SECTION – V

PROTECTION: THE ELUSIVE SUPPORT

The strategy of protection to SCs against atrocities committed on them recognized that causes of violence lie in their socio-economic conditions which the caste system had imposed on them. These conditions related to the occupations assigned to them, control over their labour and subordination of their productive capacity, all of which ensured that SCs remain tied down to the caste Hindus and on terms set by them. This relationship itself represented a continuing violence, besides infringement of human rights, even when no physical assault or injury was caused. But overt violence was committed when there was reluctance to comply or protest against the socially mandated role or its terms. Criminal laws were, therefore, insufficient to render protection to SCs in such conditions unless adequate support was provided to remove the social and economic situations which produces multifaceted violence, both overt and covert. This was done through a wide array of social and economic legislations referred to in Section-III. The enforcement of criminal laws did not generate much hope for getting protection against acts of physical violence, as evidenced in the preceding section. It is now to be seen whether the support expected from the social and economic legislations to check such violence through elimination of degrading and humiliating practices and effecting improvement of their economic position in occupations employing them has materialized. This would be done by evaluating the performance in the implementation of these laws, first in respect of customary practices and, thereafter, in their capacity as workers. The customary practices to be covered in this context relate to (a) Manual scavenging (b) Devdasi system. Their role as worker would be discussed with reference to (a) Labour laws (b) Land Reforms laws and (c) Debt Redemption legislation

A. FOR ELIMINATION OF DEGRADING AND HUMILIATING CUSTOMARY PRACTICES

1. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993

The Act administered by the Ministry of Urban Development prohibits any person from employing or permitting to be employed any other person for manually carrying human excreta or construct or maintain a dry latrine. The violation of the Act is punishable with imprisonment or fine or both. The Act applies in the first instance to the whole of States of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal and to all UTs. In regard to remaining States, it shall apply when the concerned State

adopts by a resolution passed by its assembly under **Clause (I) of Article 252** of the Constitution. Even in the above States and UTs it shall come into force on such dates as notified by the Central Government. As per information furnished by the Ministry of Urban Employment and Poverty Alleviation[1], State assemblies of Orissa, Punjab, Assam, Haryana, Bihar, Jharkhand, Chhattisgarh, Madhya Pradesh, Tamil Nadu, Gujarat and Uttar Pradesh have adopted it, while UTs of Andaman & Nicobar, Chandigarh, Dadra, Nagar Haveli, Daman & Diu, Lakshadweep, Pondicherry, States of Goa, Kerala, Gujarat, Manipur, Mizoram, Sikkim and Tripura have reported that they are scavenger free. Information maintained with National Human Rights Commission indicates that Himachal Pradesh has its own Municipal Act to attain the objective of elimination of manual scavenging and does not consider adoption of the Central Act necessary. The position about Delhi, Uttaranchal, Jammu & Kashmir and Nagaland is not clear. Ministry of Urban Employment and Poverty Alleviation implements a "Centrally sponsored Scheme of Urban Low Cast Sanitation for liberation of Scavengers", and provides for conversion of existing dry latrines with low cost water seal pour latrines and construction of new sanitary units where none exists to prevent open defecation. This scheme has been in operation since 1980-81, under which subsidy from the Ministry and loan from HUDCO in a synchronized manner is provided, so that conversion/ construction of low cost sanitation units and liberation of scavengers is done on a whole town basis. The scheme is applicable to small and medium towns having a population not exceeding five lakhs as per 1981 census. There is another centrally sponsored scheme administered by the Ministry of Rural Development called 'Rural Sanitation Programme'. It was launched in 1986 for construction of individual sanitary latrines for households below poverty line with 80% subsidy with the objective of improving the quality of life of rural people and to provide "privacy" to women[2].

A centrally sponsored scheme of liberation of scavengers was introduced in 1980-81, by the Ministry of Home Affairs during the Sixth Plan with the twin objective of (a) converting all existing household community dry latrines into water borne latrines on the whole town basis in selected small/medium towns, and (b) rehabilitation of unemployed scavengers in alternative employment/occupations simultaneously. The scheme was later implemented by the Ministry of Welfare [now renamed as Ministry of Social Justice and Empowerment]. In view of the tardy implementation of the programme, Government of India introduced a 'National Scheme of Liberation and Rehabilitation of Scavengers and their Dependents' with effect from March 1992. The components of the Scheme included identification of scavengers and their dependents, their aptitude for alternative trades, training and provision of subsidy, margin money loan and bank loan for taking up new occupation. In 1996, Government of India modified some of the parameters of the Scheme by introducing the concept of Sanitary Marts for Scavengers. The concept is based on model workshop of Ramakrishna Mission in Midnapore, West Bengal. Under the scheme the scavengers are trained to run the Marts and work in the production units. The main plank of the strategy is to create demand for latrines through these sanitary

[1]Letter of the Ministry addressed to the National Commission for Safai Karamcharis dated 4.07.2001
[2]National Commission for Safai Karamcharis, A Hand Book - 2000, pp 8-9

marts and thereafter construct latrines or supply low cost equipment/material for this purpose. A Sanitary Mart is a stocking place where sanitary needs of common man could be met. It functions as a shop as well as Service Center. As a shop it supplies necessary materials for construction of latrines and toilets such as soap, toilet brush, bleaching powder, etc. As Service Centre, it provides commodities and services on the type of latrines that would be suitable according to location and financial capacity of the beneficiary. As a production centre, it manufacturers materials and equipment used in this work[3]. In 2000, the Scheme was further revised to make it sustainable and attractive.

Ministry of Social Justice and Empowerment also administers another centrally sponsored scheme called pre-Matric scholarships for children of those engaged in unclean occupations. This scheme was launched in 1977-78 to extend scholarships to children of scavengers of dry latrines, tanners, flayers and sweepers, irrespective of religion, to pursue school education. In 1994, the Scheme was modified to remove its restrictive clauses.

In view of the unsatisfactory progress of the scheme to liberate manual scavengers and rehabilitate them in alternative occupations, the Central Government constituted a National Commission for Safai Karamcharis under a statute, namely The National Commission for Safai Karamcharis Act 1993. The Commission was constituted in August 1994 for a three-year period. Its term has been extended from time to time. The function of the Commission is to oversee the programmes relating to scavengers and make recommendations to the Central Government. The Commission has submitted four reports so far to the Government. In January 1997, a separate National Safai Karamcharis Finance and Development Corporation was also set up with an authorized capital of Rs. 200 crores to act as an apex institution for all round socio-economic upliftment of Safai Karamcharis and their dependents. Its main function is to promote self-employment by granting concessional finance and to extend loan to students belonging to Safai Karamcharis for pursuing professional education[4].

The implementation of both the law and the scheme relating to abolition of manual scavenging has been unsatisfactory. The National Human Rights Commission, which is monitoring the implementation of the provisions of the Act as well as the Schemes, has expressed concern about it. As per information available with National Human Rights Commission, the number of manual scavengers so far identified is 6,76,009. As against this, so far only 1,51,930 have been trained and 3,94,638 have been rehabilitated. Thus even going by these figures, there is huge backlog of manual scavengers yet to be liberated and rehabilitated, even though 2nd October, 2002 was fixed as the time limit for its total implementation. These figures also show that more than 60% of the so-called rehabilitated scavengers have not received any training and, evidently, they have been pushed into alternative vocations without improving their skill base. There are no evaluation studies on whether the so- called rehabilitated scavengers have really left the vocation, taken to alternative employment and are able to eke out a satisfactory

[3]Hand Book of National Commission for Safai Karamcharis, op. cit., pp 2-6

[4]Hand Book of National Safai Karamcharis Commission, op. cit., pp 17-25

living. The undocumented information indicates that this may not be the reality. In fact, in many cases, where an identified scavenger has obtained financial assistance for rehabilitation, other members of the family continue to be engaged in this abhorrent practice.

National Commission for Safai Karamcharis in its reports submitted to the Government has pointed out problems relating to the design of the programme as well as the unsatisfactory state of its implementation[5]. It has specifically highlighted the faulty definition of the 'scavenger' adopted under the scheme, which has the effect of excluding a large number of manual scavengers. The survey of scavengers is old and the number identified on the basis of old survey does not correspond to the reality as the actual number is much larger. Also, Safai Karamcharis working in cantonments, railways and PSU colonies have not been included in the survey. The rehabilitation programme suffers from low amount of stipend for training, inadequate period of training, shortage of training institutions and lack of relevant and viable training programmes, low ceiling of financial assistance (made even lower by the banks through their arbitrary restrictions) the target oriented approach, non-viability of projects, under-utilization and mis-utilization of the funds allocated under the scheme, inactive and unhelpful attitude of the banks in advancing credit for the scheme, etc. The greatest problem with this programme is its fragmented nature as no single Ministry or Agency is responsible for total attack on the problem, i.e. existence of dry latrine system and manual scavenging. While the Ministry of Urban Development implements the Act which has eliminated the practice of manual scavenging and is responsible for conversion of dry latrines into water-pour flush latrines, the Ministry of Social Justice & Empowerment has the jurisdiction for rehabilitation of scavengers. Obviously, the two have to synchronize their activities in order to achieve the objective which does not take place. Achieving coordination between different Government agencies in respect of a programme or activity is always a problem. It is absolutely crucial to this programme.

The progress of the scheme for conversion of dry latrines into wet latrines, however, is even more unsatisfactory. This would be evident from the fact that as per information available with National Human Rights Commission, of the 54 lakhs of dry latrines to be converted as on 10.9.2001, only 14.16 lakhs have been converted and of the 3643 towns to be covered, only 1248 towns have so far been covered and there was a huge backlog of 2395 towns yet to be covered. Only 385 towns have been declared scavenger-free. This statistics may have undergone some change with the progress achieved during the past months, but is not likely to alter the picture very substantially. There is lack of desired seriousness in implementing the scheme as has been noted by the National Human Rights Commission in its report for 2000-2001 and even the available funds are not properly utilized. The reason for this perhaps lies in the unwillingness of the beneficiary families [house owners with dry latrines] to share the loan liability which is provided by HUDCO for conversion of dry latrines into wet latrines. The element of subsidy is

[5]First Report (1994-95), Second Report (1995-96), Third Report (1996-97 & 1997-98), Fourth Report (1998-99 & 1999-2000). Information so far available is that first two reports have been placed in the Parliament. - Hand Book of the Commission, op. cit., p. 25

available only for weaker sections (45%) with a loan component of 50% and beneficiary contribution of 5% and for low income groups (25%) with a loan contribution of 60% and beneficiary share of 15%. The middle and high income groups have no subsidy and have to contribute 25% while the remaining 75% has to come as loan. There is always reluctance on the part of people to make monetary contribution in respect of any contingency unless there is unavoidable pressure exerted on them. Therefore, the concerned family units owning dry latrines would be disinclined to contribute financially or to take loan to convert their dry latrines unless adequate pressure is built up on them by stopping servicing of their dry latrines. What is required in these circumstances is a strong action on the part of the municipal administration to force people to get their latrines converted within a specified time frame. This could be done even without a law or pending adoption of the law throughout the country if there is requisite will and determination to do so.

Another little known aspect is that those involved in manual scavenging do not have the real freedom to withdraw from the arrangement of servicing dry latrines on their own will as they are forcibly dragged to this work by those who have dry latrines in their houses. The law and order administrative machinery also does not provide protection and support to the scavengers against the illegal action of dry latrine keepers when the former refuse to attend to this work. Rather, pressure is exerted on scavengers to carry out the work as per the customary practice in view of the health hazard involved in not cleaning the dry latrines. This highlights the need for necessarily linking the scheme for rehabilitation of scavengers with the scheme of conversion of dry latrines into wet latrines. The two steps must be taken symbiotically. Conversion of dry latrines has to come first so that the cause itself is removed whose effect is the practice of manual scavenging. For this purpose it would be necessary that the whole area of a township is taken up as a unit simultaneously and in full steam rather than the scheme being allowed to be implemented piecemeal. The law and order administration must fully back the effort of Municipal administration in such a drive. Adequate publicity should be given to the programme in the identified area regarding the consequences which would follow if dry latrines are not converted into wet ones by a specified date. It would also be necessary to provide support and protection to the scavengers so that they are not forced to clean the dry latrines manually. This itself will create pressure on the house owners to comply.

The most unfortunate feature of manual scavenging is that it is largely done by women members of scavenger families. Evaluation report in respect of Rajasthan available with the Ministry of Social Justice and Empowerment indicated that 70% of scavengers are women. The percentage could even be larger. In fact, even in families of scavengers where men have liberated themselves from this work by seeking other jobs/vocations (some of them may be just sweepers without having to do manual scavenging), they still permit, rather encourage and coerce, their women members to continue to carry on this work for augmenting the income of the family. Thus, a degrading customary practice gets reinforced by pressure of poverty, gender insensitivity and intra-family inequity. This highlights the need to primarily focus on women scavengers and, for this purpose

an altogether different strategy would have to be adopted to make a dent on the problem. Instead of merely providing financial assistance and vocational training for an alternative vocation to them, there is greater need for conscientisation of the women involved in this practice. Though women scavengers seem to have internalized the inevitability of their role in the practice and the social sanction behind their work has made them immune from the feeling of degradation, they nonetheless feel deeply in their psyche the indignity involved in the work. The strategy, therefore, should focus on awakening this feeling in them and to build up pressure from their side to break away from the stranglehold of this arrangement. Since the scavenger society is highly male dominated, their cooperation is vital. The male members of the family should therefore form part of the overall strategy where the family is psychologically and economically prepared to give up this occupation.

Ideally, the proper strategy for achieving sustained though slow progress in the matter, should have been for (a) municipalities to concentrate on forcible conversion of dry latrines into wet latrines at their own cost (by taking bulk loan from HUDCO directly), to realise this loan from beneficiary households in installments like any other municipal taxes and to resort to some punitive action against refusal to co-operate, (b) the task of liberation of manual scavengers should have begun with the process of awareness creation among women and others engaged in this activity, confidence building measures accompanied by a modest monthly allowance at least equal to or even slightly more than what the scavengers earn through cash and kind from the household owners serviced by them over a period of 2 to 3 years so as to make a complete break from the past and in order to permit them, women particularly, to build up a feeling of self-reliance, economic independence and freedom from social pressure. During this period of 2 to 3 years these women (or the men as the case may be) would have been encouraged to identify for themselves a possible alternative vocation followed by the implementing agency arranging good quality training and thereafter assisting them in finding either wage employment or setting up a self-employment unit. This strategy would have at least ensured that the manual scavenging would be eliminated without causing any hardship to either the scavengers or the households which have dry latrines. But the Scheme is being continued on the virtually traditional lines and on the pattern of other centrally sponsored schemes. A radically new approach is, therefore, necessary.

Since manual scavenging is based on customary practices, its foundations have to be explored in the customary law of caste Hindu society. In this context, one noteworthy feature of manual scavenging is the JAJMANI system rooted in the Hindu social organization under which it operates. The scavenger family is tied down to a number of households for services to be rendered in exchange for returns in cash and kind (some food) and gifts on ceremonial occasions/festivities. This exchange arrangement is sanctioned by social custom and evokes greater compliance than even a legal provision. These Jajmani arrangements of rights and obligations are even reduced to recorded documents which are exchanged and even transferred almost like a deed of contract. Usually, an intermediary from the community operates the system almost like a labour contractor in respect of specified territorial units and scavenger households. There is some vested

interest within the scavenger community for perpetuating the system because it is an instrument of exercising social control and realizing monetary benefits almost like a Zamindari system. Therefore, it would be necessary to break the stranglehold of this arrangement so that individual families are not obliged by any customary relationship to engage in this work and are not coerced to do so by any intermediary having acquired interests in this regard. In fact, this practice could even be brought **within the ambit of the legal provisions of the Bonded Labour Abolition Act** to liberate the scavenger families, should such a need arise.

The rehabilitation process has first, however, to begin with the removal of unsanitary conditions in which scavengers live in their secluded colonies. This would involve commitment of substantial funds for providing clean drinking water, provision of sanitary latrines, underground sewage, filth disposal, pavement of streets, cleaning of drains, repair of houses, provision of street lighting, etc. The present scheme envisages provision of housing loan only. This may not be enough. More important than even a house is the sanitation in the colony itself. This can only be done by the local municipal body for which resources would need to be specifically allocated. The programmes under which these improvements can be undertaken would have to be integrated with the overall integrated scheme being advocated in this paper so as to have the necessary impact. This further underlines the need for taking up a whole colony as a unit of rehabilitation rather than an individual family and the rehabilitation project should involve all these aspects including access to schooling and health care in its conceptual frame though funds for these components of rehabilitation need not come from a single programme but be arranged through appropriate convergence of concerned programmes.

As a corollary to the approach outlined above, even in the limited area of income generating activities, group activities, particularly for women, would be far more relevant and effective as group approach would generate greater confidence in its numbers and promote organizational ability to break from the system. This incidentally would also achieve efficiency of investment in self-employment ventures and, in any case, is in line with the strategy now adopted in many poverty alleviation programmes of the Government.

Manual scavenging is largely concentrated in towns and cities though it is also practised in rural areas. There are greater difficulties in providing viable employment activities on a sustainable basis in urban areas unlike in the rural areas where beneficiaries could be allotted land for cultivation or assisted to take up land related activities like livestock rearing, fisheries, sericulture, etc. In the urban areas, beneficiaries in the past have been assisted to take up dairy, piggery, garment retailing, cycle/scooter repair, tailoring and cutting, etc. There are serious limitations to providing satisfactory rehabilitation in these vocations. Piggery activities create sanitary problems in urban slums and also friction with residents in the neighbourhood. Dairy activities also cannot be undertaken in such congested localities. Tailoring and cutting, cycle repair, garment shops and such other activities cannot provide sufficient income generation as such activities have low investment and are already saturated. There is also not adequate demand for these services to accommodate such a large number of scavengers as they

inevitably are in a segregated urban colony in a target town. Due to the stigma attached, no activity which involves handling of food items would succeed. The difficulty in finding suitable vocations for such scavengers is truly formidable and has been also highlighted by State Governments as well. Most towns in States which have manual scavenging would not have flourishing industries in the vicinity so as to provide scope for wage employment. Therefore, it would be desirable to identify activities where such people can be absorbed with assurance of a gainful employment first, before taking up skill development and project formulation. Usually, such intensive pre-survey is not done and too many beneficiaries are sponsored for training and later financing in a limited number of trades without reference to the level of market demand.

