

SECTION - VI

LOCATING RESPONSIBILITY: THE INDICTMENT OF STATE

FINDINGS OF NON-OFFICIAL BODIES

Nothing brings out more succinctly and candidly the responsibility of State in relation to violence inflicted on SCs than the observations and findings of some important non-official bodies which have looked into the cases of atrocities either firsthand through open hearing or through meticulous collection of information. Four such reports are being presented in brief.

National Public Hearing on Dalit Human Rights, Chennai, 18-19 April, 2000¹

The Jury consisting of three retired High Court Judges (Justices Punnaiah, Suresh and Amir Das), among others, in their observations have severely indicted the State for violation of Human Rights of SCs by its agents and instrumentations and even by non-State actors. It has also held that State is colluding with dominant castes in several areas across the country. State laws are subverted by the very authorities who are mandated to enforce them. The law enforcing machinery is the greatest abuser of human rights of Scheduled Castes. The document has been extremely critical of State for continuation of manual scavenging and Devdasi practice despite their abolition by law. State has also been held responsible for not taking effective measures to abolish Bonded Labour system and to rehabilitate released bonded labourers, and its failure to protect SCs against encroachment of their land by dominant castes and for not regularizing rights over lands cultivated by them. The police and civil authorities have been taken to task for denial of political rights to SCs in collusion with dominant castes which have prevented SCs from casting their votes, putting up their representatives for election and contesting elections under the banner of their own parties. They have also a tendency to dislodge their elected representatives by fabricating false complaints in collusion with officials and thus negating the process of free and fair elections. The jury advocated for a code of conduct for all State agencies, including judiciary¹, with regard to ethics as in several cases State agencies accused of violation of human rights continue to be in office and appropriate legal and administrative action is not taken against them. The condition of SCs has been described by them as 'Hidden Apartheid'.

¹National Campaign on Dalit Human Rights, National Public Hearing, April 18-19, 20(X), Chennai, Vol. I - Summary: Jury's interim observations and Recommendations, pp. 309-317

Public Hearing: Lucknow, October 5-6, 2001²

The Jury consisting of Justice Suresh, Retd. Justice of Mumbai HC among others, have held the State accountable for not resolving the land rights of SCs who have been complaining of Pattas not having been given over the land promised to them and where Pattas having been given, possession has not been delivered while in some cases Asami Pattas distributed earlier have been cancelled by the district Collector without an explicit Government order. The Gram Sabha lands distributed to the SCs by the Revenue Department, is being taken away by the Forest Department. It also held the Civil Administration accountable for corrupt and fraudulent practices in distribution of loan under Government schemes as poor SCs do not get the entire amount of loan, balance being taken away by intermediaries. Sometimes loans are taken by others in their name and without their knowledge while at the time of recovery, they are arrested for failure to clear them. The jury noted that SCs are being subjected to various atrocities by all institutions, Panchayats, police, Revenue Administration and even functionaries of courts.

SAKSHI, Dalit Human Rights Monitor-2000 - A Report of Human Rights Watch, AP³

In a well researched document on atrocities in AP, the report has blamed the Police and Revenue officials for their apathy at best and prejudice at worst in the matter of atrocities against SCs. The motivation to implement the SCs and STs (Prevention of Atrocities) Act, 1989 is lacking. It has also been critical of judiciary which has failed to sustain the confidence of SCs that it would deliver justice to them. The callous attitude of State agencies to incidents of social boycott has come in for very severe indictment.

Broken People - Report of Human Rights Watch, 1999

A comprehensively researched report, after looking into recent violence on SCs in Bihar, Tamil Nadu, Maharashtra and various facets of atrocities, has highlighted through specific instances failure of State to check social violence by not implementing existing laws to eliminate manual scavenging, Devdasi system, bonded labour system. It has mobilized a great deal of evidence to highlight cases of police atrocities on SCs, such as sexual abuse of women to crush dissent, rape and torture in custody as a means of punishing their male representatives, raids of SC colonies to terrorize SCs as a group, collective penalisation of SCs for individual transgression, crushing even legitimate political activities, arbitrary detention, torture, extra-judicial executions, forced evictions and not protecting SCs against their de facto disenfranchisement during elections by political leaders of dominant castes. The report finds that the potential of SCs and STs (Prevention of Atrocities) Act, 1989 has not been tapped due to incompetence, corruption and bias of police machinery and failure of Government to punish guilty officials of police for their lapses.

²From Dalits of UP to Citizens of India: A Report of public hearing held at Lucknow on Oct. 5-6,2001 organized by Dynamic Action Group, IIP and PUCL (UP) and NGOs, pp. 40-45 -

³SAKSHI, op. cit., pp 14-20

The indictment of the State that emerges in the above findings is near total. All wings of the State share the blame in failing the people they are supposed to protect. While the largest blame may go to the Executive Wing which administers all laws and programmes, the role of police machinery is central to the failure in respect of criminal laws. The civil machinery also shares some blame for its callousness and attempts to cover up the actions of the police in relation to atrocities. But the dismal showing in social and economic legislation can be attributed almost entirely to the enforcement bureaucracy of Revenue, Labour and Development. Political leadership provides directions to both civil and police machinery; and controls their conduct and therefore is primarily responsible for the performance of bureaucracy which looks upto political signals for modulating its actions. The Judiciary is not without blame either. It has failed to deliver justice despite a strong law. The following analysis in respect of all three wings of the State on the implementation of the of Atrocities Act and social legislations referred to in this paper would bring out this aspect clearly.

SCs AND STs (PREVENTION OF ATROCITIES) ACT, 1989

A. Role of State Agencies

A-I *Political Leaders*

Ever since the Act has come to be enforced, the Hindu political leadership has launched a vilification campaign against its use. This is particularly significant because all available information shows that nowhere in the country the Act has been vigorously enforced and given the biases at various levels it has virtually little impact on the level of atrocities against SCs. In Maharashtra the Shiv Sena, which represents the Brahminical ethos par excellence, made it an election issue in 1995 to recommend to the Central Government to repeal the Act. True to its promise, after coming into power, it began withdrawing over 1100 cases registered under the Act alleging that these cases were false and were registered out of personal bias⁴. State Government also declared that it would ask the Central Government to amend the Act to limit its “abuse”. The withdrawal of cases effectively sent the message to the police not to register the cases and ensured that it would not be taken seriously. One activist and head of NGO working for Scheduled Castes who had helped in registration of cases has stated that the State Government had in fact, issued instructions to officials not to implement certain provisions of the Atrocities Act particularly those related to physical abuse and land alienation⁵. When a Government in power takes such a position, its constitutional responsibility is severely compromised. This also ensured that no one would take the law seriously.

The Chief of Samajwadi Party, Mulayam Singh Yadav, openly and unabashedly spoke against the use of the Act and accused the then SC Chief Minister of U.P. of casteism in enforcing the Act. He has been consistently arguing against its use by the police machinery. In 1997, in U.P., BJP also called for repealing of legislation on the

⁴Human Rights Watch, Broken people, Op.cit., p. 196

⁵Human Rights Watch, Broken people, Op.cit., p. 198

ground that ruling party BSP has been instigating SCs to file cases against political opponents. West Bengal Government are not registering cases under the Act because of their conviction that violence against SCs is not guided by caste consideration. Very recently, one Rajasthan Cabinet Minister termed the registration of cases under the Act as a 'headache' for the police and sought to deal with the problem. These are only few instances where the expression of hostility has come out in the open. Many more political leaders may be covertly frustrating the use of its provisions in controlling the incidence of atrocities. This provides evidence, if required, that the political will to enforce the Act has been lacking. If the Act really gets implemented effectively, it would not be surprising to see more hostile statements coming out against the use of the Act from the political class.

