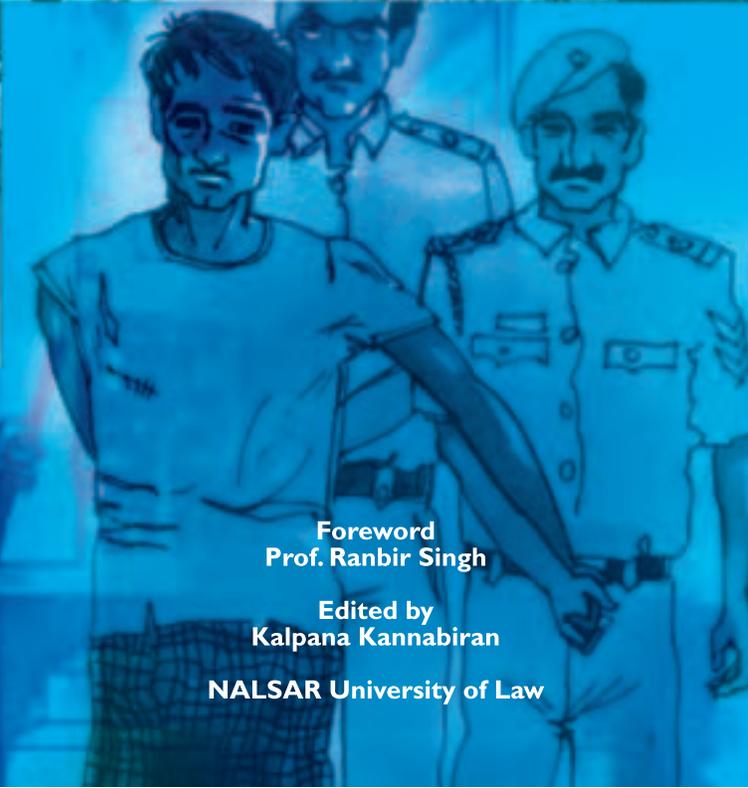
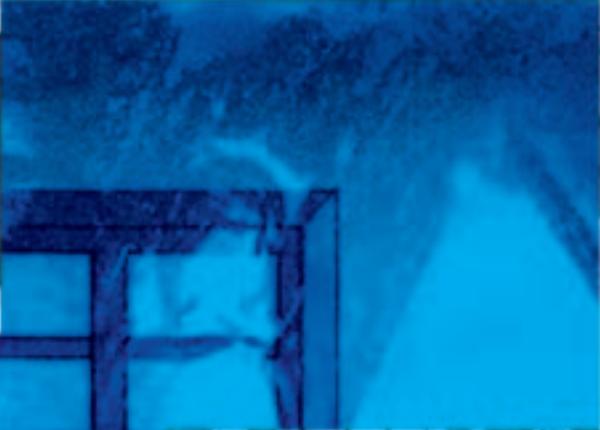




Crafting Human Rights Cultures



Foreword
Prof. Ranbir Singh

Edited by
Kalpana Kannabiran

NALSAR University of Law



A Report of the Project
“Strengthening Criminal Justice and Human Rights in India”

Foreword
Prof Ranbir Singh
Vice Chancellor

Edited by
Kalpana Kannabiran
Professor of Sociology

NALSAR University of Law
2006





Crafting Human Rights Cultures

Partnerships

This project involved wide ranging partnerships with

Administrative Staff College of India

Amnesty International, India

AP High Court

AP Judicial Academy

AP Legal Services Authority

AP Press Academy

Asmita Resource Centre for Women

Disability Rights Network of AP

Legal Aid Services of West Bengal

Leonard Cheshire International

Multiple Action Research Group (MARG)

National Alliance of Women, AP Chapter

National Institute of Mental Health

Swaadhikaar Disability Resource Centre

Yakshi Adivasi Rights Network



Project Coordination

The project “Strengthening Criminal Justice and Human Rights in India” was supported by
FOUNDATION, India under grant number I030-I582.

THE FORD



Project Team

The Full Time Project Team consisted of

- I Prof. Ranbir Singh, Vice Chancellor, **Project Director**
- I Dr. Kalpana Kannabiran, Professor, **Chief Coordinator**
- I Dr. K. Rama Patnaik, Deputy Librarian, **Project Consultant**

The responsibility for conceptualizing, planning and coordinating workshops / symposia, collating and compiling reports, overseeing documentation, planning research and coordinating logistics was undertaken by Dr. Kalpana Kannabiran in consultation with Prof. Ranbir Singh.

The conceptualisation of workshops / symposia / seminars was done in consultation with Swaadhikaar [for the Disability Rights workshops], Amnesty International India [for the Judicial Officers' Symposia], MARG-Delhi and YAKSHI-Secunderabad [for the

Adivasi Rights workshops], AP Press Academy [for the Media Advocacy Workshops] and Administrative Staff College of India [for the seminars for IAS Officers].

The coordination of library and documentation resources was undertaken primarily by Dr. K. Rama Patnaik in consultation with Prof. Ranbir Singh and Dr. Kalpana Kannabiran.

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JUSTICE BILAL NAZKI



HIGH COURT OF ANDHRA PRADESH
HYDERABAD

☎ : Off : 040 - 23446302

MESSAGE

My dear Kalpana Kannabiran,

I am happy that you are bringing out a report on the project "Strengthening Criminal Justice and Human Rights in India". Judicial Officers of Andhra Pradesh Judiciary had fruitful sessions in 2005. I am sure that these sessions were beneficial to our officers and interactions they had would go a long way in achieving the goals.

We have serious problems of violation of human rights and these violations do not take place not only in police stations, but every where including the houses the people live in. We have special problems of women and children and other social groups which are economically deprived. We have also the problem of being non-responsive as institutions and individuals. The work that is being done under the able guidance of Justice D.K. Basu, I am sure, will bring a change.

My good wishes to your organizations and I hope, you will arrange some sort of a programme in Andhra Pradesh which would enable us to assess the benefits of the sessions we held in Andhra Pradesh.

Dt. 04.04.2006


(JUSTICE BILAL NAZKI)



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M E S S A G E

I am glad that you have prepared the consolidated Report of the Criminal Justice Project, organised in Andhra Pradesh. I understand your Project has covered a vast area – compendium of not only case laws on Criminal Justice vis-à-vis Human Rights, but also collation of case laws and unpublished research work on vast range of human rights concerns. I believe that this research work will help the Judicial Officers. A large majority of the members of Judicial Officers' community have been presiding over the Munsif, Magistrate, Metropolitan Courts who are at the cutting edge of the Criminal Justice System. The Judicial Officers, at this level, also deal with the vast majority of cases of the already overburdened and poorly serviced Criminal Justice System. For both the victim and the accused, the Judicial Officers are the independent forum for redressal. The Judicial Officers work in challenging and difficult environments, which are not always conducive to enable full protection of the rights of the people who come before them. Overburdening of cases, of course, is one of the many problems and challenges they face.

It is true that the role of judiciary is changing from protecting the vested interest to upholding the rights of the vulnerable sections of the society. Many social legislations have not been implemented effectively in bringing changes to the lifestyle of the weaker and vulnerable segments of the society. This weaker section of the society has been continuously fighting with the dominant section of the vested groups not only in courts but also before public authorities. The instances are not uncommon where grievances of the weaker sections are not even attended to by the executives far from getting access to the justice mechanism. The result is that the existing legal system is losing its credibility.

Indeed, we are living in an age where our Constitution has established a Government of laws and not of men. If the enactment by the legislature is a thesis, sometimes action of the executives becomes antithesis; only then the role of the judiciary and emergence of new mode of dispensation of justice can be the synthesis. Justice jurisprudence has undergone a rapid and dynamic change with the emergence of judicial independence and introduction of judicial activism. Judiciary is the guardian of the conscience of the people and it should strike a balance to fulfil and achieve the aspiration of individuals and requirement of the community.

After holding six symposiums for the Judicial Officers in Andhra Pradesh, it transpires that reforms of the Custodial Justice System aims to put the needs of the victims and witnesses at its heart which will obviously ensure that the victims and the witnesses see justice done more often and more quickly while being treated with respect and dignity that they deserve. The victims' support and witnesses' support are required to be considered as independent charity which helps people cope up with the effects of crime. Of course, reducing bureaucracy and red tape in the Criminal Justice system makes a difference and it has become sine qua non that the Court mechanism shall require to be rationalised. In all the six symposiums held in Andhra Pradesh, the Judicial Officers demonstrated their excellence even through role play on arrest, detention and support service to the victims, role of witnesses, right and security of the witnesses in achieving their object through Criminal Justice System.

Kalpna Kannabiran, a distinguished academician and Professor of Sociology, NALSAR University of Law, was the guiding force in organising judicial symposiums on Human Rights in Andhra Pradesh. I hope and believe that this report of the Criminal Justice Project would throw more light in the mechanism for dispensation of justice by the Judicial Officers.

Kolkata.
April, 6th, 2006

Justice D.K. Basu
CHAIRMAN





NALSAR UNIVERSITY OF LAW ♦ HYDERABAD

Prof. (Dr.) Ranbir Singh
Vice - Chancellor

FOREWORD

Realizing the Constitutional Vision

It gives me great pleasure to present *Crafting Human Rights Cultures*, the report of the project, "Strengthening Criminal Justice and Human Rights in India" carried out at NALSAR in 2004 and 2005.

This project, supported by the Ford Foundation – Delhi, was an opportunity for us to initiate discussions on the constitutional vision of justice – social, economic and political and enabled us to move closer to our institutional goals of engagement with communities and outreach. Our approach was multi pronged. We initiated simultaneous discussions with different stakeholders on questions of criminal justice and human rights – media persons, adivasi rights groups, and disability rights activists.

For justice to become a reality we must have a judiciary that is sensitive to the common person's needs and a judiciary that is not hampered in any manner in its delivery of justice. Whether the gap between law and justice that we see today is because of the non-implementation of laws or it is a product of loopholes in the law, these questions need to be revisited in the light of the constitutional mandate, in order for law to be meaningful to the largest sections of underprivileged people. It is with this in mind that we organized discussions with judicial officers in collaboration with Amnesty International, India.

In its role as a clearinghouse of information, materials and resources on the criminal justice system, NALSAR has in the course of this project built up library and documentation resources on the subject that will prove extremely valuable for research and advocacy efforts in the future.

I take this opportunity to place on record our deep sense of gratitude and thanks to all those who collaborated with us and participated in our meetings and sincerely hope that the discussions will result in more vigorous collaborations in future in the cause of social justice for all.

Hyderabad
April 2006


RANBIR SINGH

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Acknowledgements



The project “**Strengthening Criminal Justice and Human Rights in India**” has been an important milestone for us at NALSAR. We take this opportunity to say thanks.

We are extremely grateful to the Hon'ble Sri. Justice G.S. Singhvi, Chief Justice of AP and Chancellor, NALSAR, for his support and encouragement, and look forward to a close association in the future.

Hon'ble Sri. Justice Bilal Nazki, Judge, AP High Court and Hon'ble Sri. Justice D.K. Basu, Consultant Amnesty International and Chairman, National Committee for Legal Aid Services - India and Former Judge, Calcutta High Court, have been a source of inspiration and support. It has been our privilege to work so closely with them.

We acknowledge the support of all the partner institutions and networks. It is only because of their unhesitant willingness to collaborate that the meetings were possible. And persons heading these networks and organizations went out of their way to take care of the logistics and arrangements; the resource materials needed for the programmes and the communication with participant groups.

From these partnering institutions, we would like especially to thank:

Ms. Abha Singhal Joshi and Ms. Seema Misra from MARG, also consultants with Amnesty International India

Mr. K.T. Suresh and Mr. Soumya Bhoumik from Amnesty International – India

Dr. S.K. Rao and Dr. Paramita Dasgupta from Administrative Staff College of India

Mr. R. Kantha Rao and Mr. A. Santhosh Reddy from AP Judicial Academy

Hon'ble Mr. Justice MEN Patrudu and Mr. T. Venkateshwara Reddy from AP State Legal Services Authority

Mr. Amar Devulapalli from the AP Press Academy

Mr. M. Pavan Kumar and Ms. SE Anuradha from Swaadhikaar and the Disability Rights Network of AP

Mr. Madhusudhan from Yakshi and Adivasi Aikyavedika

The District Legal Services Authorities of Visakhapatnam, Guntur, Tirupati and Warangal, and the officers in each of these places took enormous trouble to make the arrangements for the judicial officers' symposia. The participant officers in the judicial officers' symposia justified our objective in organizing the symposia by their enthusiastic participation. Needless to say the programme owes its success to them. Similarly the participants in the disability rights workshops and the adivasi workshops worked with us through the programme, teaching us as we went along. We are extremely grateful to every one of them. We would like to thank our

entire team of resource persons for their interest, enthusiasm and good cheer. Apart from educating us, they made the entire exercise enjoyable.

The faculty, students and non-teaching staff of NALSAR have been very supportive – this work would have been impossible without their goodwill and support. We would like especially to thank Prof. A. Lakshminath, Professor-Registrar NALSAR, for the smooth administration of the project besides agreeing to speak at the meetings at short notice; Dr. Vijender Kumar for vital logistic support during meetings on campus; Ms. Ruchira Kulkarni and Ms. Sowmya Kumar, student assistants, for their painstaking work through the duration of the project; the students who volunteered to help in the media workshops; and the entire range of non teaching staff in the library and administration who stretched themselves far beyond the call of duty to make the project successful.

This project was supported by a grant from the Ford Foundation, Delhi. We take this opportunity to thank Dr. Bishnu Mohapatra and Ms. Rekha Kapoor of the Ford Foundation for their cooperation and support.

Kalpana Kannabiran

On behalf of the project team

Hyderabad, April 2006







Crafting Human Rights Cultures

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**Crafting
Human
Rights
Cultures**

Kalpana Kannabiran





The Project “Strengthening Criminal Justice and Human Rights in India” explored the various dimensions of human rights through intense debates with diverse groups of people – judges, journalists, adivasis, persons with disabilities, women, human rights advocates, bureaucrats, lawyers, intellectuals, dalits – over a period of two years. Through five series of meetings – 29 in all – the project witnessed animated debates on a range of issues and enabled the building of bridges between different sets of practitioners in the wide field of human rights. Also critical to this effort were the ways in which the different groups we worked with reflected on old questions in new ways, bringing new experiences and a new understanding to the centre of old debates.

Questions of freedom of movement and personal liberty in its classic sense have been central to struggles for human rights and civil liberties in India for three decades. What are the meanings of this liberty for adivasis facing displacement, women imprisoned by violence in the home, and persons with disabilities denied access through the non- provision of facilities? In articulating the true meaning of personal liberty – in interpreting a fundamental right in a way that writes them into the right, these groups were in fact pointing the way to a critical jurisprudence of rights.

The existence of protections on paper alone mean little in terms of realizing human rights on the ground. One part of this realization of rights has to do with struggle. The second, equally important part has to do with the courage and creativity of judicial officers in finding ways to talk about and enforce human rights standards. This is difficult and not always possible, given the power of the status quo. And yet, officers have in the course of amazingly frank, engaging discussions spoken about problems, issues and strategies that make for a more nuanced understanding of human rights – the springboard for the discussions being the DK Basu Guidelines on arrest, with Justice D.K. Basu himself initiating the process.

The media has in an important sense been the backbone of the human rights movement. Courageous reporting, persistence and commitment have provided vital support to those whose rights have been violated, to the defenders of human rights and to judges committed to justice and the



rule of law. More recent trends in the electronic media especially point to some troubling trends where the lines between fact and fiction, reporting and storytelling often get blurred, to the detriment of those whose rights are being violated. The dialogue between rights activists, the judiciary and the media — the first step in a critical re-appraisal of what human rights reporting really means – was flagged off in the media advocacy workshops.

The uses of the law and indeed its practice especially with respect to concerns of “nurturing citizenship” are located outside the sphere of formal professional education and within a space where disenfranchisement marks difference, diversity and the denial of equal citizenship. Pedagogic praxis in the law has straddled the formal domains of legal education and the “non formal” domains of legal literacy, both constantly addressing and shaping each other.

Law is a practitioner’s discipline, which means that the pedagogy is immediately tied to the delivery of services. The fact of it being a practitioner’s discipline also means that the law is something which is immediately relevant to people, especially to those at a social or political disadvantage. While Social Action Litigation is one way in which the citizenship claims might be broadened, legal education to non-practitioners who are at a structural disadvantage – women, adivasis, dalits, unrepresented minorities – provides the tools for the assertion of citizenship claims. The teaching of skills for advocacy on equal citizenship [or ‘legal literacy’ to use an acronym] enables the convergence of theory with practice,



Role play, Judicial Officers' Symposium, Shameerpet

while also embodying the slogan “knowledge is power” infinitely – as we have seen with the campaign on the right to information. A major part of the criminal justice project consisted of legal literacy workshops for adivasis and persons with disabilities working or aspiring to work in communities on issues of entitlements.

Finally, the understanding of rights relies on access to writing, to statutes and diverse forms of documentation. The systematic, carefully planned building of library resources on criminal justice and human rights provides a dynamic database in the southern region. The compilation of cases and materials used in the Judicial Officers symposia on criminal justice and human rights is an especially valuable resource that has been widely disseminated in the state and outside.

There are gaps in research and writing as well that have been thrown up in the course of work on the project in the past two years. There have been two levels of research endeavours. Two minor research projects examined the issues of ‘environment crimes’ and ‘innocence’ in criminal law. Simultaneously, there was collaborative interdisciplinary work on larger questions facing criminal law and criminology today. While it may not be possible for the project to address all the concerns that have been foregrounded in our deliberations, two issues have been examined in some detail. The escalating violence against women remains a continuing concern. The second important issue especially in our times is the need to examine the discipline of criminology afresh. The volume of essays on violence against women, *The Violence of Normal Times* and the proposed volume of commissioned

essays on different dimensions of criminology, *Building an Archive for Criminology in India*, will we hope, sustain the debates that were generated in the first instance by our meetings, workshops and symposia.

We hope that this detailed report will give readers a sense of the texture of the work on the project, but also – and more importantly – we hope that the content and process documentation contained in this report will be informative and useful to all those interested and engaged in *crafting human rights cultures*.

Meeting Schedule

March 2005	:	3 Media Advocacy Workshops at Hyderabad, Visakhapatnam and Vijayawada in collaboration with AP Press Academy. Series inaugurated by Hon'ble Mr. Justice Sudarshan Reddy.
March 2005	:	2 Seminars for IAS Officers held at Administrative Staff College of India on Human Rights and The Right to Food.
March to December 2005	:	5 Human Rights Education Workshops for Adivasi Rights Activists in Rajahmundry and Hyderabad held in collaboration with MARG, Delhi.
July to December 2005	:	6 Symposia for Judicial Officers on Protection of Human Rights held in collaboration with AP Legal Services Authority, AP Judicial Academy and Amnesty International – India. Workshops held at Hyderabad, Visakhapatnam, Tirupati, Guntur, Warangal and Shameerpet.
July to December 2005	:	12 Human Rights Education Workshops for Disability Rights Activists in different parts of the state.
November 2005	:	1 workshop for NGOs on Human Rights and Legal Literacy.



“ Denial of the Right to Bail

Police have been adopting the practice of producing accused in each and everyailable case by taking 24 hours time. By the time they have been produced before us, they are able to produce sureties. The police recital is that they are unable to produce sureties, therefore they are being produced in courts. Is it not ridiculous? They are able to produce sureties before us; can't they produce sureties before the police? Purposely they have been producing accused in such a manner that their personal liberty is violated.



Degrading Conditions of Imprisonment

“I made a surprise visit to a jail in Machilipatnam and found 15 persons were dumped in one room which hardly accommodates 4 or 5 persons. The prisoners told me that bail is available only to rich persons, not to all.”

Inadequate Magisterial Powers

“Whenever a Magistrate orders for release of accused on bail on execution of self bond with two sureties, inspite of time granted if he cannot produce adequate sureties...the Magistrate cannot review his own order, which is resulting in unnecessary incarceration of the accused.”

Compliance to the DK Basu Guidelines

“Even though the Supreme Court in D. K. Basu v. State of Bengal has laid down the guidelines regarding arrested persons and the procedure to be followed by the police, no system is provided to enforce the guidelines effectively in its true spirit. Police are manipulating the record to show that they have complied with the guidelines. As the judicial officers are overburdened with multifaceted duties sometimes they are unable to bestow their attention to see whether the guidelines are complied with or not meticulously. Our suggestion is necessary steps should be taken to see that procedure is evolved to implement the guidelines meticulously. Statutory powers should be conferred on judicial officers to adequately deal with erring police officers.”

Parents of the disabled children also had the information

In November 2004 a survey was done on children with disabilities in 10 Panchayats of Srinivasapur Taluk and I was a member of that team doing the survey as we are close to the borders of Karnataka in Madanapalle. As part of this survey, whomever we asked in the villages, whether they knew of any disabled children, we were systematically told to go to the local school and find out. And when we went there, we found that almost always all the disabled children were found in the school, and these were not special but the regular schools and a few of the severely disabled children also were, if not in the classrooms, inside the campus of the school. And the teachers of these schools had all the information regarding these disabled children. This was systematically observed to be the case in all the 10 Panchayats that we had visited as part of the survey.



Also the teachers had the knowledge regarding disability and there is a specially trained teacher for disabled at mandal level. We were told that in case we wanted more information we could ask these teachers to give us more clarity. This proves that not just the teachers but the parents of the disabled children also had the information about these teachers and their whereabouts.

I agreed not to use the word in the classroom.

There are many visually challenged students in my class. Generally in the course of lectures it is common for teachers to speak about the “blindness of people” or the “lack of sight” of certain others. We often observe in our lectures that some writers and thinkers are not able to “see” certain things in the world, for example they are not able to “see” the problem of women.

After some months of my lectures in this vein, a visually challenged student came to me and asked me whether being blind is a swear word or a description. I understood what he was saying immediately and said that though it is a description, it is often used as an abuse. He said, “but that should not be”. I agreed not to use the word in the classroom.

Identification of Persons with Disabilities

The local organization had gone to the areas of their work and searched for persons with disabilities in the villages and brought them to the workshop. One of the first reactions from the participants there was that this was the very first time that we have come together to discuss our problems as persons with disabilities

Livelihood is important for everyone

Livelihood is important for everyone. But a livelihood that grabs and steals money from persons with disabilities who have no source of income and no other source of dependence is something that we are better off without. We have been pushed that far.

“Iqbal”

In the film 'Iqbal' the protagonist is crazy about cricket. His ultimate dream is to get selected for the national team, a dream that he realizes at the end of the film. That is the story of the film. But there is another character in the film, his younger sister. She is the bridge between her brother and his cricket coaches, translating the sign language to so many languages, but how many of us can actually claim that we know either the sign language or Braille, how many are there in

 **Kaloji once told us a story**

A sheep walking behind its shepherd looked at his woolen shawl and thought, “Oho, how good this man is; he has plucked some wool from his shawl and stuck it to my back, so that I can be warm!” We have today been put in that position. We, like the sheep think that the Government is gracious to give us these rights, whereas it is in fact the other way around. They have come to power because of generations of struggles by our people.





The slogan hamara paisa, hamara hisab, became the slogan of the movement.

Within two years, the right to information movement gained enough mass momentum to force administrative concessions. Its popularity and discipline were demonstrated in the south Rajasthan town of Beawar in 1996. I was there with a group of press reporters; the campaign was gaining national attention. It was a warm, sultry day, but about 500 people squeezed into a triangular piece of open land for five hours to hear villager after villager testify with facts and figures of the misappropriation of funds at block level. Women were prominent. A 40-day dharna was held to reinforce the demand. Another dharna was held in Jaipur to put pressure on the State Government. The slogan hamara paisa, hamara hisab, became the slogan of the movement.



the society in general and how good it would be if we did know these languages. If we did, then the levels of communication would improve so well and we would be able to understand each other so well. We keep getting confined to fighting for either this language or that as second and third languages in the school curricula but why do we not remember that there are more languages, which are of much greater importance and have to be considered as such?

Is this facility available for all the Visually Challenged?

During 1954 or 1955, when I was young, there was an Advocate General in West Bengal called Sajan Gupta. He was visually challenged, he could not see. He would get everything in Braille and argue powerfully in the Court. Is this facility available for all the Visually Challenged? There are no facilities at all. If such facilities were created, then there would be more advocates like Sajan Gupta, arguing their cases in Court.

Media responsibility

Generating a consistent drum beat for the cassettes of doom also needs to be analysed.

The role of the media in generating a consistent drum beat for the cassettes of doom also needs to be analysed. The responsible members of the media by and large need to actively demonstrably and visibly articulate their self-assessment. Amongst the various issues that the media may need to think over are:

- The role of ownership in limiting editorial discussion and slanting the orientation of a news.
- The role of media in sensationalism that does sometimes lead to tyranny of the smear.

Stories on violations must be informed by human rights standards

As members of the media it is not only important that you carry out stories on violations that take place. But it is very important that while you write about violations you also start writing about the standards that have a bearing on these violations. And this is my appeal to you today.

Unless you are going to highlight the standards which have a relation to the concrete violations that you are writing about, the awareness of ordinary people in terms of what are their rights, in terms of



standards that are set which are not being followed with in the system will not be exposed.

Fundamentalism is one thing and religion is something else...

I think we need to step back a little bit and remind ourselves that fundamentalism is not equal to religion. Fundamentalism is an interpretation of religion, one understanding of religion; not every believer is a fundamentalist whether he / she is a Muslim or a Hindu or a Jew or Christian or a Buddhist. So fundamentalism is one thing and religion is something else... The coming together of people who are committed to secular values, whether or not they are believers, will make the notion of pluralism, diversity, living in a non-violent, equal, just society a reality in our life time. That is conceivable. It may be a slow and painful process. But it can happen.

Why do higher castes continue to practice untouchability?

In the end the question is that why do the higher caste persons continue to practice untouchability and discrimination in social, cultural, religious, political and economic spheres. And why do they resort to physical and other violence whenever the untouchables try to gain a lawful access to human rights and equal participation in social, political, cultural, religious and economic sphere of community life?

The reasons for wide spread practice of untouchability, discrimination and atrocities as well as violent reaction by high caste persons are to be found in continuing belief and faith of the high caste Hindus in the sanctity of institution of caste system and untouchability. The traditional Hindu social order continues to govern the thought process and behavior of the large majority of Hindus in rural area... Unless inequalities embedded in the social, economic and cultural structure of the Hindu society are addressed the legal measures will make very little difference in providing access to human rights to the dalits in India.

The poor are actually victims of pollution

There are some myths that the poor cause more environment degradation since they are dependent only on natural resources for their life; that the poor do not care about environment. [The truth is that] the poor are actually victims of pollution, not the agents of pollution. Bad environment management results in

the immediate threat to survival to the poor. Internationally, poor nations are victims of environment pollution, right from the times of colonialism.

After a disaster, the media takes over...

Immediately after a disaster or a particular attack, the media arrives there and you have experts who are telling you what is already happening. For example, you would have somebody like Barkha Dutt sitting in the trench and saying, 'I am calling from a bunker,' and this image would be repeated over and over and over again to the extent that it seems to be an extension of you. Now you are part of that image, you are part of that event.

Hundreds and hundreds of bodies had been cremated by the police as unclaimed or unidentified

Between 1990 and 1994, our friend Mr. Jaswant Singh Khalra, investigated the phenomenon of disappearances in Punjab. In Amritsar district alone the Punjab government disappeared over 2000 people. Amritsar is one district out of 17 districts in Punjab. Jaswant Singh Khalra's enquiry was an intelligent enquiry in the sense that he wondered what the police would have done with the bodies. So it was logical for him to go to the cremation grounds and to find if there is a record of any sort.

And he discovered that hundreds and hundreds of bodies had been cremated by the police as unclaimed or unidentified bodies during this period. In January 1995, Jaswant Singh Khalra released his findings.

Discrimination inhibits the solidarity among the women workers

Relationships between women workers and male supervisors/colleagues are another area, which generated enormous stress. The women we interviewed were able to discern the subtle manner in which they experienced discrimination; younger, relatively better-looking and better-dressed women were able to wrangle several favours from their supervisors such as choosing the batches they preferred to work, promotions etc. The day-to-day operation of such discrimination at the worksite inhibited the emergence of any solidarity among the women workers.



Media Advocacy Workshops on the Criminal Justice System and Human Rights





Media Advocacy Workshops on the Criminal Justice System and Human Rights



Mr. Justice Sudarshan Reddy inaugurating the Media Series



Introduction

The media advocacy workshops were part of the Criminal Justice Project. The idea behind organizing media workshops was that talking about or writing about issues of criminal justice system and human rights is not enough on its own; it is important and essential to spread information and encourage dialogue on these issues through mass contact programs in different sections of society. The series of media advocacy workshops were held in three different locations in Andhra Pradesh – Hyderabad, Vishakapatnam and Vijayawada.

One of the most important sections of any society for the dissemination of information is the media. In strengthening the criminal justice system and raising issues of human rights in India we need to encourage a dialogue among experts (people who are working on these issues in different fields) and different audiences. Through these workshops various aspects of the criminal justice system and human rights were brought under debate. These workshops raised questions about our already existing institutions that are supposed to be fighting for and protecting our human rights.

The main point that came through during all the three workshops was the lack of media involvement or their problematic representation of events, issues and cases especially in the recent past. Though violations of human rights and the corruption in the various criminal justice systems all over the world has always existed, due to globalization and the advancements in technology (i.e. Internet, satellite television etc) these issues come to our notice more frequently. With the increasing violations of human rights various bodies have been constituted to protect human rights (NHRC etc). So, one would ask, why is there a need to conduct such workshops? The reason, which was also raised by the speakers addressing the gatherings in all places, was that most people more often than not do not know about their rights and thus hardly stand a chance in face of violations of their rights. Most people either do not know about the different institutions they can go to in case these violations occur, they lack access or are completely unaware of the proceedings.

Thus the role of the media is pertinent to the whole exercise of strengthening the criminal justice system and human rights. The media needs to be looked at as an instrument of intervention, with the kind of control and power to be able to direct and influence its audience in a particular direction of its choice. Its mass access and reach is unparalleled by other forms of communication.

Collaborating Institutions

These set of workshops were organized in collaboration with the Press Academy of Andhra Pradesh. Established in 1996 with the object of promoting high standards in journalism and to promote and coordinate study and research in the field of journalism, the Academy has been organizing training classes, workshops, seminars and exhibitions independently and in collaboration with other institutions. One of the main activities of the Academy has been conducting refresher courses for the mofussil journalists. It also publishes books, monographs, research papers etc. With active support from the state government and the APUWJ (Andhra Pradesh Union of Working Journalists) the Press Academy has actively taken up programs under the guidance of successive governing councils.

The coming together of NALSAR University of Law and the Press Academy brings together different fields of law, criminal justice and the media. This association provides the opportunity to examine intersection between issues of human rights and criminal justice system and understand how they are perceived and represented. No single constituency, whether it is lawyers, journalists, social or human rights activists and organizations, can bring change. It is when they converge to initiate dialogue, that change and strengthening of the system can take place.





The Coordinating and Organising Team

Convenor : Mr. Amar Devulapalli, Chairman, AP Press Academy

Coordinator : Dr. Kalpana Kannabiran

Coordination Assistance : Ms. Moyna Manku
and Documentation

Organising Team [all students of NALSAR]:

<u>Hyderabad</u>	<u>Visakhapatnam</u>	<u>Vijayawada</u>
Abishek V	Abishek V.	Sarah Wanglat
Adarsh G.	Abhishek S.	Varun Sangma
Anjali A. Menon	Adarsh G.	Sowmya Kumar
Divya Mohil		
Divya Teja		
Maria Cheeran		
Sarah Wanglat		
Varun Sangma		
Sowmya Kumar		
Yamuna K		

In addition to the above team, the local chapters of the APUWJ and office bearers of these chapters played an active role in organizing the workshops.



Schedule of the Media Advocacy Workshops

Date	Venue	Speaker	Topic
7/03/05	Hyderabad	Mr. Ajit Bhattacharjea	Right to Information
		Mr. Henri Tiphagne	Criminal Justice and Human Rights
		Mr. Javed Anand	Fundamentalism and Human Rights
		Mr. Rakesh Sharma	'Final Solution'
21/03/05	Vishakapatnam	Prof. S. K. Thorat	Human Rights and Dalit Rights
		Dr. Vidyullatha Reddy	Environment Rights
		Mr. Lawrence Liang	Media and Human Rights
		Mr. Ashok Agrwaal	State Violence and Criminal Justice
24/03/05	Vijayawada	Prof. Padmini Swaminathan	Women in the Informal Sector
		Ms. Priya Narula	Sexual Harassment at Work Place
		Ms. Vrinda Grover	Media and Human Rights
		Ms. Sowmya	Right to Information
		Dr. N. Vasanthi	Labour Rights





Role of Media: Issues, Concerns and Problems

Justice Sudarshan Reddy inaugurated the *first workshop* in Hyderabad and also the series. The guest of honor was Sri Srinivas Reddy. Justice Sudarshan Reddy spoke about the individual responsibility of each person in strengthening the criminal justice system and avoiding violations of human rights. He pointed out the need for tolerance, with regard to fellow humans, to build a morally right, peace loving and just society. He spoke at length about the adverse effect media misrepresentation can have on judicial as well as social proceedings. He highlighted the need for non-violence, and how any form of violence is in the end detrimental to oneself. In the introduction to the workshop, both Kalpana Kannabiran and Amar Devulapalli laid emphasis on the role of the media in strengthening and spreading awareness about the criminal justice system and human rights. Dr. Kalpana Kannabiran spoke about women's issues. The violations and acts of violence women are subject to were brought in as an important part of the whole discourse on criminal justice systems and human rights. This was particularly relevant as the next day was International Women's Day.

The first speaker Mr. Ajit Bhattacharjea was a former director of the Press Institute of India. Associated with the media nearly all his life he was editor of the Indian Express and the Hindustan Times. A prolific writer Mr. Ajit Bhattacharjea spoke on the issue of right to information in the context of

countering violations of rights and the corruption in administrative institutions. He emphasized the role of the public in acting against violations and holding the government and administration accountable for their actions. While doing this he pointed out an alternative method of countering corruption and violation – the public hearings initiated on a large scale by the MKSS (Mazdoor Kisan Shakti Sangathan). He emphasised the need for the media to be objective and not sensationalist. The role of the media was absolutely essential to the process of strengthening the criminal justice system and issues of human rights. The media could do this by reporting information the corruption of officials for example.

The next speaker in the morning session was Mr. Henri Tiphagne, Advocate, Chennai High Court. He has worked with NCDHR (National Commission for Dalit Human Rights) and is a part of Peoples Watch, Madurai. Henri Tiphagne began with the need for a workshop of this kind, which was more effective in its reach than researched documents presented by various legal and human rights groups all over the country. He spoke about the inaccessibility of institutions like NHRC and its detrimental effect on the whole process of fighting human rights violations. He illustrated various faults in the criminal justice system and explained that though institutions and rights exist to counter violations, they become futile defeating the whole purpose of their existence through corruption, delayed proceedings, institutionalization and inaccessibility for the common man. Mr. Henri Tiphagne spoke in detail of the violations that take place during an arrest despite there being rights, bills and acts to protect the victims. He brought out the plight of a layperson when faced with the aggressive criminal justice system, which was also plagued by internal corruption. As much of his recent work is based on the Tsunami relief in the coastal regions of Tamil Nadu he spoke of the problems and issues regarding the relief work there. His plea to the media was for greater involvement. He also pointed out that influence and reach that the media has could be used to build pressure on corrupt officials and systems. Henri Tiphagne felt the media should not just report the human rights violations but also write





Mr. Henri Tiphagne with NALSAR Students at Hyderabad



about the standards provided by law and the constitution to counter these violations.

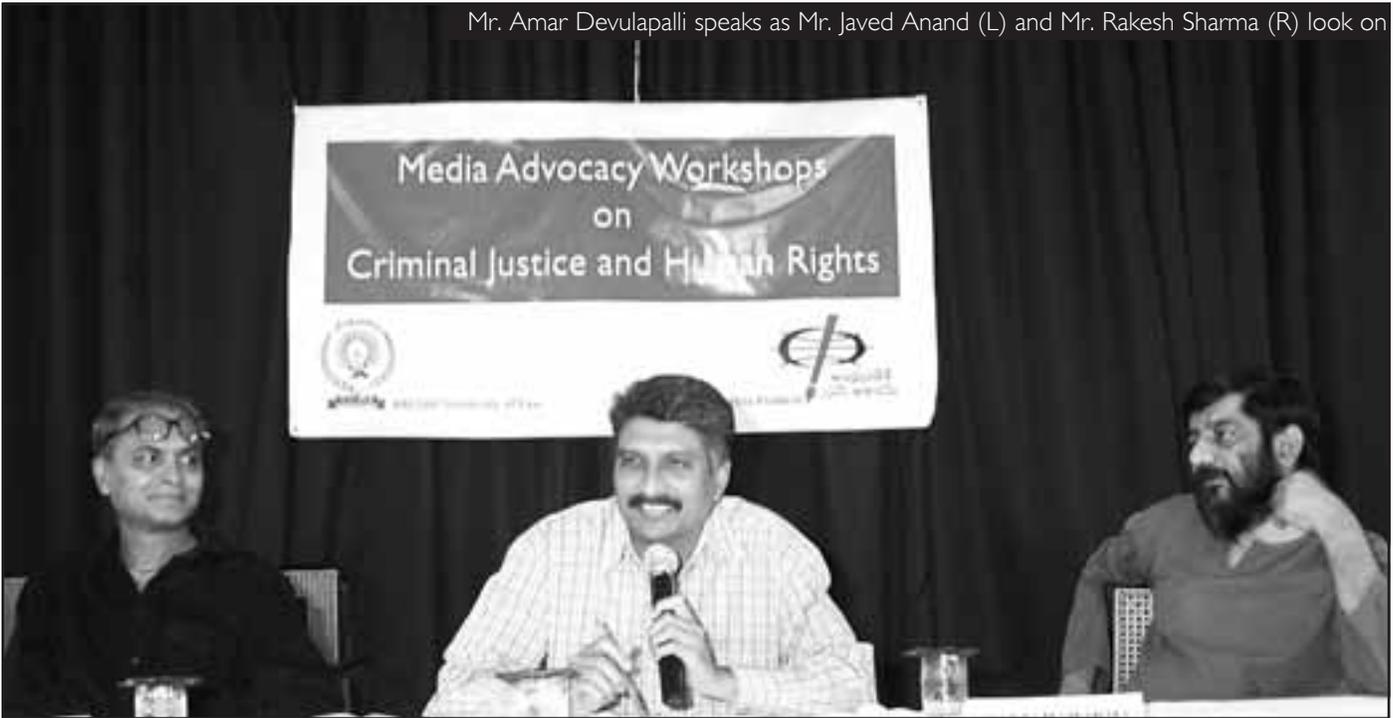
In the afternoon session Javed Anand of Communalism Combat spoke on fundamentalism and human rights. He started his talk by pointing out how fundamentalism is not a peculiarity of any one religion. Fundamentalism is not a unique phenomenon in Islam alone and there are evidences of its existences in all faiths from Buddhism, Christianity and even Hinduism. To show that all faiths and religions have always believed in the greater good of humanity he gave examples of philosophers, thinkers and maulvis and even in the Quran itself where it states that killing another human being is equivalent to killing all of humanity. Thus explaining how fundamentalism is a perspective and not necessarily an inherent part of religious teachings of any one faith, he also elaborated on the basic premise of all forms of fundamentalism, which seem to entail an absolute intolerance of differences. He emphasized the need for peace and harmony through understanding “the other” and giving space for individuals to believe in what they chose. He said every

believer need not be a fundamentalist and every non-believer need not be an atheist. Thus by breaking such stereotypes one can comprehend, understand and coexist with the diversities all around us. Javed Anand also pointed out how the basic premises of fundamentalism are quite pointless in the globalised world where all kinds of people have to coexist to be able to survive and for the growth and betterment of humanity. He ended his session with a revolutionary song sung by Iqbal Banu, a Pakistani singer during the military dictatorship of Zia-ul-haq.

The last part of the afternoon session was the screening of the award winning documentary film on Gujarat by Rakesh Sharma *Final Solution*. It is a very powerful representation of state violence and the process through which the state converts people’s outlooks and perspectives regarding a particular community to serve its own political agenda/purpose. The film is made even more powerful by its non-intrusive stand and just the representation of various versions of the train burning, the carnage and the elections immediately thereafter from both the communities.



Mr. Amar Devulapalli speaks as Mr. Javed Anand (L) and Mr. Rakesh Sharma (R) look on



The workshop ended on a hopeful note as the dialogue had been initiated and there were many responses from the audience. There was lively discussion as well as doubts about what the resource people had said. As the main idea behind the workshop was to start an interaction it had served its purpose especially with journalists staying on for the whole day to listen and discuss the issues of criminal justice system and Human rights.

The second media advocacy workshop was coordinated locally by the Vishakapatnam Journalists Forum. The interesting and unique feature of the Vizag workshop was the composition of the audience; apart from media persons there were also activists, students, professors and intellectuals of the city. This ensured active discussion at the end of each presentation. Sri Vidya Prasad, Principal District and Sessions Judge, inaugurated the workshop. The guest of honor was Sri D.V. Subba Rao, former Chairman of the Bar Council of India. Both distinguished guests expressed eager support of a workshop that aims at sensitizing people of all vocations on human rights with a close link to the criminal justice system. They emphasized the need for an objective media for strengthening the criminal justice system. Mr. Vidya Prasad

spoke about the diverse groups who are most subject to violations of human rights and the responsibility of the media towards them. He also pointed out how the media needs to be unbiased and cautious of their representation of issues, which ought to be within the parameters of a civilized society and not based on personal opinions but rather on facts. There is freedom of speech but it has to be exercised with caution. Sri. D.V. Subba Rao who has also been the Mayor of Vizag, expressed his happiness at being part of the workshop. He spoke about the evolutionary nature of human rights and their sensitization among people. He brought in examples from world history to explain that this was like the institution of slavery. He emphasized the need for authorities to balance between duties/ responsibilities towards the state and towards citizens. Dr. Kalpana Kannabiran gave the introduction to the workshop where she explained the need to stress on outreach programs and broad based debates in strengthening the criminal justice system and issues of human rights. She also said that the groups working on human rights issues owe a lot to the media that has supported them. But there was a need for a special dialogue between the media and the movements on the whole discourse of human rights today.



Professor S.K Thorat Chairman, University Grants Commission began the morning session. Associated with various human rights organizations and a founder member of the Indian Institute of Dalit Studies, extensively on poverty and human rights issues concerning scheduled tribes and scheduled castes. Prof. Thorat spoke on the human rights of the dalits and the problems they faced. According to him the contemporary acceptance of the Dalit issues is a very important achievement of the ongoing human rights debate in this country. He began with discussing what are human rights in general then the human right of dalits, the kind of violations they face and why. He explained the caste structure in which untouchability is an inherent institution. Explaining dalit exploitation and violation of their rights in India he pointed out that the institution of untouchability is a complete anti thesis of the basic premise of human rights. He traced the roots back to the hierarchical caste structure of the hindu social order. The hierarchy also enabled structured social, economic, cultural and religious boundaries and rights/ accessibility for all who are a part of it. Prof. Thorat also mentioned the efforts made by the government to ensure some rights to the dalits. He ended his talk with the question as to what the media's role should be, after analyzing the situation he placed before them. There was active participation from the audience as the caste system and violations and discriminations in it seemed to be an immediate reality. In the discussion that followed there were many questions the most prominent being "where do we stand with regard to the issue and what exactly can we do?" S.K Thorat responded with the statement that though there

is recognition of the Dalit issues there is still work required especially from the media to spread awareness and bring to light the violations along with the standards to guard against them.

The next speaker in the morning session was Dr. Vidyullatha Reddy, NALSAR University of Law. She outlined the whole evolution of environmental laws in India and linked the issue of environment and its interface with human rights. Her emphasis throughout was on the individual responsibility of each citizen towards the environment especially in the light of the fact that the environment is closely linked with the existence of life itself. Through various examples of cases filed in the Supreme Court she explained how the environment rights are now read into the fundamental rights under the constitution. She spoke on how even though rules and legislations exist to control environment pollution they are not implemented to the degree required. The stereotype in people's head about the polluters being the poor is misleading. It is the rich who have the resources and money to cause the maximum pollution. Dr. Reddy pointed out that media being so powerful needs to be committed to protecting the environment, by writing about issues beyond the few important cases like "Pepsi-Coke issues". This session was also followed by a long discussion involving the audience since there were not merely media persons present but also activists and groups working on various issues in Vishakapatnam. There was discussion on the inefficient manner of implementation of environmental laws, the corruption of the pollution control board and the efforts made by some groups in Vizag to prevent deforestation.



Mr. Lawrence Liang, working with Alternative Lawyers Forum, Bangalore, started the afternoon session. His presentation was on the media representation and its effects. He traced the representation of the terrorist in the popular hindi cinema and the way it has become a part of our perception. He began with exploring what our definition of a terrorist is and why. The history of hindi popular cinema shows the villain in an abstract form as an embodiment of all that is evil, who wants to blow up India for no good reason what so ever. And in later years this figure of the villain has moved



Prof. S. K. Thorat speaks at Vizag



on to become a very recognizable figure, from a particular community, located in a specific place fighting and wanting to eliminate India for a “cause”. Then he went on to explain from examples picked out from different film clips and news reports, which define for us what a terrorist is and what he looks like. Therefore even without meeting a terrorist we already think we know what he is like. The stereotyping of this image has caused much damage and has a dangerous amount of potential for people to be labeled as terrorists. He explained this through the conviction of S.A. R. Gilani by the media despite his acquittal by the Supreme Court. Through the film clips and news clips Mr. Lawrence Liang drew the map of the construction of a terrorist by the media for the public. His presentation ended with the Zee news clip — a ‘factual’ reconstruction of the December 13th attack on the parliament, which was a strange mixture of facts and fiction with reality effects. He emphasized on the power that the media has how it is able to influence the public drastically. Therefore there is a need to re-look at the realm through which we read or view particular actions of the state or the militants. His presentation also dealt with the whole issue of supposed objectivity ascribed to the media where as it influenced to a large extent by the political and other agendas of the state.

Mr. Ashok Agrwaal, an advocate from Delhi specialising in criminal law, and actively involved with human rights lawyering and research, spoke in the last session of the workshop. He has worked extensively on the Punjab disappearances case and at present is involved with the Kashmir disappearances cases. He spoke on the “mass cremations” case of Punjab, where large numbers of bodies were burnt by the police as unidentified bodies over a span of two or three years. Simultaneously young boys were being picked up by the police never to be seen again, thus the term “disappeared by the police”. Mr Agrwaal began with the whole history of disappearances in Punjab, which began soon after the 1984 riots following Indira Gandhi’s assassination by her Sikh bodyguards. Mr. Agrwaal is part of the ‘Committee for Information and Initiative in Punjab. He described the difficulty and the process through which they finally established to the court the link between these disappearances and mass cremations and the large scale human rights violations committed by the Punjab Police in the process. He went on to talk about the Kashmir cases where the writ of habeas corpus is completely useless in the light of the military occupation. He brought to light the futility of the situation of having human rights to protect citizens and in case of their violation the presence of writs like the habeas corpus that are meant to act as remedies in the face of state violence and state oppression. His emphasis was that if the state decides to control a law and order problem it should do so with accordance to the law and not in violation of it. At the end of the presentation by bringing in the example of the northeast disturbances, he explained that the state needs to





look beyond controlling uprising by use of the criminal justice system to dealing with the real problems at hand. They need to address the issues that cause these disturbances in order to truly resolve the situation rather than using force to silence the discordant voices of our country.

This session led to debate on the role of the state, its responsibility towards the citizens, and the need for media persons to address the issues alongside their reporting instances of violence. The dialogue on the criminal justice system and issues of human rights is long and complex and cannot be resolved in two or three workshops. The main objective of the workshop was to a large extent fulfilled through the long discussions that followed every session.

The *final workshop* in the series at Vijayawada featured Prof. Padmini Swaminathan, Ms. Vrinda Grover, Ms. Sowmya, Dr. N. Vasanthi and Ms. Priya Narula. Prof. Padmini Swaminathan, RBI Professor of Economics and Director, Madras Institute of Development Studies spoke about her work on women in the informal sector in the free trade zones in Tamil Nadu. Highlighting the precariousness of employment and the systematic refusal of employers to adhere to even the most minimal labour standards, she described the humiliating conditions under which women work in these industries, underscoring the fact that because these were closed spaces that the media never entered, the realities of women's existence just stayed out of public view, unknown to the outside world. Dr. N. Vasanthi, Assistant Professor at NALSAR, extended this concern to examine the rights of workers to the freedom of association and addressed the problem of shrinking spaces for workers to claim their entitlements in a rapidly globalising world. The connection was made between this shrinking of rights and the new legal regimes that the process of globalisation was putting in place in India. Ms. Priya Narula, advocate made a power point presentation on sexual harassment at the workplace, which made the understanding of this problem easy to the journalists present. It was also felt in the course of discussions around her presentation

that journalists unions needed to write these concerns into their forums as well. Ms. Sowmya, an activist working with the MKSS in Rajasthan gave a very detailed account of the struggle around the right to information. Ms. Vrinda Grover, who represented SAR Gilani in the Parliament attack case, spoke about the implications of the investigation and trial to the criminal justice system and underscored the role of the media in representing the entire issue in a particular way. Using this case as a springboard, Ms. Vrinda Grover spoke about the need for the media to understand issues of criminal justice and human rights in order to be able to write about them.

Conclusion

All three workshops brought to light the need for more objective involvement from the media. The emphasis laid by all resource persons was that the even though there are many instances where the media has been very supportive there are many more instances where the media has not bothered to focus on very pertinent issues. There were also instances where the role of the media has had very adverse effects on the public opinions. The response from both the media and the speakers was very positive and they all felt that there was a need for similar workshops on a large scale. This was a small step and a lot more needs to be done in the process of strengthening the criminal justice system and bringing to light human rights violations. The most significant aspect of these workshops was that they were meant for a constituency that has power and enormous potential to reach the public. Thus by sensitizing media persons one reaches out to a much larger public. The learning of the workshop was not limited to the hundred journalists sitting in the meeting hall but would ripple out to hundreds of thousands of people who read their newspapers.



What the Speakers Said...

Inaugural Address: Justice Sudershan Reddy

We saw an explosion of human rights bills both at the international level and also in the nations emerging from the colonial rule if not colonial structures. The belief was that an enunciation of some set of irreducible rights would serve some purpose even if it be purely moral. It was further believed that it would serve an educating purpose and build moral opinion that would limit the wielders of power and state's authority to within some acceptable degrees of lawlessness if one were to be minimalist in expectations and cynicism. At the same time the assault on the state's obligation towards its citizens in terms of state action and inquiry within the various equality clauses started. The notion that the state's responsibility under equality clauses ends where the state or state's agents themselves were not violators of the law vis-à-vis a victim came under a successful assault. The more progressive trend was to view the state as not merely being the protectors of the so-called negative rights but also the vehicle for achievement of the positive content of equality before the law clauses of various constitutions. Thus the original state action inquiry that led to the expectation that the state would not just abstain from unlawful violence or discriminate between individuals on invidious grounds was supplemented by two other expectations or rather ideational principles namely the state had the affirmative action to protect subjects from lawless forces and that the state had to provide for the material, spiritual and political well being of all subjects and remove the debilitating inequalities so that thorough equality would permeate the society.

One primary controversy about entrenched rights that are beyond legislative competence at least ordinary as opposed to amending competence relates to who should define the contents of those rights. Assaults on human rights paradigms post 9/11 have been aided and abetted by a media that seemed to have willingly suspended its disbelief and, some would argue, largely motivated by popularity ratings that necessarily led to biased reporting and reporting what the people wanted to hear. The polity was able to launch a

fierce assault on the content and scope of human rights if not the notion of human rights itself. Nobody in his right mind would argue the point that the defence of an innocent life is a primary human right. The point is not that it has more to do in the fact that we seem to be willing to suspend all our cherished notions of right and wrong of our ability to exercise reason and rationality as individual moral agents. The abject apology of NY Times that it may have been hasty in giving credence to the misinformation and not giving considerable thought to some obvious inconsistencies of the US administration's rationale, for the war in Iraq stands as a testimony to this. Most of you must have seen the editorials, confessions made by the NY Times as to how they were misled. The apology seemed to indicate that the NY Times acknowledged that it could have been more skeptical and exercised a greater amount of reasoning on the facts available to them. It is the willing suspension of disbelief and reason such as that of NY Times that often lead to human tragedies of massive scale. Thus it is my humble submission that the press and the media need to be particularly careful in enunciating arguments that call for an immediate withdrawal of entrenched rights. We have to remember that there are many reasons, some learnt over centuries and through the shedding of the blood of countless millions, that these rights have come to be entrenched. Further there are also some very good normative reasons for such entrenchment not the least of which would be the need to resist the immediacy of a felt need the knee jerk reaction to a grave provocation. Wisdom demands that we view with a considerable skepticism any arguments particularly in moments of great crisis that call for an immediate and permanent withdrawal of entrenched rights. It is indeed true that the spectre of terrorism looms large over the human rights agenda and the debate. However this calls for a sustained debate, which provides for a much wider based participation not knee jerk reactions. The role of the media in generating a consistent drum beat for the cassettes of doom also needs to be analysed. The responsible members of the media by and large need to actively, demonstrably and visibly articulate their self-



assessment. Amongst the various issues that the media may need to think over are:

- The role of ownership in limiting editorial discussion and slanting the orientation of a news.
- The role of media in sensationalism that does sometimes lead to tyranny of the smear.

It is now an extremely disturbing trend that the media barons are entering the portals of policy-making institutions. In the climate of depraved competitiveness that the polity has become this is a dangerous trend. I am not trying to single out any one person or group or groups or casting aspersions on any one entity. For the sake of discussion I am willing to accept that some recent examples are actually good and good people. There is a need to stay away even for good people and particularly if they are good people. There is a need to stay away from portals of power because power corrupts and absolute power corrupts absolutely. When this is combined with commercial interest and also the tyranny of circulation ratings the combination can be really devastating. I would go so far as to suggest that the effectiveness of media in combating the assault of the demagogues on entrenched HRs would be seriously impaired if it has not already happened.

The 2nd problem I wish to highlight was in respect to the tarnishing of the individuals. The instant some one is accused of a crime the media just jumps on the bandwagon of holding a trial on its own channels of course selectively and many times it appears without even an iota of respect for the rights of the individual. In the least, human rights for all individuals demand that the society be in a position to be able to give that person a fair hearing. The sensational coverage and of course the damnation of the accused even without all facts being available contributes substantially to perversion of the Criminal Justice System. I am not suggesting that the media should not report but be even handed about it and equal weightage to possibility of the other side. If you have to discuss the details of a case make sure you get the opinions that may also be in the nature of a balance

assessment of the facts available. And when you are wrong please acknowledge. This may not undo the damage done to the individual. It may at least give him at least a partial sense of vindication. If human dignity is part of human rights then I submit that is the least a victim of news reporting deserves.

Finally I also wish to reflect upon the role of the civil society and its watchdogs including the self-proclaimed one in the protection of HRs. Ultimately the role of judiciary in defining the content of human rights on a case-by-case basis is predicated on the fact that the process of adjudication in one sense is intensely participatory and hence necessary for the protection of the constitutional democracies. The nature of this participation apart from any irremediable judicial errors critically depends on the eyes and ears that bring relevant information to the courts. For many responsible people, it appears that the eyes and ears of the state itself have become corrupt if not completely then at least to a worrisome extent. Consequently, the role of civil society and its institutions and its watchdogs become all the more important. Then the imperative need that such institutions of the civil society and its watchdogs not merely do good work but also appear to be doing good and impartial work. This demands a consistent assertion of principles and integrity. Silence and atrocities committed by one group and vehement denunciations by the other can only be detrimental to the perceptions of integrity of such institutions. The murder of an innocent civilian even by a revolutionary motivated by the best of ideologies cannot be condoned for after all the murder is still for an ideology, a particular set of ideas about how a society ought to be structured. Because then you would just lose the moral high ground to hold the state responsible for its own ideology based victimization of the weak and downtrodden and members of the opposing groups.

Ultimately human rights debates cannot be predicated on the “rightness” of a particular political position. It ultimately has to be predicated on tolerance, tolerance of those who differ from us, tolerance of those who oppose us. It is only



a social philosophy founded on principle of tolerance and respect for the innate human equalities in all of us that can lead to a truly civil society and provide the foundation for entrenchment of human rights.

The survival of the very Criminal Justice Administration system to a large extent depends upon the integrity and impartiality of investigating agencies and the prosecution. I am one of those who believe that the investigating agencies and as well as the personals entrusted in the duties of prosecution must be freed from the control of the state apparatus. Suitable steps may have to be taken to make them independent and autonomous bodies.

Jan Sunwai and the National Campaign on the People's Right to Information: Mr. Ajit Bhattacharjea

Unless individuals or groups are informed of their rights and how to obtain them, human rights remain a theoretical issue fit for academic discussion but with little actual impact on human society. Right to information is the key to human rights. Few nations in the world have committed themselves to respect and uphold human rights as specifically and unequivocally as India. It was among the original signatories of the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948, soon after our independence. The essential values of the Universal Declaration found expression in the Indian Constitution. Nothing could be more inspiring and eloquent than its Preamble. It assured citizens: Justice, social, economic and political; Liberty of thought, expression and belief; Equality of status and opportunity; Fraternity, assuring the dignity of the individual. The key rights protecting individual freedoms were incorporated as Fundamental Rights. Among them, equality before the law; prohibition of discrimination on grounds of religion, race, caste, sex or place of birth; equality of opportunity in public employment; abolition of untouchability. Rights to life, liberty, religion and speech were specifically assured.