Even in respect of the scheme relating to scholarships for children of scavengers, etc., the implementation is indifferent. There is lack of enthusiasm in States to place their demand before the Central Government, get funds and extend the benefits to the children of those engaged in unclean occupations, even though the task involved is mere identification of such children and distribution of stipend. Perhaps reluctance to contribute 50% State share towards the Scheme is reflected in this lack of enthusiasm to implement the scheme vigorously.

It is, therefore, necessary that the entire scheme approach to the problem of manual scavenging is thoroughly reviewed and a radically altered approach is put in place with more integrated arid comprehensive scheme being brought into operation if the problem of manual scavenging is to be eliminated. The schooling and stipendiary aspects for the children of scavengers may be appropriately integrated into the suggested new scheme. The entire programme for elimination of manual scavenging should be implemented by a single agency which should be responsible for all its aspects ranging from implementation of the Act to rehabilitation of the liberated scavengers and improving the quality of life in their colonies.

With regard to scavengers, there are other problems as well which the existing scheme does not take into account. The most important among them is the way scavengers are employed for cleaning sewers manually despite availability of modern technology. This reflects the lack of sensitivity and concern in the employers, i.e. the municipal bodies largely, for their life and health. “In cities scavengers are actually lowered into filthy gutters to unclog them. They are fully immersed in human waste without any protective gear. In Mumbai, children made to dive into manholes have died from carbon monoxide poisoning. In many communities in exchange for left over food, scavengers are also expected to remove dead animal carcasses. ..... Their refusal to do so can result in physical abuse[6].....” It, therefore, lies within the powers of the Government to mandate that Municipalities should use modern technology for unclogging of sewers and cleaning of other bodies of human waste and provide protective gear to scavengers who come in contact with them. These provisions should be rigorously enforced and National Commission for Safai Karamcharis should monitor their compliance. The scavengers

[6]Human Rights Watch, op. cit., pp 141-142. For details of State's apathy towards the problem, see pp 141-150 also.

employed by households, private establishments, NGOs, Cooperative Societies, Contractors, some of whom are on part-time basis and service, small Government establishments do not get minimum wages prescribed for unskilled worker by the competent authority. The level of remuneration of sanitation workers in private households is very low. It is, therefore, necessary to fix minimum wages for all categories of sanitation workers under Minimum Wages Act to reduce their economic exploitation. Until then, the wage level fixed for unskilled workers should be vigorously enforced. Also, the tendency to employ Safai Karamcharis on contract basis for sweeping and cleaning work is still continuing despite its clear prohibition with effect from 1st March, 1977, contained in Government of India's Notification dated 9th December, 1976 issued for this purpose. The practice is in vogue in many Public Sector undertakings and may have surfaced in some Government establishments as well in the wake of Economic Reforms Policy with its accent on privatization despite the Supreme Court judgement (9th May, 1995). This needs to be effectively curbed to extend to the involved scavengers some modicum of justice. Exposure to health risk being an ever threatening feature of their lives, a comprehensive study of health care problems of all category of sanitation workers and effective mechanisms for their health check up and treatment are extremely important for protecting them against serious illness and premature death. The scavenger community suffers from social problems as well; indebtedness, alcoholism being some of them. The degrading nature of their work and sub-human living environment only contribute to them. These aspects need to be tackled through a social reform programme managed by NGOs and should, in fact, be a part of the new scheme for rehabilitation recommended in this paper. With such a large agenda to pursue, it is not only natural but also necessary that the National Commission for Safai Karamcharis is appropriately strengthened and empowered to carry on with its work as the task ahead is still quite enormous and challenging. The conditions of scavengers and the task of sanitation handled by them needs to be closely monitored because the ground reality even after abolition of manual scavenging even in many big Government establishments is not very different from what it was earlier as the Commission has so pointedly brought out in its Second Report in respect of Railways.

2. Devdasi System Abolition Acts

Tradition of divine prostitution wherein a woman is dedicated to a deity as a sacred body has been a part of customary practice in India for a long time, so much so that it has been claimed that there is no temple in any part of the country without a divine prostitute attached to it[7]. In fact, a few temples have more than one Devdasi attached to them. The origin of this institution lies in the fact that a few deities demanded "whole time devotees to serve them, both ritual and secular. The other reason is that devotees themselves offer women to a deity for service expecting something in return. However, the powerful section of society brought this custom into vogue to exploit the ritual and religious pretext since the divine prostitutes ultimately become the sex objects of dominant persons or groups. As per the study[8], the practice continues even today but has become

[7]Singh, Nagendra Kr., Divine Prostitution (1997), Preface

[8]Singh, N.K., op. cit., Also see Human Rights Watch, op. cit., pp 150-152

more commercialized. The Devdasi System is also helped to continue due to the extreme poverty of scheduled caste families who, under compulsion of circumstances when even religious begging does not bring enough income to have sustenance, allow this practice as a means of getting some income or gifts. While the first effective step for abolishing this system was taken by the Princely family of Mysore in early part of the century, the practice of dedicating girls to temples was made punishable under the Hindu Religious and Charitable Endowment Act, 1927 of Mysore. In 1934, 'The Bombay Devdasi Protection Act' was passed which made unlawful any ceremony intended to dedicate or having effect of dedication of woman as a divine prostitute where such woman has not consented to the performance of such ceremony. In independent India, Karnataka and Andhra Pradesh have enacted separate laws for abolition of Devdasi System. Andhra Pradesh enacted a law, the Andhra Pradesh Devdasi (Prohibition of Dedication) Act, 1988 providing deterrent punishment to those who perform, promote, take part or abet in performance of any ceremony for dedication of a woman as a divine prostitute. As per official estimates 16624 Devdasis have so far been identified in the State of which 14339 have been rehabilitated[9]. Karnataka State enacted the law entitled 'Karnataka Devdasi (Prohibition of Dedication) Act, 1992' according to which dedication of women or girls to any deity or temple for object of worship is prohibited and violation of the Act is punishable. In Maharashtra, the 1934 Act continues to be in force. Governments of Andhra Pradesh, Karnataka and Maharashtra have undertaken rehabilitation programmes for welfare of liberated Devdasis.

However, implementation of law as well as rehabilitation of liberated Devdasis in various States have been unsatisfactory. The practice is far from dead; the dedication ceremonies have shifted from main temples to the house of priests or smaller temples with no publicity and fanfare[10]. The laws also have loopholes because of which it is difficult to take legal action against the offenders. Also, victims do not come forward to complain. It has been reported that not a single case has been booked under the Karnataka Devdasis Prohibition Act against priests despite many complaints and admonitions to that effect. Joint Women Programme, a voluntary social organization, has complained many times that girls belonging to low caste have continued to be dedicated by innocent and vulnerable parents with the connivance of priests[11].

The rehabilitation programme suffers from adhocism and inadequacy. It does not provide adequate means of livelihood and skill development for this purpose. The financial assistance provided to Devdasis also carries an element of loan to be repaid. The rehabilitation projects for these women financed for taking up income generating activities have not been viable. Most Devdasis who have been covered by the rehabilitation programmes have not been provided access to a residential house, health care or

[9]A report of Public Hearing held at Tirupathi on August 18,. 2001 on the Rehabilitation of Devdasis in AP, carried out by Council for Social Development, Hyderabad for the National Commission for Women. Also see National Campaign on Dalit Human Rights, Chennai hearing, op. cit., pp 196-201.

[10]Singo, op. cit., p. 215, 1997

[11]An exploratory study on Devdasi Rehabilitation Programme initiated by Karnataka Women's Development Corporation and SC/ST Corporation, Government of Karnataka in northern districts of Karnataka, carried out by Joint Women's Development Programme, Bangalore.

educational facility for their children. There is very little by way of awareness building and creation of self-confidence among the liberated Devdasis. In the public hearing held at Raichur town in Karnataka, organized by the Council for Social Development, Hyderabad[12], the Devdasis complained of lack of response from Government for demands of various assistance, particularly relating to housing and health care and loan for maintenance of the family. Most of the Devdasis have neither land nor house. They work as wage labourers at very low wage rate (Rs. 20/- per day). The nutrition level among Devdasis and their children is very low and they suffer from various infections. STD cases are very common as they are forced into sexual activity. The programme of rehabilitation is implemented in a very fragmented manner as a single agency is not responsible for taking up an integrated project. Devdasis are also not aware of various facilities which they can avail of. Their children suffer from stigma in school because of which they drop out. It was confirmed that dedication of girls was still taking place and the number of Devdasis who have received some financial assistance is very small out of the total number identified and targeted. This is because of several complicated procedures and bureaucratic red tape in availing of assistance. It was also mentioned that many non-Devdasis are cornering the benefits of Devdasis under the Devdasi Rehabilitation programme. There is no coordinated effort among Government agencies in implementing the rehabilitation programmes. In the public hearing at Tirupathi[13], it was stressed that greatest priority in the programme was to protect the girl child of Devdasi from the system and educating her children. Several inadequacies in the policy of rehabilitation and problems related to legal aspects were also identified. Even after their liberation from the practice, Devdasis are in some places pressurized by local people to dance in village level rituals and annual jatras under religious beliefs and fear induced in them that village goddess will punish villagers if they fail to perform. Despite the continued prevalence of practice in many areas, complaints have not been registered by either the victim or the public. The police does not have power to act suo moto under the Act. The existing law has loopholes and therefore needs to be reframed. Even from the villages where Devdasis were liberated and rehabilitated, girl children are still being pushed into the system and no responsibility is being fixed for such violations of law.

These two hearings plus the detailed report prepared by Joint Women Programme for the National Commission for Women bring out the following:

A. The laws are defective and leave many loopholes in their effective enforcement But the enforcement of even the existing laws is dismal as hardly any cases are registered and there are no reported convictions.

B. As against the approximate number of Devdasis, a very small number has been identified for relief and rehabilitation.

C. Rehabilitation programmes have been extremely unsatisfactory. They are inadequate to provide sustenance in relation to the needs of these women. They

[12]Three Public Hearings, one each at Belgaum, Raichur and Tripura, held by Council for Social Development. The Public Hearing in Raichur was held on 15 Oct. 2001. The report was prepared by Dr. Vijay Kumar for all the three hearings.

[13]The Public Hearing at Tirupathi was held on Aug. 18, 2001

> do not target the entire gamut of problems faced by the Devdasis. Different aspects of rehabilitation are being implemented by different agencies and there is no coordination among them. Devdasis feel harassed because of many procedural bottlenecks amid bureaucratic red tape in accessing these benefits. There is no programme to educate Devdasis both about the law as well as the range of benefits available. There is virtually no follow up on whether the rehabilitation programme has achieved the objective. There is also no attempt to integrate admissible benefits under different programmes in the projects formulated to rehabilitate the released Devdasis so as to produce convergent action. Support from non-governmental organizations in tackling their problems is also not available to most of them as the NGO coverage of Devdasis is too inadequate and in many areas non-existent. Children of Devdasis face stigma in getting admission to schools and in pursuing their studies. The rehabilitation programmes fail to create self confidence and self reliance through awareness generation and skill development. The extent of financial assistance provided is low which cannot assure even bare subsistence. There is no focussed action on preventing girl children of Devdasis from being pushed into the system. In short, there is lack of committed participation from all stake holders; Government, NGOs, revenue and police officials, development agencies. There is also no involvement of village panchayat in the programmes[14].

The facts narrated above clearly point towards both the inadequacy of the legal provisions as well as the rehabilitation programme. Lack of political commitment to enforce even the existing law as well as the programme is also clearly evident. It, therefore, seems necessary that Central Government adopts a proactive approach in eliminating this practice and rehabilitating women released from this sexual bondage. The concerned State Governments should be pressurized to amend their existing laws comprehensively to remove various loopholes and make them stringent and also strengthen their machinery for rigorous enforcement. The cases of Devdasis being pushed into brothels need to be thoroughly investigated by a specially constituted team of police officers supported by social activists to break the nexus between traffickers and priests. They should launch a massive awareness campaign among the targeted families in the area identified for this purpose and carry out intensive survey to locate Devdasis and rehabilitate them. The rehabilitation programme for Devdasis should be thoroughly revamped so as to make it an integrated package covering their various needs from housing and health to poverty alleviation and confidence building. Bureaucratic hurdles would have to be removed and a single agency implementation structure put in place. The least Government should do is to spare liberated Devdasis the loan burden under the programme. The Devdasis should be organized and involved in the implementation of their own rehabilitation. National Commission for Women should monitor this programme on a regular basis.

---

[14]All the four reports may be referred to. The report of Joint Women's Programme is more detailed. In the report of the Joint Women's Programme, it has been mentioned that the Programme implementation in Belgaum district was relatively better because of assistance of NGOs.

Devdasi system represents only one feature of sexual exploitation of Scheduled Caste women through religious and customary beliefs and practices. But across the country there are many other forms through which women belonging to Scheduled Castes and Scheduled Tribes are sexually exploited and are forced to lead a degraded existence. The worse aspect is that some of these practices may not even constitute violation of a specified law or regulatory arrangement and therefore, fail to attract penal action. The customary practices, therefore, continue to operate unhindered and unchallenged in view of the social sanction behind them. Recently, the case of a tribal girl who was ordered by the village community into prostitution as a result of violation of some customs was reported. The girl later committed suicide[15]. There are many other areas from where women are pushed into prostitution under customary arrangements. It is, therefore, necessary that the entire gamut of practices leading to sexual exploitation of Scheduled Caste/ Scheduled Tribe women is brought within the ambit of central law which may include not only the Devdasi system but also other customary and social arrangements which promote or sanctify them. Such a law should also incorporate an integrated programme of comprehensive rehabilitation of women liberated from such practices. National Commission of Women should take up a study of such practices across the country and prepare the draft of such a law.

B. PREVENTING CONTROL OVER FRUITS OF LABOUR

1. Bonded Labour System (Abolition) Act, 1976

Bonded Labour System under which a person works in slave-like conditions in order to pay of a debt was abolished in 1976, along with all agreements and obligations arising therefrom. It also mandated release of all labourers from bondage, cancelled their outstanding debts and ordered their economic rehabilitation by the State. The bonded labour arrangement was also made punishable if operated after the Act came into effect. This revolutionary piece of legislation which held out a great deal of hope for SCs and STs, who constitute overwhelming majority of persons working as bonded labourers, has also been poorly implemented. There is no confirmed statistics about the extent of bonded labourers in the country. One study has estimated 40 million such labourers among whom 15 million are children[16]. But the number of bonded labourers identified, released and rehabilitated is negligible. This is because bonded labour system operates under oppressive agrarian relations in rural areas in which land holding is concentrated in upper castes and creamy layers of intermediary castes, while those working as agricultural labourers belong to Scheduled Castes and Scheduled Tribes or in some cases very poor among the OBCs (Other Backward Classes). As per estimate of the Programme Evaluation Organization of the Planning Commission, 83.2% of the total number of bonded labourers belonged to SCs and STs[17]. Bonded Labour System operates unchallenged even after the enactment of the Act because the labour involved is too weak and vulnerable. The

[15]The Hindu, dated 20th August, 2002 “Auctioned girl commits suicide”.

[16]Human Rights Watch, op. cit., p. 139; Also p. 9

[17]Special Report of National Commission for SCs said STs, Atrocities on SCs/STs. Causes and remedies op. cit., p. 14

resultant violence is therefore internalized. Friction arises however when the bonded labourer or members of his family demand minimum wages or better working conditions or protest against ill-treatment. Land-owners retaliate with violence against them. That is why bonded labour has been listed in S.3(vi) as one of the atrocities under SCs and STs (Prevention of Atrocities) Act, 1989. There is a strong resistance from the land owning communities who employ bonded labour to declare them as 'bonded' as it would deprive them of a source of cheap, assured and readily available labour. There is also lack of political will to enforce the law which is evident from the political pressure exerted on the implementing bureaucracy against identification of bonded labourers, as the political leadership in most States largely comes from land owning communities or has very close links with them. Various subterfuges have therefore been adopted in defining 'bonded labour' [notwithstanding the clear legal provisions] to ensure that the labour working with the land owner is not identified as 'bonded'. The attitude of the enforcement machinery also favours the employers rather than the labour as the personnel involved in the work also share the ideology of the employers. Therefore, in many cases where complaints have also been lodged by the bonded labourers themselves or by NGOs or social workers about their conditions which merit their identification as bonded labourers, the competent authority has not declared them 'bonded' and they continue to suffer the oppression of the system. In fact, the complainant labourers suffer reprisals from the employer(s) in such circumstances. The difficulty also arises because the bonded labourer being entirely dependent upon his employer for his day to day survival is reluctant to complain lest he may lose even this tenuous source of livelihood. Due to all these considerations few labourers muster courage to seek the help of the law. Even the NGOs and social activists who are engaged in this work, face great risk of threat and intimidation from the land owners if they try to identify bonded labour working under them. Many of them are also implicated in false cases. Unless there is an effective programme which provides to a bonded labourer alternative employment from the day he has been freed, he is vulnerable and therefore does not wish to approach the competent authority for his release and rehabilitation under the Act. Attempts by Government agencies to rehabilitate even the few bonded labours who have been identified and released has not been encouraging and does not create confidence in others to seek relief under the law. It is, therefore, not certain how many of the released Bonded labourers, claimed to have been rehabilitated, have relapsed into bondage. The rehabilitation programme undertaken in the case of released bonded labourers despite elaborate guidelines is neither timely, nor integrated and adequate. It also does not assure substantial alternative employment to the victim. The programme also suffers from bureaucratic red tape leading to undue delay in reaching the benefits to the affected persons. There have also been instances of erstwhile land owners appropriating the benefits given to a bonded labour after their identification and release in view of their social control over men. Considering the urgency and importance of expeditious prosecution of offenders, provision has been made under the Act for summary trial and conferment of powers of a Magistrate First Class on Executive Magistrates. But this extraordinary provision has also not been effectively utilized to punish the violators of the provisions of the Act. There is large pendency of cases with Executive Magistrates and in many

cases even the powers have not been conferred on them for trying these cases[18] and therefore the cases languish for years in the Courts.

