and documentaries which assert facts with a perspective - e.g., *An Unfinished War* on population policies and women's perception of their bodies, *Kaise Jeebo Re* on the Narmada struggle, *Hamara Shehar* on demolitions in Bombay.

Peace Committees

This was particularly spoken of where political violence is widespread and routine, especially in West Bengal and Kerala and was also found in Tamil Nadu in the context of caste violence. Human rights groups send out peace committees to bring warring groups to negotiate peace.

Census

The use of 'census' on the practice of untouchability is seen as a way of squarely placing the issue on the table.

Disability having been brought on board as a factor to record in the 2001 census, disability groups have been motivating persons with disability to enter their data in the Census as a step towards recognition of their rights in state policy.

Setting the non-negotiable

This establishes the base lines in an issue. For instance, regarding child labour, a non-governmental organisation has set them out like this: All children must attend full-time formal day schools; Any child out of school is child labour; All work/labour is hazardous, and harms the overall growth and development of the child; Any justification perpetuating the existence of child labour must be condemned.

Legislation

Monitoring changes proposed in law, and in policy, which may affect people's rights. This may also involve the critiquing of proposed drafts and preparing alternative drafts which would be people friendly. The forest laws and the laws relating to land acquisition, as well as the rehabilitation policy went through this process.

The Bill on domestic violence was prepared by non-governmental effort and has found its way into parliament.

The Women's Reservation Bill has survived disinterest and active antagonism in Parliament because of the activists who have battled to keep it on the agenda.

In the 1980s, the changes to criminal law which dealt with crimes against women were the result of demand from the women's movement.

Participating in state processes, as in presenting memoranda to the Committee to review the working of the Constitution, or intervening with the Law Commission is also practised.

Campaigns

The Campaign against Death Penalty is one instance. Campaigns often accompany other modes of intervention, legislation or recognition of rights (or wrongs), for instance. Campaigns may also take on issues such as opposition to the WTO, or to the manner of opening up of the Indian economy to multinational power companies, for instance.

Resistance and Protest

This may take the form of rallies, padayatras, cycle rallies, processions, dharna, bandh, hartal and roadblocks.

Apart from the 23 conditions that the Madras High Court has imposed on processions,⁶⁷ the Kerala High Court has declared that bandhs are unconstitutional since they deny freedom of movement and the right to carry on one's

⁶⁷ It was a direction in one case, but the police has been able to use it to get it extended to processions generally, in practice.

avocation.⁶⁸ This stands affirmed by the Supreme Court.⁶⁹ Bandh seems to have got devalued as a means of protest because of the indiscriminate use of protest because of the indiscriminate use to which it has been subjected by political parties. This is particularly true in Kerala, where activists broadly supported the court's decision. This appropriation of non-governmental methods by governments - in power or in the opposition - appears to have robbed it of its legitimacy and meaning.

- Land invasion.
- Seminars, workshops, lectures, preparing of manuals, holding state and national level consultations and conventions, training of activists and grassroot workers and getting a dialogue going among them, pamphlets and posters are usually used.
- The formation of networks has become frequent, as has the induction of issues and the broadening of agenda to accommodate such issues. This has also helped to move towards an understanding of the indivisibility of rights.
- Signature campaigns.
- Alternative election manifesto.
- Participatory methods of decision-making and policy making. The 'Van Gujjars proposal for the Rajaji area' published in 1997 where, through an overtly consultative process among forest-dwelling Van Gujjars, a scheme for community forest management in Protected Areas was drawn up.
- Budget analysis from a range of perspectives, including analysis of what it does for women, children and health.
- Social Development Report.
- Use of PIL in the Supreme Court and the High Court, using the NHRC and the State HRCs and human rights courts. In some states, either the SHRC has not been established,⁷⁰ or the SHRC is not a credible institution, and the NHRC is more regularly approached. The National Commission for Women (NCW) has also been used and, in a certain period of its functioning, it was seen as an institution which provided solidarity, by the unqualified acknowledgment of the justness of women's claims.
- Training of judges and police personnel. This has been most commonly on gender sensitisation and or human rights.
- Advocacy on rights of people with the state and agencies of the state.

Help lines

This has been established for street children, lesbians and gays, and for women in distress. While the first and the last mentioned have endorsement in state policy and practice, help lines for lesbians and gays is denied legalised spaces for operation. Help lines have also existed for some years now for those with suicide on their minds.