The Directive Principles of State Policy focussed on social rather than personal rights like right to work, education, public assistance and a living wage. Perhaps as an indication of second thoughts, these were not made justiciable. However, they were amplified and reinforced by the UN General Assembly in 1986, when members from developing countries felt that the Universal Declaration limited itself to protecting personal freedoms but was less concerned with development. Consequently a comprehensive Declaration on the Right to Development was adopted. Article 8 merits quotation:

1. States should undertake, at the national level, all necessary measures for the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be taken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating social injustices.
2. States should encourage popular participation in all spheres as an important factor in development and in the full realisation of human rights.

Yet, in the context of the actual conditions in our country, these assurances seem fanciful. The vast majority have not heard of them. Their situation is reflected in the low position India occupies in the world Human Development reports brought out by the UN. It is evident from the social injustices that confront us every day.

However, half a century after the Constitution was adopted, there are signs that human rights may come to mean more than empty words for those who most need their enforcement. And this has come about because they have demanded information about their rights, especially those concerning their right to livelihood. In other countries, authority has conceded right to information in response to demands from academic researchers, mediapersons, business rivals and others undertaking personal inquiries. India can



claim to be the first country in which the campaign for right to information has been propelled by people at the grassroots of society. It has led to the appointment of a National Human Rights Commission and enactment of right to information legislation in several States. But it will take much more awareness of human rights and how to secure them to achieve social change.

The movement started only ten years ago, in December 1994. Villagers in a remote Rajasthan hamlet in Pali district, exposed the huge corruption involved in development and poverty alleviation projects to public view. At a local gathering, they contrasted official records of money paid for schools, roads, drains and other local works with the reality on the ground. Villager after villager got up to point out that the listed works were half-done or fictional. Names were read out from muster rolls of men and women employed on the works. Again, villagers testified that many were not there that day or no such person existed there.

This was the first jan sunwai (public hearing) organised to demand right to information as essential for livelihood and clean governance. The spark it lit spread so rapidly into a popular movement for right to information that ministers and bureaucrats, used to hiding their actions under the all-embracing Official Secrets Act, could not resist. The right was conceded, backed by legislation in several States.

Earlier, official records could not be obtained by asking for them. Those cited were made available by a handful of officials anxious to counter increasing corruption. The jan sunwai demonstrated that public access to them was essential if the thousands of crores sanctioned for development and poverty alleviation was to reach the target population. In fact, the funds were promoting the process of criminalising administrators and the politicians behind them.

The process of educating villagers to demand access to official documents as their democratic right for clean governance was initiated in Rajasthan by the Mazdoor Kisan Shakti Sangathan (MKSS), a small group of activists

who had won the confidence of the villagers by living in the area and identifying themselves with local causes. Three more jan sunwais were held that winter. Villagers gained the confidence needed to stand up and testify against the local power structure. Local officials were invited to attend.

This was the start of a unique Indian version of the right to information, with jan sunwais its cutting edge. The movement is powered by the demand of people at the grassroots of society, many poor and illiterate, of their right of access to documents affecting their lives and livelihood; a mass motivation missing elsewhere. Within two years, the right to information movement gained enough mass momentum to force administrative concessions. Its popularity and discipline were demonstrated in the south Rajasthan town of Beawar in 1996. I was there with a group of press reporters; the campaign was gaining national attention. It was a warm, sultry day, but about 500 people squeezed into a triangular piece of open land for five hours to hear villager after villager testify with facts and figures of the misappropriation of funds at block level. Women were prominent. A 40-day dharna was held to reinforce the demand. Another dharna was held in Jaipur to put pressure on the State Government. The slogan *hamara paisa, hamara hisab*, became the slogan of the movement.

The stage was set to push for legislation. The movement had gained wide support. Three months after Beawar, well-known jurists, academics, retired bureaucrats, politicians and journalists crowded into the premises of the Press Council of India for two days to discuss the issue. A committee, headed by Justice P.B. Sawant, was set up to draft a model bill. From now on, rural jan sunwais and urban study groups on legislation (one held in Hyderabad's National Institute for Rural Development) reinforced each other. The first national convention was held the following year in Beawar, now identified with the movement.

The jan sunwai campaign was stepped up. At Kakardhekha, a picturesque village in the fold of the Aravallis, the woman sarpanch, Basanta Devi, publicly apologised for defrauding funds and promised to return Rs 50,000 immediately and another Rs 50,000 later. In the



nearby village of Surajpura, the jan sunwai was rocked by evidence that an entire irrigation channel claimed to have been dug from a nearby lake was non-existent. Yet there were receipts for materials and muster rolls for wages to 100 workers. Demand for action against the guilty mounted.

But administrative resistance was also mounting. The Rajasthan Government had agreed to open panchayat and local administration records to public scrutiny. Junior officials flatly rejected the orders. In Kishangarh, 30 km from Ajmer, they refused to entertain 52 requests for access to records filed in accordance with official requirements. Action did follow, however, after a jan sunwai in Janawad disclosed that as much as Rs 45 lakhs from bills and vouchers detailing expenditure of Rs 65 lakhs had been misappropriated. Three local officials were arrested and 18 suspended.

State Governments were now anxious to ride the popular wave created by the jan sunwai-spearheaded right to information movement. Bills were drafted and redrafted in eight States before enactment, some with more loopholes than others. A key provision for penalising officials who delayed or refused to give information was among those missing.

However it was included in the Delhi Act. A local voluntary group, Parivartan, was able to secure photocopies of ration shop registers and invite housewives from the colonies they served to two recent jan sunwais. They brought ration cards to demonstrate how much less they had got, sometimes nothing, than the figures in the registers. Many complained that they had to pay bribes to obtain cards. The evidence of corruption with the connivance of the authorities was overwhelming. But punishment is being resisted.

A new Right to Information Bill is before Parliament to replace the Freedom of Information Act passed earlier that did not contain provisions for penalty and had other loopholes. It too is facing problems introduced by bureaucrats who have most to lose by transparency. The attempt is to limit it to Centrally-governed areas, which would deny it a national jurisdiction. Only mass awareness

can ensure that promises are implemented, a process greatly dependent on media support. The Right to Information movement still has miles to go.

Criminal Justice and Human Rights:

Henri Tiphagne

The media that really matters in terms of people and reaching out to the masses is the media in the districts. Thousands of young people who are in the media today, are extremely enthusiastic but their opportunities of their being exposed to a number of standards is almost nil and all of you are aware of it. And therefore we concentrated on journalists from the districts, simultaneously banning journalists from Chennai attending our meetings. We were criticized initially but later people understood that it has to be for the people in the districts and the material that we supply also has to be in the vernacular otherwise this entire discourse about human rights will never reach the people. It was an extremely rich experience. It would be good to also place on record having coming from Tamil Nadu our government's contribution to Right to Information [hereafter RTI]. Our government came out with a legislation in 1997. Section 3 in the TN RTI Act had 22 exemptions. The information that we normally used to get earlier now was part of the exemptions, which were extremely well drafted.

As far as the Criminal Justice System is concerned there are a number of institutions that are key players, some of them very powerful institutions. Law enforcement agencies are one of such institutions, which have a very important role to play. Prisons of course are another major institution, which has a bearing on the Criminal Justice System. The judiciary is also a very important institution. We also have the legal services authority, which is very important since criminal justice has to be accessed by people and an institution has been created for that access to take place. The national human rights institutions in this country are contributing to the enunciation of human rights standards through specific sets of guidelines. Finally, legal professionals also play an



important role in how the criminal justice systems in this country develop and for whom. And last of course is the media.

The criminal justice scenario in the country presents a depressing picture. There is development, there are laws, but there are huge gaps. For example, in terms of children, there are no new legislations in place. You, as members of the media and we as members of civil society see the extremely poor plight of children around the country. The violations that take place against children are only on the increase. You don't see this decreasing at all. In terms of violence against women: I come from a state which is proud of women commandos — our new contribution to law enforcement agencies from Tamil nadu and you have women police stations coming up. But the cases of violence against women and the nature of these cases are increasing becoming cruder and cruder. There is a campaign in Bangalore against acid deaths. All this after so many legislations on women and so many legislations on children. Then the whole question of dalits in this country. The best legislations are in place. The SC/ST Prevention of Atrocities Act for example, and special courts to try these cases. In spite of this, there is no justice with respect to the cases that are registered and thousands of cases remain unregistered in this country despite all the provisions in the constitution.

While looking at the criminal justice system, it is important to place on record that we are not looking at situations where you do not have legislations in place; you are not looking at situations where you do not have legal standards in place; you are not looking at a situation where you do not have guidelines in place. There are a plethora of guidelines, standards, legal provisions, and government orders that are in place. But in terms of concrete implementation you see that every instrumentality of the state that we have mentioned which has a bearing on the criminal justice system is determined not to perform. One example: The chairperson of the NHRC, Dr. Justice A.S.Anand, former Chief Justice of India, delivered the D.K.Basu Judgement on

arrest during his term in the Supreme Court of India. As the Chairperson of NHRC he is in a position to monitor the judgement. Not a single police station in this country can stand up and say [except perhaps Mr.Prem Kumar of Kanchipuram in the Shankaracharya case] that the D.K.Basu guidelines in terms of arrest are being followed. It is important to place this before the media. The violations of the human rights of large sections of populations — the ordinary persons — in this country not the Shankaracharyas alone must enter the account. The Supreme Court judgement is binding on every police station in this country. You have the NHRC, which has furthered those guidelines with its own guidelines on arrest. And still you see that all the violations taking place at the point of arrest. Illegal detentions, torture in the police stations, persons injured in police stations never produced before a medical officer [the reference here is not to political prisoners]

What is the point of having a judiciary with all these commendable guidelines, not an iota of which is implemented for the common man in the ordinary police stations of this country forget the law enforcement officials in the police stations. What happens to the judiciary? A person who is arrested is remanded before a judicial magistrate. Not many magistrates are able to stand up and say 'I will not take this person on remand because his custody memo as per direction of the D.K.Basu judgement has not been furnished to me. Come back with the custody memo, I will take his remand.'

Therefore as members of the media it is not only important that you carry on stories of this sort, that you carry out stories on violations that take place. But it is very important that while you write about violations that you also start writing about the standards that have a bearing on these violations. And this is my appeal to you today. And unless you are going to highlight the standards which have a relation to the concrete violations that you are writing about, the awareness of ordinary people in terms of what are their rights, in terms of standards that are set which are not being followed with in the system will not be exposed.



Mr. Javed Anand at Hyderabad



The second question in this whole process of criminal justice administration is the question of access. You have institutions in place but in terms of access the institutions are so tightly managed that the poor in this country who are the largest users of the criminal justice system have no access to the system. Why is it that the legal services authority in this country has not ensured that legal services are offered to the poor free of cost in the police station. All of us know where the violations take place. But at that place, where the victim of a violation needs or is in search of access to legal assistance, at that place where the violation takes place, he / she does not have access. He / she has access in the courts, i.e., after he/she has passed through the police station comes in for remand and has been tortured so much that he/she refuses to speak before the magistrate since he/she is told if she / he opens his / her mouth the consequences will be even more grave. And the poor in this country are extremely intelligent; they do not want an extra burden to carry and therefore decide to keep quiet. The moment they keep quiet at the time of remand, the presiding officer makes the presumptions that no torture, no illegal detention, no other forms of violations have taken place in the initial stages.

The third problem has to do with the pendency of cases. The National Crime Records Bureau informs us that there

are more than 1.32 crore pending criminal cases in the subordinate courts in the country. And all these are brought dealt with by a judiciary whose strength is 12000 to 13000. The social fabric of caste where these caste pressures are placed on us – for three years you are expected this litigant who is already vulnerable, who is already marginalised in his village, who is already poor, who does not have any power on his side to be able to stand up facing the social pressures in the village and then come back after three years on a witness box and testify what exactly happened three years earlier. There is just no protection offered anywhere in this country. And you look at cases of custodial violence you have a number of cases of custodial violence and the state expects that these victims will come forward and have courage to speak up against the police who killed the husband. The wife is expected to come up after three years or more and testify? How will they do it? Who sustains them during this 3-year period? What is the nature of evidence that this person will come forward with after 3 years? Let me take the reverse. On 1st February 1982, the nationally well known Prem Kumar today [of the Shankaracharya fame] started as the Sub Inspector of Police in a small town called Vadipatti. He allegedly tortured an ex-serviceman on a land dispute in a civil matter. We took up the matter in the PUCL and highlighted it and our protest led to his suspension. One year later we learnt from the newspapers that this suspended Sub Inspector of Police has become Deputy Superintendent of Police after writing the Group I examinations. We rushed to the high court. The high court in 1985 gives a judgement saying although a Sub Inspector has indulged in an alleged offence, let the trial of the offence be on and depending on the verdict in that particular case we will then decide whether he can continue as DSP. Pending the verdict, let him continue as DSP. If he is convicted in that case, then he will be reverted back to the Sub Inspector of Police. The system seemed to be working like magic now. In 2003, the 11th of July the trial finally ended. The prosecution that was launched by this ex-serviceman who has lost his sight in the process, meant that he sustained himself from 1st of Feb 1981 to 11th of July 2003. This DSP



was engaged in horrible offences some of which are even quoted in High Court judgements. He is a known encounter specialist. He is a known person for custodial violence. He is the selected celebrity of Tamilnadu Law Enforcement Agency, selected to investigate the case of Shankaracharya.

We cannot hope that in this country, change will take place only from the judiciary. We have to look at newer avenues and one new avenue that is successful which has been pointed out by the earlier speaker, is a whole avenue in terms of mass mobilization which are the public hearings. The public hearings and the public tribunals perhaps today are offering much better justice to the victims of violations than the justice that people get then. In some places if they are held as real public hearings with the entire process gone through with victims participating in it and public having access to it, the extent of justice that flows out of these public hearings and public tribunals is much qualitatively better than what comes out of the institutions that we are talking about. And I think that is another area that should need attention of the media since there is no public hearing which can be successful without the media pitching in their.

Religious Fundamentalism and Human Rights: Javed Anand

What is fundamentalism? A lot of non-muslims seem to think that fundamentalism is a disease that has spread like an epidemic in most muslim societies. And a lot of muslims seem to think that fundamentalism is an elixir and a source and reason for their good health, both bodily and faith-wise. So there are apparently two different ways of looking at fundamentalism. Premised on this or underpinning this presumption is that fundamentalism is something which has to do with Islam alone and especially in the Indian context we very often hear particularly from the adherents of Hindutva ideology that 'fundamentalism cannot figure in Hinduism because there are in it no parallels of the 'fundamentals' of Islam, fundamentals of Christianity, and so on. And therefore fundamentalism has nothing to do with *Hinduism*. However, a Hindu can be a fundamentalist.

Whereas fundamentalism is an *Islamic* phenomenon and a *muslim* phenomenon. Muslims say, 'of course we are fundamentalists, since we believe in the fundamentals of our religion.' By this they mean the basic teachings of Quran or the basic sayings of the prophet, which they constitute as the fundamentals of their faith; so all good muslims have to be by definition fundamentalists. The issue however is with the words fundamentalism and fundamentalists, which entered our vocabulary particularly in the last 20 years or so. What probably gave it more impetus than anything else is what is called the Islamic revolution in Iran in 1979 from where grew the association of fundamentalism as an Islamic phenomenon, a muslim phenomenon.

To set the record straight, fundamentalism as a concept was first born among the Protestant Christians in the United States in the 1920s from California and the same time that Hollywood began to dominate the world of entertainment within the US and across the world. This fundamentalism was not sparked off by some poor people. In the 1920s, the Stuart Brothers who made a fortune through oil in California sponsored a publication of something like about 3 million copies of pamphlets, which circulated so widely in the US and also in Europe, that a writer at that time said, 'if you stand at the window of a tall building and throw an egg you are sure to hit a fundamentalist'. America was full of fundamentalists who were not muslims, but Christians. That is the genesis of the word fundamentalism. At the other end of the spectrum, today you find that the word fundamentalist is being used in a more broader sense to define many things — reaganomics for example was defined as economic fundamentalism; globalization is said to give rise to market fundamentalism.

In the case of religious fundamentalism, the first characteristic seems to be the core 'family resemblances' that run across all these. The first, each of these fundamentalisms has a problem with differences – there is very little space for pluralism or diversity or differences. Second, fundamentalism is a modern phenomena it is a response to modernity; fundamentalism is a protest or a revolt of religion against



the reign of reason. How the fundamentalists look at modern society today is captured quite graphically by Sayyid Qutub, of the Islamic brotherhood in Egypt who wrote many years ago “Humanity today is living in a large brothel” — fashion shows, beauty contests, ball rooms, wine bars and broadcasting stations, the mad lust for naked flesh, provocative postures, suggestive statements in literature, the arts and the mass media. And to add to all this the system of usury that adds to the man’s lust for money; engenders vile methods for its accumulation; in investment in addition to fraud, trickery and black mail dressed up in garb of law. What we would call a model democracy was for him “a society steeped in sin”. In order to remedy the situation, religion must be resorted to its central place; God’s laws once again must take over man made laws and only then will we return to kingdom of God — Ramraj, Mustafa, or whatever else. Third is the question of control of women. Even while it is men who have dominated society for thousands of years now, women continue to be seen as a source of evil in most religious traditions. The fourth belief that runs across all these fundamentalisms is that if you want to restore God’s laws in society you have to have power, violence being a legitimate or acceptable means to gain power. Finally, power implies territory, making ‘nation’ and ‘nationalism’ central to the expression of fundamentalism.

What are the implications of fundamentalism thus understood to human rights? The United Nations Declaration of Human Rights in 1948, was a declaration through which most countries of the world who are members of the UN agreed every human being has an inalienable right to a life with dignity and freedom irrespective of nationality, irrespective of region, irrespective of religion, irrespective of linguistic differences, irrespective of colour of the skin irrespective of gender etc. So if the central article of faith of the idea of Human Rights is the inalienable right of every individual to believe, to dignity and freedom, which includes freedom of faith, my right to freedom of faith, means that other human beings too have a right to freedom of faith; differences, pluralism, and diversity are central tenets of

human rights. Also, the question of gender becomes critical, since controlling women is a central tenet with all shades of fundamentalism whereas human rights movements, the United Nations Declaration on Human Rights and subsequent international conventions have all talked specifically about the question of gender justice. There is a basic clash of perspectives between the fundamentalist idea and the Human Rights idea. How then is this going to resolve itself?

I think for the resolution we need to step back a little bit and remind ourselves that fundamentalism is not equal to religion. Fundamentalism is an interpretation of religion, one understanding of religion; not every believer is a fundamentalist whether he/she is a Muslim or a Hindu or a Jew or Christian or a Buddhist. So fundamentalism is one thing and religion is something else. Indian reality itself to a certain extent has been a history of suspicion between the secular person and the believer, in India certainly. The believer took every secular person to be necessarily an atheist someone who was an enemy of religion and the secularist believed every believer to be deeply steeped in superstition and all kinds of vague and irrational ideas. And there was a mutual suspicion that defined the relation between these two. In the course of the last 10 or 15 years, gradually life is beginning to teach people on both sides that every believer is not a fanatic and every secularist is not an enemy of every believer and faith. And as we begin to understand this distinction between the fundamentalist and the believer, that every believer is not a fundamentalist and that every secular person is not an enemy of every believer, we can see the beginning of some kind of an arena or a public space within which a certain give and take, certain negotiation can begin to happen. Today we need to perhaps recognize the possibility that you can have a person who is a believer but is also very secular in his outlook and you can have a person who is otherwise very secular in his personal life but who can be very communal in his political practice. We could take the most obvious examples if you like of Mahatma Gandhi on the one hand and whether you talk about Jinnah, Savarkar or



Guru Golwalkar, or Savarkar — neither Jinnah nor Savarkar had much to do with the faith aspect of religion. They were interested only in the religious nationalisms that they espoused, whereas on the other hand somebody like Gandhi who was a deeply religious person at the same time pursued very secular politics. The coming together of people who are committed to secular values, whether or not they are believers, will make the notion of pluralism, diversity, living in a non-violent, equal, just society a reality in our life time. That is conceivable. It may be a slow and painful process. But it can happen.

The concept of Human Rights has increasingly encompassed almost every facet of human life, human existence and human strife — in relation to women who constitute almost half of the race; children; dalits, tribals and Adivasis; etc. The worse sufferers are the dalits, tribals and adivasis who have had to fight for their human rights in relation to AIDS and HIV, disability, custodial crimes, police atrocities, encounters and confession. Human Rights have been encroached by enforcing authorities; public servants who are corrupt and for whom teasing society has almost become a malady. Media has a vital role to play in protection of HRs and has been playing the role throughout in a very committed fashion. It is responsibility of the media to bring the violation of cases of human rights to the notice of the government. At the same time the media has to take into account the way it reports news; societal harmony and the maintenance of communal harmony is of vital importance. The press must take all possible precautions while reporting any matter, particularly those related to disputes between different communities so that it does not lead to any conflict between different communities and one act of violence does not lead to another act of violence. While it is a source of satisfaction that many scandals at the national and international level are brought to the public awareness by the media, the media while reporting must also realize that journalists are becoming the objects of attacks and they are being subjected to cruel treatment. In that regard you have got responsibility as mediemen that you have to not only

see that law is equal to all those who are involved in the scandal as well as those reporting the aspects. The media successfully explored political and public personalities and High Courts as well as the Supreme Court have punished some of them. Thus the media is supposed to be the guardian of public interest by bringing to fore the misdeeds, failings and lapses of the government and other government organizations. Freedom of press is the heart of social and political intercourse, it is the primary duty of the courts to uphold the freedom of press and invalidate all those laws or administrative act which interfere and contradict the constitutional mandates. The next aspect is that the media, while making any report regarding a matter involving human rights violation, must keep in mind that the subject of their criticism — government or individual — is presumed to be innocent till it is proved before the court that such a violation has really taken place.

While reporting legal matters the media must avoid personal reference to the judges and reporting must be such that it is in no way going to interfere to the functioning of judiciary. Democracy gets strengthened day by day and the media plays a very important role in this process.

Human Rights in the 21st Century: Sri. D. V. Subba Rao

The important thing about the 21st century is the remarkable upsurge in consciousness of the centrality of human rights. Poverty is central to the whole debate, and then you have many other rights, related to gender justice, and disadvantaged sections of the society. At every stage of human endeavour there has been a conscious effort to overcome social disorder. In an evolving society initially there was slavery, discrimination based on gender, discrimination on account of colour, etc. Then a variety of changes have taken place and perhaps its only towards the end of the 20th century that there has been some kind of a recognition in so far as human rights issues are concerned.

Even though this march towards man being sensitised to human values has been a tortuous process, a slow process,



nevertheless we are happy that in the 21st century this has come to the center. Alongside this evolution however, there are also some disturbing features that have surfaced. The big question is, are we civilized? We are educated we have comforts, we have ideas, man has set foot on the moon, man is exploring frontiers that were totally unknown to him. Today we have achieved remarkable strides in every walk of life, making life more happy, making life more liveable and all that. But then the darker side of it. The increase of violence. The movements that are said to be inspired by the desire for self-determination. Now what is a freedom movement to one man appears to be a terrorist movement to another man, whether its IRA, what is happening to ISI, and so many other movements. This is one aspect that cannot be ignored in a discussion on human rights. National policies are dictated by certain things. They must ensure that peace and order prevail; there is an emergence of conflict between human rights and the right to a just society in which the individual's rights and the rights of communities are protected.

So far as criminal law is concerned, the focus has always been on the rights of the accused. The victim is one of the most neglected aspects of the Criminal Justice System. The right to remain silent, the burden of proof beyond the shadow of doubt in so far as the guilt of the accused is concerned, entitlement to acquittal – all these concerns focus on the accused. What about the poor victim? The woman who loses her husband in the prime of her life, the children who lose a parent etc. Is the law thinking at all about them? Victimology is emerging as very important and central to criminal administration in the 21st century. My appeal is to approach human rights in a holistic manner. Let us not look at it in the abstract. Let us look at it from a practical standpoint. Let us look at it from a larger interest of society. Let us look at it from the point of view of conciling the need of the state or the duty of the state and the aspirations or expectations so far as citizens are concerned for a society in which you can walk freely on the road and come back home without being exposed to violence.

Hindu Social Order and Human Rights of Dalits: Prof. Sukhadeo Thorat

Since 1948, the United Nations has been promoting and codifying human rights through the Universal Declaration of Human Rights, which is a common standard of achievement for all peoples and nations. Over time, the concept of human rights has continuously expanded. The first generation concept of political and civic rights, has been broadened with the input of socialist states and states of the third world, to incorporate a wide range of economic, social and cultural rights, a right to development and the right of indigenous people. This ongoing effort to establish a global human community based on universal and evolving standard of human decency, morality and dignity is considered a significant achievement of this century.

The U.N. human rights framework has received wide acceptability. However, their adherence and enforcement in cross cultural-social situation has posed a serious challenge. In societies where the social, cultural, religious and economic notion or institutions are in general conformity with the U.N. framework, the enforcement and the practice of the human right turn out to be less problematic if not easy. But the situation where societal notion and informal institutions did not conform to the UN framework, the enforcement of human rights has been a major issue.

The social scientists have inquired into whether the religious and societal notions (or ideologies) of behaviour in different societies conform or came in conflict with the secular and universalistic approach of human rights. And also they have tried to identify the (religious and social) codes of behavior that conflicted with or supported the universal rights. Such analysis has enriched our understanding about sources of human rights violation in pluralistic societies. Some have considered the UN human rights framework to be the particular expression of secular humanists against which other religious and social traditions are examined and compared.



In this paper we take the UN human rights framework and discuss how the Hindu social order (particularly its main pillar, the caste system and untouchability) in its classical form comes in direct conflict with the universal human rights framework and how the continuation of practice of caste system and untouchability in modified forms leads to the ubiquitous violations of human rights, particularly of the dalits. We also argue that despite the legal provisions, since the caste system and the institution of untouchability continue to govern the social behaviour of the high caste Hindus it makes the enforcement of human rights difficult if not impossible and bring a large scale violation of human rights of the dalits.

The discussion is divided in to three parts. The first part deals with the provisions in the Indian constitution and the laws, second part discussed the concept of human rights from the perspective of Hindu social order and the last part presents the nature and magnitude of violation of human rights of dalits.

The drafting of the Indian constitution in the late 1947-48 coincided with the UN Declaration on human rights in 1948. The section of the constitution on “Fundamental Rights” and the “Directive Principles” emulates the UN Declaration. The constitution reads,

“[It is solemnly resolved] to secure to all citizens Justice: Social, Economic and Political, Liberty of thought, expression, belief, faith and worship. And equality of status and of opportunity, and to promote among them all fraternity, assuring the dignity of individual and unity.”

The Constitution also states that “The state shall not discriminate against any citizen on grounds only of religion, race, caste, place and birth or any form.” In the Directive Principles it adds that “The State shall promote with special care the educational and economic interest of the scheduled castes/tribes and shall protect them from social injustice and all forms of exploitation.”

In accordance with these constitutional provisions a number of measures have been initiated by the Government for providing protection to the untouchables (Scheduled Castes or SCs). These measures are in the nature of both protective and developmental. In the “protective sphere” the untouchability was legally abolished and its practice in any form foreboded by the Anti-Untouchability Act, of 1955. Nearly two decades later, in 1976, the 1955 Act was reviewed in order to make it more stringent and effective, and the “Protection of Civil Right Act 1955” (PCR Act) was enacted. In 1989, the Government enacted yet another Act, namely the Scheduled Caste / Tribes Prevention of Atrocities Act in order to prevent atrocities against members of the SC / ST. The need for this additional act was felt because under the circumstances, PCR 1955 and normal provisions of the Indian Panel Code had been found to be inadequate to provide safeguards to SC / ST against several crimes.

In the economic, educational and political spheres provisions have been made through the reservation and representation to improve their access and participation. The provision of political reservation in various bodies, reservation in government services admission to educational institutions and in several other areas are some of the promotional measures under this category. It must be mentioned that discrimination in private sphere, social or economics is not covered by this legislation.

The Hindu social order, particularly its main pillars the caste system, and untouchability presents a unique case. As a system of social, economic and religious governance it is founded not on the principle of the liberty (or freedom), equality and fraternity, the values which formed the basis of universal human rights, but on the principle of inequality in every sphere of life. In this context the three unique features of the caste system need to be understood. In social sphere the caste system involves (a) division of people in social groups (castes). The social, religious, cultural and economic rights of member of the caste are predetermined in advance by birth into that caste and are hereditary (b) an unequal distribution of these rights



across caste groups. (c) Provision of a mechanism of social and economic ostracism, calculated to ensure rigid adherence to the system and justification of the Hindu social system by philosophy elements of Hinduism.

In the sphere of economic rights, the Hindu social order also lays down a scheme of distribution namely, (a) it fixes the occupations for each caste by birth and its hereditary continuation; (b) unequal distribution of these economic rights related to property, trade, employment, wages, education etc., among the caste groups; and (c) hierarchy of occupation based on social stigma of high

These features imply that the Hindu social order is based on three interrelated elements, namely predetermination of social, religious and economic rights of each caste based on birth; the unequal and hierarchical (graded) division of these rights among the castes; and provision of strong social, religious and economic ostracism supported by social and religious ideology to maintain the Hindu social order. In Ambedkar's view, the doctrine of inequality is the core and heart of the Hindu social order. What is important is that the philosophical elements in Hinduism also directly or indirectly support the system. This leaves no difference between legal philosophy (and law) and moral philosophy (morality). What is legal also become moral. There being no distinction between the legal and the moral, morality becomes social and binding on all. (Ambedkar 1987 first published, Deepak Lal, 1988)

In this framework the concept of "human rights" under the Hindu social system takes a specific meaning. It becomes clear that unlike other human societies, the Hindu social order in its classical form does not recognize the individual and his distinctiveness as the center of the social purpose. The unit of the Hindu society is not the individual. Even the family is not regarded as a unit of society except for the purposes of marriages and inheritance (Ambedkar 1987 first published). The primary unit of society in caste. There is no room for individual merit and the consideration of individual justice. Any rights that an individual has are not

due to him personally; it is due to him because he belongs to a particular caste. Similarly, if an individual suffers from a lack of rights, it is not because he deserves it by his conduct. The disability is imposed upon the caste and as a member of the caste, that is his lot.

The other implication is that, the caste system also involves the principle of rank and gradation, in so far as the rights increase in ascending order from untouchable to Brahmin. It is hierarchically interlinked system. In this framework castes are artfully interlinked with each other in manner such that the right and privileges of higher castes, become the disabilities of the lower castes, particularly the untouchables. In this sense, in Ambedkar's view that caste in a single number cannot exist. Caste can exist only in plural number. There cannot be such a thing as caste as a singular phenomenon. So one has to look at the castes as a system, which is interlinked with each other in unequal measures of social, religious, economic relations and rights.

This hierarchically interlinked character of the caste system implies a concept of "human rights" and "humanhood" which is different and unique. In this particular order of hierarchy the Brahmins are not only placed at the top but are considered to be "superior social beings" worthy of all special rights and privileges. At the bottom the untouchables are treated as "sub-human beings or lesser human beings" considered unworthy of any rights. Untouchables are considered as inferior social beings and therefore not entitled to any individual rights. I.e., civic, religious, political and economic. In fact, the disabilities are so severe that they are physically and socially isolated and excluded from the rest of the Hindu society. Isolation and exclusion of untouchables is a unique feature of the Hindu social order. Classes or social groups are common to all societies, but as long as the classes or social groups do not practice isolation and exclusiveness they are only non-social in their relations towards one another. "Isolation and exclusiveness" makes them anti-social and inimical to one another. (Ambedkar first published 1987).



In the end the question is that why do the higher caste persons continued to practice untouchability, and discrimination in social, cultural, religious, political and economic spheres. And why do they resort to physical and other violence whenever the untouchables try to gain a lawful access to human rights and equal participation in social, political, cultural, religious and economic sphere of community life? The reasons for wide spread practice of untouchability, discrimination and atrocities as well as violent reaction by high caste persons are to be found in continuing belief and faith of the high caste Hindus in the sanctity of institution of caste system and untouchability. The traditional Hindu social order continues to govern the thought process and behavior of the large majority of Hindus in rural area. The provision in the constitution and law are secular and equal but the customary rules of caste system and the institution of untouchability are based on the principle of inequality in social, economic, cultural and religious sphere. This obviously brings a conflict between what is contained in the constitution and law, and what is contained in the traditional customary rules, norm, and values of the caste system and untouchability. People continued to follow the letter because it provide immense privilege and serve their social, political and economic interest. And whenever the dalits try to get equal access and 'assert their rights, it often invite the wrath of the higher caste persons in the forms of atrocities and physical violence. About the reasons for the atrocities on the SC/ST the Report of the Commission of the SC/ST 1998 observed.

"Some of the major causes atrocities and other offences against Scheduled Castes and Scheduled Tribes are related to issues of land and property, access to water, wage payments, indebtedness and bonded or forced labour. Issues of human dignity, including compulsion to perform distasteful tasks traditionally forced on Scheduled Castes, and molestation and exploitation of dalit women are also involved. Caste related tension is exacerbated by economic factors, which contribute to violence. It is the assertion of their rights, be they economic, social or political, by the

Scheduled Castes and Scheduled Tribes and their development, which often invite the wrath of the vested interests. Disputes during elections, animosity due to reservation, jealousy due to increasing economic prosperity, violence related to the process of taking possession and retaining Government allotted land, tension due to refusal of SCs to perform tasks such as disposal of dead cattle or cutting umbilical cord, are manifestations of the resentment of the high caste against increasing awareness among Scheduled Castes, assertion and prosperity among the SCs, Like land, water is another sensitive issue. Accessibility of drinking water and water for irrigation and disposal of water removed from water logged areas become issues that can trigger off atrocities on SCs. Castiest favor during religious and social ceremonies, disputes arising during sowing and harvesting operations, and removal of crops from the granary after harvesting, have also been known to cause tension. Increasing awareness and empowerment of SCs, manifested in resistance to suppression, also result in clashes".

The official evidence and the regional studies based on primary data revealed that in rural India in several spheres, if not in all spheres, the social behavior of the high caste Hindus is still governed by the norms and codes of the traditional caste system, although there are changes in some spheres of social relations. The settlements of the untouchables in rural areas are away from the high-caste locality, endogamy (which is the backbone of the caste system) continues, entries for the untouchables in private houses and temples in rural areas are limited, and common sharing of tea and food is also extremely limited. Pressures and restrictions on voting and political participation also prevail. The restriction on the change of occupation and discrimination in employment, wage rate, share of rent, rate of interest charged and in sale of items from shops owned by the untouchables is still observed in some degree in the rural areas, where three-fourths of the untouchables live.

This goes to shows that the enforcement and practice of universal human rights in society is not conditioned by the



formal supportive legal framework (such as the Constitution and other laws) alone. Often, cultural, social, religious and economics nations make the enforcement and practice of human rights difficult. Non-formal institutions; social, religious as well as economic, involve a framework of social behavior of their own, which may not be in consonance with the principles enunciated by the United Nations, or the Constitution of a nation in which case different sets of values may result in conflicts. The values of the classical Hindu caste system with its ideas unequal rights and untouchability presents such a case which makes the enforcement and practice of secular human rights difficult in India. And it implies that unless inequalities embedded in the social, economics and cultural structure of the Hindu society are not address the legal measures will make much less difference in providing access to human rights to the dalits in India.

Environment Rights as Human Rights: Dr. K. Vidyullatha Reddy

How are environment rights understood and how has environment law evolved? Environment includes land, water, air, soil, sub soil, plants, micro-organisms, human beings and the inter-relations among and between each of these. There is a broad classification within the law between natural resources and environment. The sphere of the environment has laws relating to pollution, conservation, land use and energy. To trace the history briefly, in the UN Conference in Stockholm in 1972 on environment, all countries were asked to come prepared with the status of environment in their respective countries. The findings took each country by surprise — acid rain, degradation of environment in its various forms, extinction of species, ozone layer depletion, rise in the sea level – human existence seemed to be at stake. See if you allow the environment to degrade like this, human beings cannot survive on this planet. One tenths of the world's population is drinking water far below the WHO standards. We don't know whether we are in that 1/10th. Forty-three countries will face acute shortage of water in another 40 years. And land equivalent to twenty football grounds is

deforested everyday. Everyday 150 species are going extinct. The figures are unimaginable. Every country has resolved to protect the environment and we have also come out with environment legislations.

While we had pollution laws in place in the 1970s, they were essentially regulatory, not preventive—like the water and air acts. It was only in 1986 that we enacted an encompassing Environment Protection Act, which deals with the overall sphere of protecting the environment as such. This rules under this Act related to hazardous waste management, municipal solid waste management, bio medical waste management, and hazardous chemicals, batteries etc. There were also a series of minor legislations enacted subsequently like the Public Liability Insurance Act, etc.

A very important aspect of environment rights, is that the Supreme Court of India has read this set of rights into the meaning of Article 21 of the Fundamental Rights in the Indian Constitution. Any violation entitles the person to move the High Court or Supreme Court directly. The Indian Supreme Court has developed this right through a series of cases: the first case that was *Subhash Kumar vs the State of Bihar* in 1991. This is a case where an iron and steel industry was causing pollution to the water. What the Supreme Court said in this case is most important 'right to environment is a right the violation of which any citizen can move even the High Court or Supreme Court directly.' You cannot enjoy right to life with out pure water and fresh air. If the sustenance of life is an issue then civil and political rights become ornamental rights. In the 1996 case of *M.C.Mehta vs.Kamal Nath*, the course of the Beas river was changed in order to construct tourist resorts. The question asked by the Supreme Court was, 'Is the Beas river the property of the government? Whose property is this environment? The Supreme Court said, air water and land belong to human beings not governments. And state is only a trustee and as a trustee it can only act to the benefit of beneficiaries; if it is not acting in the benefit of the beneficiaries it is violating their trust. In



Indian Council for Enviro Legal Action vs. Union of India, the Supreme Court clearly held that the polluter should pay. To what extent that liability should go. Suppose an industry has polluted a neighbouring village, in Hyderabad we have the Patancheru, Jeedimetla industrial region the ground water is so polluted that in some villages women are declared medically unfit to bear children and children that are born are stillborn. How should the principle of polluter pays to be quantified? Liability to pay compensation is not that you pay just for pollution you caused, you also have to pay compensation to victims who are affected. Secondly there should be compensation for the damage done, and reversal of damage. There are some myths that the poor cause more environment degradation since they are dependent only on natural resources for their life; that the poor do not care about environment. It is a fact that the poor lack knowledge and resources to improve environment. However, I would like to draw your attention to the 1997 Supreme Court case, *Jagannath vs. Union of India*, related to shrimp cultivation, which disproves this myth. There is mechanized way of doing shrimp culture, there is also the traditional way. Poor fishermen used to make their living on the traditional way, which depended on shrimps coming into creeks during the breeding season. But the mechanized way did not respect these cycles and also resorted to using chemicals, which were destructive. The Supreme Court ordered that mechanization should be stopped. On the other hand the poor are actually victims of pollution, not the agents of pollution. Bad environment management results in the immediate threat to survival to the poor. As nations also poor nations are victims of environment pollution, right from the times of colonialism.

The role of media is very important. The right to environment today is a major concern and as I said it is throwing our life into question. The media should make people aware — take the municipality to task if they are not cleaning up; take industries to task if they are polluting. There is an urgent need for the media to focus on these issues.

The Media and Representation of Conflict: Lawrence Liang

In attempting to understand an event we need to start moving away from the idea of content of what is happening in a particular event, to look at the consequences around it. An event is very fascinating. An event takes place in a remote village in Tamil Nadu, no one can fathom what is happening; you are so distanced from it. But immediately after a disaster or a particular attack, the media arrives there and you have experts who are telling you what is already happening. For example, you would have somebody like Barkha Dutt sitting in the trench and saying, 'I am calling from a bunker,' and this image would be repeated over and over and over again to the extent that it seems to be an extension of you. Now you are part of that image, you are part of that event. The ways in which you can recognize a terrorist without ever meeting one is that you already know who or what a terrorist is. When you read about someone being killed by the army there are a couple of things you need to look for. They will have dried nuts in their pockets, you know dried fruit and nuts, there will be a little diary with elaborate jottings of what the person was doing, what the person was thinking. There are all these various apparatuses, which are already in place with the production of this figure of the terrorist.

If you look at the early history of the figure of a terrorist in cinema its very interesting that this figure of the villain in Hindi cinema, has shifted. The figure of a villain in the 1970s for example was the smuggler. By the 1980s with the entire separatist movements in the country, there is in cinema a new kind of smuggler that emerges — almost caricatures, Mogambo, Dr.Dang, Operation Black Star. There is in the plot, the foreign hand and there are these lunatic characters who want to destroy India for no good reason, they just want to destroy it. But there is no identification. This is an abstraction, which is the early representation of the terrorist. The first significant movement that happens is with Roja where all of a sudden Maniratnam brings in a new aesthetics as well as a new aesthetic politics and a far more identifiable



character, far more real than a Dr. Dang or Mogambo. A scene of interest in this film especially is the flag-burning scene. Historically, the act of burning a flag has always been a highly performative once. It is a highly public gesture; the burning of a flag is normally a denouncement of a nationality but in a public forum. What is interesting about this particular scene is fact that the flag is burnt within a terrorist camp. Flag burnings are never non- public. Flag burnings are always for a public; it is always, more often than not for the media, flag burning, book burning. The act of burning in public is also part of a particular symbolic order. Here very clearly the public is an extension, not with in the narrative but outside of it — the audience of the film. So you become a part of this larger body. The montage of using the flag burning and Arvind Swamy trying to stop the flag and the image of Pankaj Kapoor praying continuing his prayers — the contrast sets up this binary figure of the citizen and his illegal other, the terrorist. And in very marked religious codes, what is marked in terms of the act of course is that Pankaj Kapoor is clearly marked by his religious act. Arvind Swami is the unmarked subject, the unmarked Indian citizen subject who is at the same time invisibly coded as upper caste hindu male. Movies which have the names Saleem, Jawed, Mohammed present only a limited range of possibilities for any character with a Muslim name. One is that the person is excessively evil, embodiment of everything that is evil, the equivalent of Osama Bin Laden in cinema. Second the character is excessively good, oozes with goodness, since he must prove his loyalty to the nation. Third the character is excessively dead, the character has to die, just the same way that Amitabh Bachan had to die at the end of his films because he could not surrender to the law, a Muslim character in the film has to die. The fourth is excessively absent and this is for example in all the movies of Karan Johar where you will have Shahrukh Khan, Aamir Khan all the various Khans playing the lead of being Raj Malhotra, Vijay Malhotra, Aryan Malhotra, Rakesh Malhotra and so on. But they will never, in a happy hindi movie, play a Muslim character. The Muslim character always has to appear in a film for his muslimness, there is no other reason, for the appearance of a muslim character.

In the 1970s, Dr.Dang and Mogambo were always in a non-zone, they were always somewhere unidentifiable — marked by excesses in terms of tackyness, extremely crude tacky sets, cheap rockets which don't seem like they can even take of on divali, etc. But the shift that you see for example in the 1990s is that increasingly the terrorist film starts getting influenced by news reportage and representations of conflict around us. The most important one is this figure of the mastermind, the mastermind is the central figure in the story behind terrorism that there is some one there who's controlling it, that there is this entire figure whose actually incharge of the operation. And that figure becomes very critical when you start moving to actual cases. But a couple of other things that are happening at this point of time and that is the emergence of education of a terrorist and these are the structural components that you will find in a terrorist narrative and in a terrorist film.

A Hungarian philosopher John Kopeck who has done a very fascinating account of ethnography of a state or an anthropology of a state, says the power of the state does not arise from its majesty but really in terms of very ordinary day to day events, and one of the things he looks at is the entire politics of the representation of death.

The relationship between media and the state is in crisis today where the production or the constant engagement with the nature of crisis itself is the only justification for media. When there is the competition to get the breaking news on a day to day basis. The relationship between the event and the interpretation of the event become blurred. And since very few of us really experience an event, perception of a large part of the world is really via media. It is lived through television. Hindi cinema has been marked by what some would call a kind of chaotic logic. There is a beginning, there is a middle and there is an ending which do not have any connection to each other. The ending is what brings everything together. The beginning is the dramatic – father, mother, dog everyone gets killed. And the middle is the



romance and comedy, which is not related to the beginning. The ending is where everything kind of comes together; the narrative closure that is demanded of a cinematic text is not very different in that sense from the narrative closure demanded of a text like an event. Where the text when converted into a media event, into a media text, needs a certain kind of a narrative closure. A narrative closure, which is provided to us on a day-to-day basis by experts. This really is the realm through which then we need to relook at our assumptions that when we read about a terrorist; when we read about particular actions either of the state or of militants or of whoever they might be.

In conclusion a statement from a little text by a friend, Shubhabrata, which says. "some of the most precise biographies of condemned prisoners are those written in interrogation cells. They are written by the literary geniuses of the special cells of the police department. Their authors begin work long before the interrogation, researching the contents of diaries that are always, already found on the bodies of slain terrorists. They are helped in their research by literary minded media professionals, who write pieces of forensic creative writing called post mortem reports. By the record keepers of mobile telephone companies who provide them with numbers, transcripts and recordings. They are trained by semi-literate translators who translate telephone conversations between brothers. There are critics and literary theorists called media professionals who interpret all of these to give a reading and viewing to the public. The police school of literature is reliable and flourishing. And our city, that is, Delhi is its leading center. This is the city where all news comes from; this is the city where news is manufactured, processed, packaged and refined. So even if your memory of what you did, whom you met or what you wrote in a moment of anger, in confusion or with conviction and candour is vague and imprecise then it is the task of the literary apparatus of the state to make you know who you are. The searchlight will make you known, and will reveal you even to your own shadow."

The Mass Cremation Case in Punjab: Ashok Agrwaal

In 1984 Mrs. Gandhi was assassinated by her Sikh guards and there was what they called a backlash — a very massive riot in Delhi against the Sikhs. Many of us were involved in the relief and rehabilitation efforts at that time. For a lot of people this was the first exposure to the Sikh issues that were being posed by people and which were being given the form of an armed movement for separatism in Punjab. So over the next few years some of us took an interest and tried to learn a little bit about the issues. In 1988, we came together to form a group called "Committee for Information and Initiative in Punjab". We did some investigation and the first report that we brought out was on an interrogation centre which was being run in Sangroor district, Punjab in a former holiday home of the Maharaja of Patiala called Ladha Kothi. This was used by the BSF, the CRPF and the army as an interrogation centre after 1984. In fact there was an enquiry report by Justice C.S. Tivana, a former judge of the Punjab High Court on the functioning of that interrogation center. We discovered this report which had been commissioned by the government. The report harshly indicted all the security forces for torture and all kinds of other illegalities yet nothing was done on the report. We brought out several reports including a report on what we call State Repression in Punjab. The reports were very well received, let me say they were better documented than most reports that came out of Punjab in those days. In 1994 actually some friends in Amritsar had been working on disappearances. Disappearances had been happening in Punjab from 1984 at least. A handful of disappearances to begin with but as the graph of violence both militant and state violence rose, the number of disappearances rose in Punjab. By 1990 the state machinery was really in place for disappearances to happen in a big way. Over a period of three years – four years political dissidents and human rights activists were targeted in such a systematic way that the back of the movement was broken and the entire society in Punjab was left cowed down and completely terrorized by the situation. There are a lot of people who will say that this



was the only way of dealing with the situation in Punjab. The word 'disappearance' has a special meaning in human rights discourse. It is an action where a person is arrested sometimes in an open way (the police may come and they may pick you up and they may even book you in a case) and then something will be done which will result in your disappearance. To give you an example one of the frequent excuses employed by the Punjab police for the persons who have been arrested and booked is to say, 'we were taking this militant for an arms recovery trip and then we were attacked by a group of militants and in the course of the crossfire the person was killed or the person escaped.' We have closely analysed hundreds of such cases looking at the replies filed by the Punjab government before the NHRC. There are a lot of flaws in the stories that the Punjab government has come with. In one case which comes to my mind straight away the story is that there was a police check point and the man got out of his car slung 3 guns over his shoulders lots of arms and ammunities and ran into the fields, its unimaginable for a person to run into the fields like that. And then he escaped. Between 1990 and 1994, our friend Mr. Jaswant Singh Khalra, investigated the phenomenon of disappearances in Punjab. In Amritsar district alone the Punjab government disappeared over 2000 people. Amritsar is one district out of 17 districts in Punjab. Jaswant Singh Khalra's enquiry was an intelligent enquiry in the sense that he wondered what the police would have done with the bodies. So it was logical for him to go to the cremation grounds and to find if there is a record of any sort. And he discovered that hundreds and hundreds of bodies had been cremated by the police as unclaimed or unidentified bodies during this period. In January 1995, Jaswant Singh Khalra released his findings.

This information was released to the press and an enquiry was demanded into the whole phenomenon. Because the government did nothing, some colleagues in Punjab went to the Punjab and Haryana High Court in a writ petition with this information asking for an enquiry. The High Court dismissed this writ petition saying the petition was too vague and asked for a fresh enquiry; please note the response of

the High Court to such information. Around the same time, the Committee for Information and Initiative in Punjab filed a petition in the Supreme Court under Article 32 of the Constitution with the same information and we also sought an enquiry. Our petition was perhaps a little more carefully worded and contained a little more graphic description of the situation in Punjab. But other than that there was no difference the basic information was the same in the two cases, which were filed. We had a lot of difficulty in the Supreme Court. The Supreme Court judges said they were not able to understand our locus standi. Fortunately we were able to come across a person whose son was one of the persons who was in that list, there was cremation ground in Amritsar called Durgiana Mandir. And Baldev Singh's son, Pargat Singh had been arrested from a cinema hall in Amritsar and had been tortured and confined in various places. Baldev Singh had been looking for his son for several days and one morning he learnt that his son had been killed and his body had been taken to the cremation ground. So he rushed to the cremation ground where he found that the police had already lit the pyre. He pulled his son's body out of the pyre and identified the half burnt body. Baldev Singh gave us an affidavit describing all his experiences and on that basis that Supreme Court finally issued notice on this petition the case which is now before the NHRC. There were others also who gave affidavits but this was really the clinching affidavit. Baldev Singh's daughter, Pargat Singh's sister was a national level weight lifting champion, she had taken part in international meets. After her brother's killing and death in this manner, she gave up competition athletics.

The Supreme Court issued a notice in this case and the same time Jaswant Singh Khalra received threats from the Punjab Police that he will be disappeared if he did not stop his work. On the 6th of September 1995, the police disappeared Jaswant Singh Khalra also. A team of nine policemen came in broad daylight at 11 in the morning just picked him up from his house. Khalra was standing and talking to some people in his house. They came, pulled him out of his house, pushed him into their vehicles and went away. He was never seen again. When Khalra was



disappeared there were some protests and there was also a telegram sent by Gurucharan Singh Tora, who was then the President of the SGPC which is a very important Sikh body. The president of the SGPC sent a telegram to Justice Kuldeep Singh of the Supreme Court, and Justice Kuldeep Singh treated that telegram as a writ petition, issued a notice to the Police and asked them to explain what had been done to Khalra.

Who was Jaswant Singh Khalra? Jaswant Singh Khalra's grandfather was one of the founder members of the "Gadar Party". Khalra's father was a school teacher, a very principled man. Khalra was a farmer also active in Sikh politics, he had some communist leanings. In November 1995, the Supreme Court ordered a CBI enquiry into Khalra's disappearance and the allegations of the mass cremation. This case has become known as the mass cremation case. The CBI held a year long enquiry and one of these reports they indicted a Police officers including Ajit Singh Sandhan who was the Senior Superintendent of Police of the Tamtaran district, where Khalra lives. Khalra's village, also called Khalra is right on the India-Pakistan border in Punjab. In fact part of the fields of that village are in that "no man's land" on the border. The Punjab Police had killed and cremated 2097 persons in a span of 2 or 3 years at 3 cremation grounds in Amritsar district. The CBI's report also identified 532 of these 2097 persons; gave some partial identification for about 270 old people and the bulk of them 60% of them about 1230 people they said are still unidentified.

Justice Kuldeep Singh sent the matter to the NHRC on 12th December 1996 and said all the issues that may arise in the petition or that may be raised by the parties, would be decided by the commission. The Supreme Court said that the criminality of the actions of the police would continue to be investigated by the CBI. So the order specifically said the CBI should go on investigating and register cases against persons who are found guilty of the crime of murder, while all other issues would be dealt with by the NHRC. The case came before the NHRC in January 1997. By November 2004, the NHRC passed an

order giving 2½ lakh rupees to 109 families of disappeared persons. This is the only compensation, the only order that has been passed in 8 years. This order actually encapsulates and describes what has happened in the last 8 years. From Day One the Punjab Government and the Government of India, which was made a party in this case by the NHRC, have tried to kill this case, they have tried to kill the investigation in this case. The first six months were spent on arguing about what was the nature of the order of the Supreme Court. It was our argument that there was no limitation on the NHRC's powers to investigate the cases. Now the 109 cases in which compensation has been awarded are the cases in which the Punjab government admitted that they had custody of the persons. From 2097 cases they were able to isolate 109 cases where the Punjab government admitted custody, and in which cases the NHRC applied the principle of strict liability, which in cases of disappearances acts as a gag. All that is admitted is that these persons were in the custody of the police. Nearly 2000 bodies remain, 1200 of them are still unidentified. This brings us to the premise on which a country like India is founded — that there is a law and the law will be followed by all and is applicable to all which is what is called the 'rule of law', where no body is above the law everybody is bound by the law in exactly the same manner. So if there is law and there is rule of law then it is our case that the law is also applicable to the police even during the period of insurgency.

The Trauma of Wage Employment for Women: Prof. Padmini Swaminathan

The changing nature and the range of issues that many developing countries, including India, are experiencing in the period of globalization in particular, raise several issues of concern that state and civil society organizations are forced to grapple with. Our societies are increasingly unable to provide quality employments in large numbers; worse, existing protected [howsoever inadequate] employment is rapidly acquiring a flexible character, which in our context means underpaid, insecure, unprotected employment. It is necessary to focus on the specific nature of economic



violence experienced by women. Even in looking at the situation of women workers generally, the focus today will be on the Export Processing zones because the degree of harshness is greater at MEPZ – compulsory overtime, immediate retrenchment if worker refuses overtime, impossible targets, restricted use of toilets, preference for unmarried girls and pervasive practice of sexual harassment – even if wage-wise, MEPZ workers are paid better than non-MEPZ workers.

Relationships between women workers and male supervisors/colleagues are another area, which generated enormous stress. The women we interviewed were able to discern the subtle manner in which they experienced discrimination; younger, relatively better-looking and better-dressed women were able to wrangle several favours from their supervisors such as choosing the batches they preferred to work, promotions etc. The day-to-day operation of such discrimination at the worksite inhibited the emergence of any solidarity among the women workers. However, all women workers and younger, unmarried workers in particular, spoke of the constant and humiliating verbal and physical abuse that they suffered at the hands of the male supervisors and sometimes at the hands of the owners of the units that they worked in.

The preference for unmarried, young girls over married women has been successfully justified as one where the former are 'efficient, willing and available for compulsory overtime work'. This way of posing the issue masks the ruthless drive by the employers to extend the working day in their search for maximum profits. This ruthless extraction of labour by forced overwork provides the employers with an illegal source of both absolute and relative surplus value. By using various forms of threat [as evident from the narrative below] the employers have been able to increase targets as well as extend the working day without increasing payments for overtime. Due to the limitless extension of the workday, workers are left with very little time to devote to their household chores – a phenomenon that married women in particular are not

be able to cope with on a day-to-day basis. Hence the preference for unmarried girls over married women.

Within units of production, work environments vary depending on the process. Most work places particularly machine rooms, are generally clouded with suspended fine particles; in sections like packing where such suspended particles are less, the odour of chemicals is pervasive resulting in loss of appetite and therefore reduction in intake of food. In some units protective gears are provided to the workers. But these gears hinder the rapid movement of the workers. With such gears on their body, workers complain that it would be impossible for them to achieve the set targets. Hence most of them do not use the protective gears. The problem could be a combination of both: the stiff targets that are set without any consideration for the gradual slow down in the bodily movement of the workers as well as the ill design of such gears.

Given the nature of work conditions in the industrial units of the region, the workers in general perceive that their health condition is deteriorating. Their perception is based on their experience of the time and work regimen, the nature of material they handle in their work, their interaction with the machinery in the production process and the nature of their work.

Invisibility of women's work apart, the complex interplay between the structure and functioning of the household and the structure and functioning of the worksite has several negative implications for women. The equation of development with increasing work participation rate for women has tended to suppress the 'costs' of such development to women, namely high work intensity stemming from a combination of enormous energy expenditure both at home and the workplace. The conditions under which women work in the factories as well as carry out their household tasks on a day-to-day basis render their lives extremely stressful. The lack of investment in basic infrastructure such as sanitation, drinking water and fuel, compounds the problem even



further. Further, since investment in keeping workplaces safe for workers is almost negligible, the workers are subjected to a whole host of health hazards.

The varied ways in which women are subjected to harassment [sexual and otherwise] at the workplace have severe implications for their health and well-being. The narratives that we have reproduced in our paper capture vividly the not so pleasant facets of the lives and experiences of these 'working' women. Through overt and covert policing, employers of MEPZ in particular, have so far succeeded in disallowing any form of sustained collective action on the part of workers to enable the latter to improve their lot either financially or physically.