More than 25 years have elapsed since the Act came into existence. The bonded labour system far from disappearing has acquired new forms. In the earlier times, the bonded labour system was confined largely to rural areas where a person functioned as an agricultural labourer attached to the farm of the land owner. The practice of bonded labour system has now extended to manufacturing and industry also, besides continuing in agriculture in rural areas. There are more acute cases of bonded labour system in brick kiln industry, carpet weaving, stone quarries, etc[19]. In fact, in the stone quarries, cases have been reported where the bonded labourers were chained and kept confined along with their families. Thus, even the modernization and globalization of economy does not assure that the control of those who own land and capital over the labour of others is going to relax. Documented studies have shown that labourers who migrate from one state to another to work on agricultural farms, etc. are virtually treated as slaves, transferred from one employer to another as a commodity. They are not allowed to leave employment and are kept confined to a place where no outsider can come in contact with them. Various labour laws are violated in their case since they neither get minimum wages nor benefit of any other labour legislation[20]. The operation of Bonded Labour System in occupations which employ child labour is the most pernicious of the emerging new forms. The conditions of work and the treatment meted out to child workers are much worse than those to which adult labourers are subjected to. Recently, under the aegis of National Human Rights Commission a girl child labour was detected in Andhra Pradesh who was kept in chains all twenty four hours by the employer. She had to attend calls of nature also in chains. This is the level of dehumanization and brutalization which recent forms of Bonded Labour System have acquired[21].

National Human Rights Commission has been monitoring the implementation of Bonded Labour (Abolition) Act, 1976 under the Orders of the Supreme Court. Recently, the Commission had submitted a Status Report to the Supreme Court. From this report it emerges that there has been no countrywide survey to enable an authentic assessment of the magnitude of the problem. Though the Ministry of Labour has identified only 13 States with 172 districts as bonded labour prone, the bonded labour system virtually prevails in almost all the States and most UTs. High incidence of bonded labour in the

---

[18]Report on Atrocities on SCs and Tribes (1990), op. cit., pp 14-15

[19]Recommendations of Workshop on 'Inter-State Migrant Labour, Problems & Issues' Sept. 26-28, 1997, organized by Department of Sociology, Punjab University, Chandigarh in collaboration with Ministry of Labour, etc. pp 13-14.

[20]Proceedings of the Workshop on status of Inter-State Migrant Workmen in the North-West India, 22-23rd March, 2001, organised by Department of Sociology, Punjab University, Chandigarh. Third Technical Session 'Incidence and Magnitude of Bondage in Punjab and Remedial Measures', pp 32-44

[21]Letter dated 13.5.2002 from Shri K.R. Venugopal, Special Rapporteur, NHRC, addressed to the Chief Secretary of A.P. reg: release of two children, one 12 year old girl and the other 8 year old boy, in Budavarpet area of Kurnool District. These child labourers were bonded to the Beedi manufacturer [who also happens to be a Government servant working in the District Panchayat Office, Kurnool] who had given advance to their parents in return for which children have to work for their masters.

agricultural sector is quite well established in the States of Andhra Pradesh, Bihar, Karnataka, Maharashtra, Orissa, Punjab, Tamilnadu and Madhya Pradesh. Indebtedness of the rural populace is a major causal factor for getting trapped in bondage. In the non-agricultural sector, the practice of bonded labour is rampant in brick kilns, stone quarries, beedi manufacture, carpet weaving and construction projects and of bonded child labour in sericultural processing industry. Migrant bonded labour has emerged as an aggravated form of deprivation and exploitation of labour in States such as Bihar, Jharkand, Chhattisgarh, Tamilnadu, Madhya Pradesh, Orissa, Rajasthan, Punjab and Haryana. Failure of the State Governments to enforce the provision of Inter-State Migrant Workmen (Regulation of Employment and Service Conditions) Act, 1979, the Contract Labour (Regulation and Abolition) Act, 1970 and Minimum Wages Act, 1948 is the most important causal factor of bondage of migrant workers. State Governments usually refuse to acknowledge that bonded labour system exists in their jurisdiction. While some States like Karnataka and Himachal Pradesh outrightly deny its existence, other States acknowledge its existence but ignore them. Some States as a stratagem to avoid taking any action believe that after the enactment of Bonded Labour System (Abolition) Act, 1976, all bonded labourers have been freed and nothing more needs to be done. National Human Rights Commission's own experience in monitoring has revealed that only when the Chief Minister *was* told that State could face embarrassment in its relations with National Human Rights Commission and the Supreme Court that any worthwhile steps were taken for its implementation. The civil service has virtually abdicated its responsibility under the law to such an extent that unless the Chief Minister of a State clearly indicates what his political priorities are no justice gets done to the poor. The implementation of the Bonded Labour System (Abolition) Act, 1976 and other pro-poor laws are not on the political agenda of any Chief Minister today. This is the stark reality. Therefore, bringing implementation of this Act center stage in the political governance is the first step for checking atrocities on Scheduled Castes unleashed on account of debt bondage. While the Central and State Governments continue to publicize their commitment to the eradication of poverty, elimination of various forms of exploitation does not figure in their strategy for poverty alleviation though that should constitute its essence. They would like the soft option of distribution of funds for income generation. The enforcement machinery for bonded labour at the lower level usually gives the impression that it is not very clear about the definition of bonded labour despite the clarifications laid down in the Supreme Court judgement itself and the subsequent manual issued by the National Human Rights Commission. But, in essence, the problem is less about conceptual understanding and clarity than about what would constitute the correct action in terms of political signals they receive. The only efforts at identification of bonded labourers has come from voluntary organizations and social activists but even such NGOs and activists are frustrated because of non-cooperation from district administration who are found even helping the keepers of bonded labourers to arrange dispersal and disappearance of the bonded labourers detected in their custody.

The Act mandates that on the immediate release of a bonded labourer, the process of rehabilitation has to follow. This does not happen. Even where a bonded labourer is identified and released, the action is confined to physical freedom of the victim without

ensuring his freedom from debt and further exploitation. In some cases even the Certificate of Release from bonded debt does not get issued. Vigilance Committees provided for under the Act have not been constituted for years and where they were constituted they remained non-functional. Since the process of monitoring started by National Human Rights Commission, the single most notable achievement has been the reconstitution of these Committees in most southern States but even today such Committees have not been notified for all districts and sub-divisions and where constituted these Committees have remained dormant and are not holding meetings. In some cases, the term of non-official members has elapsed and replacements have not been notified. Social activists and NGOs are not receiving representation on these Committees. Neither at the State level nor District level any worthwhile monitoring by the Vigilance Committee is being done. Therefore, the single most important instrument provided for under the Act as an aid to the process of identification, release and rehabilitation is totally missing. Prosecution was intended to start immediately on identification and release of the bonded labourer, but this is the single area of most neglect in the State even where on a limited scale bonded labourers have been identified and released. There are very few cases of prosecution of keepers of bonded labourers. Even where the formality of registration of a case has been done, investigation is tardy, trials slow and convictions almost nil. It was noted in the report that the situation has not undergone any significant improvement since the Gandhi Peace Foundation and National Labour Institute (1977-80) Study, which had revealed that only 1.35% of reported cases were registered, 32% of culprits arrested and only 0.08% given prison sentences. The provision of summary trial available under Section 20(2) has rarely been used.

There has been some achievement since efforts by National Human Rights Commission were made in the implementation of the Act through its special rapporteur system. More than 1000 bonded labourers have been identified in the State of Karnataka and as many cases of suspected bonded labourers are being investigated into. In Tamilnadu, nearly 10,000 have been identified during the last five years. District Vigilance Committees have been constituted in most districts and sub-divisions of southern States. Nearly 3000 cases of bonded labour have been identified in Andhra Pradesh. But elsewhere in the **country, the response has been largely negative**, even **after strong exertion by the National Human Rights Commission**. The general feeling in National Human Rights Commission itself is that there **is a road block with regard to cases of fresh identification.** At the present moment efforts of their special rapporteurs are directed towards location of the already released bonded labourers and to see that they are rehabilitated. Thus, the State which had completely ignored the rehabilitation part of the bonded labourers released earlier have now started the exercise and are claiming central share for this purpose.

There is a centrally sponsored scheme for rehabilitation of bonded labour. There is a huge time lag between release and rehabilitation operations of this scheme with the result that the released bonded labourers have been forced to return to their erstwhile exploiters because of their inability to survive after release. In some cases they have been compelled to accept more cruel terms of employment imposed by the vindictive

ex-masters. The centrally sponsored scheme depends on the release of matching share (50%) by the State Government which is either not done or done late and inadequately. Delay in submission of Utilization Certificates by the District Magistrates to the State Governments and by the latter to the Central Government is responsible for slow progress in release of finance under the Scheme which in turn affects rehabilitation adversely. Further, despite talk of integration and convergence of poverty alleviation programmes with the scheme, this has not happened. The guidelines for rehabilitation for bonded labourers in land based projects envisaged allotment of land for cultivation as the foundation for a durable source of income generation. In a large number of cases of such released bonded labourers, such allotment has not been done. In a few cases where land based rehabilitation was attempted, the land allotted to the released bonded labourer was unfit for cultivation. Sufficient infrastructure or inputs were not provided for making this land cultivable. The non-land based segment of rehabilitation suffered from lack of credit for consumption and productive operations and for want of sustainable projects with backward and forward linkages. The Migrant bonded labourers have been caught in the jurisdictional trap. The States where bonded labour is identified do not cooperate with the parent States by way of helping to release of bonded labourers. At best, they issue the Release Certificate and send these labourers back to their home States, where they receive no attention. In the home State, the District Magistrates refuse to take cognizance of Release Certificates and take up rehabilitation of such labour. Sometimes details sent to the Home States contains vital discrepancies which makes the task of taking up rehabilitation difficult. But the greater difficulty that the implementation of the Act suffers from is that the role of NGOs/social activists has not been recognized in the Act. State Government's attitude towards them is usually one of hostility and largely one of non-cooperation. Considering the lack of interest of the official agencies in the whole process of identification, release and rehabilitation, institutionalization of the role of NGOs/social activists is very important if the implementation of the Act is to pick up momentum.

National Human Rights Commission also set up a group of experts to look into the existing law on bonded labour system with a view to identifying whether some of its provisions needed change in order to attack the problem comprehensively. This group has already given its recommendations and suggested a number of amendments which in turn have been submitted to the Supreme Court by the National Human Rights Commission, as part of its ongoing process of keeping the Hon'ble Apex Court informed of the action being taken in pursuance of their order. The expert group, apart from suggesting changes in the law, have also recommended some administrative measures for effective implementation of the Act. These suggestions include involving the Panchayati Raj institutions in the implementation of the Act, constitution of State level Standing Committee under the Chairmanship of the Chief Secretary, the need for intensified training to the officials engaged in this work. The group has also suggested an Action Plan for the National Human Rights Commission to effectively carry on its task relating to monitoring of the implementation of this Act.

The report of National Human Rights Commission to Supreme Court has been summarized above to show that while intense pressure built up by the Commission has

moved the State administration in some southern States, the results achieved are disproportionately low to the efforts made by the Commission's rapporteurs. In the rest of the country, the Commission finds that there is both political and bureaucratic non-cooperation (virtual road block) in the matter across the States despite such high profile interventions. Therefore, the crucial question faced by the Commission is how to generate the requisite political will for this work and to bring this task on the agenda of political governance. Bureaucratic action will follow once there is necessary political direction to implement the provisions of the Act. As per the strategy, National Human Rights Commission has identified certain pockets in the country where bonded labour system operates and intense pressure is being built upon District Administration to survey the bonded labourers there. Help of NGOs/social activists is also being taken to provide information on the incidence of bonded labour system. This strategy has to continue. Basically political will has to be generated for giving priority to this work and to take it up earnestly. It is hoped that the Commission would be able to do that through its intense and sustained interaction at the highest level in the State Governments.

The prosecution of offenders under the Act needs to be intensively monitored to create deterrence. National Human Rights Commission has been pursuing this aspect as well. Debt Relief and money lending regulation laws also need to be rigorously enforced. Alternative arrangements for consumption credit would have to be provided to meet the needs of subsistence and social obligations of the targeted group. Bonded labourers claimed to have been rehabilitated need to be surveyed to find out if they have relapsed into bondage due to tardy rehabilitation. Implementation of poverty alleviation programmes in the areas of bonded labour concentration would create strength and confidence in labourers trapped in bondage to complain and seek relief under the laws. Simultaneous and rigorous enforcement of other labour laws, particularly relating to Minimum Wages, Child Labour and Inter-State Migrant labour, in tandem with this Act, would help in attacking the pernicious practice of bonded labour system in its recent manifestations more effectively.

2. Child Labour (Prohibition and Regulation) Act, 1986

Incidence of child labour is a product of both poverty and low social status. Myron Weiner has however expressed the views that child labour in India prevails due to vested interests. It is illiteracy which is the cause for its perpetuation and various countries have sought to deal with the problem of child labour, by introduction of universal education through legal enforcement, which effectively removes children from labour force[22]. In fact, institution of child labour is an integral part of bonded labour system in rural areas where the entire family of the agricultural labourer who takes a loan becomes bonded to the creditor. Under the system, specific tasks are assigned to child labour. While the adult males and females work on the farm (female agricultural labour work both on the farm as well as in the household), the children of the family are usually engaged in grazing cattle of the farm owner and some specified agricultural activities. The female child labour is also engaged in various agricultural operations, like sowing,

[22]The child and the States in India (1991) quoted in Jaiswal, P. Child Labour, op. cit., p. 62

weeding, harvesting, thrashing and picking work in cotton fields besides fetching fuel wood and water and looking after young siblings[23]. Even without linkages of bonded labour system, poor families from scheduled caste and scheduled tribe, agricultural labourers and some from backward classes are forced to send their children for grazing work so that they can have some food in return and, therefore, ease the pressure on the family to support them. The children so employed, therefore, waste their entire childhood in this manner since they can not go to schools and pursue any other activity. After they grow up, they get converted into full fledged agricultural labour. However, due to growing incidence of poverty and lack of alternative employment opportunities to support children, many families have been forced to send children outside the village to work in some industries and various other occupations. Many of these children are pledged by their parents either to the factory owners or their agents or middlemen in exchange for small loans. These mortgaged children become bonded over very small sums of money and continue to be in bondage even after both principal and interests have been paid back in full, due to manipulation of creditors and illiteracy of the parents of these children. A study conducted in the Sivakasi match factories of Tamilnadu quoted in the recent report of National Commission of Labour [P. 1010] refers to the statement of a woman that the child in the womb is pledged to the factory and consumption and maternity loans are obtained on the undertaking that the child born, girl or boy, would work for the factory. In urban areas, children are engaged in more diversified work ranging from hawking, rag picking to brick kilns, stone breaking and domestic work. Child labourers are also engaged in small enterprises of the informal sector, such as bidi rolling, carpet weaving, bangle manufacturing, plucking tea leaves and coffee beans in plantations, etc.[24]. Children are greatly sought after because they can be kept under complete control and would not protest against conditions of work and level of remuneration. Some industries like carpet weaving, match and fire works factories, etc. specifically seek child labour because of their nimble fingers. The exploitation of child labour is extremely acute. They are rarely paid any wages except for some food and are made to work for long hours without any rest. They are not provided any health care and many of them are physically abused[25]. Many children are subjected to physical torture routinely such as branding with hot iron when they make mistakes or ask for adequate food. Attempt to escape is retaliated with beating and other forms of physical violence[26]. Instances of child labour being pushed into drug and sexual trafficking are increasing. Their parents do not come to know of their real conditions. The distinct problems of the female child worker, often get ignored, in the consideration of child labour. While the girl child usually working at home is visible in rural areas, such girl child workers are 'invisible' in urban informal sector. Girl child workers are nearly half the total strength of child labour. In rural areas, girls accompany parents in agricultural operations. In urban informal sector, they are found in match industry (Sivakasi), gem polishing (Jaipur), lock working (Aligarh), brass industry (Moradabad), carpet industry

[23]Jaiswal, Prachin, Child Labour (2000), p. 33

[24]Jaiswal, op. cit., p. 34

[25]Jaiswal, op. cit., pp 37-49

[26]Rehman, M.M. and others, Child labour and Child Rights (2002), p. 63

(Bhadohi), Coir industry (Kerala) and a large number of home based industries. Tribal girls are employed as domestic help on a large scale. Tragically, even the parents do not see girl child as a worker, thereby exacerbating gender inequities. Girl child worker faces sexual exploitation at work place[27]. There are instances of slightly grown-up girl children being sold away to brothels and even for sexual trafficking outside the country. Compensatory labour legislations do not cover girl child workers because they usually work in domestic and non-industrial sectors. Child Labour (Prohibition and Regulation) Act, 1986 also exempts child labour in family enterprises from the ban. This is a great handicap in improving their condition. With the changing economy, the condition of Scheduled Castes in rural areas is deteriorating. Employment opportunities are shrinking and therefore, the incidence of child labour is increasing as the children become bread winners of the family, besides looking after their own sustenance.

India has ratified six ILO conventions relating to child labour. The Constitution of India includes provisions to secure compulsory primary education **(Article 45)** as well as prohibition of child labour **(Article 24** and **Article 39)**. The Courts in India have also demonstrated great deal of empathy against the practice of child labour. Government policy, in regard to child labour, is to ban employment of children below the age of 14 years in factories, mines and hazardous employment and to regulate working conditions of children in other employment. The Child Labour (Prohibition and Regulation) Act, 1986 seeks to achieve this objective. The Schedule to the Act lists Part-A and Part-B which include occupations and processes in which employment of children is prohibited. This Schedule is expanded from time to time. A total number of 13 occupations and 57 processes are covered by such prohibition. Section 5 of the Act provides for constitution of Child Labour Technical Advisory Committee which advises on the addition of occupations and processes to this Schedule.

According to 1981 census the estimated number of working children was 13.6 million which has come down to 11.28 million as per 1991 census. This is the figure which the Second National Commission on Labour has accepted. Two million of those are reportedly doing jobs that are detrimental to their health and safety [P. 1010]. However, as per the estimates of the 55th round of NSSO Survey (1999-2000), the number of working children in the country is estimated to be 10.4 million. The unofficial estimates, however, put the number to 100 million[28]. Whatever be the realistic number, NGOs have found that a large number of these children belong to Scheduled Castes[29]. With regard to geographical distribution of this number, Andhra Pradesh tops the list of States which have the largest number of working children. Other States with very large number of working children are Madhya Pradesh, Maharashtra, Uttar Pradesh and Bihar. More than 90% of child labour is located in rural areas and engaged in agriculture and allied occupations like animal husbandry, cultivation, forestry, fisheries, sericulture, etc. Ministry of Labour has claimed that the number of working children has come down both in

[27] Jaiswal, op. cit., pp 46-48, p. 84, p. 22

[28] Jaiswal, op. cit., p. 29 has quoted estimates by various non-Government organizations. Also Sixth Report, op. cit., p. 39

[29] Sixth Report, op. cit., p. 39

absolute as well as in percentage terms. From 1981 when the number of working children was 13.6 million, it has come down to 11.28 million in 1991. In percentage terms, it has been reduced from 2% of the total population to 1.34% of the population during this period.

