Dialogues on Justice

A Report
By
Calcutta Research Group

Compiled & Edited
by

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Contents:

Acknowledgements

These dialogues, part of a programme on the State of Social Justice in India, will hopefully produce incisive research work. Participants of the dialogues, readers of this report, and other interested persons are kindly requested to contact CRG (mcrg@mcrg.ac.in) for copies of the status reports as they start coming out in form of research papers under the CRG paper series, *Policies and Practices*. They are also requested to check the announcements on our website – www.mcrg.ac.in

Introduction

This is a report on a series of dialogues on justice carried out by the Calcutta Research Group (CRG), in 2006 where about seventy people in all participated. These dialogues were combined with public lectures in Kolkata and Darjeeling. These dialogues are also part of the CRG's research programme on social justice in India. They have immensely contributed to our collective knowledge on the state of social justice in the country, thrown up new ideas and questions, and have shed light on how collective struggles for justice go on in this country with or without the help of law. At a fundamental level, they have been instrumental in clarifying various notions about the relations between justice and law, ethics and justice, respect, revenge, and restitution, or rights and justice. These dialogues have also helped us in gaining knowledge about various repositories of archival material on justice, such as popular tracts, manifestos, legal materials, other popular writings, political declarations, and reportages that tell us lot about various perceptions on justice. Earlier CRG ran similar series on the themes of autonomy, peace in the Northeast, and sustainability of rights under globalisation, whose reports are available in print and on CRG website (www.mcrg.ac.in)

The dialogue programme has been an integral part of the research activities of the CRG, because CRG's own participatory research experiences show that dialogic knowledge is more intense, detailed, and federal. It also helps in the creation of a network of researchers and other interested persons - thereby making research a matter of sharing and collective gain and responsibility. As a veteran participant while welcoming CRG's decision to initiate a series of dialogues on justice pointed out in course of deliberations that knowledge is seen usually sacred and exclusive, something not to be shared or shared on receipt of payment on a stiff price. Such an idea about knowledge has legitimized elitism. Knowledge, seen as pursuit of truth, hides the face of power. Knowledge concentration has been seen therefore as monopolistic and exclusivist, like caste system. Besides, knowledge is marked with a division between the producer of knowledge and the user of knowledge, which institutionalizes the exclusivity of knowledge. This relation between power and knowledge is often translated into governmental policies. In this perspective, the need to democratize knowledge is immense. Issues of social justice have much to do with this relationship between the knowledge system and question of power. Divided societies emerge due to the challenges faced by the minority communities in their encounters with hegemonic power. From being a segmented society it is transformed into a divided one. Here the process of dialogue assumes importance. Dialogue has transformational potential. There is no other way than negotiating differences in knowledge through dialogues.

Below we present three reports of dialogues – in Kolkata, Darjeeling, and Bhubaneswar. In Kolkata we talked of the face of justice in West Bengal, in Darjeeling we talked of the epistemic and practical issues that mark the research agenda on social justice, and we inquired, what constitutes the 'social' in social justice? In Bhubaneswar we talked on the relation between justice and democracy in the context of divided societies, and of course in the context of our experiences as once colonial and now independent people conducting our own struggles for justice in the process enriching the notion of justice itself.

The Kolkata Dialogue-I

The Kolkata dialogue was held on the theme of **"Conditions of Social Justice in India"** on 5 June 2006.

The participants included research scholars, college and university teachers, human rights activists, feminist activists, former government officials, and professionals, and representatives of some voluntary groups active at the grassroots level. One of the aims in convening the dialogue in Kolkata was to take note of the two trends in the literature on social justice. Of these two, one consists of existing writings focused on formulating or analyzing some normative principles of justice, which states and other delivering agencies ought to follow in course of their administrative and welfare actions; this genre also consists of attempts particularly during the last twenty-five years at translating at least some of these principles into more concrete 'parameters', 'indices' or 'criteria' on the basis of which states' actions could be judged, quantified and most importantly, ranked in an order. This genre of writings is also marked by an anxiety of keeping these principles, indices, parameters or criteria separate from what people think about justice. The second trend is made up of ethnographic researches, which concentrate on how people negotiate their ways through different systems of justice – customary or modern – existing in society, and make their own meanings of justice. That is what makes the "social" of social justice. These writings are considered more as ethnographies of power than as those of justice. In the face of these two streams of researches, a plea was made for locating justice at the site of practice, viewing it as a game and freeing ethnographic researches on justice from its 'theorization effects'.

The meeting was organized keeping four main objectives in mind:

- Identifying themes and case studies with special reference to West Bengal and eastern India, and developing an appropriate research design;
- Understanding in this context the complex relationship between theory and ethnography;
- Preparing a comprehensive, annotated bibliography that will include a list of texts of relevant policies, enactments, public interest litigations and relevant legal decisions, parliamentary and legislative assembly debates and material relating to popular demands for justice, and popular tracts on justice;
- Identifying the institutional locations, resources and individual researches in the country particularly in West Bengal and eastern India.

Situations of marginality and justice

Practices of justice are articulated in situations of marginality. Discussions therefore centered on certain themes of marginality raised at random by the participants, for instance: the 'return' of hunger and hunger deaths in some apparently isolated pockets of West Bengal; riverbank erosion in Malda, Murshidabad, and the Sundarbans and the consequent impact on select population groups; forcible land acquisitions and land use; material condition of minority communities, especially the Muslims, continuing caste domination and discrimination, and sub-regional imbalances. Indeed as was pointed out, debates on social justice have shown that practices of justice are produced out of the situations of marginality. The list was not meant to be exhaustive;

it was only indicative of the situations and different segments of justice that can be made sense of in an appropriate framework covering various positions of marginality including issues of environmental and gender injustice among others.

Urban poverty amongst different minority communities in Kolkata required to be researched in the context of the theme of social justice. Infant mortality of the urban poor is higher amongst the Muslims than the Hindus. The condition of the Muslim poor in Kolkata requires to be further investigated. The UN document on urban poor (2004) and ILO report of 2005 would be of much help in this connection. The Anthropological Survey of India's study on Saheb Bagan *bustee* in the Rajabazar area of Kolkata was considered as a pioneering work in this direction. Besides rural poverty and urban poverty, there are the connected issues of education and public health. Mothers of the children studying in primary schools are associated with cooking their midday meals for which each one is paid Rs.3 per hour – four times less than what the Minimum Wage Act guarantees. Most of them do not have any other option and use the money thus received for paying the fees of the private tutors for their children. The same situation prevails in health care also. About 18 percent of the income of an agricultural labourer on an average is used for health care. This registers the failure of state in providing vital services such as primary school education and health care.

Land acquisition and change in land use are increasingly becoming an issue in the age of globalization. Most importantly, there is hardly any organized voice against this. There are some informal agreements (commonly known as 'mutual' in common parlance), which legitimize certain land arrangements that law does not permit. The sharecroppers as per law are to get 75 percent of the produce while in effect they do not get more than 50 percent. In a research like this, one should look into the functioning of these informal institutions and procedures. Ethnographies of law should focus on this.

Minimal justice

The discussion on marginality producing pleas for justice led to following observations on the contested ideas of justice. It was at the outset noted that there could not be social justice without economic and political justice. As even the apex court admits, all the three are closely interconnected. Social justice is contextually defined. To a dalit, it may imply getting entry into a temple. To a hungry dalit social justice may also mean morsel of food and to a person who is evicted from his land, social justice means retaining that piece of land. A critical theory of justice should be sensitive to the contextual specifics. State's role as the dispenser of justice becomes important when there are conflicts between multiple notions of justice circulating in the society. For instance, justice may for example conflict with majority demand for the award of death penalty, irrespective of the fact as to how the majority has been created. It is important to see how at times a certain 'national' definition of justice is set and consequently contested. Jinnah for example, contested the 'national' definition. The main reason is that, justice as a principle is an acknowledgement that apart from one's claims, there are other claims and the rightness of the contending claims is determined by the historically established notion of fairness. In this historical sense, justice needs to be defined minimally, while philosophers have hitherto defined it in the maximal sense. Minimal justice comprises the following five principles:

    (a) Recognition of past injustices is central to justice defined in the minimal sense;

(b) How much of that can be corrected is integrally connected with the ethical ideas of compensation;

(c) Custodianship or supervision of the processes of recognition and rectification is important;

(d) Since present mechanisms are not appropriate, the question of institutional innovation (like, courts, tribunals, *salisi sabhas* and settlement procedures etc.) is extremely important. Institutional appropriateness sits at the heart of the issue of justice;

(e) Finally, the provision of guarantee that the injustice will not be repeated, and gains will be preserved.

Power, contests, and justice

Social networks based on power relations and strengthening these relations in turn play an important role in defining justice at the social level. Thus we may note that fictive blood ties are increasingly becoming important in defining justice. How does one inquire into a situation where traditional mores and norms exercise an overwhelming influence and perversely define justice? Thus village male elders may claim that justice has been meted out to the deviant youth who have entered into inter-caste love or marital relations by lynching them, hanging them, setting fire on them, or as in a recent case ordering collective rape of the errant girl. It is through struggles and popular politics that such a norm of justice is challenged. Thus, if female foeticide has to do with the value preference for male child, then this has acquired visibility in recent years mainly because of the feminist struggles. In contrast to the standard communitarian argument voiced by a section of the participants in the dialogue, there was the counter-observation that what we take to be a community perception of justice may be challenged from within, and the fault lines appear sooner or later. Similarly, one can put in context the concern on women's trafficking – a concern, which apparently restricts in some sense the women's right to move.

Rights and justice are separate though integrally linked. Rights imply claims on the State, also the demand that certain protocols already granted to others be duplicated. Multiplication of constituencies through an expansion of rights does not alter the structure of rule. Therefore, paradoxically one can say that the individual instances of empowerment do not challenge power itself. On the other hand, it is not possible to conceptualize justice without some idea of claim and rights. For instance, justice consists not so much in right to life defined negatively in the sense of something that cannot be taken away as per Art. 21 of the Constitution of India, but in the right to live defined in the positive sense depending on one's entitlement to many other things and resources crucial for it.

The way justice has appeared in Bengali literature was discussed at length. The term *nyaya* is used in Bengali in two rather different senses: logic and justice. While in common parlance we make a distinction between 'structure' and 'feelings', the term 'practice' may be defined as 'a structure of feelings' (Raymond Williams), and thus literary representations of justice may be seen as giving effect to feelings organized in some structure. Today's land reforms are a culmination of the Tebhaga movement, and in this development we can place novels of such radical writers as, Manik Bandyopadhyay, who have helped in articulating a political language. The political language, however, on being used indefinitely without variation becomes 'an epitaph of dead words', which may no longer reflect the current contests on justice. All this has a 'mechanical effect' not only on the words but on the emotions they evoke. It was observed that today's literature is marked by a fondness of 'politically correct' utterances, which include

remembrance and forgetting, non-recognition as well as wrong cognition. One has to understand the protocols of such language also, and the impact such language can create once used with nuance. Thus, the dramatization of Debes Ray's *Teestaparer Brittanta*, centred on the conflict between landed *jotdars* and the landless *rajbangshi* labourers in North Bengal, has evoked discussions significant in the history of Bengali stage and drama. Finally it was suggested in this context that the formation of stereotypes, which blind us to injustice, would be a significant area of research.

Select source material for research

A separate session was organized for identification of sources and reading materials, networks, personalities, information and data relevant for our inquiry: We need to study national campaigns for food and information. An analysis of West Bengal's changing pattern of budgetary allocation can be an important source. Government records kept in district collectorates, budget proceedings of the department of water resources may be consulted for pursuing any research on riverbank erosion. State Institute for Panchayats and Rural Development in Kalyani is a resource centre on local governance. Narratives collected from district courts can provide a minefield of information about how justice is delivered in the society. The National Centre for Advocacy Studies working for 'jal-jangal-zamin' (water, forests and land), Creating Resource for Empowerment – both based in New Delhi have adopted a rights-based approach to development, and their literature will be helpful. Pratichi reports on education and health in West Bengal have to be utilized. Mansoor Habibullah's *Adhunik Totakahini* offers a good critique of the education system. Ratnangshu Bargi's edited collection on castes, Jagadish Mondal's book on Marichjhapi massacre and M. A. Q Siddiqui's paper on the same published in *EPW* in April 2005 shed light on casteism prevalent in West Bengal. The journal, *Social Justice*, should also be consulted. S. P. Sathe's *Judicial Activism in India*, Peter Rubin's *Human Rights and Development*, Neera Adarkar et al's *Theory and Voices*, and Vasudha Dhagambar's writings may offer important readings for the project. All these were suggested in addition to the bibliography prepared by CRG for the meeting, and reproduced below.

A committee consisting of Amites Mukhopadhyay, Ramaswamy, Shibaji Bandyopadhyay and Rajarshi Dasgupta was formed with Samir Das as the convener for identifying the institutional locations, resources and individual researches in West Bengal.

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The Darjeeling Dialogue-2

The inquiry into the **"Conditions of Social Justice in India"** continued in form of a second dialogue, this time held at Darjeeling, on 26-28 June 2006.

The dialogue began with a word of welcome from Subhas Ranjan Chakrabarty, and followed closely the first held at Kolkata earlier in the same month. The second dialogue began by deliberating on the note circulated prior to the dialogue. It was noted that though the theme of justice has occupied a high ground in philosophical discussions since the beginning of political philosophy, yet in terms of democracy and popular politics its exact meaning and implications have been nebulous, one of the reasons being the fact that justice in reality is a meeting ground of many ideas, situations, concepts, expectations, mechanisms, and practices. Many things intersect to form the context of social justice – ethical ideas of the people, laws, the evolving nature of claims, and the pattern of collective claim making politics, institutional issues relating to the delivery mechanisms of justice, ideas about rights and entitlements, ideas among the citizens about responsibility of the rulers towards them, plus many situations generating many conditions of justice. All these make the social context of justice, also the social form and social site of justice. By social justice we therefore indicate as a beginning: (i) social context of justice, (ii) social content of justice, and (iii) social sites of justice.

Continuing from where the Kolkata deliberations left, it was once again noted that situations of marginality produce ideas of justice. Lack of access to means of representation/resources/ survival means such as education, health, etc. produces marginality. Similarly displacement creates marginal situations. Likewise minority status engenders marginal existence. Hereditary discriminations have the same effect. Gender has the same role. These marginal situations have one thing in common – they speak of power matrix. And they produce specific calls for justice. Different marginalities generate different expectations and forms of justice – thus gender justice, justice for the indigenous people, justice for those denied of dignity for long, justice in form of certain socio-economic rights, justice for people starving to death or for people living below poverty line – all of which mean justice for those who cannot access the mechanisms for justice. The thing to note here is that while constitution has provisions of justice in its various articles and clauses, unlike in the case of rights, justice does not have a compact formulation, even though the Preamble and earlier the Objectives Resolutions of the Constituent Assembly had justice as one of the founding provisions. .

Given the significance of the idea of justice in the Indian national movement and in its associated ideas and thoughts, and the wide demand for justice from each of the underprivileged sections of the Indian society today, and the recurring incidents of communities assuming the responsibility of delivering direct justice in the background of perceived delays and determining their own norms of justice, the proposed inquiry assumes significance. During the national movement there were several articulations of the idea of justice; similarly in the constituent assembly proceedings competing and complementary ideas of justice emerged. Likewise in the writings of several thinkers justice has been discussed from various angles. Apart from intellectual, theoretical, and literary exercises, other discursive and institutional exercises have been marked by popular thoughts and ideas. Various manifestos, leaflets, pamphlets, popular writings, sketches, songs, newspaper articles, speeches, etc. have been the other sites where ideas of justice at the popular level have been articulated. Social justice is an arena only partly covered by law; rest is covered

by social and political ideas and practices. Ethical ideas about honour, right, respect, autonomy, claim, share, revenge, and shame also play significant role in determining mores of justice. A sense of entitlements also has a role to play. Justice thus propels variety of forms – from social-economic rights, to the forms of justiciability, forms of redistribution of wealth, the form of due process, subjective experiences of justice, and as distinct from these experiences the objective tests of justice. In this context one has to note the parts played by social movements and social mobilisations in determining the popular concepts of justice.