There are other ways in which the development of any form of association of workers is rendered extremely difficult. Women workers are employed only for limited periods. Even the service of the most productive and punctual worker is retrenched after this stipulated period. No formal contracts are drawn up any with any of the workers, particularly women. Hence there is no notice period and the workers need not be assigned any reason for abrupt termination of their service even if it is within six months. The layout of the work area is designed in a manner that actually discourages any form of socialization. Any recourse to legal action is rendered infructuous even before it has begun, since technically, there is no recognition of workers as 'workers'.

Despite the fact that, decades after the 1975 International Year of the Women, the program of integrating women into the developmental process has not in the least changed the basic capitalist and patriarchal structure in which women are caught up, much of development policy still continues to espouse the same 'integration into the development process' syndrome. Development means more work for women for their sheer survival, more state control over their immediate life, particularly in the sphere of reproduction and health, and generally more violence and destruction of their dignity and integrity. It is these troubling aspects of women's lives and employment that need to be focused on by the media.

Labour Rights as Human Rights: N. Vasanthi

Labour rights have been the precursor to several individual rights, which have been later enshrined in various international human rights documents. The right to freedom of association of workers long preceded the right to association as an individual human right enshrined in both the ICCPR and the ICESR.

Article 11 of the ECHR

- Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

8(1) (a) of the ICESR protects

The right of everyone to form trade unions and join the trade unions of his choice, subject only to the rules 8(1) (a) of the ICESR protects

- The right of everyone to form trade unions and join the trade unions of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or the protection of the rights and freedoms of others.

Article 11 of the ECHR

- Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

The nature of the right has also undergone a change. The freedom of association of workers is essentially a group right or a collective right to be exercised by workers as against employers and essentially recognised that workers and



employers do have power differentials which go to the root of freedom of contract and hence only if the right to bargain collectively is recognised can there be a level playing field for contracts of employment to be fair. On the other hand the international human rights paradigm is essentially one in which rights are viewed as individual rights which are equally available to employers and employees. There is no mention of the fact that there are power differentials between them and that while a worker needs to organize to better his power and individual employer can still exercise power without organising himself.

While giving effect to these rights it is important to harmonise individual rights with collective rights rather than view them as essentially different set of rights. It has been observed that at least in the arena of labour rights individual right can be effectively enjoyed only when they are exercised collectively and collective rights strengthen the exercise of individual rights.

The differing approaches of human rights law and labour law has sometimes led to decisions, which impinge, of individual rights when they fail to recognise collective rights. The case of *Associated Newspapers Ltd. V. Wilson* (2002) 35 EHRR 20 is a case in point. The English trade Union Law recognises the law of collective bargaining but the freedom to belong to a trade union can also be seen as a freedom not to belong to a union. The employers claimed that by providing incentives to employees who are not members of trade unions they are not interfering with the right to form unions and the exercise of the right to collectively bargain. The employers in fact encouraged individual bargaining rather than collective bargaining. The House of Lords held that it was not an infringement of their rights. The European Court of Human Rights however held that "It is of essence to the right to join a trade union for the protection of their interests that employees should be free to instruct or permit the union to make representations to their employer or to take action in support of their interests on their behalf. If workers are prevented from so doing, their freedom to belong to a trade union, for the protection of their interests, becomes illusory".

The rights provided in International Labour Law by way of ILO Conventions are worded differently and go beyond what international human rights law provide for. However these rights must not be seen as opposing rights but must be harmonised.

ILO Convention 98

- Workers shall enjoy adequate protection against acts of anti-discrimination in respect of their employment
- Such protection shall apply more particularly in respect of acts calculated to make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership
- Cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer within working hours.

The ILO Worker's Representatives Convention No.135 provides for

- Such facilities in the undertaking shall be afforded to workers representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently
- In this connection account shall be taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned
- The granting of such facilities shall not impair the efficient operation of the undertaking concerned.

The Indian Supreme Court however while interpreting the Constitutional rights guaranteed regarding the right to form association and the freedom of speech and expression has however not understood these rights in the context of



workers rights but rather as individual rights not to be exercised collectively but individually. This has led to the reading down of workers right to organize and other rights of representation and participation in the workplace.

Media and National Security: Lying for the sake of the nation

Vrinda Grover

On December 13th, 2001, Indian Parliament was attacked and all the 5 aggressors were killed in the Parliament complex. This was followed by a series of arrests on charges of conspiracy. One of the four persons arrested and subsequently tried under POTA was Prof SAR Geelani. Even before the criminal trial commenced the Indian media, allegedly free and independent, conducted a trial by media and condemned Geelani. News reports carried by all prominent dailies prominently splashed the news that, “ A Delhi lecturer who spoke to militants, also called up Jaish militants in Pakistan”(Hindustan Times 16th Dec, 2001); ‘varsity don guided the fidayeen’ (The Hindu, 17th Dec 2001)” “Don lectured on terror in free time”, (Hindustan Times, 17th December, 2001) “Professors proceeds- Gilani recently purchased a hose for Rs. 22 lakh in West Delhi”(Hindustan Times 17th December, 2001). To remove any lingering doubts that a citizen may have about the case presented by the Special Cell, Delhi Police, the electronic media broadcast a detailed confession of Mohd Afzal purportedly implicating himself and others in the attack.

As Geelani refused to make a confession under POTA, despite torture, the prosecution case filed before the court could no longer sustain the false claims made against him in the media. The prosecution case did not state that he had ever met or communicated with the attackers or Jaish etc. The entire case against him rested on a 2.16-minute mobile telephone conversation with his half brother, in Kashmiri. A conversation of very poor audio quality and which the police never transcribed and got translated only from a fruit vendor unfamiliar with English words used in the conversation. The

facts revealed that Geelani was living in a rented house and owned no property. His landlord appeared as a prosecution witness.

The people of democratic India read, heard, saw and formed their opinion about the Parliament attack. Amnesty International issued a letter to the Law Minister expressing grave concern that the pre trial media coverage had been extremely prejudicial to Geelani’s case and will negatively impact his right to be presumed innocent and on the impartiality of the court.

In the course of the trial the defence examined a correspondent of “Aaj Tak” news channel and played a programme broadcast by them on the 100th day of the attack, which revealed that Mohd Afzal in his highly sensational confession before the media, had exonerated Geelani of any knowledge or role in the conspiracy. However a senior police officer had requested all the news channels to edit this part of the confession. All the private news channel including NDTV, Star News and ZEE News had complied with the dictates of the Delhi Police, and broadcast a censored version that concealed the truth about Geelani’s innocence.

On the anniversary of the Parliament attack and 3 days before the judgment was to be pronounced the Supreme Court prioritized the right of business to profit, which in this case was masquerading as freedom of expression and allowed the broadcast of the ZEE telefilm ‘December 13’. Contrary to all facts and evidence, the film portrayed Geelani as the mastermind behind the attack. The stage was now set for the Designated Court to deliver death penalty to Geelani and the others.

To combat the false and groundless statements made in the media, the All India Defence Committee for SAR Geelani held public meetings and held a poster exhibition titled the ‘Lies Of Our Times’. In many places members of fascist Hindu organizations disrupted the exhibition and meetings. Geelani was acquitted by the Delhi High Court and subsequently the Supreme Court of all charges.



It is now time for the media to face trial and answer some grave charges. It would be untenable to entertain a plea of innocence from the media. The media cannot be allowed to plead manipulation or ignorance in their defence. It is a cardinal feature of their work as journalists to always check the veracity of facts, probe deeper and ask questions. Can the media be allowed to plead exceptionalism in this case because national security was involved? Does the War on Terror permit the media to sacrifice the life and liberty of members of the marked minority community as an act of patriotism?

As a direct consequence of the false stories planted by the police and actively and knowingly published by the media, Geelani and others arrested on charges of terrorism stand condemned and convicted even before the legal process is initiated. The media in democratic India is entrusted with the role of raising issues, seeking accountability and plays a critical role in shaping public opinion. By becoming a willing accomplice to the shenanigans of the police, the media has abdicated its responsibility and deserves neither respect nor privilege. The media campaign against Geelani served to numb and silence all those who questioned the police version of the attack. The overwhelming faith in the validity of the printed word and the hypnotic power of the images led to a collective suspension of reason by the 'argumentative Indians'.

More importantly it mobilized hatred and prejudice not only against Geelani and other accused but also an entire community. As the media bred hatred against Geelani it not only jeopardized his chances to a fair trial, it also took a toll on Geelani's family who had to vacate their rented home and the children forced to leave school. Effigies of the lawyers defending the accused in the Parliament attack were burnt. The office of Geelani's lawyer Ram Jethmalani was ransacked by the Shiv Sena. The media did not raise any debate on the issue of fair trial, the right to a defence counsel. Does a Kashmiri Muslim have a right to free speech, a right to fair trial and a right to assistance from a counsel in India? The media campaign also gave strength to right wing Hindu forces

who are engaged in a dangerous political project aimed at destroying the secular and democratic fabric of India. Muslims and Kashmiri Muslims more specifically are the targets of this communal politics. Geelani received hate mail and life threats while incarcerated in Tihar jail. After his acquittal by the Delhi High Court a grievous attempt was made on his life.

The issues at stake here go beyond the specific individuals in this case. This case reveals that there is a crisis in the media. In India, as in many parts of the western world there is a growing Islamophobia. The media has a crucial role to play here. However the media will have to decide whether it wants to discharge its solemn role as the fourth estate in Indian democracy. If the media and its practitioners succumb to the hysteria of the 'war on terror', at stake is the liberty and life of individual citizens, the rights of the minority community and the very foundations of Indian democracy.



Symposia on Protection of Human Rights for Judicial Officers





Mr. Justice D. K. Basu inaugurates the Judicial Officers' Symposia series at Hyderabad.

Mr. Justice Bilal Nazki (L)
Mr. Justice J. Chelameswar (C) and
Prof. Ranbir Singh (R) look on



Symposia on Protection of Human Rights for Judicial Officers



Introduction

[Adapted from the Inaugural Address of Hon'ble Justice D.K. Basu at Warangal, November 2005]

The role of the judiciary is changing from protecting the vested interest to upholding the rights of vulnerable sections of the society. Various social welfare legislations initiated by the Government, have remained on paper. They have not been implemented effectively and have not brought significant changes to the lives of the weaker and vulnerable sections of the society. The weaker sections of the society have continuously been fighting with the dominant sections and vested interest groups not only in courts but also before the public authorities. Although they might not be aware of their rights, the weaker sections are entitled to fundamental rights. Yet it is a fact that they are not treated equally even by public authorities. The instances are not uncommon where the grievances of the vulnerable sections particularly women, adivasis, landless labourers, depressed and hapless members of the public against the rich, resourceful and persons in power are not attended to. Their access to justice is severely curtailed. These people do not even know how they will get access to the laws of the land. Undoubtedly they feel that the law is an 'instrument' in the hands of the dominant section of the society. The result is that the existing legal system is losing its credibility.

In this context, if the enactment of the laws is 'thesis', the inaction of the officials or the government sometimes becomes 'anti-thesis'. Now only the judiciary can

bring synthesis. The introduction of judicial activism has transformed the judiciary into the guardian of the conscience of the people. It should now strike a balance to fulfill and achieve the aspirations of the individual and requirements of the society.

We are in the midst of a situation, where we are aware that a large majority of judicial officers presiding over the junior division, senior division, magistrate, metropolitan courts are at the cutting edge of the criminal justice system. The powers that are vested in them to protect civil liberties and fundamental rights are enormous.

Judicial Officers at the district level are in touch with the public and are the backbone of the judicial system in protecting the human rights of the people; they play a vital role. People from various sections suffer on account of lack of legal knowledge. It is the responsibility of the Judicial Officers to come to the rescue of such people.

There are landmark judgments in India and international instruments on Fundamental Rights and Human Rights. The crucial question is: How does the common citizen access human rights? The importance of the lower judiciary lies here. In trying to access human rights, the ordinary citizen- as an accused or victim- goes first to the trial courts, not to the High Court or to the Supreme Court. Their first encounter with the criminal justice system brings them to the lower judiciary in search of some protection. At a practical



level, what are the laws that we can think of, that safeguard human rights? What are the protections in the Constitution? While there are procedures laid down in the Criminal Procedure Code, what are the problems that come up at the day-to-day level when the CrPC is sought to be implemented by the courts?

The two-day symposia at Hyderabad, Vishakhapatnam, Tirupati, Guntur, Warangal and Shameerpet generated an intense debate among judicial officers on the complex area of human rights.

“When you are presiding over a court, you will find a poor lady standing in front of you, but the lawyer does not appear. Try to find out why. Was it because the poor woman had not paid the lawyer that day’s fee? Has she already paid him for a number of days? Does she know of the Legal Services Authority? The Presiding Officer cannot be unmindful to these things.” Justice D.K. Basu

The Process

The *Symposia on Protection of Human Rights for Judicial Officers* aimed at addressing a range of issues along with officers in the subordinate judiciary in Andhra Pradesh. The six symposia were the result of the collaboration between four institutions – Amnesty International India, NALSAR University of Law, AP Legal Services Authority and AP Judicial Academy.

The Objectives of the Symposia

** To identify and focus on the role of the judicial officers in promoting and protecting human rights and fundamental rights under the Constitution.

** To engender a debate on protection of fundamental rights so that it permeates the culture of the Criminal Justice System

** To understand the reasons for people’s inability to get adequate protection from the judiciary and

** To understand the constraints of the system which hamper the judiciary from performing its role satisfactorily and discussing methods in which they can be overcome.

The Content and Methodology

Each symposium began with a general introduction to human rights, where each officer reflected on the meaning of human rights through the lens of his/her experience. After the general discussion on human rights two sessions looked at problems faced by victims and problems faced by the accused and complainants. The methodology of this session was the presentation of a series of slides with visual representations of various situations that officers confront every day in the course of work. The reflections on the pictures encapsulated discussions on the problems faced by the accused, the problems faced by victims and complainants; what are the adequate remedies in place; what are the problems that officers face while dealing with those particular questions; the entire session was structured around the slide presentation. The next session saw officers move into four groups. Each group discussed the obstacles faced by the judiciary in upholding fundamental rights under the Constitution of India and presented two reports in the plenary. One report was a narrative report summarising the content of the discussions in each group. What did a particular group feel were the major obstacles, what are the solutions that the group envisages for a particular situation. The groups also suggested ways in which these problems can be overcome in order to give maximum protection under the law, giving examples from their own experience in dealing with the problems. Certain instances of violations often take on a serious turn with extremely negative consequences for people. These could be a result of a) misuse of authority b) misuse of law c) blatant violation of legal provisions d) mindset and attitudes. Intense discussions aimed at understanding the nuances of these



instances and sought to understand where and why the law fails to deter violations.

The second report was presented in dramatized form, through role plays that depicted a particular situation or problem that the group felt the judiciary is confronted with in its effort to establish a human right.

The presentations were followed by questions from the other groups and discussion and were chaired by senior members of the bench who shared their experiences of overcoming the obstacles.

The last session comprised of discussions around case studies given to each group. The discussions drew on the experience of the officers as well as the case law distributed to each officer in advance in a comprehensive resource pack.

The symposia dealt both with the problems in implementation from the 'supply side', i.e, the judicial system, as well as the problems faced by citizens when interfacing with the judicial system

Problems faced by the Judicial System

It is a known fact that judicial officers perform their duties under difficult conditions. An attempt was made in the course of each symposium to understand the problems which the judicial officers face in performing their functions and suggestions were sought on how the problems can be overcome.

A few illustrative areas of concern are:

- Lack of systems and logistic support
- Overburdening of the judicial officers
- Lacunae in the law
- Lack of co-ordination between investigative agencies, prosecuting agencies and judiciary.

Problems faced by citizens

In the case of the accused:

- Production after ill treatment or torture in police lock up
- Delayed production
- Illegal arrest

Senior officers with Mr. Justice D. K. Basu at the first Judicial Officers' Symposium, Hyderabad.





Mr. Justice Bilal Nazki addresses officers at the first symposium, Hyderabad.



- Rejection of bail plea, inability to furnish securities for bail
- Torture in Police Custody

In the case of the complainant/victim:

- Refusal of police to register cases of poor people, rape victims, women, adivasis
- Delay or lax investigation by the police.
- Problems of witnesses such as fear of revenge and harassment by accused and police, etc.

The Resource and Coordination Group

Andhra Pradesh is the third state in which this programme was conducted. It was conceived by Hon'ble Justice D. K. Basu, Abha Joshi and Seema Misra and this team along with Soumya Bhoumik from Amnesty International India was responsible for its implementation in the states of West Bengal and Orissa between 2002

and 2004. In the Andhra symposia, Amnesty International has co-organised the symposia with NALSAR under the two-year research-cum advocacy project, "Strengthening Criminal Justice and Human Rights in India." Hon'ble Justice Bilal Nazki, then Acting Chief Justice of AP and Chancellor of NALSAR was responsible for setting up the collaboration with the AP Judicial Academy and the AP State Legal Services Authority.

The entire logistics, administration and local support for the symposia were taken care of by the AP High Court, the AP State Legal Services Authority and the AP Judicial Academy. The District Legal Services Authorities were crucial to this entire process; without their painstaking cooperation and support, this effort would have been impossible. The officers of the AP State Legal Services Authority and the AP Judicial Academy were part of the coordinating team and shouldered the entire responsibility of coordinating and organizing the symposia. The primary responsibility for organizing the symposia at Hyderabad, Vizag and Tirupati was taken by the AP State Legal Services Authority headed by Justice M.E.N. Patrudu, then Member Secretary of the AP State Legal Services Authority, assisted by Sri T. Venkateshwara Reddy, Administrative Officer, APSLSA. The responsibility for the symposia at Guntur, Warangal and Shameerpet was taken by the AP Judicial Academy, headed by Mr. R. Kantha Rao, then Director, AP Judicial Academy, assisted by Sri A. Santhosh Reddy, Deputy Director, AP Judicial Academy and other officers.

Kalpana Kannabiran was the Co-ordinator of the six symposia series in Andhra Pradesh.

Human Rights Means.... Justice D. K. Basu

When the term 'Human Rights' is used, what comes to mind?

What do you understand about violation of Human Rights?

Why is it necessary to extend protection?

How may this be done?



Each symposium began with this session with every officer speaking briefly about human rights as he or she would have encountered it in the course of their work. To summarise that extremely rich discussion, the general idea of human rights that emerges is that they pertain not just to the rights of the accused, but to the rights of victims as well, and must be accessible to all irrespective of social or economic location. Officers recognized in the course of their reflections on the fact that several basic tenets of human rights — for instance with regard to illegal detention, handcuffing, bonded labour, caste atrocity and discrimination, treatment of children in conflict with the law, atrocities against women etc.— are violated constantly and restraint on law enforcing agencies is necessary.

The key issues that emerged

- Violation of the Juvenile Justice Act
- Cultures of Impunity
- Illegal Detention
- Handcuffing and the Right to Liberty
- Enforcing Human Rights Standards
- Corruption in the Criminal Justice System
- Denial of Bail
- Incompetent Investigation
- Inadequate Magisterial Powers
- Ill treatment of Witnesses
- Compliance with the DK Basu Guidelines
- Prison Conditions
- Atrocities against Scheduled Castes and Scheduled Tribes

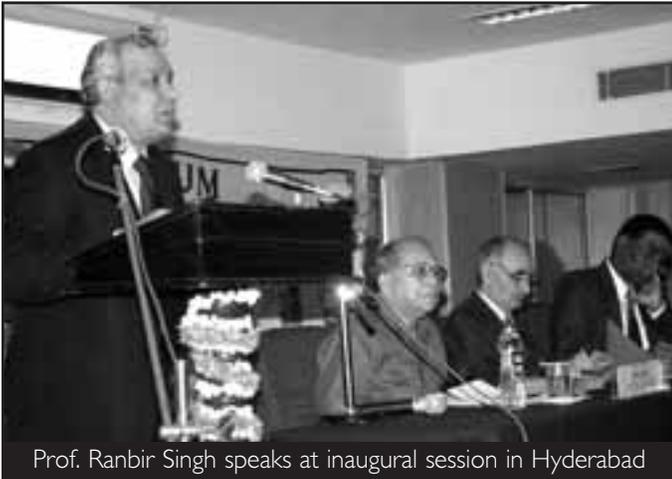
Reflections by officers on each of these issues are presented in the next section.

Human rights also means setting different cultural standards...

- The provision of basic amenities to people who come to courts – small children, women, weaker sections... Nobody should encounter any problems.
- Humaneness must be an attribute of an individual before he can even begin to understand the concept of human rights.
- If each person fulfils his obligations, the question of human rights violation does not arise.
- We have to start with our own family. There are no human rights for housewives.
- The elaboration of dharma by the seers shows us the way to protect and preserve human rights.
- Providing and protecting of rights irrespective of financial or material status.

Mr. Justice S. B. Sinha arrives at the Valedictory Session in NALSAR





Prof. Ranbir Singh speaks at inaugural session in Hyderabad

- Violation of human rights is whatever affects the life liberty, livelihood and dignity of human beings.
- Human rights are that which allows a person to live in a civilized society without fear and exploitation.
- When a person violates the rights of another person he should be punished.
- Living with basic minimum human dignity without affecting the dignity of others.
- Protection against forcible extortion.
- Good education helps a disabled student become a good worker.
- Education, freedom of speech, freedom of movement, equality before law, equal opportunity, non-discrimination, sharing of resources with those in need at an international level.
- It is the bounden duty of every system to protect and safeguard the right to life, liberty, equality and dignity of every group of individuals.
- Consciousness of liberties with its restraints
- Right of the human beings to live with human dignity in a healthy environment.
- Rights, which individuals possess in themselves inherently to live in dignity. They are not given by human beings, they are given by god and therefore cannot be taken away by act of parliament, order of executive or the decision of the court. They are not limited to the period between birth and death and they are pervasive beyond death. Antigone buried her brother's dead body in defiance of the king's order to the contrary. Asserting her defiance to the king she said that she has acted in accordance with the immutable and unwritten laws of divinity and it is not to be questioned by anybody including the king.
- Human Right is a natural right that came into being from the inception of human race on earth. It transforms itself from stage to stage based on the civilization.
- Interference or infringement by one human being in the free legal volition of another human being would be an infringement of human rights. Asking the housewife to act against her will is also infringement of human rights. Fundamental Rights are different from human rights. Fundamental Rights are guaranteed under the Constitution whereas human rights are natural rights and are acquired by individuals from birth. Therefore, the protection of human rights lies in the other human being and there cannot be any particular statutory definition as to how a particular human right is to be protected by another.
- The primary concern now is what best as judges we can do in the criminal justice system with which we are associated. Every judge has three facets: one is a judge, the other is a judge-citizen and the third is a citizen. Let us not be over-concerned. Let us have the right concern. That is a balanced approach. Let us not be worried that there are violations here and there. They are not peculiar to our society and country. They are everywhere. As a judge I feel, there is no situation that we cannot meet. There are adequate provisions in law. A right word from the bench gives a right direction to the thought process. There is nothing to worry. We are on the right path.



- In our daily experience we see members of the legal fraternity represent a poor citizen very poorly. Therefore here, our appreciation of the facts, the background and the ultimate quality of justice is bound to suffer in one way or the other, to some extent, if not to the fullest extent. We also see where a rich man infringes and violates the human rights there he engages the best of legal services, the best of the lawyers and his case is represented in the finest way. The lawyer teaches you the law, the procedure and ultimately paves the way for the passing of a particular order in a particular fashion.
- Human right is to have a right to live peacefully and to get what is due to us. It should be without any influence of nepotism. A meritorious person should necessarily get what he deserves.
- Traditional courts are not the only places where human rights are protected or upheld. We should have mechanism to protect human rights that are being violated anywhere.
- Human rights is said to be present in a society where a person can freely live and protect his future without there being any oppression from anyone.
- Every right is a human right and it is followed in violation rather than protection or implementation.
- Human right is to live with dignity. Every human being should be concerned about the other human being.
- There is human right violation under section 302 because of not providing any alternative except life imprisonment or death.





Mr. K. T. Suresh at Guntur



- Human rights are not being protected in the police station. So many victims suffer without cases being registered.
- Human right is to enjoy the benefits and resources provided by nature without any interruption or discrimination.
- I used to record dying declarations. 90% are burns cases. At that time burns cases patients were laid on the coir mattresses. They suffered with unbearable pain and adding to that pain, they were kept on coir mattresses. Then I asked the duty doctor why Rexine was not used instead of coir mattresses. She frankly replied, "We have don't proper chairs, from where are we to bring Rexine mattresses?"
- Human rights of late have become synonymous with protection of rights of the accused. That is not correct. Behind every crime, there is an accused and there is a victim, and a victim behind every accused. So the rights of the victim have to be protected.
- Human right is a right of a person to live peaceful and comfortable in the society. Without causing any

inconvenience and trouble to anybody and being caused inconvenience and trouble by anybody. For which, I say moral education is needed along with legal education.

Encountering Violations

From the various reports that we have with us, judicial officers at each of the 6 symposia held between July and December 2005 have told us that they have come across instances of accused persons being detained for months without filing charge sheet, and cases have been registered while he was in jail, the production of accused with handcuffs is a common experience, although handcuffs are removed just outside the court room. There are instances where handcuffs are retained in the court compound. The explanation of the police is that the accused might escape. There have also been instances cited of hand cuffing of children below 14. A number of accused, on being questioned by the judge have said that they have been in custody for more than 10-15 days. Refusal by the police to grant bail in bailable offences is yet another problem that has come up repeatedly. One officer disclosed that in a short span of time he came up with 90 bailable cases where accused were in a position to produce sureties.

The suspension of all norms of arrest and detention in areas identified as "prone to extremism" was cause for concern and some officers cited shocking instances of the refusal by police personnel to follow guidelines established under the 'D. K. Basu Judgment'. Most of the officers asserted that the maximum violations take place in police stations and jails.

Women Offenders

- On March 8, 2004, a lady was produced as an accused. At the time of remand she complained of stomach pain. Ordered to produce before medical authorities and produce in court the next day. The clerk did not place the file before me the following day after which I went on leave for one week. On my return I asked the clerk what happened to the lady. Then police went to hospital and produced her. She was pregnant. This fact not brought to the notice



of the court. A complaint was made to the District Judge. The sureties were accepted and released on bail. In Rangareddy district the maximum number of accused being produced are women. They are unemployed and so forced to commit offences such as food adulteration. They are being used as marketing agents by other unscrupulous persons.

On Handcuffing

- Handcuffing has been prohibited by Supreme Court. The production of the person in this form is not proper.
- Nobody is being produced with handcuffs at all. Supreme Court directions are there but in our knowledge, no body has seen the handcuffing.
- The Hon'ble Supreme Court, in a case has held that it is the duty of the Presiding Officer of a criminal court to see to it that the person being produced for judicial custody is not being produced before the court with handcuffs. As far as the court hall is concerned, they are not produced with handcuffs. But most of the time, the Presiding Officer cannot control the mode in which the accused is being produced from the jail to the court premises. If he is behind the wall with handcuffs, the Presiding Officer will not be in a position to know it, but by verifying the same, after being produced before the court, then the Presiding Officer can do the needful to prevent the violation of the Hon'ble Supreme Court's directions that stipulates that the accused should not be produced before the court with handcuffs. The other aspect is, as far as the arrest is concerned, only if he accused resists should the law enforcing agency use any force. Otherwise mere touching of the person by the police officer is also a mode of arrest of the accused. He need not handcuff each and every person. For producing a 20-year-old boy, or a school student the police officer need not use handcuffs, especially if the police officer is physically stronger than the alleged criminal. If the accused escapes from the lawful custody, action under Sec. 224, IPC can be taken against the

accused for absconding from lawful custody. This option or provision is there for the law-enforcing agency. So minimum security should be sufficient and it is the duty of the Presiding Officer, according to the Supreme Court, to see to it that handcuffs are not applied to the accused when being produced before the Court.

- In a case of the Supreme Court, in the year 1995, Chief Justice Venkatachaliah, issued certain guidelines with regard to the handcuffs. If the police arrested the accused and brought him before the court with handcuffs that is an offence and a Judicial Officer in Gujarat has been removed from service for not taking note of this. The picture clearly depicted the accused with handcuffs outside the court. In such a situation, the dictum is not applicable.
- In *Prem Shankar Shukla's* case, the Supreme Court gave certain guidelines- whether to use handcuffs or not would be based on the facts and circumstances of each case. Justice Krishna Iyer clearly articulated that the handcuff policy is unconstitutional and violative of Article 21 of the Indian Constitution. However as per the





decision of the Hon'ble Supreme Court, in *Prem Shankar Shukla*, if it is necessary, considering the criminal background of the individual, after recording reasons the Investigating Officer may handcuff the accused. These reasons should be produced before the court. While delivering this decision, Justice Krishna Iyer stated that the human body is allergic to iron and imposing handcuffs is a violation of the right to life with minimum human dignity. There cannot be a general case to impose handcuffs to every criminal even outside the court premises, even during the transit period.

- Only in the case of hard-core criminals, after verifying the antecedents can the court direct the use of handcuffs, otherwise the court has to see that the handcuffs are removed.
- If a police officer wants to handcuff an accused, he should necessarily apply for the permission of the concerned Magistrate to handcuff the particular offence. Otherwise, it is not possible and it is an offence.

On one occasion, When I was Judicial First Class Magistrate, when the accused was produced before the Court, he was

not handcuffed, but after coming into the accused dock he complained that he was handcuffed from the jail premises till the court hall. Outside the court hall, the handcuffs were removed and he also said that he was paraded from the sub-jail premises till the court hall. I recorded the statement of the accused with regard to the handcuffing and parading him down the street. The sub-jail was situated very near the court hall, about 200-300 metres away. Along with the accused four others accused were also produced before the court for the extension of the remand. I recorded the statement of the accused and the other co-accused who strengthened the complaint by the first accused. I then registered a private complaint of the offence of wrongful confinement against the constables who brought the accused before the court with handcuffs and the sub-jail superintendent.

Question: Is this the practice that is followed here? Is the recording of reasons being checked by the Magistrate?

- In the Mofussils, they are not bringing the accused, either for remand or for trial purposes with handcuffs. When the accused is produced for remand outside the court





premises (even in the residence of the officer), we have first hand information, whether they are brought with handcuffs or not. So far as our experience is concerned, they do not bring the accused with handcuffs. We immediately record the statement of the accused to see if any illegal arrest procedure has been resorted to. We issue show cause notice to the concerned police officers. And after receiving the replies from the concerned officers, if it is necessary, we register them as private complaints. So as far as our knowledge is concerned, there is no practice of handcuffing the accused in most of the cases, at least.

- I have come across a situation in the court where an accused was produced before me with handcuffs. When I questioned the escort, he replied that the accused might escape. In my perception, the police should not be permitted to bring accused with hand cuffs.
- I visited the jail when I was a Magistrate. I have seen that many prisoners are handcuffed in the jails. When I asked the jailer why they were handcuffed even in the prisons, he said that they are creating nuisance; that is why they were handcuffed. In many cases I had seen some prisoners who were brought to hospital for treatment have handcuffs inside the prison ward. Actually it was not necessary because they were escorted by security guards.
- “When I was working as a Junior Civil Judge, two accused were produced with handcuffs. I issued a memo to the SHO (who replied that) if the accused is not brought with handcuffs he might escape from custody. I issued a memo that I will intimate concerned authorities and will take action (if this was repeated) – these persons were accused of property offences.”

The problem is that though the accused are not handcuffed within the court premises, they are brought with handcuffs till the court. The judicial officers admitted to seeing the

Ms. Abha Joshi speaks at Guntur



accused handcuffed outside the court premises (walking through court buildings). There was a debate as to whether the Judicial Officer can take cognizance of it outside the *lakshman rekha*, that is where your courtroom ends and the general buildings starts. You know that this is happening but it is not happening in front of you, so then what can you do?

Khatri v. State of Bihar may be applied (the Bhalgalpur Blindings case), where the Supreme Court had said that the Magistrate may enquire of the accused if all the procedures of law had been followed.

NDPS Act

Question: The migrant labourer, who takes small quantity of drugs (he is an addict) fits into the profile of an offender who should be released on personal bond. There is also a provision for putting these kinds of people in a rehabilitation



program, under the NDPS Act itself. These are not people who are transporting drugs. What would be the decision with respect to such a person?

- The rule of “bail is a right and jail is an exception” does not apply to certain cases — certain economic offences, narcotics offences and other anti-social offences. Justice Krishna Iyer’s 1978 Supreme Court judgment should not be made applicable to cases under the NDPS.

Question: Is there a ruling to this effect?

- The provisions of the Act itself say that bail should not be granted.
- Moreover, according to Sec. 436, CrPC, bail should mandatorily be granted. In a non-bailable offence the granting of bail is totally based on judicial discretion and depends on the nature of the crime, the circumstances. The law is most important, the case law only guide us, assist us, they are not mandatory directions to grant bail or personal bond in all cases. If we release them on personal bond, where is the guarantee that they will appear before us for the trial? The trials collapse, warrants are pending, what is the purpose of such a system? We have to take the entire society into consideration

Question: What would be the length of the sentence under the NDPS Act for the above offence?

- We cannot stretch the Human Rights Act to acts against the society, and to apply it to cases under the NDPS Act. In the Act itself there are mandatory provisions, which cannot be stretched. That is the law laid down by the Apex Court as well. We cannot stretch the Human Rights Act and provide humane protection to this sort of people who are committing offences against the society. The interest of the society is more important than the interest of this individual who has fallen to that level.

Question: Are the NDPS Courts are using Section 39 frequently? This is a provision for releasing such people on probation. Are offences under Section 27 completely non-bailable? Even when the reference is not to commercial quantities?

- If a person is found in possession of a small quantity of ganja for personal consumption, it is to be seen that something is done and he is rehabilitated, taking into consideration the Probation of Offenders Act.

Bail

- Police have been adopting the practice of producing accused in each and every bailable case by taking 24 hours time. By the time they have been produced before us, they are able to produce sureties. The police recital is that they are unable to produce sureties; therefore they are being produced in courts. Is it not ridiculous? They are able to produce sureties before us, can't they produce sureties before the police? Purposely they have been producing accused in such a manner that their personal liberty is violated."
- A 75 year old person files an application for anticipatory bail, on the ground that he is medically unfit to be detained in jail; he is unable to perform his duties and he is unable to be present before the police or fit for interrogation. The allegation is that he along with some others established a company and swindled an amount



of Rs. 10 to 15 crores from several depositors. How does one protect the common man's right of recovery of his money and this man's right to anticipatory bail?

Juvenile Justice Act

The problem is especially acute when the detention or handcuffing is done in the case of children below 14 years, in total violation of the Juvenile Justice Act. The paucity of homes for Children, especially girl children, for whom there is only one home in Hyderabad, often compelled families to state the wrong age so that "children in conflict with the law" would be detained in the proximity of their homes. This however was only part of the problem. The more serious part of it had to do with the refusal of the police to treat children in accordance with the provisions laid down in the JJ Act, and officers have reported 14-year-old children being brought to court with handcuffs, which are then removed just before they enter the courtroom. The Police Act, it has been felt is obsolete.

If a child is produced who claims to be 19 years old, but it appears that he is not a major, what would the court do?

- When a person below 18 years is produced before a Magistrate, the Magistrate asks the concerned police to produce the child before the concerned Juvenile Court having the jurisdiction. In some cases, what I have noticed is that the person is below 18 years, but when we questioned him (he was tutored by the police) he would always say that he is above 18 years. If he is literate, then I would ask him, what he was studying. If he is able to say that he has completed that the tenth, then I would ask the police to produce any certificate to this effect. Based on all this, I would come to the conclusion that he is below 18 years, and would direct the police to produce him before the proper court. In some cases, the parents also deny that the person is below 18 years, in such circumstances we cannot do anything except to send the person to a medical test.
- If a juvenile, is produced like this and he pretends to be more than 18 years, we ask the concerned police to

produce the parents. We ask the parents the age of the juvenile and if they fail to tell the age, then we would report to the medical practitioner. We obtain a certificate from him and also ask the parents to produce any evidence with regard to the age of the juvenile. Then if we are not Juvenile Magistrate, we refer the matter to the Juvenile Court.

- The juvenile courts are situated in very few places. For instance juveniles from the districts of Srikakulam, Vizhianagaram will have to be brought to Vishakapatnam. In petty cases where the sentence is very small (like in Sec. 160 offences, where the sentence is only one month and a fine of Rs. 100), the parents prefer to say that he is not a juvenile as it is difficult for them to bring them all the way to Vishakapatnam. If there is juvenile jurisdiction is vested in some courts in the Mofussils, also, then that would go a long way in furthering the cause of the juvenile as well.
- As far as my knowledge goes, there is only one juvenile home for girls in the whole of AP that is situated in





Hyderabad and the juvenile officers in the other districts are facing difficulty in this regard. So, whenever a juvenile girl is produced before Magistrates in another district, they have to invariably refer the matter to the Juvenile Officer at Hyderabad.

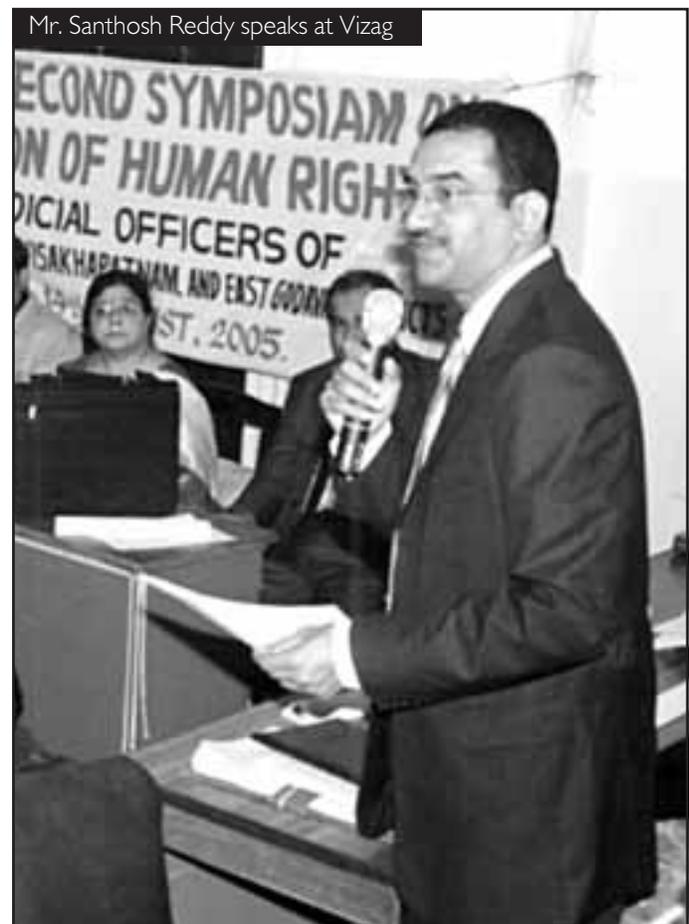
- But how safe are the girls in these homes is a big question.
- The main problem is that we have only one home in the entire State as far as girls are concerned. We are conducting Juvenile Adalats regularly. Even for boys, there is only one for two or three districts. But, why can't we have one *good juvenile home*, I am using the word good juvenile home. The reason is very recently the Hon'ble Chief Justice has received a petition; a child (aged about 7 years) was sought to be committed from Rajahmundry. The parents wanted the child to stay in the juvenile home, but they wanted her to stay at Rajahmundry so that they could go and visit her. An order was passed requiring her to shift to Hyderabad, as a response to which the PIL has been initiated. How do we overcome such situations? We are helpless. The second thing is, how safe are the children in these homes? They are not under our control, there is a Juvenile Board, a Child Welfare Department etc. We have a very limited role as far as the juveniles are concerned. The best way is to conduct Lok Adalats, call the parents and send the child home. After all, they have committed the crime, without any intention.

There is a lot of scope, under the new Juvenile Justice Act for admonition, community service etc. There are a whole range of orders can be passed now for a child, a child does not have to be committed to a children's home or a special home. The one tricky problem is that till the time that the decision on the age is taken, where is the child sent? Is the child sent to a normal jail, for remand or kept in an observation home? What is the practice followed?

- They are sent to an observation home. In other parts of the country, however the practice is that the child is remanded till the report is out. But now, there

is a Supreme Court ruling that the child has to be kept in the observation home, otherwise it would be illegal detention.

- There are two aspects. If the boy says that he is 19 years and the Magistrate entertains a doubt that he is under 18 years, he is not helpless. Under Section 7 of the Juvenile Justice Act, he can ask him to produce any material regarding his date of birth; he can also summon the parents of the boy to produce any material. Or he can direct the police to produce him before the Juvenile Justice Board to hold an enquiry regarding the age of the juvenile. Till then the juvenile will be kept in the Observation home.
- A seven-year-old girl traveled in a train without a ticket. She was caught produced before the magistrate and sentenced for 7 days imprisonment. The Chief Justice





of the State visited the home and found that for the last 7 years she has been in the home and only at the instance of the Chief Justice the whereabouts of the parents were found and she was handed over to them. The State concerned was directed to pay compensation of one lakh. The self-imposed responsibility in protection of human rights, ie, not only fighting for ones own human rights, but fighting to see that others' rights are not violated – is critical.

- We are seeing a number of juvenile cases. While the child is brought to the juvenile home, the parents of the juvenile are not being intimidated. Violation of the rights of the juvenile also amounts to infringement of human right.
- When I was in charge of the criminal court, persons below 15 or 16 years were brought to the court by mentioning their age as 20 or 21.

Question: What about bail? Under the Juvenile Justice Act, bail is mandatory, but the police are not releasing the juvenile on bail and the courts are also not releasing them on bail. That is the practice in other parts of the country.

- In AP, there are statistics to prove that 100 percent bails are granted.
- Under Section 12, it is a condition precedent that the police officer, before sending the juvenile to the observation home should give reasons to the Juvenile Justice Board as to why he has not been granted bail. If after verifying the reasons, the Members of the Board feel that bail should be granted, then they can do so, or they can refuse bail in two circumstances:
 1. When there is a possibility that the boy will come into association with known criminals
 2. Allowing the juvenile on bail will expose him to moral, social or psychological danger.

Dr. Kalpana Kannabiran presents the final report at Shameerpet



But invariably, bail should be granted liberally, even in murder cases either by the police officer or the members of the Juvenile Justice Board.

3. There is also a third circumstance under which bail may not be granted to the juvenile: in the interests of justice
- In AP, there is another thing as far as juveniles are concerned: We communicate to the parents that their child has been caught; in many cases, the parents do not know the whereabouts of the children. We are also sending juveniles to their homes. At least 40-50 juveniles in the Telangana region were sent from the Chief Judge Courts to their homes; we are sending them home through social action groups as well. Apart from granting bail, we are also taking care of this aspect.
 - I am of the opinion that it is necessary to frame a rule that places the burden on the Investigating Officer to produce the correct age certificate when the court has suspicion as to the age. The Station House Officer should produce the study certificate or extract the date from



the Births and Deaths Register or produce a doctor's report regarding the age.

Speaking of Cultures of Impunity

- "In a training programme for constables, one Judicial Officer provided details of the D.K.Basu guidelines, etc., to be followed by the police. An S.P. spoke after him and said that "State policy was to eliminate extremists. First kill them in fake encounters and then gather the necessary facts and prepare the report."
- I came to know a young IPS officer. He told me about a rich money-lender in his posting who charged exorbitant rates of interest. The officer told me "I called him once and gave him such a threat, he will not do such acts as long as I am here." Apparently, he must have threatened to kill him.

- In the Rayalaseema area, the right to life is not protected. There are indiscriminate killings. Should the protection of human rights be given to persons who commit heinous crimes?

- Naxalism very strong in Telangana. Large number join. Their relatives and families are picked up and brutalized by the police. Large number of people's human rights are violated. Violations by the state have to be redressed. No person's human rights can be denied. The Constitution has to prevail.

Illegal Detention

- I have come across a situation in 2004 where the accused person produced before me said he was detained in jail for months together without filing any charge sheet and cases are being registered against him one after the other.

Mr. Justice MEN Patrudu makes a point at Vizag





He also stated that cases are registered against him, while he was in jail, by the police.

- Most of the human rights are being violated in police stations and jails. The violation of such human rights that come to the notice of the judiciary are very few. Competent judicial officers should make frequent surprise visits to police stations and check the inmates, lock ups and FIRs and enquire about who are illegally being detained in the police stations. Although we have directions from Supreme Court and High Courts for a committee consisting of district session judge and district collector and Superintendent of Police to make such surprise visits to jails, it is not being strictly followed. Only few district judges are making such surprise visits. Moreover, the violation of human rights is much more in police stations than in jails.

- Just one month back I posed a question to an accused "is there any grievance?" He was under trial in a dacoity case. He informed me that they have not been produced before the court for the last 3 years.
- Every one has basic rights to life, freedom of opinion, expression etc., and is entitled for equal protection of law. None shall arbitrarily be arrested or detained. On one Friday an application was filed by the accused against whom a non bailable warrant was pending. The warrant was cancelled and he was set free. On his payment of process fee an intimation was sent to the concerned police that the warrant was cancelled that day. But on the very next day, i.e. holiday, the police executed the NBW against the accused and produced him before me at my residence. The accused filed an application in Telugu that he was already produced and the NBW was cancelled on his application. But the police said that they have not received any such intimation. Is it not violation of right? There was no NBW as on the date of execution of NBW. Immediately on his petition I released him with an undertaking and a direction to him to appear before me on the next working day. From that day onwards, I used to give notice of intimation



immediately to the court constable who is attending the court. This is only solution because the police may say tomorrow that they have not received the intimation, hence they are executing the warrants.

Right to Liberty

- Our magistrates have power to order investigation by a private investigating agency or advocate who is an expert in law. If we appoint certain advocate to enquire into the violation of human rights, definitely the police will be afraid and will avoid committing such offences.
- In 1991, one advocate was brought before me for remand. He complained that a particular SHO brutally beat him. He was brought before me after 24 hours. I know that the accused must be brought within 24 hours. I should not send him to remand. If I don't, where is he to go? Again he will return to custody of police against whom he complained. I asked him to give a complaint, recorded his statement and remanded him. I registered a case. And I asked superior police officers to take action against the SHO.
- Police produced an accused before me with a remand report. I verified the remand report and put some questions to the accused. Then the accused said that police had beaten him. After recording his statement, I issued a warrant against S.I. Then I got transferred to another place, and do not know what happened later.



Right to Dignity and Equality

- Human rights are violated not only in the society, even sometimes in the court hall also by the judicial officers. Because as per criminal rules of practice whenever the court addresses the accused, it should be in plural. But while I was practicing as an advocate, I came across with some instances in which the court addressed an accused in a disrespectful manner. It may cause injury to his mental condition. I can say that violation of human rights means not only physical but mental injury also.
- Human rights are violated not only in the society, even sometimes in the court hall also by the judicial officers. Because as per criminal rules of practice whenever the court addresses the accused, it should be in plural. But while I was practicing as an advocate, I came across with some instances in which the court addressed an accused in a disrespectful manner. It may cause injury to his mental condition. I can say that violation of human rights means not only physical but mental injury also.
- When I was protocol magistrate in Tirumala, there were 2 queues. One queue with huge crowd of pilgrims and another queue is kept vacant. When we were going for darshan in the vacant queue, the pilgrims commented, "they are judges, they are speaking about human rights."
- Human rights violation is taking place in this august assembly. I requested the attenders to occupy the last rows and sit. But they did not sit and they prefer to stand for 2 to 3 hours. This is violation. To treat others equally irrespective of their status in society, with dignity, is a human right.

Corruption in the Criminal Justice System

- Accused complained of police ill treatment and said that he has not seen them because his face was masked at the time of beating. The police denied this and "managed" the medical report, which said that the injuries were 10 days old.

Death Penalty

- In AP, innocent people traveling in the public transport system were burnt alive by some culprits. When the trial court awarded the capital sentence, Amnesty International and other organizations protested. Why should these culprits be exonerated?
- A teenage girl was murdered in her college itself in broad daylight. When that fellow was given capital sentence, these organizations protested. Should such fellows be set free or should they be punished according to the law?

Incompetent Investigation

- "The police, instead of going and examining witnesses at their places are sitting in the police station and preparing Section 161 (CrPC) statements without examining the persons concerned. They are not visiting the scene of offence, from where they can get material which would be useful at the time of trial. Arrest is the first stage and investigation follows. They are also not properly preparing the chargesheet and filing the necessary documents along with the chargesheet."
- Police not trained to investigate without excessive force. In our court some clerks conspired to help others to extract 25-30 lakhs from a case. They conducted interrogation but could not get information because of unscientific interrogation.

Inadequate Magisterial Powers

- "Whenever a Magistrate order for release of accused on bail on execution of self bond with two sureties, inspite of time granted if he cannot produce adequate sureties...the Magistrate cannot review his own order, which is resulting in unnecessary incarceration of the accused."



III Treatment of Witnesses

- Witnesses are harassed a lot. The witnesses in a criminal court may come from far of place and find the case adjourned. He has to come to the court many times at what cost, his own self, his family is not difficult to fathom. The witness is not treated with respect in the court. He pushed out from crowded court-room by the peon. He waits for the whole day and he finds that the matter is adjourned. He has no place to sit even to have a glass of water and when he does appear in the court, he is subjected to unchecked and prolonged examination and cross examination and finds himself in a helpless situation. For all these reasons and others a person avoids becoming a witness.
- We must see that witnesses who are coming from distant places give evidence first, and we must dispose of them quickly.

Compliance to the DK Basu Guidelines

- A man who was produced before me complained of ill treatment by the police. He added one more thing that he has not seen them as his face was masked at the time of beating. He only knew that there were many policemen. I called for an explanation from SHO concerned. He informed me that he never beat him; he denied all the allegations made against the police. Subsequently in the evening I also received the medical certificate where it was mentioned the wounds caused to the accused person were 10 days old. So the police managed it. They are influencing the medical officers also.
- Instead of protection of human rights, let us say performance of human rights. There are no rights, only duties. The way the accused is produced and remand order is passed. We are not taking signature of the accused under the order even though CrPC referred





the same. It says immediately after passing the orders, signature has to be taken and that is actually the evidence for production of accused.

- I go to the villages to tell them that we have leading case by D K Basu in West Bengal. I tell them “you have right to make a representation to the concerned court that if you are unlawful detained or you are tortured, make a representation before the courts.” Then I was told, “sir, the policeman will be watching at the doors. He will again thrash me after I come out.” We have to fight for our rights. I said “even Mahatma Gandhi was in the prison.” They said “it was not like the prison in which I will be put.” There is a big gap between what we are talking and what is going on at the ground level. We need to bridge this gap.
- When police present the accused before the magistrate, magistrate can ask when he was arrested, have they taken the signature of accused on the arrest card or not, at what time they arrested, and so on. With due regrets I would like to say in many cases police are not taking signatures of accused. Police are expected to inform arrest of accused to his near relatives and facts of arrest, i.e. on what grounds they arrested and when he is arrested.

Prison Conditions

- There are no basic amenities in jails. In one case, I made a surprise visit when I worked at Machilipatnam. 15 persons were dumped in one room which hardly accommodates 4 or 5 persons. There is only one pot of drinking water. The inmates complained to me, “Babu, bail is only for the rich, not for us.”
- Judicial officers should visit jails frequently and check them. It is a right and it is the duty of judicial officers.
- The conditions of the sub jail as far as water supply is concerned, is lacking in quality. Of late I have observed that if a remand prisoner is there in the jail for about 5

or 6 months, he is unable to walk because of the quality of the water. I have observed these incidents on two or three occasions. I thought earlier that it was because of physical fitness of the prisoner, but of late I have realized that the water facility there is responsible.

- There is an enactment called the Borstal Schools Act, which deals with adolescent offenders between the age of 18 to 20 years. Under this enactment, in case of conviction of an adolescent criminal, he should be sent to the Borstal school instead of the central prison. But there is only one Borstal school in Nizamabad, which very few people know about. There is one circular issued by the A P High Court in 1993 and it is not circulated thereafter. As a result there are hardly 40 to 50 adolescent offenders in the school. They are sending convicted adolescent offenders to the general prison like all other adult prisoners.

Atrocities against Scheduled Castes and Scheduled Tribes

- In one case the SC people refused to beat the drums and dance before the fire on Holi. Then sarpanch and other 30 people raided on the SC /ST houses, ransacked them and chased the people who fled into the hills to hide. Senior police officials had to camp in the village for one week. I convicted all the forward caste people who were involved in the case to 3 years imprisonment.
- *Jhanda Case:* In a remote village the sarpanch is a forward caste, and upa-sarpanch is a SC/ ST candidate. On Independence day, the Sarpanch did not arrive in time for the flag hoisting function. So the upa sarpanch hoisted the flag. After some time the sarpanch came got irritated and questioned upa sarpanch: “Who asked you to hoist the flag, when I am here and I am just a bit late?” Saying this the sarpanch pulled out flag and threw it outside. These people went to the police station and complained regarding sarpanch’s action and the matter is taken up at SP level. They filed the case under the charge



dishonouring national flag and emblem under section 3 they were prosecuted. After cross examination etc., the judgment was to be delivered. At that stage, the sarpanch went to upa sarpanch and SC /ST people, begged them to withdraw the case and agree to compromise. I convicted that man. My sentence under those circumstances was unique. I released him on Probation of Offenders Act under section 4 under the supervision of DPO. I gave a mandatory direction that the next 15th August and 26th January, the upa sarpanch will hoist the flag; this sarpanch will attend that function and salute the flag in the presence of upa sarpanch; the upa sarpanch will submit the function photos to the court; and the district officer should attend the function and submit his report independently to the court.

- I happened to work at Narayanpet, Mahaboobnagar District. Before holding a literacy meeting in a particular village, I wanted to know whether there was untouchability in that village. I visited the scheduled caste colony in disguise along with my attender. I asked some people to come with me to the hotel for tea, but they refused. Then I myself went to the hotel along with my attender and introduced myself as a scheduled caste person. Tea was served to me. There were separate glasses for scheduled caste persons and I was also informed that there was a separate hotel for them. A week later when I came there to hold literacy meeting, and confronted the elders and told them that what is going on is against constitution is punishable under law. Then everybody in the meeting denied that untouchability was prevalent in the village. Then I revealed the names of persons running the different hotels. The scheduled caste people refused to complain against untouchability. When I enquired, I was informed that previously when they were ready to complain against untouchability, they were socially boycotted; they were denied work in the fields; they were not allowed to walk on the streets. This happened 50 years after independence.

Case Study I

Narendra, a poor dalit, is arrested on 11.2.1998 in connection with a theft reported five months ago. He is remanded to police custody for five days and then to judicial custody on 16.2.1998. On 17.2.1998, Narendra dies in the jail. The jail authorities alleged that Narendra had hanged himself with his gamcha. A writ petition alleging torture both in Police Custody as well as death due to torture in jail was filed in the High Court.

The Court found that

- Narendra's arrest was illegal because the directions for arrest had not been followed. The police alleged that he had refused to sign the arrest memo.
- Narendra had been given 'police remand' and 'Judicial remand' without the orders being actually signed by any magistrate.
- The Police records in the diaries were tampered with and overwritten in several places.
- The proper procedure was not followed in the jail.
- Forensic evidence showed that Narendra had not died by hanging himself, but had been tortured and either been hung after death or in an unconscious state.

Suggested points for discussion

1. How can the safeguards laid down by the Supreme Court in D.K.Basu's case be enforced by judicial officers in the case of poor and illiterate people who do not know the law and never dare to demand their rights from the police?
2. How can judicial officers exercise effective control over the police stations within their jurisdictions and over the prisons so that such cases of unauthorized detention do not go unnoticed ?



3. What are the provisions in the procedure which allow the judicial officers to
 - Call for the record of the PS regularly and examine it for irregularities
 - Make or cause to be made visits to Police lock ups and prisons to inspect the conditions of detenues.
4. Do you think that the high incidence of “suicide” by prisoners is a normal thing to happen? Why?
5. What can judicial officers do if the accused is ill treated by the police?

Case Study-II

A woman and her 17-year-old daughter were called to the police station for interrogation in relation to the death of the husband/father. There they are subjected to physical and mental torture, which forces them to commit suicide while still in custody.

Suggested points for discussion

1. What are the violations of law in instances like these?
2. If the case is already before the court, can the Court ensure that investigation procedure is such that the rights of people are not violated?

Case Study-III

Bhanwari, a poor and uneducated woman of a ‘lower’ caste is a social worker in her village and is involved in a government campaign to eradicate the practice of child marriages in the region. Once, she tries to stop a child marriage of an upper caste family from taking place and advises them that it is bad for the child and is also against the law. Enraged by her daring attitude for challenging the actions of the upper caste, a group of persons assault and rape her and attack her husband.

Bhanwari filed a complaint in the Police Station. The trial judge, in his order acquitting the accused of the crime of rape, remarks that:

1. It is beyond comprehension that ‘respectable’ men of ‘upper caste’ will gang rape a lower caste woman in front of each other.
2. It is unnatural for Bhanwari to say that she was afraid to go to the police station because it was night time and because she was afraid of the accused.

Suggested points for discussion:

1. Are considerations like the above relevant for disproving or proving an offence? Why?
2. When a woman, especially a poor woman, complains to the police of rape, sexual harassment or assault, usually, the police does not register an FIR, or take steps for investigation. Women usually have to hear crude remarks about their own behaviour, social status or physical attributes when they take recourse to the law. What can the judicial officers do to ensure that victims of these kinds of crimes are not doubly victimized by the legal procedure?
3. Minor discrepancies often creep into the statements etc. given by victims who are poor, socially backward and illiterate. As in the above case, courts often rely upon these to acquit the accused. Can the legal procedures be made more conducive to the majority of the people who are brought before the courts?
4. Are court procedures sensitive towards a victim who has suffered such kind of an offence?
5. How can judicial officers ensure that the dignity of a victim is protected in such cases?
6. If the victim in a case like this is known to be a prostitute or of ‘loose morals’, is she still entitled to this protection from the legal system?
7. Should the court accept an application from a man convicted of rape, offering marriage to the victim? Will his sentence be reduced if the victim agrees to marry him?