Government formulated a national policy on child labour in 1987. The major focus of this policy was to prepare a Legislative Action Plan, taking up general development programmes for benefiting children and initiate Project based Action Plan in areas of high concentration of child labour. In pursuance of this policy, National Child Labour projects were taken up initially in 12 States. Their number has now increased to 100 covering as many districts and nearly 1.81 lakh children. The major activity under these projects is establishment of special schools to provide non-formal education, vocational training, supplementary nutrition, stipend, health care to children withdrawn from employment. In 1994 a major policy announcement was made on 15th August for withdrawing child labour working in hazardous occupation and rehabilitating them through special schools. A high power body called the National Authority for Elimination of Child Labour was also set up for this purpose. This authority adopted a programme for securing convergence of services from various Ministries and Departments of the State and Central Governments which implement child related programmes by pooling resources and taking up programmes in a cost effective manner. During the 9th Five Year Plan, around 250 crores were allocated for child labour rehabilitation programmes. The national agenda for governance of the present government also incorporates the commitment to eliminate child labour.

The Supreme Court in its judgement dated 10.12.1996, in Writ Petition No. 465/ 1986, directed (a) completion of survey of children working in hazardous employment within a period of six months, (b) payment of compensation amounting to Rs, 20,000/ - by the offending employer for every child employed in contravention of the provisions of the Act, (c) giving alternative employment to an adult member of the family in place of the child withdrawn from hazardous occupation and (d) payment of an amount of Rs 5,000/- for each child employed in hazardous employment by appropriate Government, payment of interest on the corpus of Rs. 25,000/- to the family of child withdrawn from work, (e) provision of education to the child and constitution of Child Labour Rehabilitation/ Welfare Fund. Government was also required by the Court to intimate it about the compliance of this order. In another judgement relating to the case, *Bandhua Mukti Morcha Vs Union of India and others,* the Supreme Court in May 1997 directed Government of India to evolve in consultation with State Governments principles and policies for progressive elimination of employment of children below 14 years in all the employments consistent with the scheme laid down in the judgement of 1986. This judgement was given in the context of engagement of children in the carpet industry in the State of Uttar Pradesh. The implementation of the direction, therefore, is being monitored by the Ministry of Labour. An international programme on the elimination of child labour launched by ILO in December 1991 is also being implemented. Around 165 Action Programmes were taken up during this period under IPEC covering 90,500 children during 1992-2001. At present 11 projects are under implementation, some more are being

planned. The strategy for the 10th Plan is to carry out detailed survey to assess the number of child labourers in the districts, and to expand National Child Labour projects so as to cover all child labour endemic districts and to progressively move towards elimination of child labour from at least hazardous occupations. Ministry of Labour admits that the number of working children at present covered by special schools is miniscule of the total number of working children waiting to be released and rehabilitated and feels that other Ministries should share this burden in this regard[30].

The report of the Ministry of Labour provides no information on how many children were released from hazardous occupations and the extent of corpus of Child Welfare Fund created in pursuance of the Supreme Court judgement. Since all National Child Labour Rehabilitation projects are being implemented with Central Government funds, the presumption is that the enforcement machinery has not been able to detect violations of the law on child labour in respect of establishments and, consequently, collection of fund from employers has not materialized. Instead, the employers have changed their strategy and shifted the burden of their production to the homes of such child labour as the NLI study has brought out[31]. This underlines the weakness of not only the enforcement machinery but the inadequacy of the law which does not apply to home based occupations. There is, therefore, nothing to celebrate about the number of working children having come down.

National Commission for SCs and STs has noted that despite the directions of Supreme Court in the two cases referred to above, no significant impact on the condition of child labour seems to be visible[32]. Of course, around 100 National rehabilitation projects are under implementation. But efforts made in pursuance of these directions are far too inadequate relative to the magnitude and complexity of the problem, which reflects the level of genuine political commitment. Apart from lack of political commitment, inadequate strength of the enforcement machinery and weaknesses of the existing law may have also contributed to this performance. The Second National Commission on Labour has also recognized that the 1986 Act has many lacunae and effectively covers only a small portion of children and even proposed an indicative law on child labour to replace the existing one [P. 1032]. Without an effective enforcement of the law and consequent release of child labour, the contemplated rehabilitation of such labour cannot take place. In fact, one NGO, Global March Against Child Labour, has found that the enforcement of existing laws which ban the use of children in hazardous activities has been very lax[33]. It is in public knowledge that a large number of children are employed

[30]Ministry of Labour, Annual Report (2000-2001), pp 108-112

[31]A study carried out by NLI in respect of children in carpet/home-based industry in UP has found that not much has changed in the production and organization of this industry. Instead of children now coming to industrial locations for work, the strategy has changed and the industry itself has gone to the child labour market, thereby shifting a major part of weaving to their homes. While this may have reduced migration of children, but not their employment - NLI Research Studies 011/2000 by Ravi S. Srivastava & Nikhil Roy (2000), p. 88

[32]Sixth Report, op. cit., p. 39

[33]Jaiswal, op. cit., P. 84; Also Sixth Report, op. cit., p. 39. She has also drawn attention to many loopholes in the Law pp 83-85.

in glass manufacturing, fireworks industry, brick kilns, mines and in large number of dhabas, restaurants and as domestic help and the number of street children working as rag pickers, etc. is on the increase. Inhuman treatment meted out to these children is highlighted from time to time in media reports. Being the largest source of child labour, Scheduled Castes are the worst victims of poor enforcement of labour laws, besides facing caste prejudice[34]. Myron Weiner has in fact laid the blame for poor achievement in elimination of child labour on the vast gap between official rhetoric and the policy on child labour in India and the beliefs of the Indian middle class, including bureaucrats, social activists, trade unionists and academics which are rooted in the caste based Hindu social order. These ideas assign respective roles to upper and lower social strata and the function of education is seen as a means of maintaining differentiation among social classes. As per this social ideology, 'excessive' and 'inappropriate' education for the poor would disrupt existing social relations of hierarchical caste system. It is particularly hostile to attempts at raising social status through education by lower castes even through their own efforts[35].

Following directions of the Supreme Court, the National Human Rights Commission has been overseeing the enforcement of laws relating to bonded labour and child labour in different parts of the country. It has concentrated its efforts principally in the carpet belt of Uttar Pradesh, silk reeling and twisting industry in Karnataka and road building and construction industry in Gujarat. 51 out of total 83 districts of UP have been declared child labour prone. U.P. Government has created a corpus of Rupees One crore for creating the Child Rehabilitation-cum-Welfare Fund in pursuance of the order of the Supreme Court. District Societies for abolition of child labour have been constituted in all these districts. During the year 1999-2000, 21 of these Societies have been registered and had received official grant of Rs. 5 lakhs each for Child Labour Rehabilitation-cum-Welfare Fund. U.P. Labour Department, on the advice of National Human Rights Commission, carried out two surveys to assess the incidence of child labour in the State and identified 10,778 child labour in hazardous occupations and 9,676 in non-hazardous occupations. It had launched prosecution in respect of 1,244 cases; 3875 children have been admitted to schools and employment was provided to 1,547 persons. Although recovery of the amount from employers has been affected by Stay Orders from Courts, non-formal education of children withdrawn from work has picked up in a big way. 370 National Child Labour rehabilitation projects had been taken up by the end of 1999-2000. 90 of these were in the four districts of carpet belt. The Commission also interacted with carpet manufacturers and exporters urging them to cooperate in the effort to eradicate child labour and substitute child labour with adult labour. A number of women were provided vocational training for this purpose. As per information available in the Commission these efforts have encouraged more and more families, whose children were engaged in child labour, to approach authorities for admission of their children to such schools. During the year 2000-2001, 1,361 child labourers were detected in U.P., 394 under hazardous and 967 in non-hazardous employment category. Of them, 1403 were from

[34]Sixth Report, op. cit., p. 39

[35]Weiner quoted in Jaiswal, op. cit., pp 66-67

six districts of carpet belt. Rs. 20.42 lakhs was actually recovered towards contribution of employers for the Child Labour Rehabilitation-cum-Welfare Fund as per requirement contained in the Supreme Court directions. 370 schools have been sanctioned under National Child Labour Project for 11 child labour prone districts of U.P., of which 346 were operational and 19,807 children were receiving non-formal education with other supplementary benefits. These schools were being run by NGOs. The Commission has also been monitoring disposal of cases in U.P. under the Child Labour Act. During the year under report, the rate of disposal was considered poor but conviction rate had shown some improvement, as compared to previous years. The Commission also constituted a Committee to study child labour situation in the lock industry in Aligarh. The report has been sent to the State Government for their comments. The Commission has got an impact study carried out on the non-formal education under National Child Labour projects in areas where carpet weaving and manufacturing of glass bangles predominate. The report has been sent to the concerned authorities for action. The Commission has also been organizing Workshops in important towns of the districts which are child labour prone to create deeper awareness regarding the evils of child labour.

The foregoing would show that under the intense supervision and monitoring of National Human Rights Commission, some results have been achieved in detection of child labour, prosecution of offenders, taking up of rehabilitation projects and the response of the State Government as well as district level administration, at least in U.P., has been very positive. This would serve to highlight the point that the existing mechanism, if pushed from above and regularly and intensively supervised, is capable of delivering results. It is, however, to be seen whether similar success is achieved in other States. The experience relating to implementation of Bonded Labour Abolition Act has not been encouraging in this regard. It would, therefore, be desirable that National Human Rights Commission expands its activities in respect of widely known and identified occupations across the country which are considered child labour prone and replicate the U.P. model elsewhere with the help of special rapporteurs and, where necessary, other selected officials specially deployed for this purpose. National Human Rights Commission may also have meetings with concerned State Governments and direct them to undertake measures similar to those which were done in U.P.

Notwithstanding above efforts, girl child workers who are largely employed in home based occupations besides engaged in daily chores of the family are not receiving any attention. While the law excludes them from its ambit, even development programmes or special projects to wean them away from 'domestic'/home based work with suitable compensation for the parents, as an incentive, are not in evidence despite the fact that there are a number of schemes to benefit the girl child. There are no reported schemes focused on girl child workers either by Ministry of Labour or by the Department of Woman and Child Development. Even the Ministry of Social Justice and Empowerment which administers a scheme for low literacy pockets of SC girls has not brought in its ambit SC girl child worker though the scheme could be suitably modulated to cover them in a big way.

Ministry of Social Justice and Empowerment also finances NGOs for providing essential services to street children under a central sector scheme. The number of projects taken up is small in relation to the large number of working children on the streets. No effort has been made at any level, Government or non-Govt, to find out how many SC children have been covered by these projects and whether any NGO is specifically catering to them. It is also not known whether SC street children covered by any projects face any discrimination or caste prejudice. It is necessary to have a survey of SC street children to find out whether they suffer additional disabilities compared to other working children and whether they are getting any support or relief from any agency with a view to making specific interventions in their case. This segment of SC population more than any other requires priority and focused attention because the entire strategy of upliftment of SCs would be defeated if the children of the SCs, who would constitute its hope when grown up, experience such brutalization and a bleak future ahead. A major effort would be needed in protecting SC child labour.

The suggested area of State intervention would therefore lie in (1) Survey of SC child labour in different occupations, (2) vigorous inspection of hazardous occupations and processes followed by rescuing child labour and bringing them within the fold of rehabilitation projects, (3) Rigorous enforcement of labour laws in respect of non-hazardous occupations employing SC child labour along with necessary development interventions to improve the condition of child workers, (4) conceptualization of innovative schooling for SC child labour under Sarva Shiksha Abhiyan and launching projects in pursuance of it, (5) Designing and operating specific interventions for SC girl child labour engaged in home based industries, etc., (6) mobilizing NGOs for extending safe shelter and elementary services to SC street child labour, (7) Vigorous and sustained police action for checking trafficking of SC children with the help of local communities and NGOs/ social activists, (8) Development intervention in endemic areas which supply SC child labour so as to remove compulsions of parents to push their children into work and (9) Massive sensitization programme among the general public against employment of child labour and their inhuman treatment. The suggested actions though recommended in respect of SC child labour could form part of the efforts directed at child labour in general.

3. Inter State Migrant Workmen (Regulation of Employment and Service Conditions) Act, 1979

Due to unemployment and under-employment, large number of members of scheduled castes as also people of other communities migrate to distant places in the country (sometimes within the State itself) in search of employment. This process is accomplished through labour contractors who try to scout for labour from different locations and supply them to the employers who seek them. Many labourers also go out in search of work on their own through information obtained from people of the same village and other acquaintances. The migrant labour is employed in multifarious occupations ranging from agriculture and live stock farming, to building construction, brick making, stone quarrying, road construction, dam construction, etc. In respect of those who go through supply

contractors and also some of those who go directly, usually some advance money is given for use of the family in the village to meet its needs and for meeting the cost of travel to the work place. In return, they are tied down to the employer for a specific duration. Migrant labourers are acutely exploited. They are never paid the minimum wage. They do long hours of work and live in subhuman conditions. They are physically assaulted if they try to run away from their place of work. Compensation in the event of accident is virtually non-existent. Their women have to suffer sexual exploitation as well. Migrant labourers sometimes are transferred from one employer to another, almost like a commodity. In some occupations, they are confined to isolated places so that they do not come in contact with others who might complain about their condition. Those who work for a season, as for example those employed in agriculture, brick kilns, etc. usually wish to return home at a time when farm work in the village is available. But they are not allowed to go back home until they pay back the advances, which they do by borrowing more money and thus the vicious cycle of debt bondage continues to operate. During journeys to and from the place of work, migrant labour is exploited by ticket collectors, policemen and anti-social elements who extort money from them[36]. Central Government enacted a law in 1979 to regulate their employment and service conditions and to give them the benefits which labourers of other categories are entitled to. The Act is applicable to labourers who migrate from one State to another but it does not cover labourers who migrate from one place to another within a State.

The implementation of the Act is most dismal of all labour laws. This is because there is total non-cooperation from the States, which receive labour, to implement the law, as the National Human Rights Commission has also noted in its Annual Report for 2000-2001. This attitude of the State Governments who are recipients of migrant labour is intended to protect the interests of employers. The recipient States are beneficiaries of cheap labour and they do not want labour laws regulating their working conditions to be implemented lest their source of supply gets extinguished or the cost of labour to the employers increases. This is particularly the case with Punjab and Haryana State Governments where big farmers who employ these labourers enjoy a great deal of political clout. Recipient States have also not shown enthusiasm for granting permission to officers of the source States to inspection despite the direction of the Supreme Court in a case[37]. The State Government officials, even at the highest level, are not only indifferent but even hostile to implementation of the law and try to give the impression that migrant labour in their State is very happy and is well treated though documented studies from the same State have provided evidence to the contrary[38].

---

[36]Unprotected Migrant Labour in NCR Delhi - Workshop - Background note concerning, op. cit., Also see Recommendations of Workshop on Inter-State Migrant Labour (Sept. 26-28) 1997 organized by Punjab University, Department of Sociology-Genesis of the Problem, op. Cit., pp 5-16. Also Proceedings of the Workshop on the status of Inter-state Migrant workmen in North West India (22-23 March, 2001) organized by Department of Sociology, Punjab University - technical session, op. cit., pp 16-26

[37]Information gathered during the Workshop at Delhi (2002), op. cit.

[38]See for example the statement of Special Secretary, Labour Department in Punjab at the Chandigarh Workshop (2001), op. cit., p. 20 Workshop

The Act also suffers from serious legal loopholes, the most important being the definition of migrant labour itself which provide easy escape route for employers[39] and alibi for the un-cooperative recipient State Governments. Attention of the Central Government has been drawn to these loopholes[40] but it has not thought fit to amend the Act. The resistance of the recipient States has also stood in the way of amendments to the Act. The indifference of the Ministry of Labour would be evident from the fact that its Annual Report for 2000-2001 contains no worthwhile information regarding the status of implementation of the Act. The plight of migrant labour becomes worse when even their home State is also indifferent to their condition. Most of the States from where the labour migrates have shown no inclination even to maintain record of the movement of such labour and those of the supply contractors. Unable to provide alternative employment to them, they do not want to take any tough measures which restrict their wage earning opportunity. The problems become tragic when such migrant labourers are killed or disabled or suffer grievous injuries and their families are unable to get any relief and entitlement under the existing laws.

The implementation of the Act is also complicated by the fact that in case of many migrant labourers there is no fixed location where they are employed. They are moved from one place to another and even from one employer to another. The family members at home too do not know the whereabouts and destination of the persons migrating. Trade Unions have also expressed difficulty in organizing such labour. As the migrant labour passes through different layers of contractors, it is difficult to identify a 'Contractor' for licensing. The Employers and Contractors use various methods to circumvent the provisions of the Act. Conflict between migrant and local labour further add to their vulnerability and constrain attempts at organizing them[41]. SCs who constitute the largest percentage of landless and unorganized wage labour and face various forms of exploitation in the home State are also more adversely affected migrant labourers as well. But their plight does not end here. Not only are they exploited as migrant workmen, their families at home also suffer atrocities by the landowner-employers who are angry at their migration since the cheap labour would not be available to them when needed on their farms[42]. For reducing the vulnerability of migrant workers, AITUC, a major trade union organization has submitted a 10-point memorandum to the Prime Minister. This includes proposals for formulation of a National Policy on Migration, constitution of Social Security Board for Migrant Workers, amendments to the Act, enforcement of various international core conventions, coverage under group insurance scheme with Government paying premium, constitution of Special Courts for settlement of their disputes and provision of basic amenities, etc.[43]

---

[39]Also, Smarika - Proceedings and Papers of the First State Conference on Inter-State Migrant Labour of Bihar organized at Shaikhpura on 16-17 June 2001 by Bihar Rajya Khat Mazdoor Union, pp 40-42. Also see Resource Kit for Delhi Seminar on Migrant Labour (Sept. 2002), pp 69-77.

[40]Extracted in Resource Kit at the Delhi Workshop on Migrant Labour (op. cit.,) pp 82-25; Letter from Secretary, AITUC to Secretary, Ministry of Labour dated January 23, 2002

[41]Views exchanged during the Workshop on Migrant Labour in Delhi (Sept. 2002); Also see the Resource Kit.