In this context the all-important question is – how are we to make sense of different notions and realities of justice, which we have already noted? Governmental justice consists of various welfare schemes, law, legal literacy, administrative forms of arbitration such as tribunals, boards, courts, public interest litigation, new legal education, plus the constitutional idea of protection of weaker sections of the society and introduction of positive discrimination. But this dominant governmental form cannot satisfy the requirements expressed in other forms of justice, indicated above. The inquiry conducted through historical investigations into conditions of social justice, and select case studies, has to provide us an answer as to: What constitutes a just society or just social relations? Or, how can people having conflicting interests and values agree on principles of justice? What constitutes in the main the world of social justice in India? Where and how do the social-justice-talks feature in Indian political and social discourse? People talk of lack of or inadequate access to legal justice; dalits talk of social justice against the backdrop of discrimination, caste society and social and government. interventions; activists talk about how the people' s notion of social justice is often trumped by economic rationality and growth and other powerful interest associated with them; women activists also talk about justice in the context of discrimination, patriarchy and so on. For the sake of clarity then we can say that the project will be about critically examining the ways people/groups encompassing different contexts use the language of ' social justice' to advance their interests, to critique and to promote their values, and advance their claims in the context of their respective notions of what constitute "injustices".

Thus, the inquiry will be conducted keeping its eyes on the various uses of the social justice language in India; its multiple contexts, its myriad invocations and its varied renditions. One might say the ways in which people/groups/ activists use the social justice language may not be coherent; may not even pass the standards set by political philosophers. But a critical examination of these usages will do an important job. As a result of the work, these discourses can become the elements of a new theoretical explanation of the dynamics of justice and critique the existing ones. We can term thus the approach of the proposed study as part ethnographic, if it is part historical, part analytical.

In the course of presenting the note Ranabir Samaddar explained further how CRG viewed the dialogue series more as a means of understanding how different segments of the Indian society had developed their own ideas of justice and come to periodic agreements through diverse ways. Citing Marc Gallanter's works, he pointed out how the two pillars of justice – legality and violence, have been in constant tension with each other: At one level, justice has always dragged one to the pillar of law and has sought recourse to legal remedies; but at another level, it has also pushed one towards violence and has impelled one to use it as a means of realize what a community or a group has perceived to be just. Violence, he argued, is endemic in the dynamics of justice, for, the institutions of delivering justice would not deliver it unless pushed by violence. Justice - in the neo-liberal version, is ordinarily not considered as a right (right to get justice) but

only a deliverable good to be made available to the people. It thus becomes an object of government. With government it is not an issue of listening to popular demand, that is ethics of democracy, but a matter to be handled, administered, governed. Drawing on the argument, he further explained how the research segment of the project purported to be a mix of historical and analytical works with ethnographic accounts. Thus, studies focusing on such questions as how various judicial forms have evolved in India would be as relevant to our research work as would be relevant explorations into extra-constitutional means of justice (for example, meted by the Naxalites and Maoists) and the ways by which society rendered them 'just'.

Much of the discussion that followed centred on the question of whether philosophical and ethnographic understandings of justice can at all be separated, and if to what extent. It thereby set the tone of subsequent discussions for the next couple of days. Sanjay Barbora maintained that ethnographic accounts have their philosophical underpinnings as much as philosophical principles have had certain anthropological notions of man. Bishnu Mohapatra pointed to the importance of studying how 'worldliness implicates the concepts in the social world'. People do not hang on a high philosophical ground. The social validation of the principles of justice he argued deserves particular research attention. Besides, Samaddar's point that, justice is viewed as a component of governance was vindicated by many other participants. Insofar as violence remains endemic in the state institutions, what is considered as reasonableness by the state may not necessarily be considered as such by many others in the society. Thus the point came up again that it is important for us to look for the notions of justice articulated beyond the sites of the state. The role of caste panchayats in meting out - albeit instant justice may serve as a good starting theme in this context. Such notions produced beyond the state sites are not of course static, but undergo historical changes. Of late, there has been resurgence of interest in the non-state forms of justice. But, one should be careful about the subject, because the subject is seldom homogeneous. One has to take note of the locations and contexts of justice. In the context of Ranabir Samaddar's point that notions of justice requires to be recovered, Peter De Souza pointed to three challenges: First is the challenge of recovery. Second is the interrogation of that recovery. Third is adjudication of the recovery. Determining the justiciability of justice that defines the crux of adjudication is an endeavour both philosophical and practical in nature. Moreover, it was also argued that justice left to the market vagaries involved a perpetuation of inequality.

Locating different discourses on justice in India – I

Dalit articulations of justice, Peter De Souza argued, contain three strands: the first expression has centred around the issues of purity and pollution, because they were condemned to be 'untouchables' and kept outside the social, economic and political processes. So they must be given a just place. This has a compensatory value. Second, their contribution to all sectors of productivity – railways, mines, agriculture, industry, etc. forms the basis of their claims for just share in all the spheres. It signifies a moment of assertion for a new set of redistributive values including human dignity. Third, dalit critique of development potentially contains the fragment's view of the whole – of what constitutes a just society. Besides, recognition of the dalits' sense of justice takes us to a family of concepts such as, exclusion, humiliation, discrimination, subjugation, exploitation in addition to brutality, dignity etc. It is imperative that our researches work out the relationships that obtain between these concepts. The agency of dalits consists in their historical ability to map articulations of what they perceive of what is done to them. The issue of agency has to be distinguished from the issue of structure, which is the result of power relations existing in the society. He also charted out a possible research outline focusing on four

domains: First, there is the legal domain. A legal and constitutional space is created in order to generate what he termed as 'cultural capital' that enables her/him for instance to be the village executive. It is also important to see how this space is subverted. For a dalit to file a simple petition or case, as P. Sainath points out, is to cross seven hurdles. In the economic and developmental domain, water stands out as the major site of discrimination and humiliation. Water tap becomes a contested site. Thirdly, there is the cultural domain. All of dalit literature is full of anguish and pain. Other emotions like joy are singularly absent. Reviewing the political domain requires some degree of discourse analysis. Mayawati, the former UP chief minister taking pride in being the 'dalit ki beti' (the daughter of the dalit) and c utting a cake on her birthday is reported in mainstream high caste dominated media not as celebration but wastage of money. It would be thus wrong to say that the dalit question is non-existent in India. Dalit discourse has its specificity even in a state like, West Bengal.

Much of the discussion that followed centred on the issue of stratification within the dalit society. Bijaya Bohidar pointed out that dalits are not a homogenous community and are stratified. While dalits may be seen to run many RSS shakhas and many upper caste persons seem to lead BSP – a party meant for the lower castes – this stratification does not promote the cause of justice. The stratification within the dalit society should not be underemphasized. There is also a distinction between the OBCs and the dalits in terms of deprivation and injustices suffered. Moreover, there is marked regional variation in matters of deprivation. Dalit configurations in South India and Bihar are not the same. Kumar Rana argued that Namasudras and Bagdis of West Bengal – both dalits, are marked by their mutual differences in terms of education and occupation. Urban dalits provide another very different site of social research. How do they fare in IITs, IIMs, AIIMS and police and how are they treated in these institutions? Dalit displacement and rehabilitation – Jagadeesh observed, is a necessary area of investigation.

In line with this argument, Bishnu Mohapatra pointed out that there are many discourses on justice. People other than dalits also participate in the articulation of dalit discourse. Similarly, creative writings by the dalits give them an identity that cuts across their identity as particular dalits. As he remembered someone telling him, 'I am not a dalit writer, but a writer'. He narrated the story of a dalit publishing house. Ranabir Samaddar argued that stratification is common within any social group. The question is, in what way can we link the question of agency with stratification? The question of dalit agency is supreme here.

Paula Banerjee in her presentation argued that her concern was with a new group of untouchables emerging in India: the HIV-positive patients, who constitute one of the most marginalised of such groups. Reproductive health was one of the areas of health where emphasis was given duly by state policies. The policy of 2002 was one of the most articulate statements that emphasized the issue of reproductive health. The moment migration was posed as a security question in India's northeast AIDS too from that moment began to be perceived as a threat to settled population. It began to be perceived as a 'foreign' disease carried from outside and infected into the nation. It is considered now a disease that an Indian gets because of the vast and porous land border that the region shares with many of the neighbouring countries. Initially AIDS was perceived as a homosexual disease, but no more. Women are now taken to be the prominent carriers of the disease. So, the AIDS prone groups have to be kept apart. AIDS has thus become an issue of controlling women's sexuality; and from this arises a new question of justice in India, related to public health, marginality, and women. The politics of AIDS in India has taken this trajectory because AIDS continues to be designated as a disease from the borders and knowledge about the

disease remains severely inadequate and marginal. No state wants to accept full responsibility for public health, which includes the issue of AIDS, and the price for this therefore is extracted from those in the margins of citizenship such as women sex workers, widows, sexual minorities, and immigrant labour. This introduces new ways of segmentation within the society much in the way races are segmented in western societies. Thus, witch hunting is conducted on the immigrants almost on a daily basis. Society is marked by a *cordon sanitaire* by which terminally ill patients are separated from the society at large. Legislation is suggested as one of the correctives. She argued for intense cross-village surveys particularly in Manipur and Nagaland. The discussion that followed reflected on how situations marginality of make talk of social justice possible. Marginality is the other way of saying that there has been denial of justice.

Samir Das in his presentation argued that in view of these identifications of 'significant marginalities' the discussion should tackle a complex methodological question relating to the relationship between philosophy and ethnography nagging the participants since the Kolkata dialogue began. The governmental mode of justice is delivered a priori – independently of what people think about it apparently through a choice of principles. Das with the help of his fieldwork on the victims of riverbank erosion in the two West Bengal districts of Malda and Murshidabad pointed to the growing schism that has developed between the two – administration's idea of justice, and what people considers as just. Notions of justness are evolved through a dialogical process, as Das pointed out.

Locating different discourses on justice in India – II

Yet the dialogue had not exhausted the inquiry: how do we locate different discourses on justice and how different are they? Three more suggestions came: *historic location, legal location, and justice located in transitional circumstances, and therefore justice in the form of transitional justice*.

Ranabir Samaddar in his presentation raised the question of historic location with the illustration of place of social justice in colonial India and asked, where could one look for its articulations in the larger historical context? Transformation of Hindu or Muslim laws and judicial reforms n 1860s and 1870s – thanks to the British rule - tended to compete with indigenous systems of law prevailing in India at that time. There was not much of a case of rule of law bringing in a new notion of justice. People accepted the transition with discontent, protest, and revolt. In the new context, we can sketch the first traces of ideas concerning justice in the writings and speeches of such leaders as, Rammohan Ray and Jyotirao Phule and others and locate them in the social movements they led. He added that it could be interesting to look at the debates inside the Constituent Assembly of India, how they reflected the earlier debates on justice, and then trace their evolution over the last sixty years or so. If we remember how the government transformed the question of restitution of rights of the indigenous people into that of administering the Scheduled Tribes, we are faced with the question, could there be no other way to look at justice apart from the governmental way? Social justice, according to Samaddar, is produced on an enormously contested site, and consists of the compromises, agreements and correlations of forces reached from time to time at particular moments of history. While the Lucknow Pact addressed the minority question, we cannot forget that it was the outcome of compromises between two conflicting communities of the Hindus and the Muslims. These are subsequently sanitized as the theories of justice. What we call, the principles of justice are therefore produced historically through a contention of forces, and they are never lean enough to be absorbed into the

bill of rights, or what the historian of laws Bartolome Clavero calls, 'freedoms laws'. History is all about contentious notions of fairness and compromises. These compromises are also called, the 'dialogical dynamics' of justice. What is arrived dialogically again is neither permanent nor static. As a possible site of justice, the term 'dialogue' reflects competition, acquaintance, and conflict. The agenda of justice is thus never completely set by the state or completely managed by it. As a dialogic subject, justice is primarily articulated in the political sphere. While the state has its rules, statutes and the constitution as a means of guaranteeing justice, we are forced to perpetrate a sense of identity and tell others to do what they want to, within that. They seek justice within it, but basically that means beyond it. This inexhaustibility of justice is a historical product.

Samir Das asked, why and how should historically arrived compromises be construed as justice? If Lucknow Pact stands out as an example of historic compromise, could there have been more just (he admitted that this was albeit counterfactual way of evaluating a compromise) way of arriving at such an agreement – other than the one actually accomplished in history? It can always be argued that a different and probably more just compromise could have been reached. History is however what keeps the practice of justice always minimal. But, are the various forms of minimal justice historically arrived at, and at different times the same? The answer to this question will give us clue to good comparative study. Samaddar's observation was that his idea of minimal justice was predicated on current times.

Subhas Ranjan Chakrabarty raised the issue of the popular movements against regional imbalances, injustice and disparity. He framed the question in the context of North Bengal and referred to the alienation that developed in this region after independence. Various marginalised and migrant communities of the region developed in course of time a sense of distinctiveness of their identity vis-à-vis the dominant Bengali identity. He commented that it would be interesting to see how they interrogate the latter and raise the question of social justice. His presentation reflected on the connection between ethnicity and identity on one hand and social justice on the other. The point was reinforced in the discussion on the condition of the plantation workers of the region.

There are, as Ashok Agrwaal contended, two ways of viewing justice: as an ideal and as a process of adjudication of peoples' contending claims. Justice only relates to the marginal cases where people left to themselves, cannot arrive at what is just without going to the law courts. Most cases get settled without moving to them. Matters, which cannot be objectively decided, reach the court. He raised the question for consideration of the dialogue: Is rule of law a panacea to all our social problems? The answer is: Rule of law will be of no help when there are contesting notions of law and legality. The court is approached when we fail to generate any consensus about the meaning and ambit of law. It will be interesting to see how law courts deal with such cases – not just PILs (public interest litigation) but other cases too. In the ensuing discussion Samaddar referred to Jeremy Bentham's distinction between 'substantive law' and 'adjective law', the latter having to do with procedures and practices; and argued that the latter often shrouds the former. Jagadeesh's presentation focused on the inadequacy of existing laws in addre ssing the problems of displacement and forced migration. Bharat Bhushan commented that how courts deny justice is a good source of research. Similar research is needed into how courts perceive various issues of social justice through various judgments such as on displacement – and that can provide a viable benchmark for understanding court behaviour on justice.

In the absence of Sabyasachi B. R. Chaudhury, Sanjay Barbora presented his note on the possibilities of transitional justice in India. The note raised two critical questions - of the length and plurality of transition. It was agreed that the issue of transitional justice forces us to review the constitution and look beyond it. Justice that remains confined to the ambit of constitutionality cannot be called, transitional justice. Sabyasachi's idea generated discussion on the viability of the theme and the potential for research from a new angle.

The dalit quest for justice

According to G. Krishna Reddy, the failure of the nationalist discourse to defend the marginalised communities in the country led to the assertion on the part of the dalits. In Andhra Pradesh during the 1980s, the dalits for the first time claimed the need to be their own representatives and not be represented by others. The parties outside, they thought, could not represent their problems. The question of dalit of identity marks the failure of universal rights and justice. It seeks to challenge the universal appeal and questions the core of universal justice. Reddy traced three distinct yet interrelated levels of dalit articulation: the mainstream represented by the Left, liberals, as well as the radical Left, second, the dalit activists and finally, the ordinary dalits as different from dalit intellectuals. The dalit critique has passed through at least two stages: first, there was the stage of recognition in which retribution is sought against wrongs done to them in history. Secondly, there was the stage of redistribution. The argument is that the dalits must get back in proportion to what they have contributed. This may seem to be a fragment's view of just society. It is also argued that the dalit critique is restricted to the caste system, and the dalits are fighting for themselves only. Identity politics has the capacity of doing away with the claims of rights and justices. The development that states talk about is uneven and unless the total energy of the society is developed, the overall development of the society is not possible. In the case of reservation followed by the state, it is a tool to realize representation rather then giving special protection to the weaker sections. Arguing for dalits would also be synonymous with demanding the abolition of the caste system. Krishna Reddy however opposed this assumption, and said that dalit politics is not about dalit society but about society as a whole. While the middle castes have become the beneficiaries of land reforms, dalits got nothing. Moreover, there are significant regional variations. Most of the dalit administrators come from coastal Andhra Pradesh and not from the more backward Telangana region.