Case Study IV

Employers of a child of about 16 years report a theft from their house. The police arrest the child and produce him before the Magistrate. The police request remand for four days in order to recover the stolen goods.

Suggested points for discussion:

1. Should the Magistrate proceed with the case?
2. Should the Magistrate give any directions to the police or any other authority? What?
3. The court refused to rely on the private school certificate as proof of age of the accused, saying that it did not seem genuine.
 - Do you think this was appropriate and why?
 - If there is conflicting documentary evidence on the age of the accused what should the courts do?

Case Study V

Some adivasis are having a peaceful, unarmed protest in the district headquarters against forcible eviction from their land by the local forest officials and the land mafia. The police fire upon them; take some of their leaders into custody; and slap several criminal charges against them. They are all refused bail and are sent to 15 days judicial remand.

Suggested points for discussion:

1. Persons who express protest of any form are regularly attacked by the police, very often fatally. Why is such harsh action taken against people who are exercising a democratic right?
2. Is such action justified in the case of unlawful assembly?
3. Can the judicial officers take suo motu action against the police, especially in cases where death has resulted from their actions?

4. What are the considerations for bail in a case like this, where the accused are ordinary citizens with no history of criminal actions?

Case Study VI

Saraswati got married in 2001. She was a post graduate and was working as a teacher in a school. A few months after her marriage, her mother-in-law started asking her about her savings from her job. She said that she should have brought it along with her to her matrimonial home. Or her parents should have given some money in her name. Her husband also started saying that since she is not good looking she can compensate by bringing some money from her parents' home. This continued for a year. Saraswati tried to look for a job but her husband and in-laws did not allow her to work. They started making her do many menial jobs in the house. Her husband constantly taunted her about her looks and that he should have married one of the other girls who were better looking and from affluent families. He even started threatening her with divorce proceedings. Within two years, Saraswati's health deteriorated. She stopped talking to her parents and friends and even stopped them from visiting her. One day, after a long fight in the house, she was locked out at night. She went to the police station and told them about her problem. The police filed a case under section 498A IPC against her husband. The following day they sent her to her parents' home. Her husband was arrested and sent to judicial remand. He got bail after one month.

After a relative intervened, Saraswati agreed to go back to her husband's house as they promised not to repeat the behaviour. However, after a few months, her husband started the same behaviour. He even started beating her saying that now he would teach her a lesson for sending him to jail. Saraswati managed to go back to her parents' house and asked for cancellation of his bail. When they approached the court they found that the case had been closed.



Suggested points for discussion:

1. Were the police right in arresting Saraswati's husband on the basis of Saraswati's complaint?
2. Can any action be taken against her mother-in-law, although she was not mentioned in the FIR?
3. What remedy does Saraswati have after finding that her case has been closed?

Case Study VII

Police got information of the presence of Naxalites in Vasapanda village in Vishakapatnam district and raided the village. They rounded up a group of tribals and allegedly beat them up for providing food and shelter to the Naxalites. One of the tribals Korra Satya Rao received severe injuries on his head and shoulders and died due to these injuries a few days later.

Suggested points for discussion:

1. On the recommendations of NHRC the policemen were booked under the IPC. What would be the appropriate charges that the court can frame against the policemen ?
2. After no complaint was filed against the policemen for several months, Korra Satya Rao's brother filed a copy of the NHRC order in the Magistrate's court. Can the Magistrate take cognizance of the case?
3. Villagers are often arrested for harbouring Naxalites. Do they have a valid defence in law?

Case Study VIII

A police jeep passing near the forest was blown up by landmines and two policemen died. The next day a police party came to the area. In a shootout Rajanna died. The police said that he died in an encounter when extremists attacked the party on the way. Rajanna's wife claimed that he was at home and was picked up by the police and taken

away. Since the police refused register an FIR she filed a complaint before the magistrate.

Suggested points for discussion:

1. Should a magistrate take a cognizance of the complaint on these facts?
2. What is the degree of proof that is required by the court to establish a genuine encounter death?

Case Study IX

Padmamma did coolie work in the fields owned by Pratap Reddy. Padmamma was from the Koya tribe, which is a Scheduled Tribe. Pratap Reddy began cohabiting with Padmamma and promised to marry her. A couple of months later Padmamma became pregnant. Pratap Reddy's family did not approve of this relationship, so he left Padmamma and went to live with his family. Padmamma gave birth to a son. Her parents went to Pratap Reddy and broached the topic of marriage. He refused to have anything to do with her. Padmamma's parents were advised to go to the police station to file a complaint.

Suggested Points of discussion:

1. Under what provision of law can the complaint be made?
2. Do you think Pratap Reddy should be granted bail?
3. What will a judicial officer do if the charge-sheet filed in this case is on the basis of investigation done by a Sub-Inspector of Police?





REFERENCE MATERIAL FOR DISCUSSION OF CASE STUDIES

[A resource pack with all the reference material was sent to participant officers ahead of the symposium]

PART I: RIGHTS OF THE VICTIM AND ACCUSED

a. *Arrest, Detention and Interrogation*

Kharak Singh v. State of UP & Others

Nandini Satpathy v. P.L. Dhani

Joginder Kumar v. State of UP

D. K. Basu v. State of West Bengal

Ranjit Singh v. State of Punjab

Mrs. Angammal, Petitioner v. State of Tamil Nadu & Ors

State of Maharashtra v. Christian Community Welfare
Council of India & anr

State v. NMT Joy Immaculate

State of Himachal Pradesh v. Pawan Kumar
Gangula Suryanarayana Reddy v. State of A.P.

b. *Handcuffing and Fetters*

Sunil Batra v. Delhi Administration

Prem Shankar Shukla v. Delhi Administration

Sunil Batra v. Delhi Administration,
Charles Sobhraj v. Delhi Administration

Citizens for Democracy through its
President v. State of Assam & ors.

Officers in the Guntur symposium present a role play





c. *Bail*

Hussainara Khatoon & anr. v. Home Secretary,
State of Bihar

Motiram & Ors. V. State of MP

Uday Chand v. Sheikh Mohd. Abdullah

CBI v. Anupam J. Kulkarni

Aslam Babalal Desai v. State of Maharashtra

Uday Mohanlal Acharya v. State of Maharashtra

Prahlad Singh Bhati v. NCT, Delhi & anr

Ram Govind Upadhyay v. Sudarshan Singh

d. *Custodial Violence and Compensation*

Khatri v. State of Bihar & Others

Rudul Shah v. State of Bihar

Nilabati Behera v. State of Orissa & ors

Paschim Bangal Kheria Sabar Kalyan Samiti
v. State of WB

e. *Speedy Trial*

AR Antulay & Ors v. RS Nayak & Ors

Raj Deo Sharma v. State of Bihar

Mahendra Lal Das v. State of Bihar

P. Ramchandra Rao v. State of Karnataka

f. *FIR and Cognizance of Offences*

UPSC v. S. Papiah & ors

Satvinder Kaur v. State (Govt of NCT of Delhi) & anr

Trisuns Chemical Industry v. Rajesh Agarwal & ors

Sri Bhagwan Samardha Sreepada Venkata Viswanadha
Maharaj v. State of AP & ors

Navinchandra N. Majithia v. State of Maharashtra & ors
State of Rajasthan v. Teja Singh & ors

Rajinder Prasad v. Bahir

Kari Choudhary v. Mst. Sita Devi & ors

Iqbal Singh Marwah & Anr v. Meenakshi Marwah & anr

g. *Trial*

Zahira Sheikh v. State of Gujarat

PART 2: RIGHTS OF WOMEN

a. *Rape/Sexual Assault and Child Sexual Abuse*

Gajanand Madanlal Mehta v. State of Gujarat

Bhanwari Devi Case – Extracts

State of Punjab v. Gurmit Singh

Delhi Domestic Working Women's Forum
v. Union of India

Chairman, Railway Board v. Chandrima Das

Sakshi v. Union of India & ors

Sheba Abidi v. State & anr

b. *Sexual Harassment at the Workplace*

Vishakha & ors. V. State of Rajasthan

Apparel Export Promotion Council v. AK Chopra

c. *Immoral Traffic (Prevention) Act*

Smt. Ram Devi v. State

d. *Maintenance*

Daniel Latifi & ors v. Union of India

PART 3: RIGHTS OF THE CHILD

a. Brief on Juvenile Justice and Child Rights

b. Juvenile Justice (Care & Protection of Children) Act, 2000

c. Andhra Pradesh Juvenile Justice (Care And Protection
Of Children) Rules, 2003



C. Cases

Umesh Chandra v. State of Rajasthan

Bhola Bhagat v. State of Bihar

Pratap Singh v. State of Jharkhand

PART 4: UNITED NATIONS HUMAN RIGHTS TREATIES

Universal Declaration of Human Rights, 1948

International Convention on the Elimination of All Forms of Racial Discrimination, 1965

International Covenant on Economic, Social and Cultural Rights, 1966

International Covenant on Civil and Political Rights, 1966

Convention on the Elimination of all forms of Discrimination Against Women, 1979

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Convention on the Rights of the Child, 1989

DISCUSSION ON THE CASE STUDIES

The role of the judiciary in investigation

Interference of the magistrate in investigation not permissible. Under law the investigation is the exclusive domain of the police and no one can interfere in this work of police. There is no power either expressly or impliedly conferred by the code on a magistrate to call upon the police to submit a chargesheet when they have sent a final report under S.169. Magistrate cannot impugn the jurisdiction of police by compelling to file a chargesheet. (1968 SC 117). The investigation of offence is exclusively reserved for the police officer whose powers in that field are unfettered so long as the power to investigate into cognizable offences is legitimately exercised in strict compliance with the provisions

falling under chapter 12 of the code. If not legitimately exercised, what is the power? Can we not interfere? Then what are the ways to interfere? We have to innovate. In an injury case a chargesheet is filed before a magistrate without a wound certificate. What should he do? Return the chargesheet for filing the wound certificate. Is it not helping the investigation in a way without interfering in the investigation? The police officer comes back and says that no wound certificate was obtained because he cannot travel back in time and bring back a wound certificate. Did any of the witnesses speak about the injuries and places of injuries? We return it. Suppose he has not examined one witness on that score he will think over. If there is a witness who can speak about the injuries he will collect the statement and re-submit the chargesheet.

There is no prohibition. There is a practice, which is approved. The only embargo is we cannot direct and they cannot investigate without our permission. They can file a supplemental chargesheet. Then if all these steps are implemented and still we are helpless there is a provision for reference where our powers are curtailed. We can make a reference to the high court expressing our opinion and the high court has the power of judicial review of investigation. Action of police officers in the field of investigation can be subject matter of judicial review by the high court. The high court can give suitable directions and see that the defects are rectified. Ultimately what is our endeavor? Lapses of police officers, sometimes deliberate, do not defeat ends of justice. After all when technicalities are pitted against ends of justice we are always there to prefer ends of justice. So we are not powerless. There is one more avenue now open to us. As district judge we receive a complaint that investigation is not proper. We may not be able to do it as a district judge. Then I refer that to my lok adalat as chairman as lok adalat. And under lok adalat powers there are no fetters. I can give a direction to the police to do the needful and follow it up with senior officers.



Death of a Woman and her Minor Daughter in Police Custody during Interrogation

A woman and her 17-year-old daughter were called to the police station for *interrogation* in relation to the death of the husband/father. There they are subject to physical and mental torture, which forces them to commit suicide while still in custody. On plain reading of this case study it is clear that the woman and her daughter died due to police torture. Under S.46 of Cr. P. C. procedure for *arrest* is clearly laid down.

The mandatory provision is that no woman can be called to the police station for interrogation. That is the proviso to S.160. There is a complete embargo. Where in the law is there a 'sunrise - sunset rule' for purposes of *interrogation of women*? Is there an amendment in the law to this effect?

- If she was called as a witness it is a violation. If she was called as an accused for interrogation then it is not violation.
- interrogation applies only to the accused, not to the witnesses. Witnesses will be examined.
- if she is already in the police station and it is brought to the court then already we have S.97 for wrongful confinement. So we can send a search warrant. Thus criminal proceedings can be initiated against such violators apart from departmental enquiry.

A Child in Conflict with the Law

A child is no longer treated as a criminal but as one who has unwittingly come in conflict with the laws. So this is the procedure we have to follow with regard to the first question.

Under S.13 of JJ Act of 2000 there is a provision, which directs the officer to arrest the juvenile and to inform the

parent or guardian of such person. As well as to the probationary officer of such arrest to enable him to obtain information of the antecedents. And if the officer fails to do so the magistrate can give directions to the officer to inform the parents and ask them to produce the child before the court and also to inform the probationary officer. In this regard there is another duty cast on the officer to direct the police officer to follow the procedure laid down in Child Labour Act. It is not out of place to give some provisions with regard to the Child Labor act. Art.39 of the Constitution which says that children are given opportunities and facilities to develop in a healthy manner and in a condition of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment. In the Convention on the Rights of Child it is clearly stated that states parties recognize the right of a child to be protected from economic exploitation and from performing any work that is hazardous and from interfering with the child's education or to be harmful to the child's health – physical, mental, spiritual and social development. In this regard we have to give necessary directions to the Asst. Commissioners of Labour also to take necessary action against the employers.

Sexual Assault on a Woman

Bhanwari, a poor and uneducated woman of a lower caste is a social worker in her village and is involved in a government campaign to eradicate the practice of child marriage in that region.





An uneducated and a poor woman of a government village is implementing a government program. In a welfare state it is the bounden duty of every citizen to carry out and implement the official programs formulated by the government and to penetrate into the mind of the public while acting in pursuance or consonance of the government activities. A protection is to be given to such women, especially weaker sections. The Child Marriage Restraint Act is an important legislation. Here there is no hard and fast rule such thing will not occur or upper caste people will not commit such things and the contemplation of the judge is erroneous. His view is erroneous in acquitting the accused. And when the ego of the upper caste people is wounded, definitely they may commit such offences to take revenge.

Naturally in such circumstances Bhanwari would not dare to go to police station in the night. We are aware of the present scenario and situations in India. There is no protection for the women who go to the police station – there is possibility of committing rape on her. So in such circumstances, going and presenting a report in the day-time cannot be ruled out.

There is no hard and fast rule that there cannot be a conviction on the sole testimony. A sole testimony can be acted upon to give a conviction if it is unnatural, improbable and does not suffer from any infirmities. There is no bar for a conviction under sole testimony. There are lots of decisions of the Supreme Court in this aspect. With regard to the minor discrepancies, naturally in truthful witnesses minor discrepancies will occur because photographic expressions

cannot be expected in a court with regard to each and every aspect of how they have committed the offence of rape.

As per section 9 and 10 of the Penal Code, 'woman', 'man', 'persons' are mentioned in the definitions — whether she is prostitute, loose character, etc. is not contemplated. Woman means woman and she is entitled to the protection under the law against any offence committed against her. Because she is a prostitute or a woman in a flesh trade, she is not denied the opportunity and the protection under the law.

Should the court accept an application from a man convicted of rape, offering marriage to the victim? Will his sentence be reduced if the victim agrees to marry him?

- This is the important aspect because her human right has already disappeared because one cannot bring the virginity because it was spoiled. But how to protect her human rights? Do the laws allow such things? For example in this case – it is a case of S 376 IPC. It is punishable with life or imprisonment upto 10 years and not be less than 7 years. But there is a proviso under it. By assigning special reasons the court can impose sentence less than 7 years. So by assigning this reason, i.e., by stating that the accused came forward to marry the woman and to allow them to live peacefully a lesser punishment has been awarded. The Probation of Offenders Act is not applicable for rape cases because it is an offence punishable with imprisonment for life, so a lesser sentence can be imposed.
- If the woman is also agreeable to marry him and lead a life, we will be inhuman if we reject that and to say, 'you marry him, the man will be in jail for seven years and you be outside'; is it a humane approach? I don't think so? We should give lesser punishment with giving adequate reasons. That is permissible under law.

The case in Delhi was a very violent case of rape, where the rapist actually gouged her eyes out. Then when he was



convicted he put in an application to marry her. Where is the provision in law that allows the Sessions judge to accept such an application? As far as we know there isn't a provision in law to allow this. It is not necessary that a woman may want to marry. What our experience has been in talking to hundreds of women across the country that a woman who has been raped will never want to marry a rapist. The only thing is societal compulsions.

- The Supreme Court in one case has taken into consideration the mitigating circumstances and then after consent of both the victim and the accused they have reduced the sentence. But that is not a law, which can be applied to each and every case. In another case the victim may say 'he has spoiled my life once and for all; I am not going to marry him'. Then the accused cannot take recourse to the plea that 'I am offering to marry and I am entitled to mitigating circumstances.' To reduce the sentence or take note of mitigating circumstances the court will take into consideration the consent of the victim. *Without the consent of the victim the question of mitigating circumstances does not arise.*

This point has to be viewed from two angles. One is legal, the other is socio-psychological. As far as the legal is concerned there is minimum mandatory punishment for these things. When there is a minimum mandatory punishment can the courts reduce on those grounds? Thereby they are legislating and it amounts to judicial legislation. There are one or two SC decisions. In a case of rape when the sentence was reduced to 4 or 5 years and the Supreme Court has reprimanded the judge and insisted on imposition of minimum sentence. Rape is a horrendous crime. Let us not only be male oriented in our thinking. By reducing the sentence you are subverting the very criminal process itself. And under what circumstances she must have been forced to say, 'yes I am willing to marry'. Will she be in a position to adjust psychologically? Courts must act with an inquisitorial mind like civil law countries. Will it be psychologically possible for a rape victim even if she says yes? Considering these two angles, the sentence should in no case be reduced. It is not the rape victim alone. The sentiments of society as a whole are hurt.





This reference to mitigating circumstances, at what stage does it come? Mitigating circumstances are at the time of committing the offence. Mitigating circumstances cannot come in at a subsequent time.

The Right of Adivasis to Peaceful Protest

The first point that needs to be considered is the tribals formed an association, which was fighting for a just cause. So forming an association and protesting for a just cause without using arms is a fundamental right. So while exercising the fundamental right by the tribal people the police without having any warning opened the fire. The tribals are justified in protesting in peaceful manner without any arms. So the action of the tribals is justified. But however the police people opened the fire even though the situation is not warranted. In such circumstances it is clear that even if the situation is warranted the police before opening the fire against the mob, has to follow the code and the principles that were prescribed. Instead, the police straightaway opened the fire without following the prescribed procedure or without taking any steps for curbing the unlawful movement.

The second point whether the judicial officer can take suo moto action against such police? As far as this point is concerned, as per S.190(3) CrPC the court can take cognizance of any offence upon information received from any person or upon his own knowledge that such offence has been committed. As can be seen from the facts of this case after the tribals were taken into custody they were produced before the court and were remanded for judicial

custody for 15 days. This shows that the police had placed some papers before the court. So based on the documents produced before the court the court has knowledge of the offence committed by the police. On the basis of this knowledge, under Section 190(3), the court can take cognizance against the police who opened the fire unlawfully. In the decision reported in 1975 Cr.L.J 1565 and 1980 Cr.L.J 896 (Raj) it was held that the magistrate can derive his own knowledge of the offence from the police papers placed before him. So as per the decisions pronounced by the courts, the courts or judicial officers have power to suo moto take action against the police officers who abused their powers by opening the fire against a peaceful mob.

The third point that needs to be considered is what are the considerations for bail in a case like this where the accused are ordinary citizens with no history of criminal action? The judiciary has a role to play. The judiciary has to control it. We have to take these into cognizance suo moto because a peaceful protest is not an unlawful assembly. We should grant bail to all those persons who are protesting peacefully and we should also take judicial notice and initiate suo moto complaints.

Encounter Deaths

What is the degree of proof that is required by the court to establish a genuine encounter death?

The answer is the burden is on the police because there is justified action while pleading right of private defence. They contended that as the naxals attacked them, to protect their lives they killed the naxals in the encounter. When the police unequivocally admit the act of killing the naxals and when they plead right of private defence under the general exceptions, the burden is on the police under S.105 of the Indian Evidence Act to prove the general exceptions. But the standard of proof to discharge the burden under S.105 Cr.P.C is not so heavy as that of the prosecution and proof beyond reasonable doubt is not the standard of proof. It can be proved by preponderance of probabilities either by adducing direct evidence or by proving the same from circumstances of the case from the prosecution evidence.



Obstacles Faced By The Judiciary

Reflecting on the obstacles faced by the judiciary in operationalising human rights standards, several officers felt that the judicial system is hampered by inadequate investigation and the lack of adherence to procedure by the officers of the executive. While the court is bound by procedure, which by itself does not leave too much scope for intervention, officers have also felt that there are enough checks within the CrPC to ensure realization of human rights. There has in several of the symposia been an intense debate on the Human Rights Act and its scope in checking human rights violations. Officers have felt that while one problem is the absence of a clearly defined procedure – apart from the procedure defined in the CrPC in the Act, others have felt that human rights needs to be defined clearly within the Act, so as to restrict its scope and offences need to be enumerated under the Act so as to distinguish it clearly from offences listed under the IPC. The difficult and often fraught relationship between the judiciary, law enforcement agencies and the Bar has been discussed in great detail with problems being

delineated both in oral and dramatic presentations. The other problems that confront the judiciary is the pendency of cases, non production of undertrials, non appearance of investigating officers and insufficient budget allocation for cases. There are of course ways of getting around these problems as well, and what has been extremely energizing about these discussions is the fact that officers have been able to share problem solving strategies. Several officers from different districts have underscore the rights of witnesses and the importance of witness protection underscoring the importance of treating witnesses with dignity and ensuring their security, something not often done.

The refusal of the police to grant bail and the non execution of NBWs is yet another problem that came up repeatedly in our discussions with officers from different districts in the state. The separation of law and order functions from investigation it has been felt might make it possible to seek greater accountability from the police.

- The public is under the impression that the Criminal Justice System is completely at the edge of the collapse. The reason for this unfounded and baseless allegation is the percentage of convictions. The crucial question that has to be considered at this juncture is, who is responsible for acquittal of criminal cases? The criminal justice system consists of a number of segments – victims, the police, the prosecution, the courts, the witnesses etc.

Above all, each system has its merits and demerits and the Criminal Justice System is no exception. The system is generally good; the fault lies with the people who operate the system. If they, apply their mind and are dedicated or committed, the evils may be eliminated from the system. If the same tendency continues people may lose faith in the judiciary. We have to set right the mindset of the witnesses, police prosecution and the judicial officers. We have to develop the work-culture, the commitment and necessary training has to be provided so as to equip all the four wings with the latest developments in society. Proper cooperation and co-ordination among all the four wings is a condition precedent for the smooth running of the system.





Logistic Support:

- Providing a suitable software and imparting appropriate training to the staff to use the software so that the information of the court readily available in the computers can be used to minimize the attendance by each member of the staff.
- Providing internet facility to each court and formulating a process for communication of information between the court and source of information required such as the police control room, the concerned revenue office, the municipal office etc.
- To include appropriate software in the computer available with the court for the purpose of systematic reproduction of statistics, so that much time of the staff spent in preparing statements with statistical information can be reduced drastically and that time would be available to them to attend to the real work of the branch where their personal attention is highly needed.
- Inefficiency of the staff is also a problem. Frequent training programmes for the staff will also be a help to judicial officers. Appointment of staff on ad-hoc basis will also help.
- The role of a communication system, as far as the judiciary is concerned is not of material significance. However it will have its own role. The judiciary is not going to interact with any other agency, at the time of the adjudication process. In some cases, where investigation is required at the pre-trial level, if information has to be gathered from some source other than the police we must have some sort of coordination with those sources. If the court wants to get some information from the police, which is not readily available with the person attending the court on behalf of the prosecuting agency, some sort of a speedy communication with the police is required. Before introducing such communication, the development of the system to receive such communication is also



necessary. These are some of the areas where the courts can be benefited, by improving the infrastructure.

- Budget must be requested at the correct time from the High Court. In a dacoity case several witnesses used to come from far away places — some officers and some poor persons. We requisitioned a budget and sent them demand drafts later. But this cannot be done in every case. Payment should also be done at the time when witnesses appear before the court.

“I saw a news item that on Wednesday five women were arrested by the police dancing semi nude in a club. On the night of Friday, at about 9 pm all five of them were produced before me for remand. With regard to the news item in the newspaper and the production of accused there is a big gap. They were produced before me for offences punishable under *Prevention of Immoral Traffic Act* and *Prohibition of Objectionable Performance Act*. I never had the opportunity of perusing this second Act. I asked the police to produce the act; I sent my staff to obtain the act from the residence of the local advocates; but we could not get the act. The court could not secure the act from any advocate and it could not secure the act from the library of the court. Three or four advocates came to me to remand the accused the same night. They said that the offences are bailable. Ultimately I contacted a police officer in a far off place and he read the relevant sections out to me.”



The Victim

- The first and foremost one is the complainant or victim. If the complainant or the victim approaches the police with true and correct facts, then it is good foundation for convicting the guilty. Whenever, an untoward incident takes place, the victim approaches the police station to lodge a complaint. But, unfortunately, the complainants, instead of placing the true facts before the police, often exaggerate so as to implicate unconnected and unnecessary persons in the case in order to harass them. This is one of the reasons for the failure of the system. If the complainant or victim places the real facts before the police, then they can investigate in a proper manner

The Police System

- In India there is no demarcation between the law and order enforcing agency and the investigation agency. As

of today, both the functions are being carried out by a single police force. The police are generally pre-occupied with bandobast or other law and order problems. Lack of proper police personnel or the dearth of staff in the police force is one of the reasons of the failure of the Criminal Justice System.

- The second reason is that the Investigating Officers are not equipped with the latest developments in society. Now cyber crimes are on the rise, the Investigating Officers are not well versed with computers and the recent Information Technology laws.
- The police, instead of going and examining the witnesses at their places, sit in the police station and prepare Section 161 (CrPC) statements without examining the persons concerned. They do not visit the scene of offence, from where they can get material which would be useful at the time of trial (especially in circumstantial evidence cases). Even when they collect material, they do not take proper care- they do not seize the articles as a precautionary measure. In western countries arrest is the last stage and much investigation precedes it, whereas in India, arrest is the first stage and investigation follows arrest. They do not take adequate care in the preparation of the charge sheet and filing of the necessary documents along with the chargesheet. All this leads to delay.
- As far as the police force is concerned, it is time that the police is demarcated into two wings: the investigation agency and the law and order agency. The investigation agency, should act as an independent body, without influence of the party in power or higher officials. Only then, the system will survive. At present, every police officer has to conduct more than 100-200 cases a year, which is humanly impossible. This is one of the main reasons for the deteriorating quality of the investigation.

Even though the Supreme Court in Sri D.K.Basu vs. State of West Bengal reported in AIR 1997 SC 610 has laid down the guidelines regarding right of arrested persons and the



procedure to be followed by police, no system is provided to enforce the guidelines effectively in its true spirit. Police are manipulating the Record to show that they have complied with the said guidelines. As the Judicial Officers are overburdened they are unable to bestow their attention to verify whether the said guidelines are really complied with or not.

- In bailable offences also, the police are producing the accused before the Magistrate. Though under Sec.50 of the CrPC, a duty is cast upon the police to ask the arrested persons if he has sufficient sureties for releasing them on bail, this is not being done. In this regard, we feel that the Standing Instructions should be strictly implemented or action should be taken against the erring officer.
- Excise department has no recruitment of women constables. So women accused are routinely searched by male constables.
- In the contemporary society, certain people are being projected as protectors of human rights but people who are implementing the law are facing violations but not much concern has been shown by non-governmental organizations. Police personnel face this problem; they say they are dying because of attacks. Practical problems of law enforcement must be taken into account.

The Prosecuting Agency

- Lack of proper training to the Prosecutor is one of the problems. There is no commitment on the part of the Public Prosecutor to assist the court at the time of conducting of the trial. Apart from that, there is no proper co-ordination between the Investigation Officers and Public Prosecutor. Unfortunately, the prosecution wing conducts cases without ascertaining the correct prosecution version.
- Most of the Prosecutors are appointed by the State Governments and in some courts by the party in power. Prosecutors are not selected on the basis of their quality, ability and commitment. Moreover, most of the Public Prosecutors are not working with the witnesses before

the commencement of the trial. They simply come to the court without having opened the case-bundle at all! There is also no proper coordination between the Public Prosecutors and the police at the time of the preparation of the charge sheet. Lack of legal and scientific knowledge on the part of the Investigating Officers and lack of commitment on the part of the Prosecution, is another reason for the failure of the Criminal Justice System. It is high time that training is provided to all the Public Prosecutors so that they are equipped with the latest law and the latest developments in society and therefore conduct the trial in a proper manner.

- APP was appointed from civil background and could not conduct the case properly. There was no proper prosecution. APP conducted the trial in some cases against the accused and sometimes in favour of accused.

The Courts

- The judicial officers are overburdened with the pendency of various types of cases and Civil matters; besides attending daily Criminal trial matters, the judicial magistrates have to attend remanding the accused to judicial custody; granting of bails; acceptance of surety and recording dying declarations, which work is enormous due to increase of crime rate. Recently, cases in the Agency area is also entrusted to regular Judicial Magistrates, who are already overburdened. Besides the above Judicial Officers asked to hold Lok Adalats and legal literacy camps in villages, and administrative work. The Judicial Officers are asked to reach the target of disposal of cases fixed by the Hon'ble High Court by giving preference to oldest cases, matters and cases relating to senior citizens, women and defence personnel. It is humanly impossible to keep pace with the quantity of work and assure quality as well. Due to the workload, the officers are unable to concentrate on checking of the charge sheets at the time of taking of cognizance, which ultimately affect the merits of case. Entrusting of checking of charge sheets and property registers to untrained judicial staff is also a major set back. The foremost difficulty



in protecting the Human rights is lack of proper system and logistic support and infrastructure facilities to Judiciary despite its inclination to implement and protect Human Rights in letter and spirit.

- Sometimes, the Investigating Agencies do not produce witnesses, which results in delay in conducting trials. In most of the cases, the witnesses are being won over by the accused by coercion, undue influence or unlawful gratification. There is no proper security to witnesses. If the State is in a position to provide proper security to witnesses, certainly the conviction rate will be increased. Due to lapse of time, the witnesses are unable to speak. They parrot tutored versions in the courts. Lack of social commitment and responsibility on witnesses is also one of the reasons.
- The Magistrates Courts are working overtime (sometimes from eight in the morning till eight in the night). They sometimes take up about 10-15 charge sheets in some cases. Due to work pressure and lack of proper staff, they are not in a position to apply their mind at the time of the checking of the charge sheets. They do not verify whether the prosecuting agency has filed all the necessary and relevant documents along with the charges sheet. They realize the defect only at the time of the trial or at the time of the judgment. So each officer, has to apply his mind at the time of taking cognizance and check whether

the police has submitted the charge-sheet along with the necessary documents or not. At the time of the filing of the charge, the Officer has to go through the entire case-bundle, see the Section 161 statements and then frame relevant charges. If any defective charge is framed, it may lead to acquittal.

- With regard to the recent Circular in granting bail even during night from home without requisite infrastructure is difficult.
- Even if the remand is ordered after sun-set and also on public holidays, the jail authorities will not admit in jail basing on the provisions of the Jail Manual and Prison Manual. So there is need to make amendments in the manual and also suitable instructions are to be given to the Jail Authorities
- Under trial prisoners are not being produced due to lack of Escort, thereby the disposals are delayed.
- The overburdening of the court both in the range and the magnitude of work have direct bearing on the overall turnout of the officer's work. He hardly finds time to refresh his knowledge by referring to the relevant library material and to pay attention to the cases particularly those that warrant a thorough study. If the burden is lessened, it would help the officer to spend more time for disposal of cases, which could only give relief to the victim or the accused from the vagaries of investigation or trial.
- Increasing of the number of courts is also something that can be looked into. One Officer is asked to be in charge of a number of courts with the result that the Officer has to look into 8000-9000 matters. There should be distribution of work.
- Semi-computerization of the court with particular reference to preparation of statements with the aid of some suitable software preferably data base software would be beneficial as it would reduce the time the officer



spends for verification of the statistical details in the periodical statements and ensure ready availability of the information of the similar cases.

- Formulating a procedure so that a packet of cases consisting of all classes of cases in an optimum number would be placed before the officer and he would be asked to complete the trial of all those cases within a given time. The remaining cases can be called only once before the next packet of cases is to be entrusted. This would save unnecessary call work time and the time the officer spends to call the cases, which would not be taken up for trial. This would also reduce the heavy burden on the limited staff available to attend to the huge number of cases pending in the court concerned. The most important advantage is that the accused need not be required to attend the court many a number of times before actual trial has begun.
- Magistrates who are being entrusted with the work of recording Dying Declaration, Statement of Witnesses UJS. 164 Cr.P.C., conducting test identification parades, recording confessional Statement of Accused, are unable to devote their full time and bestow their full attention to the conduct of trial and speedy disposal of cases thereby unable to render speedy justice to the litigant public. Therefore, the function of recording Dying Declaration, Confessional Statement of Accused and Statement of witnesses and conducting test identification parades and record statements u/s. 299 Cr.P.C. and Final Report should be entrusted to one officer who is to be specially deputed for the said purpose in each station, preferably in Metropolitan areas and District Head Quarters. The same officers may be entrusted with the responsibility of recording the 299 Cr.P.C. statement, Final Report and other miscellaneous work.
- It is not the duty of the court to convict or acquit but to come to the truth.

The Witness

- During the trial the police are not in a position to produce the witnesses-there is a delay in conducting the trial. We know that the human memory is very short and people forget things in a short time. If the trial takes place after three or four years, the witnesses may not be in a position to refresh their memory or to explain to the court what exactly happened (with minute details) on that day. Also, there is no security for the witnesses and sometimes the accused may threaten, or gain influence over the witness. It is the duty of the State to provide proper security for the witnesses, even after the completion of the trial. This will also result in the witness reposing confidence in the system. We will thus create an atmosphere, where the witnesses can freely come and depose the true facts without any fear or favour.
- Eyewitnesses turning hostile: Sensitization of witnesses and then giving protection to the witnesses to see that they are given the help to see that even if they are put before the court nothing will happen to them at the hands of the factionists and powerful criminals.
- The problem of witnesses turning hostile is perhaps because the 161 statement is not signed – so the witnesses simply refuse to corroborate.
- There is no obligation on the court to accept all witnesses. Witnesses may be rejected by the court and also by the Public Prosecutor. The problem is when the main witness





turns hostile. Although the court can still convict, it is difficult to uphold the conviction.

- Judicial officers must be sensitized towards the rights of witnesses. They have to face much humiliation in courts at the hands of advocates, police, constables, court attenders and sometimes even the officers. Sometimes the witness is taken to be arrogant although he is not. The witness should be examined keeping in mind his own lifestyle and background and should not be expected to cater to the ego of the court. There is no provision for treating the witness well and for protecting him or her after he or she leaves the court. They are threatened and sometimes even attacked and killed in the court premises. Identity and security of the witness is never protected because of 'transparency'. The whole case depends upon the witness but he is the least protected. The Court should insist that the constable gives the allowance to the witness before he is examined. Then the witness' confidence will go up.

The Defence

- We cannot dispense with the role of the defense counsel in the Criminal Justice System. Right from the day of filing the memo of appearance till the date of delivery of judgment the learned defence counsel, always seeks to protract the matter to enable his client to escape the clutches of law. It is the duty of the Presiding Officers to curtail the cross-examination and delay tactics.

Lacunae in the Law

- Though Human Rights Courts are established, Under Section 30 of the Human Rights Act, 1993, it is unfortunate to state that till now, the nature and the functions of the Human Rights Courts, have not been mentioned in the Act. The Powers of the Human Rights Courts including the penal action i.e, punishment for violation of Human rights, though the said Section clearly states that the said Court has to try the offences of violation of Human Rights. There is no investigating Agency to assist the Human Rights

Courts as provided under Section 37 of the Act. Procedure to be followed on receipt of a complaint received from a victim, by the Human Rights Court is silent, in the Act. Even Rules are not framed so far as required under the Act. Therefore, the Human Rights Act, should be amended to remove the above deficiencies and to make the Act more useful and meaningful. Human Rights courts should be empowered to give monetary relief and in genuine cases, to give just and reasonable interim relief to the victims.

- Whenever a Magistrate orders for release of accused on bail on execution of self bond with two sureties, and in spite of time granted, if he is unable to produce adequate sureties he is unable to approach the same court to revise the bail order as the *Magistrate cannot review* his own order which is resulting into unnecessary incarceration of the accused.
- There is no effective provision in Cr.P.C. empowering the court to secure the presence of witnesses and particularly investigation officers who are intentionally avoiding receipt of summons and also avoiding attendance in the court even after receipt of summons. This causes abnormal delay in disposal of criminal cases. Adequate provision is to be incorporated conferring power on the Court to secure presence of witnesses particularly police witnesses to deal with him according to law for disobeying the summons in Court amending the present available provision which is not effective and as it is cumbersome to deal with the situation.
- Adequate statutory provision should be incorporated making it imperative on the part of investigating and prosecuting agencies to maintain co-ordination with judiciary in rendering effective Criminal Justice System. As per the said provision, there must be accountability on the part of said prosecuting and investigating agency.
- Since the adversarial system is followed in India, the Court is bound by procedure. There is not much scope for intervention. Some amendments must be made to the criminal law.



- Human Rights Act is not effective because of lack of procedure. Specific offences must be listed which will make it possible to deal more effectively with human rights violations.
- An offence was registered in my court for human rights violations. I marked it to the Human Rights Courts but it came back with no comments.
- The designated court must proceed for trial of offences under IPC. Where no specific provision exists, the CrPC has to be followed.

Coordination between the Different Arms of the Criminal Justice System

- Need to have periodical meetings with all three limbs and necessary instructions shall be given accordingly to all the concerned agency for effective and speedy disposal of cases.
 - Each court shall have regular Prosecutor thereby pendency can be reduced drastically.
 - Charge sheet shall be routed through the A.P.Ps., the SHOs shall attend and monitor the cases regularly with the help of an Liaison Officers.
 - Lack of co-ordination between the judicial officer and the investing agency may lead to occasioning injustice to the person in detention particularly for production of the accused for the purpose of remand. The investigating agencies may be required to pass on information to the court without delay if the accused could not be produced. *Though the video conferencing is available at a few places, it has its limitations and it is not available at many places.* So, a systematic communicative coordination between the court and the investigating agency would enhance the scope of rendering speedy and effective justice to the accused and thereby protecting his fundamental right. After all, he is only an accused and not an adjudicated criminal.
- In the trial of cases there is need for the prosecuting officers to take active role to pass on information to the court about the witnesses, the need to examine all or not, the availability of the witnesses, the reasons for any longer period for production of documents, in original, etc. The prosecuting officer may also appraise the court of the time to be taken for examination of the witnesses on each day. Such information, if gathered, before hand it would help the court to finalize the dates of the trial of certain classes of cases, so that optimum number of cases are posted in a week. This would result in avoiding unnecessary adjournments and repeated attendance of the complainant, the accused and the witnesses.
 - Regarding investigation failures, the law laid down by the Supreme Court is very clear – keep aside the investigating officers' lapses and look at the other evidence on record. If that evidence is enough to come to the conclusion regarding the guilt of the accused and is sufficient to prove guilt beyond reasonable doubt, then in spite of investigation lapses a conviction can be recorded. Only exception is whether the lapses vitiate the trial or not. This is the only test to be applied.
 - Regarding non-production of undertrial prisoners, I think in Visakapatnam and Vijayanagaram districts this problem is not there. The police have got sufficient forces here in these districts to produce undertrial prisoners for facing trial. There is a practice in the State of AP to hold review meetings every month. The superintendent of Police and





the District Collector attend the meeting in which cases will be discussed where witnesses are not produced or investigating officers do not attend. These cases will be listed; after calling information from all the courts in the district, a statement will be prepared and all this will be discussed in the review meeting. One important suggestion is in such cases even a court can be held in the jail premises and the case can be completed there.

- The increase in the number of courts is a matter not exclusively within our domain. The only thing we can do is if one court is overburdened, in so far as criminal cases are concerned, under S.408 of the Cr.P.C the sessions judge has the power to maintain equilibrium. He can withdraw cases and redistribute cases so that all courts have sufficient work and no court is overburdened. However, we have to be careful on locating the courts itself. Courts must be located in those places where there is more work. One officer who is having less work can come over to the district headquarters once a week and hold an additional court. And for those two days he will preside over cases and share the burden of the other officers.
- Protection to the witness means protection to not only the witness coming before us, his entire family needs protection. How long our police force can be attentive and give protection is a big question.
- So far as the co-ordination and cooperation between the three wings involved in the criminal justice system, i.e., the investigating agency, the prosecuting agency and of course our judiciary, there appears to be some ambiguity inspite of the monthly meetings that are being held in the presence of the District Collector, the Magistrate and the Superintendent of Police. Though the matters are discussed there as to the production of accused, witnesses, execution of warrants and other issues, things do not move as planned. So there we find it difficult.

- Where case management and time management is concerned, we do plan it out, we take up the priority wise cases, seniority wise, year wise and undertrial prisoners, senior citizens, and all that. So far as the failure of cases is concerned, of course, we not may be able to say much in this regard as it all depends on the investigating agency and the witnesses. Sometimes they turn hostile and the case results in the acquittal.

Conclusion

The intensive interaction with judicial officers focused on their experiences – drawing out best practices and thinking through thorny issues that inevitably crop up in their everyday engagement with the criminal justice system. The discussions were also structured to offer the officers an opportunity to engage with issues of public importance that nevertheless are decided in their courts – whether these related to arrest and detention, custodial violence, child rights and the juvenile justice system, is there a different standard of “ethical” sentencing in rape cases, distinct from and outside of the “four corners of the CrPC”, the more widespread use of alternative dispute resolution [ADR] mechanisms like trained conciliators and mediators and so on.

On the Role Play

The discussions were vibrant for another important reason as well. For the first time in Andhra, judicial officers came forth to express their perception of the criminal justice system in a dramatized form. The role play was a runaway success. The problems dealt with reflected the impediments that judicial officers encounter in delivering justice in different cases because of insufficient/inefficient investigation, as well as problems in the process of trial. 498 A, Filing of FIR, differential treatment of rich and poor suspects, conduct of the police, public prosecutors and defence lawyers and court staff in court and their behaviour towards the witnesses and complainants, reflections on the life of different officers in the criminal justice system in Yamaloka, with the police officer



being sentenced by Lord Yama to do voluntary work in Amnesty International, formed some of the themes of the role plays. The space of theatre, several officers reflected, offered them an opportunity to reflect on their situation in unprecedented ways and we hope to provide a more detailed report of the themes etc. at a later stage.

The role plays have been extremely significant and very important because what it has done both for people who were watching and for the people who were performing the role play was that it was not just entertainment. It was a reflection of the predicament of the people who come before us. And it was an internalizing of that predicament, which we don't do on an everyday level. We are sympathetic to the people who come before us and we deliver justice to them but we don't often get the opportunity to internalize those problems and present it in the way in which we have. It has given a very refreshing and rich way of looking at these problems and understanding them.

Issues

The issues that came up in the course of the two days in each symposium were diverse and complex. The officers raised concerns pertaining to Juvenile Justice Act and provisions there under; issues pertaining to the bonded labor act and the SC ST prevention and atrocities act; rights of persons in custody. While several officers said that we do not look adequately at the rights of victims and that human rights discourses concentrate on the rights of the accused, the concerns that were raised, cases of children or cases under bonded labour act, or SC ST Prevention of Atrocities Act, cases of violation against women, are the cases that deal with victims and within the perspective radical victimology, which basically do not look at individual victims, but classes of victims, who are victims because of their social position — victims of structural violence.

Two issues emerged, which are very valuable — the critical issues of free speech and right of dignity within the courts that has agitated officers at each of the symposia — this sentiment often coming out in the role plays. When officers are asked to actually dramatise the situation, most of them

look at question of the rights to dignity of persons who appear in the courtroom. This is something that does preoccupy officers but might not be verbalized all the time. With regard to the violence by private actors there is a slight departure between the judicial view and the jurisprudential view. In cases of large scale violence there is need to use the clause of “due diligence” where it is not direct state responsibility alone that needs to be taken into account. The failure of the state to offer adequate protection, to exercise due diligence in protection of persons who are potential victims, is also a sign of state responsibility even if the acts have been committed by “private actors”.

As it is the lower judiciary and magistracy in particular that stands at the threshold of the protection of human rights, the dialogue initiated with judicial officers has been an important step in moving towards the realization of human rights.





List of Participant Officers

Schedule of Symposia

Date	Place
09 & 10 July, 2005	Hyderabad
13 & 14 August 2005	Visakhapatnam
24 & 25 September 2005	Tirupathi
22 & 23 October 2005	Guntur
12 & 13 November 2005	Warangal
10 & 11 December 2005	Shameerpet

9 & 10 July 2005, Hyderabad

B.S. Bhanumathi	III Addl. Chief Judge	Hyderabad
A. Shankaranarayana	Pri.Spl. Judge for SPE & ACB cum IV Addl. Chief Judge	Hyderabad
K. Mohan Rao	Judge, Family Court cum Addl. Chief Judge	Secunderabad
G. Gopala Krishna Murthy	IX Addl. Chief Judge (FTC)	Hyderabad
P. Adinarayana	X Addl. Chief Judge, (FTC)	Hyderabad
K.V. Kishan Rao	XI Addl. Chief Judge (FTC)	Hyderabad
G. Udaya Gowri	I Addl. Judge	Hyderabad
T. Venkateswara Reddy	II Addl. Judge	Hyderabad
S.P. Ismail	III Addl. Judge	Secunderabad
D. Nagarjun	V Addl. Judge	Hyderabad
K.B. Narasimhulu	VII Addl. Judge	Hyderabad
M.V. Ramesh	XII Addl. Sr. Civil Judge (FTC)	Hyderabad
K. Sailaja	I Asst. Judge	Secunderabad
M.V. Ramana Kumari	II Asst. Judge	Hyderabad
K. Uma Devi	III Asst. Judge	Hyderabad
G. Bhoopal Reddy	IV Asst. Judge	Hyderabad
V. Vara Prasad	VI Asst. Judge	Hyderabad
K. Lalitha Kumari	VIII Asst. Judge	Hyderabad
G. Raja Gopal	XI Asst. Judge	Secunderabad
P. Durga Prasad	MSJ	Hyderabad
L. Kedarachary	I Addl. MSJ	Hyderabad

P. Anantasena Rao	II Addl. MSJ	Hyderabad
M. Kanthaiah	Spl. Judge for trial of cases under Essential Commodities Act	Hyderabad
P. Prameela Devi	V Addl. MSJ	Hyderabad
V. Venkata Prasad	Spl. Judge for trial of offences Under SCs & STs (Prevention of Atrocities) Act, 1989	Secunderabad
N. Raghava Rao	Addl. Sessions Judge	Hyderabad
G. Chakradhara Rao	Spl. Judge for Economic Offences Cum VIII Addl. MSJ	Hyderabad
G.P. Sree Sudha	Addl. Metropolitan Sessions Court For Trial of Jubilee Hills Car Bomb Blast case	Hyderabad
Mohd. Nurullah Gouri	Chief Metropolitan Magistrate	Hyderabad
Y.H. Prameela Reddy	I Addl. CMM	Hyderabad
S. Praveena	IV Addl. CMM	Hyderabad
J. Sree Lakshmi	V Addl. CMM	Hyderabad
M.R. Satyanarayana	X Addl. CMM	Secunderabad
M.R. Seshagiri Rao	XII Addl. CMM	Hyderabad
K. Surya Rao	XIV Addl. CMM	Hyderabad
R. Tirupati	IV MM	Hyderabad
M. Satyanarayana Murthy	Addl. Chief Judge	Hyderabad
M. Rajender	Addl. Judge City Small Causes Court Cum VI Addl. Judge	Hyderabad
D. Sarala Kumari	I Addl. Rent Controller cum XIII Asst. Judge	Hyderabad
K. Aruna Kumari	II Addl. Rent Controller cum XIV Asst. Judge	Hyderabad

13 & 14 August 2005, Visakhapatnam

N.B. Narayana Rao	Pri. Dist & Sessions Judge	Srikakulam
B. Sudheer Kumar	I Addl. Dist & Sessions Judge	Srikakulam
T. Sunil Chowdary	III Addl. Dist Judge	Kakinada
Vijay Mohan	Senior Civil Judge	Sompeta
K.V.R.K. Anjaneya Sarma	Senior Civil Judge	Vizianagaram
B. Girija Manohar	Senior Civil Judge	Yellamanchili
M.R. Sarvana Kumar	III Addl. Metropolitan Magistrate	Gajuwaka



R. Danie Ruth	Junior Civil Judge	Palasa	P. Venugopal Rao	Junior Civil Judge	Tadipatri
G.G. Kesava Rao	Prl. Junior Civil Judge	Vizianagaram	K. Sailaja	Addl. Junior Civil Judge	Kadiri
M. Maduri	Spl. Judicial I Class Magistrate	Vizianagaram	J. Venkataramana	Prl. Junior Civil Judge	Ananthapur
N. Rajya Lakshmi	Junior Civil Judge	Vizianagaram	M. Ramakrishna	Prl. Junior Civil Judge	Chittoor
Ch. Raja Gopala Rao	Junior Civil Judge	Gajuwaka	S. Rajani	I Addl. Junior Civil Judge	Chittoor
C.V.S. Sai Bhupathi	Addl. Junior Civil Judge	Anakapalle	S. Sreedevi	II Addl. Junior Civil Judge	Kurnool
L. Appa Rao	Prl. Junior Civil Judge	Chodavaram	Shaik Meera Khasim Saheb	Junior Civil Judge	Lakkireddypalle
P. David	Junior Civil Judge	Madugula	K.P. Balaji	I Addl. Junior Civil Judge	Nellore
K. Venkateswarlu	Prl. Junior Civil Judge	Rajahmundry	P. Shyam Prasad	Addl. Junior Civil Judge	Nandikotkur
V. Mohan Kumar	II Addl. Junior Civil Judge	Kakinada	S. Prasad	Prl. Junior Civil Judge	Proddatur
S.V.P. Surya Chandrakala	III Addl. Junior Civil Judge	Kakinada	G. Lakshminarasimha Reddy	Prl. Junior Civil Judge	Kadapa
S. Srinivasa Rao	Addl. Junior Civil Judge	Kothapeta	S. Sreedevi	II Addl. Junior Civil Judge	Chittoor
G. Vallabha Naidu	Prl. Junior Civil Judge	Ramachandrapuram	P. Radhamma	III Addl. Junior Civil Judge	Kadapa
K. Vithal Kumari	Addl. Junior Civil Judge	Rajole	K.V.L. Harinath	Prl. Junior Civil Judge	Madanapalle
A. Mary Grace Kumari	Junior Civil Judge	Rajam	S. Ramanaiah	Prl. Junior Civil Judge	Puttur
A. Vara Prasad Rao	Senior Civil Judge	Chodavaram	P. Vasu	Junior Civil Judge	Atmakur

24 & 25 September 2005, Tirupathi

M. Vijayalakshmi	Prl. Dist. & Sessions Judge	Kadapa	A. Jayaraj	Addl. Junior Civil Judge	Ananthapur
S. Chinnaiiah	Prl. Dist. & Sessions Judge	Anantapur	D. Lakshmi	I Addl. Junior Civil Judge	Kadapa
Ashok Pissay	II Addl. Dist & Sessions Judge	Adoni	K. Sreedevi	Junior Civil Judge	Koilkuntla
S. Ravikumar	III Addl. Dist & Sessions Judge	Tirupathi	G. Geetha	Junior Civil Judge	Railwaykodur
S. Surendrababu Reddy	I Addl. Dist & Sessions Judge	Kadapa	M. Venkataramana	Junior Civil Judge	Penukonda
K.L. Narasimha Reddy	II Addl. Dist & Sessions Judge	Hindupur	L. Venkateswara Rao	Addl. Junior Civil Judge	Kovur
P. Muthyala Naidu	Spl. Judge for SPE & ACB cases	Nellore	S. Sujatha	Junior Civil Judge	Piler
T. Anand	VIII Addl. Dist & Sessions Judge (FTC)	Chittoor	L. Thejovathi	I Addl. Junior Civil Judge	Kurnool
C.S.S.V. Durga Prasad	III Addl. Dist & Sessions Judge	Nellore	B. Sadhu Babu	Junior Civil Judge	Venkatagiri
G. Lakshmiopathy	Prl. Senior Civil Judge	Kurnool	N. Sreenivasa Rao	Junior Civil Judge	Rajampet
Dattatreya Gouda	Prl. Senior Civil Judge	Ananthapur	P.R. Rajeev	IV Addl. Junior Civil Judge	Nellore
N. Malyadri	Senior Civil Judge	Punganur	22 and 23 October 2005, Guntur		
M. Anand	Prl. Senior Civil Judge	Nellore	A.P. Bhanj Deo	Prl. Dist. & Sessions Judge	Guntur
Shaik Yousuf	Senior Civil Judge	Kadiri	M. Ramakrishnaiah	Prl. Senior Civil Judge	Tenali
S. Nagarjuna	I Addl. Senior Civil Judge	Nellore	C.B. Satyanarayana	Prl. Senior Civil Judge	Narasaraopet
G. Swamalatha	Senior Civil Judge	Piler	Ch. Eswara Prasad	JMFC	Guntur
P. Subrahmanya Kumar	Prl. Senior Civil Judge	Chittoor	K. Subba Rao	Prl. Junior Civil Judge	Gurazala
B. Syam Sunder	Senior Civil Judge	Proddatur	Y. Veeraju	Addl. Junior Civil Judge	Mangalagiri



V. Gopalakrishna Rao	Prl. Junior Civil Judge	Tenali	B. Gayathri	Prl. Junior Civil Judge	Ongole
R. Srikanth	Junior Civil Judge	Vinukonda	M.V. Harinath	II Addl. Junior Civil Judge	Ongole
S. Bhujanga Rao	Prl. Dist & Sessions Judge	Machilipatnam	C.S. Sridhar	IV Addl. Junior Civil Judge	Ongole
M. Chalapathi Rao	V Addl. Dist & Sessions Judge	Vijayawada	A. Inna Reddy	Addl. Junior Civil Judge	Addanki
M.M. Jeelani	Senior Civil Judge	Machilipatnam	A. Karna Kumar	Prl. Junior Civil Judge	Chirala
I. Krishnaiah	Prl. Senior Civil Judge	Gudivada			
Y. Sujana Kumari	Senior Civil Judge	Nandigama			
N. Raja Prasada Baba	Chief Metropolitan Magistrate	Vijayawada	Mohd. Ghan Sharif Basha	Prl. Dist. & Sessions Judge	Warangal
J.M. Bharatha Lakshmi	II Addl. Chief M M	Vijayawada	D. Shaammohan Rao	Senior Civil Judge	Warangal
V. Naresh	I Addl. Junior Civil Judge	Machilipatnam	J. Rama Murthy	Junior Civil Judge	Jangaon
G. Yagnanarayana	II Addl. Junior Civil Judge	Machilipatnam	K. Narsimha Chary	Junior Civil Judge	Parkal
K. Nagendra Raju	Spl. JMFC Excise Court	Machilipatnam	P. Jagannadha Rao	Prl. Dist. & Sessions Judge	Khammam
K. Prabhakar Rao	Addl. Junior Civil Judge	Avanigadda	Shameem Akther	I Addl. Dist. & Sessions Judge	Khammam
A. Narasimha Murthy	DM cum JMFC	Gannavaram	K. Raj Kumar	Senior Civil Judge	Khammam
P. Rajendra Prasad	Addl. Junior Civil Judge	Gudiwada	A. Pardha Sarathi	Addl. Senior Civil Judge	Khammam
K. Siva Rama Krishna	Prl. Junior Civil Judge	Vijayawada	A. Venkateswara Rao	II Addl. Junior Civil Judge	Khammam
C. Ratna Padmavathi	II Addl. Junior Civil Judge	Vijayawada	P.V.P.L. Siva Jyothi	J.M.F.C. Excise Court	Khammam
G. Prathibha Devi	I M M for trial of cases MV Act	Vijayawada	R.J. Viswanadham,	Spl. JMFC Excise Court	Khammam
K. Sanjeeva Rao Naidu	Prl. Dist and Sessions Judge	Eluru	S. Ramesh	Junior Civil Judge	Khammam
Ch. V.Subba Rao	I Addl. Dist and Sessions Judge	Eluru	P. Chandrasekhara Prasad	Junior Civil Judge	Yellandu
Ch. Kishore Kumar	Prl. Senior Civil Judge	Eluru	T. Lakshmana Rao	Prl. Dist. & Sessions Judge	Karimnagar
K. Sai Mohan	Senior Civil Judge	Narsapur	T. Rajani	I Addl. Dist. & Sessions Judge	Karimnagar
Y. Hema Chander	Senior Civil Judge	Tadepalligudem	V. Raghunadha Rao	III Addl. Dist. & Sessions Judge	Karimnagar
K. Hanumantha Rao	II Addl. Junior Civil Judge	Eluru	Sambasiva Rao Naidu	Senior Civil Judge	Jagtial
Ch. Venkateswara Rao	Spl. JMFC Excise Court	Eluru	A. Venkateswara Reddy	Senior Civil Judge	Peddapalli
N. Nagaraju	II Addl. Junior Civil Judge	Bhimavaram	C.Rajender Reddy	Addl. Junior Civil Judge	Karimnagar
C. Syam Sunder	Junior Civil Judge	Chintalapudi	S. Radhakrishna Murthy	Junior Civil Judge	Jagtial
K. Bhavani Prasad	II Addl. Junior Civil Judge	Kowur	P. Vasanth	Junior Civil Judge cum JMFC	Godavarikhani
P.V. Sadananda Murthy	Addl. Junior Civil Judge	Narasapur	M. Badri Rangachary	Junior Civil Judge	Peddapalli
M. Ramabhadra Rao	I Addl. Junior Civil Judge	Tanuku	P. Jeevan	Junior Civil Judge	Sultanabad
P. Bhaskar Rao	II Addl. Junior Civil Judge	Tanuku	V. Suri Appa Rao	Prl. Dist. & Sessions Judge	Nizamabad
V. Sitharama Avadhani	I Addl. Dist & Sessions Judge	Ongole	G. Mohan Gandhi	I Addl. Dist & Sessions Judge	Nizamabad
K.V. Ramanaji Rao	Prl. Senior Civil Judge	Ongole	A. Radhakrishna	VII Addl. Dist & Sessions Judge	Bodhan
G. Kanaka Sundar	Senior Civil Judge	Chirala	B.S. Jagjeevan Kumar	Prl. Senior Civil Judge	Nizamabad
P. Uday Kumar	Senior Civil Judge	Parchur			

12 & 13 November 2005, Warangal



R. Radha Devi	Senior Civil Judge	Bodhan	T. Suryanarayana	Senior Civil Judge	Sangareddy
G. Pramalatha	Addl. Junior Civil Judge	Nizamabad	T. Raghuram	Senior Civil Judge	Medak
M. Ananda Theertha	Junior Civil Judge	Armoor	G. Jaisimha Rao	Addl. Junior Civil Judge	Sangareddy
Narsimha Chary	Junior Civil Judge	Bichikonda	Shaik Akber Ali	JMFC Spl. Mobile Court	Sangareddy
Syed Qayam Hussain	Junior Civil Judge	Bodhan	Ch.A.N. Murthy	Spl. JMFC Excise Court	Sangareddy
T. Narsi Reddy	Junior Civil Judge	Kamareddy	B. Goutham Prasad	Junior Civil Judge	Gazwel
K. David Wilson	Prl. Dist Judge	Adilabad	N. Ranoji	Junior Civil Judge	Medak
K. V. Vijaya Kumar	II Addl. Dist Judge	Adilabad	K. Jmaleswara Rao	Junior Civil Judge	Siddipet
S. Madhava Rao	III Addl. Dist Judge	Adilabad	K. Janaki Rama Rao	Junior Civil Judge	Zaheerabad
S.V.V. Natha Reddy	Addl.Sr. Civil Judge	Adilabad	S. Ramakrishna Reddy	Prl. Dist & Sessions Judge	Nalgonda
M. Rajabhushanam	Sr. Civil Judge	Nirmal	L. Sreerama Murthy	I Addl. Dist & Sessions Judge	Nalgonda
Y. Hema Latha	Jr. Civil Judge	Adilabad	T. Narasimha Rao	LRAT cum II Addl. D & S Judge	Suryapet
M. Johnson	Jr. Civil Judge	Boath	M. Venkatarama Rao	Senior Civil Judge	Nalgonda
A. Satyanarayana	Jr. Civil Judge	Chennoor	K. Ramesh	Senior Civil Judge	Suryapet
V. Satyanarayana	Jr. Civil Judge	Luxepet	P. Kalyan Rao	Senior Civil Judge	Miryalguda
M. Srinivasachary	Jr. Civil Judge	Mancheril	K. Ramesh Babu	Junior Civil Judge	Nalgonda

10 & 11 December 2005, NALSAR, Shameerpet

M. Rama Rao	Prl. Dist & Sessions Judge	Mahabubnagar	Y. Govinda Reddy	Junior Civil Judge	Huzurnagar
K. Siva Prasad	I Addl. Dist & Sessions Judge	Mahabubnagar	Mohd. Abdul Rafi	Junior Civil Judge	Miryalguda
P.V. Krishna Murthy	II Addl. Dist & Sessions Judge	Mahabubnagar	D. Ravindra Sarma	Junior Civil Judge	Nakrekal
D. Lakshmi Kameswari	Prl. Senior Civil Judge	Mahabubnagar	Ch.V.R.R. Vara Prasad	Junior Civil Judge	Suryapet
A.V. Parthasaradhi	Senior Civil Judge	Wanaparthy	R. Damodar	I Addl. Dist & Sessions Judge	R.R.Dist
K. Narasimha Rao	Senior Civil Judge	Nagarkurnool	Y. Reddappa Reddy	LRAT cum II Addl. D & S Judge	R.R.Dist
K. Bhupathi	Senior Civil Judge	Narayanapet	K. Basavaiah	V Addl. Dist & Sessions Judge	R.R.Dist
P. Lakshmi Sarada	Spl. JMFC Excise Court	Mahabubnagar	N. Narayana	I Addl. Senior Civil Judge	R.R.Dist
P. Uma Maheswari	Junior Civil Judge	Achampet	G. Gopichand	II Addl. Senior Civil Judge	R.R.Dist
N. Roja Ramani	Junior Civil Judge	Atmakur	B. Manjari	V Addl. Senior Civil Judge	R.R. Dist
R. Sreelatha	Junior Civil Judge	Kodangal	G. Kabardhi	II Metropolitan Magistrate	LB. Nagar
M. Sivasankara Prasad	Junior Civil Judge	Shadnagar	T. Venkateswarlu	Prl. Junior Civil Judge	R.R.Dist
S. Sreevani	Junior Civil Judge	Wanaparthy	K. Ravinder Reddy	Junior Civil Judge	Ibrahimpattam
K. Devi Prasad	Prl. Dist & Sessions Judge	Sangareddy	G. Adinarayana	Junior Civil Judge	Medchal
A. Balachandra Reddy	I Addl. Dist & Sessions Judge	Sangareddy	K. Seshagiri Rao	IX Metropolitan Magistrate	Kukatpally
S. Venkataramaiah	IV Addl. Dist & Sessions Judge	Siddipet	K. Sudha Mani	Spl. JMFC Excise Court	R.R.Dist



Human Rights Seminars for IAS Officers





Human Rights Seminars for IAS Officers



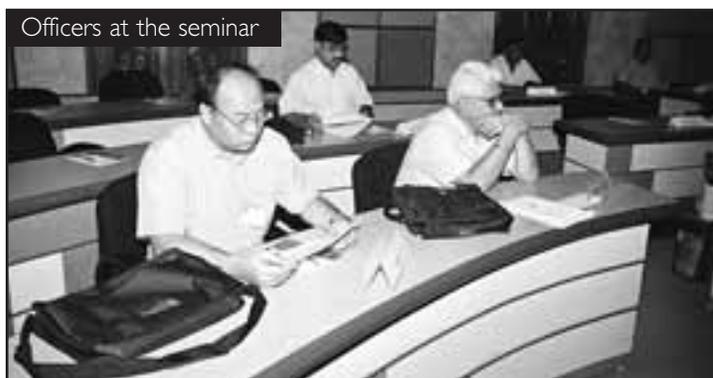
L - R: Mr. Colin Gonsalves, Dr. Paramita Dasgupta, Mr. S. R. Sankaran and Mr. Shekhar Singh at the first seminar





Two seminars on Human Rights and the Right to Food were held in March 2005 at the Administrative Staff College of India. All the participant officers were senior officers with at least two decades of experience from different states. The resource persons included Prof. Padmini Swaminathan, Ms. Vrinda Grover, Mr. SR Sankaran, Mr. Colin Gonsalves and Mr. Shekhar Singh. The first seminar on human rights focused on arbitrary arrest, unfair trial [focusing on the Parliament attack case], the situation of women workers, particularly in the unorganized sector in Tamil Nadu, the

problems of unionization and the experience of the Chattisgarh Mukti Morcha, and the National Campaign on the People's Right to Information. The second seminar drew linkages between the National Campaign on the People's Right to Information and the Right to Food campaign, focusing both on the campaign to strengthen the Public Distribution System and the case in the Supreme Court on the Right to Food. The seminar led to a very vibrant discussion on different aspects of human rights and officers shared their experiences from different states.