A-II *The Executive: Police Machinery*

The problem starts with registration of the case itself. Police resort to various machinations to discourage Scheduled Castes/Scheduled Tribes from registering case, to dilute the seriousness of the violence, to shield the accused persons from arrest and prosecution and, in some cases, the police themselves inflict violence. The following is the range and pattern of **atrocities perpetrated by the police** itself based on investigation carried out by Human Rights Watch and documented in the book Broken People: "Caste Violence against India's Untouchables".

(a) *Police as Participants in Violence Against SCs*

Custodial Torture and Death

The most obvious form of State violence against SCs is in the treatment meted out to them in police custody in connection with criminal case, even petty cases of theft and minor offences. What usually happens is that subsequent to arrest, during interrogation injuries sustained by the arrested person are so serious that he dies. The custodial deaths are then covered up usually by showing that the detained person was attempting to run away from custody or died of natural causes⁶. Supreme Court guidelines in such cases are not followed. National Human Rights Commission is now monitoring such cases.

Criminalisation of Social Activism

This happens when SCs or their supporters/sympathizers protest against any wrong done by the State or private individual or group and seek redressal of wrong through rights guaranteed to them under the law and political system. As the protest is not relished by State agencies, the protesters are charged under serious IPC offences and even under those provisions of law which deal with offences relating to National Security. Provisions of CrPC are also used to detain SCs in order that they are prevented from organizing themselves or mobilizing the community on some issue. Even activists, social workers, NGOs who take up the cause of SCs face criminal action⁷.

⁶SAKSHI, op. cit., pp. 90-91: National Campaign on Dalit Human Rights, Chennai Hearing, op. cit., pp 73-76; Human Rights Watch, op. cit., pp 115-121

⁷Human Rights Watch, op. cit., pp 161-164

Encounter Deaths

This is a feature of areas affected by insurgency, naxalism or radical left movements, where members of such groups resort to violence for seeking a life of dignity and honour denied to them due to oppression of caste Hindus, land owners and other exploiters, which they have not been able to get through constitutional means. The police and security forces pick up young persons, particularly educated ones, from the supporters of these organizations, torture them to extract confession and then kill them while showing that these deaths took place as a result of self defence against the armed attack of the accused persons. Often bodies of persons killed in encounters are disposed of quietly to obliterate evidence which may in case of enquiry expose them⁸. There is caste differentiation in encounter killings also as upper caste persons picked up by police are not killed or manage to get a lighter treatment as a result of pressure from influential contact persons belonging to their caste⁹. Andhra Pradesh has emerged as a major area where such encounter deaths have taken place with regularity. While encounter deaths are also alleged from J&K, which is affected by terrorism, the case of Andhra, Jharkhand, MP, etc., are noteworthy in the context of this paper because SCs and STs are among the major victims of such deaths in these States. Committee of Concerned Citizens, a Human Rights Organisation in Hyderabad, has strongly protested to National Human Rights Commission against encounter killings in A.P. and has termed them as “fake” and part of undeclared State policy¹⁰. National Human Rights Commission has issued guidelines for carrying out enquiry into such cases by police officers of integrity.

Violence as Expression of Class Bias

In insurgency/naxalite affected areas, SCs/STs face dual violence, one of caste Hindu landlords (private militias) leading to gruesome atrocities on them, second from the State. The two operate with a certain degree of nexus but with different motivations and through different methods. State bans both the insurgency/naxalite organizations as well as private militias of dominant castes/class in pursuance of its primary duty to maintain public order. As a result, police and security forces carry out combing operations in search of leaders and sympathizers of both. But the police and security agencies during their investigation and search operations make a differential approach. They unleash violence during this operation on inmates of SC colonies during which treatment of SC women is extremely offensive and humiliating. Similar operations are not carried out in the upper caste settlement at all or if resorted to under pressure is executed mildly and with no indignity shown to their women. Bihar is a typical example of class and caste biased violence of police against SCs in such situations¹¹.

⁸Human Rights Watch, op. cit., pp 75

⁹National Campaign on Dalit Human Rights. Chennai Hearing, op. cit., 267-269

¹⁰Notes submitted by the Committee to Chairman, National Human Rights Commission, op. cit., pp 73-75

¹¹Human Rights Watch, op. cit., pp 53-81, also 76,116,119

Raids on Scheduled Caste Colonies

Usually when inter-community clashes take place with SCs as one of the affected groups, police raid colonies of SCs on the pretext of seeking fire arms and militant leaders and unleash huge violence, including sexual harassment of women and looting/destroying property of SC households. The better off among SCs in the colonies are specifically targeted to break their morale and to undo the economic betterment achieved by them. Such raids have been documented in case of Tamil Nadu and Bihar¹².

Violence as a Means of Putting Pressure¹³

In the colonies raided by police, sexual violence on SC women is inflicted as a stratagem to exert pressure on male folk to surrender or compel them to give false evidence, retract their complaint or compromise their position in the case or to silence them from raising protest against the treatment meted out to them¹⁴ by the police.

Violence as a Means of Crushing Ordinary Democratic Protests

Instances exist when in peaceful and democratic protests carried out by SCs against the Government on some issues which have hurt them, excessive firing/force is resorted to disregarding national and international norms evidently with the objective of restraining them from undertaking such protests. Firing in such cases are unprovoked and motivated. Specific case of Ramabai killings in Maharashtra in 1997 as an example has been documented to establish this point¹⁵.

Collective Penalisation of Individual Transgression

It has also been observed that police or security forces in their search for a particular individual or accused person belonging to SC in connection with a case or incident, instead of confining themselves to the search of the household of that person, target the entire SC community in the colony with offensive behaviour, search and seizure, physical abuse and assaults. This is used as a pressure tactics to force that individual to surrender and as a penalization of the whole community for the action of an individual.

Criminalization of Communities

Certain communities, mostly SCs and STs, during British period were termed as 'criminal tribes' or 'habitual offenders' as they were perceived to be crime-prone for survival. The members of such communities were routinely picked up in connection with any crime committed in the area and were tortured to extract a confession. Separate laws were enacted to deal with them. Even though such communities were denotified by Government, they are still treated as born criminals by the police and the old mindset still operates in their behaviour - a telling example of criminalization of communities. On the initiative

¹²Human Rights Watch, op. cit., pp 102-112, also pp 73-81

¹³Human Rights Watch, op. cit., pp 75-80

¹⁴Human Rights Watch, op. cit., pp 124-125

¹⁵Human Rights Watch, op. cit., pp 127-137

taken by Denotified and Nomadic Rights Group headed by Smt. Mahashweta Devi¹⁶ National Human Rights Commission has issued guidelines for their destigmatization and mainstreaming.

(b) Police as Saboteurs of Justice: Registration of Cases and Follow-Up Action

SAKSHI - in its report on Human Rights Watch - 2000 in respect of Andhra Pradesh has analyzed several cases of atrocities right from the commission of the offence to the stage of completion of the trial and has identified following methods used by police to deflect the objectives of the law¹⁷.

- (a) Not registering the case
- (b) Pressurising the victim complainant to seek compromise to help perpetrators,
- (c) Foisting of false cases against victims at the behest of perpetrators to pressure them to compromise
- (d) Refusing to register cases under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 so as to avoid strong punitive measures against the accused
- (e) Not citing proper Sections of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 so as to dilute the seriousness of the offence and help the perpetrators get a minor punishment, if convicted
- (f) Registering FIR but not arresting the accused; shielding public servants/ local political leaders from arrest
- (g) Against the specific stipulation of Rule 7(1), an officer of lower rank conducts the investigation and Dy. SP simply puts his signature on it
- (h) Delay in investigation and filing Charge Sheet
- (i) Granting of bail despite stringent provisions in the Act¹⁸.