In the discussion that followed his presentation, Bharat Bhushan wondered whether identity politics ever fits into the trajectory of class politics. Manish Jha however maintained that in the case of Bihar, there is a tremendous overlapping in terms of caste and class. While there is no denying that dalits harbour a universalist notion of justice, Samaddar argued that there is a need to study how these contending universals talk between themselves and meaningfully engage with each other. Krishna Reddy replied that the experiences of dalits with both Left radical politics and electoral politics have been extremely bitter. For dalits, caste is the basis in which both are embedded. For Samaddar, identity politics will always be bound by differences; but it is also important to look at the broader aspect of democratic setup beyond the realm of identity politics. Reddy summed it up by saying that the interplay of the specific and the universal is always there in dalit politics; but dalit politics has realized the important question of visualizing the system as a whole as part of its vision of justice. Now dalit politics has hit a point of stagnation and accordingly developed some internal contradictions. But the emerging politics of dalits is offering to us many alternatives and an ethnographic study is required to unveil the worldview of the ordinary dalits, to interrogate and see whether dalit politics is representative of the whole or not.

Ethnographic strategies and case studies

Northeastern India

Sanjay Barbora in his presentation on justice underlined the need for developing a regional perspective (that of Eastern Himalayas) on the indigenous peoples - instead of continuing to view them from the perspective of Indian Sociology. In India's northeast, many forms of asserting indigenousness are visible: Most of these assertions harp on the demand for homeland. Homelands in a plural region like the northeast should not be construed as mutually exclusive but overlapping. Nagas, Dimasas and the third-generation Bengalis in Nagaland constitute indigenous people in present Indian state of Nagaland. Some of these assertions are expressed through their eagerness of preserving and archiving their own histories including oral traditions. It also entails a rediscovery of how people meet and share what they have done in history. The ethnography of an otherwise troubled Assam-Nagaland border for example suggests the continuities and exchanges that have historically occurred there. Such accounts tell us, how what once were considered as continuities and exchanges along the foothills gradually came to be stigmatized as 'extortion' by the Naga plunderers and rebels. Indigenousness is also scaled along one's distance from or for that matter, closeness to the seat of power.

Barbora's presentation triggered off interesting discussion on the link between indigenousness and justice, According to Bishnu Mohapatra, the formulation overburdens the concept of social justice. The presentation may as well pass on as an exercise in identity politics. It will be interesting to see why in some areas like, West Bengal questions of social justice are more direct and straightforward and are free from the encumbrances of identity politics than in some other places. While there is no denying that behind identity politics there is always some hidden issue of justice, the difference between dalit politics of Andhra Pradesh and indigenous politics of northeast is that the former is universal and the latter continues to be mired by particularistic ideological strands. Samir Das raised the question of as to how one might relate everyday negotiations and exchanges between indigenous peoples to the larger project of social justice. Peter De Souza expressed his trepidation that we must be able to define and delimit the field of social justice and refuse to bring in every political instance as an elucidation of social justice. Any narrative of significance cannot be said to have reflected on the question of social justice. In this case, there is a sense of grievance that produces the ethnography of borders and gives a space of one's own that must be guarded. To have that as a form of social justice is a bit too much. It seemed in the course of discussion that at least one idea there was that social justice discussions must have something distinctly social, and that indigenous people's assertion for autonomy or self-determination as a political demand, can be treated as a demand for meting out political justice, but this could not be treated as a case of social justice.

Orissa

Amrita Patel discussed the situation of Orissa, and argued that the space available for seeking justice on the part of the women has considerably shrunk in recent years. Biju Patnaik, former chief minister of Orissa, had implemented after he came to power in 1992 the provisions of 73rd Amendment Act that provided for women's representation in panchayati raj institutions (PRIs). Tribal women were seen to be advising him on policy matters. He reportedly instructed the women: 'If the government officials do not listen to you, give them a good slap'. The women

have been subject to at least seven different yet interconnected kinds of discrimination: malnutrition, poor health and lack of education, overwork, lack of skill, mistreatment and powerlessness. Social justice is thus far from reality in Orissa. Using ethnographic research technique and within an interpretive framework, Patel proposed a study that could understand gender relations in context of social justice in a particular region in Orissa. The issues can include Dalit women's struggle and the state of female infanticide, the declining sex ratio, dowry violence, development induced displacement, the changing nature of communal violence in India and the functioning of female members of PRI etc. Women's participation in various social movements particularly in anti-liquor campaign (*madamukti abhiyan*) is important. The number of female-headed households in the rural areas has increased as the male members are migrating out in search of survival opportunities.

In the discussion that followed, it was pointed out that the real challenge for her would be to delimit her frame of reference. It was also brought to her attention that the level of women's participation does not automatically take care of the concerns for justice. More of participatory democracy does not mean more of employment. Paula Banerjee suggested that it would make an interesting study if she took the UN decade of women beginning in 1975 and looked at the issue of gender. Bishnu Mohapatra saw potential in this study, in the sense that this could be an occasion to record women's views on all these.

Exploring further 'social justice' in Orissa, Bijaya Kumar Bohidar argued, would involve critical examination of a whole range of issues like the social composition of its population, hierarchic social structure, historical processes resulting in marginalization of certain groups and classes, implementation of constitutional provisions, legislative and the bureaucratic interventions, civil society initiatives and the impact of market driven development process on state and society. Along with these determinants of the conditions of social justice, the study would also have to take into account the emergence of resistance movements and reactions among the people around the issues of actual or anticipated marginalization, displacement, poverty, growing inequality, non-representation, denial of rights and loss of honour. Popular assertions have not only sought to oppose conditions producing injustice, but also have articulated alternative notions of justice. Development is a contested notion in Orissa. Struggles against POSCO and the Tatas in Kalinganagar provide only two examples. The alternative notion of development harps on the idea of development of a kind that ensures justice. These notions need to be recovered from a critical reading of the government documents, the literature of the resistance groups which as he informs us are widely in circulation, and the pro-people literature (journals like, *Bikalpa Bichara* and *Anwesha* etc.) that has come up in a significant way particularly since the early 1990s. It is important to remember that the mainstream Oriya press toes the government line or the corporate line.

In the discussion that followed, it was asked whether it would be possible to describe in a blanket manner all that people hold as justice can be construed as justice. Does this pass the test of justice? The real issue in Orissa - it was felt by some, is governance. Rampant corruption leads to depletion of resources and makes their distribution highly skewed. Can we link up the issue of governance with that of justice? Samir Das pointed out that most of the resistance movements are viewed as critiques of the dominant models and practices of development. Is it possible to design an alternative research proposal to capture an alternative vision of development that represents a coherent vision? Das also referred to the intergenerational dimension of justice. Is it just on the part of the present generation to deplete the resources and cut into the livelihood of the future

generation? Is this issue articulated in Orissa in terms of its intergenerational dimension? Or is it just a natural resource critique? It is important that we make distinction between justice argument and natural resource scarcity argument as two principles of development critique. At one point, Bohidar clarified that that he was not an environmental extremist and was for development that took care of environmental justice. Viewed in that context, examining the compensation package was important. Although most of the resistance movements remain localized, he drew our attention to how Kalinganagar struggle has brought as many as 64 indigenous communities together. It is through struggles that unity is forged and justice cuts across different lines and boundaries.

Bihar

Manish Jha's presentation focuses on the terrains of southern Bihar known for widespread caste and class violence. The simmering tension in the districts of Jehanabad, Arwal and Bhojpur often draw the attention of society and media for the recurring incidences of violence between upper caste private militias and different radical Left organisations often known as Naxalites since the 1970s. A parallel justice system is operating in the 'flaming fields' of Bihar. Some of the important questions that arise are: What is the socio-economic background of the victims of this injustice and violence? What is the socio-economic and political milieu responsible for perpetual injustice and oppression? What kind of justice delivery mechanism is available for people and how effectively does it work? For the purpose of studying injustice and violence in Bihar, case study method should be used to get in-depth insights into the experiences of injustice and exploitation of the people. A village or a hamlet has to be selected on the basis of purposive sampling to conduct the study. Focused group discussion and individual survey will further enrich its findings. The study will draw from the parallel literature brought out by several Naxalite organizations that are available.

West Bengal

As many as 4612 villages as Kumar Rana informed us, have been declared as backward in West Bengal whether in terms of literacy rate or in terms of workforce participation. Over 91 percent of the villages are concentrated in 8 districts. While he proposed a study that would unravel the macro dynamics of inequality and injustice between the castes, social groups, and regions of West Bengal, he also intended to focus on a village or two along a longer time span and examine how they fared in terms of the known parameters of human development and most importantly how various cross-sections of people came to view it. In the context of the present day politics of Bengal and the identity movement there, what is happening is not new to Bengal. This is a continuation of what had happened in Bengal for a long time in terms of inequality between castes, also between sub-regions. Particular groups of people living in marginalised situations are being targeted by government policies today in the wake of globalisation. When they take up arms they are heard, and the debate around development and path of development starts again. Until arms force the debate, the government seldom does anything beyond the routine. In this way, the Scheduled tribes and the Muslims remain for years systematically deprived of the basic facilities in terms of human development indicators.

These presentations generated an interesting debate. While questions were raised as to the newness of the radical mobilization that one comes across in Bihar, many thought that it was actually a continuation of the old Naxalite struggle of the 1960s and the 1970s. It is also

important to find out whether the extraordinary violence has disarmed the people in their fight for justice or not. Some argued that the classic struggle of the 1960s and the 1970s are their way out. It is also to be kept in mind that these are the areas where people used to manufacture firearms at that time. Some suggested that the women's groups and the dalits could try to bring the state and armed groups together. The study should probe into the significant question: What role does violence play in the social realization of justice or even in the proliferation of the discourse of justice. As Peter De Souza pointed out, violence often performs the same function as law by disciplining social behaviour. Does exercise of violence in this case result in any redistribution of resources and justice? The West Bengal case was considered as unique as the ruling party by its admission commits explicitly to an agenda of social justice. At the same time, old inequalities are staging reappearance. The regime in West Bengal maintains that in areas where starvation and hunger deaths are taking place register the same level of development as elsewhere in other parts of the state. Does this mean that equality is not enough for justice? Or, development does not ensure justice? While inequality has to do with injustice, the connection between equality and justice is not all that clear and must be further explored. Democracy too has no guarantee against injustice.

Reservation and the issue of justice

Bharat Bhushan began his presentation with the hypothesis that reservation is neither the largesse granted to certain groups by the state, nor a result of pressure mounted on the government by a section of caste-based politicians; reservation of jobs and other opportunities is a product of people's sustained struggles. In the colonial time a lower caste boy was barred from being admitted into a government-run school on the ground that other caste Hindu boys would not sit with him and desert the school. It was reservation in reverse. The relationship between backwardness and caste has been both problematic and contested one. Inclusion of caste groups in or their exclusion from the list of reserved castes has always been politically contested and determined. He also mentioned that reservation, according to some, cuts into the Constitutional right to equal opportunities. The argument runs, if the size of the pie is already limited then there is bound to be conflict between reservation and the right to equal opportunities. But the other argument is that equal opportunities require an egalitarian social context and unless people are made equal, they cannot avail themselves of the equal opportunities given to them. Society should search for justice beyond the procedure of caste arithmatic. This requires both reservation and affirmative action, and other strategies and struggles. Most interesting part of the ensuing debate concerned the criterion of reservation. Construction of criterion runs it was submitted makes a political calculus. Subash Ghisingh's plea for treating the Gorkhas of Darjeeling as scheduled tribes rather scheduled castes serves as an interesting illustration. Besides caste, other claimants to reservation are ex-servicemen, their children, the defence personnel, the disabled, freedom fighters, and other groups. The constitution of India provides for reservation. Yet the conflict over reservation has not died down. For, two issues are at stake here: test of fairness, and correction of past injustices. Any study on reservation would have to dig deeply into Supreme Court judgments, government orders, constitution of backward committees and their reports, reports of various state governments etc. Secondary sources such as, historical records consisting of select colonial texts of the nineteenth and twentieth centuries would also have to be studied anew. The Hunter Commission, the M C Miller committee (report in 1928), OHB state committee reports would also be significant. Bhushan's presentation chronicled the evolution of the reservation discourse in India. Again and again the discussion returned to two questions – the test of fairness and the need and mode of correcting historical wrongs. While summing up the discussion,

Ranabir Samaddar pointed out the need to look into how the so-called tests of justice or criteria were historically constructed or are constructed from time to time. Elections and the incipient obligation of mobilizing people through elections gave people an opportunity to articulate the issue of social justice in particular ways. CRG's attempt at producing a status report on justice would have to chronicle these historical moments, because that would show that a democratic set up empowering the national collective also produces deficits and marginality for those who refuse to belong to it or are left out of it. What will an agenda of social justice look like in such a situation? Our positioning as the author of the report is therefore very important.

From all these discussions, Kazimuddin Ahmed observed, that it was clear that since there was no one notion of justice, it was in that spirit that we would have to identify institutions. We need to have certain understanding about locations of institutions and prioritize accordingly. The sense of injustice and justice go hand in hand. For instance even in Northeast different ideas on justice are active. Besides claiming the right to justice in the sense of claiming sovereignty, there are other movements taking place in India's northeast on the issue of resistance the incursion of the multinationals and multilateral financial institutions. Kumar Suresh too argued that social justice has multiple sites and areas, so there are multiple groups demanding justice in plural. For the purpose of research we need to identify certain relevant core groups and institutional locations. In this context even when focus on ethnography we have to keep in mind studying government institutions.

In conclusion the participants appreciated enormously the procedure by which the deliberations were carried out, key issues were raised, and different viewpoints were clarified and got space in the mapping of issues on social justice. Dialogue is a forum that encourages initial thoughts, which the participants eventually attempt to articulate in a remarkable shape. It is conceptually different from seminar; there is no tension of carrying the load of our positions. Participants while leaving after attending the dialogue for three days requested for many more dialogues under the auspices of CRG.

The Bhubaneswar Dialogue-3

The inquiry into the conditions of social justice in India continued in form of a third dialogue held in Bhubaneswar. The Bhubaneswar dialogue was organised on the specific theme of **"Justice and Democracy in Divided Societies".** It was held on 20-22 November 2006. Socially minded academics, human rights activists and lawyers, women's rights activists, and policy-makers etc. were invited to take part in it. Each session began with a small note of about 10 minutes, initiated by one or two lead discussants and the deliberations were held in dialogical format. There were six sessions in all, three per day, with two sessions being devoted to each of the three objectives.

Why did the third dialogue decide to consider the context of divided societies in deliberating the issue of justice? While societies of South Asia have by all accounts been plural and heterogeneous, it is only with the emergence of the modern state that such pluralities and heterogeneities have been transformed into divisions and borders separating people on the basis of their gender, ethnicity, class and other varieties of membership to political and administrative units etc. and most importantly, turn into distinct and clearly distinguishable objects of government. As the boundaries are drawn fairly precisely – ruling out possibilities of crossings and overlaps, people are called upon to enumerate their identities in clear and unambiguous terms and the societies become dotted with innumerable fault lines cutting them into both new and hitherto unknown ways. The census operations conducted by modern states are reflective of these boundaries and fault lines. It is in this context that we need to understand and make sense of the dynamics of social divisions emerging in our societies. Divisions in other words are not simple means through which societies remain stratified, but are the products of modern states' technologies of government. The way people sharing continuous cultural and physical spaces has been partitioned into 'nations' and 'nation-spaces' speaks of how borders are created and what they do to people.

In this context we have to remember that justice was never fore grounded as the key issue in any of the traditional notions of democracy. While participation, representation and freedom were always considered as the three pillars of democracy, justice was always perceived as the accumulated product of all this. Indeed, justice continues to be seen as being embedded - insofar as democracy founds itself firmly on these three pillars and functions effectively. Justice takes care of itself as appropriate constitutional and legal mechanisms are constantly evolved and refined to ensure participation, secure representation and guarantee freedom. The question of justice is thus subordinated primarily to the ambit of legality and delivery of legal care.