Trial Observers

This appears to be an underused method of demanding accountability in judicial and quasi-judicial processes. Yet we did hear of its use in two situations: at the Justice Mohan Commission of Inquiry into the Manjulai tea estate incident where 17 people drowned in the Tamaraparani river - 6-7 persons attended the hearings each day of its sitting. And, the Kerala State Commission for women had two lawyers attending as trial observers in the Vidhura case.

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⁶⁸ *Bharat Kumar K Palicha v. State of Kerala* (1997) 2 Ker LT 287.

⁶⁹ *Communist Party of India (M) v. Bharat Kumar* (1998) 1 SCC 201.

⁷⁰ As in Andhra Pradesh

The state has adopted strategies, and measures, dealing with human rights violations, and for pre-empting the occurrence of such violations. While some of these strategies and measures are perceived by activists as having supportive potential, others are seen as providing spaces for human rights violations with impunity; this is particularly so in the case of extraordinary laws.

The establishing of 'Commissions' including: the NHRC (by Act of 1993), the NCW (by Act of 1990), the National Commission for Backward Classes (by Act of 1992), the National Commission for Safai Karamcharis (by Act of 1993). It is a widely held opinion that the NHRC was established in response to international pressure. Though the Protection of Human Rights Act says that there shall be 'two members having knowledge, or practical experience in, matters relating to human rights' there has been no person from the human rights community in the NHRC; nor does there seem to be enthusiasm among the members of the human rights community to be appointed to the NHRC.

The NHRC has standardised compensation as a response to human rights violations. It does recommend disciplinary action and prosecution of errant officers, but this is not invariable. There has been an acknowledgment of custody deaths, and there is a direction that all cases of custody deaths be reported to the NHRC within 24 hours of its occurrence. The numbers have been seen to be increasing each year; the NHRC puts it down to increased reporting. There is a direction that post-mortem of persons who have died in custody be videotaped; it is not apparent that this has made a difference.

The NHRC was at one with the human rights community in demanding that TADA be not re-enacted. It also recommended ratification of the Torture Convention, but the government does not have to heed the NHRC, since its opinion is only recommendatory; and the Torture Convention remains not ratified.

The exclusion of the armed forces from the purview of the NHRC is identified by activists as a grave lacuna in the Act that establishes the institution. This is especially so since human rights violations by the armed forces is a matter of concern and contention in the conflict-torn regions of the country. It is also that this exclusion is viewed in the context of the NHRC's reach over 'terrorism', and, therefore, found anomalous.

In defending its human rights record before the Human Rights Committee, the state has used the NHRC, along with PIL, as reason to believe that all human rights violations have avenues for redressal within the state.

The Supreme Court, too, has passed on the burden of PIL cases which deal with human rights issues, included bonded labour, mentally ill in institutions and women in 'protective' homes, to the NHRC. This shift from a binding fundamental rights jurisdiction to an institution with recommendatory powers has been viewed with growing concern by activist lawyers.

The judge-heavy composition of the NHRC has influenced the procedure of 'hearing', setting out of a 'case', and even 'affidavits' and 'arguments'.

The Annual Report of the NHRC is to be placed before Parliament, making it a public document. The government is to give an Action Taken Report along with it. In the Annual Report of 1998-99, the NHRC refers to the non-tabling of the report of the previous year; the more significant recommendations from the previous year have been reiterated in 1998-99. There has been no challenge to this governmental neglect.

The soft approach, sometimes amounting to a clear negation of rights, as in the Punjab Disappearances case, has been castigated by activists. The impact of directives issuing from the NHRC, on custody deaths for instance, is unclear. Documentation of cases, and the reports of investigations, is not easy of access, and no system has been devised for ensuring such transparency.

State Human Rights Commissions (SHRCs) have been set up only in some states. Andhra Pradesh, with its escalating record of encounter killings, has not established a SHRC. In West Bengal, activists do approach the SHRC, but they explained that they were confronted with popular prejudices - such as judging a victim of custodial torture as not worthy of the energies of human rights activists; and their concern being 'misplaced'. An orientation to human rights was found missing when such poses were struck, they contended.

Activists in other states, such Tamil Nadu, seemed to prefer approaching the NHRC rather than the SHRC; a question of competence and demonstrated seriousness of purpose at the state level, they explained.