[42]Resource Kit for Delhi Seminar on Migrant Labour (Sept. 2002), op. cit., pp 43-47

[43]Letter from Secretary, AITUC addressed to the Prime Minister on the occasion of Squatting by unorganized inter-State Migrant Workmen on Nov. 28, 2001.

Migrant labourers represent a classic case of trafficking in human beings and a new form of slavery. Media reports and documented studies have highlighted this aspect. National Human Rights Commission, as mentioned in the Annual Report for 2000-2001, took cognizance of one such report in respect of Punjab and got it investigated. The report substantiated the allegation of illegal trade in human beings and revealed that this trade has been flourishing with the knowledge and patronage of the Police and other authorities for the last 30 years. The possibility of sexual exploitation of women was also conceded. The Commission intervened in the matter and directed Ministry of Labour and Government of Punjab for corrective action. It is hoped that the Commission would prevail upon Government of India to amend the law and the concerned State Governments to rigorously implement the existing Act. National Human Rights Commission has to monitor the action taken on its directions so as to break the strong resistance of State Governments who are recipient of migrant labour. Besides exerting maximum pressure on State Governments to implement the Act, the following interventions may be needed to provide some modicum of support to the migrant labour.

(a) Creation of reliable information system pertaining to vital aspects of Migrant Labour

(b) Reducing vulnerabilities, both chronic and short-term, at the point of origin, which push people to distress migration, through development programmes

(c) Most expeditious amendment of the Act to remove loopholes

(d) Registration of labour with the help of TUs, NGOs, etc. and issuance of Identity Card to them at the place of origin

(e) Helping migrant workers access basic minimum amenities such as PDS, drinking water, toilet facilities at place of work

(f) Safe journey through Railways to prevent extortion and assault

(g) Setting up of Welfare Boards and taking up Social Security Scheme on the pattern adopted by Kerala and Tamilnadu

(h) Activating the enforcement machinery and constitution of Special Courts

(i) Skill development of labour wishing to migrate voluntarily.

4. Minimum Wages Act, 1948

Minimum Wages Act provides the framework for determining the minimum wage admissible to a labourer and also the manner in which his wages and other working conditions can be regulated. The Act lays down procedure for fixing/revision of minimum rates of wages, overtime and rest. It also specifies modalities for enforcement of its provisions besides providing penalties for offences under the Act and Rules made therein. One of the important provisions of the Act is that the minimum rates of wages are not to be fixed under the Act in respect of any employment in a State if it employs less than 1000 workers. Under **Section 30** of the Minimum Wages Act, the appropriate Governments are empowered to frame rules for implementing the provisions of the Act. These rules prescribe operating modalities for various provisions. All State Governments and UTs and the Central Government have framed Minimum Wages Rules.

One of the difficulties in enforcement of minimum wages is that until a particular employment is notified as scheduled employment, minimum wages cannot be fixed, reviewed or revised in respect of that employment. Despite progressive coverage of scheduled employment there are several of them which have not yet been notified. The average number of scheduled employments in a State is in the range of 30-50 only. The difficulty in notifying an employment in the schedule is lack of survey at periodical intervals to establish that the particular employment has more than 1000 work force. These surveys have not been carried out by the State Governments for a long time. Central Trade Unions have been demanding that this artificial limitation of notifying an employment for fixing minimum wages on the basis of total work force of 1000 persons in a State should be removed and minimum rates of wages should be fixed for all industries and occupations. Even in respect of occupations covered by the Act, the level of wages fixed does not correspond to the objective norms and conditions which should be factored in their determinations. Even though the Act provides for two methods of fixing of minimum wages (a) Committee Method, and (b) Direct Notification, usually the State Governments resort to Committee method, which is a tripartite arrangement, in which decisions arrived at are through consensus. Pressures are exerted from employers largely to depress the level of wages to be fixed.

The Act permits the payment of wages either wholly or partly in kind if such payments have been customary and their continuance is necessary. This provision is particularly relevant in relation to agricultural labourers where payment in kind has been a general feature in many areas. The payment of wages in kind also acts to the disadvantage of labourers who are engaged in agriculture and since the Scheduled Castes are largely employed as agricultural labourers, they also suffer the disadvantages arising out of this provision in law. The provision for payment in kind, which had relevance for a largely non-monetised economy, is not particularly beneficial in the current situation.

Minimum Wages Act also seems to legitimize the employment of child labour by providing separate hours of work and, therefore, fixing of wages for children. This needs to be removed in order to operationalize the national policy on child labour.

The study on the working of the Minimum Wages Act, 1948 carried out by Labour Bureau, Chandigarh for the year 1993 and released in 1996 have pointed out the following problems in relation to the enforcement of this Act.

1. The amounts awarded by the authority under the Act are not deposited/disbursed by the employer for a long time. Employers have been showing a tendency to challenge in the High Courts the decisions made by the authority.
2. Due to addition of more employments to the Schedule of the Minimum Wages Act, the enforcement machinery has considerable difficulties in enforcing the provisions of the Act, both on account of inadequate strength, overloading of work as well as lack of mobility.
3. The penalty under **Section 22A** of the Act, which provides punishment with fine upto Rs. 500/- is extremely meagre and therefore has no impact on the defaulting

employers. In some cases, Courts impose such a low amount of fine as Rs. 50/- as a result of which employers are not deterred from committing violation of the Act.

4. The Labour enforcement machinery is not empowered to realize the claim amount and has to seek the intervention of the appropriate court for this purpose, which is dilatory and extremely demoralizing to the labourer.
5. Minimum rates of wages fixed by the appropriate Government are not revised timely and do not keep pace with the wages in a locality, which are at times higher than those fixed by the Government.

The study has concluded that the effective implementation of the Minimum Wages Act was seriously constrained, particularly in rural sectors, due to inadequacy of the enforcement staff, scattered nature and location of establishments, volatile nature of the units, lack of proper transport facility, absence of strong trade unionism in labour, illiteracy among employers and workers, etc. Inadequacy of the enforcement staff was seen to be the single most important factor which hampered implementation of the Minimum Wages Act. Some States had not even provided exclusive staff for this purpose[44]. This view has been contested by National Commission on Rural Labour which puts the blame on lack of commitment and motivation of the enforcement machinery. The Indian Labour Conference in its 30th Session in September 1992, however, felt that Labour Enforcement Machinery has been far from effective and desired that a greater role be played by workers organizations, NGOs instead of enlarging army of inspectors for this purpose.

5. Equal Remuneration Act, 1976

The ILO Convention No. 100 of 1951 relating to Equal Remuneration for Men and Women was ratified by the Government of India in the year 1958 to give effect to the constitutional provisions and also to ensure the enforcement of ILO Convention No. 100. The Equal Remuneration Ordinance was promulgated in the year 1975. This Ordinance was subsequently replaced by Equal Remuneration Act, 1976. States and Union Territories have appointed competent authorities under the Act and have also set up Advisory Committees. As per information available from the Annual Report of the Ministry of Labour (2000-2001), the enforcement of the Act is very weak despite the fact that there is widespread violation of the Act in various employments. Available information in the report of the Ministry, though incomplete, shows that in the central sphere, of the inspections carried out, the violations detected are very large. The position in relation to the States' sphere shows a smaller number of violations detected against the number of inspections carried, which appears highly unrealistic, as the incidence of violations would even be larger. The assumption in respect of states would be further corroborated by the fact that violations rectified in relation to the violations detected in the State sphere are very low which position in relation to the central sphere is better[45]. Thus, the available information on the subject points to a very weak enforcement of the Act.

[44]Report on the working of the Minimum Wages Act, 1948 for the year 1993, Government of India, Ministry of Labour, Labour Bureau, Chandigarh/Shimla (1996)

[45]Annual Report of the Ministry of Labour (2000-2001), pp 100-101

Ministry of Labour has been advising the States and the Union Territories to improve the condition of the women workers.

Implementation of both these laws is extremely weak and have been so for a long time. An Evaluation Study conducted by Labour bureau, Ministry of Labour showed that agricultural workers were not receiving minimum wages in the surveyed States. The situation was similar in Forestry, Fisheries, Cottage Industries, Artisanry and in urban employment like vending and home based productions. The poor enforcement of these laws is on account of same factors as have been listed in the case of Bonded Labour System (Abolition) Act, 1976. Wage disputes are a major source of atrocities against SCs as in their case occupational vulnerability as agricultural labourers is compounded by social disability[46]. The unorganized labour is very weak and not in a position to assert. If such a labourer demands the minimum wage, he risks being thrown out of employment besides facing other hazards- something which he cannot afford due to lack of alternatives.

The employer has the advantage of getting other labourers to work on his terms due to excess supply of labour. Any attempt to seek the help of enforcement machinery results in retaliation of various kinds – even physical assault is some cases. The enforcement machinery is both inadequate and ill-equipped, and demotivated. It is also oriented towards the employer more than towards the labour as the political commitment to enforcement of these laws is lacking. Its approach is therefore to have the cases compromised even to the disadvantage of labour and at less than minimum wages rather than pursue effective enforcement of the law. The registration of cases is very low on this account. The smaller number of registered cases are also disposed of with delay.

Further, in few cases, where the labour courts have ruled in favour of labour and have declared the award, the labourer still does not get his wages as the employer does not deposit the award, resorts to various strategies including appeal in the High Court challenging the order with sole purpose of frustrating the labourer. This de-motivates the labour from seeking help of law to get justice. It is also seen that in case of agricultural labourers, landowners in the area gang up to ensure that those who choose to fight for minimum wages are not given work on the farm of any landowner of the village and even nearby villages, since all of them are united in keeping the wage level low and in fixing up 'assertive' labourers. It is clearly unequal power relations at work.

The same factors operate in respect of lower wage levels of women as compared to men. This is the reason why even today agricultural labourers in many areas work for such small amount as Rs. 15 or 25 or two to three Kg of rice per day, well below the minimum wage prescribed in their State and women are paid less than men[47]. Government has launched the rural employment programmes to strengthen the bargaining power of rural labour in general and agricultural labour in particular. But as pointed out in the Section on Development, the impact of such rural employment programmes

[46] Atrocities on SCs & STs, Report of National Commission (1990), op. cit., p. 21.

[47] Human Rights Watch, op. cit.

has been very negligible since the total number of mandays generated under them has been very small. The share of SC labourers in this benefit would be even smaller. Therefore, agricultural labourers, or for that matter labourers engaged in other unorganized occupations, are totally left to the market forces, whether in rural or urban areas.

It would thus be seen that the extreme vulnerability of the labour, the inadequate and unresponsive enforcement machinery, the dominant social and economic position of the employer, the dilatory and ineffective adjudication process and lack of alternative employment opportunities and absence of support from Government have worked together to defeat the objectives of the laws. Of these factors, lack of alternative avenues of employment is, undoubtedly, the most important factor in the vulnerability of labour. SCs who constitute the largest percentage of wage labour in the unorganized sector are obviously most affected by these conditions. National Commission for SCs and STs has rightly suggested that monitoring and revision of wages should not be left to the Labour Departments of State Governments and the Labour Ministry of the Central Government.

The agencies of Government dealing with problems of SCs at the Centre and State level should be intensively involved in this exercise to ensure that revision is done timely and implementation is regularly monitored. It has also suggested inclusion of non-payment of minimum wages to SC/ST labour as an act of atrocity in Chapter II of the SCs/STs (Prevention of Atrocities) Act, 1989 with provision for higher penalties than those existing under the Minimum Wages Act. Also, occupations where SCs are employed in large number should be brought within the ambit of Minimum Wages Act. The Commission has emphasized the need for providing legal aid where demand for minimum wage results in atrocity against SCs and hence enforcement machinery also needs to be activated and strengthened[48]. These measures are supported.

What is most paramount, however, in this context is the demonstration of requisite political will by the State and Central Governments for enforcement of those labour laws by giving adequate importance and priority to the implementation of Labour Laws in the agenda of governance, as it was done in the 20-point programme of the former Prime Minister, Smt. Indira Gandhi. Also, vigorous implementation of such pro-poor laws should constitute an integral part of the strategy of poverty alleviation. The agencies dealing with SC Welfare should refashion their role as one of advocacy with other Government agencies, Ministry of RD in this case, to take up special projects for rural employment under on-going programmes in low wage pockets and areas of SC concentration to increase the staying capacity of SC agricultural labourers.

Needless to say that Ministry of Labour should also lend its support to this move as this measure would benefit other labourers in the unorganized sector as well. Once that happens, other steps such as strengthening of enforcement machinery with training and motivation, mobilizing TUs and NGOs to provide support to vulnerable SC labour to strengthen its bargaining power, etc. would achieve better results.

---

[48]Atrocities on SCs & STs, Report of National Commission, op. cit., pp 22-23

C. CURBING UNEQUAL DISTRIBUTION OF ECONOMIC ASSETS AND RESOURCES

1. Land Reforms Laws

The implementation of Land Reforms in the country as a whole has been termed as largely a failure except for patches of success in respect of some measures and in a few States. The implementation of land reforms has been subverted by the absence of political will and bureaucratic commitment, loopholes in the laws, tremendous manipulative power of the landed classes, lack of organization among the poor and excessive interference of courts. Therefore, the intended benefits to the poor in general failed to materialize. Across the country, insecure and oral tenancies continue with little interest among States (with the exception of West Bengal) to bring them on record. Very little surplus land could be acquired from landowners for distribution. A sizeable area of surplus ceiling land is still locked in litigation and large sections of distributed ceiling land to poor are still characterized by problems of non-delivery of possession, encroachments and obstructions from erstwhile landowners, interventions from courts and various malpractices in the distribution of land itself. The land consolidation programme, confined to a few northern States in any case, has now virtually been given up due to resistance from smaller landowners who get a raw deal in the exchange of their plots. Land Records continue to be in a very bad shape and far from updated. States just do not have the financial resources to accomplish this task. As land revenue has ceased to be a source of States' tax income, there is no pressure for incurring expenditure on land records to improve its resource yielding capacity. Therefore, the redistributive strategy to change agrarian relations and break the caste and class nexus of big landowners has not succeeded. The landed classes, in fact, have grown stronger and have consolidated their economic power and political clout to resist any move to alter the existing distribution of land and productive assets. The only change that has come about in this context is that the power has shifted substantially from upper caste landowners to land owning backward castes. SCs continue to be victims of violence related to agrarian relations from the new set of backward class landowners as well.

In this pessimistic scenario, it is hardly likely that SCs would have received substantial benefits from the limited enforcement of laws and programmes related to land. But SCs suffered from additional disabilities, due to which the programmes themselves had very limited benefits to offer. In respect of the very first measure, i.e. the abolition of intermediary tenures, which was relatively the better implemented of all five programmes, SCs had virtually nothing to gain. Due to restrictions imposed on them by caste based social order, ownership of land was prohibited to SCs. Acute poverty in any case precluded possibility of building up independent productive assets. Therefore, there were hardly mentionable number of tenant cultivators in the uppermost rung of Zamindari system and its variants in different States who could benefit from abolition of intermediary tenures and gain ownership rights in respect of the land they were cultivating. Most of the SCs who were engaged in cultivation were oral and insecure tenants at the will of landowners with no proof or record of their cultivating status. For this reason, they also could not benefit much from laws on tenancy reforms which conferred ownership

rights on the tillers of land. They were also weak and vulnerable and assertion of rights as tenant or even mobilizing evidence to this effect would have resulted in instant eviction besides physical assault and entanglement in false cases. This is the situation which obtains even to this day in most States.

The revenue machinery would not record their cultivating status in land records in respect of specific plots they have been cultivating because of its nexus with the landowners and in many states even overt political directives against it. In the absence of this proof they continue to cultivate land of others on exploitative terms without getting any benefit of law. West Bengal is the only State which brought tenants/share croppers (Bargadars) on record and thereby giving them security from eviction as well as share in crop as per their legal entitlement. (But West Bengal has not gone beyond this to confer ownership rights on such tenants). SC Bargadars, whatever their number, would have therefore gained from this programme. Some SC tenants may have also benefited in a few other States where configuration of local circumstances helped them in this process.

The ceiling on land holdings offered the only realistic opportunity to a large number of SC landless persons to own some land and thus acquire dignity and status. This dream also remained substantially unrealized because of the poor implementation of ceiling laws for reasons mentioned above. However, from the limited surplus land that could be acquired, SCs did get some land. As the statement extracted in the Section on Development indicates, SCs got about 35% of the area distributed due to the priority accorded to SCs and STs in the distribution of such land as a matter of policy. The impact of this distribution on the status of SCs is, however, not large considering the magnitude of landlessness among them and the per capita area distributed to them being slightly less than an acre. SCs have also been distributed land which belonged to the Government or Panchayat or was donated under Bhoodan campaign in view of the priority assigned to them, along with STs, in all land distribution programmes. But the benefit which could accrue from all this redistribution has also been snatched away from a number of SC beneficiaries on account of non-delivery of possession over allotted land, forcible dispossession, litigation and alternative claims made by erstwhile landowners and other vested interests, etc. SCs affected by these problems have been going from pillar to post for resolution of these problems. But, as the open hearings on dalit issues tell us, the problems by and large continue to linger.

SCs have also lost out in land reforms in other ways. Some of them have tried to reclaim vacant/waste lands belonging to Government Panchayat or other public bodies and have been cultivating them for a long time. Under the existing instructions/rules of State Governments, such cultivating possessions are usually regularized and Pattas issued to them unless the land is reserved for a public purpose or is under common use. But due to apathy, negligence and even bias of revenue machinery, they have failed to get rights in respect of those lands. Sometimes the lands they have been cultivating are allotted to others while, at other times, powerful landowners manipulate to prevent such allotment. Thus they face ever present threat of eviction. There have been cases in U.P.

where SCs even after being given Asami Pattas were evicted from the lands they were cultivating and their Pattas were withdrawn as was revealed in an open hearing.

SCs also face restrictions on use of common lands imposed by caste Hindu/bigger landowners in respect of grazing of cattle, collection of fodder, right of way and easement and use of water sources, etc. This creates immense difficulties for them in livestock farming which is virtually the only economic activity they rely on in the absence of access to land and capital. These restrictions are not supported by any law or regulation but are simply expressions of social power of landowners and extreme vulnerability of SCs. Little support is available from State agencies against imposition of such unjust restrictions. In the village, for all practical purposes, the law is laid down by the powerful and land ownership is the source of that power.