As democracy secures one's entitlement to participation, representation and freedom, modern state's entire repertoire of constitution and law creates the fiction of homogeneity and standardizes people into an undivided and homogeneous public. The legal fiction of a homogeneous public immune from the operations of power in the society is nowhere more sharply focused than in the writings of Jurgen Habermas, Axel Honneth and their associates. As the legal fiction subsumes governmentally produced social divisions – mentioned above, issues of justice get continuously sidetracked and pushed into the background. In other words, democracies of modern times bring into play a discourse where they produce injustice without being seen as such. Thus, it is not surprising that marginalities, livelihood crises and hunger deaths do not get constituted as public agenda in societies revisited by them.

A post-colonial engagement with the issue of democracy helps demystify the fiction, and thus can seek to push democracy beyond the grids of governmentality by teasing out the implications of social divisions for issues of justice and bring them to bear on the functioning of contemporary democracies in divided societies.

On the first day the aim was to deliberate on how divided societies engage in questions of justice democratically and the discussions reproduced in some details in the following pages were taken as follow up deliberations on the dialogic nature of the agenda. It was pointed out by *D.L. Sheth* that every society has divisions, and this, in fact, is a characteristic of a complex society. In such societies certain divisions acquire primacy, visibility and become threatening. Division in the form of 'othering' is the most important source of threat to democracy and justice. This happens more when an ideology is at work claiming to unify people Politics and the mode of othering is important in this context. Secondly, a society requiring homogenization often as a part of its nation building process inevitably gives birth to hegemonic power. Unifying ideology and hegemonic power are thus related. It essentially amounts to non-recognition of divisions. As a consequence what is seen is expulsion, subordination, isolation and sub-humanisation. Most pernicious is non-recognition, making the 'other' invisible. In this context *Nur Ahmed Baba* said distribution of justice and democracy in India and elsewhere in South Asia is more like a device for promoting false consciousness of perpetuating social oppression and inequalities rather than as viable devices for distributing justice, for empowering underprivileged and bring some level of fair play for all segments of society. In such a situation, the State instead of promoting equality, promotes repression against any group seeking justice and empowerment. India in this way has remained a fractured democracy and her democratic institutions have gone through a process of erosion. Large sections of people have remained bereft of the benefits of justice and democratic fair play. Discussion revolved around the question of articulation of divisions and realization of justice in the historical context. Questions were raised about the reasons as to why certain divisions at certain conjuncture are perceived as threat to democracy, and it was argued that those reasons were difficult to comprehend unless the associated justice issue was addressed. Questions were raised about the recognition of articulations and identities on one hand and the justice question on the other. It brought out also the fundamental point if the relationship between justice and democracy really belong to two separate domains. The main objectives of this dialogue in this context were:

(a) To explore into the dynamics of social divisions in contemporary South Asian societies compounded by governmental operations, which transform divisions into marginalities;
(b) To propose a possible agenda of social justice in the context of divided societies – an agenda that bases itself on marginalities and can address therefore the issues of justice in a new way;
(c) To suggest policy alternatives in terms of their bearing on democracy.

A total number of 27 participants from various regions of India took part in this Dialogue (The list of the participants is enclosed herewith). The Agenda of the Dialogue was provided to all prior to the Dialogue. The note presented a brief introduction to the theme and objective of the Dialogue. The discussion was held in an informal mode with one or two discussants leading the discussion in each session and followed by interventions by participants drawn from academics, lawyers, journalists, human and women's rights activists, and policy makers.

Seven rounds of discussions were held centering round each of the following questions:

1. When do the divided societies pose a threat to justice and democracy?
2. How is gender justice distinct from other forms of justice?
3. Can indigenousness be a basis of our right to justice?
4. Are there any Dalit perceptions of justice?
5. Does the Constitution adequately address the question of justice?
6. How do the people make sense of laws?
7. Can justice be delivered through policy interventions?

It was argued that the division of societies has a strong relation with the emergence of modern state structure, and together they create a situation, which poses threats to claims on justice. An alternative path to take democracy ahead was suggested – it called for the imagination of new forms of ethical collectives, which would neither dissolve difference nor proclaim it as an obdurate element in the path of democracy and collective development. The dialogue also addressed a paradox, namely, how governmentality creates divisions in segmented societies and produces from these divisions the marginalities thereby creating a situation where equality as a legal concept is reduced to a fiction. Even the best of the democratic polities is marked by asymmetries of powers. It is not enough therefore that divided societies have dialogues on issues of justice, but have strategies of dialogue towards more equal conversation. It was also later argued that in the subcontinent the questions of justice and its evolution must be understood in historical settings. It implied that justice must be seen as concrete historical product, which is why ethnographic studies of popular notions of justice is so necessary.

Another point that came up was namely that, justice as a concept was not culture specific, but it became so when the term 'social' was added to it. In recent years, dalit and feminist assertions have articulated their agenda around social divisions. The dalits suffering marginalisation may not necessarily have a coherent and unified response, and the response may change following changes in society and politics.

The relationship between gender and space was also discussed. Unlike previous social theories, which gave little attention to the issue of space, and hence space remained an underdeveloped perspective, now increasingly scholars are exploring various points of intersection of space and gender. The issue of differential and gendered access to public space was also discussed. A feminist critique of human rights law was also put forward.

People's sense of law is shaped to a considerable extent by its encounter with legal procedures. It is perhaps misleading to discuss law in our own societies and communities through the lens of the principal concepts of western jurisprudence; possibly in its place we should employ vernacular terms to describe the indigenous legal sensibilities. The highly deficient legal system should lead us to thinking of a more pluri-cultural rule of law to promote greater justice. In the context of efforts to build a more culturally appropriate and responsive rule of law, what then becomes necessary is to make use of submerged signifiers of legal sensibilities, meaning and practices of previous periods as a starting point for rethinking justice and democracy.

The Indian constitution had tried dealing with the question of justice in a transitional way as all constitutions are framed in times of transition. Allocative justice with positive discrimination has been a feature of the Indian Constitution. But it was pointed out that the Constitution was framed in a way that it retained its historical and structural limitations, and thus while the Constitution

exhibits modern egalitarian concerns, it does not show any commensurate concern about socioeconomic transformation of society.

Recently India has witnessed an explosion in policies, specifically in the context of globalisation and its impact on rights and social security. In this context, policy formulation, proclamation, and the building up of a policy fund have become a contested site. Policies are considered by the administration as dialogues with the population. It seems therefore that our dialogue with the state can be conducted in either of the two languages: the language of collective obligation (represented by the government) or that of rights (represented by the claim making population groups). These two languages are distinct in many ways. Moreover, the language of rights may not always have an obligation of being bound by the imperatives of the so-called collective, such as the Hindu community. Policies and rights in this view are clearly dichotomous. The question that arose was whether democracy guarantees justice or complicates it, perhaps leading to a deficit in democracy due to its patronage of highly standardized power structures.

At the end of the two and a half days of fruitful exchanges and discussions, the nature of the issues of concern relating to the theme of social justice were brought out. Five important ideas emerged:

- First, justice cannot be subsumed in law and tension exists between the two. We need to develop a more plural map of legal sensibilities to ensure that law approximates justice to a greater extent.
- Second, specific dalit and women's ideas and visions of justice emerge because of the marginalities that our democracies inhere, also newly produce; and in the context of emerging marginalities justice becomes the animating concept guiding the career of rights and obligations.
- Third, and following from the above formulation, perceptions of justice are always plural, and cannot be made homogenous, much though concerns of law and administration would have liked to see justice as a clear and homogenous concept.
- Each claim for justice has to be seen as a product of particular historical juncture, always a result of a collision between the governmental notion and the administrative form of justice and the specific popular notion of justice.
- Finally, all societies are divided in various measures. Social divisions produce calls for justice; if societies and polities do not echo with calls for justice, it means often that divisions have been muted with legal, cultural, and ideological measures. Justice indicates claims defying those standardizing measures; it carries evolving notions of rights, morality, and different legal sensibilities.

Below we reproduce some of the highlights of the points made in the deliberations. Readers of this report on Bhubaneswar dialogue will see that around three major cluster of issues the dialogue became intense and produced new ideas: (a) The first cluster of issues related to law and its relation with justice; (b) the second cluster of issues related to the fundamental question of division, thus raising the issue of caste and indigenous people; (c) and the third related to policy making itself and its role in making justice effective or making rule effective.

We begin with the first cluster of issues: *law and social justice*

Constitution and social justice

Amarnath Mohanty drew the attention of the participants on the issue of how the Indian Constitution Of India has reflected on questions of social justice. He pointed out that the Constitution of India, like all other constitutions, is more than a mere text dictating the terms of political discourse and defining the structural parameters of the state institutions. It is a rich repository of specific terms, concepts, ideas, meanings, and linguistic and ideological nuances exceeding its instrumental use and relevance. A number of socio-economic and political aspects and ideological goals find resonance in the Constitution. The Indian Constitution has a crucial role in determining, and as it is determined by, the structure of the broader political discourse by means of its alphabets, rhetoric intent, and interpretation. The nature of social justice hinges basically on how valued goods are distributed, and on the economic opportunities and social conditions in the various segments of society. In this sense the Constitution explicates the form and substance of justice and the means of realising it. When social justice is understood in terms of a set of principles that define the appropriate distribution of benefits and burdens among persons through assigning rights and duties in the basic institutions of society, the Constitution we can say definitely constitutes the fundamental site for defining the conception of social justice in India. But Mohanty pointed out that post-colonial India had never undertaken the most essential project of the redistribution of income and wealth as a part of its objective of social transformation and social justice. Rather on the existing iniquitous socio-economic structure, India tried to inscribe its prized conception of distributive justice. The Constitution has adopted three basic principles for distribution of valued goods: a) valued goods, i.e., various kinds of basic liberty, is distributed equally among all irrespective of differences by the principle 'to each according to one's *rights*'- equal right to liberty; b) access to positions and offices, based on he principle of equality of opportunity, is to be determined by the principle 'to each according to one's *desert* or merit'; and c) special provisions for the underprivileged to have access to valued goods on the basis of the principle 'to each according to one's *need*' in a very loose sense, but not in terms of thick conception of 'need'. The commitment to affirmative discrimination is a substantive intervention in the hierarchic social order of India. The conception of social or distributive justice in India has tried to mediate problematically between 'substance' of justice - the constitutive values of justice (liberty, equality, rights, autonomy), and the 'criteria' of justice - the concrete rules and norms applying to each members of the social cluster or the basic structure.

The constitutional provisions pertaining to social justice are mainly confined to the provisions relating to Fundamental Rights, Directive Principles, specifications for affirmative action, and other constitutive values of social justice against the backdrop of the broad political discourse and ideological underpinnings. More important, these provisions relating to justice are to be read with reference to the larger context in which the constitution is basically positioned and by which it is conditioned. Analysis of individual articles and clauses relating to justice without considering the whole of the context and content will only reveal a part of reality. This reality is marked with the entire process of colonialism and the complex course of freedom struggle. The story of passive revolution, Mohanty argued, complements the history of colonialism, which included the nature of leadership and the intricate process of modernization of Indian tradition and the imbibing of liberal values. Both colonialism and passive revolution collectively determined the structure and composition of the historic site - the Constituent Assembly of India and the Constitution. The constitution thus began its life with certain historical and structural limitations: upholding of almost unchanged structure of fundamental colonial administration – civil service, police administration, armed force, legal system- civil and criminal law and its administration; the espousal of a capitalistic strategy of economic development through a set of

essential liberal modern legal and institutional form; and the received liberal modernist paradigm of development. Mohanty therefore concluded that contrary to expectations, our constitution has not been able to address to a substantive extent issues of social justice in India. However, judicial interventions have at times addressed issues of social justice, though it can be argued that these interventions make the constitution less a citizens' charter for justice, and more a lawyers' constitution.

How do the people make sense of laws? (I)

In this context the question came up, and *Pradip Kumar Bose* raised this mainly, namely: How do people make sense of laws? In any language, most words, which refer to important social phenomenon – as 'law' obviously does – are likely to have several referents and cover a wide range of meanings. He argued that we should therefore expect that the English word 'law' and other related words would not have a single precise meaning. If jurisprudence is full of controversy centering on how 'law' should be defined, the terminology disputes increase when people and communities with varied cultures are investigated. Since our own words for 'law' and related phenomenon are already loaded with meaning, we run into difficulties as soon as we try to apply these words to activities of other cultures. Yet, on the other hand, how can we think or write outside our own language? Must we develop a special technical language which some may confuse with jargon or should we conclude that it is misleading to try to discuss law in our own societies and communities in the principal concepts of western jurisprudence and instead employ vernacular terms to describe the indigenous systems? This is a general problem. In general terms law is viewed as social control through the systematic application of the force of the politically organised society. However, if 'politically organised' implies the existence of courts, then there are people and societies without law. Thus Evans Pritchard stated that 'in the strict sense of the word, the Nuer have no law'. Yet in another book on them published in the same year he spoke Nuer law and legal relations and he described how people might recognize that justice lay on the other side in a dispute. In a paper on reconciliation mechanism among people I once argued that it was based on some notion of 'law', not in the formal sense of the term, but in the sense of local knowledge; local not just as to place, time, class, and variety of issues, but as to accent – vernacular characterizations of what happens to vernacular imaginings of what can. One might call this *legal sensibility*, which will mean this complex of characterizations and imaginings, stories about events cast in imagery about principles. Bose referred to Srinivas who had pointed out that the two terms that he would hear frequently about disputes in Rampura were *naya* and *anyaya*. It was not simply the arguments viewed as *nyaya* or *anyaya* but also the decisions of the arbitrators. The notion of *nyaya* was linked to morality and local practices, and expressed the local knowledge based sensitivity to subtler points of customary law and procedure.

In such a context, law is local knowledge and not placeless principle, which is constructive of social life. Even in contemporary times, the forms of legal sensibility persist, because even if it has become modernized, it has not become placeless. In every Third World country, the tension between established notion of what justice – *dharma*, for example – is and how it gets done, and imported ones more reflective of the forms and pressure of modern life animates whatever there is of judicial process. Within the context of established forms of justice, law would not be a set of rules to be applied to all in a mechanistic fashion by a superior authority, but rather would embody a recognition that peoples and individuals have a right to discover their own modes of being, and to devise the rules that are to govern their existence. Various terms have been invented to characterize the process, like 'legal pluralism' 'legal syncretism' and so on, but the central issue posed by the legal pluralism of the modern world that largely escapes the classroom

formulation is, namely, that how ought we to understand the office of the law now when the varieties of 'law' are so widely intermingled.

The modernist notion and practices of law often have an uneasy relationship with the 'local knowledge' based le gal sensibility, and even when the varieties of law are intermingled, they acquire a specific character, depending on the social and cultural formation of that society. While modern law is based on a detailed categorization of rules, offences, punishments, etc., legal sensibility is more unfocussed; it is a normative order with broad parameters. This is also a reflection of distinct worldviews, spatial organization of people and customary practices. In one sense, one can understand the instrumentality of legal sensibility as a counter-hegemonic strategy used by people and communities to protect their limited and conditional autonomy. In another sense, this overarching sensibility governs people's judgements about the legal procedures of modern state systems.

In many of the post-colonial states, a substantial section of the population continues to perceive modern state law and its institutions as arbitrary, distant, ineffective, and often unjust on the grounds of prevalent normative order. In many cases, the judicial inefficiency, impunity, and corruption prevent the full exercise of rights or the enforcement of obligations, creating a situation, which has been termed as 'low intensity citizenship'. The highly deficient legal system provides the context for constructing a more pluri-cultural rule of law to promote greater justice. In the context of efforts to build a more culturally appropriate and responsive rule of law, what then become necessary is to make use of submerged signifiers, meaning and practices of previous periods as a starting point for rethinking justice and democracy.