Consequences of Not Registering FIR Under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Failure to register an offence under the above Act has the following implications:

- The perpetrators are punished with a lesser sentence
- Relief or compensation is not admissible to victims
- The perpetrators are likely to be released on bail
- Cases are investigated by an officer of Sub-Inspector or Inspector rank with less experience and sensitivity.

¹⁶Letter from Smt. Mahashweta Devi to Chairman of National Human Rights Commission dated 4.5.1998

¹⁷SAKSHI Dalit Human Rights Monitor -2000, AP, pp 100-104

¹⁸National Campaign on Dalit Human Rights, Chennai Hearing, op. cit. p. 314

Two Common Methods Police Use to Avoid Registering Cases Under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

i) Registering FIR Under PCRA (Protection of Civil Rights Act), 1955

This act attracts lenient punishment as compared to Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and does not provide for compensation or relief to the victim. Offences under Protection of Civil Rights Act, 1955 relating to the practice of untouchability attracts a maximum of 6 months imprisonment and maximum fine of Rs. 500/-. In respect of offences not covered by Protection of Civil Rights Act, 1955 the FIR is registered under IPC whose provisions attract lesser punishment than those of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for the same offence.

ii) Requiring Explicit Mention of Abuse by Caste Name for All Atrocities

Police are not registering many cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on the ground that SC/ST victim/victims have not mentioned that they were abused by caste name. This is not even necessary and constitutes a distorted interpretation of the Act. Such a requirement is only provided for in Section 3(1) of the Act and in no other section.

Social Roots of Police Behaviour: The Caste Bias

This behaviour of the police reflects a deeply embedded caste bias even if not openly exposed. This is because

1. Most police and revenue officers belong to the dominant castes. This was the position, at least till recently. Though some lower caste officers are now coming up in these positions, but their number is still small and they may not be given crucial positions or may be circumscribed in their action under pressure from their controlling officers in the hierarchy.
2. Police personnel are not sensitized to take atrocities and discrimination cases against Scheduled Castes/Scheduled Tribes seriously.
3. Many officers at lower levels are not aware of the legal provisions of the Act.
4. Usually police officers are posted to the Protection of Civil Rights Act cells as a punishment. They are a frustrated lot and take no interest in the work.
5. The police see their primary duty as maintenance of law and order. Therefore, registration of cases resulting in increased crime rate goes against the officer in charge of police station and may even lead to punitive action¹⁹.
6. Police also view the Act as an obstacle to caste harmony since it makes Scheduled Castes more powerful and has an adverse effect on society. They even charge Scheduled Castes with filing cases for monetary gain²⁰.

¹⁹Human Rights Watch, Broken People. op. cit., p. 195

²⁰Human Rights Watch, Broken People. op. cit., p. 196

7. Police are under pressure from several quarters of the same dominant caste whose member/members have committed atrocities²¹.
8. Corruption also plays its part in enforcement. SCs are not in a position to bribe the police while the upper caste accused may be in a position to do so. Their version therefore gets reflected in the investigation²².

A-III Executive: The Civil Administration

The apathy and bias is not confined to police personnel alone. It extends to other agencies of the Government and the District Civil Administration. This is established by the following behaviour:

Duties of the Civil Administration Under the SCs and STs (Prevention of Atrocities) Act and Rules Involve:

- (i) Visiting the place of occurrence and conducting enquiry under Rule 61 for assessing the loss of life and damage to property and to draw up a list of persons entitled to relief
- (ii) Providing relief compensation and rehabilitation, as per norms contained in Rule 15 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules and preparing a model Contingency Plan consisting of a package of measures for this purpose.

Breach of Duty by the Administration

Usually where atrocities get a lot of publicity, the local officials promptly provide compensation and relief to the Scheduled Castes victims to tide over the public concern. But their response to other incidents of violence is characterized by apathy, negligence and passivity. The breach of duties by Civil Administration is committed in the following manner²³.

- (a) Not conducting an enquiry, thereby evading duty to give relief and compensation,
- (b) Making false promises to give compensation and delay in distributing cash compensation,
- (c) Not providing allowances, such as travel allowance relating to trial and investigation for witnesses, victims, maintenance expenses and daily allowance, medical expenses, etc.
- (d) Administration ignores social boycott of Scheduled Castes which leads to denial of employment and access to basic necessities like ration shop, refusal to buy or sell any goods in the village, etc., to pressure Scheduled Castes into submission and cause intense suffering to them, though no physical violence may take place in the process. The attitude of District Administration in such situations usually ranges from indifference to negligence.

²¹Human Rights Watch, Broken People, op. cit., pp 189-190

²²Human Rights Watch, Broken People. op. cit., p. 188

²³SAKSHI, Dalit Human Rights Monitor - 2000, AP pp 104-108

- (e) State and District level Monitoring and Vigilance Committees, though constituted, do not meet as required. Even when they meet, there is rarely any attempt to interact with activists, human rights groups, NGOs working with and for Scheduled Castes. The meetings are not announced in advance or proper intimation not given to members. The reports prepared by implementing agencies quarterly, monthly and biennial, are not made available to concerned groups and individuals, who can comment upon the conduct of delivery agencies²⁴.

Magistrates often provide a shield for police excesses by either failing to conduct a thorough enquiry into the incident or producing a report or declaring a decision that deliberately covers up abuses by police officials. Sometimes Executive Magistrates or Revenue officials are assigned the responsibility of enquiring into custodial deaths. They produce a report which denies police involvement and defends police version due to their institutional affiliation with the Executive wing of the Government²⁵.

There are other sectors of Civil Administration also which lend a helping hand in atrocities against SCs through intellectual dishonesty in discharge of their duties. One category is the medical personnel who often knowingly help cover up cases of police torture by providing false reports in the examination of the detainee while he or she is still alive or by fabricating a post-mortem report. Medical personnel often under pressure give diluted version of injuries on the body of the victim to minimize the gravity of the offence. In rape cases, doctors, even lady doctors, with a view to helping the accused issue false certificate, deny evidence of sexual assault after examining the victim or packaging the medical examination report with vague/contradictory statements which create grave doubts about the validity of the complaint.

The other category is that of Public Prosecutors who help the accused by not carrying out scrutiny of papers before putting up challan in the court, not presenting the case of prosecution properly, concealing material facts from the court, pressurising the victim to compromise, colluding with the defence lawyer to spoil the case.

OTHER CIVIL INSTITUTIONS: JUDICIAL CUSTODY

Torture and death in judicial custody is a case of institutional violence under State custody which accounts for the largest number of deaths - much more than in police custody. The Annual Report 2000-2001 of National Human Rights Commission indicates that of the 1037 cases reported of custodial deaths, 910 occurred in judicial custody. Bihar, U.P. and Maharashtra account for very large number of deaths in judicial custody. While all deaths may not be on account of custodial violence, but violence in judicial custody is a well known occurrence. SCs account for a sizeable number of such custodial deaths. Inmates of jail are beaten up by jail staff for various reasons. This becomes worse when jail staff nurses hostility against them²⁶. SC inmates are routinely insulted, intimidated

²⁴SAKSHI, Dalit Human Rights Monitor - 2000, AP, pp 110-111

²⁵Judgement Reserved: The Case of National Human Rights Commission of India, SAHRDC (South Asia Human Rights Documentation Centre) 2001, pp 112-11

²⁶National Commission on Dalit Human Rights, Chennai Hearing, op. cit., 96-99

and are forced to do menial work inside the jail and carry out various commands not only of the jail staff but sometimes of caste Hindu prisoners as well. SC prisoners do not have avenues of protest in the prison set up. If they complain to outside authorities, they are beaten up even more. Sometimes when an enquiry is made by an outside agency, jail staff is usually present before the enquiry authority and therefore SCs are afraid to speak up.