A. Courts

The setting up of human rights courts at the district level has begun, and activists have engaged with the process of establishing rules and guidelines in terms of the procedure to be adopted by these courts. These don't seem to have become functional yet, and they remain sidelined and hazily constructed within the dominant judicial system. Also, activists in Tamil Nadu said that human rights courts were restricting themselves to civil and political rights; it will lead to a defining of what constitutes human rights in this lexicon, they said.

Mahila Courts, or courts for women, have been set up in some states, including Karnataka. The appointment of women as judges to person Mahila Courts, and the setting up of all women police stations, are measures that are expected to make the system more accessible, and sympathetic, to women. Some respondents said that conscientisation of judges on women's issues was of importance; appointing women as judges was no guarantee that the necessary sensibilities would enter the system, they said.

B. Compensation

Like the NHRC, the state too uses compensation as a remedial tool. Ex gratia payments made to victims is a response that has got standardised especially in areas of conflict. The state generally provides compensation for victims of 'terrorist violence'. Victims of violence practised by the security forces, or state violence, is not accorded this recognition.

C. Extraordinary Laws

While using the language of 'law and order', 'public order' and of 'terrorism', the state, at the centre and the states, has enacted extraordinary laws. These represent an assumption of extraordinary powers premised on security and safety of the state and of the population at large.

The Indian state is also in the vanguard in negotiating an international law on terrorism. Cross-border terrorism is identified by the state as a major threat to human rights, and more prominently, to the security of the state.

D. Other Laws

The state has enacted, re-enacted, or amended, laws which deal with rights of populations considered vulnerable. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 is one instance. More recently, the Juvenile Justice Act 1986 was replaced by the Juvenile Justice (Care and Protection of Children) Act 2000.

Both these laws have been through the process of consultation. In the case of the Persons with Disabilities Act, in 1998, the government set up a committee to review the legislation. The Committee held regional consultations where interested persons could state their position before the committee. No changes have, however, been brought into the legislation since then. Consultations were sponsored by the government and other agencies when changes to the JJ Act were being considered. A division of opinion on children in conflict with the law was discernible at a stage in the consultation. This was not investigated further, nor resolved. The government instead consulted with a closer group of professionals and the Juvenile Justice (Care and Protection of Children) Act 2000 was enacted as a result.

E. Counselling

The setting up of Crimes Against Women cells in Delhi, for instance, is intended to provide a place for registering complaints seeking help, providing counselling and, where relevant, reconciliation. Violence in the home has been the primary target.

We also heard of the counselling of the families of naxalites by the police, though we did not get insights into the intent, and techniques employed in counselling.

F. Census

The inclusion of the category of 'disability' in the 2001 census has been a statement of recognition of persons with disability being persons requiring specific state attention. Apart from providing a basis for asserting their rights, it has also placed persons with disability within the agenda of the Planning Commission.

Women in prostitution have, however, been agitated by their profession being classed with beggars and the unemployed, particularly since it is being done at a time when they are asserting that prostitution be recognised as work.

G. Samathuvapuram (A Place of Equality)

This is a state-sponsored scheme in Tamil Nadu, expressly intended as an intervention to reduce caste clashes in the state. Envisioned in 1997-98, the scheme is to create a settlement of 100 houses as part of, but some distance from, a village, where contiguous houses will house persons belonging to different castes/religions, even as a large proportion of the houses are allotted to scheduled caste families. The beneficiaries are selected at the gram sabha, and they are only to be people from the villages immediately in the vicinity of the new settlement. 150 samathuvapurams are planned. The second and the 77th samathuvapuram were visited.

There was a case of a caste clash that broke out in the 2nd samathuvapuram where a dispute over filling water from a common tap resulted in a dalit woman being assaulted by a family belonging to a higher caste. Local political activists explained that the issue had been resolved with the withdrawal of allotment of the house to the higher caste woman and her family, and their being sent back to their abode in the original village. This is an experiment that calls for long term follow up.

H. National Commission for Women

Established by statute in 1990, this was one of the consequences of the demand of women's groups that women be given a space in intervening on their own behalf.