How do the people make sense of laws? (II)

Yet in another submission on the same issue *Amites Mukherji* observed that while, in principle, the concretization of law that occurred with codification permitted grater accessibility by the common people, people's experience of legal process or the labyrinthine world of justice suggested that the relation was not that straightforward. In other words, people's sense of law is shaped to a considerable extent by their encounter with legal procedures. Arzoo Osanloo in his account of women and law in Iranian family court has described as to how women's encounters with legal processes have been a key to understanding popular perceptions of law and justice. *Amites Mukherji* referred to his own research on riverbank erosion and floods in the Sundarbans of West Bengal, which had allowed him to talk to the islanders who had lost lands but were not compensated against their loss. Their visits to the government departments in search of compensation only heightened their sense of the complex legal procedures (knowledge of procedure dependent on the nature of a particular encounter), but justice remained elusive in this encounter with law. *Amites* also recalled recent writings on ethnographies of the state that focused on the banal bureaucratic working of the state and everydayness (quotidian) of people's interactions with the bureaucracy at a variety of levels. Their negotiations with bureaucracies on an everyday basis allow them to imagine and perceive state in certain ways. These perceptions and imaginings provide a more disaggregated (state as a trans-local policy making institution and everyday bureaucratic practices in which the state is instantiated) view of the state. These analyses are significant because they offer insights into the ways people perceive rules, procedures and laws at different levels and sites. People's sense of law appears to have nuances, and as disaggregated, constantly shaped and reshaped by the nature of their encounters and negotiations with multi-leveled and multisided public offices. That is why ethnographic works on

justice become crucial in order to understand the social significance of the notion, for which a pure philosophic understanding is not enough.

Can we speak of transitional justice in the Indian context?

The discussion around the relation between law and justice brought in another interesting inquiry. *Sabyasachi Basu Ray Chaudhury* raised the issue of transitional justice in the Indian context. He pointed out that justice is a very complex ethical, legal, institutional, and emotional issue, and the aspirations for justice are rendered all the more difficult in societies undergoing transition. Problems relating to access to justice in crises and post-conflict societies are usually more pronounced and pervasive than in non-crisis situations, especially relating to the criminal justice system. Transitions are usually times of contestation. The transitional times, therefore, witness relentless calls for apologies, reparations, memoirs, and various modes of account settling related to past sufferings and wrongdoings. Transitional societies are not only those that are moving from a phase of authoritarianism to an age of democracy. Transition from colonial past to a decolonised future also marks some kind of transition. Therefore, after decolonisation, India also had to grapple with a range of complex challenges. Questions of justice figured prominently in these situations. For that reason, Sabyasachi argued, deliberations over social justice in the Indian context can perhaps be best understood when situated in the concrete realities of the transitional context that include political, juridical and social contingencies. The Partition of India, the age-old caste-based exploitation, the riots and pogroms involving different religious communities, and various ethnic conflicts, plus thousand and one state abuses of power make the question of justice crucial. The question of justice takes an acute form in an expanding and industrialising economy, as of India, where the indigenous peoples are specially subjected to the cost of transition; they are uprooted from their habitat and disconnected from the forest resources on which they depend for their very existence. Transitional justice is the legal and administrative process carried out after a political transition, for the purpose of addressing the wrongdoings of the previous regime. If that is so, it implies that such an idea of justice is associated with periods of political change, characterised by legal responses to confront the wrongdoings of the repressive predecessor regimes. The new regime decides what counts as wrongdoings and how to sanction punishments on the wrongdoers, and also decides what counts as suffering caused by these wrongdoings and is expected to compensate the victims. Herein comes the role of the Constitution. After all, all constitutions are framed in the time of transition. Constitution may not be that magic formula as such and recovery may not be that smooth and easy. But, experiences from different transitional societies indicate that, rule of law is not a settled procedure, and justice is not a trivial issue that can solely depend on rule of law. Without a credible machinery to enforce the law and resolve disputes, people very often resort to violence and illegal means. The Constitution of India also, in a way, tried to deal with the question of transitional justice immediately after decolonisation and partition of the sub-continent. If contains a separate chapter on rights, though not on justice as such. However, many of its articles deal with the question of justice. The issue recurs again and again in different forms. The right to resettlement may not have been accepted as a fundamental right, but in the context of caste-based discrimination justice has been thought of in the form of positive discrimination. The 1940s and '50s also witnessed an emphasis on the idea of allocative justice – in the form of allocation of resources among the provinces in a federal administrative structure. For instance, Article 262 of the Constitution addresses the question of adjudication of disputes relating to waters of inter-State rivers or river valleys. Articles 370 and 371 may be seen as interim measures to deal with the people who were reluctant to accept India's control over their

territory. In this milieu, we need to examine how adequately does the Indian Constitution adequately address the question of justice – in the different time of transition?

Does law satisfactorily deliver justice?

Oishik Satkar in his intervention raised some points about what he called the 'obsession' of social movements with law reform, and argued how this obsession was fuelled by the state rhetoric of 'rule of law', which makes law the primary legitimating discourse of human rights, and makes the state the primary signifier to give rights recognition. In effect, engagement of rights-claiming movements with the state, with a singular focus on changing the law never ends up with the desired results. Such a process gives the state the privileged position of 'giving' citizens rights, and makes the legal process subsume the larger political movement. The law thus remains insulated from interrogation (its intimacy with juridical interpretation continues though) – and becomes a tool in the hands of the state to do 'rights-work', through the disciplined project of legal delivery of protection of rights. Social movements then, under the influence of this discipline, start self-disciplining themselves – in turn setting exclusionary agendas. He therefore raised the following points for discussion:

- Do more Laws equal more Rights?
- The Freedom vs. Protection quandary
- The Discursive and Schizophrenic – How does the law decide who and what to protect?
- What can law reform achieve?
- The Enforcement Principle vs. the Constitutive Principle
- Can there be 'human rights from below'?
- Calibration of Pain – Lives Realities and Respectability
- The Individual vs. the Community – what constitutes of People's Movement?
- What forms the meta-narrative of social justice claims in India? What contributes to legal knowledge production? What authors and who consumes that knowledge?
- Strategic use of Human Rights Law – developing a methodology

Oishik discussed in the process how from rights we could effect a movement in the direction of what he called the "Utopia of Justice". He proposed uses of law in a strategic way, so to use it intelligently for strengthening claims, as well as expanding the sources of State/UN authored standards. In the ensuing deliberations specific references to the use of legal debates around issues of rape, sexual harassment at the workplace, special security legislations, death penalty, mental health, and the right to healthcare were made.

Another fundamental critique: the feminist critique

Ruchira Goswami began with reminding the participants the conventional images of justice, such as, justice as fairness, impartiality, neutrality, as an opportunity to redress grievances, rights over wrongs, justice as a struggle, justice as a virtue, the idea of worthiness, justice as reparative, justice as distributive, and referred to the tremendous influence of the works of John Rawls and Ronald Dworkin in modern political philosophy. As theories of social justice, they have implications for distribution of goods between citizens, calls for positive state action and institutional framework for equitable distribution of resources. All citizens have the right to equal

concern and respect from the government and there should be equality of resources. Yet, as she argued, these theories have failed to take into account the following points:

- The model of the welfare state is based on a disembodied and de-gendered construction of citizenship that negates women's experiences of exclusion.
- These theories have typically constructed the organisation of family life, domestic work, sexuality and child rearing as largely private matters and therefore marginalized women and have attempted to exhaust the political implications of women's disadvantages.
- The limits of formal equality model
- The human rights laws often do not take into account structural disadvantages of women; the human rights rhetoric operates in the public sphere and women's lives are primarily lived in private sphere.
- International human rights law has not yet been applied effectively to redressed the disadvantages and injustices experienced by women by reason only of their being women.
- Structural injustices cannot be translated into the narrow, individualistic concepts of rights, which s why the rights discourse has remained a weak discourse in South Asia

Another point, which the discussion on the feminist critique brought out, relates to the question of gender and space and the significance of this on the issue of justice. *Sunalini Kumar* pointed out that space has remained an underdeveloped perspective. What is the reason for this neglect? She referred to the feminist geographer Doreen Massey, and pointed out that while while 'time' is equated with movement and progress, 'space'/'place' is equated with stasis and reaction". But space is not a primordial, ontologically prior 'empty' given, but is in fact constantly 'produced' by the prevailing economic and political powers of our times. What is urgently required is an understanding of the ways in which any regime of power must continuously engage in organization and reorganisation of space. She also emphasized the fact that justice for women and for all must engage with the problematic of the interrelation of space, women, power, and political participation.

We now pass on to the second cluster of issues: *social divisions, discriminations, and justice*.

When do divided societies pose a threat to justice and democracy?

Rajarshi Dasgupta began by reminding the dialogue that the division of societies into caste, community and gender is not something natural or pre-given. These are the products of modern state formation and its governmental strategies, which seek to segregate peoples into various discrete configurations, and to accommodate them within a political system of participation and representation. This move, modern politics claims, is taken as sufficient and necessary to ensure freedom and justice in a divided society. There are, however, three kinds of conceptual problem in this operation.

In the first place, we are given to think that in some sense these divisions recognized by the state are naturally inherent to our society, to its particular nature and evolution. So these divisions are in fact a way of conceptualizing the already existing segments and hierarchies in society – a remedial measure for age-old diseases. Such an understanding is grossly mistaken in that it collapses often very different older systems of social difference with the ones that are produced anew through mechanisms like the census by the colonial state in our case. The divisions we

negotiate today are logically and structurally different from the divisions negotiated in the earlier periods. The peculiar construction of the category of 'Hindu' in the nineteenth century and its projection into Indian antiquity is an appropriate case in point. Secondly, the segregation of population into different ethnic and linguistic groups and communities creates the impression that their recognition by the state should provide them with the legitimate space for participation and representation in government, thereby fortifying democracy. Yet, this very operation has another, rather undemocratic possibility, built into its disposition. This is the fact that in making these categories crucial to the discourse of rights and citizenship, there is a certain kind of essence that is attached to the different segments of people of the country, understood as fundamental to their 'identity'. Such essentialised identities not only tend to deny the changing realities of society and people, undermining vertical and lateral social mobility, but they also ignore two extremely important features of everyday social life. First, they overlook the fact that social life involves a negotiation in multiple and plural contexts, thereby making it often impossible to enumerate any single location or to claim any one identity as total or absolute. Second, they avoid taking into account the domain of inter-subjective relations and dialogical practices as constitutive of identities and politics, which means that identities cannot be reduced to aggregation of isolated individuals and must be seen in collective contexts and within shifting networks of difference. Finally, the mere official recognition of existing differences in a society can very well be counterproductive to ameliorating these differences in actuality. By posing purported static essences in the place of changing population profiles, one could in fact use the differences precisely in order to legitimize the status quo, pitted against the marginally located. Once the practical hierarchies are translated into a legal-conceptual system of social divisions, popular movements can have no option but to articulate their grievances in accordance with the systemic borders. Thus, for example, despite the *dalit* and feminist assertion in recent years, we have not seen a political combination of the two agendas that might have been to their mutual advantage. It seems that one of the abiding troubles with the liberal democratic framework is the obdurate resistance to meaningful coalitions, leaving us isolated with our differences, living in an increasingly divided society. The question of justice, however, cannot be drawn and quartered accordingly: the challenge for taking democracy ahead must involve imagining new forms of *ethical collectives*, which will neither dissolve difference nor sustain it as an obdurate essence.

Can indigenousness be a basis of the right to justice?

Amit Prakash pointed out that all the three sets of the interlinked concepts: indigenousness, rights and justice are problematic. First is the issue of indigenousness, which despite having acquired a degree of centrality in the political discourse of social groups so described, remains a highly contested category – conceptually as well as politically. Politically, the term is applied to social groups (and sometimes by the social groups them themselves) "who are engaged in an often desperate struggle for political rights, for land, for a place and space within a modern nation's economy and society. Identity and self-representation are vital elements of the political platform of such peoples." However, conceptually, the term is replete with essentialism, primordialism and primitivism, as well as the residual colonialism. While the debate continues about the meaning, content and suitability of the term for social science analysis, the issue of identity and culture, and their representation, are self-declared priority issues for the indigenous people themselves. It is within this framework that the issue of right to justice of 'indigenous people' must be located, which is often seen as tribal rights located within the framework of human rights and right to development. This introduces a degree of fluidity to the relationship between indigenousness and the rights claimed on its behalf.

Amit Prakash pointed out further that herein lay another complication: what does justice entail for the tribal populations. While democratic governance, accompanied with recent impetuses towards local governance, guarantees a degree of procedural justice for the tribal populations owing to its stress on participation and representation, substantive justice eludes vast majority of the indigenous population in the country. It is in this context that the question of indigenousness as a basis for right to justice needs to be located. This question overlaps closely with the vested and problematic relationship between individual and group rights. In light of this broad conceptual framework, Amit suggested, that the right to justice for the tribal population comprises of:
:
- Right to preservation of their socio-cultural distinctiveness
- Right to socio-economic development

The first covers a set of rights, which invokes the liberal notion of rights and multi-cultural politics, fundamental rights and human rights. The local political contestation for the realisation of these sets of rights is normally expressed in demands for administrative autonomy (including the right to self-determination), right to special representation, the right to special culturally-oriented affirmative programmes and often, demands (nor necessarily claims) for cultural activities, educational curricula, etc.

The second set of rights straddles the framework of right to development and various articulations about socio-economic rights. It lays a claim on the State for adequate public policy mechanisms in order to ensure that the members of the indigenous societal groups are able to achieve the same level of socio-economic development as the rest of the populations, for which a claim to an over-riding right to the resources of the region is justified. While this aspect of rights is central in any analysis of the indigenous people's right to socio -economic development, it must be kept in mind that these arguments must not become essentialist. The two sets of rights enumerated above are not exclusive to each other. In fact, the two are closely linked and this can be understood better in the framework of (i) the politics of development and identity; and, (ii) claims for structure for participation in decision-making (for instance, local governance).

In view of this discussion, the category of indigenousness can be the basis for right to justice in the case of the first set of rights, which is attested to by the history of political contestations in the country. However, in the case of the second set of rights, the category of indigenousness offers a much more contingent argument owing to not only the conceptual difficulties of squaring individual rights with group claims or one group claims with other groups' claims, but also owing to the post-developmental processes of contemporary political economy.

Amrita Patel brought in the particular experiences of the indigenous population groups in Orissa. The habitation is mostly in the forest and hilly regions of the state and they have specific customs and traditions for self-governance. Formal education is sparse and their survival and sustenance is based on again very specific relationship with natural resources. Displacement has resulted massive displacements, and rehabilitation and compensation have signified loss of livelihood, increased alcoholism (due to availability of cash as compensation) and loss of social security. The situation of the landless (Sukhbasis) is even worse. Political leaders and people's representatives have blatantly disregarded the resolutions/mandate of the tribal Gram sabhas. There is also 'distress migration', which shows how actual conditions negate the 'right to food' and 'right to livelihood'. In this situation, all formal processes for seeking justice or protection are beyond the

comprehension of the indigenous peoples. The legal and constitutional framework has remained inadequate. The Panchayati Raj institutions specifically in the Scheduled areas, the Tribal Sub Planning process, the Western Orissa Development Council, - all these are yet to transform the their lives. One of the basic flaws of their functioning is that they have ignored the identity of the indigenous population groups as a community and their right of self-governance including access to and command over resources.

Social justice in Dalit Pattis (hamlets) of rural UP

But political economy is not all. Badri Narayan reminded that ethnography too has thrown light on the state of social justice in India, and since discriminations and divisions produce issues of justice, the concept of justice can never be the same for people living at different layers of society and subsequently facing different levels of injustice. In the highly hierarchic and unequal society characteristic of UP, the meaning of justice for an upper caste might imply a legal dispute against another upper caste over land or property. On the other hand, for dalits for whom suffering social injustice is an inescapable part of their existence, justice is not merely legal justice but 'social' against everyday exploitation and humiliation by the higher castes. For them, justice would mean being able to live like human beings with dignity and self-respect, without their caste and family pride being deflated everyday by the higher castes with whom they need to interact. Many men from dalit families have migrated to Mumbai where they are earning well and remitting a good amount to their families back home. This has significantly raised the standard of living of most dalit families. But in spite of this, the social gain from economic development is not yet visible to most parts of UP since it is still dominated by the Brahminical cultural code of conduct and mentality. Even today in most villages the lower castes live in separate hamlets or patties that are some distance away from the upper caste settlements. Even today, in spite of Uttar Pradesh having had a dalit chief minister for two terms and the Bahujan Samaj Party (composed mainly of dalits, and one of the most powerful political parties of the state), lower castes are still relegated to the fringes of mainstream society and constantly face social and cultural oppression. These examples of the gross social injustice existing in rural society in UP underpins the need to strengthen social justice in the state, which is one of the major concerns of the Indian state today.