SCs face problems not merely with regard to cultivable land but also in respect of a secure habitat as well. Many SCs do not have ownership of land on which their house, in most cases a mud hut with thatch roof, is located. Usually such residential premises are located on the land of landowners for whom they work as agricultural labourers. This makes their position very vulnerable as they can be evicted from the house if they do not comply with the demands of the land owner. Thus a bondage system comes to operate. There are laws in many States under which ownership of a land on which residential house of a landless person is located, even if it is private land, can be conferred on the occupant of the house. But these laws have not been regularly implemented while the population of SCs and therefore the number of residential units are increasing. Here also, the revenue functionaries whose duty it is to process such cases, as and when they observe them during field visits or when they are approached by occupants of houses, share the blame. The nexus with the landowner is the most obvious explanation for inaction in this regard.

Also, many such residential units are located on Government/public land as well. Ownership of land in respect of even such units has not been regularized by Government. The occupants in such cases are equally vulnerable as revenue functionaries can exploit them with the threat of eviction. In addition, there would be quite a few SCs who may not have even an insecure thatched hut to themselves. They may be sharing their residence with others or may be spending the night in a public building. The shortage of housing space for SCs is so acute in many areas that the practice of joint family of father and married sons sharing the same single room thatched hut, sometimes along with their livestock as well, is not uncommon in eastern India. There are programmes which provide for allotment of a minimum of land area for construction of a house to a landless/ resourceless poor person. But like other programmes, it is the revenue functionary who knows these provisions and can implement them if he has the will and interest to do so. The poor SC beneficiary may even be unaware of legal provisions/ administrative instructions to generate necessary pressure on him.

The consolidation programme, in any case, did not hold out much promise for SCs because they did not have much land even in fragmented patches in the first place. But the poor in general, and weaker sections in particular, have strongly resisted land

consolidation programmes because of their tilt in favour of bigger landowners who get a better plot in exchange of their fragmented ones and usually at the cost of weaker party. In fact, in Bihar, consolidation programme has been consciously and officially abandoned because of many such problems. Even in other northern States, there is little enthusiasm now for this programme though in the early years of Planned Development, these States (U.P. and Punjab) were the pioneers.

The programme for updating of land records has been seriously neglected and there is little chance that it would get the priority and importance it deserves, largely because of lack of resources to carry it out but also because land administration has receded in priority in the development agenda of the Government. Attention is getting diverted to computerization of land records which in the absence of updated land records does not provide any benefit. While all classes having rights and interests in land suffer in the absence of updated land records, SCs and other rural poor cultivators are major losers because they do not enjoy security in access to land which in turn affects adversely their access to institutional finance. They are, therefore, at the mercy of landowners as oral tenants with highly adverse terms of contract. Thus legal provisions aimed at loosening the shackles of oppressive agrarian structure and enabling cultivators of land to enjoy fruits of their hard labour remain out of their reach.

This, then, is the backdrop in which violence against SCs occurs when some of their members show any signs of seeking justice against unfair treatment. The agenda for reducing incidence of violence on this account would therefore have to concentrate on the following major tasks:

1. Delivery of possession to those who have already been allotted land
2. Removing encroachment of non-SCs from the lands owned by SCs
3. Regularizing their cultivating/possession of Government/Public lands by conferring ownership rights
4. Expeditious allotment of vacant surplus ceiling land, Government land, Bhoodan land and other public lands,
5. Focused efforts for getting ceiling land locked in litigation cleared from courts at the earliest, followed up with its distribution among SCs/STs and making ceiling laws more stringent so as to have more land available for distribution,
6. Conferment of ownership rights on SC occupants in respect of houses located on the land of landowners and public lands; Allotment of minimum land for landless/ houseless SCs for construction of a house,
7. Recording the status of tenancy/share cropping in the land records,
8. Eliminating restrictions in use of common lands and other common property resources imposed by dominant sections of the village, etc.
9. Making SC owned land inalienable
10. Giving the benefit of irrigation and other inputs under poverty alleviation programmes to those SCs not yet covered by them to improve productivity of their land.

2. Debt Relief Legislation

The status of implementation of debt relief legislation is no better. In fact, it has been completely ignored as a component of the strategy of poverty alleviation. As the National Commission for SCs/STs has pointed out, the explanation perhaps lies in the change of focus of Government policy towards extension of credit to rural areas and credit schemes for weaker sections through institutional sources such as DRI (Differential Rate of Interest) and implementation of poverty alleviation programmes[49]. However, neither the legislation nor the credit schemes touch the root cause for which most of the borrowings take place by SCs and other rural poor. The All India Rural Credit Survey conducted in 1951-52 mentioned that 93% of borrowings of even cultivators came from non-institutional sources, like moneylenders, traders, commission agents, etc. Though the situation has changed since then and for production purposes substantial lending is now available through institutional agencies, mainly Commercial Banks and Cooperatives, a sizeable chunk of lending, even for rural cultivators, still comes from non-institutional agencies. But the rural non-cultivators, in which category Scheduled Castes would largely fall, overwhelmingly rely on non-institutional sources for their credit needs, since the institutional agencies do not lend for non-productive purposes. Even for production purposes, the percentage of lending to Scheduled Castes from institutional sources like commercial banks and cooperatives is much lower than their share of population. Even this share is now declining under pressure of economic reforms as mentioned in the Section on Development in this paper. Thus, the members of the Scheduled Castes are compelled to borrow from either the professional moneylender or the landowner-employer on whose farm they work. Usually, the landowner performs the double role of employer as well as moneylender. Institutional agencies even otherwise consider the poor in general and Scheduled Castes and Scheduled Tribes in particular, as high risk borrowers who cannot provide any collateral security. The recourse by SCs to moneylenders for credit at exorbitant rates of interest therefore is the only option. It is widely known that a large number of atrocities are related to the money transactions of SCs as borrower because of which they get entangled in the vicious circle of debt bondage.

Immediately after the enactment of debt relief legislations, a drive was launched to implement them all over the country. That was the period of emergency. However, the debt relief laws have remained in cold storage thereafter. While the institution of money lending continues without check and most such moneylenders are unlicensed, the provisions of law regulating these transactions have not been enforced. Thus the beneficial provisions of law, which could at least reduce debt burden of Scheduled Castes have not been made use of to reduce the incidents of atrocities against Scheduled Castes related to indebtedness. It is imperative, therefore, that the debt relief laws are rigorously enforced particularly in areas where atrocities have occurred on account of money transactions arising out of such debt[50]. It is also necessary that various non-governmental organizations and activists working for SCs should take note of provisions of this

[49]National Commission for SCs/STs, Special Report on atrocities, op. cit., p. 19.

[50]National Commission for SCs/STs, Special Report on Atrocities, op, cit., p. 19.

legislation and follow it up by pressurising the Government for implementing them. They should also seek legal aid for fighting litigation on this account under the available legal aid schemes[51]. Ministry of Social Justice and Empowerment should also review the existing schemes of legal aid with a view to providing guidelines on how members of scheduled caste trapped in litigation or suffering violence can avail of legal aid to seek the benefit of various laws. Ministry of Rural Development should carry out a detailed review of debt relief legislations enacted by various States for framing National guidelines[52] for a model legislation and to identify areas of policy intervention in respect of this problem.

It is, however, conceded that the problem of indebtedness is not merely one of enforcement of law. If alternative sources of credit for consumption purposes are not available, the victims of indebtedness would not come forward to seek relief under the law because in doing so the available sources of credit, however exploitative, would get dried up. Institutional agencies have never shown any interest in extending consumption credit. Even the Cooperatives have fought shy of doing so. However, in the recent past, a new movement of self-help groups, of women particularly, has sprung up. These groups are organized around thrift and credit activity, to start with. The groups assume the responsibility of both lending as well as realization of the loan advanced to its members and also decide the rate of interest to be charged for the money lent. These groups use their saving as seed money for getting additional capital from banks for lending purposes. Considering the success rate of repayment of loan achieved in this arrangement and also the fact that this process does not involve any administrative cost to the lending agencies, a number of commercial banks have shown great deal of interest in such self-help groups and are willing to advance money to the groups for augmenting their corpus for lending. The interventions by Government should, therefore, focus on organizing self-help groups of women, and also separately for men if necessary in SC concentration areas for taking up thrift and credit activity and linking them up with local commercial lending institutions. Existing programmes which provide assistance for organizing such groups could be availed of. In addition, Grain Bank Scheme initiated for Scheduled Tribes by Ministry of Social Justice and Empowerment (now Tribal Affairs) should be taken up in villages of SC concentration so that one major reason of accessing consumption credit, i.e. subsistence during lean season, is taken care of. This should be supplemented by Annapurna Scheme of the Ministry of Rural Development applicable to senior citizens and not covered by National Social assistance programme so that the need for borrowing for subsistence is eliminated.

Struggle for Justice: Facilitating Mechanism — The Legal Aid

In the existing strategy to combat atrocities committed by caste Hindus against the Scheduled Castes, the major instrument is action against persons responsible for inflicting this violence under various laws, both criminal as well as social, enacted for their benefit, while the contributory factors in giving rise to atrocities are attended to through

[51]National Commission for SCs/STs, Special Report on Atrocities, op. cit., pp 19.
[52]National Commission for SCs/STs, Special Report on Atrocities, op. cit., p. 20.

development measures to support their bargaining position. But Scheduled Castes, because of their weak economic and social position, often find it difficult to seek the benefit of provisions enacted for their protection under criminal laws but even more particularly under social legislation. Ignorance of law and the remedies available, fear of reprisal from caste Hindu offenders, lack of faith in the neutrality of police and judicial system, have all combined to compel SC victims to acquiesce in the existing unjust situation and even illegal compromises. They also find that even when recourse is taken to law, the proceedings are protracted, witnesses are reluctant to testify in their favour against powerful persons, potential for manipulation is large. Also, even though victims, they lose interest because they cannot afford to forego wages for days in attending the courts[53]. The result is that legal provisions become ineffective in delivery of justice. Article 39A of the Constitution inserted in 1976, for the first time, made provision for free legal aid through suitable legislation or schemes. The Legal Services Authorities Act was passed in 1987 for constituting authorities to provide free and competent legal services to the weaker sections of the society, etc. The Act provides, inter-alia, that every Scheduled Caste or Schedule Tribe person who has to file or defend a case shall be entitled to free legal assistance. But the Act has not been brought into force. However, States have established Legal Aid Boards which give different types of legal assistance. A study made by the National Commission for Scheduled Castes and Scheduled Tribes, however, has found that no such special legal assistance was extended to SCs and STs even in one of the thousands of cases looked into by them[54]. The official approach is to leave the victim to the due process of law without the help of any lawyer. On the other hand, the accused persons have recourse to good lawyers. In cases of atrocities, where SCs are victims, the cases are conducted by public prosecutors, whose competence and performance has come in for critical mention in the relevant section of this paper. Under the existing arrangements, Legal aid is conceptually extended only if a member of SC or ST happens to be an accused. On account of this restrictive nature, SCs can not avail of legal assistance for registering complaints under Protection of Civil Rights Act, land related cases, debt relief laws, tenancy reforms, labour laws and various other matters where they are complainants[55].

It has already been brought out in this paper that the implementation of laws relating to atrocities on Scheduled Castes is characterized by apathy, indifference and even bias and hostility on the part of enforcement machinery. This has resulted in very low rates of conviction, high rate of acquittal and huge pendency. Legal aid to Scheduled Caste victims in such cases would go a long way in enhancing the accountability of the existing prosecution machinery, strengthening the presentation of case and witnesses in the court and more effective delivery of justice. Extension of criminal legal aid, both as complainant and accused in case of SCs and STs, has been recommended by a Committee on Procedural Justice to the People (1973) headed by Justice V.R. Krishna

[53]National Commission for SCs/STs - Special Report on Atrocities, op. cit., p. 38
[54]National Commission for SCs/STs, Special Report on Atrocities, op. cit., p. 38
[55]National Commission for SCs/STs, Special Report on Atrocities, op. cit., p. 38

Iyer and Dr. Madhav Menon, the then Director, National Law School of India[56]. National Commission for Scheduled Castes and Scheduled Tribes in their Special Report on atrocities have also argued that in the special situation where the SCs/STs and the bureaucracy become adversaries, assistance of voluntary agencies becomes necessary. Further, where SC victims confront powerful adversaries like landlords, moneylenders, contractors, it may be difficult to get justice unless legal aid is available through voluntary agencies. Thus criminal legal aid to SCs and STs should be available in the form of lawyers, services, witness expenses, copying fees and travel cost to police station and court. Even voluntary agencies taking up their cause through a public interest litigation should also be assisted by Legal Aid Boards[57].

This calls for a serious review of the reasons for very poor access of SCs to legal aid and taking of expeditious and strong steps to promote access to and availability of legal aid to them, wherever necessary, to facilitate the process of accrual of justice to them in the highly unequal struggle they face in their lives.

FOR POSITIONING WATCHDOG ARRANGEMENTS

The analysis of performance of social and economic legislation has shown that the support expected from these measures to control atrocities has failed to materialize. This conclusion, in fact, neatly fits into the picture that had emerged with regard to the performance in respect of criminal laws as there is an underlying connection between the two. The reasons why atrocities have not shown any credible reduction and SCs have not felt more confident about protection against physical assaults are not merely to be located in the performance of criminal justice administration but, more importantly, in the socio economic conditions which generate circumstances in which violence occurs and against which no significant improvement has been registered.

This was not entirely expected. It was foreseen by the framers of the Constitution itself that an effective mechanism would have to be created to watch whether the intended benefits of various laws and programmes are reaching SCs (also STs) since they would not have the strength to avail of them, given their weak and vulnerable position. The Constitution itself, therefore, created the first watchdog institution for safeguarding the rights of SCs/STs in the institution of the Special Officer. This was later converted into a National Commission. Subsequently, other watchdog institutions were created, each for looking into specific area of vulnerability, starting from National Human Rights Commission, followed up by National Commission for Women and National Commission for Safai Karamcharis. It is now to be seen whether these watchdog bodies have lived upto the expectations of the law makers as well as the aggrieved vulnerable groups (SCs in this case). If these institutions are able to deliver justice to SCs, which Government machinery in their direct interface could not do, their existence would generate hope that the system may at least respond to pressures exerted from outside. The capacity and effectiveness of these Commissions would, therefore, be examined,

[56]National Commission for SCs/STs, Special Report on Atrocities, op. cit., pp 38-39

[57]National Commission for SCs/STs, Special Report on Atrocities, op. cit., pp 39-40

starting with the National Commission for SCs and STs, which is entirely committed to look after the interests of these groups, is the oldest of all Commissions and has a constitutional status.

1. National Commission for SCs and STs

To ensure that provisions made for SCs and STs in the Constitution, laws and programmes are implemented sincerely, the Constitution provided for appointment of a Special Officer under Article 338 to investigate matters relating to the safeguards and report to the President. The office of Special Officer was subsequently designated as Commissioner for SCs and STs and came into being on 18.11.1950. Field units were also set up under it. In 1967, field offices were transferred to the newly created organization known as Director General, Backward Classes Welfare. In 1978, attempt was made to amend **Article 338** so as to set up a multi-member Commission.

As this could not materialize, a multi-member Commission was set up under an executive order in July, 1978. This was known as Commission for SCs and STs. This was renamed as National Commission for SCs and STs in 1987. The field units of erstwhile Commissioner for SCs and STs which had been transferred to Director-General, Backward Classes Welfare were placed under the control of multi-member Commission. In 1990, Article 338 was amended vide the Constitution (Sixty-fifth) Amendment Act, 1990 and the first National Commission for SCs and STs was set up in March 1992. The earlier offices were closed down. During 42 years of the existence of Commissioner for SCs and STs, 30 reports containing 5200 recommendations were submitted. During 14 years of multi-member Commission, 8 reports were submitted containing 1100 recommendations. It has also submitted a report on 'Atrocities on SCs and STs - Causes and Remedies' to the President in April 1990.

Present Commission is the 4th since it was given a constitutional status. The Commission was given enhanced powers and responsibility under Article 338 of the Constitution and it has been empowered to regulate its own procedure. It has also been given power of a Civil Court to ensure presence of respondents and protection of records. The Commission consists of a Chairperson, Vice-Chairperson and five members and is assisted by a Secretariat headed by a Secretary. It has 16 State Offices located in capital cities of various States.

The Commission investigates and monitors the implementation of safeguards provided to the SCs under various arrangements and in doing so covers a wide gamut of activities, which include implementation of laws, provisions relating to compensatory discrimination such as reservations in recruitment, promotion and admission to educational institutions, economic development including educational development and social integration of the community with the rest of the society.

The Commission is also required to submit a report every year to the President which is laid on the table of the Houses of Parliament after incorporating the action taken report. Besides submitting annual reports, some special reports are also submitted by the Commission covering specific problem areas affecting these communities. Among the

special reports submitted by the Commission, one related to SCs and STs (Prevention of Atrocities) Act, 1989 and Rules there under in the State of Uttar Pradesh and Madhya Pradesh. This Report was submitted along with the fifth Annual Report in February 2001.

National Commission for Scheduled Castes and Scheduled Tribes has recently submitted its sixth Report pertaining to year 1999-2000 and 2000-2001. This report is yet to be placed before the Parliament. Previous Reports have already been laid on the floor of the Houses of Parliament.

Recently, as a result of bifurcation of the Ministry of Social Justice and Empowerment and creation of a separate Ministry of Tribal Affairs, there is also a move to constitute a separate and exclusive Commission to look after the interests of Scheduled Tribes. Already, the Government has created a separate Corporation for providing financial assistance to identified scheduled tribe beneficiaries. This development would now leave the existing Commission with exclusive responsibility to look after the interests of Scheduled Castes.

The Commission sometime back organized a Workshop, addressed by the Prime Minister, for Members of Parliament belonging to SCs and STs in December 1999 for improving the effectiveness of laws and programmes for these communities, which was a welcome initiative. Its recommendations need to be followed up. Hon'ble President had taken initiative and constituted a Committee of Governors to suggest measures for improving effectiveness of various programmes for socio-economic development of SCs/ STs. The Report of the Committee has also been presented to the Government. It is not known what its recommendations are as the information could not be accessed. It would be of interest to know if any radical measures have been suggested to create confidence among SCs and STs in the capacity of the 'System' to deliver justice to them. This Commission had also provided inputs to the National Commission for review of the Constitution. But it is not known if any of its suggestions were accepted in its report. The Commission also held a National Seminar with Collectors of certain selected Districts in August, 2001 to understand the difficulties at the implementation level. The Commission should formulate its views on the possible ways of improving delivery of programmes for SCs and incorporate them in the main report. The Commission has also launched a quarterly newsletter to focus attention on various issues.