Participant Officers

Sl. No.	Name & Designation	State
1.	Mr. M. G. V. K. Bhanu Spl. Secretary to CM	Andhra Pradesh
2.	Mr. T. K. Jose Executive Director Kudumbashree State Poverty Eradication Mission	Trivandrum
3.	Mr. Narendra Kumar Secretary Cum-Commissioner Labour & Employment Govt. of N. C. T. of Delhi	Delhi
4.	Mr. P. K. Mahapatra Director Department of Commerce, Ministry of Commerce & Industry	
5.	Mr. P. K. Mohanty Secretary to Govt. of Uttaranchal Rural Development & Panchayati Raj Rural Engineering Services & Minor Irrigation Deptts. Civil Secretariat	Dehradun
6.	Mr. W. R. Reddy Director (Marketing)	New Delhi
7.	Ms. Sheela Thomas Secretary Food Civil Supplies Consumer Affairs and Transport Govt. of Kerala	Kerala
8.	Ms. Vandana Krishna Secretary Women & Child Development Dept.	Mumbai
9.	Mr. G. Vajralingam Director & Secretary Local Govt. Govt. of Punjab	Punjab



Human Rights Education for Adivasi Groups





Human Rights Education for Adivasi Groups



The first Adivasi Rights Workshop, Addateegala





Introduction

The issue of Adivasi rights has been central to discussions around forest rights and land rights in Andhra Pradesh for over a decade. The question of atrocity, while it has been central to the experience of Adivasis has not figured prominently in the discourse on Adivasi Rights. As part of this project, NALSAR in collaboration with MARG, Delhi and YAKSHI, Andhra Pradesh (the collaborating organizations) organized a series of five workshops for middle level Adivasi leaders from across the State. MARG is known for its work on legal literacy for marginalized sections and also for its extensive documentation of the Narmada struggle. YAKSHI, an organization based in Andhra Pradesh has played a critical role in consolidating net works in Adivasi groups around issues of land and the rights to live and liberty in the Forest areas of Andhra Pradesh.

The Schedule

The initial plan was to have two sets of three workshops each that would provide intensive training and legal literacy to the participants. The selection of participants was done by YAKSHI with reference to region and gender so that the diversity index in the Adivasi groups that attended the workshops was representative of the people. Eventually we were able to organize five workshops. These five workshops were held as a single series for 45 activists as we found the three workshops were not enough to cover the range of issues that arose in the course of our deliberations with them. Two of these workshops in the months of March and July 2005 were held in Addateegala near Rajamundry town,

Schedule of Adivasi Rights Workshops 2005

March	Addateegala
June	Addateegala
August	Hyderabad
November	NALSAR
December	NALSAR



a village which is at the heart of the Adivasi belt in that region. The workshops in August, November and December 2005 were held in Hyderabad - two of these three on the NALSAR campus.

The Programme

- Open discussions
- Group work
- Role plays
- Structured dialogue
- Lecture sessions

on

Criminal Law

The rights on arrest and detention, the scope of special legislations like the SC/ST Prevention of Atrocities Act

Constitutional Law

The Equality Principle and the position on rights under Schedule V,

Land Laws

Particularly the Land Transfer Regulation Act and its scope



Environment and Development Issues

The position of the law in relation to these

The Right to Information Act

With a focus on the ways in which Adivasi groups could use these beneficial legislation in order to force official mechanisms to be more transparent

The Juvenile Justice Act

Its relevance to an understanding of the position of the Adivasi child particularly in the formal education system, the

Resource Persons

Abha Joshi	Executive Director, MARG
Seema Misra	Human Rights Consultant
Madhusudhan	Convenor, Yakshi
Kalpna Kannabiran	Professor, NALSAR
Prof. Ranbir Singh	Vice Chancellor, NALSAR
Prof. A. Lakshminath	Professor and Registrar, NALSAR
Mr. K.G. Kannabiran	National President, PUCL
Justice DK Basu	Former Judge, Calcutta High Court

residential schooling system where distance from communities of belonging is the norm.

Engagement with these issues involved an introduction to the statute a discussion of ground situations and action taken, the retrospective assessment of the action taken with reference to the laws introduced in the workshop and a careful study in groups of the later and spirit of each legislation.

Snippets from the Sessions.....

Outlining Critical Concerns: Adivasi Aikyavedika

The Adivasi Aikyavedika has its main aim the safeguarding of resources in the scheduled areas. The Adivasis in these areas do not have any rights over these resources and are the targets of a lot of injustice. It is for this reason that workshops that impart rights training and advocacy are extremely important and necessary for activists in these groups. In the same way Adivasis have rich cultural practices, which are being consistently eroded. It is necessary for us to search for ways of protecting our cultural heritage. Our main purpose is to put these issues before the people and work with them. Apart from rights training the other issues that are crucial to Adivasi people are issues related to livestock, sustainable agriculture and livelihood issues. There is among our people a tremendous pool of knowledge on traditional seed and soil conservation techniques, which is being eroded by the new patterns in non-sustainable agriculture. There are also





in Adivasi areas issues like bauxite mining, which pose long-term hazards to the survival of our communities. A large part of our work involves raising awareness on these issues and helping our communities resist programmes that are detrimental. There are also very specific issues that Adivasi women face.

Structure of Sessions

The sessions were structured around a series of questions, case studies that participants brought to the training and role plays that interlinked the question, case studies and provisions in the law.

What is law?

Is law something that concerns only people who go to courts? Does it concern all people – those who go to courts and those who have never seen a court? Should law be written? What is the relationship between law and the rule of law? What is the relationship between law and procedure?

- Discussion on the different ways in which every aspect of a citizen's life is connected with law, whether or not there is direct involvement with the institutions or profession. Family, livelihood, work, schooling, clothes, petty trade, consumption of necessities and consumer goods, public transport, private transport, shelter and housing
- Group work on cases: One incident that any participant has encountered where the law did apply; one incident where the law did not apply.
- Role Plays
- Different Special Legislations that are relevant to Adivasi people: I/70, SC/ST Prevention of Atrocities Act, Juvenile Justice Act, Right to Information Act, Employment Guarantee Act, etc.

In Addateegala, a non-tribal farmer bought a cashew plantation. Another non-tribal man, David, along with his son were caught stealing the crop. The owner chastised David

and his son who, unrepentant, beat him up. The owner lodged a complaint with the village panchayat. Five members – all tribal people – intervened on behalf of the owner and got beaten up by David. So they beat him up too and people from both sides were hospitalized. After discharge, the adivasis asked the police to take action. The police said, "You beat each other up, so you are quits. No case".

Podu cultivation is practiced by adivasis in the forest areas of Khammam district. Although the cultivation conforms to legal requirements, and 50 families together cultivate 50 acres, cases are registered against the adivasi cultivators. On the other hand, 3 non-tribal families cleared 40 acres for cultivation and no case was registered against any of them. Increasingly non-tribals have been clearing forests and occupying banjar land and there is no action at all. There is one law for tribals another for non-tribals.

In cases like the above, what laws could one apply to which actions ?

- What remedies can one claim and what is the procedure that will be followed?
- What are Fundamental Rights? What is the Constitution?
- What is the distinction between civil cases and criminal cases?
- What are the steps in filing a case?





Role play on the D. K. Basu guidelines at NALSAR



Political Process

What are elections? How do people, right from the Prime Minister to the Village Sarpanch get elected? How do people who are elected make laws?

Law and Custom

- Many married women wear the tali bottu. One woman who was married refused to wear it. Can the police arrest her?

This is a democracy. Even if there is a custom, people are free not to conform. The violation of a custom is not necessarily the violation of law.

What are the customs that have the force of law?

- It is a custom in our community to kill girls who marry out of their own choice. The law is not binding on us.

Communities can decide how marriages will be performed, and how divorce will be granted. But public law is universally applicable, especially where the right to life is under threat.

No community can assert that it has the right to kill its members and that it is outside the constitutional framework.

Meeting Justice D.K. Basu

The Human Rights Education Workshops for Adivasi Rights Groups were conducted in Addateegala and Hyderabad. In the course of the workshops, participants had learned about the D. K. Basu guidelines and rights on arrest. They had learned that every police station must display the guidelines prominently so that everyone who goes there can read them with ease. The local organizers had in the course of the second workshop at Addateegala visited the local police station, which had fencing to prevent people from entering, and had requested the officers to permit the participants to visit the place. They were refused permission. They had gone back to their villages and told their people what they had learned about arbitrary arrest, since this was a particularly



troubling problem in their areas. In the workshops, they had put together role plays that reflected on their experience with the police in the light of what they had just learned about the DK Basu guidelines. They heard about the Budhan Sabar case in West Bengal and discussed the details drawing parallels with their own life situation. Now they had to meet Justice DK Basu. The concluding workshop was fixed immediately after the final judicial officers' symposium in mid-December 2005. Justice Basu spent the day with them, doing a session on access to justice and witnessing their skits on the D. K. Basu guidelines. This rounding off of the training was an exhilarating experience for us all.

Access to Justice

The session on Access to Justice was conducted by Justice D.K. Basu, who focused on the meaning of Human Rights

and Fundamental Rights and the procedure by which these rights can be made justiciable by marginalized communities. Part of this session consisted of looking at what the ordinary citizen could do when he/she was faced with the possibility of government encroachment on land that was in his/her possession. Further if this situation presented itself in terms of the encroachment of an entire village for some purpose-Dams being one such example with thousands of people being evicted – who would the displaced communities fight against? The second issue the session addressed was the rights the people have against arbitrary arrest and interrogation. The third issue addressed dealt with bonded labour in its various forms. For instance unregulated employment of large numbers of adivasi people in quarries under virtual custody for months together without any adherence to labour standards or wage levels. The problem of child labour that formed an important part of bonded labour was also discussed at length in this session. Following the discussion on issues confronting the adivasi activist the next part of this session focused on legal institutions, particularly the courts and the accessibility of these institutions to people living in





remote areas. Distance poses a serious problem to people, the example of Adilabad District Court being particularly telling – several villages being located anywhere between 85 and 180 kilometers from the District Court and about 50 kilometers from the Sub Division Courts. Justice Basu then focused the rest of his lecture on the National Legal Services Authority, the State Legal Services Authority and District Legal Services Authority, explaining to the participants the way in which they could approach the courts and the authority at different levels for different issues. The session was extremely important because it provided activists with information on the specific ways in which they could seek redressal for rights violation that they faced on everyday basis both at the individual and community levels. This information was provided through case studies of bonded labour and other issues tracing the path that activists should take in following up each case.

Example 1: Suppose you find that in a mine in the Paderu area there are 10 families that are living and working in conditions of unfreedom, what will you do? Suppose you find several children below 10 years in these families who have also been put to work similarly along with the adults, what will you do?

You will go to the Sub Divisional Magistrate in the Paderu Sub Divisional Court and inform him about the same. Not everything can be

done by the Chief Minister of Andhra Pradesh or the Prime Minister. As a social worker you have to learn to challenge these things using the institutions that are there for the purpose. The Magistrate is the person who can provide you immediate relief. Go to him/her and explain the situation. If the Magistrate refuses to hear you, what will you do? You will go to the District Judge who is the Chairman of the District Legal Services Committee. Explain the situation all over again to him. Request him to have these families released immediately from bonded labour. It does not matter if the district court is 180 kilometers away from where you are. You will have to go there to fight for the rights of these people to be free. The district judge will order the employer to release the families immediately. It might also be that the Magistrate himself orders their release and you do not need to go as far as the district court. And it is not only release. The employer will also have to pay compensation to each person thus released. You do not need a lawyer to do this. The social worker can directly approach the Magistrate or District Judge. If a lawyer is necessary the judge will arrange for a lawyer to represent the case.

The session also looked at issues which cannot be resolved by the district judge – setting up a school for instance – and outlined the procedures that communities and their representatives would follow in approaching the state legal services authority in larger matters involving for instance allocation of government funds for education, welfare and public works in remote areas. Therefore through these examples the crucial question of jurisdiction of courts at different levels was explained to participants as also procedures applicable at each level. Finally the concept of Public Interest Litigation and its uses for poor and marginalized communities was explained especially in the context of the enforcement of Fundamental Rights under the Constitution.



General Discussion on Human Rights



Domestic Violence

One of the first issues that came up during the general discussion related to desertion of adivasi women, bigamy and increasing cases of alcoholism and domestic violence. Activists placed before the group several instances of domestic violence and destitution faced by women. The ensuing discussion focused at length on existing provisions relating to domestic violence in the penal code and the ways in which the new Act on domestic violence departed from traditional, legal premises and presented possibilities for relief for women. What the groups saw as a particularly positive provision was the right of a wife to reside in the shared matrimonial home under the new act.

The Murder of Srilakshmi: Death Penalty

Manohar deserves the death penalty because he has forfeited his right to life by attacking a killing a student in broad daylight. Her parents had so many expectations of her and they were left with nothing. They neither got their daughter nor did they manage to get him punished. Participants seemed to feel that Manohar was “let off” by the High Court.

This observation was followed by a discussion on the difference between imprisonment for life and the death penalty. The fact that both these are punishments for serious crimes and for crimes of equal intensity. The decision of High Courts not to confirm death penalties should not be read as acquittal of the guilty was explained at length with a discussion on the campaign for the abolition of the death penalty. The jurisprudence on the death penalty – “the rarest of the rare” principle was discussed and the process by which a person awarded a death penalty in the trial court can appeal at different levels, finally for Presidential clemency was discussed at length with the help of case law. In Dhananjay’s case the demand was that the death penalty should be awarded since he raped and killed a young girl. Several women organizations also in both these cases demanded the death penalty. However, human rights movements have consistently opposed the death penalty

and did so in these two cases as well, the reason being that imprisonment for life is not less severe, and the taking of life by the state unwarranted. The fact that very often poverty and marginality obstructs people from appealing effectively pushes abolitionists to demand the removal of the death penalty. The group was discussing this issue in all its complexity for the first time.

“Those who violate the human rights of others cannot claim human rights for themselves”:

- Abu Salem has violated the human rights of so many people. He should have no human rights now.
- Manohar put that girl through so much suffering. He should also suffer.

Was he not punished with life imprisonment? Nobody is arguing that Salem should not be punished if it is proved that he has committed the crimes he is accused of. What is the method of appropriate punishment? Should they be tortured in the same way that they tortured people? Or should guidelines based on principles like the DK Basu guidelines come into operation in deciding appropriate punishment? Should they be treated in accordance with the law?

- The law must be followed strictly in dealing with persons accused of committing crimes.

Grazing Rights

The government came up with the view that the grazing of goats and sheep is destroying forests and so grazing rights of tribal and other communities must be curtailed. The communities that rear goats and sheep are poor, marginalized communities that depend on this for livelihood. This is their only livelihood resource, their only property. Denying them grazing rights will result in the dispossession of entire groups. Since this is a matter of state policy, the only way of seeking redress is for us to file a public interest litigation on behalf of all the affected communities.



Juvenile Justice

The rights of children outlined in the Juvenile Justice Act were discussed in detail. The requirement that all police stations should have a designated officer; designated officers must not be in uniform; that children below the age of 18 should only be produced in a Juvenile Court, and in the absence of facilities to retain them like the Juvenile Home, they must be returned to their parents. Children have the right to immediate bail under the Act. Secondly, how would we protect children from anticipated harm? It speaks to issues of children in conflict with the law and children in need of care and protection.

Norms in Police Stations

In most cases in remote areas, when there is a problem and people go to police stations, they are told orally that action

will be taken and no case is registered. People are then summoned suddenly and taken for 'questioning' or the police comes to the village to 'settle' the issue, charging a "jurmana" for the settlement. Through an understanding of the difference between civil law and criminal law and detailed discussions on the Criminal Procedure Code, participants had begun to understand the norms to be followed by the police and also areas that allowed for police intervention and the limits on such intervention. The common practice has been for people to write out complaints on plain paper for the police. The registering of the complaint, the FIR were relatively rare and the distinction not known to most participants, although all of them are fairly active organizers. Knowing this distinction and acting on it, however, is an important part of effective rights advocacy.



Participants in a group discussion, Addateegala



Arrest and Handcuffing

In cognizable offences, the police can take action on its own without a complaint and they can arrest without a warrant. This is something that happens routinely in agency areas because of the naxalite presence there. The distinction between these two kinds of offences was explained with several illustrations and the presentation of slides. The restrictions on the use of handcuffs or physical restraint were discussed at length. The police must explain why it is necessary to use handcuffs on a particular undertrial. Handcuffing cannot be the norm, it is against the law. If the police have picked anyone from the village up, he must be produced before the Magistrate within 24 hours. If this is not done, the people of the village must immediately inform the Magistrate of this, giving details of the time of arrest etc.

Polavaram Dam

The discussion on the Polavaram Dam was initiated by Mr. K.G. Kannabiran on 15th November 2005. He traced the history of Adivasi struggles from the colonial period to the present time. He then went on to discuss the specific issues that the Polavaram project raised and the ways in which the struggle should address these issues.

Based on the suggestions given by Kannabiran garu on the Polavaram dam issue the Adivasi Aikyavedika took up some actions at the local level. Since the decision to go ahead with the dam was a violation of the fundamental rights of adivasis, the issue discussed the issue at length and plans were made to evolve an effective course of action. On the 4th of December, when Medha Patkar visited Andhra Pradesh, the participants used the opportunity to discuss the Polavaram issue with her. They asked her several questions: when there are grama sabhas in each of these villages, how was it possible for the government to unilaterally decide on the construction of the dam without holding consultations with the gram sabhas. Some of the activists who resisted the dam were arrested. What was the reason for the arrests? Is it a crime to demand our fundamental rights to life and residence? What kind of action is it possible for people facing displacement to

take against the government? There are a range of issues that must be addressed, for instance whether Relief and Rehabilitation is acceptable at all, given the fact that adivasis stand to lose entire villages and control over natural resources and land communally. Displacement will mean ways of life, cultural resources and entire communities will face destruction. How has it been possible for the government to put forward a proposal like this even though there are so many protections for adivasis under the Constitution? How has it been possible for the entire administrative machinery of the state to be put in service to deny us of their constitutional guarantees? These issues were raised with the minister and police authorities as well and activists were assured that consultations would be held with the gram sabha before the plans were implemented and also that there would be no arbitrary arrests. An important part of the consciousness raising involved urging gram sabhas to convene and resist any efforts by the government to go ahead with the dam.

The workshops, participants observed, provided them with information necessary to carry this work forward....





List of Participants

Rajamundry: 29.3.2005-31.3.2005

1. Boraga Babul	East Godavari District
2. Boraga Ramakrishna	East Godavari District
3. Kotam Rajyalakshmi	East Godavari District
4. S. Bharathi	East Godavari District
5. P. Chinnabulli	East Godavari District
6. V. GiriBabu	East Godavari District
7. Adivasi Aikya Vedika	Vizianagaram District
8. P. Narendrakumar	Khammam District
9. T. Shantha	Khammam District
10. S. Haritha	Khammam District
11. Y. Raju	Khammam District
12. G. Raju	Visaka Zilla
13. D. Ganga Raju	East Godavari District
14. D. Pottamma	East Godavari District
15. D. Indrija	East Godavari District
16. V. Upendar	East Godavari District
17. K. Chinnaludora	East Godavari District
18. B. V. Ramana Reddy	East Godavari District
19. Ganta Satyam	Adilabad District
20. Talanad MAdhu	Adilabad District
21. Komula Bapu	Adilabad District

Rajamundy: 8.6.2005-10.6.2005

1. G. Raju	Visaka Zilla
2. M. Venkata Rao	Vizianagaram District
3. D. Ganga Raju	East Godavari District

4. K. Chinnalu Dora	East Godavari District
5. K. Prabha	Vizianagaram District
6. R. Sumalatha	Adilabad District
7. G. Satyam	Adilabad
8. Kommula Bapu	Adilabad
9. B. Venkata Ramana Reddy	East Godavari District
10. B. Rama Krishna	East Godavari
11. Kunjam Pundudora	East Godavari
12. P. Naredra Kumar	East Godavari
13. V. Chinnarao	Visakha District
14. A. Raju	Visakha
15. K. Rajyalakshmi	East Godavari District
16. P. Chinnabulli	Visaka
17. V. Rambabu	East Godavari
18. V. R. Lova Raju	East Godavari

Hyderabad: 29.8.2005-31.8.2005

1. Nimmala Buddesh	Vizianagaram District
2. Mandangi Venkata Rao	Vizianagaram District
3. G. Damodar Rao	Srikakulam
4. V. Chinna Rao	Visakha District
5. P. Appa Rao	Visakha
6. B. Padma	Visakha
7. S. Bharathi	Visakha
8. D. Pottamma	East Godavari
9. D. Ganaga Raj	East Godavari
10. B. Rama Krishna	East Godavari



11. P. Chinnabulli	Visakha	13. M. Shivaprasad	Adilabad
12. T. Santha	Khammam	14. S. Laxman	Visakha
13. K. Chinnaludora	East Godavari	15. B. Padma	Visakha
14. G. Raju	Visakha	16. T. Satyavathi	Visakha
15. K. Rajyalakshmi	East Godavari	17. G. Rama Rao	Srikakulam
16. V. Rambabu	Hyderabad	18. Srinivas	Srikakulam
17. V. Lova Raju	East Godavari	19. B. Chinnamma	Srikakulam
18. K. Pandu Dora	East Godavari	20. B. Srinubabu	East Godavari
19. B. V. Ramana Reddy	East Godavari	21. E. Paparao	East Godavari
20. G. Satyam	Adilabad	22. B. V. Ramana Reddy	East Godavari
21. K. Prabha	Vizianagaram	23. K. Prakash	East Godavari
22. A. Raju	Visakha	24. K. Venkateswarlu Dora	East Godavari

Hyderabad: 14.11.2005-16.11.2005

1. N. Buddesh	Vizianagaram District	25. V. Lachi Reddy	East Godavari
2. B. Padmavathi	Vizianagaram District	26. Ch. Nukaraju	East Godavari
3. V. Chinna Rao	Visakha	27. D. Ganga Raju	East Godavari
4. R. Eswaramma	Visakha	28. E. Raja Kumari	East Godavari
5. V. Zogi Raju	Visakha	29. M. Venkata Lakshmi	East Godavari
5. G. Satyam	Adilabad	30. V. Prasad	East Godavari
6. K. Bapu	Adilabad	31. Ch. Nukaraju	East Godavari
7. S. Bhumaiah	Adilabad	32. K. Pandu Dora	East Godavari
8. R. Sumalatha	Adilabad	33. K. Muthyalu	West Godavari
9. S. Seetharam	Adilabad	34. K. Pandamma	West Godavari
10. M. Manik Rao	Adilabad	35. N. N. Murthy	East Godavari
11. K. Kamala	Adilabad	36. K. Chinnalu dora	East Godavari
12. M. Shubadra	Adilabad	37. N. Rajamma	East Godavari
		38. S. Amala	East Godavari



39. K. Rajya lakshmi East Godavari
40. M. Ammaji East Godavari

Hyderabad: 12.12.2005-14.12.2005

1. K. Pandamma West Godavari
2. V. ChinnaRao Visakha
3. R. Eswaramma Visakha
4. V. Jogi Raju Visakha
5. B. Padma Visakha
6. N. Buddesh Vizia nagaram
7. B. Chinnami Vizianagaram
8. A. Gouramma Vizianagaram
9. B. Srinubabu East Godavari
10. K. Pandudora East Godavari
11. N. N. Murthy East Godavari
12. D. Ganga Raju East Godavari
13. V. Prasad East Godavari
14. S. Laxman Vizag
15. S. Seetharam Adilabad
16. K. Kamala Adilabad
17. M. Subadhra Adilabad
18. G. Satyam Adilabad
19. B. V. Ramana Reddy East Godavari



Human Rights Workshops For Citizens With Disabilities



Human Rights Workshops For Citizens With Disabilities



Prof. Ranbir Singh at the Inaugural Session, Legal Literacy for Persons with Disabilities, NALSAR.



Background and Context



Citizens with Disabilities frequently live in deplorable conditions, and face physical and social barriers, which prevent their integration and full participation in the community development. The situation is not different in the state of Andhra Pradesh where millions of adults and children are segregated, deprived of virtually all their rights, and sometimes lead deprived and marginalized lives.

Although the international disability community has spoken of disability as a human rights issue for at least two decades, not all Citizens with Disabilities view discrimination and abuse in terms of international human rights instruments. I For some people, discrimination and abuse have become normal, everyday occurrences that are part of their lives as Citizens with Disabilities.

Rule 12 of the AP Judicial Services Rules states that:

“Rule 12: General Qualifications: No person shall be eligible for appointment to the service unless –
(iii) He is of sound health and active habits and free from any bodily defect or infirmity making him unfit for such appointment.”

We have in the course of our work come across cases where this rule has been applied to bar candidates with disability from appearing for the examination as recently as 2003. We would like to bring to your notice that this clause is too wide and as such subject to arbitrary interpretation, collapsing together “sound health” “active habits” and “bodily defect or infirmity.” Sound health and well-being is determined by parameters that are quite different from the parameters that define ability and disability. According to the Constitution of the World Health Organisation, “Health is a state of complete physical, mental and *social* well-being and not merely the absence of disease or infirmity... The extension to all

peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health... Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and *social* measures.”

If one were to examine the definition of disability, one similarly comes across a very wide range of physical and mental disabilities, some of which coexist with sound health. Just as the Hon'ble Court cannot adopt the broad view of sound health proposed by the standard setting World Health Organisation in order to bar candidature to the judicial services, similarly it cannot also take a broad and encompassing view of disability disregarding actual capacity to discharge duties in different spheres. A blanket rule, such as Rule 12 iii, comes within the meaning of unfair discrimination because a disabled person is treated less favourably than someone else; the treatment is for a reason relating to the person's disability; the treatment cannot be justified [pl. refer to the Disability Discrimination Act, 2005, of the United Kingdom; also article 9 of the Constitution of South Africa].

Excerpt from letter presented by Dr. Kalpana Kannabiran to Hon'ble Justice Bilal Nazki, then Acting Chief Justice of Andhra Pradesh in June 2005.

The right to life is a universal norm. Citizens with Disabilities cannot be treated as an exception to this norm. Yet this fact needs to be emphasized – for the universal norm often appears disregarded in action. From the legal point of view, there are three implications to this statement: (a) the recognition that Citizens with Disabilities have specific rights; (b) respect for these and all their rights; and (c) the obligation to do what is necessary to enable Citizens with Disabilities to enjoy the effective exercise of all their human rights on an equal footing with others.

This section is based on the following references: <http://www.un.org/esa/socdev/enable/stockholm2000.htm> Marcia Rioux. Let the World Know. [Report of an international seminar on human rights and disability, which was held from 5 to 9 November 2000 at Almåsa Conference Centre, Stockholm, Sweden.] <http://www.un.org/esa/socdev/enable/dispaperdes0.htm> - Human Rights and Disabled Persons by Leandro Despouy, Special Rapporteur for Disability, UN, 1993

<http://www.ohchr.org/english/about/publications/docs/disability.pdf>.- Gerard Quinn and Theresia Degener, with Anna Bruce, Christine Burke, Dr. Joshua Castellino, Padraic Kenna, Dr. Ursula Kilkelly, Shivaun Quinlivan. Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability, February 2002. Pavan Muntha. 'A Concept Note on Documenting Human Rights Violations', unpublished, 2005.



The Universal Declaration of Human Rights refers specifically to the rights of Citizens with Disabilities. Article 1 declares that all human beings are born free and equal in dignity and rights. There is a joint responsibility at the national and international level to ensure these rights are translated into concrete action. The right to equality is one of the most fundamental human rights norms. The guarantee of equality is reflected in several provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR) as well as the Constitution of India and other national laws for Citizens with Disabilities.

Citizens with Disabilities (CWD) working as activists and organizations working with Citizens with Disabilities in the various regions of the state of Andhra Pradesh have already recorded a number of case histories on the violation of the fundamental principle of equality and on various forms of discrimination and other negative differential treatment of CWD which were inconsistent with basic legal instruments and were therefore an infringement of their human rights. While reviewing the earlier work, the proposed series of workshops attempted to grapple with questions such as how can CWD themselves speak up for their rights and make human rights a tool in their continuous struggle for dignity, equality and justice, and how the rights proclaimed in international norms and legislation may be translated into real improvements in the lives of CWD.

Three factors make it a particularly favourable time to begin a concerted effort to profile infringements of human rights of CWD:

- The recent recognition in theory and law of disability as a rights issue
- The latest promulgation of policies in many countries directed at strengthening the rights of CWD and eliminating discrimination at the national level and
- The increase in organizations of the disability rights movement worldwide

Swadhikaar

After receiving intensive training organized jointly by National Human Rights Commission, Canadian Human Rights Commission and Indira Gandhi National Open University, Swadhikaar Center for Disabilities Information, Research and Resource Development engaged with grass root activists who were CWD and successfully organized 6 workshops on human rights and Citizens with Disabilities, in collaboration with Asmita Resource Center for Women, in the last one year. These 6 workshops gave Swadhikaar a valuable experience to propose for a national level workshop on Human Rights and Citizens with Disabilities in September 2005 in collaboration with the National Institute for the Mentally Handicapped, Commissioner's Office, Disability Welfare, and NALSAR.

This was felt to be an urgent need because the conditions of life for CWD in the rural areas has slowly begun gaining attention of the development agenda of the State. It is imperative that the human rights perspective empowers the CWD to move in a direction toward their active participation in the development as a right as against the top down approach of charity and services. The idea of a collaboration was in a sense to be expected given NALSAR's institutional commitment to the issue of disability rights and Swadhikaar's challenging work in this field in the state of Andhra Pradesh, especially in the direction of educating the most marginalized people's constituencies on human rights.

The intervention on disability rights as human rights involved a series of eleven state level meetings across the entire state and one National Workshop. Approximately 400 disability rights activists participated in these meetings – each a four day meeting – and discussed the various dimensions of human rights from a perspective that was sensitive to the experience of CWD. It was hoped that a module-based training on international covenants and national laws (corresponding to the development of national case laws) to the partner organizations (POs) and individual activists would strengthen their advocacy skills.



The objectives of this intervention for Swadhikaar were:

- To provide a forum to exchange knowledge and expertise and to have a dialogue on the integration of disability-related issues into mainstream human rights process, programs and projects;
- To devise a substantive methodology to develop legal frame of preference with respect to the obstacles to participation, neglect, abuse and other forms of discrimination by drawing attention to legal provisions of existing human and civil rights instruments; and
- To design a process for follow-up and for collection and analysis of information and within this to build and support a reporting capacity in POs and Organizations of CWD and individual activists working with CWD.

These objectives are significant since they address ways of making the human rights machinery work better in the context of disability.

For Swadhikaar and the AP Disability Rights Forum [a network coordinated by and constituted at the initiative of Swadhikaar] this would pave the way for the formation of similar State level Committees in other states of the country, with the active support and help of the CWD working as activists, POs, Organizations of CWD and other human rights activists. It was envisaged that after certain period of work, these State level Committees would evolve into a National level Monitoring Body for Implementation and Violation of Human Rights of Citizens with Disabilities.

The Process Initiated by NALSAR

Against this background, this initiative could generate a fruitful discussion and dialogue on what constitutes a violation of human rights for persons with disabilities and how these should be documented and resisted. The project “Strengthening Criminal Justice and Human Rights in India,” in its endeavour to look “differently” at questions of human rights provided the starting point for this initiative. After a series of discussions and planning meetings between

Dr. Kalpana Kannabiran and Mr. M. Pavan Kumar, it was decided that the initiative would be a collaboration between Swadhikaar and Disability Rights Network of AP [both of which would be represented by Mr. Pavan Kumar in the organisational work] and NALSAR University of Law [which would be represented by Dr. Kalpana Kannabiran, Chief Coordinator of the Criminal Justice Project]. It was decided to hold ten district level meetings in different districts that would draw in persons with disabilities who were part of rights networks, as well as persons who had till that point no exposure to advocacy, in an attempt to broaden the base of disability right advocates in the state. In terms of the content of each workshop, it was decided that the Asmita Collective team would be requested to conduct sessions on gender and disability in the entire series, local officials would be involved, and discussions on human rights would be initiated with activists from the regions where the meetings were being held. From NALSAR, it was decided by the organising team that there would be a session at each workshop on labour and disability, which would be conducted by Dr. N. Vasanthi, Assistant Professor, NALSAR, who would also provide coordination assistance for the series. Apart from the series of human rights education workshops, NALSAR also provided partial support and conducted three sessions at the National Workshop on Disability Rights held at the National Institute of Mental Health. Towards the end of the series, during a review meeting, the organising team felt the need to consolidate the gains of the series by organising a three-day legal literacy workshop on the NALSAR campus, which would draw out the different problems that were articulated in the ten workshop series. This meeting also marked the culmination of this phase of the initiative.

Coordination and Documentation

Coordinator	: Prof. Kalpana Kannabiran
Convenor	: Mr. M. Pavan Kumar
Documentation	: Ms. SE Anuradha
Coordination Assistance:	Dr. N. Vasanthi



National Workshop On Human Rights And Citizens With Disabilities

A two-day National workshop on Human Rights and Persons with Disability was conducted during 03-04 September 2005, by National Institute for the Mentally Handicapped in collaboration with Swadhikaar Centre for Disabled Information Research and Resource Development and NALSAR University of Law. This workshop marked the beginning of a six month collaboration between Swadhikaar, the Disability Rights Forum of AP and NALSAR University of Law on the issue of human rights of CWD and was preceded by two months of intense discussions between Prof. Kalpana Kannabiran of NALSAR and Mr. Pavan Kumar on the direction and content of the collaboration. In an important sense therefore, the National Workshop was the inaugural moment of what turned out to be a rich and wide ranging dialogue on the meanings of the rights of Citizens with Disabilities.

The two day workshop was supported by Leonard Cheshire International, South Asia, Center for World Solidarity, Hyderabad, Action Aid International India, Andhra Pradesh Regional Office, NALSAR University of Law, Hyderabad, Asmita Resource Centre for Women, Hyderabad, Aashray, Hyderabad and Disabled Rights Forum.

The main object of the workshop was to address issues related to human rights and persons with disability and to ake road maps for future directions. Luminaries in the area of disability rehabilitation as well as those who are actively engaged in civil and human rights activities were invited to participate in the workshop.

Dr. L. Govinda Rao, Director, NIMH, welcomed the delegates and gave an inaugural speech followed by Prof. Venkat Rao who spoke on how the human body is a challenging phenomenon. He advocated that some challenges are inherited and some come afterwards and if these challenges are investigated then management becomes easier. He suggested that there are two major discourses to turn challenges into objects - Science and Culture.

1. “Disability Rehabilitation & Human Rights: A Perspective” by Dr. L. Govinda Rao

- Poverty compounds the marginalisation of Citizens with Disabilities.
- There must be a change in social outlook
- In consonance with the Biwako Millennium Framework guidelines, there has been a paradigm shift from a medical rehabilitation model to socio-medical rehabilitation, which will lead to social, and attitudinal change.
- The key to transformation in the lives of Citizens with Disabilities lies with the enhancement of their quality of life.

2. “Disfiguration: Rethinking the question of body” by- Prof. D. Venkat Rao

- There is need for a reexamination of the language of culture that currently exists in the society.
- What are the cultural models that affect issues relating to disability.

3. Critique of Domestic law for Citizens with Disabilities –Prof. Amita Dhanda

- The law, while it is a major source of empowerment can also be a major impediment to empowerment.
- Laws in the field of disability can be categorized as follows:
 1. Special legislation
 2. General laws
 3. Case laws
- The areas, which have not been covered by the Persons with Disabilities Act are:
 1. Civil rights,
 2. Political rights,



- 3. Right to participation in policy making
- 4. Right to legal capacity.

4. “Implementation of Citizens with Disabilities Act in Karnataka” by Sri Pradeep Kumar

The Role of State Commissioners under the Persons with Disabilities Act:

- Investigative powers.
- Head of department to meet the cost in many cases.
- Sign language usage.
- Barrier free access for Citizens with Disabilities.
- Interaction with Judges towards a fast track disposal of judgements.
- Inclusion of rights of Citizens with Disabilities

5. “Law, Diversity and Disabilities” by Prof. Kalpana Kannabiran

- One reason why the plethora of laws do not guarantee protection to women because there are no women on the bench. x
- The importance of access in understanding the right to information.
- She suggested that Braille or Sign Language can be made compulsory as a 3rd language in all schools. The ultimate result would be the inculcation of values of diversity and its percolation into consciousness.
- Continuum between disabilities and violence related trauma – mental illness, post traumatic stress disorder, especially in the case of women and people living in zones of conflict.

6. “Understanding Caste, Human Rights and Disabilities” by Dr. K. Srinivasulu

- Need to understand the continuities between social disabilities [caste, for instance] and physical disabilities.

7. Rights of Children with disability - By Ms. Sumithra

- Need to focus on the rights of children with disabilities and the need to develop an integrated understanding of the position of the child in society.

8. “Myth and Reality in Practices of Religion and Culture” by Dr. Kodandaram

- The history of social perspectives on disability from Karma theory to liberalism to renaissance and finally the rights approach to disability.

9. “Right to Information” by Ms. Anjali Arora

- the need for making information accessible to all persons with disability.

10. “Right to Work and Perspectives on Urban Employment” by Prof. Sirish Deshpande

- Difficulties faced by Persons with disability in employment in terms of reservation, job suitability and analysis.

11. “Judicial Redress Strategy” by Sri R. Sundarvadan

- Role of district level disability rights forum

12. Grassroots Approach to the Citizens with Disabilities by Sri Sudhakar Reddy

- The Indira Kranti Padam (IKP) in the villages pointed to quality of life of Citizens with Disabilities.

The participants prepared the next plan of action vis-à-vis Human Rights of Citizens with Disabilities and reflected on how the issue of Disability can be taken at both the grassroot level as well as part of the academic institutions.



Outcome

At the workshop it was proposed to constitute two committees to evolve road maps to review and continue the work with Citizens with Disabilities at National and International levels. One committee consists of teachers and intellectuals from special institutions, social science institutions

and technological institutions to promote interdisciplinary research programmes to bring in a change in the present approaches. The second committee consisting of Commissionerate, disability welfare and legal experts would look into setting up of district rights forum at district level towards a speedy judicial redress.



Participants in a group discussion, NALSAR.



Human Rights Education Workshops

The areas discussed at the human rights education workshops related to the everyday exclusions of CWD and their everyday negotiations in a world that was not completely sensitive to their needs and at times even insensitive. This is the first time that such extensive discussions have been conducted in such far flung areas of the state. While the state run IKP Programme has attempted to address disability rights as part of its larger work with marginalized groups, questions of the linkages between human rights and disability rights rarely enter the discourse in state run programmes. In that sense therefore this was the first attempt of its kind and the unanimous opinion of the participants — all CWD and caretakers of persons with severe disabilities – was that this is the beginning of a larger, vibrant mobilization by CWD. This networking was also seen as offering immense possibilities for the building of bridges between disability rights and other human rights movements. Given below is the summary of discussions on the various areas that were discussed at each of the ten workshops.

Content of the Workshops

The rights assertion of CWD has become an important and underlying imperative for their development and empowerment, which is best achieved through self-assertion and sustained action research and practice by the CWD themselves. This participation of CWD in self-development and empowerment is a supplement to the existing socio-cultural and economic coping mechanisms of the CWD along with a skill-based knowledge base for a scientific approach and positive attitude. Discussions at each of the workshops were woven around the following themes:

- Approaches to Disability: Various Paradigms
- Human Rights Principles (Equality, Autonomy, Dignity, Non-Discrimination, Solidarity) and Key Concepts (Inclusion, Adequate Accommodation, Progressive Realization, Special / Temporary Measures, Access)
- Overview of International Norms and Standards on Disability
- Right to Education

- Right to Work and Social Security
- Freedom of Expression, Speech, Information and Communication
- Full Legal Capacity and Equality before Law
- Family Rights: Marriage, Guardianship, Adoption
- Right to Health
- Right to Food, Shelter and Clean Water
- Right to Access to Gram Panchayat
- Right to Quality and Sustainable Provisions
- Addressing Human Rights Violations: Different Approaches
- Introduction to Socio-Political and Cultural Rights and Dimensions of Class, Caste and Gender
- Right to Mobility and Communication access in Rural Areas
- Right to Aids and Appliances: Mobility and Communication Accessories
- Review and Action Plans for the Redress of Victims of Human Rights Violations
- General Introduction to UN Conventions (Ex: CEDAW, CRC, etc) and Vishaka Guidelines
- Addressing Domestic Violence and Sexual Harassment at Workplace: Issues of Women with Disabilities
- Organizing Data Collection of the violations against Citizens with Disabilities and MIS
- Right to Formation of Associations/Joint Action Committees
- Right to Redress Mechanisms and Community Action Plans
- Right to Organizing Community and Legal Resources
- Planning Advocacy Strategies

Different Approaches to Disability

Disability as an issue has always been there and has been tackled at different times only through various processes. Each religion has its own understanding, and disability



considered through religion, it is not only the wars that are bloody but even religious wars have been equally bloody and gory with heavy massacre. In each of these historical periods, there were deaths but there were equally high number of disabled.

Even the acts and laws which have been implemented in this country also do not support the Citizens with Disabilities, what with the clause of “within the constraints of your financial budgets”. Which effectively means that the Citizens with Disabilities will never be able to achieve their rights. When we come to the other model of bio-centric model, the disabled are categorized as having certain percentage of disability according to which they are said to be eligible for benefits and entitlements. All this discrimination, be it on women, aged, dalits, aadivaasis, children or disabled is only being reflected in the acts and laws as even the makers of these are also part of this dominant castes and classes. In this model, it is the non-disabled who decide how disabled a person is, what is the category and how much entitlement they need and this is what is reflected in the laws also, as the domestic law of India draws its content from the erstwhile British Poor Laws.

The four approaches to disability historically can be divided under two models, Individual Pathology and Social Pathology.

Individual Pathology

- Charity Approach (Institutions, IBR)
- Bio-Centric Approach (Correctional surgeries)

Social Pathology

- Functional Approach (Aids and Appliances, CBR)
- Human Rights Approach (Disability Rights are Human Rights)

Access to Gram Panchayat

The constitution, responsibilities of the gram panchayats and local governance issues were discussed at length through

group discussions and simulation exercises, and participants were encouraged to think of strategies to ensure inclusion of Citizens with Disabilities in the deliberations of the gram sabha.

First of all, all of you should go back to the villages and identify the disabled in your village, cross check with the government list of Citizens with Disabilities, there will definitely be more Citizens with Disabilities than what the local government sources claim. Speak with the parents, get to know them, hold meetings together with them all, then discuss about how to get access to their entitlements and then ask how they would be able to find solutions to their problems, and then stress on the importance of forming into a group and to find redress mechanisms for the most severely affected of Citizens with Disabilities. Once this group has been formed, inform all the officials concerned, and other groups if any were existent. Then take up each issue at a time and put it in front of all these representatives for redress. Ask them to arrange for a Gram Sabha and there discuss the specific problems of the Citizens with Disabilities, our demands, like certification, White Ration cards, concessions, etc. We should always keep in mind that right from the family members to the ministers of the state cabinet, no one has even the vaguest idea of either disability or Citizens with Disabilities and if we take this for granted then our plan of action can be clearly defined and developed into a struggle for the assertion of rights of Citizens with Disabilities. Arrange a meeting of Citizens with Disabilities in your village in the next 15 days, then we will be there all through to support you. If you arrange the meeting, get to know their opinions, and requirements then you yourself would have an idea of what exactly has to be done. Unity is the greatest strength. A group is a sign of recognition and empowerment.

Right to Work

Most often the problems of the disabled are invisible in the society and they hardly have any friends and are not even recognized as either members of the family or community and have never considered them part of the society. If the disability occurs during the middle of a person's life, if a person



in employment becomes disabled due to some accident, he is always sent away with some compensation but he is never considered for a different kind of the job in the same organization. Today the labor laws of the country also do not favor the disabled. What are the most basic of rights? Right to life, for shelter, for education or equality, etc. Right to equality is next to life, especially where the disabled are concerned. This was not considered because the disabled were supposed to be different from the others and so there was supposed to be no equality with others. But the disabled have every right to equality in all spheres just as men and women have the right to equality. This applies to even employment. Recently there was a new bill ensuring at least 100 days of livelihood for able-bodied persons in a family in the rural areas. The disabled activists questioned this, as they would be disqualified under this scheme so changes were made by the government to accommodate the disabled to avail this scheme.

Understanding Causes and Categories of Disability

The session reflected on the various categories of disability and started with the definitions of impairment, disability and Handicap. Loss of any organ or limb is known as impairment, loss means either complete loss of the limb or when it does not work. If a person, due to his impairment, cannot do his work, be it personal or outside work, then it is known as his disability. Inability to do personal work is disability. Handicapped means if a person who is disabled and is denied equal participation in the society because of his disability, he is understood to be handicapped.

Why is disability caused ?

Consanguineous marriages, malnutrition, superstitions, lack of medical facilities, accidents, etc. There are three periods when disability is caused majorly during pregnancy. One is pre-natal, the other is per-natal and the last is post-natal. The first cause of disability is GOK or God Only Knows or unknown causes. Most of the time, the causes of disability are not known at all. All we can explore is the chances of

where disability can occur, as the pregnant woman is easily available, and as being a woman she can be blamed for the fact of child being born disabled. One of the causes for disability especially during pregnancy is lack of nutritious food. What is the difference between food and nutritious food ? A balanced diet consisting of all the vitamins and proteins and carbohydrates and other strengthening factors is nutritious food whereas food is whatever is normally available to everyone.

Another cause is disease during pregnancy, if care has not been taken in taking medicines, another is accidents, one more is consanguineous marriages or among very close relatives. It has been found that the chances of disabled children being born in these kind of marriages are higher as the factor of mismatched RH factor or mismatched Chromosomes might lead to disabled children being born. But there have been cases where non-disabled children are born in these marriages as well as disabled children even if it was not a consanguineous marriage. Other reasons for causes could be indiscriminate or deliberate use of medicines to remove the child/abortion, own or quack medicine, cigarettes, beedis, drink, drugs, X-Ray, indiscriminate scanning during pregnancy on the stomach, all these coming during pre-natal pregnancy.

The Acts and Accessing Government Schemes for the Citizens with Disabilities

What are acts or laws? Those that protect our rights are termed acts. The disabled also have certain legal acts which ensure the protection of the disabled, the first of which was the Mental Health Act in 1987, RCI Act in 1992, and then came the Persons with Disabilities Act in 1995, which ensured the Full Participation, Equal Opportunities and Protection of Rights of the Citizens with Disabilities. Then the last of the series is the National Trust Act in 1999 for the persons with Cerebral Palsy, Autism, Mental Retardation, and Multiple Disabilities, for their welfare as they were supposed to have caretakers and were unable to live independently. The RCI Act was implemented to bring a standard to the professionals



who are involved in the rehabilitation of the disabled of various categories, especially for Speech and Hearing Impaired in the form of sign language, Braille for Visually Impaired and Activities of Daily Living Skills for the intellectually disabled. Then comes the Persons with Disabilities Act, which has 14 chapters, which protect the rights of the disabled. Now on the first day we learnt about the several rights of the citizens of this country and as the disabled are also citizens and human beings all the human rights are applicable for the disabled also. This act protects the rights of the disabled, and then ensures that every disabled is equal to others in the society and should be given equal opportunity toward development as well as to participate in the process of the society.

Issues of Mobility Access in the Rural Areas and Access Audit

What exactly are the ways in which the disabled are discriminated against by the able bodied? Why are we stressing on the importance of accessibility and barrier free society. What is it to have a disability and try and move? We all have to experience this and understand. This session continued in the form of a game. The participants were tied with cloth over their eyes, ears, their arms and legs were tied and some were made to sit on the wheel chairs and they were asked to go from the meeting hall up the stairs, come down again and then go out onto the road, tied all the way through.

Gender and Disability Introduction to Human Rights

What are the human rights?

What are the rights of the disabled?

The participants were given quarter of an hour to do the work and present their findings.

- Right to life
- Right to religion
- Right to abolition of exploitation
- Right to vote
- Political right

- Right to property
- Right to freedom of speech
- Right to education
- Right to equality
- Civil rights
- Right to liberty

When it comes to women with disabilities, it was found in a study in Orissa that nearly 20% of them face sexual harassment and abuse from their own family members, of which 25% are intellectually disabled. They are locked in the house, they are denied even the most bare minimum of their needs, they are tried to be disposed of as quickly as possible, so are married off to a person already married or just given away. The parents try to give their daughters with disabilities away because they have become more and more selfish due to various sociological conditions and want to get rid of their burdens. In this situation it becomes that much more important for us as activists working with NGOs and voluntary organizations to ensure that this difference and discrimination is reduced as much as possible so that other forms of discrimination can be addressed with much more telling effect. There was also a discussion on sexual harassment at the workplace.

CEDAW

In December 1979, a Convention was brought out to protect and safeguard the rights of women exclusively. This was different from the earlier legal instruments in that the women were identified as a community who face more problems than others. More than 100 countries have signed this convention, where India is also one of the signatories. There are 30 sections in this convention and the first 16 sections speak exclusively about the rights of the women, such as reproductive rights, child bearing and rearing, and cultural and traditional influences of man woman relationships. The implications of each section to the situation of women with disabilities was discussed in detail in the context of the present effort by NGOs at drafting a shadow report on CEDAW.