Not many people are aware that the dalits have never passively accepted injustice by the dominant forces. Since the process of oppression and exploitation began, they have been lodging their protest against it in their own way, which has led to the creation of narratives documenting their dissent. The narratives created by the grassroots of the dalit society generated in the dalits newer claims of justice. These narratives have been recorded and documented by the educated dalits in their newspapers, magazines and popular booklets in the forms of stories, poems, plays and so on, and are once again circulated among the grassroots dalits at their social meetings and political rallies. It is however interesting to note that rather than a demand for social justice, in their oral narratives the descriptions of the injustices suffered by them are more overwhelming. The instances of social injustices can be found in all their narratives ranging from their origin stories to descriptions of their everyday lives. Their quest for social respect, social dignity and desire for human treatment are strongly visible in these narratives but their aspiration for social justice is present in these narratives merely as a nuance. Overtly, the concept of social justice is neither clearly outlined nor is there present any assertive demand for it from the government or the state.

Since it is very difficult to measure the perception of social justice, the only way is to document and analysis their oral narratives in the context of ethnographic observations. The methodology employed has to be '*baat se baat*' (conversational) method i.e., extracting information through semi-structured conversation. In one such work *Badri* reported, lengthy interviews were conducted with three people each of three generations of people of Chamar and Pasi castes – interviewees selected because of their encyclopedic memories and ability to recount interesting narratives. The three age groups were 70 and above, between 45 and 50, and between 20 and 30. The reason for dividing the population into these three age groups was to study the variation in the perception of the concept of social justice between these three generations. The persons' minds were first brought into the memory lane by talking about their personal life stories and then channelled into discussions about their caste in general. Thus the conversations ranged from their everyday life experience to the origin myths of their castes. The study revealed a glaring difference in the reactions to the narratives of social justice between the older illiterate section and the younger literate generation of both *Chamars* and *Pasis*. The older generations of both castes are rooted to their mythical past when they were equal to the Brahmins. The middle generation too believes in the mythical past but interpret the stories as a conspiracy of the upper castes to bring them down in the social ladder. This generation also has other heroes and idols - real historical characters. The stories of these heroes are related in a way that shows how they were debased and marginalized by the upper castes. Neither of these two generations, however, demands any retribution from the state or from the upper castes for the centuries of social injustice suffered by their caste. In the case of the younger generation it was observed that although most of them have not had much first hand experience of suffering these injustices because of the growing sensitivity in society towards dalits, they have a learned perception of social justice through secondary sources especially political rallies. This has evoked a strong feeling of anger against the injustices faced by their ancestors over the centuries. Being heavily influenced by the contemporary dalit political mobilisational discourse, they vociferously demand retribution from the state and government for these injustices. This demand is not always in a consolidated or unified form but is often unsystematic, fragmentary and scattered. However, the dependence on the government and state for achieving social justice is evident. They would like their caste to be restored to its former glory, for which they are now acquiring education and striving for socio-economic and cultural improvement to be equal to the upper castes. They have shunned their caste- based professions which they believe was the main cause of their inferior status in society, and have taken up other activities that are cleaner and less marked by 'polluting'. Their responses to the centuries old social injustices could be the outcome of the newly emerging dalit politics that is exercising strong pressure on the state to ensure the prevalence of social justice.

Once again on the question of division, do divisions matter?

These discussions on divisions indicated, as *Nur Ahmed Baba* commented, the challenges posed by the democratic Inadequacies in divided societies. Pluralism and divisions as such cannot constitute challenge to the justice and the process of democracy, when there is a certain level of power-compatibility, a robust mechanism of federal distribution, and a process of democratic decentralization. However, divisions cause problems when there are deep disparities of power, wealth, education, honour and prestige among various segments, classes, groups and strata that make a people. The problem of providing justice and allowing a fair interplay in such a society becomes a complex problematic. Working of democracy in such societies in the sense of empowering people at some level of equity would be more of an illusion and be a mechanism of

promoting a sort of false consciousness that accepts as legitimate different degrees of hegemony of privileged classes, strata, gender and majorities. Unfortunately in all South Asian societies, this is how democracy operates. Under the legal facade of liberty, equality, justice and empowerment, repression by the traditional/inherited authoritarian order at the level of family, society, caste, gender, classes, very often reinforced by one another, continues.

We now pass on to the third group of issues: *justice and policy-making for justice*

Governmental policies and justice

This was the third cluster of issues animating the discussion in Bhubaneswar. *Ranabir Samaddar* felt that it was difficult to make a categorical judgement as to how policies contribute to social justice in divided societies. He said that the following factors needed to be taken into account in this discussion, namely: the particular historical conditions in which policies are being framed; the implementation mechanisms and their nature; policies as arms of particular interests in plural societies, the nature of a divided society caught in acute conflict situation; The presence or absence of the dialogic basis of policy formulation; elements in a policy fund, such as, imagination, data base, interest aggregation, vested interests in securing certain policies and conservatism. He further drew the attention of the participants to the policy explosion in India in the wake of globalisation, which showed public policy as a contested field where on one hand globalisation acts as pressure for structural reforms and on the other hand mass movements in defence of social security become catalysts for new policies. He also presented in brief a comparative profile of the policy explosion in India in the fifties and the seventies of the last century and the first decade of the new century and its lessons. Finally, the question came up clearly in course of his deliberations, namely, is not a policy a response from the top to the pressure from below for justice? And, if that is so, how exactly does policy mechanism work as part of the phenomenon of 'governmentality'? Yet, while they can act as this, they occasion new dialogic surges also in society.

Samir Kumar Das continued the discussion on if justice can be delivered through policy interventions. He referred to Ronald Dworkin who in his *Taking Rights Seriously* makes a distinction between 'policies' and 'rights'. Rights tend to disarticulate the c ollective (the nation) that policies seek to organize, sustain and stabilize. Rights therefore are to be regarded as particularistic or at times exclusive claims against the collective. He said that it seemed that our dialoguing with the state could accordingly be conducted in either of the two languages: the language of the collective or that of rights. These two languages are distinct in many ways. The language of rights does not have any obligation of remaining bound by the imperatives of the collective. Policies and rights in this view are clearly dichotomous. In this context he proposed the idea that we are now living in an age of policies rather than rights. We are passing through a phase of policy explosion particularly since the 1990s. National Agricultural Policy, National Employment Guarantee Act, The Policy of Resettlement and Rehabilitation of Project-affected Families etc. provide only some examples of this larger policy explosion. These policies, he argued, are meant primarily for rebuilding the collective now facing the threat of being disarticulated and fractured by a plethora of forces commonly associated with globalization. Peoples' struggles for rights are attended by the policies. In this way the government's policy fund.is substantially enriched. The language of policies soon appropriates the language of rights and justice, and locating justice at the level of policies implies governmentalization of justice.

The question with which the discussion ended promising to return with renewed thought in near future was, how are to ensure then the dialogic mechanisms for justice? And, equally significant was the realization that justice needed to be considered as historically contingent, a phenomenon that despite all governmental strategies retained its appeal beyond law and policies.

Notes from the participants for the Darjeeling dialogue

A note on background and research design on Bihar / Manish Jha

The terrains of southern Bihar (known as central Bihar before the state of Jharkhand was formed) are known for widespread caste/class violence. The simmering tension in the districts like Jehanabad, Arwal, Bhojpur, etc. often draw the attention of society and media for recurring incidences of violence between upper caste private militias and different ultra-left outfits often known as Naxalites. Since 1970s there has been a phenomenal growth in the instances of conflict leading to death and destruction of people mostly from lower socio-economic strata. The protest movement of lower caste landless labourers under the leadership of Naxalite groups have ensured that the poor and downtrodden do not accept the repressive treatment any more. They started objecting to anything that hurts their honour. The mobilisation and protests of lower caste were not accepted and tolerated by caste Hindus and they formed their caste *senas* (private caste militia) to 'set things right'. The Upper caste groups have suppressed the rights of the poor people and their private militias have been used to keep them in continuous threat. The trajectory of this violence needs to be examined in the light of failure of the state in implementing land reform legislations, providing minimum wages to the landless labourers along with a range of practices of socio-economic exploitation of lower caste landless labourers at the hands of upper caste peasantry. The issue of uneven land holdings, low wages, caste discrimination, sexual exploitation of lower caste women has resulted in galvanization of rural poor under the leadership of radical left groups. Such mobilisations resulted in regular confrontation between low caste peasants on the one side and the upper caste big peasants on the other, and as a consequence widespread violence and massacre was witnessed frequently. Be it Caste militia like Ranvir Sena or various Naxalite outfits, they act with a strong belief that they are the custodian of justice within their area of influence. The motto seems "Justice must be obtained, by any means, here and now". Such understanding and delivery of instant 'justice' is antithetical to any norm of just society. The research questions can be:

1. What is the socio-economic background of victims of injustice and/or violence?
2. What is the socio-economic and political milieu considered responsible for perpetual injustice and oppression?
3. What kind of justice delivery mechanism is available for people and how effectively does it work?

For the purpose of such a study in southern Bihar, case study method should be used to get in-depth insights of experiences of injustice and exploitation of the people. It would help in investigating the phenomenon of injustice and violence within its real life context. The data can be obtained through in-depth interview. In order to get the thick description of historical background and present situation, the researcher needs to rely on varied methods to extract depth and meaning in the context. The field researcher needs to be directly and personally involved as the issue demands experientially engaged lens of the researcher. In the given issue and its locale, either an individual or an entire *tola* (hamlet) can be taken for case study. If an entire hamlet is taken as case study, focus group discussion can add value and quality in information already collected through interview and/or observation. Diversifying sources of data and means of interpretation has special value in a locale, which is socio-politically sensitive and polarised. Studying social actors ethnographically means that we have a better chance of 'triangulating'. Besides, the study would involve an extensive review of literature about agrarian structure and

relation, caste-class dynamics and people's response in the situation. In depth interview guide could be used to collect background information from members of civil liberties organisation, Leaders of Naxalite groups as well as caste *senas* (private militia), police personnel, lawyers and social activists. For the purpose of identifying individuals and/ or hamlets for case study, fact-finding reports of civil liberties' organisations and other sources are available. There are individuals and families facing injustice and exploitation on a regular basis. It would be appropriate to do purposive sampling and identify villages/hamlets for the purpose of case study. The idea is to sample experiences rather than people *per se*. Moreover, temporal and spatial dimensions would be taken into consideration for sampling.

Education, health and justice / Kumar Rana

The importance of education and health is incontrovertibly linked with development. However, the linkage between these two 'development' indices and justice has not been discussed much. In fact, in spite of being acknowledged as social components the issues of education and health have mostly been discussed in economic terms. The issues of education and health are certainly important for development – both individual prosperity and collective socio-economic advancement. And yet, they demand much fuller discussion in terms of equity and justice, inside and outside the premise of development.

Let us begin with education. The centrality of education for achieving economic prosperity is undeniable. There are clear statistical correlations between illiteracy and economic prosperity: often the poor are illiterate and vise versa. While illiteracy inflicts the possibility of economic development the frailty in economic condition prevents a community from accessing education. And here lies the terrible linkage between state failures to deliver education in an equitable manner and segmented unevenness of development. The deprivation of education of the poor figures in many different ways: low access to educational institutions, poor infrastructure facilities, appallingly low quality of education that necessitates private and paid arrangements to learn the basic skills, and so on. The failure of the state in delivering equitable education makes the poor the victim of larger social injustice. The consequences of the failure to guarantee education to the poor are manifold: economic, social and political. Illiteracy not only deprives a population from the opportunity to advance in economic terms but also leads to the incapability to exercising democracy and sharing social and political power, which are again linked with economic progress. Many of the elected panchayat members were seen to be helplessly dependent on others owing to the sheer lack of the basic skills of reading, writing and computing. And on many occasions their decisions were altered under duress or made in favour of the particular class of the person the member depended upon, even though the member's class position and angle was diametrically opposite to the class she had to decide in favour of.

The limitations imposed by the state in accessing the health services are no less unjust. The non-functioning or absence of the health services has serious implications on the lives of the people, particularly belonging to poor socio-economic background. While this failure has direct bearing on the life of the particular person concerned the injustice exerted by the poorly functioning health services affects the communities in many different ways. Aside from direct taxation on individual health and family economy this often promotes a pervert private system of health care, led by the quacks and other wicked practitioners that brings forth further injustice in the society. The so-called private system not only gives way to exploitation but also to severe inequality. The

commodification of health services results in further class polarisation where the poor becomes the victim of perennial vulnerability.

Apart from the above detrimental consequences the poor delivery of education and health services has also had a reverse impact on the weaker section of the society: in many cases the achievements made by these sections through their struggles are brutally negated by want of an equitable delivery of education and health. These can be seen in the form of reverse tenancy, ruination through loan and bondages, lowering down the wage rate and so on. In the case of West Bengal the major victims of the injustice forced by the state through the inequitable and poor delivery of education and health services are the traditionally weaker sections of the society: the Adivasis, Dalits and Muslims, who form the majority of the working class of the state. There is a need for a fuller understanding as to how these deprivations should be challenged and how the different agents of the society – the affected communities, academia, the state, and larger society – could act with particular relevance and effectiveness to end such injustices.

Transitional justice: a source of illumination? / Sabyasachi Basu Ray Chaudhury

Post-colonial and transitional societies, like India, have to grapple with a range of complex challenges. As a result, questions of justice figure prominently in these situations. Therefore, the deliberations over social justice in the Indian context can perhaps be best understood when situated in the concrete political realities and in the transitional political context that include political, juridical and social contingencies. Due to the transition from a colonial to a post-colonial society, India has confronted a lot of contesting identities in view of the redrawing of boundaries in the sub-continent.

For instance, the Indian caste system is often associated with the age-old exploitation of a majority belonging to the so-called lower castes by the so-called upper castes – a situation that calls for justice. Similarly, the conflicts, riots and pogroms involving different religious communities have also made the question of justice quite crucial. The ethnic tensions have also added more problems to the system of democratic governance in India. The question of justice takes a crucial turn when in an ever-expanding and industrialising economy of India, the indigenous peoples are getting uprooted from their traditional homeland and getting detached from the forest resources on which they used to depend upon for their very existence. In this scenario, how far the administration of punishment, in most cases on the basis of the laws enacted during the colonial period, can ensure justice? Moreover, in a conflict-ridden fledgling democracy, administration of punishment can pose acute dilemmas concerning rule of law. In other words, in such a society, in the post-conflict situations, the contradictions to the uses of law may become excessively great. The failed trials in Rwanda demonstrated quite clearly such acute conflicts between the processes of national reconciliation and criminal justice. Therefore, in many countries, subsequently decisions were taken to forego prosecutions in favour of alternative methods of truth-seeking and accountability. South Africa is a prominent example in this perspective. Moreover, such truth commissions are also associated with critical responses to globalisation, where the perceived democratic deficit has led to the pursuit of a universalising and legitimising discourse.

But, with apparently ongoing processes of transitional justice delayed, the very meaning of the category of transition has expanded over time to become a persistent trope. What was historically viewed as a legal phenomenon associated with the extraordinary post-conflict conditions, now

increasingly appears to be a reflection of ordinary times. In fact, the emergence of this form of transitional justice discourse in recent times reflects its association with the politics of globalisation, and the related challenges to the maintenance of a robust public sphere. These policies, in a way, became the signs of an age of restoration of the rule of law in a period of politics of globalisation. As a consequence, the understanding of transitional justice has become more and more associated with the more complex and diverse political conditions of nation-building in the post-colonial and post-conflict societies. However, the aim of transitional justice has gradually shifted from the earlier goal of establishing the rule of law through accountability to the goal of preserving peace. In fact, transitional justice has become a form of dialogue between the victims and their perpetrators and local understanding of legitimacy has become more relevant. In other words, the problem of transitional justice has been reconceived across moral and psychological lines to redefine identity.