A-IV Response of Judiciary

After experiencing biased conduct of police officials and indifference of civil administration, victims pin their last hope on judiciary to deliver justice. This hope has also been belied, judged by the low rate of conviction under the Act. SAKSHI after examining four types of judicial interventions in Andhra Pradesh, involving both the trial court and the High Court, has concluded that judicial delay and dilution of the scope, applicability and meaning of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has resulted in denial of justice to the Scheduled Castes²⁷. The judicial trends observed from this study are:

- (a) Technicalities often take priority over the intent of the Act and the merits of the case. In fact, the intent is lost sight of because of scrupulous pre-occupation with technicalities.
- (b) The prosecutions are quashed on the ground that the offence was not committed on account of victim being a SC or a ST but on other accounts such as lust for sex, illicit intimacy in case of rape, political rivalry, enmity in case of murder, grievous hurt, etc.
- (c) There is a tendency to accept evidence only from non-Scheduled Castes/non-Scheduled Tribes people. An official of the National Commission on SCs/STs reported that he had studied fifty-sixty cases wherein the judge invariably concluded that SC/ST evidence is not valid because they are an interested party. "To attribute a pattern to a community is a prejudice in and of itself. That itself is an atrocity. They do not give weightage to SC/ST evidence, but it is too much to expect evidence from a non-SC/ST when the victim is a Scheduled Caste. That is the dichotomy; if they did come forward, we would not need the Act²⁸".
- (d) Personal beliefs and prejudices determine appreciation of evidence, determination of guilt and award of judgement. These beliefs have the unmistakable print of social biases, both caste and gender. "Cases at all levels have the potential to be influenced by the judge's personal perception of caste and gender that are brought to bear in determining the credibility evidence or the likelihood of guilt..... These biases are pervasive all the way to the top of the legal system. The few cases that

²⁷SAKSHI, Dalit Human Rights Monitor - 2000, AP, pp. 112-137. The Report of National Public hearing on Dalit Human Rights, Chennai has also commented that judiciary has not responded to violation of rights of SCs with adequate sensitivity and urgency. National Campaign on Dalit Human Rights, Hearing April 18-19, 2000 Chennai, Vol. 1, case papers: 'Summary, Jury's interim observations and recommendations', pp 309-317.

²⁸Human Rights Watch, Broken People, op. cit., p. 192.

manage to reach the Supreme Court still do not escape these deep seated prejudices”^{28A}. Nothing illustrates better than the following sentence quoted by Human Rights Watch from the Judgement of a case of rape against a SC woman. “Rape is usually committed by teenagers and since the accused are middle aged and therefore respectable, they could not have committed the crime. An *upper caste* man^{28B} could not have defiled himself by raping a lower caste woman”. Other cases have also been referred to^{28C} by the same organization to illustrate the atmosphere of prejudice in courts which Dalit women face both as Dalits and as women.

The Report of the National Commission on Scheduled Castes and Scheduled Tribes

Watchdog bodies are entrusted with the responsibility to oversee the functioning of laws and programmes for their target groups. National Commission for SCs and STs is a constitutional body exclusively devoted to scrutiny of performance of Government agencies in delivery of rights and entitlements to these groups. Protection being an important and in fact, overarching component of the strategy to improve the conditions of SCs, the Commission in its reports has therefore been commenting upon the implementation of the Act. In its Sixth Report (1999-2000 and 2000-2001) it has observed²⁹ that in most States:

1. Monitoring and Vigilance Committees at State & District levels have either not been constituted or its meetings are not held on a regular basis.
2. Annual Reports are not submitted by the Ministry of Social Justice and Empowerment as per law. The Second report pertaining to 1991-92 was laid in the Parliament in June 1998.
3. A large number of deserving cases are not registered under the SCs & STs (Prevention of Atrocities) Act, 1989 due to ignorance of law or under pressure from interested parties.
4. Appointment of Special Prosecutors is often influenced by political considerations.
5. Supreme Court judgement on the ineligibility of a Sessions Court to directly take cognizance of the case without committal proceedings by the Magistrate will further delay the disposal of the case and defeat the objectives of this Act.
6. States are not implementing relief and rehabilitation package.

It has suggested corrective measures to improve the effectiveness of the implementation of the Act.

^{28A}Human Rights Watch, op. cit., p. 176

^{28B}Human Rights Watch, op. cit., p. 176

^{28C}Human Rights Watch, op. cit., pp 175-178

²⁹Sixth Report, op. cit., 207-219

Status of Implementation in U.P. and M.P.

National Commission for SCs and STs also carried out a study on the status of implementation of SCs and STs (Prevention of Atrocities) Act, 1989 in Uttar Pradesh and Madhya Pradesh. In the U.P. study, which covered 10% of the districts and an analysis of 1311 cases of atrocities, it came across cases of late registration of FIR, delay in the visit of the investigating officer, accused not being arrested, cases of charge sheets having been submitted late and compensation, etc. not being paid in time. Of these, the most glaring inaction related to not arresting the accused persons which enabled them to surrender in the court and robbed the proceedings of its immediate deterrence effect. The other omission concerned the non-implementation of the mandatory provisions (a) regarding provision of legal aid, traveling and maintenance expenses to witnesses and victims, (b) economic and social rehabilitation of victims, (c) appointment of officers for initiating or exercising supervision over prosecution, (d) setting up of committees at appropriate level, (e) making periodical survey of the working of the Act and (f) identification of atrocities prone areas for taking preventive action. The Commission, therefore, in its Fifth Report (1998-1999), Vol. I. made special recommendations for implementation of the Act, the most important being³⁰:

- (a) Taking departmental action against the guilty police official in case of non-registration of FIR on the basis of the complaint
- (b) Cause of atrocity to be investigated by an experienced DSP, even if he does not have territorial jurisdiction for normal day-to-day work
- (c) Special Public Prosecutors to be paid on a higher scale than the panel advocate
- (d) Special Enquiry Cell setup under Rule 8 to be given special powers to register FIRs, investigate and submit Charge Sheet/Final Report to the Special court, etc.
- (e) Implementation of mandatory provisions.

The **study on M.P.** focussed on disposal of cases and was carried out on a sample of 82 judgements delivered by judges of special courts. The following reasons for **overall high pendency** of cases have emerged from this study³¹:

- (a) Absence of investigating police officers in almost 60% of cases
- (b) Witnesses not appearing in the court on scheduled date and time in 10% of cases
- (c) Accused and victims not appearing in 30-40% of cases
- (d) Arguments taking substantial length of time in 10% of cases.

The study found that percentage of **acquittal of accused was 95.12%** of the cases and the reasons for acquittal were attributed to the following:

- (a) Delay in lodging FIR
- (b) Courts attributing FIRs to enmity

³⁰National Commission for SCs/STs, Fifth Report 1998-99, Vol. I, pp 234-237

³¹Fifth Report, op. cit., pp 176-177

- (c) Contradictions in the statements of complainants and witnesses and no proper scrutiny of cases done by the prosecution before putting the challans in the court
- (d) Witnesses and complainants becoming hostile
- (e) Accused and victims compromising, sometimes outside the court and sometimes inside the court
- (f) Prosecution unable to prove charges.