Formation of Associations / Joint Action Committees and Community Action Plans

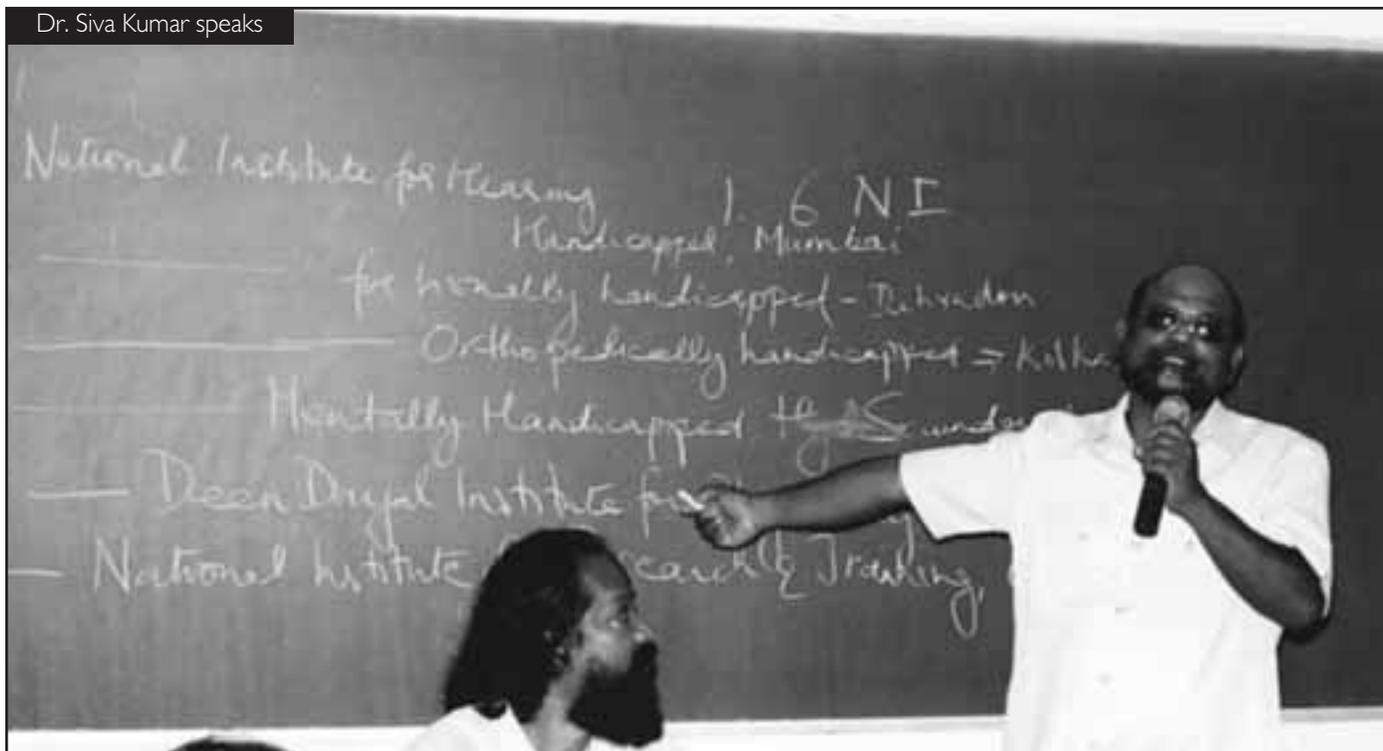
Regarding formation of Groups for Citizens with Disabilities, Bamma described how women can form into groups first and then to help and support the formation of groups for Citizens with Disabilities. These women's groups should just not concentrate on how much to save and how to access the loans and other schemes but discuss about the specific problems of women and this information should be the support for the formation of the SHGs of Citizens with Disabilities. Women are not encouraged to come out or earn for themselves, we wish that we were able to earn and buy things for ourselves but the men say, have we died or have gone away that you should go out of the house and earn for the family. In other places women are more empowered and are able to voice their problems, but here it is not possible. The women are the sole caretakers of the disabled, they do not share in the work, and there is not enough income and if the women want to go and earn then they are not allowed, how do we come out of this situation. A discussion on this problem must begin.

And there should be struggle and there will be pain. But whatever the cost, this should change.

Every activist should have the complete trust of the person who has faced human rights violation, so that s / he can at least come and express his/her problems to you. The activist must be a support to the person who was a victim, and ensure that they find the redress by themselves. Disabled peoples' networks must work closely with other rights groups and identity movements so that the problems of the disabled will be foregrounded in a more holistic manner to the world.

We have to take up the cases such as these so that the future of the CWD is assured and others might not consider it as something of importance. This is where disabled rights forums can play a proactive role, as they would build alliances with other identity movements such as women, aadivaasis and dalits for the achievement of rights of the CWD. Rights violations should in the first instance involve the moving of the government mechanism for redress and necessary training

Dr. Siva Kumar speaks





and skills enhancement. The Collector is the first citizen of the District and he should take care to ensure the protection of rights of CWD. There are many CWD who are on the brink of suicide, but we have to think about changing that despair into hope, make sure that they become aware of their rights and learn to fight for their protection. CWD belong to different castes and disabled are present in women, children, dalits, aadivaasis, etc but when they all come together their caste becomes “disability jati”. We are all working with disabled. When activists go to the village to collect information about the groups that are working in the village, only groups such as dalits, women, aadivaasis, farmers, etc are mentioned but there is never mention of the disabled groups because they are never known, or recognized as people who make a positive contribution.

Alliance building can be accomplished in the first instance by attending rights meetings of other groups and inviting other groups to participate in meetings on disability rights. This way CWD get to know the problems of women, dalits, farmers, etc. In the same way the others will get to know the specific problems of the disabled, who could be women, dalits, farmers, youth, etc. In the case of Ushamma it was the support of the other groups who came forward with unconditional support for the girl.

But at the same time, said Sajjid, “we have to be careful not to give the leadership over to the non-disabled because this could hamper the disabled movement. But at the same time we cannot achieve anything by ourselves and as our main problem are the non-disabled, we have to make sure to include them in all our struggles, so that the empowerment process continues and gets strengthened. Working individually works, but working with various constituencies toward redress of the problems of disabled itself will be an empowering process by itself. This will go a long way toward strengthening even the very laws that are supposed to protect our rights exclusively. Today if a dalit is called by their caste name as an insult they can go to the police and complain and get immediate redress whereas if a disabled goes to complain for the same reason, for being called by their disability name, the police say what is wrong, after all you do have that disability, this in spite of the fact that the Persons with Disabilities Act does say that it is not right and legally punishable.”

To illustrate this Sajjid gave the example of a boy who was a person from BC and a disabled woman who was from SC and how all the groups gave the support for their marriage, even though their respective parents themselves had opposed the marriage.



Dr. Kodandaram speaks at NALSAR



Human Rights Education Workshops held at:

Dammapeta	[Khammam District]	05-07-2005 to 08-07-2005
Tadepalligudem	[West Godavari]	26-08-2005 to 29-08-2005
Secunderabad		03-09-2005 to 04-09-2005
Ananthapur	[Ananthapur District]	13-09-2005 to 16-09-2005
Amalapuram	[East Godavari]	06-11-2005 to 09-11-2005
Anantagiri	[Visakhapatnam]	11-11-2005 to 14-11-2005
G.L.Puram	[Vijayanagaram]	16-11-2005 to 19-11-2005
Gudivada	[Krishna District]	21-11-2005 to 24-11-2005
Warangal	[Warangal District]	05-12-2005 to 08-12-2005
Kosgi	[Mahabubnagar District]	12-12-2005 to 15-12-2005
Manchala	[Rangareddy District]	17-12-2005 to 20-12-2005

Collaborating Organisations and Local Organisers:

- Mr. Jayanand – ACTIVE, Khammam
- Ms. Anne Ferrer,
Mr. Dashrath and Mr. Malla Reddy – Rural Development Trust, Ananthapur
- Mr. Suresh – Action for Development, Tadepalligudem
- Mr. Nageshwar Rao – Jan Kalyan, Amalapuram
- Mr. Balaraju – Nature, Araku/Anantagiri
- Mr. Rajeshwar Reddy – GSRDS, Parvathipuram
- Mr. Nireekshana Rao – Sneha, Gudivada
- Mr. Arun Gaddala – Pragathi Seva Samithi, Warangal
- Mr. Krishna Murthy – Commitments, Kosgi
- Mr. Madhu and Mr. P. Srinivasulu – Community Development Center and IKP, Manchala



Legal Literacy

The Legal Literacy Workshop was planned as a final summing up of the six-month process that had been initiated in July. In the course of six months from July to December, activists in different corners of the state and persons with disabilities who had not till that point had any access to rights networks, had sat together grappling with the ground realities of persons with disabilities, realities which seriously interrogated the meanings of citizenship for them. In the course of discussing rights, participants felt the need to learn more about laws, policies and procedures, in order to be more effective rights advocates. The legal literacy workshop brought five participants from each of the workshops together on the NALSAR campus for three days to meet with professors of law, human rights advocates and leaders, women's rights leaders, judicial officers, professionals from institutions for persons with disabilities to discuss the problems they faced in the course of their lives and work and to debate on the effectiveness [or lack of it] of public policy for persons with disabilities. An important part of the discussion also focused on best practices in other rights struggles and their relevance to the citizenship struggles of persons with disabilities. This section of the report presents edited transcripts of the different sessions.

NALSAR's Commitment to Disability Rights: Prof. Ranbir Singh

When we produce lawyers we have 3 basic parameters that we try our best to trace out. Lawyers, those who are technically sound, professionally competent and what's more important is those who are also socially relevant. You may ask me a question that people call this an elite institution and how do you produce socially relevant lawyers? Friends, we do it because the University Professors, students themselves engage in a very big way with the community. We engage ourselves with Dalits, we engage ourselves with disadvantaged groups, women and with children. If you know the very first draft bill on the abolition of child labor in the state and was prepared by NALSAR. We are also seriously involved with the Velugu Project

on land rights, especially exploring the possibility of restoring the land rights of indigenous people.

In the second year every student of NALSAR has to go for a training of six weeks compulsorily to an NGO at State level. This involves going to remote areas, studying the situation of local communities and preparing a report. This is often the beginning of an extended contact they have with these communities. We have a very strong interface between law and economics, law and political science, law and sociology and law and history which are important for the understanding of law. Our clinical legal education programme takes students to the villages.

The problems faced by persons with disability are known to everybody. We have a Constitution that can quite easily take care of the problem. We have a national mandate. We have an international mandate. We have laws. India is one country that is not short of laws at all in any field. But most of our laws are in a state of suspended animation. What is the problem here? We keep saying India is a nation that is 58 years old now. It is not as if we have not done anything, we have done a lot of things. But we have still a long way to go. And in the field of disabilities we say we need to redesign, reshape, re-structure, re-map many of our policies. Because we know what Article 14 says, what our Preamble says, Article 15, 16, 19, 21, 38... We are looking forward to the day, when we have a very strong interface between law and justice. Let me conclude with what with Ms. Aruna Roy, Member, National Advisory Council and Activist said:

"India empowered to me is, when we have the political maturity to listen to the dissent of the deprived. We all want to matter ... we want our views to be heard, our pain and suffering addressed, our hopes and aspirations to be acknowledged, the motivational power of the universal desire to be relevant has always encouraged me. Democracy theoretically offers every individual an equal voice in deciding our collective future. That is empowerment. But it is long voyage from theory to practice. It is along this journey that we can nurture individuals and collective motivation with compassion and understanding or sow the seeds of our



collapse through indifference, shattered dreams, and silenced voices. Our more than 55 years old experiment with democracy has been a mixed bag.”

Friends, as far as the problems of disability are concerned, the answer lies not in tomorrow, for tomorrow may be too late. We have start today.

Disability Rights as Human Rights:

K.G. Kannabiran

We are here today to understand what the rights of the Citizens with Disabilities are. What do you have to understand? Generally, this society is full of inequalities. For generations on end, there have been these inequalities. Castes, religions, the poor. Independence came to a society with so many differences.

We have all accepted the Constitution and have to try and understand what exactly it is saying. The first fundamental right in it is Equality. Meaning, in a society that is unequal, the most important reform would be creating an equal society. When we look at the process of how the Constitution was written, it is as if all the people came together, discussed and came to a decision, and the decision was that they should have certain political awareness. As a part of this, we should be able to set up a government in a democratic way; that government should run in such a way that it would remove the political, social and economic inequalities; it should do justice to each and everyone; it should do political, social and economic justice to everyone. People should live with respect as human beings. Other than the fundamental rights of freedom of speech, to form associations, to express opinion, to reside in any part of the country, equality was also written as a right, as a fundamental right. After writing it down as a fundamental right, generally when rights are being analyzed, when analyzing the right to equality, whenever inequalities become apparent, a process has to be evolved to redress them, to remove them. This can be through legal methods, through constitutional analysis. However, society does not always consent to the constitutional analysis of inequality. As a result, child labour, bonded labour, untouchability continue to be issues for which laws need to

be made, although they have already been prohibited constitutionally. According to the Constitution, a dalit should have reservation. If this is being implemented, then a PIL is filed against this. But this is something that is already agreed constitutionally. A Dalit belongs to a community that has been suppressed and oppressed for generation and thousands of years, and if the inequalities that he has faced have to be removed, then some support systems have to be built into the Constitution, certain provisions have to be implemented for giving more opportunities to the lower castes. Even if no great changes are made in the levels of their education, they should be given some support. Yet, when all these entitlements have been set up as fundamental, we abandon them and go for Public Interest Litigation.

Now what happened with Citizens with Disabilities? There was nothing explicitly written in the Constitution. Even then, when a phrase like ‘values of Equality’ has been set down, that means it will become applicable to the Citizens with Disabilities also because they are a marginalised group. During 1954 or 1955, when I was young, there was an Advocate General in West Bengal called Sajan Gupta. He was visually challenged, he could not see. He would get everything in Braille and with all the script in Braille he would argue powerfully in the Court. Is this facility available for all the Visually Challenged? There are no facilities at all. If such facilities were created, then there would be more advocates like Sajan Gupta, arguing their cases in Court.

That sense of equality that moves towards creating enabling conditions in societies must be nurtured. The State can remove these inequalities without taking recourse to Law, it does not need the laws, what is needed is, human values and recognition of human rights, there is no need for laws. But, in a society without human values, no one will work without the Law. There should a law and an authority for the law and he should be able to tell what is right and what is wrong, otherwise no one will work. So in a society like this, what can we do? We have to set down laws. These laws have to be understood by all of you. Because, it is not enough to take it for granted that as it is set down in the law, the authority will implement it. We have to understand



the law and know what our human rights are, we have equal rights in society and what are these equal rights? Is it one vote for each man? Or are equal rights about the creation and provision of appropriate supports, facilities and capacities to a person to enable him/her to compete with others? We have to understand this and we have to assert the rights. You have to demand that we have these rights, and you have to ensure that these are enforced. No one will do anything unless you demand for it.

“It is because I am disabled that I am demanding equal rights. If I have to have equal rights, then there should be some provisions made to ensure that I can access both equal rights and equal opportunities.” This should be your stand. Equal opportunities should be provided and equal rights should be given. How would you be given equal rights? You should be made equal to the person who is normal. For you to be made equal, several types of supports have to be made to you. For instance, you may have to have certain implements to make you walk. Visually challenged persons have to be taught Braille to know what is being brought out in print, and other facilities that go with it. Otherwise there is no equality. It is important to recognize your rights and assert your rights. “I have this right, I have the right to live”, and you should have the courage to say I need all these rights in order to assert my right to live. If you do not have the courage then the inequalities will never be removed. They will continue to go on and on and will never be removed.

Charity and pity is not what we need. Charity and pity are not rights of an equal society, are not sentiments of an equal society. In an equal society, assertion of right is the indication. If ours is an equal society, I should be able to assert my rights and they should be able to recognize the extent of inequality I am suffering. You should also be able to tell others of your inequalities. You should have the capacity and ability to come and tell me, that we have these difficulties in overcoming inequalities and accessing equalities, unless our difficulties are removed, we would not be able to work equally with you, cannot think equally with you or argue equally with you. You must campaign for yourself. Nobody is going to campaign for you. In this society, nobody has the time, the interest, to

campaign for equality. In the 55 years, what the society has done is, it has defeated the concept equality in every sphere. If you have to fight this, you have to campaign against it. You must campaign to force people to listen to you.

Disability Rights and Women’s Rights: Volga

In the NALSAR-Disability Rights Forum initiative, Asmita Resource Center for Women has had the good fortune of being part of these 10 workshops over this one year. And the result of all this working together as a team has today led to my representing Asmita here in this Workshop. These workshops were held in the 10 districts of Khammam, West Godavari, Ananthapur, East Godavari, Vishakapatnam, Vijayanagaram, Krishna, Warangal, Mahaboobnagar and Ranga Reddy. And most probably there are representatives from all of these 10 districts where these workshops were held. In the coming next three days, you are going to sharpen the various issues that you have learnt, the human rights perspective and dimensions, and plan strategies of how to turn all that you have learnt into law and how to demand these laws as our rights and to bring it into part of our experiences, all these you are going to gather from lot of experts who are here to give you exactly these kinds of information.

We were able to achieve human rights, after a struggle, which was carried out systematically for a long period of time, for justiciable and equitable society, carried on by many people. No one came and put either human rights or the Human Rights Declaration readily in our hands. We had to struggle a lot... so many people, from so many countries! In 1948, though the Universal Declaration of Human Rights was promulgated, many groups of people were submerged under this larger spectrum of ‘Human’. When we hear the word ‘human’, we are made to feel as if all the different constituencies of people seem to be represented, but when we take a careful look at the definition of human, it actually means a ‘man who has normal characteristics’. So the community of human beings would not acknowledge the differences in human beings. There are many types of human beings, like women, Dalits, Citizens with Disabilities.



There are many such differences and more which were not accepted or acknowledged. So obviously there would be a voice raised against this invisibility every time these diverse groups of people would demand that their rights be acknowledged, and through the raising of this voice expanded the horizons of the definitions of human rights. Whenever the needs and wants of the people increase, whenever various kinds of human beings demand the recognition of their individual and collective needs and rights, the limitations of human rights progressively decreases.

So human rights never remain constant but keep changing according to the needs of the people, new ones are added and their meaning expanded. The women's movement has the experience of contributing to one such expansion of meaning of human rights. From the days when human rights were considered to be only the political and civil rights, today

issues like speaking about domestic violence on women and the suppression of women as part of religious beliefs are also considered to be human rights issues and are being discussed as such. For a long time human rights were defined as a redress mechanism when Governments/States indulge in human rights violations, and basically spoke about how the citizens could protect themselves from this violence. But there is a lot of violence that is indulged in by non-state persons and agencies. Especially when we take the case of women, there is lot of violence meted out on them inside their families. There is lot of violence on them by their fellow men, in the civil society.

The women's movement for many decades questioned this bias, and fought for the rights of women, and resisted. The Movement also participated in International level forums like Rio, Copenhagen, Vienna, Cairo, and strongly expressed that



Mr. Sajid welcomes Mr. K. G. Kannabiran. Prof. Ranbir Singh looks on



women needed certain rights to protect themselves from domestic violence, sexual harassment, violence in the name of cultural beliefs and practices, and also demanded that these rights should be considered as Human Rights and eventually raised the slogan of “Women’s Rights are Human Rights” in 1993 at Vienna. In 1995, by the time of the Beijing Conference, this slogan had spread across the world in a major way. And since then there has been no looking back, and no respite. Most importantly, until then, there was a glaring difference between production in the public sphere and what was considered as a private realm of reproduction, and this difference was focused upon and it was argued by the Women’s Movement that though the public is wage driven and the private is not read along the lines of wages or income at all, there is hardly any difference between both the spheres where intensity of labour is concerned. The Movement was able to put this argument forward and was able to gain respect for itself as well as respect, recognition

and values of equality for the work and labour of women all over the world, through this Convention.

There is so much history and struggle behind the evolution of this Convention. But in spite of being such a wonderful boon to women all over the world, in spite of the fact that it touches on the rights of women in almost all the areas like religion, culture, reproduction, forms and definitions of discrimination, etc., and which were in fact not touched upon within the larger Human Rights Conventions, there is no specific mention, in so many words, of Women with Disabilities under this Convention. We can only assume that as its title itself claims “Against all Forms of Discrimination”, we could also include the discrimination against the citizens with disabilities under this Convention. CEDAW did not stop with its promulgation in 1979, but many Commissions were formed over the next few years to take forward the provisions of the Convention and ensure their implementation, in all the countries of the world. In the Commission that was formed in 1991, there were certain General Recommendations that were promulgated. Articles 18 and 24 under these General Recommendations have a specific mention of the Women with Disabilities. The Committee clearly mentioned that women with disabilities faced two forms of discrimination: as women they face inequalities and oppression, and on the other side as disabled they face equal violence, inequality and oppression.

The Committee then requested the States Parties that when they submitted their respective Reports to the Committee on CEDAW, once in every two or three years, there should be a clear section on what is being done to remove the discrimination against the women with disabilities in their respective countries and what is their status in the country, what are the conditions, what special provisions have been made for them. The Committee on CEDAW also clearly stated that each Member State should take positive steps to ensure that women with disabilities live with equal rights, dignity in the society, and with equal participation both in the social and cultural life.





There is a need for a movement for the rights of citizens with disabilities. By this I mean that their lived experiences should be taken into account, their specific problems have to be addressed. There are also a lot of commonalities between the women and citizens with disabilities — especially in the problems they face culturally, the prohibitions, superstitions and beliefs. There is a need to ensure that cultural and social rights are promulgated, for the protection of persons with disabilities. In the same way, just as non-protection of human rights is a violation, impediment from enjoying our rights is also a violation of our human rights. We have a right to education, but there are many barriers in accessing this right, be it in transport or built environment, and the non-provision of necessary facilities for children with disabilities is also a violation of the right to education and we have to keep this in mind. There is a great chasm in the awareness of the larger society in understanding the needs of persons with disabilities.

Every individual is immersed in his/her own struggles, you have to turn their focus and insight toward your struggle, not only to achieve their own rights for themselves as persons with disabilities but that their rights have to become part of others' struggles for rights.

Just as women said women's rights are human rights, even rights of persons with disabilities should be considered as human rights, which widen and at the same time enrich human rights. We should speak about our rights with that kind of pride and there should be laws enacted for us to enjoy these rights and we should bring pressure on our governments to enact these laws, and I feel that this meeting here in such peaceful environs is the foundation for us to begin and take up that kind of a work in future.

This experience I feel is relevant both to the disability rights movement and to the questions raised by women with disabilities in society in general and in the movement in particular.

“Recently there was a film called ‘Iqbal’ released where the protagonist is crazy about cricket. His ultimate dream is to get selected for the national team, a dream that he realizes at the

end of the film. That is the story of the film. But there is another character in the film, his younger sister. She is the bridge between her brother and his cricket coaches, translating the sign language to the others. I felt then that we generally claim to know so many languages, but how many of us can actually claim that we know either the sign language or Braille, how many are there in the society in general and how good it would be if we did know these languages. If we did, then the levels of communication would improve so well and we would be able to understand each other so well. We keep getting confined to fighting for either this language or that as second and third languages in the school curricula but why do we not remember that there are more languages, which are of much greater importance and have to be considered as such?

Reflecting on the Human Rights Education Workshops: M. Pavan Kumar

The one reason for us to speak about human rights is that the problems begin right from the time when either an activist or organization comes to that house with steps in which you live in, and bring you here to attend this meeting. Starting from such “normal” problems to problems like drinking water. Here one person was asking me, how would a woman with disabilities go to the bore well and carry the water filled vessel from there to her house. But why should the bore well be at the end of the village and not near her house? We were discussing problems like this, about the problems of accessing most basic necessities of our lives like water during these workshops. What kinds of houses are we living in what kind of food are we eating, are marriages necessary for persons with disabilities? We discussed issues like these and many more. We also discussed whether children with disabilities should be separated from the love and affection of their parents and live in far away in special hostels, institutions and schools or should they be able to access not



just the love of their parents but also be part of the community and neighborhood in which they were born. All these are problems. If we were to look at the persons with disabilities Act of 1995 or the National Trust Act that was enacted in 1999, it seems as if these acts are touching upon these issues but there are no provisions in these acts to remove our problems and to make us live in this society with liberty and equality, as one among all. We discussed this also.

If I were to speak about the problems unique to each region, in Ananthapur, when the participants were asked what were the reasons for disability, they said “factionalism”. They do not give such ‘normal’ reasons like lack of nutrition, mothers, or congenital occurrence. Along with all this the reality that exists is factionalism. If we look at the problems in Ananthpur, even where big organizations like Rural Development Trust is working, along with others, the persons with disabilities are facing acute drinking water and transport problems. There are schools in many places. But if girls who have attained puberty were to continue to go to these schools, even such a basic facility like toilet is missing there. More than 170 non-disabled girls had to drop out of school for this reason. What of disabled girls? How many of us have accessible latrines in our homes, are we not human beings? These were questions that were raised. From there if we were to come to Khammam, it is a hilly adivasi area. There is no education there. Some drought rice that is distributed once in a while and if a Minister or Collector passed that way, some aids like walking sticks, tricycles and crutches distributed. All these are necessary. The adivasis have great respect for their traditions and culture, towards their languages, and how many adivasi languages have been recognized as official languages of the Nation? These were also your questions. The people are removed from their lives, from their language, from their society and settled in an alien place and then they are declared to be unintelligent, they are being placed in such a situation, so that the others could dominate and repress them. The others mentioned caste, religion, and patriarchy. Along with these three, just because the society is unable to accept or understand the slight differences or lack in the physique of

certain people, this along with the other three reasons compounds our oppression. This is also a problem. From here to Tadepalligudem. We went to this region with great hopes that the lives of the persons with disabilities would be much better as the Andhra region is full of water sources, there is good agriculture, lot of employment, it is very well developed and there is no need to give any kind of awareness to these people. They are well ahead in development. But there is no difference at all between this region and the other regions of the state. That is purely because of the cultural discrimination that speaks the language of pity and charity. The awareness of pity and charity has been raised to the point where a fellow human being is refused identity as a human being. This is the situation we faced in Tadepalligudem and we discussed this too. We do not have drinking water. We do not have livelihood options. We are not being given admissions in schools and colleges. We do not know what kinds of trainings are available for people like us. Where do we have to go? Even in the family, we are being looked down upon. Our elder sisters and younger sisters are getting married. All these are problems and we saw the same in Tadepalligudem also.

In fact, the identification of persons with disabilities was initiated for the very first time in Tadepalligudem through the workshop held there. The local organization had gone to the areas of their work and searched for persons with disabilities in the villages and brought them to the workshop. One of the first reactions from the participants there was that this was the very first time that we have come together to discuss our problems as persons with disabilities.

We speak of liberty and equality, but we do not even have the opportunities to meet even people like ourselves. This is a problem that is prevalent everywhere. Even in Amalapuram. Another problem was, in every district we visited, there are district, state and even national level organizations already set up and in place. Livelihood is important for everyone. But a livelihood that grabs and steals money from persons



with disabilities who have no source of income and no other source of dependence is something that we are better off without. We have been pushed that far. Next was Araku. Another adivasi area. We regularly go to this area because of its scenic beauty and the wonderful hills. But if we were to go with the adivasis to their homes, we would understand the sadness and despair that are their lives today. What these people need is not the scenic beauty but food to eat and accessible clean water to drink. Again Parvathipuram, that is also an adivasi area. The participants sat and listened to all that we said. It was a great challenge for me because I really did not know whether they were able to understand what I was trying to tell them. There is no reply from them. Some of them were able to write. We would ask them what was happening, why were they not speaking, were they sleeping? But there would be strong reply of no. They were hesitant

to explain the problems that they face every day of their lives, their lived experiences. They wondered if those experiences were relevant. I have seen the nadir of backwardness in that district. Perhaps their inability to express themselves was in fact the poverty of language that does not enable communication. And Vizianagaram is a district that has a rich history.

In Mahaboobnagar District, in the last 10 years all kinds of groups have been set up in certain mandals of the district. Today, the major problem facing the activists in this district is how to make the women's organizations/SHGs, Dalit Groups understand the issues of persons with disabilities. The government is willing to accept applications from persons with disabilities regarding accessing of Schemes but these are being channelized through the women's SHGs, how do



Role play at NALSAR



the persons with disabilities make them understand how important accessing a particular scheme is to these women? This is the situation in Mahaboobnagar. After seeing all this, what I have realized for the first time is that all my university education is of no use at all. We do not know anything. Our books have not taught us anything. There have been no discussions at all about lives like these, nor were they part of our curricula. No one wrote about this. When I decided to work with persons with disabilities and went and spoke with the Asmita team, I should say they responded in a way that most of the organizations in Hyderabad have not been able to. That is why they have been with us from the beginning. When we demand our rights, how do we fight the culture and the domination that is so closely linked with it? How will we bring change?

Cultural Aspects of Discrimination and Human Rights: Dr. Kondandaram

Human rights movements constantly search for solutions to problems and processes through which they may be achieved. What are the human rights and how can we use human rights to achieve our solutions today. We accept that there is a problem.

There are many visually challenged students in my class. Generally in the course of lectures it is common for teachers to speak about the “blindness of people” or the “lack of sight” of certain others. We often observe in our lectures that some writers and thinkers are not able to “see” certain things in the world, for example they are not able to “see” the problem of women. After some months of my lectures in this vein, a visually challenged student came to me and asked me whether being blind is a swear word or a descriptive word. I understood what he was saying immediately and said that though it is a description, it is often used as an abuse. He said, “but that should not be”. And I agreed that of course it should not be used to degrade someone. But the problem is that it is being

used as a matter of fact and without thought, and as part of the culture that is handed down to us. I had agreed not to use the word but I had to stick to my word and not use it in the classroom, but it has become such an integral part of our lives and culture and to speak without using that word. Now you can imagine how critical my problem was, of not being able to use words that I had got used to so much. Now whenever I come to the point where I have to use that word, the student comes to my mind and I have to search for an alternative.

Generally, elders tell us that the disability was a work of god, that he created him like that and you like this, and it is Generally, elders tell us that the disability was a work of wrong of you to hold it against him, it is a sin to tease him. Here also there is a great value, to the extent that a disabled person was also to be considered a human being like us and had to be respected as such. There is also another problem that is interwoven within this understanding. As he is a human being with disability and god created him as such, and as he has some problems, he has to be looked at charitably. Once you say that god created them that way, there is no longer any solution. It is generally said in the rural areas that as all the fingers of a hand are not equal, so are people not born equal. And each person is different in their own way, and when we think like this there is no solution at all, and they will remain like that and we will remain like this. Some people are born into that caste and the others in this, some are born as men and others as women, and they have to live like that, and there can be no change, they have to continue to be. Now in this situation, the only solution for all is to wait for the grace of god to change our lives some day, in this life and if that is not possible in the next life, or the next if even that is not possible.

Many of us are not willing to agree to this method. It is exactly because we do not agree that the human rights have been recognized. If we were to agree then there is no human rights approach. We would adjust and console ourselves that



this is a life that has to be just lived in society and there is no problem of finding a solution. It is not as if the problems of persons with disabilities are all going to be easily wiped out or are solvable. But does this mean that they do not have an opportunity to live equally with others in the society? That is the question. The second question is if we have to live equally what has to be done for this? It is not possible to overcome the problems unless we find an answer to both these questions.

Let us keep aside creation of god for a while and think that we have control over the conditions around us. The thought process evolved that if the conditions could be changed according to our requirements then there is scope for individual development. Could this seminar be possible if we had not thought that we needed to change the conditions of our life? We would be somewhere running around temples singing prayers to God for our redemption. But we are not there and have come here, why is that? Because we have the idea that, within our capacities and the capacities of the society the conditions can be changed, for us. We have come from 10 districts and are speaking about not just disability but several other issues because we have a belief that our problems will get some solution. If we were not convinced about this, why would we be here? We have to make an attempt and the attempt should be to begin to demand that we should also have all the facilities to develop and grow as others in the society. We need access to drinking water. This might seem a small issue but it is really a big problem. We never think about this. Why can we not have a pipe extended right up to my doorstep, this is a problem. Now there are no accessible schools for children with disabilities to study, so they cannot stay with their parents and study, why can I not have this facility? God is not responsible for this after all. Man is responsible for this problem. So now we think in terms of finding a solution to these problems.

We are now able to ask what should the government, you and the next person do? When I cannot walk, how can the government office working for people like me be situated on the 5th Floor? This is something that can be set right by

us. We are not asking for legs and eyes, but are demanding from the Government an opportunity to live like others in the society? What are the facilities created for us?

Though human rights cannot be understood as a political process, they have a defined boundary and we use them within this. The definition here is that all human beings are equal and to find solution through rights is to accept that everyone is equal in society and must develop uniformly and that facilities have to be created as such as well as to have the power/authority to achieve these rights. The last is the most important, rights give us the power/authority. There are three kinds of power/authority that rights bestow on us. One is when we are discriminated against, are being insulted and looked down upon, when the basic facilities for our living are being denied, then the rights give us the power/authority to resist this discrimination that is being meted out on us by society. The second is, it is not enough if the discrimination, domination and oppression is removed from the society but we should be provided basic facilities, for us to develop and live equally, like education and livelihood. It is not just enough to say that as I am constructing houses for all, I will construct one for you. These houses should be accessible to us. The Government has brought out a new act ensuring 100 days of work, but for whom, only those who can take their work implements and go to work, but we cannot carry those implements so what of me, that is also a question. The third power/authority is to demand for economic and other policies of the government, which will benefit everyone in society. These powers protect our rights. I will go a step further and say that these powers are in fact our rights. Our powers or rights can be demanded and it is the onus of the government to ensure these rights, and in case the rights are not provided, every society has given ways in which these can be achieved. These rights are not the dole of the government nor did all the elders in the society sit together to give them to others. They came when all the people united, struggled and fought for them.

If everyone fights together then all do not get the rights equally. First they said that all mankind has the right to live



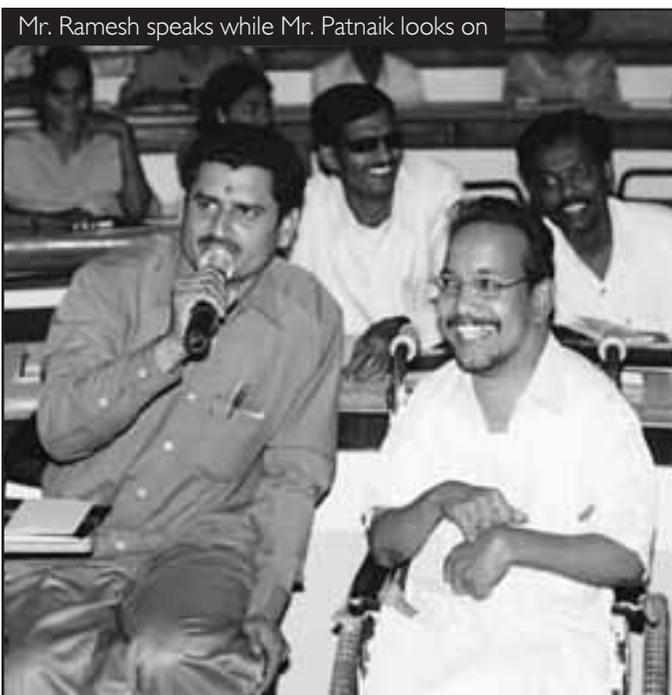
freely, in liberty, but women are less equal. Then the women fought this concept and after years of struggle today they are also being considered as equal to men. Over a period of time, recognition came to each community or group of peoples that fought for their individual rights. Once they were achieved these rights were put down on paper and were made part of the Constitution. This was a process that evolved from the society and did not automatically find their place in the Constitution.

Kaloji once told us a story. A sheep walking behind its shepherd, looked at his woolen shawl and thought, "Oho, how good this man is; he has plucked some wool from his shawl and stuck it to my back, so that I can be warm!" We have today been put in that position. We, like the sheep think that the Government is gracious to give us these rights, whereas it is infact the other way around. They have come to power because of generations of struggles by our people.

So we have to be careful when trying to understand the history of how these rights came to be and how these could be accessed to our benefit. It is not enough to accept that the government has put it down on paper and as they are already there for us. Why do we need to know this entire process of the struggle that went into the rights being put down on paper. We need to know this because when a government representative provides us some facility it is not out of his good will but because it is our right. There a long history of the Dalits to achieve their rights from the oppressive higher castes, and during the struggle for freedom from the British, they claimed that once India became independent, they would still be enslaved to these higher castes. So the Constitution evolved out of their demands for rights that treat everyone in the Indian society as equal but we never tell our students all this history because the next day they would also start demanding for their rights. When we know that these rights are something that evolved from our struggles we become confident and empowered and do all that has to be done to protect them. We will also value them, give them due recognition and will fight for them at all events.

The Constitution was created to ensure that all these fundamental rights are protected and every citizen of this country would be able to access them equally. It is not enough to have equality or fight discrimination from others in the society but there should be a demand for provision of basic facilities.

I remember, once we had gone to visit a severely drought prone remote village in Mahaboobnagar to speak with the villagers. While we were doing so, an old woman approached me and wanted to know what they were thinking in the capital. I confessed I did not know. Then she said something amazing. She said I voted this time, as always for the local political representative, so obviously I have a voice in the running of this state government. But I wonder what they are doing, do you think those people know I am here, that I voted for them? Are they making policies knowing, realizing and understanding that I am here, that I exist?



Mr. Ramesh speaks while Mr. Patnaik looks on



In spite of having studied political sciences in such depth and discussed so extensively I was still struck with the thought that what she was saying was the quintessence of all that we want to say and see implemented. So, when the government prepares its policy, we should demand to know if we were considered at all, whether it knew we also exist, during the preparation as if we are considered then the policy would definitely benefit us and not like how the society is at present. And not just regarding policies but even while preparing budgets, our rights and needs have to be kept in focus, which are in fact very meager. And there are many ways in which to struggle for the achievement of our rights and affiliate ourselves with the other Movements already in the process, as our numbers are very small, like the Dalits, adivasis, and women. If we fight and struggle for our rights, at least our next generation would be able to enjoy the rights, which we fought for. And after all, your very lives are a struggle already so please do not stop here but continue until you achieve your rights.

Discussion

We have understood that it took a very long time for other communities of people to achieve their rights but I am confident that persons with disabilities would not require so much time in enjoying their rights.

How can we ensure reservation in private educational institutions?

Special committees should be set up to ensure the protection of these reservations.

Due to the 3% reservation, only very few are able to access education and the others stand in the peripheries waiting for their chance. We should not be confined to the reservation but should demand that government has the onus to provide educational facilities for all the persons with disabilities.

When we say that we have a right to the resources, the onus for provision of these resources also should

be on the onus for provision of these resources also should be on the government.

Reservation policies have to be reviewed and people friendly reservation policies should be promulgated.

What is the connection between persons with disabilities and privatization?

Economic, social and cultural rights have been virtually set aside by the government and it is confining itself increasingly to addressing the personal rights of individuals, like private businessmen, for instance.

Privatization always looks only at the development of a select few and not the common good of all. And when there is a desire for personal class advancement, and the government also vociferously supports this, all these problems of private institutions, contractors come up and only their needs are catered to.

In this democracy where every citizen has rights, all the marginalized communities have had reservations in all the fields, but persons with disabilities have been ignored. For standing as Ward Member, each caste has certain amount of reserved posts, so why cannot the person with disability also have the same kind of reservation, especially achieved through the rights approach?

Political reservation for persons with disability might not be a practical demand. For people who refuse to allocate seats in educational institutions after the 3% quota has been filled up, it becomes very difficult to ask for political reservation. But if persons with disabilities become a political force likely to affect the political parties' right to power it will be possible. In the meanwhile, we should demand that there should be a representation for the disabled. There should be representation in trade unions. That will become the beginning of empowerment.

Women, 50% percent of the population, what is it that they have achieved today? Dowry Prohibition Act was introduced, but it was made compoundable. Bigamy was prohibited and



then an amendment was made saying it is permissible if the first wife consents.

One DGP from Orissa said that rape was not a law and order problem. True. Rape is not a law and order problem. It is an Act, which in fact enforces the male order of the society. That is why it is not law and order. If women pose a threat to power, then it will become a law and order problem.

A SHG of persons with disabilities in Mahaboobnagar were denied the facility of opening an account in the village. They brought this experience to the meeting. The group discussed the fact that it was in fact the land, water and money of the village that the bank depended on. On the advise of the participants, the SHG met the manager and told him that if his bank officials are not willing to open an account for them, there was no longer any need for the bank to be present in the village, as it was refusing to cater for the needs of a certain section of the village. The officials immediately opened an account for them.

For sign language and Braille to be made accessible for all, the first step would be to legalize the teaching of these languages at the school level. Then we would get a chance to demand for the inclusion of these languages as part of the college or school education. While some activists had already put this in practice, clarity was required as to what the process of making the languages compulsory in all the government schools across the state. The inclusion should be given a legal standing to these languages, and automatically all the processes can be put in motion thereafter. A language committee could be formed to review the list of recognized languages as curricula and how these languages can be included into this list. There is already a provision under which all the government teachers are supposed to get trained in sign language, to support the children with disabilities in their respective schools but unfortunately it is not being implemented properly. Even if they do get trained they do not have the access to use their training. But trainings are being implemented, for 4 or 5 days per year.

We can speak about rights only if we have a certain identity. Dalits all have a certain identity through which they can claim for their rights but as far as the persons with disabilities are concerned, the one major problem is identity.

The latest Census had a column to identify the persons with disabilities but the enumerators did not have any idea of the categories of disability.

The certification process for persons with disabilities involved financial, infrastructural and human resources. Though the District Collector is assigned the responsibility of identifying suitable doctors irrespective of their availability only from the Government Sector, in some districts the Collectors still have to become proactive. Out of more than 16,000 crores of the State's Budget, only 32 crores that is not even 0.3 percent against the supposed allocation of 3% budget as per reservation which would actually be about 480 crores. Out of this 32 Crore allocation, 87% is spent on administrative costs and maintenance of hostels and pensions. District Collectors have to raise resources from the unassigned grants, if there are any or negotiate with the State to categorize such heads in BC, SC, ST Corporations and Department of Woman and Child Welfare, to allocate financial resources to organize certification camps for the persons with disabilities. This has been a long pending issue for the Government, which is yet to consider it.

Issues of Severely Disabled: Dr. Siva Kumar

The provisions in the persons with disabilities Act, 1995 as well as National Trust Act, 1999 and Rehabilitation Council of India, 1992 will be broken up in detail and explained. First the RCI Act, which looks into the maintenance of the quality in services extended to severe persons with disabilities. It will also give registration certificates to those rehabilitation professionals trained under RCI guidelines to ensure the quality of services offered for the persons with disabilities. The RCI will develop training modules for training teachers, for all categories of disabilities and universities should adopt such training modules as part of their curricula. To this effect,



any Government or non-government organizations can make use of the mandatory provisions under the RCI Act and should train and give licenses to the trainees. This in effect brings in uniformity in the country to ensure quality in the rehabilitation services for persons with disabilities. Some such professionals are rehabilitation professionals for severely disabled persons with disabilities, clinical psychologists, speech therapists, etc. RCI also conducts examinations for trained professionals. According to the RCI, unlicensed rehabilitation professionals are punishable by law.

As it was declared that the period from 1982 to 2002 are the two decades for persons with disabilities by the UN, there should be uniformity in all the countries to respect persons with disabilities. As part of these human rights promulgations, the President of India gave his assent to the persons with disabilities Act in 1996 though it was tabled in the Parliament in 1995. This Act has 14 chapters and the first three are basic information, as well as the last three chapters. There are 7 categories of disabilities identified in this Act, blindness, low vision, hearing and speech impairment, locomotor disability, leprosy cured, mental illness and mental retardation. The rest of the chapters speak about the support systems provided in the specific areas. Chapter 4 discusses on the prevention and early detection of disability. Chapter 5 discusses education aspects. Chapter 6, 7 and 8 deal with employment, and affirmative action, and remaining non-discrimination aspects as well as barrier free environment. Chapters 9 and 10 deal with research and development of persons with disabilities. Chapter 11 deals with exclusively the establishment of Institutions for severely disabled persons. Section 56 of Chapter 11 refers to appropriate governments may establish and maintain institutions for persons with severe disabilities and such institutions will be identified. The Act also says that the Government will recognize institutions for these purposes, other than the institutions established by itself, for example Sweekar-Upkaar is recognized as a State level Resource Center for persons with disabilities by the Government of India.

As per the Act, those who are identified as 40% disabled are recognized and those who are above 80% disability or have

more than one disability are considered to be severely disabled. This is the précis of the persons with disabilities Act enacted by the Government of India. Chapter 12 elaborates on the appointment of Chief Commissioner and a Commissioner in each state of the country. Chapter 13 discusses issues regarding social security for persons with disabilities and Chapter 14 discusses various miscellaneous issues. This is as far as the persons with disabilities Act is concerned.

Now let us look at the National Trust Act, 1999 and its emphasis on persons with severe disabilities. For example, Autism covered under this Act is a developmental disability and it is a condition of delay in the development of the cognition or motor function or thinking pattern. It is a combination of problems and not really mental retardation but more severe. Cerebral Palsy is particularly a disorder with motor coordination and can occur before, during or after birth. Mental retardation can also occur before, during or after birth till 18 years and due to some reasons it arrests the functional development of the brain. Persons with multiple disabilities are considered so if they have more than one category of disabilities, for example a person with mental retardation could also be affected with visual impairment. NSSO regularly conducts studies for the Government and according to a 2002 sample study around 2% were considered to be disabled, whereas the 2001 Census more than 3%, around 3 Crores have been identified as being





disabled. Regarding Mental Retardation, 94 persons in every one Lakh persons are considered to be affected with Mental Retardation.

The National Trust Act is the additional support that is offered as support through the persons with disabilities Act, for Mental Retardation. The importance of this Act is to help the severely disabled to live as independently as possible with their families and close to their respective communities. And it aims to strengthen the facilities to provide support to the persons with disabilities to live with their own families and to extend support to registered organizations to provide need based services during the period of crisis in the families of persons with disabilities. It is a very, very important clause in the Act through which professionals can intervene in a family crisis, those who have children with mental retardation and related conditions. Equally important emphasis is given, the Act also

deals with the problems of persons with disabilities who do not get any family support. It promotes care and support or care and protection in the event of the death of the parent or guardian. It also has procedures for appointment of guardians and trustees for persons with disabilities requiring such protection. For example, through National Trust, there is a Local Level Committee at every district level, in which the District Collector is the Chairperson and prominent members of the citizenry and representation from the NGOs as well as representatives of persons with disabilities. This is the combination of the Local Level Committee to decide the guardianship of a parent or guardian of the child with mental retardation or Cerebral Palsy or associated conditions. The sub-section 3 of the National Trust very clearly emphasizes on the women with disability, persons with severe disability, and senior citizens with disability. Both these two Acts mentioned above give particular emphasis to persons





with severe disability whereas the RCI Act takes care of quality control for creating the personnel required for giving support for persons with disabilities.

So now based on the laws or acts we have, the Government of India has many Schemes or facilities and provisions to support or to see that the Equal Opportunity and the quality of life is offered for persons with disabilities. We can say that all the three acts put together gave rise to the Government of India to establish 6 National level Institutions in the last two decades. These National Institutes are

- National Institute for the Hearing Handicapped at Mumbai
- National Institute for the Visually Handicapped at Dehradun
- National Institute for the Orthopedically Handicapped at Kolkata
- National Institute for the Mentally Handicapped at Hyderabad
- Deen Dayal Institute for the Physically Handicapped at New Delhi and
- National Institute for Research and Training at Cuttack

Our observation is that among the nearly 3% of the Census Report, nearly 60 to 70% of the persons are orthopedically handicapped. And if you see, that could be the reason there are three National level Institutions for orthopedically handicapped, one at Kolkata, another at Delhi and another at Bhubaneswar. And these institutes create manpower required for persons with disabilities. They have teachers' training program, professional training program, they conduct short term programs for the professionals as well as persons with disabilities. These organizations also very extensively involve in research and training to see that the quality of life

of persons with disabilities is enhanced. Vocational training is one of the major components in all these institutes.

The next important thing part is the Schemes of Government of India. There is a very popular scheme known as Deen Dayal Rehabilitation Scheme. Through this Scheme, the Government of India extends support for the NGOs working in the area of disability rehabilitation. The money is extended for establishing an organization and supporting the salaries for the teaching and non-teaching staff and the supporting staff and money is also extended for building construction, for vehicle purchase, all these are supported under this Scheme. In fact, we see that there are about 3000 NGOs in the area of disability rehabilitation in India and about 60% of them are availing DRS facilities. Next Scheme is the ADIP, which is Assistance to Disabled Persons. Through this Scheme, the persons with disabilities are provided assistive devices, the tricycles, wheel chairs hearing aids, to some extent the corrective surgeries for persons having orthopedic handicap, persons with hearing handicap and persons with visual handicap.

Another Scheme is the National Handicapped Finance Development Corporation, under Government of India, Ministry of Social Justice and Empowerment. In fact all these are Ministry of Social Justice and Empowerment programs. This is operated through a nodal agency, and for AP it is the AP Vikalangula Sankshema Corporation through which the NHFDC distributes the money for persons with disabilities. This is one scheme where the persons with disabilities can get the direct financial support. Now the Government about two decades back had developed a Scheme known as the DRC, District Rehabilitation Centers. Little more than 20 DRCs were established in the country and another support is given through the RRTC, Regional Rehabilitation Training Centers. In 2002, the Government came out with a program known as District Disability Rehabilitation Centers. Initially 133 districts were chosen in the country and the aim was to directly give support to persons with disabilities, at their place. They need not come to any other place, it is like reaching the unreached. There are three such centers in AP, at



Mr. T. Venkateshwara Reddy speaks about the State Legal Services Authority



Ananthpur, Krishna and Karimnagar. Then the Government has come up with Comprehensive Rehabilitation Centers in 7 States, basically in the northern part of the country, whereas the DDRCs are focused on the southern parts of the country. The National Trust is taking care for giving care for the people who are not able to get any services, that is, care training program. Families having children with mental retardation have much more problem than the ones with children with other disabilities. Some of their problems are, for example, if the family has to go to some place, they are unable to take a child with Autism with them. So respite care is required, somebody needs to take care of the child for a little time. Or some children require long-term care, so for all these kinds of requirements the National Trust has introduced a program known as Caregivers' Program and throughout the country, they have been training state level and district level caregivers.

This in brief are the Government initiatives.

The Role of the State Legal Services Authority in Protecting the Rights of Persons with Disabilities: Mr. Venkateshwar Reddy

Certain rights were ensured for all. In case these rights are not made accessible to you, what can you do? The important objective of either the Supreme Court or the Government is to provide and protect the rights of each and every person in the country and to this extent the Government of India has brought out legislation called the Legal Services Act. Under this Act, both the physically as well as mentally challenged have the right to free legal aid and service. When their rights are being denied to them, the Legal Services Authority at the District headed by the District Judge and at the Mandal level headed by the Magistrate, can take care of your legal needs. When your rights are violated you need to inform the Legal Services Authority through a petition, explaining the manner in which your right is being violated and once you submit the same to the Authority, the case would be filed in the Court and free legal service would be provided for you. This benefit is extended to any person with disabilities by the Authority. Every state in the country has one State Legal Services Authority and the High Court Judge works as its Chairperson. At each district level, there is the District Legal Services Authority, under the Chairmanship of the District Judge and is situated right in the premises of the District Court. Then in every Mandal there is the Mandal legal Services Committee, which runs under the Chairmanship of the mandal level Magistrate.

Earlier you were told about the Schemes, if you were not able to access the Schemes available to you, then you can write to us at your mandal level Committee, or the District and State Legal Services Authorities and we would do the needful to ensure that you would be able to access those schemes as you were meant to access them, completely. Most often the persons with disabilities in rural areas either do not know about the schemes at all or do not know which officials to approach to access them. So instead of running from pillar to post if you were to approach the mandal level official of the Authority, the Magistrate, with an application/



petition he would be able to gather the information for us and ensure that we would be able to access the scheme properly. You do not have to run around trying to find a lawyer who will take up our case with empathy, but if you were to submit your petition to the mandal or district level official in the Authority, they would be able to give you all the details regarding the particular scheme you want to access, and at no cost. Besides the problems of accessing the schemes and facilities under the persons with disabilities Act you are entitled to, all of you may have legal problems such as property related matters and violation of other rights. In any such matter the Authority will appoint advocates on your behalf and ensure that justice is imparted. The Court will impart services without any expenditure from your side. This Authority was initially set up as part of the Act by the Government but at present it is working under the aegis of the AP Judiciary, that is why the Authority and its advocates will also have legal understanding and knowledge to critically analyze the matter and ensure that justice is imparted to you, beyond doubt.

For any grievance anyone can approach the Magistrate at Mandal and Judge at District level, and seek advise on legal matters pertaining to the violation of your rights. There is a Court for a few number of Mandals and all those Mandals will come under what is known as a Taluk Court. Be it Sub-Court or Magistrate Court, your petitions will be referred to that particular Judicial wing. Otherwise the petitions can be sent directly to the State Legal Services Authority in case the justice is not imparted at the District, Taluk or Mandal level, and I have given you some books regarding certain Acts and Laws simplified, and the address of the State Authority is given behind those books and the petitions can be sent here directly and we will forward the same to the relevant Judicial Authority.

Discussion

Mr. Venkatnarayana: Now the Government job opportunities are provided to persons with disabilities on Roster System. I received about 10 interview cards but the kinds of jobs offered are of bill collector/assistant clerk, which

a person with visual impairment like me might not accomplish well. The local government department will conduct a test and give such jobs to other persons and use our services as telephone operators. If the person selected to accomplish the work of bill collector/assistant clerk commits any mistake, the punishment is extended to people like us because we have been appointed for the post, at least on paper. To avoid such discrepancy I would like to request you to help the government identify such posts that we can do without a problem. Please advise me on how to achieve this.

Mr. Venkateshwara Reddy: You give us a petition and explain the matter concerned and on the basis of your petition we will persuade the Principal Secretary. As you have expressed your apprehensions about transfer of punishment, I would like to tell you that since your appointment is made on office order, there is no way that the mistake or inefficiency of the person concerned shall be transferred on your name and you would be made liable. Law clearly states that such transfers of punishment are illegal. So in no way can any office victimize you on the lines you mentioned above.

Mr. Pavan Kumar: In the context of employment for persons with disabilities particularly in the government sector, it is necessary for all of us to think critically about the current situation. There have been instances in the State of AP where a locomotor disabled person is given a job of attender in an office, who is expected to carry files from table to table and floor to floor. And there was another instance where three visually challenged persons were employed as watchmen in Nizamabad. It has always been the officers appointed by the Government who follow the existing roster system and accordingly posts are filled. And there is no such hard and fast rule so far established apart from the Roster System in the context of job identification in AP or anywhere in the Country.

Mr. Venkateshwara Reddy: Participants can immediately write a petition to the Authority, which will begin its persuasion with the concerned government officials to work out a remedy to the issue of employment as watchman to visually challenged persons in Nizamabad. If the bureaucracy



does not respond to their persuasion positively, the matter will be referred to the High Court of AP, which will consider the matter as a writ petition and sue the personnel responsible for such appointments. Regarding tackling discrimination against disabled subordinates, Mr. Reddy said that discrimination is generally experienced by everybody in both government and private offices. We will have to be strong and bold and fight for our rights.

Mr. Patnaik: Is there any process under the Authority to ensure the implementation of 3% reservation in the State Budget allocation for persons with disabilities?

Mr. Venkateshwara Reddy: If a petition is sent to us, we will ask for a report regarding this from the concerned higher officials and in case they do not send the report, a writ will be filed on the High Court and ensure that the reservation is implemented properly.

Mr. Madhu: As there are Courts at all the three levels of mandal, district and state under the Authority, who would decide as to which court would try a given case that has been filed?

Mr. Venkateshwara Reddy: The concerned Authority, after examining the case closely, will decide to which level of Court the petition should go and also the petitioner will be informed of the same and explained why it was referred to that particular court.

Mr. Lakshmi Narayana: You are saying that there is this free legal aid. I refer to you a family matter where the disabled child is disowned by the father and he has deserted the child and family. The family is not in a sound economic position to look after the child. As the family does not have the economic background to take care of his welfare, can the case be brought to the notice of the Court? Till the child crosses his 18th year, he is taken care by his mother. After crossing 18 years does he have a right, of at least by half, on the property earned by his father?

Mr. Venkateshwara Reddy said, of course he can file a petition in the Court again. The right to property is just as

applicable to a person with disabilities as it is to others and if a case petition were brought up in front of the Authority, it would fight the case freely, and also appoint an advocate on behalf of the complainant and be with him till he gets what is due to him as a legal share. These are all individual matters. Apart from the persons with disabilities Act, and the acts that you have already learnt about, any such legal matter can be referred to the Authority, which will ensure that justice is imparted on free basis to persons with disabilities. These services are not just for you alone but they are also for those to whom you inform about the services of this Authority.

Question: In the case of injustice done to a persons with disabilities by an MRO pertaining to the sanction of a scheme, is it possible to refer the mater to the local Magistrate, without giving any complaint to the District Collector?

Mr. Venkateshwara Reddy: Of course it can be done. The Legal Services Authority will initiate correspondence with the MRO concerned, the District Collector and state level





higher officials to expedite the matter in your favor. If the officials do not cooperate with the Judiciary they are bound to be prosecuted.

Mr. Anjana Prasad: Most of the issues pertaining to persons with disabilities refer to policy matters of the Government. Is it possible for us to appeal before the Authority on such policy matters of the Government?

Mr. Venkateshwara Reddy: Yes it is. For example, roster system is a policy matter, which allowed the bureaucrats of the district to appoint visually challenged persons as watchmen. This can occur only due to the defects in the policies. The Legal Services Authority can work with the government to make amendments to the extent that a suitable employment may be identified for the visually challenged. And these Orders for amendment in the policies become applicable all over the state and do not have to be petitioned for at different levels and regions of the State. If there is a defect identified then the Judiciary will rectify that policy.

Ms. Thirupathamma: How can the inefficiencies and incompetencies and deliberate misuse of power in the Court system be remedied?