Transitions are times of contestation in historical narratives. They present the potential for counter-histories. There are persistent calls for apologies, reparations, memoirs, and all manner of account settling related to past suffering and wrongdoing. The normalization of transitional justice currently takes the form of the expansion of the law of war, as illustrated by the rise of humanitarian law. The appeal to a language of universal morality in humanitarian legal discourse resonates with recent developments in transitional justice. While construction of history remains fundamental to building a state's political identity, the control over construction of a n alternative history can lie with multiple actors, like historians, lawyers, journalists and victims. In this context, transitional justice is usually considered as a conception of justice associated with the periods of political change, characterised by legal responses to confront the wrongdoings of the repressive predecessor regimes.

In brief, the origins of contemporary transitional justice can be traced back to the World War I. But, it was appreciated as extraordinary and perhaps international in the post-war era after 1945. In recent times, it has been associated with present-day conditions of relentless conflict, political instability and violence. Therefore, it is now related to local accountability and domestic justice and no more simply an international legal response governed by the laws of war or conflict. Transitional justice's critical dynamic is exposed now through new responses to contemporary post-conflict circumstances. Transitional justice has also transcended its historic role in regulating international conflict and moved in the field of regulating intra-state conflicts and peacetime relations. To some, it has, of late, turned into a threshold rule of law in globalising politics. When India was de-colonised and millions of people got displaced and became subjects of torture and humiliation, the concept of transitional justice was not applied although it could be of much importance in the subsequent years. The idea of transitional justice became particularly relevant in the context of political transitions across the globe when the democratic regimes were displacing the erstwhile authoritarian ones. But, that does not mean that this cannot be relevant today while taking a stock of social justice in terms of caste, religion, ethnicity or gender in contemporary India. In short, the concept of transitional justice can be a major source of illumination and, it can also reflect a limited critical response in the context of an inquiry into the conditions of social justice in India.

Questions of law and enforcement / Byatha N Jagadeesha

In the year 2000 in Chennai, the number of cases booked under Immoral Traffic Prevention act (1956) was 3658, and the conviction rate was almost 98%. This is the case thought South India

where sex workers are facing convictions on a vast scale. Yet quite often the public discourse is that the conviction rate is low, because of the perceived weaknesses of law. This results in recommendations from committees such as the Malimath Committee to reform the Indian Evidence Act and the Criminal Procedure code in order to improve the conviction rate. However this analysis ignores legislations such as the Immoral Traffic Prevention Act 1956, which has a conviction rate of more than 90 per cent. The other important factor of these cases is that more than 95 per cent% of the cases are being booked against women. For example in some places like Chennai in year of 2000 out of 3656 cases not even a single case was booked against men. This is more or the less the same in all the states in India. But how this can happen? The international convention on Trafficking, 1949, mandates countries to pass laws to prevent the trafficking of a women and girls for the purpose of sexual exploitation. India has ratified the convention in the year 1950 and passed a law in 1956.

The law aims to punish traffickers, pimps, and persons living on the earning of the prostitute' s Rescue and Rehabilitation are the measures taken supposedly for the benefit of the forced or trafficked persons. In an acknowledgment of the kind of police we have the law clearly states that the investigation should be done only by the Inspector and special police level and any raid conducted by this special police has to take take two nearby residents and one among them should be women. Nowhere does the Act mentions that ' sex-work' or "prostitution'*per se* is a crime, what is a crime is the activities surrounding 'prostitution'. However what is happening is its end up punishing the 'sex-worker' as statistics above indicates. The question is why is this happening in spite of law specifically not criminalizing sex workers? The answers probably lie in how the perception and the treatment of sex-workers are closely connected to the social, moral and economic fabric of our society. The police also shares the perception of sex workers as immoral and dirty, as they are equally a part of society. This means that in spite of the legal position being that, 'police are not lawfully empowered to enforce any moral code; the police are not the arbiters of morals and ethics', the reality is completely different. This raises the question as to how we actually understand law. Is it about the letter of the law or about enforcement practices which sometimes bear little connection with the letter of the law? How do we work for social change when what needs to be changed is the way mindsets operate?

The agenda of justice in a historical cast / Ranabir Samaddar

There are several routes to approach the issue of justice – several ways of engagement. The philosophical path tells you to go back to Plato, whose theory of justice tells you about the correctness of social order and the virtue in maintaining it, or to the middle age theorists who combined religion, virtue, and justice in a comprehensive theory of ethics where justice had no special place, or to the modern day neo-Platonic Rawls in whose works justice becomes a complex arithmetic and a strenuous human effort to maintain it in a world marked by hierarchies and illiberalism. A slightly historical twist to the philosophical path can be found in Michael Walzer's *Spheres of Justice* (1983). One can also have a sociological route, which enables one to identify various social notions of justice, the "habitations of justice" we may say in the sense in which Bourdieu used the word "habitation", and this enables us to see justice and its demand and procedures as a social phenomenon. The ethnographic method may help us to map these habitations, and help us to see what one can call the ethnographies of justice. There is a route grounded in ethical readings also. Finally, there is a historical route, which allows one who takes it to see in a historical glance what can be called the "regimes of justice" and a "regime of

justice" which has in it several notions, institutions, discourses, and agencies of justice existing simultaneously but in a relation of power and subsidiarity.

There is something more to what constitutes the historical route. This route enables you to see the contentions and contingencies giving rise to a specific notion of justice. To give some brief instances:

The first instance - How do you fight war? Do you kill the enemy who has surrendered? Do you conduct war in stealth, without declaring? Do you deprive the population under enemy control of say water? Do you make the women of the conquered territory your slaves? Can you violate laws of property and force a group or someone into privation of means of sustenance? Or can you say that you will not talk with your opponent anymore? Now these issues - debated for instance at length in the *Mahabharata* forming the core of the justice question in the epic - have history to them in their resolution in what are called the Geneva Conventions (for instance Common Article 4). The condition of war produces the idea of *war crimes and justice* even in conditions of war. The second instance – How did the specific idea of *justice in form of restitution* grow among the indigenous population groups in India? Here again if one goes back to the long span of seventy five years (roughly 1775-1850) one would see the systematic dispossession of the indigenous population groups of land and other resources, and then the development among the indigenous people of the politics of collective claim making whence the idea grew that justice could be done only by restitution. The third instance – How did the specific idea of *justice as dignity* emerge? Here again, we not only have a long history of struggle going back to the middle ages or more, we have the specific contentions over the issue of equality during the entire colonial period, when the dalit agenda of justice left its permanent mark on the programme of independence and freedom. The fourth instance – when we study popular politics particularly in its contentious phase, we can see how *justice in form of revenge* makes its appearance. Thus during the "religious war" of 1947 groups of insane roving mobs thought that by killing individuals, families, and villages, of the other religious denominations they were extracting justice, and taking revenge for depriving them of legitimate power. In the dynamics of justice, claim making is essential, and therefore it is critical to find out how claim making arises in the first place. Revenge and retribution occur elsewhere also in social, juridical, and political life. The State hangs to death at particular moments long detained prisoners as acts of demonstration of its power and revenge against errant groups or individuals, or as stamp of its juridical authority to take life. Besides, we have other demonstrations of revenge as acts of justice. Such demonstrations occur as examples of *instance justice*, or as summary lessons in justice. Thus there are occasions when someone has crossed certain boundaries (like caste lines, or some imaginary blood ties, etc), and justice is done by punishing the "errant" individual/s by group elders by expelling them or even by killing them. In cases like these justice is seen as correction, punishment, and reprisal for transgressions. The fifth instance – *justice is seen as fairness* also. This fairness is not only in the fact that a claim is seen as a fair claim, but in the fact of acknowledgement also that other claim has also legitimacy and is fair. This has happened in Jinnah-Gandhi Pact of 1916, in the appeals by Jinnah to correct the one-sidedness of the Motilal Nehru Committee Report in 1929, in the Bengal Pact (1926), in Cabinet Mission negotiations (1944-45). This tradition of fair bargaining was so strong that constitution making was influenced by that tradition. Justice meant, as the Constituent Assembly opened, recognition of fair claims by different sections, a recognition of injustice done to dalits, women, indigenous groups, minorities, and in general the weaker sections of society, so much so that one of the strong basis of state welfare was the requirements of justice. The State would deliver justice. Delivery mechanisms

thus became important, and to that degree the anger of the people at the failure of the machinery to deliver justice fell upon these institutions. Burning, looting, ransacking, demonstrating, picketing, boycott, and other avenues of showing anger became commonplace. We have to only think of the food riots in West Bengal in mid-sixties, or in the Jharkhand area in the eighties, or in Orissa today – in the last two instances over failures to resettle the ousted people satisfactorily – to appreciate the extent people judge state actions by the norm of justice.

We can go on with more instances. But for this short note we need not increase them. I think these historical instances of varying forms of justice pose for a critical research programme on justice two problematic: (a) Sovereignty clearly is an agency and a factor. People expect the sovereign to be responsible – and this is behind the current juridical theory about "sovereignty as responsibility". Who will institute dialogues for establishing a just solution of a certain problem? Who will deliver the common goods? Who will write the fair script – the script of the judge, or of the basic law, or of the just policy (let us say, policy on information right, or resettlement)? The common answer is the sovereign. Thus, in the colonial time even though various non-state actors (Congress, Muslim League etc.) dialogued for a just solution to issues of injustice, they needed legal solutions. Hence quarrels over seat sharing, reservation, form of federation, etc. went on. Yet, the point is that even if the people burden the sovereign with their claims and expectations, the sovereign retains exceptional powers to be "unjust" that is to say arbitrary; and in any case the delivery of justice would depend on government and not the sovereign, who is sovereign, not because as sovereign the power delivers justice but as Carl Schmitt pointed out this power has extra-ordinary powers to make exceptions. Now in reality we have already found out there are many ideas, many implementation authorities, many governmental agencies, many sites, and many actors shaping the agenda of justice and implementing it. Sovereignty is thus already diffused. Governments provide justice, but it is only the sovereign who can be the final arbiter of justice… How do we cope with the problem? It is not only a theoretical one, but one of immense significance to politics and society. (b) The governmental form of justice (such as welfare provisions, equality of rights, non-discrimination, positive discrimination, judiciary, public interest litigation and judgements, speedy trials, provision of social and economic rights, special enabling legislations, and anti-poverty programmes) carry on them the mark of popular claims for justice. Yet as governmental form this particular form of justice delivery produces a particular form of subject – the justice-seeking subject, who as we witness in form of the crowd throngs for days and months and years in the court, mostly without avail, a scenario dominated by lawyers, counsels, judges, police, the magistracy, and the middlemen. Fairness is reduced, procedure is maximal, and what we have instead is a regime of justice, whose legal form empties the particular claim, and exhausts the function of reconciling various claims; and relations of justness are replaced by relations of governmentality, that is relations of being governed for each and every purpose. Now if the society is historically as we have seen marked by different ideas, practices, and sites of justice, can we not envisage a dialogic notion of justice, which is not ideal, but historically conditioned, therefore minimal, dialogically produced, therefore backed by a rational version of legal pluralism, and which acknowledges the different motivations of justice spoken of earlier, and institutes dialogues between different legal modes. Dialogic justice is based on the principle of social justice, is conditioned by historically grounded rules and possibilities.

Dialogic justice poses a clear challenge to the entire tradition of sovereignty. One of the recurring truths of political philosophy is that every sovereign power forms a political body of which there is a head that commands and other organs function together to support the ruler. Justice dispensation is part of those functions. The concept and the realities of dialogic justice challenge

this accepted truth of sovereign power exactly in the way in which the political and social dialogues over contesting claims in the great anti-colonial movement happened in the sphere beyond the sovereign, and challenged the latter by creating a political mode that was outside the sovereign sphere, even though this other sphere had enormous internal differences and multiple realities, which indeed in the first place required dialogues. The dialogic subject is therefore more than the justice-seeking subject that governmental mode of justice creates. The bio-political reality of subjects seeking a fair resolution of claims and therefore producing dialogues on historically conditioned basis is one of the abiding themes of democratic politics today.

Ethnographic strategies and case studies / Sanjay Barbora

Among the most contested, and resisted terms in academic institutions in Northeast India is 'indigenous'. I found out the hard way that Benedict Kingbury's extremely detailed account of historical debates that affect the use of the word 'indigenous' in internat ional politics could not crack the strong walls of Indian sociological method. Nor could Andrea Muehlebach's scholarly appeal to understand inchoate demands of disparate marginalised communities as part of a universal demand for rights and justice cut much ice with academics who argue that tribal politics is largely about instrumental rationality and opportunism. Having somehow survived my methodological trespasses and non-sociological transgressions, I drove back to Guwahati (from Shillong) reading faded graffiti on walls that said: "*Justice for Khasis living in Block I and II*", referring to events of 2004 when Karbi militants had allegedly evicted Pnar Khasis from a disputed part of Karbi Anglong district.

The walls of major towns in Northeast India are full of similar graffito and the many self-published monographs entitled: "*The Lepchas: History of a People*" or "*A Brief History of the Origin of the Boro People*" reflect a similar urgency for recognition and redress of some form of injustice among the people of the eastern Himalayan region. If one were to plot the demands for separate homelands, recognition of cultural rights and other forms of assertion of identity against assimilation into dominant national/ regional social and political structures, those in this region would be just as numerous and complex (if not more) than Central Asia. The fact remains that throughout a wide stretch expanse of mountains and valleys that make up the eastern Himalayan region, experiences of peoples with modern institutions of state and the citizenship regimes has been fairly dismal. Apparently, academia's unwillingness to engage with the indigenous question in the region is conversely proportionate to the meaning and passion that people attach to collective, communitarian and kinship-oriented identities and politics.

While India has a fairly well-documented history of constitutional provisions for people from the geographical and political margins of the country, there is very little research on what constitutes peoples' struggles and peoples' politics; or at what point does indigenous rights appear in the political vocabulary of a movement. From a purely political anthropology perspective that would please many members of expert academic panels in the Northeast, the study of formal political institutions of government ought to be enough. Hence, they would probably argue that it is enough to study the traditional institutions and the power dynamics that they generate. However, we need to understand that given the crisis of legitimacy that affects political life in the eastern Himalayan region, including Northeast India, it seems more necessary than ever to move beyond a focus on the state (and formal structures of governance) to an analysis of how power is acquired and transmitted in societies as a whole and most crucially, the emergence of *indigenousness* as a marker in the concretisation of political culture at a point where power is affirmed and contested.

In doing so, an ethnographic case study of even one of the societies in the region would throw up seemingly contradictory results. Given the different 'autonomous' arrangements in Northeast India, one would be tempted to conclude that devolution of power has somehow addressed the issue of social justice for marginalised peoples. Yet, I would argue that this autonomy is an illusion, for it also throws up questions of replicating statist visions. How could, one may ask, the creation of the state of Meghalaya, lead to the demand for a Garoland, merely three decades after the creation of the state? The provisional answers might lie in an ethnographic history of the state that shows that power actually rests on everyday social practices central to all modern societies where people do not feel incorporated into the political life of the nation/ administrative unit within which they reside.

Indigenous politics and the quest for justice in the Northeast is a tricky question. Most political movements would use parts of the larger indigenous discourse to bolster their claims[1]. Nevertheless, if we were to engage with the question in all seriousness, this complex resurgence of identity along the entire region has to be characterised as the responses to domination (by the state, settlers, military, local elite or even a clan) of groups that have little else to lose than struggle for autonomy and recognition. Much of this is in danger of slipping away from view because of its everyday inchoate quality and this where a good ethnographic account has an important role to play in bringing these dimensions of political life back into view. In recognising them, we may be able to bring a political, ethical and moral dimension to doing research on social justice (especially in Northeast India).

A note on Dalit discourse of social justice / G. Krishna Reddy

The idea of justice often in practice serves 'self'. Following the politics of social justice, the 'universal' as constitutive of justice works for the 'particular'. For instance, the universal appeal of ruling elite legitimizes their power and sustains domination. It subjugates the rest of social groups to particular interests of the elite. The caste system in India historically served and is serving this purpose.