The study also found that the **Special Public Prosecutors** appointed to handle such cases **were of very poor competence and experience**, the reason for which was meager amount of remuneration. They were also not provided any facility. Even the learned judges found these prosecutors frustrated. The study also found that monitoring at the State level and District level by the **Vigilance and Monitoring Committees had not at all been effective**. Among the recommendations made by the Commission³², the major ones were:

- (a) Chief Justice to depute a Judge of the High Court to review working of the Special Courts and judgement delivered by them, at least once a year
- (b) Strengthening of the Directorate of Prosecution for effective supervision of cases,
- (c) Selection of competent and committed Special Prosecutors
- (d) Responsibility to be fixed on District Superintendent of Police if the accused is acquitted on the grounds that relevant section of the Act was not included in the challan filed in the court
- (e) Effective conduct of the meetings of the State Vigilance and Monitoring Committees so as to give strict guidelines to District Level Committees for implementation of the Act and Rules.
- (f) FIR lodged under the Act should be recorded with due care.

Taking into account the trend of judgements and judicial interventions in cases coming up for trial in various courts, various amendments to the SCs and STs (Prevention of Atrocities) Act, 1989 and SCs and STs (Prevention of Atrocities) Rules, 1995 have been suggested to remove the handicaps emerging in its effective enforcement³³, both by State Govts., the National Commission for SCs and STs as well as by NGOs and social activists working for SCs. All these proposals have been placed at Annexure VII to IX.

Social and Economic Legislation

The above analysis has laid bare the role of the three wings of the State in enforcement of criminal laws to evaluate why it has failed to check atrocities against SCs. This violence however is rooted in social and economic situation in which SCs are placed. Various social and economic laws were enacted to remove the causes of this violence

³²Fifth Report, op. cit., pp 178-179

³³SAKSHI Dalit Human Rights Monitor - 2000, AP, pp 142-143. Amendments have also been suggested by State Govts. which are under consideration of National Commission for SCs and STs. Some proposals have also come from social activists, etc.

as a supportive measure. The poor enforcement of these laws has already been referred to in the preceding section. It would now be examined with reference to these laws whether the role of State in their enforcement has been any different as compared to the criminal laws.

A. POLITICAL LEADERSHIP

In respect of the social and economic legislation, the role of political leaders in their poor implementation is even more direct. On the land reforms front, the reasons for dismal performance has been squarely attributed to political leaders. Their lack of commitment to carry out radical land reforms was clearly reflected in enacting laws with considerable loopholes to permit evasion. No determined efforts were made to remove them. While mouthing radical statements to please the poor, they showed reluctance to hurt landed interests because most of them belonged to that class or beholden to them for political gains. They did not permit for the same reason truthful recording of oral tenancies in land records to implement land to the tiller policy. And yet when the poor launched political struggles to implement land reforms in various parts of the country the same political leadership has been instrumental in brutal suppression of these movements, often in collaboration with the landed classes.

The lack of will to implement Bonded Labour (Abolition) Act is directly attributed to the political leadership because bonded labourers are the mainstay of agricultural operations on the farms of big/medium size land owners and enforcement of the Act would imply that this source of cheap labour would not be available. Political leaders are either land owners themselves and, therefore, unwilling to forego this power or have close social and political links with them and share their interests and value system. Even the efforts of National Human Rights Commission to implement the Act under Supreme Court directions is facing this problem. The lack of interest in implementation of minimum wages for agricultural labourers or equal remuneration for male or female worker is also on account of the apathy of the political leadership. It, in fact, encourages enforcement machinery to pressurize the labourers to compromise on less than minimum wages to avoid litigation, harassment and loss of employment. Political leadership has shown no concern for the plight of migrant labourers. In the recipient States, it is directly responsible for virtually freezing the law on migrant labour in collusion with powerful land owners and other employers. In the home States, the political leadership has shown total apathy as it has not taken their case with the recipient States for enforcement of law and has also taken no steps to stop distress migration.

The same lack of sensitivity of the political leadership is evident in the increasing number of children being forced to join the labour force due to poverty. Even the most dehumanized and brutalized form of present day slavery, i.e. news of children being chained by the employer to get work out of them does not stir their conscience as the National Human Rights Commission's own experience of a case in A.P. has brought out. There were no credible efforts from the political leadership to ensure exemplary punishment to such employers, prevent children from being forced into work and encourage them to get enrolled in schools. In fact, a sizeable number of members of the political

and bureaucratic elite employ child labour as domestic help, who do not accord to this labour the humane treatment that they so lovingly bestow on their pets or domestic animals. The intervention to save children from brutalization came from the Apex court rather than from the political leaders who are elected on the rhetoric of social justice.

There is no case more glaring for lack of sensitivity and commitment of political leadership than the manual scavenging which still operates after 50 years of independence, despite the law enacted in 1993 to ban it, and despite pressures from Central Government and National Human Rights Commission to eliminate this practice and rehabilitate of scavengers by 2nd October, 2002. The same political apathy is discernible in the poor enforcement of Devdasi Abolition Acts and indifferent rehabilitation of liberated Devdasis. Political leaders who are inclined to exert even in small matters where their interests are involved are not moved by the plight of victims of these practices.

Political leadership is the fountainhead of political authority. It controls the bureaucracy which enforces all laws, whether criminal or social. Therefore, the failure of enforcement is directly relatable to political inclinations of the authority in power, since bureaucracy these days almost entirely looks upto political signals to act. It knows which action would please political bosses and which would not.

Executive: The Civil Bureaucracy

In the case of social and economic legislation, the role of civil bureaucracy is paramount and that of police only supportive. Land reforms are implemented by revenue officers and labour laws are enforced by labour officials. The class bias of revenue functionaries has been commented upon adequately in the critique of land reforms implementation contained in various research documents. Largely coming from the same land owning castes/class, they were widely perceived to be biased in favour of the land owners and had been chiefly instrumental in failure of land reforms to achieve their objectives. Land owners have used the revenue machinery a great deal to evade land reforms by getting to know the loopholes in the provisions and the manner in which they can be subverted. Revenue officials are known to manipulate land records in various ways to help land owners. Non-delivery of possession to allottees of land is also on account of connivance of local revenue officials with a view of helping the landowners.

The weak implementation of labour laws is also on account of the bias of the labour law enforcement personnel in favour of the employers as against the labourers. In case of agricultural labourers or bonded labourers, this bias can be attributed to the fact that they are largely coming from the land owning caste background and, therefore, empathise with their concerns. This is reinforced by lack of political signals in favour of vigorous enforcement. In case of non-agricultural labourers, the tendency of the enforcement machinery to court employers for petty gains is also an important factor. The political signals also influence their action in a major way. The employers whether in the occupation of agriculture or in manufacturing have not encountered much of a problem in influencing political response in their favour to the demands of labour for enforcement of laws protecting their interests. Myron Weiner has in fact attributed the entire

phenomena of child labour not so much to poverty but to the value and belief system of the elite which allocates differential social roles to lower castes and is not in favour of their efforts at upgrading their status. This belief system would in fact be working in their subconscious while dealing with other categories of labour as well.

In respect of social legislation, such as those relating to manual scavenging and abolition of devdasi system, the civil officers share the entire blame because poor implementation of these laws is entirely due to apathy and lack of importance and priority they attach to this work. In this sphere of legislation there are no formidable vested interests resisting implementation nor is there any political interference affecting this work. It is simply the insensitivity which explains their lack of interest and efforts. This can only be explained in terms of their caste background also.

Executive – The Police Machinery

The role of police machinery becomes crucial in implementation of these legislations when the vested interests try to use criminal laws to frustrate it or divert attention from it. In the case of labour legislation, the employers often register false criminal cases against workers to put pressure on them to back out of their demands or to agree to a compromise desired by them. The police in such cases are not neutral and often side with the employers. This helps the employer in breaking the morale of the labour. In case of land reforms, powerful land owners have used criminal cases to subvert the allotment of land to the poor and prevent them from acquiring possession over land allotted to them or to discourage an oral tenant from seeking the benefit of law to gain security. The role of police in such cases also has rarely been supportive and protective of the poor. Even minimal of police action in such cases is sufficient to demoralise the poor beneficiary who has no means to fight harassment.