The NCW has, over the years

- intervened where women's rights have been violated, as in the case of custodial rape, or where young women have been kept confined by their families to prevent them from going away with a man they choose to marry and live with;
- constructed laws, with regard to domestic violence for instance, to be lobbied for acceptance by parliament;
- held public hearings into the treatment of oustee-women affected by the Maheshwar dam, for instance
- conducted surveys, of women's views on the imposition of death penalty for rape, for instance.
- held consultations on a separate criminal code for women, for instance, or on the issue of cross-border trafficking;
- organised meetings to mount pressure on issues such as the reservation of seats for women in parliament and the legislatures;
- intervened in court cases, as where a woman was awarded the death penalty by the Allahabad High Court, and an appeal was made to the Supreme Court.⁷¹

The Supreme Court has on occasion, asked the NCW to prepare a scheme for the care of victims of rape.⁷² Some states, such as Kerala, have also set up a State Commission for Women.

⁷¹ *Panchhi v.State of U.P.* (1998) 7 SCC 177. The Supreme Court, however, did not allow the NCW to intervene, on the ground that they would not entertain a public interest petition in criminal appeals.

⁷² *Delhi Domestic Working Women's Forum v. union of India* (1995) 1 SCC 14.No scheme has yet emerged from the exercise that must have followed from the 1994 order.

I. Public Interest Litigation (PIL)

This is a jurisdiction that was sponsored by the court, but which developed with the participation and enterprise of activists and the press. The 1990s have, however, seen an appropriation of this jurisdiction by judges and by lawyers, often acting at cross-purposes with activist concerns.

At its inception, the PIL jurisdiction of the High Courts and the Supreme Court, with a relaxed rule of standing and simplified procedure, where even a postcard sent to the court highlighting human rights violations could be converted into a petition was a means of asserting the court's relevance in the human rights arena.

The court has used

- commissioners to do fact finding
- expert agencies to assist in deciding upon a course of action
- the issuance of directions, and the monitoring of their implementation by the court through report-back methods
- the involvement of all governments, at the state and the centre, since many of the issues have been systemic, and widespread, e.g., the condition of undertrial populations, or the cleaning up of cities.

PIL was conceived as a 'non-adversarial' process, though located within an adversarial judicial system. In 1988,⁷³ the Supreme Court asserted its hold over a case, and the cause, even where a public interest petitioner may seek to withdraw the case from the court. The power of the court to reach issues has expanded with PIL, as has the Supreme Court's exercise of its constitutional power to do what it considers necessary in the 'interests of complete justice'.⁷⁴ The rights orientation of the court has therefore acquired significance. Conflicts among rights have manifested over time. The use of the courts, and the PIL jurisdiction, by activists, and other public interest petitioners, has come into contention particularly since the *Delhi Industries Relocation* case, *Almitra Patel* and the proceedings in the Bombay High Court in the *Borivili National Park* case.

The **cradle scheme** in Tamil Nadu was initiated by the state government to prevent female infanticide. The **midday meal** scheme has been a means of reducing malnourishment among children, while bringing them into the schoolroom. Among schemes to improve the status of the girl child, we heard of a government scheme where if a girl child studies up to standard X, the government will pay Rs.10,000 on marriage.

In the nature of 'help lines', which are sometimes located within the offices of high-ranking police personnel, we heard of a 'Crime Stopper Control Bureau' in Tamil Nadu.

The coopting of NGOs in monitoring and implementing laws, policies and schemes has been routinised in the last decade. It may take the form of

- membership of a commission, such as the Rehabilitation Council of India
- membership of committees set up by the government to make policies, e.g., in the making of a population policy
- appointing NGOs as monitoring agencies, e.g. under the Equal Remuneration Act 1976.
- empowering NGOs to take action under the law, e.g., s. 13 of the JJ Act 1986⁷⁵
- funding NGOs carrying out programmes devised by state agencies, e.g., providing child care facilities for children of women in prostitution
- participating in training of judicial officers and policemen, for instance, in gender issues, matters of human rights, and child rights.

⁷³ *Sheela Barse v. Union of India* (1988) 4 SCC 226.

⁷⁴ Article 142.

⁷⁵ Replaced in December 2000 by the Juvenile Justice (Care and Protection of Children) Act 2000.

In the Janmabhoomi programme of the Andhra Pradesh government, one example of the process of involvement of the people in reviving, or creating, resources - in desilting tanks lying long in disuse, for instance - is achieved through giving work contracts to collectives such as Mahila Mandals. This, however, is not accompanied by a transfer of rights to the local people. The impact this has on the panchayat system may need to be studied.

The changes in the role, and autonomy, of the NGOs in relation to the state was adverted to by many respondents, and may need a more systematic appraisal.