The Commission suffers from a number of problems. One of them relates to the organization itself. The Investigating Wing of the Commission relating to investigation of cases had been non-functional as the post of Director-General incharge of that cell had been lying vacant for nearly ten years. In the absence of adequate supporting facilities, there was unwillingness on the part of eligible officers to occupy this position. It has been filled up very recently. However, the status of the post continues to be low and is a handicap in dealing with senior positions in police hierarchy of States. Further, the post does not carry any supporting staff which would make the incumbent virtually nonfunctional. The Commission also does not have any Law Wing and therefore is unable to examine in-house various legal matters which become particularly important in criminal cases and reservation matters. The Commission also does not have adequate

computer capacity for processing of large number of complaints that it receives every year.

The Commission also faces acute shortage of funds. It is supported by a non-plan budget which almost entirely consumed by establishment expenditure and leaves little for research, consultation and investigative activities. Even its Research Wing remains virtually unutilized in absence of fund for touring and collection of data and information. It looks up to the Ministry for allocation even for organizing seminars and meetings outside Delhi.

The Commission has also shown excessive preoccupation with reservation related complaints. This may be on account of the pressure exerted by the complainants who belong to the educated and vocal sections of the community and are able to pursue the matter. This has led to relative neglect of more important problems of poorer Scheduled Castes in States. The Commission is conscious of this problem.

But the Commission feels handicapped due to ineffectiveness in getting its recommendations implemented. While the Commission has given large number of recommendations in all its reports covering all three components of the strategy, i.e. protection, compensatory discrimination and development, there is no picture available on how many of these recommendations have been accepted or are being acted upon. But the Report itself gives the impression that Commission's recommendations do not generate the required pressure on the State and the Central governments and their agencies to act upon them. This is because the reports of the Commission are laid on the table of the Houses of Parliament with considerable delay - on an average of three years. The delay is on account of collecting comments from different government agencies Centre and State on the recommendation. As a result the reports are not accessible to MPs and other public institutions. The result is that by the time the report is laid in the Parliament it is already dated and worse still, there is no discussion on the report. Neither SC/ST MPs show any interest in calling for a discussion on the report nor the Minister, Social Justice and Empowerment presses for such a discussion. Thus the opportunity for getting valuable views of MPs is lost. That is why the Commission made a recommendation in the 4th report and reiterated in para 3 of 33 of the 5th report that its reports should be placed before each House of Parliament within 3 months of its submission to the President. Action taken report should be placed within six months.

In the matter of atrocities specifically, the Commission feels particularly powerless when on the basis of reports received from State agencies, responsibility is fixed for omission and commission on specific Government personnel but its directions that necessary disciplinary action may be initiated against the officials found guilty are stone walled. This is also frustrating for the victims because even after vindicating their case before a constitutional body, justice eludes them. It has therefore been suggested in its sixth report that adequate powers may be vested in the Commission to ensure that its recommendations are implemented. It would therefore not be wrong to say that even this mechanism created by the Constitution to safeguard the rights of SCs does not serve the purpose where it matters most.

The Commission should therefore prepare a detailed analysis on its various recommendations and their status of acceptance as a special report which should be placed before the Parliament and the Ministry should seek a discussion on it. Mechanism also needs to be developed by the Government to remove the feeling that recommendations of the Commission carry no value and are a mere academic exercise. This can be done without any extra powers but with some little effort, provided there is necessary political will to do so. Government (Minister incharge of the Nodal Ministry for SCs) can bring the Commission and the agency with which a specific recommendation is concerned together for detailed discussion and ensure that differences are ironed out and a consensus is reached. Routine bureaucratic comments on the recommendation as Action Taken Report should not become the manner of their disposal. The fact that such initiatives are not taken to ensure effectiveness of existing institutional arrangements to safeguard rights of SCs is a clear indication of the overall apathy of the system towards them.

The Commission should, however, continue to explore ways in which it can generate necessary moral pressure on the issues it has highlighted and recommendations it has made in its reports. As a first step, it should make all its reports easily accessible to public by making them priced publications which can be bought from bookshops all over the country. It should keep in touch with legislators not only of the Central Parliament but also of State Legislature besides interacting with major political parties, media and NGOs to place the problems of Scheduled Castes before the nation.

2. National Commission for Safai Karamcharis

National Commission for Safai Karamcharis was constituted in August 1994, through an Act of Parliament, namely National Commission for Safai Karamcharis Act, 1993 for a period of three years initially. It is not a permanent Commission but its tenure has been extended from time to time. It consists of a Chairperson, a Vice-Chairperson and five members all nominated by the Central Government. At least one member is a woman. The Commission is serviced by a Secretariat headed by a Secretary. Its function is to oversee the laws and programmes relating to Safai Karamcharis and particularly regarding abolition of manual scavenging and for improvement of conditions of those engaged in this activity. The Central Government is required to consult the National Commission on all policy matters affecting Safai Karamcharis. It can investigate into specific grievances of Safai Karamcharis and take suo moto action relating to their problems. The Commission is empowered to call for information with regard to Safai Karamcharis from the concerned governments or authorities. The Commission is required to prepare an annual report which is laid on the table of both Houses of Parliament. Where the matter in the report relates to State Government, a copy of such report is to be laid by the Governor of the concerned State before the Legislature of the State. The Commission has so far submitted four reports with a large number of recommendations.

Government of India has placed the first two reports on the table of Parliament. The comments of the Commission on the functioning of programmes relating to Safai Karamcharis have already been referred to. The Commission has however complained

about its status, lack of permanency and autonomy, non-conferment of powers on the lines of other Commissions and inadequate secretarial support and resources due to which it finds itself handicapped in discharging its responsibility. It has also a grievance that its jurisdiction has been confined to Public Establishments for the purpose of looking into complaints of scavengers and Private Establishments/Cooperatives/Establishments have been excluded. It has also made recommendations to amend the Act to remove this limitation[58]. It has also been complaining that power of a Civil Court is not vested in the Commission due to which difficulties crop up, such as obtaining information, production of documents, receiving evidence on affidavits and enforcing attendance of any person and examining him on oath, requisitioning public record in response to notices issued by it. Their added grievances is that since all other National Commissions have been vested with these powers, the Safai Karamcharis Commission is being discriminated against because it is dealing with a highly marginalized community[59]. It is also not known what action has been taken on various recommendations made by this Commission. Judging from the tenor of reports already placed before the Parliament, it does not appear that the Commission has been very effective in delivering justice to the scavengers.

3. National Human Rights Commission

There is also in existence a National Human Rights Commission constituted under the Protection of Human Rights Act, 1993, which inter alia looks into the grievances relating to violation of human rights. National Human Rights Commission consists of a Chairperson, who should have been the Chief Justice of India and four other members, one who is or has been a Judge of the Supreme Court, one who is or has been the Chief Judge of a High Court and two knowledgeable persons in matters of human rights. Apart from this, Chairpersons of the National Commission of Minorities, the National Commission for SCs and STs and National Commission for Women are ex-officio members. Chief Executive Officer of National Human Rights Commission is the Secretary-General. The provisions regarding appointment etc. have ensured autonomy, independence and impartiality of the organization. The Commission is empowered to regulate its own procedure. The Commission, apart from enquiring into the complaints received by it can also inquire suo moto into violations of Human Rights or abetment thereof. It also has powers to visit a jail or any other institution. The Act provides for constitution of State Human Rights Commission and setting up of Human Rights Courts for speedy trial of offences arising out of human rights violation. The Commission has powers to issue directions for relief.

As various atrocities, discriminations and disabilities suffered by Scheduled Castes are also violations of human rights, National Human Rights Commission receives a large number of complaints from victims, as well as organizations and activists supporting them for redressal of grievances. These complaints are investigated largely through the State Governments and, in a few cases, directly by the Investigating Wing of the

[58]Second Report of the National Commission for Safai Karamcharis (1995-96) - Chapters II and IV.
[59]Report 1995-96.

Commission. However, in view of the limited capacity available with the National Human Rights Commission to look into cases directly and increasing volume of complaints received by it, it is not able to provide the desired degree of satisfaction to the complainants. Since most of the complaints received by the Commission in relation to Scheduled Castes are against State agencies, the lack of sufficient personnel and infrastructure for directly investigating into these complaints stands in the way of rendering justice to the Scheduled Castes. National Human Rights Commission, however, works in close cooperation with important Civil and Human Rights Organizations and activists to get feedback about the ground level conditions. It has also been pursuing with States that they should set up their own Human Rights Commissions. Eleven States have set up such a Commission, though Himachal Pradesh State has decided to abolish it recently. It also takes help of experts and retired officials in discharge of its responsibilities.

But as the ambit of its jurisdiction is vast and the facets of human rights violations are varied and complex, the Commission's attention to problems of SCs would only be limited. The Commission has felt deeply concerned with problems of SCs and recognized caste based discrimination as an existing reality in the Golden Jubilee Year of the Republic (Annual Report 1999-2000). In the World Conference against Racism, Racial Discrimination and Xenophobia and Related Intolerance, it took a bold stand different from the Government of India and expressed the view that exchange of views on Human Rights matters, whether at National, Regional or International level, can contribute constructively to promotion of such rights. It has taken many initiatives both in the domain of civil liberties as well as socio-economic spheres which have potential for redressal of complaints of SCs and reducing the level of atrocities committed on them. It has been intensively monitoring the implementation of Bonded Labour System (Abolition) Act, 1976, Child Labour (Protection and Regulation) Act, 1986, The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act,1993, on a regular basis besides intervening in a number of issues affecting them such as the Denotified Tribes, Devdasi system, trafficking in human beings, etc. Its Annual Reports mention these interventions along with specific cases of complaints from SCs it has handled.

In the matter of atrocities, the complaints are primarily against acts of omission and commission of the police machinery and, in some cases, also against civil personnel. SCs, therefore, repose a lot of faith in National Human Rights Commission because of its composition and stature of its members to render justice to them. Mechanisms need to be put in place which can sustain this faith. National Human Rights Commission's efforts to inculcate greater sense of accountability in State organizations through monitoring and directives, though welcome, are insufficient in achieving this objective. The Commission has taken up systemic reforms in police organisation, prison system and criminal justice administration, which if accepted, would go a long way in establishing accountability of State agencies. Until that happens, mobilizing alternative mechanisms of enquiry [other than the State police machinery against which complaints have been filed], would be very crucial to ascertain the truth and fix responsibility for wrong done.

4. National Commission for Women

National Commission for Women was constituted in January 1992 in pursuance of the National Commission for Women Act, 1990. The Commission consists of a Chairperson, five Members and a Member Secretary all nominated by the Central Government. Of the five members one should be from SC and one from ST. The Commission is entrusted with the responsibility of investigating and examining all matters relating to safeguards provided for women and to recommend measures for their effective implementation, review the provisions in the Constitution and other laws affecting women and recommend amendments to meet any lacunae, inadequacies etc. It can look into complaints and take suo moto notice of matters relating to women's rights, inspect jails or remand houses where women are kept under custody. The Commission has the powers of a civil court while investigating cases. It can summon any person and examine him/her on oath, requisition documents and receive evidence. Section 16 of the Act makes it obligatory for Central Government to consult the Commission on all major policy matters affecting women.

Like all statutory Commissions it has to submit a report annually which is placed before the Parliament after incorporating the Action Taken Report. The Commission looks into the problems of women irrespective of caste or religion. Accordingly, the complaints regarding Scheduled Caste women are also entertained by them. But considering the wide canvas of their jurisdiction, which covers all women, the scheduled caste women and their problems would not command very substantial attention from them, more so when there is a separate Commission for SCs and STs. Nonetheless, the Annual Report of the Commission specifically incorporates activities of the Commission benefiting the Scheduled Castes and Scheduled Tribes. The Annual Report (1996-97), for example, contains recommendations of an Expert group it had set up for improving the socio-economic status of SC women. Based on this situational report, some general recommendations had been made[60]. These include:

1. Educational/Health facilities in areas of high concentration should be provided
2. Existing laws regarding crime against women should be made more stringent
3. Victim of rape should be provided with a permanent job
4. Legal awareness programme should be taken up
5. Land and inputs should be provided to women
6. Education of SC girls should be made compulsory upto middle level
7. There should be job reservation for SC women
8. Integrated package of development should be provided for scavenger women
9. A comprehensive well-knit programme of rehabilitation should be launched for Devdasis
10. Separate chapter should be devoted to SC women in the reports of the Commission for SCs and STs

[60]Annual Report, National Commission for Women (1996-97), pp 73-74.

11. Under Special Component Plan separate provision should be made for SC women
12. Proper system of monitoring should be separately developed for SC women.

It is not known how many of its recommendations have been accepted and what is the status in regard to those which have been accepted. The Commission has complained like the National Commission for SCs and STs that its reports are placed in the Parliament with great delay/with the result that inputs and observations of MPs are not available to them in time. The Commission complains of shortage of staff and subject matter specialists for discharging its duties. The Commission also has the same feeling about non-implementation of its recommendations as other Commissions do, though it has not been monitoring the follow up action as National Human Rights Commission has been doing. It feels the need for taking up the regular monitoring of action on the recommendations and for this purpose the proposal for bringing out a consolidated booklet on the recommendations made in various reports is also being considered.

Both National Human Rights Commission and National Commission for Women have felt handicapped due to limited capacity for dealing with the huge tasks assigned to them and the load of complaints received by them, particularly when they don't have field set up of their own. However, State Governments, have also set up their own Commissions for Human Rights, SCs and STs and Women. National Human Rights Commission has been pursuing the matter and 11 State Commissions for Human Rights have been set up. But UP and Bihar have not yet done so even though nearly 50% of complaints received by National Human Rights Commission for human rights violations are from UP alone. Most of the States have set up State Women Commissions but there are very few States which have Commissions for SCs/STs. The performance of these Commissions is not being referred to here. In respect of State Human Rights Commissions, National Human Rights Commission has recommended that a clear functional relationship be established between National Human Rights Commission and State HRCs through an amendment to the Protection of Human Rights Act, 1993 to achieve greater efficiency and accountability of Human Rights violations which the Government has not accepted yet. In any case, the potential and effectiveness of these Commissions in reducing the workload of National Commissions seem limited since the State Commissions suffer from inadequate administrative and financial resources even more than the National Commission does and may not also be bringing out their Annual Reports regularly to be placed before the State legislatures. They would therefore generate much less pressure on their State Governments, though perhaps a larger number of complaints may be getting attended to. In respect of atrocities on SCs, in any case, where omissions and commissions of police machinery are the focus of allegations, the political and bureaucratic attitude would be more responsive if the recommendations emanate from the National Human Rights Commission than from the State Commission This further underlines the need for strengthening the capacity of National Human Rights Commission to deliver justice to SCs.

EFFECTIVENESS OF WATCHDOG INSTITUTIONS

In the light of the above, it would be evident that all four watchdog institutions feel that they are handicapped in relation to the tasks assigned to them and the expectations which their client groups have from them in delivering rights and entitlements, though the intensity of feeling and its articulation is not the same in all Commissions. Overall, the grievance, whatever its degree, is directed against the State in respect of all of them. National Commission for SCs/STs feels that there is an urgent need to look into the issue and empower the Commission by giving more powers under the Constitution itself to ensure the implementation of its recommendations[61]. National Commission for Women also has complaints about its recommendations not being accepted though it has not expressed them as forthrightly as the National Commission for SCs and STs or pursued them as determinedly as National Human Rights Commission has done. It has, however, not sought any amendment to the Act for any substantial augmentation of powers. National Human Rights Commission has made several recommendations and has also been pursuing them with Government. These will be considered in some detail because they virtually concern the National Human Rights Commission's capability to deliver justice to SCs in respect of atrocities committed against them.

The prescribed drill on the reports of the statutory Commissions is that the nodal Ministry of the Commission circulates the recommendations of the Report to the concerned agencies of the Government whom they concern. The comments furnished by them are included in the Action Taken Report, which is placed before the Parliament indicating whether the recommendation is accepted or not accepted and, if accepted, what action is being taken. If no final decision has been taken on a particular recommendation, the comment inserted is that it is under consideration. With these comments on action taken, the report is placed before the Parliament. This explains why there is time lag between submission of the reports by the Commissions and their placement before the Parliament since quite sometime is taken in collecting comments of concerned government agencies. The time lag in case of National Commission for SCs and STs is as long as three years.

Usually, in respect of recommendations which are radically divergent from the existing processes/practices/approaches or decisions on the subject, the bureaucratic tendency is to deflect or reject it and some grounds are mentioned for doing so. Commissions, however, expect that during the discussion on the report, some MPs may raise the question of non-acceptance of important recommendations which the Minister concerned may have to answer and, if there is widespread support for the issue, non-acceptance may cause embarrassment. The matter may even be picked up by the Media or NGOs/public spirited citizens/pressure groups which may also build up public opinion for its acceptance. But the reality is that reports do not come up for discussion at all as the experience of National Commission for SCs and STs in respect of last few reports placed before the Parliament indicates. This is partly because by the time reports are submitted with ATRs they are dated and at times lose their contextual relevance. No

[61]Sixth Report, op. cit.

separate discussions are arranged on these reports. Reference to these reports also does not come up during discussions on the budgetary grants of the nodal Ministry as due to shortage of time and low priority, the budget is passed after guillotining. The discussion on the Ministries is not taken up. NCW would also be facing similar problem. It is not known whether National Human Rights Commission has fared better in this respect. Information is not available about specific recommendations made by different Commissions, which have not been accepted by the Government and the reasons assigned for such non-acceptance. While Government may have genuine difficulty in accepting some recommendations in view of their wider ramifications and other valid reasons, non-acceptance of recommendations on a large scale is disheartening and even frustrating to the Commission because its efforts seem wasted.

The Commissions, apart from dealing with larger issues, also deal with specific complaints of individuals and after consideration make their observations and directions on them which may or may not form part of their recommendations in the report submitted by them. In such cases, the complainant/complainants may feel cheated if the verdict given by the Commission is not honoured by Government agencies. The issue of non-acceptance of recommendations, however, is a crucial one and needs to be dealt with seriously in the larger interest of the vitality of these institutions and their credibility with their client group. It is, therefore, suggested, as has been done in the specific context of the National Commission for SCs and STs, that in respect of recommendations not being accepted, the desired approach should be for the concerned Minister [dealing with the recommendation] or the State Governments, as the case may be, to have a free and frank discussion with the Chairman of the Commission so that area of maximum consensus is reached. Such a discussion should be facilitated/arranged by the nodal Ministry.