In case of social legislation, the police could take initiative to implement laws to eliminate Devdasi system. But usually, the police take a back seat in such areas and wait for police action/support to be invoked by the civilian authorities in-charge of enforcement of the law by registering a complaint. However, this alibi cannot be advanced when it is widely known that SC girls are also being pushed into brothels by traffickers since the jurisdiction of criminal law is also attracted. But lack of sensitivity and concern and virtually non-existent pressure from above or below prevent them from taking initiative in this regard. Of course, civil officials in-charge of the programme share the major blame for not taking police help when it is required in the course of implementation of the programmes. In case, however, of manual scavenging the law itself does not involve the police and the duty is cast on the DM or the SDM. However, police help may become necessary when there is resistance from house owners or when pressure or force is exerted on scavengers to service their dry latrines against their will. Here too the civil officers are entirely responsible for not even invoking the law in support of the scavengers.

Judiciary

The role of judiciary has been very critical in the land reform cases. Litigation has been used as an effective tool by landowners to subvert land reforms. Invoking court's intervention is the last resort of land owners when they find that revenue and police

officials are not siding with them and political support is also not forthcoming. Judiciary's interventions in land reform cases, by and large, have hurt the poor. This may be on account of the inability of the poor to present his case properly as he can not afford a good lawyer and the State lawyers may not match the competence and integrity of a better paid lawyer of the land owner. But in several cases the delivery of possession over the allotted land to SCs has been thwarted by injunctions from the Court which has resulted in the landowner continuing to occupy the land despite its acquisition. Huge area of surplus ceiling land locked in litigation for years has enabled land owners to enjoy the fruits of this land. The poor have thus been deprived of its distribution. Courts have shown no urgency and priority to clear such cases. Further, courts have not prevented powerful landowners from manipulating judicial process to frequently invoke their jurisdiction to thwart land reforms. Judgements of courts, both revenue and judicial, from lower to higher level have been known to help landowners defeat ceiling laws on minor technical/procedural grounds.

Labour courts also share the blame for poor enforcement of labour laws. Large pendency of cases, delay in disposal and attitudinal bias during adjudication have helped the employers frustrate the objectives of labour laws. Labour does not have the staying power. It has to earn a wage to survive from day-to-day. So, even the delay of a few days in disposal is sufficient to make him lose interest in pursuing the matter or force him to compromise. But even when Labour Courts have delivered orders in favour of the labourers, the employers quite often refuse to carry them out and labour courts do not have the power and machinery to enforce their orders. The process of recovery of wages is dilatory. Employers also use the tactics to go in appeal to the High Court where they succeed in obtaining injunction against the Labour Court's orders. This effectively tires out the worker. Some States have made provision for deposit of a portion of the Award before an appeal is taken up for disposal, but even such provisions afford no relief to the worker because this award money so deposited is not distributed to him. In this kind of unequal struggle, therefore, labour has no strength to fight out the legal battle. But the attitude of the Apex court has shown considerable empathy with labour in the implementation of Bonded Labour (Abolition) Act, and the elimination of child labour. Supreme Court has given a number of judgements to help the process of enforcement of laws concerning these categories of labour. It has even directed National Human Rights Commission to monitor their implementation. The enforcement machinery, despite this help from the Court judgements, has failed to respond as the experience of National Human Rights Commission with monitoring of this work has brought out. In this background, the signals for non-action would have to be located in the political wing of the Government which controls the enforcement machinery. While pressure from courts and National Human Rights Commission can help activate the process of enforcement, adequate political will and determination is required to see that laws, whether criminal or social, are implemented vigorously and sincerely. This is amply borne out of the experience of National Human Rights Commission itself.

B. THE SOCIAL AND POLITICAL DYNAMICS OF LAW ENFORCEMENT

While the role of the State in implementation of laws for protection of SCs against violence has been brought in the preceding pages, it is necessary to emphasize that law operates in a given social and political environment. This environment reflects the relative position of various interests in society which influence governance. These interests are represented by political elements, the bureaucracy, civil society and the SCs themselves. Impinging on them are also other institutions of civil society such as the media, NGOs, etc. Analysed here are the attitudes and considerations which weigh with these forces and interests in the matter.

A. POLITICAL ENVIRONMENT: THE INDIFFERENCE

The political environment is characterized by lack of sincerity and even outright indifference to the plight of SCs. This is signified in different ways. The most important reflection of it is represented by the meagre political space this subject occupies. The issues of atrocities, caste discrimination and under-development of SCs have not significantly figured in the manifestos of major political parties, and, in any case, not with any degree of clarity, focus and concretization of the action proposed. The plight of SCs does not serve as an attractive slogan of political mobilization either at the time of election or subsequently. The issues pertaining to SCs do not form sizable part of the questions asked in Central and State legislatures and discussions/debates held therein. Of course, when major incidents of atrocities against Scheduled Castes/Scheduled Tribes take place, voices are raised in the legislature and outside largely to embarrass the Government and at times to extract a commitment for specific measures to be taken to prevent such occurrences. But expression of concern for Scheduled Castes on such occasions remains shortlived. Outside of such instances, the larger political process is preoccupied with other problems. This may also be on account of the fact that the major political parties have very inadequate representation of Scheduled Castes in important decision making positions. Even the representation of the Scheduled Castes in Government in pursuance of the constitutional requirements and various other bodies and political formations is more symbolic than empowering in the real sense. Scheduled Castes, therefore, remain largely marginal to the political process and cannot use it for any effective advocacy of their agenda.

The failure to effectively deal with those who commit atrocities against Scheduled Castes has never figured as a key issue in the political future of a Government. No Governments have fallen or Ministers holding Home portfolio resigned on account of atrocities being committed against Scheduled Castes and Scheduled Tribes, or of failure to protect victims of such violence or for that matter other omissions and commissions adversely affecting Scheduled Castes. In fact, even routine discussions on reports submitted by watchdog bodies do not take place these days. If a discussion is forced on government in respect of a report of a Commission of Inquiry on specific incidents of violence, it does not invoke from the State the concern and response one would normally expect on a sensitive issue like atrocities. The available instruments, including those in the international fora have rarely generated the desired sense of accountability.

The atrocities on SCs and other related problems are not high on the agenda of governance of the concerned Governments, whether Central or State. This is corroborated by the manner in which Atrocities Act has been implemented. One obvious instance of political indifference relates to States which **do not register cases** of atrocities against Scheduled Castes under the SCs and STs (Prevention of Atrocities) Act, 1989 and only invoke IPC provisions when an offence is committed¹⁷. The other expression of lack of concern is by States who do not pay the **required compensation** to the victims for whatever reasons. But there is **no political outcry against such attitudes either within the legislature or outside it, whether at the level of Centre or States**. Even when incidents of atrocities occur on a continuing basis the poor enforcement of the Atrocities Act does **not attract the attention of Government** or opposition political parties. In respect of Government such incidents do not provide an occasion for serious review of the enforcement of Act. On the part of opposition, barring some expression of outrage and demand for discussion in the legislature, such incidents do not stir them into serious thinking on the failure of the system to provide protection to SCs and seeking an effective solution to it. In fact, there is not merely indifference and apathy to the enforcement of the Act but outright hostility against the Act itself at the political level in some States. Reference has already been made to the attitude of Shiv Sena Government in Maharashtra, Mulayam Singh Yadav Government in U.P. and recent statement of a Rajasthan Minister in this connection.