J. Commissions of Inquiry

The appointment of judges to constitute commissions of inquiry under the Commissions of Inquiry Act 1952 is a commonly used device to quell immediate protest and agitation, and to provide a veneer of impartiality to the investigation. This process has lost quite significantly in terms of credibility, since most commission reports come long after the event, and all too often gives a clean chit to the government. The Srikrishna Commission of Inquiry into the Bombay riots of 1992-93 following the demolition of the Babri Masjid is held out by activists as an exception. There is an appropriation by human rights activists of the device of 'Commissions of Inquiry', and this device has been resorted to regularly in the past decade.

The legal aid system, now established under the Legal Services Authorities Act 1987, is one potential intervention in the arena of human rights. It however remains litigation-dominated, and is unavailable at the points in the system where human rights violations may occur. The dearth, near-absence, of legal aid available for the victims of the Union Carbide disaster in Bhopal has been represented as one instance of the incapacity, or neglect, of the legal aid system in responding to counselling, litigative and consultative needs of a victim-population.

VI. A FINAL CHAPTER

In the past decade the context of human rights in India has been influenced by

- the state policy of liberalisation
- the internationalising of human rights
- a prioritising of rights that has occurred particularly through the agency of the court, and even as the human rights and development communities have been working at breaking down the barriers between rights.

Liberalisation, and the concerted moves towards opening up the Indian market and the valorisation of the market economy; and the various initiatives to attract foreign direct investment has resulted in a re-prioritisation of a range of rights, including in the area of project displacement, workers' rights and the casualisation of work, exclusion of local populations from forests and from livelihood access including, for example, in fisheries. The restructured role of the state as a contracting party with multinational corporations and with international financial institutions, has altered the nature of the dialogue between the state and the affected peoples. The study constantly met with concern about disjunction between emerging state policy and the insecurities among people who are either victims of this 'growth' model, or who apprehend that they may be wiped out in the process.

In the early 1990s, there was talk of 'safety nets'; and re-training of the workforce rendered redundant in this growth model. In the late 1980s and early 1990s, a re-negotiation of the equation of cost: benefit was recognised by the state as inevitable, and there was an acknowledgment of the need for introducing land for land when involuntary displacement occurred.

The displacement contestation, moving from being a stir and an agitation to a challenge to the development model which often excludes those who pay the price, has been one expanding challenge to a notion of development which threatens, and deprives, continuity of life and community, causes impoverishment, and witnesses disappearing livelihoods and exclusion. The Aruvari Sansad experience in Alwar district of Rajasthan has begun to be a model for the regaining of control over local resources, and its possible rejuvenation. The Right to Information Campaign initiated by the MKSS has been adopted widely to vitalise notions of accountability, transparency and to alter the equation between the state and the people.

These movements are instances of a demonstration of the indivisibility of rights. And the clamping down on protest and the use of arrest and criminal charges has squarely situated civil liberties in the struggle for development, and the resistance not to be a victim of development.

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The internationalising of human rights has had a range of effects. International pressure, both from governments and from organisations such as the Amnesty International, led to the government establishing the NHRC. The link that is made between human rights and trade, and the 'social clause' that has been under discussion, has, on the other hand, resulted in a wariness - both with the state, and among a number of human rights and development activists. This threat of intervention in the arena of human rights with the possibility of sanction has been one overt cause for hostility to international instruments which deal with human rights standards and conduct. The Torture Convention, the Optional Protocol to the Geneva Convention, reservation while ratifying the CEDAW, and the non-consideration of signing the statute for the establishment of the International Criminal Court are premised at least in part on this apprehension. Human rights and development activists have begun to reach international - particularly UN - organisations to represent their cause, and use them to demand accountability from the state. This is true with the report presented to the Human Rights Committee, under the CEDAW, for instance. The preparing of alternative country reports has also been a process of comparing state and non-state priorities.

The theme of impunity remains inadequately represented in all of this.

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Some questions were raised by activists which did not allow for ready responses.

Does the language of human rights depoliticise?