Mr. Venkateshwara Reddy: The Authority is operating at the Mandal and District levels precisely to avoid these problems. If the case is referred to the Authority, it will take up the matter in the Court on behalf of the petitioner.

Dr. Kalpana: When you find that your matter is not being taken up seriously or the Court is being complacent with you for various reasons a copy of the petition may be sent to the district and state level Authority. It is not all that difficult for us to mark a copy to the Authority to ensure that justice is done properly. After running from pillar to post for justice now we have realized that the Legal Services Authority is the best option for immediate redress. As we have already decided to identify certain issues for redress in the next six months, let us work together to chalk out a plan of action to initiate the process with the Authority, as to which issues we would like the Authority to

take forward. If we can list out the issues and put it before the Authority, it would explain to us how we can arrive at justice and the process involved in it. We can take this initiative forward on these lines.

Mr. Venkateshwara Reddy: It also depends on how the petitioner uses the judiciary. For example, in Nellore, an ST girl married an upper caste man. The couple went to the parents after giving birth to a girl child. The man's family disowned her and the child and denied the marriage. The girl registered a case of cheating in the local Police Station and met the District Superintendent of Police. In her desperate attempts, she also filed a petition in the District Court requesting for a DNA test to prove that her husband was the father of the child, who had already denied being the father of the child as well as the marriage itself. The case went against her because of the misinterpretation of the petition and the Judge dismissed the appeal. That girl somehow came to know about the District Legal Services Authority and sent a complaint on a small post card. The District Authority put the matter before the High Court and it immediately called both the parties to the court and ordered for a DNA test, which proved conclusively that in fact the man was the father of the child. Such things will be certainly taken up by the Authority.

Ms. Thirupathamma: A girl with multiple disabilities was raped by a person. An FIR was registered and matter was taken up by the Court, and for the last 5 years that woman and their family, in spite of their extreme poverty, attended the Court regularly. We from the civil society organizations could extend only moral support. That woman did not even have money for travel and for food, in spite of which she continued to fight for justice. After 5 long years of struggle the culprit was sentenced to 10 years of rigorous imprisonment. But what about the rehabilitation or support to the victim who is living in utter poverty, struggling for daily bread and had to spend more as part of the case?

Mr. Venkateshwara Reddy: As this is a criminal case there should have been some form of redress mechanism already



put in place, but if you were to give me a written petition then we would be able to take it up with the concerned district authorities, the Collector to see that she either gets compensation, employment or redress through some scheme.

Mr. Sajjid: Cattle traps are generally laid before the entrances of the Court Compounds and these cause lot of mobility problems for persons with disabilities, especially the persons on crutches. There were instances at Kalwakurthy where the persons with disabilities faced problem with the trap that was laid to prevent the entry of cattle. In fact, when they were laying the rods for a new cattle trap, our group went and requested the officials that they should not lay them, or at least to make an alternative path for the persons with disabilities as they would have difficulties, the official concerned agreed but when the next day we went there, the trap was already laid.

Mr. Venkateshwara Reddy: There are instances where the Chief Judge came down to the petitioner to record the statement from the third floor of the City Civil Court. My submission to you is that Judiciary does believe in humanism. If you can inform us on a post card that you need to attend the Court on a particular day, we can arrange your transport and see to it that you will safely reach the Court Hall.

Participant: We have been able to learn a lot in the previous workshop as well as in the last two days, but when we go and speak to the community, they refuse to accept us or even listen to us. There is a disabled child who was born with the disability and when we asked the parents why he was not being sent to school, they said as he is disabled he would be of no use to us and so why should he be educated. In fact they said they would prefer him to be dead. But he said he will study and we took him to the local school, where the teacher told us that they would not be able to educate him and that he should be taken to the special schools for the persons with disabilities, but when we took him there also, even they refused to admit him saying he would be of

no use and as such should remain at his house and live there until he dies. So what I would like to know is, is there any form of redress to this kind of problem from your side?

Mr. Venkateshwara Reddy put forth a proposal that the AP Legal Services Authority would recognize the participants from each district as Para Legal Volunteers, who would then act as the bridge between communities and the Legal Services Authorities at the Mandal and District Levels.

The day's session ended with participants going into groups and preparing small skits on themes related to disability.

Using the Law for Disability Rights:

Mr. Pradeep Kumar

Discussion

Why is each of you attending this workshop?

We want to know more about rights based approach and want to include rights based activities along side the regular medical rehabilitation and livelihood programs.

persons with disabilities are restricted to the households, the reasons could be inaccessible social environment, inferiority complex, etc. Our interest is to take the learnings from this workshop to empower them to get out of their confinement within the four walls of their houses and mingle freely within the society.

We are here from different districts of the state, to learn from your experiences as you have worked in other states of the country. This shared learning will help us to use legal resources to engage with our issues. To achieve this, all of us would like to use the Disabled Rights Forum as a platform.

I have come from Warangal and I have been facing discrimination right inside my house itself. If I were to ask for my food or clothes, I am told that though I do not have my limbs, I should work hard and earn my living. I have come to use the law for my survival.



There are many persons with disabilities living in remote villages, in conditions of severe poverty, and do not have any source of livelihood. There are many schemes for housing and for livelihood support. I would like to use the persons with disabilities Act to understand whether the access to these schemes or livelihood opportunities can be extended on par with caste or disability reservation. I would also like to know the details of necessary qualifications for such employments opportunities extended by the Government.

We have come here to understand how we can confront discrimination, at both domestic and societal levels, and also to struggle with inequality that prevails in the social system. We would also like to know about our right to education, livelihood, and about equality of opportunities which are extended to the persons with disabilities by the government and also to learn how to work through the law to achieve the same.

What rights are violated? What kinds of discrimination do you face? [to the women]

Rights such as marriage, food, livelihood, self-respect, dignity of life, are being denied to women with disabilities at the family, community and government level. This form of discrimination went to the extent that even a beggar in the society could earn his living with the support of the alms, but the situation of women with disabilities is much worse than that of the beggars, and as if all these were not enough, they are also sexually exploited.

As most of the persons with disabilities are in the villages, the condition in their houses prevents them to move out of their houses, and they themselves develop inferiority complex over a period of time. Added to this, education and health are denied to them both by their families and society. We have come here to learn and go back empower people in our villages to fight for their rights.

Most often women with disabilities are married off to their brothers-in-law or a widower with children. Those who are married, are being harassed for money and addressed in

degrading manner, and they are beaten up and abused in every way, in spite of which they carry on with their lives, though it is miserable to say the least, with their in-laws as they do not get any support from the parents.

There is a practice at Narayakhed in Mahaboobnagar District where the women with disabilities are married off to a sword or tree to avoid her supposedly inauspicious presence, before the marriage of her younger sister.

As there is no value for the current graduation and post-graduation programs, the government should come forward to offer such types of courses to women with disabilities so that they would be able to come up in their lives and become more self-confident. I want to know about the chances of getting such opportunities.

The government schemes such as marriage incentives, scholarships, employment reservation, and pensions are often given to 3 or 4 persons out of hundreds of disabled applicants. This discrimination is often organized with the support of percentage of disability given in the certificate. There is also a kind of enormous delay in processing the applications.

There are persons with disabilities with enormous standards at national and international levels in sports and games but that talent is not properly recognized or encouraged by the government particularly with reference to persons with disabilities.

Though there are employment exchanges registering the names of persons with disabilities there has been no instance where the persons who registered were called for even one interview. I had registered my name about 20 years ago. Is there any way in which these circumstances can be changed?

How do we deal with the problem of school or college going students with disabilities. Most often high percentage of marks is considered as merit. This policy works against students with disabilities in the villages and elsewhere. The students may not find an escort or in the case of persons



with severe disabilities parents or other caretakers may not find time to take the child to school or college on a regular basis. Students with disabilities will lose out regular attendance, classroom exposure/instructions, as it is available to other students. This will lead to the low percentage of marks for the students with disabilities and as a consequence higher education and scholarships are denied. Can the education policy be amended to the extent that students with disabilities should be given priority on the basis of her educational qualification irrespective of merit?

3. Who can help solve this? From your point of you who are supposed to offer solutions to solve the problems you have identified, could it be civil society organizations or government personnel?

We should form ourselves into self-help groups to solve our problems.

Most feel that government is not the source of solution for your problems at all. If the government comes to know about that, they would really be more than happy.

If you do not need to ask the government to solve your problems, you might want to depend on your families or on NGOs, which is also good. Let us not tell the government that we do not need the government at all.

(Laughter)

Mr. Pradeep Kumar

It is primarily the government, which is supposed to provide all these facilities. Despite the presence of so many NGOs and INGOs still I am sure all of you will agree the government is the single largest service provider. It is the government, which provides you the disability certificates. They are the ones who provide the medical facilities. They are the ones who provide scholarships. They are the ones who run the schools. They provide the aids and appliances, not the community. The family members will not do that. They are the ones who provide pensions. For each and every thing, if

your rights are violated, you will not ask your parents is it? if something happens, if you do not get a seat in a government school, you will not approach your parents is it? What will you do, you will approach the Block Development Officer, District Education Officer. If any of your rights are violated, you go to the Courts, you do not go to any other stakeholder in the community so the Government is the single largest service provider.

All of you feel that in many ways government is not providing the kind of services you expect. In other words you are expressing your dissatisfaction. If this is the situation in Andhra Pradesh, it is so in almost every other state. I have been to Madhya Pradesh, Uttar Pradesh, Andhra Tamilnad, Karnataka, I have traveled to Tripura. I have been invited by the Government of Jammu and Kashmir. I have been in Rajasthan. In all these places, the situation is the same. People are not satisfied with the Government. The Government is not able to address the needs of the persons with disabilities. Well, it is the responsibility of the government as a primary service provider, to meet your demands, to address the needs of persons with disabilities.

I would like to share with you what is it that I could do in almost 5 years, from 2000-05. I established the Office of the State Commissioner for Disabilities, Government of Karnataka. Through a series of measures I was able to ensure that the persons with disabilities Act was to the best possible extent implemented in the State of Karnataka and I was quite successful in doing so. As a result of this, the Ministry of Social Justice and Empowerment this year, has declared my office as a National Model for the implementation of the persons with disabilities Act. If some change could happen in Karnataka, I am sure it can happen in Andhra Pradesh. I will share what are the best practices that we have implemented in the state of Karnataka and how best it can be implemented with the support of you people in Andhra Pradesh. Today I would like to share with you to what extent the persons with disabilities Act can help you people in bringing about change in AP.



Since you work with disabled persons, it is very essential for all of you to have a very clear understanding of the Disabilities Act. From there we need to think of how best we can make use of this Act to safeguard the rights of the disabled persons. Though there are many criticisms about the Act saying it is not enforceable, or it has not been properly implemented, we in Karnataka have certainly made a difference, we never bothered about what are the drawbacks of this Act, we looked at what are the strong points in this legislation and how best we can make use of this Act, through the Office of the State Commissioner, to honor, respect and promote the rights of persons with disabilities.

There are six Authorities under the Persons with Disabilities Act, if you study the Act you will come to know there are six Authorities who are responsible for implementing the Disabilities Act. These are

- The Central Coordination Committee
- The Central Executive Committee
- The State Coordination Committee
- The State Executive Committee
- The Chief Commissioner for Disabilities and
- The State Commissioner for Disabilities

It is important to understand the role of the State Coordination Committee and the State Commissioner for Disabilities, which are very important to people at the State level. For people at the State level, as I told you earlier, it is the State Coordination Committee and the State Commissioner for Disabilities who are really of some importance. Now, what is the role of the State Coordination Committee? It provides for NGOs to be representatives, is there any NGO that represents the State Coordination Committee here or do you know of NGOs that represent it? There are none. Your responsibility starts from here. Since all of you are here to know more about laws, legislations and rights, and go back, since all of you have told me that is the reason why I asked you this question, since you have

said that you would like to go back and promote and safeguard the rights of the persons with disabilities, to make sure that the services are provided to persons with disabilities, you should be empowered with this knowledge about the Act. So make sure who are these members and NGOs. There are 5 NGOs who are representatives of the State Coordination Committee. Please find out which are those 5 NGOs, how often does the State Coordination Committee meet. The responsibility of this Committee is to advise the government as to what should be the policies and programs that the State should bring about. Secondly, if at all there are problems like what you have told me now, these problems should be discussed in the State Coordination Committee, and the NGOs who represent the community of disabled persons should raise these issues. You should also make sure that you find a place, especially disabled persons, representing DPOs, should find a place in the State Coordination Committee.

Then comes the State Commissioner. If the State Commissioner is proactive, most of your problems can be sorted out. You may be wondering why this State Commissioner's Office has been created. It was created under the Act with some very specific purpose. The Act was brought into force in the year 1995, almost 10 years ago. The whole idea of having an independent Commissioner under the Act was to make sure that there was an Authority within the Government machinery who was sensitive to the needs of the disabled persons. As somebody rightly said, they give an application for a job and nothing happens. Similarly you people give applications to procure services in different departments and nothing happens. It is the responsibility of the State Commissioner to make sure that the services reach persons with disabilities without any delay. Also to draw the attention of the State Government towards problems faced by disabled persons, to ensure the accountability and transparency within the government, in all those disability issues and matters, it is the Commissioner who is empowered to ask every department, what is it that you have done. In other words, he is supposed to ensure the right to information about all



disability issues. As citizens of this country, none of you should tolerate any officer of the Government, if he is callous or is not responsible and more so, I would certainly expect all of you to raise voice against that person who has been appointed as a State Commissioner and if he does nothing because, the Act expects him to be extra-sensitive. He has been appointed by the Government to make sure that he provide for whatever is expected for persons with disabilities. It is his responsibility to make sure that there are equal opportunities; there is protection of rights and full participation. You simply cannot tolerate this person if he does not respond to the needs of the disabled persons.

You have to make sure that you have a say in the appointment of a person for this post. The government need not contact you for any other post, the government need not contact you about who should be the District Collector, who should be Secretary but you must make sure that you have the right to find out who this person is and this person attend your needs. In many states there are many agitations and persons with disabilities and NGOs want persons with disabilities to be the Commissioner but what I would say is whoever be the Commissioner, whether it is a disabled person, government official, a non-government official, that person should be sensitive enough to make sure that the rights of the disabled persons are protected and he does everything to implement the Act in letter and spirit.

Of the most important functions of the State Commissioner is to act as a Civil Court. Under the Disabilities Act, the Commissioner has been empowered with the powers of the Civil Court and not many people know about this and not many State Commissioners have really exercised this power as a Civil Court. Here we have made a difference in Karnataka that the State Commissioner for Disabilities has acted as a Civil Court and we were able to solve many issues which in our absence would have gone to various other civil courts and high courts.

The first thing we did at the State Commissioner's Office is, to spread awareness about the Act. Unless the Secretaries

of the Government know the Disabilities Act, they will not know what sort of policies that they should frame and implement for the benefit of the disabled persons. So right from the Chief Secretary up to all the Principle Secretaries, Additional Secretaries, Deputy Secretaries, Section Officers, from top to bottom, we had a thorough and a massive orientation for all of them about the Disabilities Act, problems faced by the disabled persons, and responsibilities of each department. The various departments sorted out issues as a result of this orientation for all the Secretaries.

The Secretary of the Health Department decided that all the Primary Health Center doctors should undergo training on prevention and early detection of disabilities. Karnataka is the only state which has trained all the 1450 doctors in early intervention and prevention of disabilities. You must have heard of hemophilia, it's an illness which prevents blood clotting. As a result of this, many people become disabled on account of internal bleeding. To help in that clotting of the blood, they need some special medicine, which is very expensive. It costs about 15 to 20 thousand per person if they have buy this medicine, to help in prevention of blood internally clotting, every month. When we came to know that these people are becoming disabled due to internal bleeding and they are not able to afford this kind of money, the State Commissioner intervened, it was the responsibility of the State Commissioner to make sure that this particular need of disabled persons are met. So we took up this matter with the Government and today Karnataka is the only state, which has earmarked 2 Crores 69 lakhs Rupees per year toward purchase of these drugs and we supply this free of cost to 2500 hemophilic patients in Karnataka.

Next correctional surgeries. Many doctors in the government were not taking up corrective surgeries because persons with disabilities could not pay them bribes, and most of the time these doctors were busy attending trauma cases because they were more lucrative. Once the Commissioner came to know about this, we took up the matter with the Health Commissioner and issued an order that in case if any doctor refuses to undertake corrective surgery, he would be



suspended. And we also fixed a target that in a particular month the doctor should invariably conduct these many surgeries and we also told our district disability welfare officers to identify children and persons who can undergo corrective surgeries and we provided 15,000 Rupees per person to undergo corrective surgery and this has nothing to do with income, he can undergo this surgery in any hospital, government or private. Similarly, to promote livelihood opportunities we decided that in all court complexes and hospitals, photocopy machines and PCOs should invariably be allotted to disabled persons and wherever public space is there, persons with disabilities should be encouraged to put up kiosks so that they can take up livelihood opportunity. There is an Order to that effect.

Coming to education department, in accordance with the provisions of the Disabilities Act we issued a Circular that no school that gets a grant from the Government and Government institutions shall deny admission to students with disabilities on the grounds of disability. And if they do it, we will stop their grants and believe me there have been instances where schools have refused admissions and we have stopped their grants. Now the incidence has come down to zero, no school denies admission to children with disabilities, especially those institutions which get grants from the Government. Next, we also made sure that wherever children with disabilities are studying, those institutions provide disabled friendly toilets, we also made sure that all classrooms for them are conducted on the ground floor, we got a circular issued and we gave wide publicity in the newspapers and wherever complaints came from, we made sure all those institutions construct a disabled friendly toilet and classrooms were conducted in the ground floor rooms. Apart from this, we also made sure that all the visually challenged and hearing impaired students get one hour extra time to write the exams and Karnataka is the only state which has relaxed the rule of Scribe for the visually challenged students. As you are aware, for visually challenged students the scribe should be less qualified and this used to create lot of problems for them to find the right kind of scribe, less qualified, who has good handwriting, and who can understand

whatever he says or writes. So what we did was we told the Education Department that this was a violation of their right, please relax this rule, and again I must say that Karnataka is the only state that has relaxed this. Today even a PhD can come and write for a visually challenged student. The families can write, the mother can write, the father can write, and every day he can have a new scribe. As a result of this, the visually challenged students have found a big relief during examination time.

One girl told me that especially during the time of exams she would be harassed and she told me that in spite of studying so well, preparing so well for the exams, because of a very bad scribe she would lose marks.

Regulation of employment in government services. As you are all aware, there are many people with disabilities who are working in the government departments, now many a times they cannot come to office on time because of their disability, because of very poor public transport services, so what we did was the State Commissioner put up this matter with the Chief Secretary and we made sure that timings are made flexible for the disabled persons. They can come half an hour late and they can go half an hour early, even during lunchtime they should be given some extra time. Apart from this, transfer policy, at times people were transferred to place where there was no access to health and rehabilitation services. So we made sure that a separate transfer policy is brought for the benefit of disabled persons so that they are not transferred to far off places, and they should be transferred to only those places where they are able to get medical facilities, rehabilitation facilities, and even if there is any persons dependent upon them in the family, we made sure that such a person should not be put into hardship. Suppose there are government employees who have got disabled children and these people cannot be shifted to posts where there is no school that provides inclusive education. So we made it a point that these people should be given the place of their choice. You all know that there is always an inordinate delay in getting the files cleared in various



government departments. Many of you have said that there is so much of delay when you apply for something. You do not get proper reply, so in Karnataka what we did was we met the Chief Secretary and we got a Special Circular issued which says that within 30 days time, all those files which related to disabled persons should be disposed off. And for some reason, if there is a delay, that person should be informed as to why there is a delay.

In all allotment of government sites, on preferential basis by the disabled person concerned, 2% reservation should be given to disabled persons, and Bangalore Development Authority provides sites for disabled persons and there is a big demand and we made sure that at least two persons from 100 and out of 100 sites two sites should be given to disabled persons, and they should be preferred and they should be given at concessional rates. We have also 5% reservation in all housing schemes under various poverty alleviation programs. Wherever houses are distributed in that 5% of the houses go to disabled persons and once again preference is given to women with disabilities. Similarly for NGOs if they want to purchase land to establish an institution, start a vocational training center or a residential school, land at 50% concession is given to them by the government. One of the mandates of the Disabilities Act is to make sure that all public places are made disabled friendly, so what we did was, the Commissioner took up this matter with Urban Development Department, and we got all the building by-laws amended, both town and city building bye-laws amended, so that any new building that is going to come into existence from 2004 onwards, they must conform to the barrier free access otherwise their plan would not be sanctioned at all.

The Transport Department: We made sure that every district bus stand provides easy access and there is wheel chair kept in all the district bus stands and two seats are reserved for persons with disabilities in all our Transport Cooperation buses and if anybody uses these seats, violating the rule of these seats being used by only persons with disabilities, if we find somebody occupying these seats, despite persons with disabilities being present in the bus, they are

finned to the extent of Rs.500/-. There is a ramp and a wheel chair, not only disabled persons but even elderly persons can use this. You were talking about the inaccessibility to the buses right, because of those huge steps? Now what has happened is that it has become a trend that all the Transport Corporation buses are buying Volvo Buses and these Volvo buses are having low floored steps, and what is nice about this company is they also made provision for wheelchair access. There is a hydraulic ramp that comes out and people in wheel chairs can easily get into the bus, provided that the platform of the bus stand is proportionate to the ramp, which emerges out of the bus.

The High Court of Maharashtra ordered the Mumbai Transport Corporation to purchase Volvo buses on the basis of a Public Interest Litigation that was filed. So similarly in Bangalore we have told the BNPC to buy such buses and believe me, these buses do not cost more than the regular buses and the cost is almost the same. But still many Transport Corporations do not prefer to buy these buses. Now on the basis of what has been done in Mumbai, we are now telling our Transport Corporation to purchase such buses. Already we have about 167 low-floored buses that are plying on the different routes in Bangalore.

The Police in Karnataka. What we have done was, as I have told you earlier, if we start sensitizing these officials and departments, I am sure that lot of things can be done. We found that many of them are not aware about the Disabilities Act or the problems faced by disabled persons. Just by talking to them we could see quite a few changes have come and in Karnataka what we did was we all know that police play a very important role in safeguarding the rights of disabled persons, we made sure that all officers of the rank of Deputy Commissioners of Police and above are sensitive to the needs of the disabled persons, so we used to conduct special orientation programs for them. Whenever we had these programs, we used to have disabled persons with us. Even today, it is practice in Bangalore city that when a new Commissioner is appointed, in the very first few weeks of his posting, we make sure that the Commissioner meets this person along with disabled persons, the parents and care



givers of disabled persons and we talk to him about the various problems faced by disabled persons. This has really helped us and it has taken us a long way in the Police meeting the needs and requirements of disabled persons.

The disabled persons need the police for parking of vehicles. In Bangalore we have identified all the strategic places where parking is very difficult for people and there, especially for disabled persons. We have provided stickers from our office to the disabled persons for easy identification.

The Police Training Academy has included a session on disability. So all the constabulary forces and other officers who are trained get to know about the different acts, legislations, circulars and what are the needs and requirements of the disabled persons and how they should respond to the needs of the persons with disabilities. And there is a special orientation on the Mental Health Act, 1987, where the police have a special role to play under this Act. The State Commissioner has ensured that whenever a disabled person goes to a police station to register his complaint, in variably it should be registered and it should be disposed off in 30 days. Otherwise he should give the reasons to the Superintendent of Police as to why this complaint has not been disposed off within 30 days time, and there is a special marking on the FIR, it says that this complaint pertains to a disabled person. The DGP conducts the Annual Police Conference, and during this conference, all the Superintendents of Police from all the Districts and all senior officers are present. The Commissioner's Office used to take up all those issues and complaints related to different districts and discuss this in the presence of all the SPs and senior officers. This was such a useful exercise that we used to get lot of solutions from the Annual Police Conference which we have made into an annual exercise, whenever there is a Conference, we are given one session. The Conference was a day and we were given about one hour.

The Revenue Department: The first line of contact for disabled persons is the Taluka level officers. We made sure that whatever problems are faced by people at the Taluka

level are redressed by the Taluka Officers. We passed an Order to the Revenue Department stating that the Executive Officer of the Taluk Panchayat Department should be the nodal officer and he is supposed to tell persons with disabilities on what particular day and at what time he is available. This is a sort of Adalat conducted at the Taluka level so that problems faced by the disabled persons are attended to and disposed off. Under the Disabilities Act, there is scope for designating the Collector of the District as the Deputy Commissioner of Disabilities, under Section 53 of the Disabilities Act this is possible and what we have done is, I am not too sure if it has been done in AP, whereas in Karnataka we have passed orders that all District Collectors are also designated as Deputy Commissioners of Disabilities. This makes them the first nodal officer at the district level to attend to the problems of disabled persons. It is the responsibility of the District Collector to attend to the problems of the disabled persons. He cannot refuse if a disabled person goes and meets him. It is now his responsibility, otherwise also it is a responsibility but now it more of a reiteration of his responsibility toward the disabled person, so he has to specially attend to the needs of the persons with disabilities on a priority basis. As you are all aware many disabled persons are harassed when they go for income certificates and income certificates are given once, they are supposed to annually renew this income certificate. Just to avoid this harassment for persons with disabilities, in Karnataka we have made it a rule that when the persons with disabilities go for income certificates, they should get it once in five years, the validity of the income certificates should be 5 years, so they need not go every year for getting it renewed. The participants said that in fact in AP, the renewal is for every 6 months. In fact if the persons with disabilities are applying for two different schemes, they have to submit two different originals as income certificates. These are exactly the issues that we would have to focus on, as disabled activists, with the appropriate authorities.

An order, which is in force in Karnataka is that all religious places be made barrier free and disabled persons should not stand in queue. A



very Senior Officer of the Central Excise and Customs who was a wheelchair user, went to Ranganatha Swami Temple in Srirangapatnam. This Order was violated by the Temple management. In the first place, they made her stand in the queue and when her turn came she was not allowed into the temple because she was on a wheel chair. When she tried to fight for her rights, they did not allow her at all and finally her husband had to carry her up to the Sanctum Sanctorum for her to have the Darshan and come back. She felt so humiliated that she came back and complained to us. The officer and the chief priest concerned were summoned through warrants to the Commissioner's Office and were made to apologize for their non compliance and they were also transferred from that place and we told the Endowments Department that we should not hear any such complaints from any other temples and religious places. This case was given wide publicity in all the newspapers by the State Commissioner, just to drive home the message that no temple authority shall deny admission or entry of any disabled person to any temple.

The Judiciary: What could the State Commissioner for Disabilities do with the Judicial Department? We are all aware that the principal institution to safeguard your rights is the Judiciary, the Courts. We came to know that many Orders passed by the High Court were not in favor of disabled persons. And when we analyzed we came to know that it was largely on account of lack of awareness about the problems faced by disabled persons and also about the provisions of the Act and various other orders, bye-laws, and circulars issued by the Government. If only the High Court were aware of all these things, we thought that most of the decisions would have been in favor of the disabled persons. So we decided to sensitize the Judges. It was a very bold and daring step, which we took, which was met with

lot of resistance. The Judges ridiculed at my Commissioner saying that who the hell are you to come and talk to us about an Act, which we are all aware of. We told them sorry, if you look at various judgments we realize that you people have not followed the persons with disabilities Act and this is not reflected in your Orders. We went back to the Judiciary, we went back to the Chief Justice and we told him that the Judges were not very much in favor of this. Thanks to that Chief Justice, Justice Jain, who thought like we did and he suggested that there should be an orientation and finally he sent the circular to all the Judges to attend this session. Very reluctantly these Judges came for this session, they sat through the session and my Commissioner made a presentation on various legislations related to persons with disabilities and specific problems faced by each category of disabled persons, what are those steps that are taken up by the Government in the form of circulars, orders and notifications. After this session, to all our surprise, I think, there was a huge change in their attitude. We could know that it had a very good impact on them and after this sensitization session, the High Court used to ask the Commissioner's opinion on various issues. That was a very welcome move by the High Court and they also went to the extent of telling the Judicial Academy that all the District and Lower Court Judges should undergo this kind of an orientation, which we did. Today the Judicial Academy works in collaboration with the Commissioner's Office to conduct various programs. When we had a very renowned person from the US who works for the National Council of Disabled Persons and advises the President of US on Disability issues, when he came to Bangalore, it was the Judicial Academy which organized a workshop for all those judges and disability activists and almost the entire bench was present there. Even though it was a Sunday, the Chief Justice and all the other judges attended the workshop and it was hosted by the Karnataka Judicial Academy. This was the kind of change we saw in the judiciary.

Another important step we took was to conduct *orientation for the advocates*. As you are all aware, if somebody has to safeguard your rights in the courts, it's the advocates who



take up your issues, the lawyers. If the lawyers do not know the legislations and orders issued by the government, they may not be able to defend your case in the right context. We thought an orientation is necessary and we approached the Bar Association and we now conduct orientation sessions for all the lawyers on the day of their enrollment, every Thursday in the Karnataka Bar Association, when they have the enrollment day and they start their career as lawyers by getting to know the Disabilities Act and issues. This has been very, very useful in disseminating information about law, legislation and rights to the lawyers. We also run a legal cell in our Office. Most of these advocates' office is situated on the First Floor because they have to be in the commercial areas and naturally they look for accommodation, which is quite cheap, and without even bothering whether it is accessible or not. We conducted a survey in Bangalore and the results showed that about 60 to 65% of offices were inaccessible. At the same time, we also came to know that even a very modest fee that was charged by lawyers was beyond the reach of the persons with disabilities; they were not able to pay that kind of fees. And this made us think that we should provide legal aid services through our office and we approached one NGO called Alternative Law Forum. persons with disabilities come to our office, one thing about the legal cell is that our office is on the ground floor and accessible and in the heart of the city and it is provided free of cost by the best of lawyers. The whole idea is to resolve the dispute without allowing it to reach the Courts through mediation and conciliation. If this is not possible then the lawyers take up this matter to the Court of law without charging anything. We made sure that women with disabilities come forward to access this kind of legal aid services, also senior citizens and people below poverty line.

Another remarkable achievement of our Office is conducting Adalats in rural areas. It was very difficult for persons with disabilities to come from rural areas to lodge their complaint with the State Commissioner. So what we do is every month we choose a district, we inform the district disabilities welfare officer, the District Collector and all the Senior officers that we are going to come on this day so you please make yourselves free to be part of this Lok Adalat and wide

publicity is given in the newspapers requesting persons with disabilities to attend this Adalat if they complaints or grievances against any of the government departments. On that day, we try to solve their issues on the spot in the presence of the Collector and all the officers. And those issues cannot be resolved on the spot, we record them and come back to Bangalore and initiate the action. This has been widely appreciated by different states, the Chief Commissioner and the Ministry of Social Justice. Next is the Constitution of the Nodal Committee. I am sure that you must all be aware that and heard about the incident in Tamil Nadu, in Ramanathapuram, Eravaadi incident where there was fire in a mental asylum and many people were charred to death. After that, the Supreme Court came down heavily upon the State Governments and even the Union Government and told them that the Disability Acts should be properly implemented and to make sure that these legislations are implemented in all earnestness and seriousness, they directed the State Governments to appoint a Committee, which should be chaired by an officer not less than the rank of Chief Secretary or the Additional Chief Secretary. Even to this day, apart from Karnataka no other state government has bothered to constitute this Nodal Committee whereas we constituted this Committee way back in 2002. As on 31 December 2004, we had almost 7 meetings conducted and now another two meetings have been held, so by this December we have conducted 9 meetings. What is important and significant about this meeting is, we could address issues directly to the Chief Secretary, the highest Officer in the State bureaucracy. If any department failed to take any action, failed in its responsibilities, this was the Committee, this was the forum we used to draw the attention of the Chief Secretary. We met with huge success in implementing the Disabilities Act because directions used to be given from the Chief Secretary directly to the Principal Secretaries and various departments.

We had a very interesting workshop, which we organized, through our Office. We know that among the persons with disabilities, problems faced by hearing impaired are not addressed often enough. This is largely due to failure in



communication unlike persons with other disabilities, who can come and straight away meet the authorities and tell them well these are our problems. People with hearing impairment cannot do that. This is largely because the service providers do not understand sign language. In our state, what we have done is starting from the State Commissioner, and the Director for the Department of Welfare for Disabilities we have made sure that whoever gets appointed as Commissioner or Director, he must undergo sign language classes so that he is in a position to understand something when a hearing impaired person comes to the office. All of us have learnt sign language as a result. We may not be able to communicate very fluently and correctly but nevertheless, we know what it is to learn sign language. And then we realized that many issues are not properly understood by the government, those relating to the hearing impaired persons. So we decided to come out with a Vision Plan for persons with disabilities especially for the hearing impaired. We wanted a 5 year Vision Plan from 2003 to 2008, so what we did was we organized a workshop and what was unique about this workshop was the entire workshop was in sign language, and the participants were the hearing impaired themselves, their children, their family members, their caregivers and service providers. All the people from the Government took the back seat, we allowed them to participate and finally they came out with a Vision Plan. They realized, they worked out what were their needs, how they should be met, and how government can do it and that Vision Plan has been implemented today in the State of Karnataka. The entire workshop was in sign language. Nobody spoke. And this got a huge coverage, all the television channels, including the NDTV covered this event.

What I would like to tell you at the end of the session is you have witnessed what is it that we could do and it took 5 years for us to do this much. Believe me, though we have done so much, though we could achieve so much as an Office, yet there are so many issues that still remain unresolved. The only satisfaction, which I have, is that I have made the maximum use of the Disabilities Act and the Office of the State Commissioner to achieve whatever we have achieved.

Discussion

Participant: It would be better if all the persons with disabilities were to migrate to Karnataka as it was so much better there.

Mr. Pradeep Kumar: We learnt a lot through speaking with the mothers and care givers of persons with disabilities, I was able to learn about the problems and severity of the problems especially from the mothers. I was also able to plan on where and how I have to take up work.

Participant: Does the Karnataka department also had a scheme like or similar to the marriage incentive, in place in AP?

Mr. Pradeep Kumar: From the information gathered from Tamilnad, some men married women with disabilities, exclusively for the incentive, after which they had to go through living hell. After getting to know about these instances, the Government was definitely informed by the Commissioner, that this particular scheme should not be approved or implemented. I also request you not to marry women for some incentive and insult them or hit at their confidence and dignity. It is wrong to even have a thought like this and women have a lot to lose from this incentive. Keep this in mind and please do not line up for accessing these kinds of schemes, and target women to severe violence. It is like adding a monetary value to a woman.

Participant: As so much is being done in Karnataka, was anything specifically done in the area of politics?

Mr. Pradeep Kumar: Most of the rights have been in the socio economic realms and not much in political sphere and this is what is being done in almost all the states.

Participant: There are local level committees which are supposed to be put in place as part of the National Trust Act. Have they been set up in Karnataka?

Mr. Pradeep Kumar: In Karnataka all districts have constituted local level committees but then there are some inherent



defects in this local level committee as a result of which the local level committees have not been successful anywhere in the country. I have made a study of all local level committees in other states. You know why they have not been successful? In the first place the District Collector has been made as the Chairman, he does not find time for any of these things. Secondly, a persons with disabilities has been made a member, which is very good and then an NGO. But then in none of the districts have the Committees been meeting as per the schedule. Collector does not even bother to find time. Thirdly, even though local level committees have given guardianship orders, there is no follow up. The disabled person and NGO have not been given any kind of administrative and monetary support to follow up on these guardianship orders. If this is the case, why should we have local level committees? The 100 crores allotted for this is a corpus fund from which only the interest may be used for the implementation of the Act.

Participant: Were special schools for children with disabilities encouraged in Karnataka or is admission in normal schools encouraged? What are the areas where special trainings are encouraged for persons with disabilities? Was there any thinking about this regarding livelihoods?

In November 2004 a survey was done on children with disabilities in 10 Panchayats of Srinivaspur Taluk and I was a member of that team doing the survey as we are close to the borders of Karnataka in Madanapalle. As part of this survey, whomever we asked in the villages, whether they knew of any disabled children, we were systematically told to go to the local school and find out. And when we went there, we found that almost always all the disabled children were found in the school, and these were not special but the regular schools and a few of the severely disabled children also were, if not in the classrooms, inside the campus of the school. And the teachers of these schools had all the

information regarding these disabled children. And this was systematically observed to be the case in all the 10 Panchayats that we had visited as part of the survey. Also the teachers had the knowledge regarding disability and there is a specially trained teacher for disabled at mandal level. We were told that in case we wanted more information we could ask these teachers and get it more clearly. This proves that not just the teachers but the parents of the disabled children also had the information about these teachers and their whereabouts.

Mr. Pradeep Kumar: As far as Karnataka is concerned considerable efforts have been put by the Education Department to train teachers in inclusive education and the Scheme of Sarva Siksha Abhiyan has been implemented very effectively in Karnataka. We do encourage inclusive education but at the same time we do not rule out special education, especially for children who are severely disabled who have problems of augmentative and alternative communication. We still feel that the child has to be in a special school and talking about the rights, there are many children with hearing impairment whom I have seen, cannot do extremely well in a regular school. That is largely due to the sheer number and teachers not being too much trained in communicating with the hearing impaired child. There I feel that until and unless we reach a stage like in the West, where we can provide one to one attention, I will certainly encourage a child with hearing impairment to be in a special school because at least there is some education there. Otherwise this child is totally lost. I have spent hours together in an integrated, inclusive school and I have found that children with hearing impairment are finding it very difficult to cope. And I am part of a study group which is now looking at the UN Convention of rights of persons with disabilities and many members of this group who are well educated, they feel that it is a right of a disabled person to decide whether he should be in a special school or he should be in an inclusive school, mainstream school.



Many persons feel that they do not like to study in an inclusive setting, they would like to have a special school, a school that caters to their needs and requirements. They feel that we have not reached a stage where inclusion is complete, psychologically also. So they feel very threatened in a regular school, so they feel, “why should I be forced just because there is a policy of inclusiveness? I do not feel comfortable. I should have that right to decide.” And I fully agree with that person. What is important is that they want quality education. “Do not compromise on the quality. Whatever you provide for other children, make sure that we also get that kind of education. So we do not bother if we are in inclusive setting or in a special setting.”

International Convention on Disability Rights: Dr. Amita Dhanda

[This session was conducted bilingually, with Dr. Amita Dhanda speaking in English and Dr. Kalpana Kannabiran translating into Telugu. It was an interactive session that presented a dynamic interlinking between the English lecture and the Telugu translation. We present here the edited English transcript and the re-translation of parts of the Telugu translation that attempts to contextualise the session in terms of the process that the participants had already been through in the human rights education workshop series]

Dr. Amita Dhanda: Along with looking at national law, it is worthwhile to see what is it that international law requires nations/countries to do, because that provides us with one more tool for lobbying for our rights.

What does international law have for disability? At this point of time there is no convention on disability. Why is it important to have a convention on disability? Because in international law there is a distinction between various kinds of laws. There are rules, principles, guidelines, declarations, all of these have only persuasive value and states can follow them or need not follow them. But a convention on the other hand is something which once signed by a state, must be followed by that state.

What is the disability convention? What is the progress regarding the disability convention? Prior to this there was a declaration on mentally retarded persons, there was a declaration on disabled persons, there are rules for the equalization of opportunities for persons with disabilities and there are UN principles for the protection and care and treatment of persons with mental illness. All of these are the existing laws, international instruments, in relation to disability. Yet we want a convention. There are four immediate reasons why.

First, a convention is binding on the state whereas these existing laws are only persuasive. The other reason is, that all persuasive laws look at disability in the charity mode. Now with persons with disabilities asking for a place under the sun, for full rights, these recommendatory documents are not based on that perception or perspective. They represent an outmoded way of looking at disability. The way disability or persons with disabilities want to be viewed and the way in which the conditions should be perceived has changed dramatically.

Second, all the instruments, which were there before were made without the participation of persons with disabilities.

Third, disability is about diversity. It is about the fact that human beings are so different from each other. The “one size fits everybody” approach (which is the approach of the earlier instruments) will lead to problems.

Fourth, is the need to formulate disability friendly concepts, norms and procedures. This is the proactive reason for needing a disability convention.

Dr. Kalpana Kannabiran: Disability is part of diversity, difference. In fact difference is important for the existence of society, different castes, different colors, different sizes, different faces and different countries. There are as many differences in different continents as there are countries. There is a different world once we accept difference, as persons with disabilities would also become active members of the society then. But to date they have only been looked down upon. There should be no discrimination or repression against



the persons with disabilities, that just as different castes and colors and races are recognized as being different, even persons with disabilities should be considered as different, and once this happens then the stigma and discrimination against the persons with disabilities can be removed forever. The Convention was fashioned after this idea. So difference is a crucial factor. Instead of speaking about difference, so far disability was represented as something lacking from the norm, persons with disabilities as being something less than normal, and instruments were then made that were universally applicable. On the other hand if we accept the various differences and create a norms out of these differences, then we can bring in conventions and other instruments to include diverse needs and rights. When we accept that there are differences, even among the persons with disabilities, then our thinking would facilitate similar instruments.

If the persons with disabilities have to participate in the processes for preparation of the legal instruments, then these processes have to be conducive to persons with disabilities, and there should be facilities for them, so that they can participate equally and this has to be ensured by the authorities, which was lacking in the earlier processes. So once the process is conducive then the participation of persons with disabilities becomes immediately productive.

Dr. Amita Dhanda: Persons with disabilities have not been involved. But ordinarily it is only governments who take part in the making of international law. A convention is something that is settled between governments. It is here that there is a formalized difference in relation to disability. The UN General Assembly passed a resolution setting up an Ad Hoc Committee, as it is called, to draft the Convention. In that resolution, it was clearly stated that this convention had to be drafted with the active involvement of disabled people's organizations as well as human rights institutions. This Ad Hoc Committee set up a Working Group, which came up with a Working Group draft. All states parties then discussed that draft with active representation from disabled people's organizations inside the meeting room. That is the basic

difference. In contrast, women's rights activists or child rights activists were not involved in the drafting process in the same manner. They were involved in lobbying outside; not inside the hall speaking simultaneously along with or after the States Parties. That is the fundamental difference, which has come in the way this convention is being discussed. After the working group draft was ready, this was discussed at a series of meetings at the end of which, the Chairperson of the Committee has come up with a new draft on the convention. It is this draft, which is now being discussed in a lot of e-forums between states parties, by disabled people's organizations, by human rights institutions, and again when they meet in January, everybody will participate all over again.

Dr. Kalpana Kannabiran: For the earlier conventions the non-governmental representatives had to be outside the meeting hall, which we had experienced with the CEDAW, where there is an alternative NGO Forum where the points to be included in the Convention were discussed separately. To ensure these points are included there is a big struggle where the representatives have to chase and beg and cajole the government representatives to mention and get these points also included in the convention. The NGOs and human rights representatives are outside and the government representatives are inside and the persons outside can only make suggestions to the ones inside to present the points for discussion. This is a process when politics gets involved. And as the government representatives are the political representatives of their respective countries it is quite common that some suggestions might be accepted and others thrown aside.

Dr. Amita Dhanda: What are the key questions in the convention; why they are controversial; what is the structure of the convention; what kind of a role disability rights networks play in the making of this convention.

- Who should be included in the Convention, should you define disability, should you define persons with disabilities? Defining persons with disabilities, or defining a disability carries the danger that whoever is not today organized enough to voice their needs, whoever is not able to show



that they are persons with disabilities will automatically stand excluded from the Convention. One of the big unanswered questions in the Persons with Disabilities Act is, what about the rights of all those people who are not covered in that definition? Several people say, do not define disability. Developing countries want definition to happen. A number of persons with disabilities also want definition to happen, especially people who have clearly identifiable disability.

- Should the convention be based on a medical model of disability or a social model of disability? The general consensus in the Committee is it should not be a medical model; it should be social model. It is not whether doctors consider something to be a disability or not, it is how society treats a certain condition which is what makes for a disability or does not make for a disability.

Dr. Kalpana Kannabiran: If we speak about definitions, only some people tend to be included and others excluded. Here the example of Sameera, a eunuch, from Tirupathi is relevant. At a workshop of the Disability Right Network on Gender and Disability, she wanted to know where she would get to be included under law as there is no mention of eunuchs in it. So this is the danger of defining. She said, "I do not have the basic organs for procreation, you did not define me as disabled, you all have a special act for persons with disabilities, but I do not have access to that act, there are several forms of repression." Similarly she is outside the framework of entitlements based on gender. There are obviously some problems with definitions. The use of a law would depend on the definition and those who do not get defined are kept beyond the purview of the law. Even when we look at the problem from a sociological point of view, to exclude is a painful process but is equally painfully common, be it caste, gender or even disability. So when a good legal redress mechanism like the disability convention is being put in place, it becomes crucial to settle who should be included. And if we were to keep aside the question of how the inclusion can be misused, in this context the non-inclusion of disabilities would amount to exclusion.

Dr. Amita Dhanda: However, there could be some groups of people, who might actually get excluded if the medical model is ruled out — conditions like Thalessemia, even for chronic heart problems or Hemophilia. The other question is of discrimination or non-discrimination. What is discrimination? Does it have to be that somebody actually discriminates or is discrimination a whole range of the way in which you organize the world? There is the view that the convention should do no more than see that persons with disabilities are treated in the same way as the rest of the world. If they are not being so treated, that is discrimination and so the convention should set that right. Clearly there is a difficulty with this approach. You are not the same as the rest of the world so if you have to be included in, you have to be treated differently. Take for example the right to education. There should be no discrimination in the right to education for persons with disabilities. Now one way of seeing it is that the admission norms should allow the persons with disabilities to be admitted. But if there is no other accommodation, (entry into the school, the teaching method, languages used) then there is still discrimination. But that is where disability runs into big difficulty: Is this absence of reasonable accommodations discrimination or is not discrimination?

Dr. Kalpana Kannabiran: If there should be no discrimination, then there should equality and everyone should be treated equally and all facilities should be equally available for all, and such a society is considered to be an equal society. When we take education, and a building, this should be accessible to all, this building is a little distance from village, and as the government is not naturally discriminatory, everyone has access to this building. Nobody is barred entry. But does everybody actually have access? If I were to be asked to go to that building, I would simply walk up to it, but if Patnaik were to be asked he would not be able to come so easily. We have to create wheelchair access for Patnaik to come to the School building. So what is actually discrimination here? And what is equality? To say there is a building with access to all, meaning that nobody will be 'prevented' from entering?



Or to make it accessible not just for persons like me but also to provide all the facilities for everyone, including wheelchair access so that Patnaik can access this building equally easily? It is understood that when we speak of equality it should not be just in treatment but also in consequence through provision of certain facilities. And this should be taken into account when considering discrimination. If there is equality of treatment alone that in itself is discriminatory as the key component of equality clause is equality of consequence, in this case accessing facilities. Let us take a step further. The building should have accessibility; transport should be accessible; to that extent there is equality in consequence. But to be present in the building and be treated equally with the others in it, the facilities have to be increased step by step because, only then I would be able to develop equally with others. I should not only be able to come to the building equally but also to move about and access the facilities inside and feel equal with others, there should be accessibility built into every level.

Dr. Amita Dhanda: Actually somewhere in this example, we have captured this whole difference between non-discrimination and reasonable accommodation. The distinction between civil political rights and social economic rights is critical to an understanding of disability rights. In international law till today, civil and political rights whether it is the right to freedom of speech and expression, whether it is the right to freedom of movement, whether it is the right to vote, whether it is the right to personal liberty, are immediately available once they are guaranteed, since they don't require investment/costs. All that is needed is, the freedom to exercise the right. For persons the disabilities on the other hand, which was what the education example was meant to show, some resources have to be invested for those rights to be in fact realized. One of the fundamental problems in the disability convention is that non-discrimination implies accommodation. The view is increasingly that the failure to reasonably accommodate, even if it requires resources, should be seen as discrimination. The division which international human rights has made

between civil, political rights and social economic rights is an incorrect and false division. If the disability convention is able to change this and is able to talk about hybrid rights, it is going to revolutionize not just rights for persons with disabilities but all human rights.

Dr. Kalpana Kannabiran: when we are speak of disability rights, if we take freedom of speech as a first generation right, and disability rights as a third generation right, freedom of speech for a speech impaired person means that there must be conditions where the speech of the disabled is understood and their communication and languages and speech are also given recognition equally along with other forms of communication and speech. Only then is the right to freedom of speech of the persons with disabilities ensured and protected. There should be access to make our sources of communication part of the public realm, there should be an environment where our modes of communication are easily comprehended by all, and the facilities should be so accessible. Only then is our freedom of speech recognized and protected and if these facilities are not provided then it will be construed as discrimination. As a part of this, the difference between first and third generation rights is wiped out when it comes to the disability rights. The right to freedom of movement is a fundamental right according to our constitution and is an important right under the international legal instruments. If there are no facilities or the creation of access in transport or roads, then it is a violation of our right to move freely. And to provide facilities is not to do us a great favor but is to prove that there is no discrimination against any of the citizens of the country. Where the disability convention is concerned, the difference between the three generations of rights has been wiped out. If the aspects of the third generation rights for persons with disabilities are not taken into account, then the first generation rights themselves would stand violated. If our language is not understood then our freedom of speech is violated, if our mobility to school or work for example is hampered due to lack of facilities, then our freedom of movement is violated. So it is the responsibility of the government to provide all



the facilities, for ensuring the civil rights of persons with disabilities, with no ceiling on the resources allocated to create these facilities. Non-allocation of resources to create access would be construed as discrimination. The disability convention brings in a new understanding of discrimination.

Dr. Amita Dhanda: The convention has been divided into three parts; the first part is primarily talking in terms of purpose and general principles and obligations. There is a controversy on whether or not there should be special articles on women with disabilities and children with disabilities. Sections 10 to 30 sets out all the rights, intermixing civil and political with social economic rights, to underscore the fact that there is an inextricable connection between the two. And the last part of the convention is primarily about the implementation.

Dr. Kalpana Kannabiran: The sections deal, in brief with right to life, equality before law, freedom of movement, personal liberty and protection, right against torture, right against violence and harassment, freedom of life, personal mobility, freedom of speech and expression, privacy, family as institution, marriage, children, reproduction, education, health, rehabilitation, housing, work and livelihood, political participation, cultural rights, etc. these are all part of the convention. One of the key factors in the convention is collection of the information on disabled in all aspects, especially their number. If we have that number, then we would have weapons to take strong steps for the removal of discrimination at the policy level. We work locally but we should also know what are the processes in the international level, what policies, linkages between government and persons with disabilities and this convention speaks about the processes for international linkages between persons with disabilities across the world. It also mentions the mechanisms to be put in place by the respective governments to implement all these and also how this can be monitored through regular reports every few years for the continued protection of the rights of the persons with disabilities.

Dr. Amita Dhanda: Why should groups engage with the convention? Some of the material can be translated into Telugu and made more widely available. Discussions on the key questions of the convention and informed feedback to national associations that can lobby with the government will be very useful. It is extremely important to do this while the convention is happening so that when the Convention comes you will really know how to use it.



Speakers at the Disability Rights Meetings



Nalsar

Prof. Ranbir Singh
Prof. Kalpana Kannabiran
Prof. Amita Dhanda
Prof. Sirish Deshpande
Dr. N. Vasanthi

Swaadhikaar

Mr. M. Pavan Kumar
Ms. Anuradha SE

Disability Rights Forum, AP

Mr. N. Ramesh
Mr. Chakravarthi K
Mr. Krishna Mohan B
Mr. K. Nageshwar Rao
Mr. Sajjid

Asmita Resource Centre for Women

Ms. Volga
Ms. M. Aparna
Ms. P. Anuradha
Ms. Shanthi Durga
Ms. Neelima
Ms. T. Anuradha

National Institute for the Mentally Handicapped

Dr. L. Govinda Rao
Dr. Siva Kumar

Commissionerate-Disabled Welfare, AP

Mr. R. Sundervadan, Commissioner
Mr. Prasada Rao, Assistant Director, Vishakhapatnam dt.
Mr. Suryanarayana, Assistant Director, Krishna dt.
Mr. Jeevan Babu, Assistant Director, East Godavari dt.
Mr. Kumar Raja, Assistant Director, Ananthapur dt.