The political insensitivity to the atrocities on SCs is also reflected in the reluctance to discipline the bureaucracy involved in its implementation. No credible efforts have been made to change the attitude and behaviour of enforcement machinery. There is no evidence that the functionaries of police or civil administration have been expeditiously and decisively punished for their acts of omission and commission in dealing with atrocities and those among them who earn confidence of the victims by virtue of their timely, strong and required actions have been encouraged. In fact, the available evidence relating to conduct of the cases under the Act sends signal to perpetrators of atrocities that they can get away lightly with offences arising out of this Act, and to the enforcement machinery that laxity and even outright bias in dealing with matters arising out of this Act does not entail much cost. But the greatest reluctance to take action is in respect of enforcement personnel directly accused of committing excesses and downright abuse of law. There is a plethora of evidence in respect of custodial torture and killing of SCs, death of SC youth in 'encounters', assault and rape of SC women and looting away of their property. These excesses are condoned, or at best ignored to maintain the 'morale' of the forces. In rare cases when public outcry or outside intervention exposes the culpability of some officials, they are merely transferred or temporarily suspended to silence the critics and get over the immediate political embarrassment.

Further, there is little monitoring of the implementation of the Act at any level and virtually no follow up of specific cases so as to ensure that prosecution process is firmed up and perpetrators of atrocities are expeditiously punished. Even worse, there is

¹⁷ Information gathered from discussion with Senior Research Officer of National Commission on SCs/STs

inadequate attempt to provide necessary protection to the victims so that they are not harassed/intimidated by the accused persons and/or pressured to turn hostile or compromise their position in the case. Over the years, the political sensitivity on the issue has come down considerably. This would be evident from the fact that **the plethora of reports** which are generated in respect of major cases of atrocities by Human Rights organizations, NGOs, activist groups, Commissions of Inquiry including the Statutory Commission on Scheduled Castes and Scheduled Tribes do not create any ripples in the system let alone **decisively acted upon**. In fact, complaint of the National Commission on Scheduled Castes and Scheduled Tribes and National Commission for Safai Karamcharis is that their recommendations are not taken seriously. The discussion on the reports submitted by them in the Parliament does not take place as the placement of the report is delayed on account of ATR. The reports therefore do not lead to any soul searching and resultant corrective measures to improve performance. The directions of Commission including those of National Human Rights Commission meet with stiff resistance where punitive action against officials is involved.

The political apathy in respect of SCs and lack of will to act in their favour is not confined to the enforcement of Atrocities Act. It is widely reflected in the enforcement of social and economic legislation as well, as the preceding section has brought out. Thus the whole gamut of issues defined by social justice cry for focussed political attention and decisive political action.

B. BUREAUCRACY - THE WIDESPREAD BIAS

The meticulously produced reports of various Scheduled Castes Activist Organizations and Human Rights bodies have laid bare the biases in the law enforcement machinery - the police, civil functionaries as well as judiciary but more specifically the police. These biases particularly operate at the cutting edge level where the cases of physical violence against Scheduled Castes and other forms of atrocities are dealt with and are reflected in various stages of the case. Ignoring the complaints of Scheduled Castes, discouragement and even rejection of them, giving no credence to the version of victims but believing in the version of the victimizers, shoddy investigation, deliberately creating loopholes to benefit the accused persons, discouraging victims from pursuing the case, pressuring them to compromise, failing to expeditiously conclude investigation and above all failing to provide necessary protection either before or even after the commission of the offence, are some of the expressions of these biases. The indifference, if not bias, is reflected even in such non-contentious matters as distribution of relief and providing rehabilitation. The lack of interest taken by district level officials and below in these matters is evident from the fact that Vigilance Committees at the district level are either not constituted or even when such committees have been notified, no regular meetings are held and when meetings are held, hardly any substantive issues are discussed and even their transactions are not transparent. There is no attempt to involve those in its deliberations who are working for Scheduled Castes to get meaningful feedback and obviously no serious follow up action emerges from the deliberations of such committees. The same lack of sincerity is observed in Vigilance and Monitoring Committees at the State level.

They provide no guidance to District Level Committees. All serious cases under the Act are supervised by the SP of the District because they are all specially reported cases and the first investigation is done by no less a person than a DSP. One would therefore expect a more competent investigation of such cases, superior in quality to those investigated under IPC. Yet the meticulous researches carried out by NGOs show a large number of omissions and commissions which have the effect of helping/favouring the accused and frustrating the victims. There are no in-house reviews of cases in the light of these reports and obviously no effective punishment is meted out to public functionaries who have failed to discharge their duties properly or when such apparent negligence or bias is brought out. There is also no initiative at various levels to review and monitor the status of the cases registered under the Act and, in particular, the conduct of the enforcement machinery in dealing with them during investigation and trial. While in similar cases, in respect of other communities, the interest of the victims may be pursued by their relatives or other important persons of the area, this rarely happens in the case of Scheduled Castes. They neither have the resources to do so nor command the necessary social support or political clout which enables others to take up their cases. Therefore, public functionaries do not feel pressured to be alert and reorient their mind-set and behaviour. There is also no scrutiny of performance in this regard and therefore no signals about the importance and priority of the work get conveyed from the highest political quarters [i.e. Chief Minister or a Home Minister].

The bias of enforcement bureaucracy in checking violence against SCs is equally reflected in administering social and economic laws. Here the civil bureaucracy is the culprit whose attitude and conduct influences the processes of implementation at all stages. In fact, the caste bias here is reinforced by class bias which makes SCs even more vulnerable.

C. SCs: THE GNAWING POWERLESSNESS

Despite the protective and development measures including enabling provisions for participation in political processes, it is quite evident that when violence is inflicted upon Scheduled Castes and other forms of atrocities are committed against them, victims find themselves helpless to prevent such incidents from happening and equally powerless to get the accused persons dealt with effectively under the law after the incident has taken place. This powerlessness stems from their weak economic position on the one hand and indifference or even hostility of the other groups in the civil society on the other, which also explains their inability to mobilize political opinion in their favour and for effective action against the offenders. They are faced with an unfortunate and unenviable situation that they are dependent upon members of the same segment of society [and at times individuals] for their day to day survival, who are largely responsible for committing atrocities.

Their powerlessness is more striking in their inability to hold officials of the Government responsible for even their own acts of unprovoked violence against them. This is particularly evident in cases when police/security forces themselves have committed

excesses in the course of the discharge of their official responsibility, such as custodial torture/killing and encounter deaths, molestation and rape of women, destruction of property, physical assaults, etc. and denial of elementary democratic rights. Several documented studies have brought out how the officials involved in such incidents have received no punishment.

The inability of SCs to decisively influence political processes for pressurizing the State to implement effectively its policies and programmes for their protection and development is well known. But when they resort to alternative forms of political mobilization by joining radical movement to change iniquitous social relations, no doubt with violent underpinning, the role of the State is far from supportive. In fact, it is instrumental in crushing such movements with use of excessive force and State agents commit atrocities against SCs in the process of maintaining law and order. The plight of SCs is worse in such situations as they face wrath of both State as well as armed militias of their tormentors. Even in the face of retaliatory violence unleashed by the armed militias, State agents are soft on the violence of caste militias and particularly harsh on the defensive violence of SCs. Worse still, even from such a situation of desperation to which SCs are forced, States takes no signal or message. It still does not demonstrate political will, strength and vitality to implement its declared agenda of social and economic legislation, policies, programmes, in favour of SCs, so as to wean them away from violent forms of alternative political mobilisation. The powerlessness of SCs is therefore most glaring here as they fail to influence political attitudes even at a huge human cost. The State squarely ends up by being on the side of status quo.