How does funding of development and human rights work affect the politics of grassroots? The letters issued to some NGOs who had signed on to an advertisement issued by Communalism Combat preceding the last elections, with the threat of revoking their FCRA clearance was one instance that generated the question. The attacks on the NBA as being sustained by foreign resources, and the denials that the NBA was impelled to put out to counter these 'allegations' is another instance. The Sahyog experience in Almora district of Uttaranchal raised similar questions. So too has the PWG's rejection of funded organisations - receiving funds from the government or from any other agency - in their area of influence. Some asked the question differently: is there a 'loss of anger' due to funding? Or, are people now able to sustain their anger because of funding? Both appeared to be possibilities.

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An emerging area of enquiry is the prioritising and re-prioritising, of rights. There is also an element of re-interpreting of rights which occurs in this process. In the aftermath of the Bhopal Gas Disaster, which resulted in mass victim-creation, statute law and court decisions have restructured the rights of victims into one of compensation. It is not only the right to see offenders brought to trial and conviction, and the need for prioritising of safety which has been accorded a low order of importance; even medical assistance and treatment of the victim has been relatively marginalised. It is commonly understood that the priority of attracting multinational corporate capital, technology and, more recently, the emphasis on foreign direct investment, has encouraged this approach.

Liberalisation and globalisation has, again, reoriented governmental position with regard to the right to work. In the closing years of the 1980s, there were serious efforts undertaken to give the right to housing and the right to livelihood/work a place among the fundamental rights. The start of this decade has moved a long way to casualisation of labour, and the narrowing of social security and protective provisions (including a proposal to remove the prohibition of night work for women); the dominant reason is to improve competitiveness in a globalised, market economy.

The expansion of, and the interrelationship between the arena of human rights, development, gender issues, and the environment have resulted in the emergence of a tangle of rights.

There has been a prioritisation that has occurred while dealing with this tangle. This prioritisation has been influenced, and sometimes determined by

- the agenda of the podium from which the right is canvassed, illustrated in the conflict when environmentalists have raised the issue of pollution, or of conservation of forests, relegating livelihood issues, and the rights and interests of forest dwellers and users to tertiary positions.
- the forum where the right is canvassed. This has been particularly stark when the forum has been a court. The issue is taken to court in the ‘public interest’, and the negotiation of rights passes from affected people, public interest groups, and the executive decision-maker, to the court. If the 1980s saw the courts, and particularly the Supreme Court, attempting to entrench the rights of dispossessed, and impoverished, peoples, the 1990s has reversed this in some part while furthering an agenda located in environmental concerns. The Borivili National Park matter, and the industries relocation issue, referred to earlier while setting out the areas of conflict of rights, are instances. The court’s capacity to re-define the rights in contest has also been in evidence in the *Almitra Patel* case, where a petition for cleaning Delhi of its garbage became a matter of slum clearance.
- the dialoguing between different interest groups. Even as the indivisibility of rights has been gradually acquiring a context, the dominant interest of a group has spelt out the priority it will accord to an issue. So it has happened that a group of environmentalists have decided to suppress their unease about loss of livelihoods while asking for the closure of an industry, even as, in another region, degradation of soil and water sources by a polluting unit are not raised as issues of concern since that may result in the loss of workers’ livelihoods. In a third scenario, those adversely affected by a polluting industry ask for it to desist from causing pollution, and to repair the damage done to the water source, or absorb into the industry those whose livelihoods have been displaced by the pollution. The importance of widening the dialogue, and finding resolutions to issues which are inclusive, is becoming of increasing importance.

The need for dialogue and resolution which does not relegate some rights beyond the margins, and recognises the complexion and complexity of human rights, is heightened in situations where different interest groups approach institutions, such as courts, to resolve differences which exists **among the groups**.

- A question that arises naturally in this context is that of articulation of interests, and appropriation of voice. The articulation of rights by women in prostitution, those who speak on their behalf, and those who oppose, the language, and approach, of the first two groups, suggests that there can be considerable divergence in the perception of rights. The issue of whose voice is heard as the one which represents the rights of the subject group acquires significance in this context.

There are further matters about

- the process of acquiring an understanding of what constitutes the public interest
- who speaks on whose behalf, or the appropriation, or partial taking over, of the voices of those affected
- the reporting-back processes, where rights groups hold themselves answerable to the community whose rights they are negotiating.

These are systemic concerns which go beyond participation and consultation – two facets that have received some recognition in recent years, particularly since devolution has been constitutionally introduced in the 73rd and 74th amendments to the Constitution.

The resolution of these areas of conflict of rights, and of answerability to affected populations, could influence/set the agenda for human rights activity, and activism, in the next decade.