Leonard Cheshire International

Mr. Pradeep Kumar
Ms. Chaitanya

AP State Legal Services Authority

Mr. Venkateshwara Reddy, Administrative Officer

Peoples' Union for Civil Liberties

Mr. K. G. Kannabiran

Human Rights Forum

Dr. Kondandram

Human Rights Programme, HCU

Prof. G. Haragopal



Participants

**Dammapeta, Khammam Dt.
05 July 2005 to 08 July 2005**

1.	M. Venkatesh	Gandiprolu	29	Soyam Ramulamma	Patwarigudem
2	Parvathi	Ragulagunta	30	Madivi Suraiah	T. M. Gumpu
3	K. Mariamma	Patwarigude3m	31	Kaka Rajamma	Ankamapalem
4	K. Jayendar rao	Gandiprolu	32	Soyam Nageswa rao	Ankampalem
5	V. Muthyalu	Regulagunta	33	Sadiyam Krishna	Kothagangaram
6	S. Venkatamma	Patwarigudem	34	S. Papamma	Bolligattu
7	K. Ramalaxmi	Chillagumpu	35	M. Muthamma	Patwarigudem
8	V. Nagamani	Pathagangaram	36	K. Ramalaxmi	Patwarigudem
9	P. Nagamani	Kothagangaram	37	Kattam Bamma	Bolligattu
10	P. Bhadramma	Kodisalagudem	38	D. Ajay Kumar	Patwarigudem
11	Madivi. Rajini	Kommugudem	39	D. Anil Kuamar	Patwarigudem
12	K. Varalaxmi	Patwarigudeem	40	N. Venkateswar Rao	Patwarigudem
13	Ch. Venkat	Patwarigudeem	41	M. Sugunakar	Patwarigudem
14	K. Venkatesh	Kommugudem	42	M. Krishna kumari	Patwarigudem
15	P. Srinivas	Patwarigudeem	43	R. Jyothi	Patwarigudem
16	P. Prabhakar	Patwarigudem	44	T. John Rathna kumar	Patwarigudem
17	B. Potti	Rasannapeta	45	K. Panthulaiah	Patwarigudem
18	P. Venkata Rao	Lankalapally	46	M. V. Murali Krishna	Jagannadhaapuram
19	K. Venkata Rao	Patwarigudem	47	D. Venkateswarlu	Jagannadhaapuram
20	Kalluri Muthamma	Kotha gangaram	48	V. Babu Rao	Jagannadhaapuram
21	K. Nagulu	T. M. Gumpu	49	G. Srinivasa Rao	Patwarigudem
22	V. Surappa	T. M. Gumpu	50	G. Issac	Patwarigudem
23	S. Veeramma	Sudhapally	51	N. Venkateswara Rao	Patwarigudem
24	P. Madhavi	Patwarigudem	52	V. L. Babu rao	Patwarigudem
25	G. Laxmi	Sudhapally	53	M. Ananda rao	Patwarigudem
26	V. Rekalamma	Jagannadhapuram	54	M. Venkateswara rao	Sudhapally
27	Penuballi Kanthamma	Jaggaram	55	Kunja Venkatesh	Kotha gangaram
28	Kursam Nagamma	Burugumpu	56	Vuke Satyam	Kotha gangaram
			57	Vaggela Parvathi	Ankam palem
			58	Eesam Venkatesh	Gandiprolu



**Tadepalligudem, West Godavari Dt.
26 August 2005 to 29 August 2005**

1. Gatti Annavaram	Danddagarra	28. Mutta Paranjyothi	Danddagarra
2. Rudra Balaji	Amruthapuram	29. G. Dinesh	Krishnappalem
3. Konduboina Venkateswararao	Mettauppragudem	30. G. Ramalakshmi	Krishnappalem
4. Katta Satyavathi	Mettauppragudem	31. M. Sivakrishna	Krishnappalem
5. Angadala Chintarao	Mettauppragudem	32. K. Rama Rao	Umamaheswaram
6. Dake Dhanalakshmi	D. Uppragudem	33. A. Nagaraju	Umamaheswaram
7. Bijja Lakshmi	Danogagarra	34. T. Krishnamma	Umamaheswaram
8. Pothula Srinivasu	Pedatadepalli	35. T. Ramesh	Umamaheswaram
9. Dulapalli Nageswararao	Pedatadepalli	36. B. Ravamma	Umamaheswaram
10. Paturi Ramakrishna	Kommugudem	37. Reddy Suryakumari	Krishnappalem
11. Kamana Satyanarayana	Kommugudem	38. S. Ravi Kumari	Krishnappalem
12. Dulapalli Syam Babu	Pedatadepalli	39. M. Naga Raj	Rachala
13. Rajarajeswari	Kunchanapalli	40. K. Veera Raju	Rachala
14. Lakshmanarao	Kunchanapalli	41. Ch. Venkata Laxmi	Alampuram
15. Subrahmanyam	Kunchanapalli	42. K. Varalaxmi	Krishnappalem
16. Rambabu. A	Ramannagudem	43. Danalaxmi	Alampuram
17. P. Ravi Kumar	Ramannagudem	44. K. Satyanarayana	Kommugudem
18. Gopiseti Kondaiah	Muthyalampapuram	45. K. Laxmana Rao	Chintadepalli
20. Naka Lakshmanarao	Muthyalampapuram	46. V. Surya Chandra Rao	Chintadepalli
21. Gandikota Ganesh	Kommugudem	47. P. Sunitha	Chintadepalli
22. Kariyada Rajamani	Kommugudem	48. K. Srinivasa Rao	Chintadepalli
23. A. Ramababu	Umamaheswaram	49. K. Venkata Ramana	Chintadepalli
24. S. Somayya	Umamaheswaram	50. K. Pothu Raju	Chintadepalli
25. A. Veeeramma	Umamaheswaram	51. M. Srinivas	Chintadepalli
26. Rudra Rambabu	Umamaheswaram	52. S. Marry	Krishnappalem
27. Katta Gangadharao	Mettauppragudem	53. Srinivas	Krishnappalem
		54. K. Ravi	Krishnappalem
		55. Varalaxmi	Krishnappalem



Anantapur, Anantapur Dt.
13 September 2005 to 16 September 2005

1. M. Rajamani Kovurunagar
2. B. Srinivasulu Pamudurthi
3. D. Jagadeshwara Bathalapalli,
4. Mr. Murugan Madakasira (M)
5. P. Y. Hanumantha Reddy Madakasira (M)
6. Anandkumar Madakasira (M)
7. H. Ramanjineyulu Gundumala V
8. N. Samuel DDRC Ananthapur Town
9. J. Venkatalakshmi Kalyandurg (M)
10. Bharathi (PD) Akuthotapalli (Vi)
11. Nagamani (PD) Jaladurgam (Vi)
12. R. Sudhakar Chowtakuntapalli (Vi)
13. Venkataramana Reddypalli (Vi)
14. Reddy Viswanath Bathalapalli
15. Narapa Reddy Mudigubba (Vi)
16. Balanarayana RDT, Rayadurg (M)
17. Ramadevi Yallnur (M)
18. Anjineyulu Kanekal (M)
19. G.Venkatanarayana Kanekal
20. B. Vasurappa Beluguppa (M)
21. Marena Beluguppa (M)
22. Srilakshmi Gandlapenta (M)
23. Sridevi Pamidi (M)
24. Yellamma Kalyandurg (M)
25. C. Eswaramma Nagireddipalli (Vi)
26. Bhavani Idukallu (Vi)
27. Sudharani Neelampalli (Vi)
28. Lakshminarayanamma Arakatavemula (Vi)
29. Padmavathi Rekulakunta (Vi)

30. Lakshmikanthamma Narasimpalli (Vi)
31. B. Nagireddy Bathalapalli
32. G. Ananda Kalyandurg
33. A. Sudhakar Kadri
34. P. Rangareddy B.K.Samudram
35. Sri R. Dasarath Ananthapur
36. Sri Suresh
37. C. Beebi Madanapalli
38. P. Nagarathna Madanapalli
39. Ramesh Madanapalli
40. Subrmnyam Ananthapur
41. Thirupathamma Achampeta (Vi & M)
42. Abdul Shazee Mahaboobnagar
43. Seshu Madanapalli

Amalapuram, East Godavari Dt.
6 November 2005 to 9 November 2005

1. Velukuri Satish Edharapalli
2. Meka Saibaba Edharapalli
3. Golakoti Nagadurga Edharapalli
4. Nalam Jaggaraju Badaru lanka
5. Kaki Reddi Satyamani Edharapalli
6. M. Satyanarayama Kesanakurrapalem
7. Chintalapalli Venkataramana Indupalli
8. Gode babu Chellapalli
9. Polamuri Gangadharam Indupalli
10. Nandhyala Durga Bhavani Edharapalli
11. Ragi Reddi Ramesh Allavaram
12. Beere Srinivasa Rao Indupalli
13. Bonthu Durga Prasad Indupalli



14.	Chollanggi Babulu	Indupalli
15.	Janga Dhana Raju	Nadipudi
16.	M. Raga latha	Palagummi
17.	S. Mary Ratnam	Bandaru lanka
18.	Pithani Malleswari	Mallayagiri Palem
19.	Chinthapalli Venkata Laxmi	Indupalli
20.	Beera Srinivasa Rao	Indupalli
21.	Pulusuganti Venkamma	Bandarulanka
22.	Theenath Venkata Ramana	Bandarulanka
23.	Nimmana Ramu	Amalapuram
24.	Golakoti Ganapathi	Edharapalli
25.	Aadapa Ramakrishna	Nadipudi
26.	Neelam Jaggaraju	Bandarulanka
27.	Mummidivarapu nagababu	Edharapalli
28.	Chinddhede Gani Raju	Edharapalli
29.	Pattchimala Balayya	Saavaram
30.	Vundhurthy Venkateswara Rao	Bandarulanka
31.	Motipalli Trimurthulu	Indupalli
32.	Mummidivarapu Chinna	Edharapalli
33.	Ryali Subba Rao	Edharapalli
34.	Kamidi Subramanyam	Indupalli
35.	Elingi Sathi Babu	Amalapuram
36.	Thutupodu Veera Venkata Satyanarayana	Amalapuram
37.	Chintalapudi Satyanarayana	Amalapuram
38.	Gelli Sai babu	Amalapuram
39.	Naagarapu Pallupu Reddy	Edharapalli
40.	Mattaparthi Nageswara Rao	Ambajipeta
41.	M. Ranjani	Edharapalli

42.	Kudupudi Vijaya Durga	Indupalli
43.	Paramata Sai baba	Saripalli
44.	Mattaparthi Mangedevi	Ambajipeta

**Anantagiri, Visakhapatnam Dt.
11 November 2005 to 14 November 2005**

1.	J. Swami	Visakhapatnam
2.	S. Ramesh	Visakhapatnam
3.	K. Chinnappa	Visakhapatnam
4.	J. Balia	Visakhapatnam
5.	K. Seethamma	Visakhapatnam
6.	J. Sanni babu	Visakhapatnam
7.	K. Mastyaraju	Visakhapatnam
8.	S. Narasamma	Visakhapatnam
9.	S. Pakir Dora	Visakhapatnam
10.	G. Simhachalam	Singavaram
11.	B. Kanna Rao	Visakhapatnam Dist
12.	S. Chinna Rao	Yeguvasobha
13.	K. Kasulamma	Peddaburuguputtu
14.	B. Neelamma	Visakhapatnam
15.	G. Thoudayya	
16.	K. Kalaraju	
17.	D. Syamsunder	
18.	M. Matsya Murthy	
19.	S. Manga	
20.	B. Ganga	Kasipatnam
21.	B. Appamma	
22.	K. Seethamma	
23.	B. Gowri	
24.	J. Sanyasamma	Chimudupalli
25.	K. Ravikumar	Limbagadda



26. Ramulamma Kothuru
27. G. Drowpathi Kothuru
28. J. Narayanamma Pedirai
29. B. Venkanna Babu Budi
30. A. Ramakrishna Anathagiri
31. S. Parvathi Saravannapalem
32. B. Asanna Bangaramgaruru
33. U. Thoudayya Uppabyrodivalasa
34. Ch. Yugandar
35. S. Bharathi
36. Rajesh Kumar Jeena Ananthagiri
37. S. Donnu Tokuru
38. S. Sanyasi Rao Muyaguda
39. K. Mosia

15. R. Anjamma G.S.R.V.S.
16. R. Eshwaramma Peddapata
17. M. Ganganna Malluguda
18. B. Sundaramma Budia
19. K. Buchamma Bharunaguda
20. B. Kadaiah Dhandusuraguda
21. B. Sannaiah Dhandusuraguda
22. P. Ramarao Lovalaxmipuram
23. P. Thimmayya Pachi
24. K. Ramarao Nilakantapuram
25. N. Harish Peddakurja
26. N. Pentamma Arts
27. K. Laxmi Arts
28. K. Mukalingam Arts
29. P. Keshav Rella
30. M. Ramesh Rella
31. A. Prakash Nilakantapuram

**Gummalaxmipuram, Vijayanagaram Dt.
Dt, 16 November 2005 to 19 November 2005**

1. K. Nageshwar Rao
2. Sajid
3. Ch. Saritha
4. M. R. N. Tohatly A.R.T.S.
5. V. Ramulu Kambavalasa
6. K. Nirmala A.R.T.S.
7. M. Venkatarao Kothaguda
8. T. Srinivasarao Gotivada
9. A. Eshwarrao Konguda
10. M. Kantarao Chinadoja
11. Nimmaka Satyam Chinadodija
12. Kondagorri Kousalya Gorada
13. Kondagorri Appamma Kothaguda
14. L. Sittamma Gorada

32. D. Anand
33. Arika Manga Bodaminaguda
34. K. Venkat Bhavanguda
35. N. Singanna Chinadodija
36. A. Chandrakala Nereedumanuguda
37. T. Suresh Gotivada
38. N. Somjyamma Gurramguda
39. S. Anand Mulavalasa
40. Y. Dharmarao. Peddakharja
41. J. Giriprasad Gotiwada
42. B. Kurmarao Boddamanuguda
43. P. Mohanrao Peddakharja
44. A. Venkatrao Mamidimanuguda
45. A. Chakravarty Warangal



46.	P. S. T. Patnaik	Atchutapuram	18.	P. Suryakalavathi	Chinagollapalem
47.	P. V. S. Mahesh Patnaik	Salur	19.	K. Chekrapani	Garisipudi
48.	Muvvalachinamani	Kurkuti	20.	B. Yesu	Gudivada
49.	Ch. Padma	Gunhapavalsa	21.	B. Bapanayya	Gudivada
50.	P. V. Parasaramu	VSP	22.	B. Basavayya	Gudivada
52.	N. Thirupathamma	Achampet	23.	P. Sunitha Kumari	Gudivada
53.	R. Padma	G.S.R.D.S	24.	M. Chintu	Gudivada
54.	V. Samuel	G.S.R.D.S.	25.	P. Radha	Gudivada
55.	P. V. V. Satyanarayana	G.S.R.D.S.	26.	G. Venkayamma	Gudivada
56.	K. Kishore	G.S.R.D.S.	27.	M. Umamaheswari	Gudivada
57.	B.Bhudaya	Chinadorja	28.	K. Ravi	Gudivada

**Gudivada, Krishna Dt.
21 November 2005 to 24 November 2005**

1.	N. Francis	Chinagollapalem	31.	N. B. Kumari	Mandavalli
2.	K. Venkanna	Chinagollapalem	32.	N. Ramesh	Mandavalli
3.	K. Venkata Ramana	Chinagollapalem	33.	P. Yesteru Rani	Chavalipadu
4.	K. Satyanarayana	Chinagollapalem	34.	P. Daveedu Raju	Chavalipadu
5.	B. Sheshadri	Chinagollapalem	35.	S. Devadas	Chavalipadu
6.	N. Premavalli	Chinagollapalem	36.	L. Veerabhadrachari	Chavalipadu
7.	N. Venkata Rao	Podu	37.	N. Marthamma	Chavalipadu
8.	M. Lajaru	Nidammarru	38.	I. Venkateswaramma	Chavalipadu
9.	T. Latha	Gudivada	39.	G. Nirmala	Chavalipadu
10.	M. Jaya Raju	Nidammarru	40.	K. Krishna Murthy	K. Rudravaram
11.	M. S. Raju	Nidammarru	41.	S. Durga Rao	Kanukollu
12.	P. Abraham	Padatadika	42.	G. Govind	Kanukollu
13.	P. Ribka	Padatadika	43.	S. Peddintlu	Kanukollu
14.	K. Srinisava Rao	Chinagollapalem	44.	G. Yedukondalu	Kanukollu
15.	T. Santha Kumari	Chinagollapalem	45.	P. Peddi Raju	Kanukollu
16.	K. Chinnari	Chinagollapalem	46.	P. Balaji	Kanukollu
17.	K. Durga	Chinagollapalem			

**Warangal****05 December 2005 to 08 December 2005**

1. E. Buchamma Guthur
2. Bura Uma Dhanthaipalli
3. L. Upendra Venkatapuram
4. U. Amala Devi Beerishetti Gudem
5. P. Vijaya Saideddypalli
6. M. Dayarani Nekkonda
7. Ch. Shailaja Karkala
8. N. Venkanna Dhanthalpalli
9. J. Jaipaul Pedds Nagaram
10. K. Srikanth Nekkonda
11. P. Srilaxmi Bharamanakothapalli
12. G. Ravi Jamathanda
13. Laxminarayana Munegala veedu
14. P. Venkateshwarlu Mudigonda
15. M. Somalaxmi Nellikuduru
16. B. Venkanna Rammannagudem
17. P. Naresh Burahanpuram
18. T. Venkanna Bommakal
19. B. Sampath Bhetel
20. Jukanti Ravi Kesamudram
21. Gadda Yakaiah Kesamudram
22. M. Venkateshwarlu Ammapuram
23. M. Narasaiah Mudu Pungal
24. T. Mary Veeraram
25. V. Chandra Gupta Jamundiapalli
26. E. Sudhakar Mahabubabad
27. K. Satish Penugonda
28. T. Laxmaiah Upparpalli

29. J. Appaiah Abahipalam
30. A. Venkanna Maripeda
31. Ravi Venkatapuram
32. Yellaiah Gurthur
33. Buchamma Gurthur
34. Ravikumar Kesamudram

Kosgi, Mahabubnagar Dt.**12 December 2005 to 15 December 2005**

1. D. Chandramma Janakampalli
2. B. Devamma Bolavoni palli
3. A. Arunamma Hanmanpalli
4. S. Bamma Hakeempet
5. T. Venkatamma Nandipahad
6. A. Sugunamma Hanmanpalli
7. G. Dastaiah Commitments
8. S. Tulasi Commitments
9. M. Mogulamma Neetur
10. K. Narsamma Kosgi
11. K. Laxmi Mungimalla
12. V. Yellamma Vhellapur
13. B. Mohan Commitments
14. D. Narsimulu Kosgi
15. P. Yellamma Kosgi
16. G. Yellamma Kosgi
17. P. Mallamma Pothireddy Palli
18. D. Ramulu Hakeempet
19. E. Saiulu Gokapaslabad
20. T. Narsamma Mushrifa
21. D. Laxmi Mushrifa
22. G. Anjilamma Togapur



23.	M. Viswamma	Togapur	11.	Iramalla Bikshapathi	Manchala
24.	M. Hanmanthu	Bhwmpur	12.	Moodavath Bikku	PC Thanda
25.	Ananthaiah	Polepalli	13.	S. K. Mallesh	Manchala
26.	B. Yadamma	Bodajanampet	14.	P. Bikshapathy	Nomula
27.	L. Krishna Murthy	Project Coordinator	15.	Md. Parveen	Manchala
28.	Anuradha	Documentation-wadhikar	16.	B. Poshaiiah	Manchala
29.	Pavan	RP-Swadhikar	17.	Danaiah	Manchala
30.	Krishna Mohan	RP-Swadhikar	18.	Ch. Ramesh	Manchala
31.	Mogulamma	Doultabad	19.	Gaddam Ramchendaiah	Manchala
32.	P. Narsimlu	Veeranna Pally	20.	A. Krishnaveni	Loyapalli
33.	M. Ramulu	Sarjakhpet	21.	Mallesh	Bodakonda
34.	Nellamma	Mettkakuntta	22.	E. Kavitha	Manchala
35.	B. Chandraiah	Lagacharlla	23.	Poshaiah	Manchala
36.	Gous	Choudrarpally	24.	K. Andalu	Manchala
37.	Chenya Naik	Regadi Mylaram	25.	R. Lakshmi	Manchala
38.	D. Venkata Rao.	Commitments	26.	G. Yadaiah	Ibrahimpatnam
39.	Sahithya	Commitments.	27.	G. Narasimha	Tippaiguda

**Manchala, Ranga Reddy Dt.
17 December 2005 to 20 December 2005**

1.	Ch. Poshaiiah	Nomula	30.	Jaipal Reddy	Rangapur
2.	G. Bikshapathi	Tippaiguda	31.	Shyamamma	Joopal
3.	G. Bikshapathi	Tippaiguda	32.	Leelavathi	Joopal
4.	G. Shankaraiah	Tippaiguda			
5.	Erpula Ramesh	Chittapur			
6.	G. Soopanamma	Chittapur			
7.	Y. Sattaiah	Khagaz ghant			
8.	K. Kishan	Khagaz ghant			
9.	Chitti Raju	Loyapalli			
10.	Srinivas Akula	Khanapur			



**Legal Literacy Workshop for Persons with Disabilities held at NALSAR, Shameerpet
21-12-2005 to 23-12-2005**

Anantapur

Mr. P. Narasimha Reddy	Reddipalli (Village & Post)
Ms. B. Sreedevi	Bukkarayasamudram (Mandal)
Mr. G. Venkatanarayana	Komatikuntla Post & Village
Ms. D. Laxminarayanamma	Arakatavemala Village & Post

Warangal

Mr. V. Chandra Gupta	Vill & Po: Jamandlapally
Mr. K. Laxmi Narayana	Munigalaveedu Village
Ms. P. Vijaya	Saireddy Pally Village
Ms. Ch. Sailaja	Karkala Village
Mr. A. Chakravarthy	Thorruru (Mandal & post)

Krishna

Ms. Nandikolla Bhushana Kumari	Mandavalli Village & Mandal
Mr. Nallanganga Francis	Chinagollapalem Village
Mr. Palaparti Abraham	Padatadika Village
Mr. Siddantapu Durga Rao	Kanukollu Mandavalli Mandal
Ms. Naganaboena Marthamma	Chavalipadu

Hyderabad

Mr. Nanduri Ramesh	Hyderabad
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Vishakapatnam

Mr. P.S.T. Patnaik	Atchuta Puram (Po & Mandal)
Ms. S. Manga	Bayyavaram village
Mr. P.V. Parasuramu	Andalapalli Village
Mr. Mathy Murthy	AT: Kumaravalasa
Mr. B. Vekan Babu	Digibvali Village
Mr. J. Narayanamma	JPeti Rai Village

West Godavari

Mr. Vuppala Venkatesh	Tyajampudi
Ms. Kanchumarri Lakshmi	Tyajampudi

Ms. Sakhinala Divya	Tyajampudi
Mr. Sakhinala Sridhar	Tyajampudi
Mr. Ambati Rambabu	Umamaheswaram Village
Mr. Sudikonda Somayya	Umamaheswaram Village
Mr. Kasagani Lakshma Rao	Chinnatadepalli Village

East Godavari

Ms. S. Mary Ratnam	Bandurlanka Post
Ms. Raga Latha	Palagummi Post
Mr. Janga Dhama Raju	Nadipudi Post

Kadapa

Ms. Sure Tulasamma	Vempalle Post & Mandal
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Mahabubnagar

Mr. D. Venkata Rao	Kosgi (Mandal)
Ms. S. Tulasamma	Kosgi (Mandal)
Mr. B. Chandraiah	Kosgi (Mandal)
Mr. Abdul Sajeed Ali	Kalvakurthy Mandal
Ms. N. Thirupathamma	Achampet mandal

Vijayanagaram

Ms. Arika Chandrakala	Neredimanuguda Village
Mr. Biddika Buddaiah	Chinadodija Village
Mr. Padala Ramu	Thettedavalasa Village
Mr. Janni Lachaiah	Pachipenta mandal

Rangareddy

Mr. K. Mallesh	Manchala PO & Mandal
Ms. R. Lakshmi	Manchala PO & Mandal
Mr. Y. Sattaiah	Kagajghat Village & Post
Mr. P. Butchaiah	Nomula Village
Mr. N. Bugga Ramulu	Jupala Village & PO



Outcome

The workshops for Citizens with Disabilities have immediately resulted in two major gains.

The first has been that the AP State Legal Services Authority has recognized the participants as para legal volunteers who will be the bridge between communities and the district judiciary.

The second gain has been the invitation extended to the disability rights network by the Government of Andhra Pradesh to make recommendations on the inclusion of Citizens with Disabilities in the Employment Guarantee Scheme

Recommendations for the Inclusion of Citizens with Disabilities in the Employment Guarantee Scheme in Andhra Pradesh

[Draft prepared by Dr. Kalpana Kannabiran on the basis of minuted discussions at the state level meeting of persons with disabilities to discuss the EGS at the National Institute of Mental Health, Secunderabad, January 2006]

The following recommendations are being proposed in the spirit of affirmative action and the right to equal access of Citizens with Disabilities to all measures for the eradication of poverty and the realization of the right to life initiated by the government.

1. Mechanisms may be put in place to ensure the fullest participation of Citizens with Disabilities in the registration and ratification by the Gram Panchayat of identified works, and their mandatory inclusion in self help groups to enhance their effective engagement with VOs and other local representatives.
2. Inclusion of Citizens with Disabilities in Joint Forest Management and the creation of effective access to common property resources.
3. Officers at each level responsible for the implementation of the EGS may be trained and oriented towards

appreciating actual capabilities in consultation with Citizens with Disabilities seeking inclusion in particular works, thus making decisions regarding appropriate work participatory and the process inclusive rather than charity oriented.

4. Since the Act does not make special mention of ability as a pre-condition to granting of work, this must be read in favour of the person with disability in the granting of work.
5. The definition of the household is far from fixed in the Act. In the event that the nuclear family is taken as the unit for the household, irrespective of actual numbers of units sharing a common hearth, this flexibility may be extended to adult Citizens with Disabilities residing in the household. In concrete terms, if 100 days of work is guaranteed to each unit, the presence of an adult with disabilities should result in the granting of an additional 50 days of work — to the person with disability. Where the disability is severe and obstructs the person from participation in work, these additional hours may be given to an adult caretaker. However, this decision must only be made on a case by case basis after the officer has personally consulted with the person with disabilities, and the reasons for not allotting work to him/her and allotting it to a care taker/family member must be recorded in writing. Adults with disabilities would be given additional job cards.
6. Of the 14000 or more field assistants employed by the government to assist in the implementation, Citizens with Disabilities will be identified to ensure inclusion of Citizens with Disabilities. For this purpose, the persons identified by the AP State Legal Services Authorities as Para Legal Volunteers in each district [where such identification has been done], may be included in the implementation of the EGS.
7. Field Assistants appointed from among Citizens with Disabilities will also bring to the notice of



the government the progress or obstacles as the case may be in the allotment of work and timely payment of wages.

8. All information that must be provided on the EGS and related matters must be communicated effectively to Citizens with Disabilities keeping in mind the access issues that are specific to their situation. Merely displaying information at public places cannot be read as having communicated with Citizens with Disabilities.

9. At the level of the Gram Panchayat, members should have separate consultations with Citizens with Disabilities prior to the meeting to discuss works and an independent record of such discussions must be maintained in the minute book to enable the government to be responsive to the needs and entitlements of Citizens with Disabilities.

10. Where training can enhance the participation of Citizens with Disabilities in the works to be allotted, efforts must be made to ensure that this training is imparted by and in consultation with Citizens with Disabilities as far as possible.

11. In the event of no work being allotted by the stipulated time to a person with disabilities, unemployment allowance may be paid to such person with greater stringency and checks than in the case of persons without disability as there is a strong possibility of this provision being misused to deny Citizens with Disabilities equal access to the EGS.

12. For Citizens with Disabilities, the measure for wages should be hours of work rather than performance of fixed amount of work because it is a recognized fact that Standardization of capacity and definition of standard efficiency is both difficult and problematic in the case of Citizens with Disabilities. This would require the government to look at the EGS through a new perspective that does not see the poor person with disability as lazy and unwilling to work, but rather to make an assumption that if included in the EGS the person

with disability will work to his/her maximum capacity and that willingness provides the rationale for the government to shift from quantum of work to hours of work. According to ILO norms, hours of work are a standard measure that has been proven to be just.

13. Apart from questions of inclusion, transportation for person and escort where necessary; signage for the speech and hearing impaired and audible implements for the visually challenged; allotment of work in proximity of residence; orientation of all persons covered by the EGS towards disability issues; equal wages for men and women with disabilities; building of social capital to be stressed alongside infrastructure development etc.; formal mechanisms for the inclusion of Citizens with Disabilities in local governance at the village and ward levels on the initiative of the government if necessary.





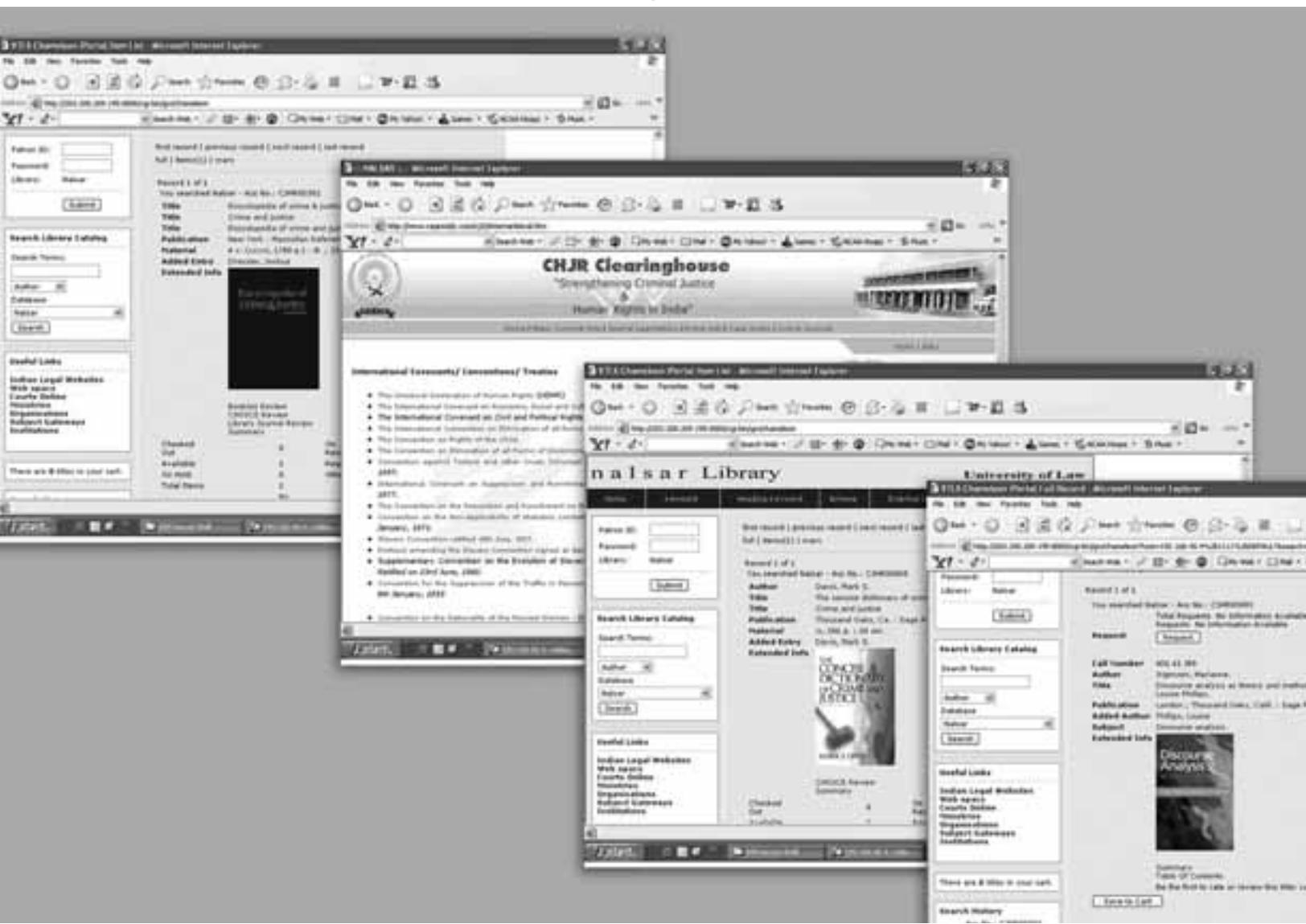
Documentation





Documentation

Co edited by Dr. K. Rama Patnaik





Library and Documentation division of the project which has already acquired substantial resources to assist in the research activities of the project developed a web portal to organize disseminate and store its resources for furtherance of research in the area. It is established with the following objectives.

Objectives

The main objectives of the division are enumerated below:

1. Acquire – resources of all kinds and in all format relevant for the project.
2. Organize – resources scientifically and logically employing latest information and technological standards for interoperability and wider accessibility.
3. Disseminate – information anytime and anywhere in useable formats and design a gateway to streamline heterogeneous datasets at a single point of access.
4. Develop - the resource base as a “clearinghouse” pooling all the resources pertaining to criminal justice system and human rights in India for use by academicians, scholars, policy makers and all those who are interested in this subject.

I. ACQUISITIONS

The main aim of the acquisition policy is “to acquire materials in appropriate formats and in sufficient quantity, depth and diversity to support the research needs of the team in the subject areas of the project.” The subject areas identified but not just confined to

- Crime
- Criminology
- Human rights
- Criminal Justice (Pre and Post Independence era)
- Prisons & Correctional facilities

- Police
- Courts
- Juvenile justice
- Child rights
- Women and Crime
- Socio-legal reforms movement
- Penology
- Restorative justice
- Disability Rights
- Empirical studies with reference to India in any of these areas.

Acquisitions comprised books, encyclopedias, Acts & statutes, Case Laws, commission and committee reports, consultation papers, Law commission reports, Project resources, journals, pathfinders and websites either related as core content or peripheral to the topics mentioned above.

Encyclopaedias





Law Commission Reports



Notable among the accession is all major criminal acts, special legislations, police acts, Case laws pertaining to Rape, Prevention of atrocities against SC/STs, Custodial Deaths, Prevention of Corruption, Prohibition of Dowry, Sati etc from all High Courts and Supreme Court cases. Enclopaedias on Crime and Justice, Criminology, Prisons and correctional facilities and human rights are also procured. Earlier in the year, resources from various libraries viz, Supreme Court of India's Judges Library, Court library, Central Secretariat Library, National Human Rights Commission library and Library of Indian Law Institute were also collected.

Library has taken membership from local libraries to facilitate inter library loan as well.

To augment access to electronic databases, it has subscribed to the following E-Resources. These trial versions of these resources were evaluated before the project team decided to subscribe them.

a) Manupatra

Manupatra online is subscribed by the main library but accessible only on campus as the subscription is based on IP range. But for the project, only Legal module was subscribed for the period march 2005 - February 2006 with password enabled access. Legal Module includes case updates from Supreme Court and all High Courts.

b) EBSCO – Academic Premier

Academic Search Premier is a collection of three databases EBSCO, Legal Collection and Current Abstracts comprising active full text peer-reviewed journals. *Academic Search™ Premier* contains indexing for 8,200 publications, with full text for more than 4,650 of those titles. PDF back files to 1975 or further are available for well over one hundred journals, and searchable cited references are provided for more than 1,000 titles on Social Sciences and Law. There are about 365 legal journals and reviews in the database.

c) Criminal Justice Abstracts

Criminal Justice Abstracts is the Bibliographic database from SAGE publications, on Criminology and allied areas. The content includes comprehensive coverage of International journals, books, reports, dissertations and unpublished papers on Criminology and related disciplines. Subscription to this database is based on IP range and accessible only on campus. The subscription period is from June 2005 – May 2006.



Under the aegis of project all High Courts and Supreme Court Cases on CD-ROM is also subscribed with quarterly updates. The subscription period for this database ends in February, 2006.

The acquisition process is fully automated with all activities in the chain of workflow from requisition to creation of



voucher is being done in the acquisition module of the software. The module has also the facility of sending purchase orders through email.

2. ORGANIZATION & RETRIEVAL

One of the objectives of the division is to employ modern technologies for organization and management of resources procured for the project. Initiation began with search for suitable library automation software by identifying the technical and functional specifications, which conformed to the major international standards.

Technical standards included

- Platform — Linux/Unix/Solaris
- Architecture — Client / Server
- Database – RDBMS

And host of others such as OMI/PMH compliant, TCP/IP, Unicode, SIP, SIP2, Z39.50.

Bibliographic Standards

- MARC21
- ISO2709
- UNIMARC
- FRBR

Technical and functional specifications were identified based on the manual system that was in practice for all these years. Seven vendors were short listed which also included specialized software for law libraries. The existing circulation practices and arrangement of resources warranted a technology that would save the manpower time in all kinds of transactions and orient productivity to intellect based services. Finally VTLS Inc. *Virtua* is selected among all which met the technical and functional specifications outlined in the proposal for automation. The evaluation criteria mainly focused on ease of use, tried and tested features, good documentation, larger user community, compatibility, vendor's experience and performance, continuous support and obsolescence and upgrades.

◆ Technical Processing

Library technical services (technical & physical) are weathering all challenges of change in both technologies and globally acceptable international standards in order to enhance the quality of information services. In contemporary times, cataloguing requires high level of standardization and competence in order to be widely acceptable and be able to integrate in networks at international level.

Advent of Internet, new publishing trends, innovative and emerging standards to describe resources and its manifestations has revolutionized the online library catalogue. Its functions no longer restricts to reflecting library collection, but acts as access mechanism to resources beyond the library. While broadening the scope, it has also deepened to include resources that indicate the content of the item.

For resources of the project, choices had to be made among creation of bibliographic records, compiling web lists, context sensitive linking and federated searching was concerned. All of these approaches involved the following standards

- MARC 21
- Open URL
- Federated searching
- AACR2
- ISBD
- Library of Congress subject Headings
- Z30.50 protocol

Books

Bibliographic records are created for books and other printed resources using the MARC 21 format, and subject headings were assigned from Library of Congress thesaurus. Each record is designed to provide extensive bibliographic information with hot links to table of contents pages, reviews, and publishers' notes etc. Analytics were created for journal articles, where ever the full text content was available.



Case Laws and Acts

Acts, legislations, case laws are treated as web lists to isolate the collection of resources and enable the library to position these within easy reach of users browsing the clearinghouse. Hyperlinks to categorized list of case laws are provided in the web page, while creating a bibliographic record for each of the case laws.

Pathfinders, thesis submitted to various Indian Universities, links to free E journals, reform resources, project resources which originally manifested in digital format are also arranged as list in the web page with active hyperlinks. E- Journals categorized as “free” and “subscribed” are listed alphabetical with URL that will take directly to the home page of the journal. It was found prudent to isolate the online resources in order to make the searching more efficient and transparent.

Online resources

Software provides facility of *Open URL link* resolver, use of 856 field will take to the full text or related link to the resource. Each case law while giving the case details is also hyperlinked to the full text of judgement.



Federated Searching

Federated search allows users to search multiple networked information resources from one user interfaces. For example, a Federated Searching Service may enable a user to search the local online catalogue, catalogues of other libraries,

licensed full text databases, online journals and content rich web sites from one search screen. The results are ranked by relevancy or sorted on various criteria. The main benefit of federated searching is that it provides patrons with access to a broad spectrum of information resources through a single tool. The z39.50 detail of the EBSCO database was integrated with the online catalogue of the project resources to enable this feature.

Physical processing

Every printed resource is accessioned in the register with a unique accession number. Since library uses Barcode technology for all transactions, all numbers are bar-coded and labels are generated and pasted on the third page of every book. To arrange in a logical order as per subject on the shelves, Classification numbers following rules of Dewey decimal classification and Cutter numbers were assigned. The printed resources included case laws and journal articles as well.

3. DISSEMINATION OF INFORMATION SERVICES

Automation of all activities, from acquisitions to cataloguing has enabled to provide the following services in both online and offline modes for the project team.

◆ Making a purchase recommendation

The project team is empowered to request for a purchase recommendation online through the following form.





◆ Online public access catalogue

Majority of the catalogue records are hyperlinked to table of contents page, author's notes and summary of the content of the item including the scanned image of the cover page of the book.

Computerized Catalogue of project resources is accessible from any terminal on the campus to

- Locate books and all kinds of material
- Check the item status, whether order placed, received, in cataloguing or available
- Place requests for items that are checked out to others
- Renew borrowed books
- Email, print and save Search results
- Customize automatic periodic search
- Log-in to patron account to view books borrowed and fine amount due.

◆ New Accessions

The New Accessions link on the library catalogue to displays new titles added to the collection.

◆ SDI Query

SDI system in the library OPAC allows patrons to save any number of bibliographic keyword or expert search queries and then run them again at a later date. Users can run these saved search queries as needed, or they can instruct the system to perform the searches automatically at a set frequency. In this way, patrons can monitor new items that your library has added to its collections or other databases.



◆ Hyperlinks to Online journals

Open access initiatives are gathering momentum across academic institutions to popularize free access to scholarly information. There are quite a number of journals and e-books which are available for free on Internet.

Journals related to the project topic are categorized as “free on Internet” and “subscribed”. The alphabetical listing of these e - journals are hyperlinked to the URL which takes to the home page of the journal.

◆ Library orientation and Information skills

Library conducts training and user orientation sessions in the usage of its online catalogue and other E-resources. Orientation by vendors of EBSCO and Criminal justice abstracts were conducted for the project team in the library to use these databases.

◆ Bibliographic Search Service

The documentation division has provided bibliographic search service on topics requested by the project team from time to time. It has retrieved journal articles pertaining to sentencing policies in various countries, environmental crimes, literature review on punishment and penology and others. It has retrieved a number of case laws from Supreme Court and High Courts as well.

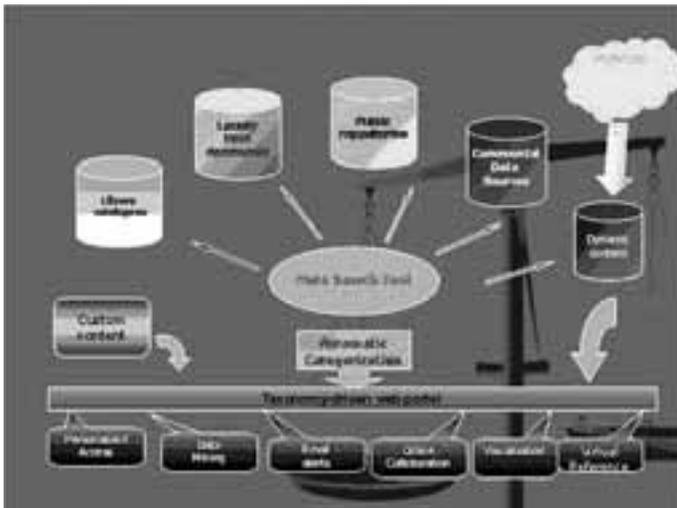




4. DEVELOPMENT OF RESOURCE BASE INTO A CLEARINGHOUSE

Libraries in contemporary information society are increasingly relying on web technologies to disseminate the content and information services which are no longer limited to traditional physical and technical architectures.

It is in this context, the Documentation division of the project which has already acquired substantial resources to assist in the research embarked on developing a web portal to organize, disseminate and store its resources for furtherance of research in the area.



This division is not assisted by any web committee to solicit inputs for labeling and identifying the content but with intermittent advice from the chief coordinator of the research team, the identification of resources and target audience was easier. The resources which were acquired for the project comprise an assortment of both printed and digital and encompassed varied literary forms. Legislations, statutes, case laws to reports, digests, commission and committee reports, socio-legal resources, statistical information, pathfinders, project reports, theses and dissertations, index of case laws and journal articles, websites and an array of electronic resources.

It was clear from the beginning that combination of full text search and bibliographic details cannot be met by the portal

component of the library management software. While all the documents are covered for bibliographic search by using the 856 tag of MARC 21, it was necessary to create HTML content for full text resources such as acts, legislations and reports.

Apart from the resources, some of the basic information services, such as events calendar, Ask a librarian, new accessions list, requesting a purchase, link to external resources were also identified to incorporate in the portal. Since the list of resources and services were too many, upon the advice of developers, it was decided to segregate some labels to the library online catalogue pages.

As regards, the audience as concerned the content and resources would mainly attract the academicians, lawyers, judges, researchers and law students.

After deliberations with team of developers and research team, it was decided to have the following labels in the home page of the project.



1. About us

To provide information about the project and portal objectives

2. Project Team

Information about the team of researchers engaged in the research with outline of their bio-data.



3. Major Criminal Acts

- Code of Criminal procedure
- Indian penal code
- Evidence Act
- Criminal law and amendments

4. Special legislations

- Prevention of Atrocities against SC /ST s
- Prevention of Corruption



- Prevention of terrorist and disruptive activities
- Representation of People's act
- Prevention of Illicit Traffic In Narcotic Drugs And Psychotropic Substances Act, 1988
- Prevention of Terrorism Act, 2002
- Prisoners Act, 1900
- Prisoners (Attendance In Courts) Act, 1955
- Probation of Offenders Act, 1958
- Smugglers And Foreign Exchange Manipulators Forfeiture of Property Act, 1976

5. Related Links

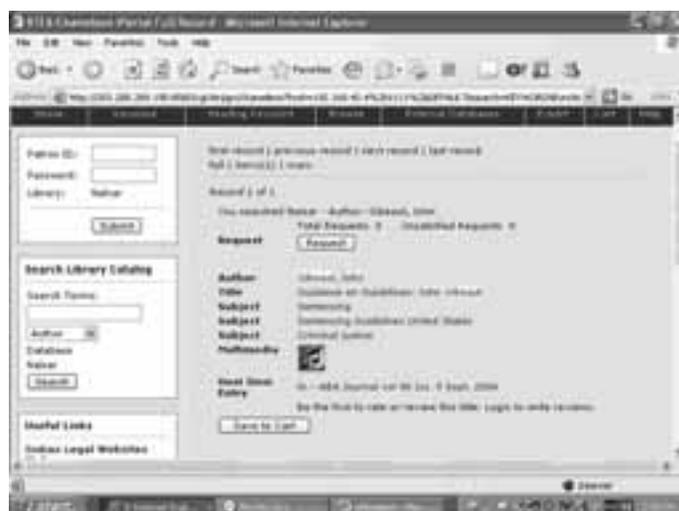
- Government Agencies
- Non- governmental Organizations
- Campaign and Advocacy groups
- Clearinghouses in other countries
- Educational institutions
- Subject Gateways
- Courts Online

6. Online catalog

7. New accessions

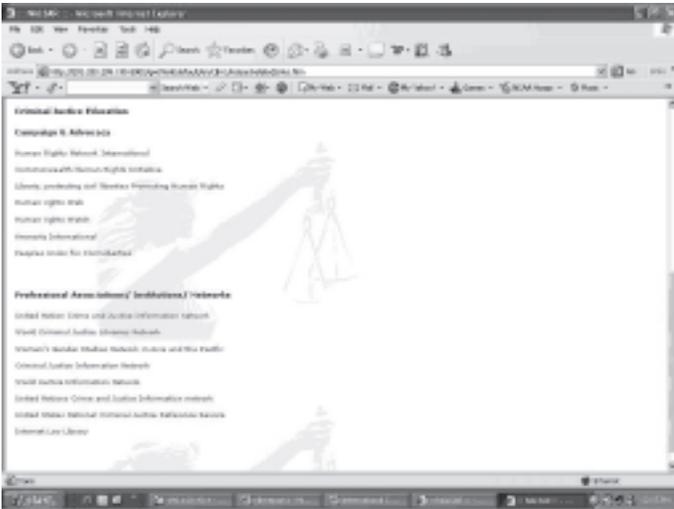
8. E- Databases

9. Information Services





10. Case Index
11. Events Calendar
12. Bibliographies
13. Reference Chat



14. Online Journals
 - Subscribed
 - Free on Web
15. Contact us

A prototype of this site is launched to test the links and their labeling. If all the information is brought to this single point of access is arranged and retrieved as envisaged, a web portal which would act as a clearinghouse will be developed for preservation and incorporation of nascent information.

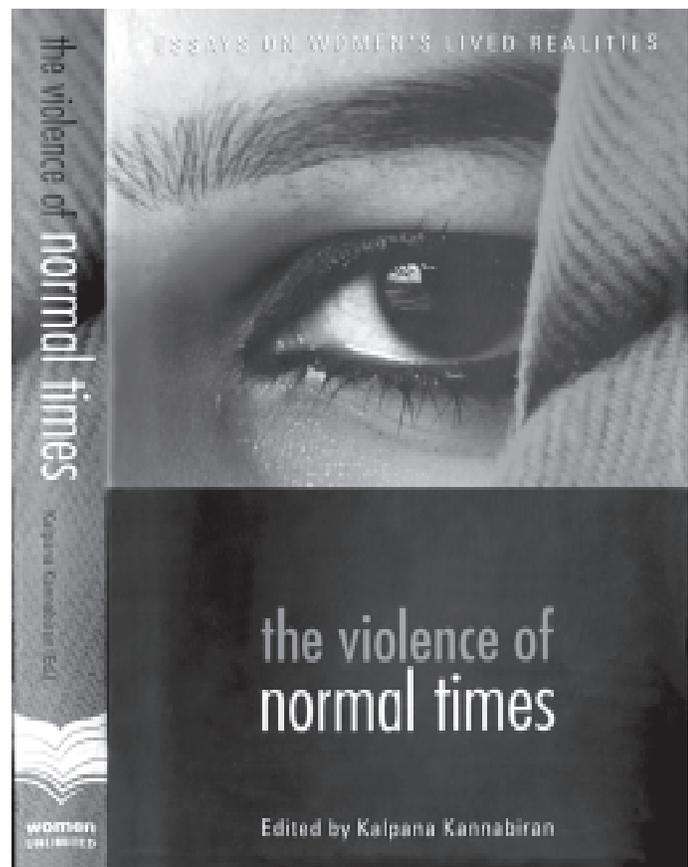
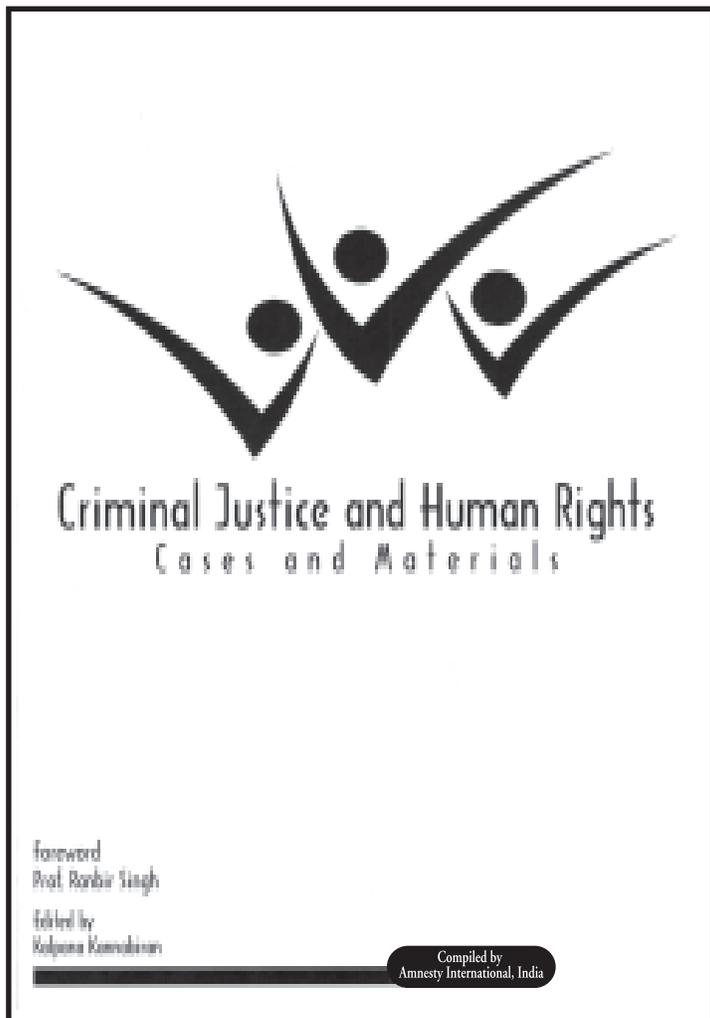
Since the organization and processing of information and its retrieval subscribes to all the latest technologies and international standards, this clearinghouse will have the potential to be a national resource and documentation center in this area and become one of the participating members in the World criminal justice library network.



Research and Publications



Research and Publications





The research component of the project has involved five streams.

- Extensive collation of case law and unpublished research [theses, dissertation and reports] on a vast range of human rights concerns.
- Preparation of research papers on “Innocence in Criminal Law” by Dr. N. Vasanthi, Assistant Professor, NALSAR and “Environment Crimes” by Dr. K. Vidyullatha Reddy, Assistant Professor, NALSAR.
- A volume of essays on violence against women edited by Kalpana Kannabiran, *The Violence of Normal Times: Essays on Women’s Lived Realities*, New Delhi: Women Unlimited in association with Kali for Women, 2005.
- Compendium of case law on criminal justice and human rights (800 pages), which also forms the resource pack for the judicial officers’ symposia.
- Criminology volume(s) – which will carry twenty interdisciplinary essays that map the field of a post/counter-colonial criminology with a focus on India.

Publications

The Violence of Normal Times: Essays on Women’s Lived Realities (Delhi: Women Unlimited in association with Kali for Women, 2005) Edited by: Kalpana Kannabiran.

This volume attempts to look at the experience and articulation of violence against women in relation to feminist debates and organizing on the issue; and the positive and negative responses to that articulation, particularly from the standpoint of law and the institutional apparatuses of the state.

Its several essays focus on everyday settings from justice dispensed by traditional authorities to modern courtrooms; domestic spaces; a home for mentally disabled women in Pune; a factory in Tamil Nadu. Moving from the routine to the extraordinary, the essays analyse the spectrum of violence against women that covers witch-hunting in adivasi communities; structural adjustment

programmes and economic violence; violence against sexually marginalized groups; and against women of religious and ethnic minorities. Read together, they expose the extent of systemic violence against women in India, a violence so routinised that everyday forms of it slide into the gross and macabre in a seamless continuum.

Contributors: Vasudha Dhagamwar, Dev Nathan & Govind Kelkar, Padmini Swaminathan, Rajeswari Sunder Rajan, Anjali Dave, U. Vindhya, Bina Fernandez & N.B. Gomathy, Pratiksha Baxi, Syeda S. Hameed, Upendra Baxi.

Criminal Justice and Human Rights: Cases and Materials, (Hyderabad: NALSAR University of Law, 2005)

Edited by: Kalpana Kannabiran

Foreword by: Prof. Ranbir Singh

Compiled by: Amnesty International, India

This volume was compiled in consultation with Hon’ble Sri Justice Bilal Nazki, Hon’ble Sri. Justice D.K. Basu, Abha Joshi, Seema Misra and Soumya Bhoumik

The volume provides the full text of landmark cases – reported and unreported – on

- *rights of the victim and accused* – arrest, detention and interrogation; handcuffing and fetters; bail; custodial violence and compensation; speedy trial; FIR and cognizance of offences; trial.
- *Rights of women* – rape, sexual assault, child sexual abuse; sexual harassment at the workplace; immoral traffic prevention act; maintenance.
- *Juvenile Justice Act*

It also provides the full text of UN Human Rights instruments

Building an Archive for Criminology in India

A forthcoming collection of original essays

The field of criminology presents rich possibilities for research in India. However, the field has been so far defined in terms that limit its scope to administrative criminology and the



operations of criminal law alone. This note is by no means exhaustive and only attempts to start off some thinking on how to re-draw the map of criminology in India.

There has been path-breaking research on concerns of criminology within the fields of history, sociology, anthropology, psychology, political science, literature, media studies, medicine, environmental studies, and social work [to flag some disciplines]. However, this research has not been presented within the discipline of criminology, nor has it shaped legal pedagogy in any significant way.

Instead of focusing on criminal law alone, a multidisciplinary approach will aid an understanding of the complexity involved in evolving a more workable approach to crime and crime control. Crime control has been the motive for most of criminology with researchers focusing almost entirely on understanding how best to keep the society free from so called criminal elements. But the larger question of how we understand crime and define it, which may be relevant to understanding its control, is often neglected in legal studies.

The colonial criminal practice or the codes that we have now are colonial inheritances and the manner in which crime is construed and dealt with is obviously dependent upon the approach towards crime and control. Also the history of penal law in India and its specific developments especially in the context of colonialism must be explored from the standpoint of a counter colonial criminology that must then inform legal theory and practice on the sub continent. Anthropological questions about the typical criminal and the presumptions and biases against a set of people – the notification of criminal tribes, minorities and the biases in the criminal justice system about petty offences, like theft and minor offences like vagrancy are all issues that can only be understood from an interdisciplinary perspective. It is important in understanding criminology to focus on marginalized sections, diversity, disability, gender, religion, poverty, specific constituencies – children, especially and criminal law.

There has been considerable activist engagement on issues like the death penalty, legal aid and legal literacy, alternate dispute resolution forums like caste panchayats, and the relationship between criminology and human rights, broadly defined but also specifically focused on questions of personal liberty. What are the ways in which practices of impunity have been understood and theorized and what impact has this understanding had on the workings of the law in India? What have been the major sites of this theorizing and engagement? What has been the place of gender in theorizing criminal law and

jurisprudence in India? What are the ways in which gender [masculinity especially] structures criminal law regimes and what are the exclusionary practices spawned by hegemonic masculinity in the histories of crime and criminal justice?

Labour has largely been left out of the domain of criminal justice, although the importance of eliminating bonded labour, child labour, sexual harassment at the workplace and degrading forms of labour have been critical issues before human rights movements in the country.

The need to develop a framework for situating radical-feminist victimology within the field of criminology is urgent. In the context of increasing state repression and armed conflict on the one hand and an escalation in mass crime – particularly against dalit, adivasi and minority groups—on the other, the need to develop the contours and build materials for a radical victimology that will concern itself with victims of police force, of conflict, of correctional systems, of systemic and systematic oppression, is urgent.

The last part of the Criminal Justice Project will be the publication of a collection of twenty original essays that will explore the complex terrain of post/counter colonial criminology in India.

The papers in this collection will explore the anthropological and historical aspects of criminal law, which form the basis for the modern criminal law and will throw some light on the representation of crime, law and justice in the popular



media/literary/cinematic genres on the one hand and courts on the other. The proposed volume(s) hope to create an archive for criminology in India that will be interdisciplinary and will be directly relevant to the teaching and understanding of criminal law. It is necessary to strike a different path in our understanding of the criminal justice system. All the contributors to this collection have done path-breaking work in different fields that intersect in important ways with criminal justice. For this volume, they will reflect on that work in the light of a more nuanced understanding of criminology and the lessons the work has to bear on our contemporary understanding of the law and criminal justice.

The contributors to this collection are:

Paula Banerjee, Sumanta Banerjee, Bikram Jeet Batra, Amita Dhanda, Vrinda Grover, Kaveri Haritas, Aloysius Irudayam, Abha Joshi, Kalpana Kannabiran, K. G. Kannabiran, Jayashree Mangubhai, Ritu Menon, Seema Misra, Vijay K. Nagaraj, Arvind Narrain, Meena Radhakrishna, Ranabir Samaddar, SR Sankaran, Shekhar Seshadri, Khazan Singh, Ujjwal Kumar Singh.

The collection will be edited by Kalpana Kannabiran and Ranbir Singh.



Looking into the future...



The project “Strengthening Criminal Justice and Human Rights in India” has opened out a whole new range of work at NALSAR. The most important achievement of the project has been the establishing of sustainable partnerships with institutions and networks in Andhra, that straddle the divides between, activists, human rights practitioners, bureaucrats, judiciary and the media.

Our meetings with the lower judiciary have been especially productive and significant. Apart from establishing ties, there has been a cross fertilization of ideas and the sharing of best practices. On the ground we have had an impact as well. We have had officers informing us that after the symposium they had in fact identified and released a child from a prison; people in bonded labour were released and awarded compensation; so also child labour. This is not of course to suggest that these officers had not done this before. What it points to is the fact that the symposia have created a network among the officers and the coordinating team so that there is an information flow that increases and facilitates access. From our side, we have been systematically directing people to district courts, and we have had a very good response from the courts. The engaged interaction between officers and the resource team has contributed positively to this response. We hope that we can think through ways of taking this effort forward by strengthening what Justice Basu has called The Dialectic of Human Rights, where enactment is the thesis, inaction is anti thesis and judicial action is the synthesis.

In the longer term, the impact of the workshops has been seen in the request from the Chief Justices of Jammu and Kashmir and Chattisgarh to organise similar symposia in that state, a proposal that has now been confirmed and scheduled for 2006.

In yet another development, the Supreme Court has asked for feedback on the implementation of the D. K. Basu guidelines. The observations of the officers have provided the basis for a series of recommendations to the Supreme Court.

While separate sets of meetings were held with different stakeholders, there was a constant interlinking of different constituencies within the space of the project. A judicial officer who participated in the first symposium at Hyderabad, took the initiative to speak to and recommend three hundred disability rights activists as paralegal volunteers who will be recognized by the District Legal Services Authorities in their deliberations on the rights of the disabled in their respective areas.

At the end of the final Disability Rights Meeting at NALSAR, a core group met government officials on the inclusion of Citizens with Disabilities in the Employment Guarantee Scheme. This led to a meeting in end January 2006 to discuss the specific recommendations of Citizens with Disabilities, which was attended by government officers responsible for implementing the EGS. It has been suggested that the para legal volunteers identified by the Legal Services Authorities be designated as field assistants on the EGS in the first instance, so as to avoid delay in supervision and enumeration.

The most encouraging aspect of the project has been the way in which each part of it has knitted in with the others, strengthening institutional mechanisms and increasing their responsiveness to questions of human rights raised more often than not by people at the margins.

List of Resource Persons



Mr. Justice S.B. Sinha

Judge, Supreme Court of India

Mr. Justice Bilal Nazki

Judge, High Court of Andhra Pradesh

Mr. Justice Sudarshan Reddy

Chief Justice, High Court of Assam

Mr. Justice J. Chelameswar

Judge, High Court of Andhra Pradesh

Prof. S.K. Thorat

Chairman, University Grants Commission

Mr. Justice D.K. Basu

Former Judge, Calcutta High Court

Mr. K.G. Kannabiran

National President, Peoples' Union for Civil Liberties

Mr. K.T. Suresh

Country Director, Amnesty International – India

Mr. S.R. Sankaran

Retired IAS officer, Supreme Court appointed
Commissioner on the Right to Food

Mr. Shekhar Singh

Convenor, National Campaign on the Peoples' Right to
Information

Mr. Amar Devulapalli

Chairman, AP Press Academy

Mr. Ajit Bhattacharjea

Senior Journalist, Former Director, Press Institute of India

Ms. Volga

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