D. CIVIL SOCIETY: THE CONTINUING HOSTILITY

It is no doubt primarily the duty of the State to prevent atrocities being committed against Scheduled Castes and to take effective, timely and decisive measures to punish offenders involved in such violence so as to send correct signals to such other persons as may have intended to pursue similar aggressive designs. But the larger civil society also has a role in checking such violence by demonstration of their support to Scheduled Caste victims and condemnation of accused persons including their social ostracization. Notwithstanding the fact that perpetrators of violence also come from same sections of civil society, it was expected that liberalizing and humanizing processes of democracy and development would create an environment in which large sections of caste Hindus would come to the rescue of SCs and isolate the few who carry out these offences. Such a response would have discouraged the perpetrators of atrocities and generate a sense of safety, harmony and confidence among the Scheduled Castes.

Unfortunately, this has not happened. One explanation may be that the caste Hindus continue to share (and it is true to a large extent) the age old biases against and hostility for the Scheduled Castes lest improvement in their status deprives them a source of cheap labour or threatens to equalize their social position leading to loss of social control over them. The other explanation could be that the liberal elements in

the Hindu society, small as they are, do not stand up or speak while those who subscribe to traditional feelings on caste system support the perpetrators of violence directly or indirectly. Either way it appears that the impact of elaborate constitutional measures, democratic process, liberalizing influence of development, education and awareness, have not helped in transforming civil society.

This explains why supportive role of the civil society in the matter is missing. On the other hand, there is plenty of evidence to show how civil society has systematically undermined the authority of the State in discharging its responsibility towards SCs. In fact, regretful as it is, the caste bias hostility is even among the younger generations of caste Hindus including the highly educated ones. They feel resentful of reservation provisions which curtails their monopoly over jobs and development measures which reduce dependence of Scheduled Castes on caste Hindus for survival. On the other hand, in some places, where development process has resulted in significant improvement in the condition of a small number of Scheduled Castes, hostility of the caste Hindus has increased because they are unable to digest loosening of traditional bonds of dependence as also their increasing self-assertion. It provides little satisfaction that the atrocities resulting from self-assertion of Scheduled Castes has at least altered the nature and balance of their social relations with caste Hindus because coping with the aftermath of such violence does not merely ruin the victims financially and emotionally but also break their morale. But attitudinal transformation of caste Hindus in civil society is an issue which is not on the political agenda of any political party.

E. MEDIA: MARGINAL SPACE

SCs and STs together constitute nearly 25% of the country's population and yet the media, both print and electronic, provides negligible space to their plight/problems. Just compare how much of attention is bestowed in the media to even political gossip and infighting, sleaze and corruption and even to art and culture and sports. Even in respect of social and economic problems, it is the policies of upper castes, economically better off sections and the elite which hog the headlines in various papers. The economic pages and business news totally ignore these categories altogether because in their perception they are not a significant factor in generating wealth. On the other hand, these communities and poor in general receive uncomplimentary attention when discussion is focused on population growth, backwardness, lack of entrepreneurship and productivity. No doubt when major incidents of violence take place, they have a news value and are highlighted and, for a while, followed up with some investigative stories. But there are no sustained campaigns on their problems, no 'researched' articles on issues which affect them and no conscious and systematic efforts to provide voice to them in their columns. The primary interests and outreach of the media is virtually bypassing them. And yet, the media could play a very significant role in raising consciousness of the civil society against the caste injustices, sensitizing the Government with investigated facts and findings, bringing out the gap between Government claim and ground realities in relation to the problems of SCs whether in respect of atrocity cases or development programmes.

F. NGOs: MARGINAL COVERAGE AND CAPACITY

In view of glaring inadequacies in the enforcement of law on atrocities, the indifference of Government and biases in the attitude of public functionaries against Scheduled Castes, various Human Rights activists/organizations strongly suggest that NGOs should be utilized in mobilizing support for their protection. Involvement of such NGOs would act as a check on the biased behaviour of the enforcement machinery and would generate greater accountability at the political level. NGOs may also be in a better position to know how various processes are being manipulated to frustrate the enforcement of laws and Government policies. NGO involvement is likely to provide a voice to the Scheduled Castes and help articulate their case better which, on their own, they may be unable to do because of the varieties of handicaps they suffer from. NGOs can also network with similar organizations in other parts of the State and the country and build up common strategies for taking up the causes of Scheduled Castes at various levels.

NGOs can fill gaps which governmental efforts leave behind in implementing the law on atrocities by creating awareness among the Scheduled Castes, enhancing their self-confidence and morale, building up bridges between them and caste Hindus and in providing crucial feedback to the Government at various levels of administration about the behaviour and performance of Government officials handling the problem as well as the machinations of social elements behind such incidents. NGOs could, of course, play a very supportive role in reducing atrocities, by promptly taking up at appropriate levels incidents which have not been registered so as to get the legal process initiated, mobilizing evidence for prosecution, keeping a sharp eye on officials who maybe trying to dilute/spoil the case by shoddy or biased investigation, helping prepare documents relating to the incidents, their background and their ramifications. Their contribution would indeed be very valuable in garnering local support from liberal elements in society, keeping up the morale of the special prosecutor, and above all ensuring rehabilitation of the victims with the help of Government agencies.

The difficulty, however, is that there are not many **NGOs** with both empathy for SCs and good track record of competence and commitment. And, there are even less number of NGOs working in the field of law enforcement for providing necessary support to Scheduled Castes since this area of work requires dedicated law professionals with sufficient guts to withstand intimidatory tactics and threats of violence from perpetrators of atrocities or their henchmen. Most NGOs working for Scheduled Castes are in development work, such as housing, welfare, education, poverty alleviation, nutrition, etc. It is easier to operate in these softer areas, because funding is available from Government/Semi-Government organizations and international donors. These activities usually do not generate conflict between beneficiaries and the rest of society since contentious issues are avoided in their implementation. The development activities also, by and large, do not create any tension with the Government and its functionaries, particularly the police. NGOs willing to work in the field of law enforcement to check atrocities would have to reckon with hostility all around, ranging from the larger Hindu community to the police machinery, the District and State administration and also, at times, the courts. Besides, such NGOs should have at their disposal law professionals

well versed with intricacies of criminal justice administration to be really able to help Scheduled Castes.

In the Central and State Governments, there are no specific programmes which provide funding to NGOs engaged in helping Scheduled Castes in matters related to atrocities on a sustained basis. International funding for such work may be available on a small scale but is usually suspect in the eyes of the larger caste Hindus who accuse them of disturbing social peace and harmony and the bogey of national security is raised in this context. NGOs working in this field therefore need to be prepared for facing onslaughts from vested interests in society and Government such as intimidation and threats, implication in false cases and, at times, even physical assault. These are the reasons why so few NGOs are working in the country on this subject and even those few NGOs must have managed to mobilize appropriate support, professional and financial, for their survival on a continuing basis. At present, efforts of such NGOs are localised and highly scattered that make no impact on the enormity and complexity of the task to be attended to although some of them have been able to produce useful documents.

The dynamics of implementation of protective arrangements strikingly illustrate how different interests and forces are heavily loaded against SCs which circumscribe the efforts at administering social justice to them and their conspicuous lack of strength and ability to neutralize this formidable resistance at the current level of their social status. Thus the elaborate legislative architecture of protection in their favour does not present a viable and smoothly exercisable option to significantly alter the disabilities imposed on them by the caste based social order. Could the other two components of the triangular strategy help them realize this goal or at least strengthen their position in the struggle towards it? This question would be examined in the following sections.