In the case of atrocities on SCs, most of the complaints are directed against the conduct of police personnel and security agencies. Effective redressal of these grievances would require systemic reforms besides interventions in specific cases to make the guilty officials accountable. Larger reforms are also necessary to obtain desired cooperation from State agencies. The absence of such cooperation affects the credibility of the Commission and would have the effect of emboldening the guilty officials into continuing with their offensive behaviour/action and others into believing that they can also get away with it. National Human Rights Commission, because of its focus, capacity and stature of its members has been primarily handling such complaints though National Commission for SCs and STs and National Commission for Women also look into some of them. In the course of its Annual Reports, National Human Rights Commission has made the following major recommendations to reduce Human Rights violations and establish accountability of personnel involved in them, which, if accepted, would also strengthen National Human Rights Commission in dealing with cases of atrocities against SCs.

A. SYSTEMIC REFORMS

1. Custodial Violence

The Commission suggested specific substantive changes to Indian Laws in its 1995-96 Annual Report in order to help deter occurrence of custodial violence. It endorsed the recommendations made by Indian Law Commission (ILC) in its 113th Report (1985) that the Indian Evidence Act 1872 be amended to introduce rebuttable presumption against the police when persons in police custody sustain injury. The Commission endorsed the ILC recommendation that the Code of Criminal Procedure be amended to obviate the necessity of governmental sanction for the prosecution of a Police Officer where a prima facie case has been established through enquiry. The Commission further endorsed the recommendation of National Police Commission made in its 1979 report that there should be a mandated enquiry by a Sessions Judge in each case of custodial death, rape or grievous hurt[62].

2. Police Reforms

In order to insulate the police from interference or improper pressure from political and other extraneous sources, National Human Rights Commission made recommendation in its 1994-95 Annual Report for adoption of special remedial measures set forth in the 2nd Report of the Police Reforms Commission in 1979. It reissued these recommendations in the Annual Report of 1995-96, which has specifically called for statutory tenure of Chiefs of Police in the States so as to remove the potential of political pressure affecting the functioning of the office and for a statutory State Security Commission in each State to act as a Superintending body for monitoring police conduct[63].

3. Prison Reforms

The Commission recommended creation of a high level committee in each State to review the cases of prisoners and ensure that none was detained unlawfully as well as improvement of the conditions of police lock-ups and sub-jails in 1994-95. The Commission recommended preparation of a new All India Jail Manual and also deemed it of critical importance that the antiquated Indian Prison Act 1894 be revised in 1993-1994. National Human Rights Commission also prepared a draft model Prison Bill to replace the present Indian Prison Act 1894 and this has been circulated to the States to elicit their views in 1997-98. The Commission is pursuing with the States to draft a new Prison Bill and Jail Manual incorporating the provisions of the draft Indian Prison Bill 1996 circulated by the Commission[64].

B. INCREASING ACCOUNTABILITY OF POLICE FORCES

1. Custodial Death, Rape and Torture:

The Commission issued instructions that any incident of custodial death must be reported to it within 24 hours of occurrence. Such information should be followed by submission

[62] Judgement Reserved: The case of National Human Rights Commissions of India. South Asia Human Rights Documentation Centre (2001), p. 42

[63] Judgement Reserved - op. cit., pp 45-48

[64] Judgement Reserved - op. cit., pp 48-50

to the Commission of relevant post-mortem report. Magisterial Investigation Report and Videography Report on the post-mortem. These reports must be sent to the Commission within two months of the incident. It also clarified that post-mortem report and other related documents should be sent without waiting for the viscera report, which may be sent subsequently as soon as it is available. It has also circulated model autopsy form for the post-mortem report[65].

2. Encounter Death

The Commission framed guidelines in respect of procedures to be followed by the authorities dealing with deaths that occur in encounters involving police and circulated them in 1997. It urged that enquiries into encounter deaths be carried out by police officers known for their impartiality and integrity[66].

3. Establishment of Human Rights Cell

It has suggested that each State Government should establish a Cell within the office of the Director General of Police as an in-house mechanism to deal with increasing number of complaints of human rights violation by members of police force. It has also requested Chief Justices of High Courts and Chief Ministers of all States/UTs for issuing directions to District Judges to constitute in their respective jurisdictions a District Complaint Authority with the Principle District Judge as Chairman and Collector/ Dy.Commissioner and S.P. as members[67].

C. REFORM OF CRIMINAL JUSTICE SYSTEM

It has made the following major recommendations[68] concerning changes in the CrPC and the substantive laws:

(a) Process of progressive and massive decriminalization of offences recognized and made culpable as penal offences

(b) Clause of compoundable offences under IPC and other laws should be widened

(c) Experienced criminal lawyers be requested to work as part-time judges

(d) System of 'plea bargaining' be introduced

(e) Judicial remand should be self-limiting

(f) Comprehensive training for judicial personnel and court administrators

(g) Increase in Population: Judges ratio

D. General Enforcement

The Commission suggested amendment to Section 13 of the Protection of Human Rights Act granting it the power to compel attendance of any person during inquiry. It recommended amendment to Section 18 in order to enhance its enforcement power

[65]Annual Report 2000-2001, pp 19-20

[66]Annual Report 2000-2001, pp 20-21

[67]Annual Report 2000-2001. p. 25

[68]Annual Report 2000-2001. pp 30-32

subsequent to inquiry by granting it the sole authority to impose compensatory relief and initiate proceedings against public servants when evidence of human rights violation or negligence in preventing such violence had been found. It recommended amendments to Section 36 to include a provision which would expressly bring future State Human Rights Commissions under the direct judicial oversight of National Human Rights Commission. It also recommended amendments broadening the definition of "human rights" and eliminating restriction that human rights be those enforceable in courts of India. It also recommended elimination of the provision which limited the definition of "international covenants" in order to allow flexibility as and when India enters into further international treaties. The Commission also recommended broadening the jurisdiction of Human Right Courts to be established under Protection of Human Rights Act for granting them temporary jurisdiction over normal criminal work[69].

D. INCREASING ACCOUNTABILITY AND TRANSPARENCY IN PROSECUTION OF HUMAN RIGHTS VIOLATIONS COMMITTED BY ARMED FORCES

The Commission in its report for 1996-97 questioned the protected status accorded to armed forces by Protection of Human Rights Act as it diminishes the credibility of the National Human Rights Commission and its goal to protect human rights. It made specific recommendations intended to remove the privileged status of armed forces and bring the authority, when inquiring into human rights complaints, under the direct control of the Commission. It also reiterated its recommendations in earlier report that armed forces report directly and promptly to the Commission any instances of death, rape or torture occurring while a person was in their custody and also indicated that failure to report such cases in a prompt and accurate manner would lead to adverse inferences being drawn by the Commission that effort was being made to suppress the truth[70].

E. INTERNATIONAL TREATY OBLIGATIONS

1. 1984 UN Convention on Torture - National Human Rights Commission has been urging Government of India to accede to the 1984 UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment since its 2nd Annual Report for the year 1994-95.
2. CEDAW and other UN Treaties - National Human Rights Commission has been persistently urging the Government to effectuate obligation embodied in various international treaties to which it is a party. It has specifically recommended in 1994-95 to implement the obligation relating to the 1979 Convention on Elimination of all forms of Discrimination Against Women[71].

---

[69] Judgement Reserved : op. cit., pp 35-36

[70] Judgement Reserved, op. cit., pp 58-61. Also see, Annual Report 2000-2001, pp 10-18

[71] Judgement Reserved, op. cit., pp 62-65

On the substantive issues of systemic reforms and increasing accountability of State agencies in respect of human rights violations, no mentionable success has been achieved. While the Central Government has refused to accept the proposal to bring human rights violations of armed forces within the ambit of scrutiny of National Human Rights Commission[72], recommendations to establish accountability of officials for custodial violence, encounter killings and prosecuting those found guilty have not been rejected outright. But the Central Government has deflected some of these recommendations by passing on the responsibility to the State Governments or linking them to request made to ILC for a comprehensive review of IPC and CrPC. This has serious implications for efforts to reduce atrocities against SCs. The recommendations on criminal justice administration, reforms in police and jail administration, etc. are either reported under consideration for years or not accepted[73]. The recommendation of National Human Rights Commission to establish a clear functional relationship with State HRCs has also not been conceded. In respect of international treaties also, there is no positive response from Government yet. For SCs who are victims of systemic abuse both under police and judicial custody lack of positive response from the State (Central/State Governments.) to the directions issued by the Commission directly affects its capability to deliver justice to them.

National Human Rights Commission has also not achieved much success in establishing accountability of the State agencies in respect of arbitrary arrests and extra-judicial killings through the mechanism of timely reports after proper inquiry. As per its report for 2000-200l, of the total 177 cases of death in police custody registered in 1999-2000, the Commission had not received full reports in respect of 165 cases. In respect of total 916 cases of deaths in judicial custody during the same period, reports were awaited in respect of 520 cases. The Commission however takes satisfaction from the fact that custodial deaths have gone down to 1037 in 2000-2001 from 1093 in 1999-2000 and deaths in police custody have decreased from 177 to 127 in the same period. But in respect of fake encounters, the National Human Rights Commission's intervention has shown little impact. As the letter from Committee of Concerned Citizens, Hyderabad has revealed, the Commission's directive for an inquiry into encounter deaths by State police officers does not inspire confidence since such extra-judicial killings have virtually become a part of unofficial State policy. The Commission itself feels disturbed by the complaints of fake encounter deaths it continues to receive from A.P. SCs/STs are amongst those who are the largest victims of State violence in insurgency affected areas. Even with regard to improvements in the condition of jails & lock-ups, the Reports on inspections carried out by Special Rapporteurs of the Commission have not yet been fully acted upon by the concerned State Governments.

It is not merely in the field of changes in law and institutional reforms that the attitude of the State is vital to the effectiveness of the Commissions. The State also touches upon the functioning of the Commissions in other ways, one of which and

[72] Judgement Reserved, op. cit., p. 59

[73] Judgement Reserved, op. cit., pp 40-65

substantially important is the resources; financial and manpower assigned to them to discharge their role. Commissions have complained about of lack of sufficient staff and financial allocation. These complaints vary in degree from Commission to Commission. National Commission for SCs and STs faces acute shortage of budgetary provision which constrains its activities. It does not have money left even for touring of its Field and Secretariat staff after meeting its establishment expenditure. It has to look to the Ministry of Social Justice and Empowerment even for such small matters as sponsoring Seminars and Research Studies. National Commission for Safai Karamcharis also has huge complaint in this regard.

The other Commissions also face problems of budgetary constraints. All Commissions feel overloaded with complaints and responsibilities against which their infrastructure is inadequate. The manner in which it significantly impinges upon delivery of justice to SCs relates to the machinery available to them to carry out independent investigations. All Commissions are most inadequately equipped in this regard considering the complaint load they handle and demand for direct investigation placed on them. Only a very small number of complaints can be directly looked into by Commissions through their own staff. National Commission for SCs and STs is better placed because it has field officers in sixteen places, mostly capitals of major States. But National Commission for SCs and STs did not have an investigation wing in operation till recently. Its position for a police officer was lying unfilled for a long time. Though an officer has now joined, but in the absence of any supporting staff, it is handicapped in taking up any direct investigation into complaints against police bias and has to rely upon only on State agencies. It also does not have a law wing. National Commission for Women does not have any investigation wing and also does not propose to have one, though earlier it had been thinking on these lines. National Human Rights Commission is slightly better placed in this respect than other Commissions and is in a position to examine complaints and take up a few investigations through its own staff at the headquarters. It has positioned senior retired officers as Special Rapporteurs to make up for the absence of field units, who engage supporting staff on contract basis. But its load of complaints is very large compared to its capacity. Also, it is assigned a lot of monitoring and investigation work by the Supreme Court which requires full time persons in headquarters to handle. It does not have them and, therefore, feels constrained by lack of adequate manpower. All Commissions therefore have to rely upon State Governments to inquire and investigate into complaints. This is not merely time taking as the reports are received after undue delay, but usually the version of the same agency against whom complaint is made comes as State's report.

In the absence of alternative method of investigation re-inquiry is ordered when reported version of the State does not satisfy the Commission. This process turns out to be dilatory and, even with delay, not entirely satisfactory to the Commission or the complainant. National Human Rights Commission had sought financial and administrative autonomy from the Government to overcome some of these problems by suggesting amendments to Protection of Human Rights Act. The Commission recommended amending Clause 11 of the Protection of Human Rights Act in order to enhance its administrative

autonomy. This pertains to the appointment of Director General and other investigating officers to the Commission, subject to the rules framed by the Central Government. The Commission's recommendation was that the appointment of administrative, technical and scientific staff should be on the basis of the judgement of the Commission. The Commission also sought amendment to Clause 32 in order that its budget is appropriated directly from Parliament as a separate line item, rather than as part of the budget appropriated to and allocated under discretion of Home Ministry. But the Government have not yet accepted either of these recommendations.

There is however another aspect which severely constrains intervention of National Human Rights Commission in relation to atrocities against SCs. **Clause 36** limits the powers of the Commission to entertain complaints and investigate them. **Clause 36(1)** bars the National Human Rights Commission from inquiring into any matter which is pending before a State Commission or any other Commission. This provision has been cleverly used by Governments to prevent inquiry by National Human Rights Commission by appointing separate Commissions for inquiry into specific incidents. But the complainants who usually approach several agencies in their desperation to get justice may find that this provision has precluded National Human Rights Commission from looking into the matter because some other Commission has already initiated the process. Even more crippling is the provision of **Clause 36(2)** which lays down that the Commission shall not inquire into any matter after the expiry of one year from the date on which the alleged incident has taken place. Added to this are regulations framed by National Human Rights Commission itself. **National Human Rights Commission Regulation 8(l)(a) to (e)** provides for dismissal of complaints. These include complaints regarding matters that are sub-judice **8(l)(b),** complaints that are vague, anonymous or pseudonymous **8(l)(c),** complaints that are frivolous 8(l)(d) and complaints that are outside the preview of the Commission **8(l)(e).** The impact of these limiting considerations lead to dismissal *in limine* of a very large percentage of complaints. One researcher has noted that in the year 1994-95 out of 5700 complaints as many as 2483, roughly 43% complaints, were dismissed *in limine*[74]. Under this procedure a petition can be dismissed without assigning reasons as the remedy can be sought elsewhere. Of all these limitations, clause **36(2)** is more crippling as it has been rightly noted, many cases of atrocities may not be brought to the public attention for months, particularly because SC victims are unaware of the provisions of law and safeguards available and may have no one knowledgeable to help them. Also, the victims first try to approach local authorities for justice and in case of no response, represent to higher-level bodies. The intervening delays may be quite long in case of powerless SCs. Setting a time limit to registration of a complaint may virtually result in the offender getting away with his act. Unless the National Human Rights Commission agrees to use its discretionary power in relaxing time limit in serious cases of atrocities, most of the complaints from SCs, by the time they reach the Commission, would become time barred and therefore the last hope of

[74]Vinay Kumar. V., The Working of NHRC: A Perspective in Nirmal, C.J.(ed) Human Rights in India (2000) p. 226-227.

the victim may also be shattered. There is no indication that National Human Rights Commission has resorted to this arrangement or sought to eliminate this clause[75]. In the interest of such weaker sections as SCs/STs, it is extremely necessary to do so.

This matter assumes greater importance when it is observed that in respect of major cases of atrocities where reports of Enquiry Committees, Human Rights Organizations, well researched documents of NGOs, Observations made in Open Hearings presided over by eminent persons, including retired Justices of Supreme/High Courts, sufficient facts have been placed about the acts of omission and commission of enforcement agencies which have resulted in denial of justice and tremendous frustration and indignation among the victims. No State agency has taken note of them and initiated desired action to undo the wrongs done to SCs. If even the National Commissions, more specifically the National Human Rights Commission, declines to take up the issues raised therein on grounds of legal and regulatory limitations, it would produce further demoralization and loss of faith in the system among SCs and the efforts of the organizations which have produced the evidence would seem wasted. National Human Rights Commission may consider using its discretionary powers to take up such cases so that the guilty do not get away unpunished.

Notwithstanding the disappointments registered in effecting systemic reforms and enforcing accountability of State agencies towards human rights violations, National Human Rights Commission is, by and large, satisfied that its pressures have reduced their incidence. States also, by and large, comply with directions regarding award of financial compensation to victims/their kin for such violations. In social sphere interventions, National Human Rights Commission is, no doubt, pleased that District Administration and State Government in U.P. have been cooperating regarding elimination of child labour from carpet industry in four districts. Central Government has also accepted its recommendation to amend Government Servant Conduct rules against employment of children below 14 years as domestic help. National Human Rights Commission has also achieved, after a great deal of exertion, some breakthrough in activating the Government machinery in southern States in detection of bonded labour. But even in this sphere, where no contentious issues are involved and there is no direct pressure from its own police bureaucracy/security forces against outside scrutiny into their conduct, has not achieved much success with States in issues it has taken up for enforcement of social justice. It faces great deal of resistance - virtual road block - in regard to implementation of Bonded Labour Abolition Act from most States. The direction given regarding implementation of Inter-State Migrant Labour Act in Punjab has also not yet been acted upon. The deadline for elimination of Manual Scavenging is over. But substantial backlog of work still remains and the Commission is pursuing the matter. With regard to De-notified tribes, there has been no response from State Governments and the Commission has expressed anguish about it. There has also been no reported compliance to its directions with regard to the Devdasi rehabilitation either from the Central or the concerned State Governments.

[75]Judgment Revised, op. cit., pp 135-136.

In the light of the above, the impact of National Human Rights Commission interventions on atrocities against SCs through positive action would continue to remain limited until the core issue of accountability of State agencies for violence inflicted violations of human rights and provisions of law is settled. Till then no substantial change in the behaviour of enforcement agencies is likely to register.

This completes the picture of protective arrangements, the most significant component of the triangular strategy for controlling atrocities against SCs. The picture that emerges from this analysis raises serious question marks on usefulness of law as an instrument of administering social change and delivering social justice. It also exposes the utter powerlessness of highly vulnerable groups such as SCs to invoke this instrument for changing terms of social engagement and discourse. It is now to be seen how the other two components of the strategy have fared in the struggle to achieve this goal.