While not attempting to engage with the philosophical context of justice, the present note focuses on the political arena where the conflicting ideas are continuously produced and discourses are shaped. I put dalits' engagement with the question of social justice in three ways. Firstly, their sense of justice could be viewed as an offshoot of failure of universal appeal of the nationalist elite whom they consider as constituting essentially of brahminical-upper caste interests. That it did not bring about any change in their social, economic, and political conditions as promised. Rise of movements around caste, gender, tribal issues since the 1980's reflect the limits of the norms of justice that the ruling class politics introduced. However it does not mean dalit consciousness is merely contingent upon ruling class politics. The relation is rather dialectical. That brings us to the second aspect of their concerns of justice. Untouchability, being the binding feature of dalits, constitutes the core of their sense of justice. Untouchability here assumes many

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[1] Here I refer to occasional statements of the United Liberation Front of Assam (ULFA) that speak of the 'rights of indigenous peoples pf Assam", or the memorandum submitted by Naga nationalists at the United Nations' forums for indigenous people. Both ULFA and the Naga nationalists do use a particular kind of indigenous political discourse, but are extremely cautious about falling in line with the more established normative discourse on indigenous-ness. They do not seek symbolic concessions from settler nation-states, but claim that they constitute the future state. This puts them apart from other indigenous organisations that seek to position themselves as minority constituencies within larger national/ regional entities.

forms, not just physical. It radically separates their sphere from the rest of the caste society marking the beginning of their identity formation. It calls for entirely *different* parameters, not even as an alternative, for justice. Their notion of justice is based on the premise of particular exclusive claims for goods. Yet interestingly, they use the parameters of universal justice inwardly when addressing the differences within themselves. The sub-caste difference, gender question, regional differences all stand as challenges to such identitarian position – the situation that dalit movement in Andhra Pradesh faces today. However this supposed dilemma in dalit movement must be understood to be different from the crisis of ruling politics as the former's effort is to forge a unity to fight the marginalisation and the latter's' is to perpetuate dominance. In this second sense, they make exclusive claims over social, economic and political goods. There is a third line of perception concerning justice that originates from everyday experiences and struggles of 'ordinary' dalit (as different from articulate, educated and thinking dalit, often we call him/her as dalit intellectual). This segment of dalits appears to be amenable to both dalit identity articulations and mainstream politics. Quite readily they rally around the forces of any hue whoever promise to intervene to solve their everyday issues notwithstanding the prevailing frameworks of justice.

Dalit articulations of justice contain three stands: one that they have been condemned to be untouchables and kept outside the social, economic and political processes. So they must be given a just place. This has a compensatory value. Second, their contribution in all sectors of productivity - railways, mines, agriculture, industry etc. forms the basis for their claims for share in all spheres. It signifies moment towards assertion and attempting to introduce new set of re-distributive values-human dignity, labour, etc. Third dalits' critique of development potentially contains fragment's view of just society. For instance, dalits' argument about representation is not just concerning the issue of reservations but as a necessary value of society, as Ambedkar had said. Unless the obstacles over the human energies are removed, no development is possible. Caste system is a major stumbling block in the way of growth of human energies. Though anti caste agenda in dalit movements presently is latent and weak, logically the dalit movements cannot grow without it. Engaging in dialogue with the larger society is endemic to the logic of identity movements.

Identifying institutional locations and resources on research on justice / Kumar Suresh

Social justice, as rightly pointed out in the research note, signifies multiple contexts, content and sites. The perception, perspectives and claims also vary considerably. Therefore, the task of mapping the resources and institutions for research on social justice should also be reflective of the multiple dimensions of social justice. The first task in this case is to identity the core groups who constitute the cases of claims for social justice. The dalits, women, indigenous groups, minority communities are some of the groups around whom the claims and discourse on justice generally revolve, though the grounds of claims are not identical. The discourses on deprivation and discrimination may also be at variance in each case. Therefore the resources and institutions for research on social justice can be identified accordingly.

Among the multiple resources, governmental institutions constitute one of the important resources bases for research on social justice. It is not because of the 'vastness' or 'authenticity' of the governmental data but focusing on the governmental institutions could provide insight into understanding the concept from above as to how the state perceives and approaches the very concept of social justice? What informs the mechanisms and their effective delivery with the

governmental structure could be the other interrelated point of inquiry in this regard. The perspective and approach can be discerned from the relevant ministries of the union government and their counterparts in the respective states. The Ministry of Social Justice and Empowerment and The Ministry of Panchayati Raj may provide relevant data on dalits, women and other groups. The Panchayati Raj institutions have initiated a new process wherein excluded and deprived groups. The Panchayati Ray institutions have initiated a new process wherein excluded and deprived groups are also finding their place. Though there are limitations of the state initiated efforts, the space created by the state in case of Panchayati Raj is remarkably important. There is still a gap between the precept and practice but focusing on this dimension could be insightful. In this case the databases of the Ministry can through some light on the issue The Planning Commission's approach paper and their database could provide important insights.

As parts of the governmental institutions, The National Commission for the Scheduled Castes and Scheduled Tribes, The National Commission for Minorities, The National Commission for Women, and The National Commission for the Other Backward Classes etc. are directly entrusted with the task of monitoring the proper implementation of the governmental programmes related to one or the other dimension of social justice. Their counterparts in states, wherever they exist, may provide important insights. Apart from the relevant data, the nature of complaints and grievances received by these institutions and their redress could help in understanding the dynamics of social justice from above.

However, the ethnographic studies and resources bases of the non-governmental institutions may be more important in this regard. They may provide insights into understanding the dynamics of the concept of social justice from below. There could be a large number of institutions engaged in the study and research on one or the other dimensions of social justice or articulating the claims of one group or the other. The task of identifying such institutions invites a collective effort, as there could be different institutions in different regions. Some of the Delhi based institutions may be identified that may serve both as important resource base or collaborating institutions. The Centre for Women Studies, Centre for the Study of Developing Societies, Institute of Social Sciences, Indian Social Institute, Institute of Objective Studies, Centre for Dalit Studies etc. are some of the important institutions, which may serve as resource base of research on social justice. The institutions with whom the dialogue participants are associated with can also significant partners in this collaborating effort.

Conditions of social justice in Orissa / Bijaya Kumar Bohidar

Exploring 'social justice' in Orissa would involve critical examination of a whole range of issues like the social composition of its population, hierarchic social structure, historical processes resulting in marginalization of certain groups and classes, implementation of constitutional provisions, legislative and bureaucratic interventions, civil society initiatives and the impact of market driven development process on state and society. Along with these determinants of the conditions of social justice, the study will also have to take into account the emergence of resistance movements and reactions among the people around the issues of actual or anticipated marginalization, displacement, poverty, growing inequality, non-representation, denial of rights and loss of honour. Popular assertions have not only sought to oppose conditions producing injustice, but also have articulated alternative notions of justice.

Given the fact that conceptualization of justice remains vague, largely subjective and quite dynamic, the task of research may appear to be quite unmanageable. Hence it becomes necessary to assign priority to certain aspects of justice within the overall context of the research project while being sensitive to the local specificities. It may be useful to examine 'justice' in the context of interactions between a complex set of realities: 'social structure', 'development process' and 'politics' in Orissa. The following constitute specificity of the Orissa situation:

- Dalits and the indigenous people account for roughly two fifth of the population of the state, while the latter alone account for almost one fourth;
- Poverty of people in spite of plenty of natural resources;
- Failure of the state machinery during its welfare phase to address problems of poverty, marginalization and other roots of injustice;
- Gradual withdrawal of the state from its societal responsibilities and the emergence of market forces accentuating further marginalization of weaker sections of society and depletion of natural resources.
- Absence of powerful social reform as well as class based movements and consequent exclusion of vast masses of people from the structures of power,
- And, the emergence of a number of popular protests and struggles against loss of livelihood due to displacement and ecologically unsustainable development process. Interestingly this has added a new dimension to the debate on the definition of justice by bringing into focus the issue of intergeneration equity.

Any relevant research will generate data on all these aspects from various sources. Critical analysis of government documents, legislative debates and judicial pronouncements would help evaluate the nature and limits of state intervention. Besides published research works on different dimensions of social justice, less known popular tracts will help explore the issue further. During the last few years, people's movements have produced an impressive range of literature as a part of their struggles to get justice. Complementing such literature, a number of pro-people journals and news magazines with critical and alternative ideas have emerged. Extensive survey of such material will constitute vital source of information and ideas. All these efforts have to be accompanied by wide spread dialogues and intensive interviews with representatives of relevant social groups.

Rule of law and justice / Ashok Agrwaal

Any rule one does not like can be described as tyrannical. This is as true for the rule of law as it was for the rule of men that preceded it. Thus, rule of law can well become tyranny of law. Many would say that it is so. Perhaps conscious of the perpetual chasm at its feet, law has constantly striven to justify its existence as an operating principle by claiming an intrinsic link between itself and justice. However, the connection between law and justice is riddled with contradictions. For example, law, even ' rule of law' , enjoys a symbiotic link with force: that which cannot be enforced is not law, while the fine robes of law sustain the illusion that the force which backs it is more than mere barbarity. On the other hand, justice and force are antithetical to each other. Looked at in another way, law comprises all that an *authority* is able to enforce, without reference to reason or compassion. But once it is linked to a notion of justice, law is compelled to display not only an inner consistency but also, to satisfy a set of social, moral and ethical criteria extrinsic to itself.

The controversy whether law is a tool of justice or whether justice is an excuse for imposing (and enforcing) law, may never be resolved since the arguments are strong on both sides. It is also patent that the modern nation-state has forged a special web of links between law and justice. When viewed in the context of its evolutionary history, these links seem inevitable and, more importantly, a step forward in the eternal quest for justice. Thus, in a democracy, even a parliamentary democracy such as found in India, the rhetoric of empowerment has perforce to be accompanied by a degree of concrete action. Without confronting the question- can law deliver justice- this paper will seek to examine whether, and the extent to which, public interest litigation or PIL has served the cause of justice. Hundreds of thousands of PILs have been filed before the Supreme Court and the High Courts in India over the last two and a half decades since the PIL came to be recognised as a separate genre of litigation. There should be research to find out what satisfaction the Supreme Court was able to deliver by looking at a few of the PILs that have been heard by it. However, the main thrust of such a research has to be to present a contextualised statement on the impact that PILs have had on social justice in the country, both in terms of conscientising the masses about their rights and, the actual delivery of the commodity.

Social justice in the time of AIDS / Paula Banerjee

In recent years the debate on social justice for women in India has not been restricted to debates on economic and political vulnerabilities of women, but it also encompassed issues of health especially in relation to the rising number of HIV positive cases. India has a population of over one billion and about half of this population falls under the sexually active age group, supposedly the group most vulnerable to AIDS. The first AIDS case was detected in 1986 and from that time onwards every state has reported the presence of HIV positive cases with the highest concentration in Western, Southern and Northeastern states of India such as Gujarat, Maharashtra, Tamil Nadu, Manipur and Nagaland. All these states can be defined as Border States and so the Indian state designates AIDS as a border disease or a disease from outside. By the middle of 2005 the Indian National AIDS Control Organization (NACO) estimated that 5.21 million Indians were living with HIV. Of these 39 per cent were reported to be women. A report of the US Census Bureau states that in the recent years HIV positive cases are alarmingly on the rise among sex workers, truck drivers and IV drug users. Further, not only among female sex workers, but HIV infection is also on the increase among the entire female population of India. What results from the acknowledgement of this increase is a veritable witch-hunt and for the HIV/AIDS infected women; more often than not, female migrants are blamed. The spread of HIV is considered as a result of porous borders and the carriers are considered as women who cross those borders. If one goes through newspaper reportage of the phenomena one can find clear evidence of such an attitude. A report of *North East Reporter* clarifies the issue by stating:

> Assam may soon turn out to be AIDS capital of the Northeast, if immediate steps are not taken to check the growing menace of flesh trade, especially by commercial sex workers who have migrated from Bangladesh.
> These immigrant sex workers have posed a serious threat to the health scenario of Assam, causing an alarming rise in the number of HIV positive cases.
> A survey conducted by the state AIDS control society indicates that there is an alarming rise in the number of HIV positive cases. Assam has a total of 334 registered patients out of which 90 are full blown AIDS cases.
> Official sources said that 70 per cent of the victims had sexual contacts with prostitutes from the migrant population.

> Sexual transmission is the main cause in more than three-fourths of the cases. 71.08 per cent of the patients are reported to have contacted HIV through sexual contacts, out of which 70 per cent of the individuals had regular sex with these immigrant prostitutes. (*North East Reporter*, 25 February 2004)

This report addressed the two most important issues inherent in the popular threat perceptions related to AIDS, women and borders. These issues are: (a) threat of uncontrolled sexuality of women and (b) women with different sexual mores crossing porous borders leading to a threat to male health and control over the nation. The corrupting influence is then quite easily designated as a foreign influence and women's bodies are considered as the contaminated vehicles of bringing the threat home. AIDS has therefore become an issue of the control over women's sexuality and it has thrown up new questions of justice in India.

That the state is a participant in this discourse becomes clear when HIV is made to look like a societal threat that comes largely from sex workers. There is also an effort to portray that the threat is perpetuated by the presence of foreign women in the brothels. The witch-hunt is then brought to the brothels where some of the least empowered women survive. Such a move makes it is easy to mark these women as criminals. After all there is almost no one to protest against such treatment of women. They are blamed for not being able to protect their clients, but when they insist on protection they lose the same clients and the state does not reveal any commitment to support them. Moreover, these women are also forcefully tested and thrown out of these brothels when they are diagnosed as HIV positive. The women are treated as soiled goods and dispensed with. Such acts are easily explained when one consider how these women are marked as criminals in the established discourse. Yet the trafficking of child virgins from foreign land continues because in the flesh market one can still find clients who believe that virgins are able to cure men with AIDS.

The politics of AIDS in India has taken this trajectory because AIDS continues to be designated as a disease from the borders and knowledge about this disease remains as marginal. No state wants to accept responsibility for AIDS and so the price for this is extracted from those who are in the margins of citizenship such as women sex workers, widows, sexual minorities and immigrant labour. In a patriarchal society, where women have little control over their sexuality, women are blamed for sexual choices that they might not have made. Thus, women's vulnerability leads to their victimization. A discourse on social justice needs to address this issue that questions women's position in society and their ability to negotiate sexual choices. The politics on AIDS throws up many new questions. A few among these are:

1. In what way do women's vulnerabilities increase the threat of their victimization in the politics of AIDS?
2. Are all sections of women affected equally by this process of victimization?
3. How does this affect the question of social justice?
4. Is a discourse on social justice possible without a debate on women's ability to make sexual choices?

Identifying institutional locations and resources on research on justice/ Kazimuddin Ahmed

Contemporary notions of justice can be categorised in two basic forms. One is a tenet constructed and patronised by dominant structures of power. In the case of India, it is the Indian State. The

State lays down normative ideas of justice and creates delivery mechanisms based on these. It has systemic tools like the laws, regulations, Acts, economic policies and has entities like the judiciary, the executive and the market through which this form of justice is realised. The other is the notion of justice perceived by people living and experiencing realities differing from what the State prescribes. The latter is like the experience of the subaltern, the marginalized and those in the fringes of the politics of power and its accessories. Here justice is sought. The former is the provider. This division is exclusive.

To millions living in India, the State has been able to project itself as an omnipotent, but benevolent entity. The State is the provider and deliverer – of food, welfare, health, education, and of justice. The process of nation-building in India saw the internalization of the notions of justice set in place by the State, however much they differ from realities of justice experienced by the subjects. The State might perceive killing dozens in the name of national security as justice for national integrity. The families of those killed invariably perceive otherwise. State sponsored justice and its delivery mechanisms have been experienced as often unjust, and certainly long drawn and taxing to the recipient, and seen as compounding socio-economic disparity.

Indeed the anomalies that we see in the justice delivery system can be traced to the very construction of the notion of justice by dominant power structures. Addressing issues of justice as is applicable to various contextual and experienced realities need radical rethinking of the notion. However, this rethinking has to go hand in hand with campaigns for justice. The work of research and documentation also comes as a crucial tool here. Rethinking justice and the logical subsequence of a campaign is shallow without a knowledge base, which only extensive research on the issue can generate.

Apart from the institutions directly under the State involved in the state delivery of justice, there are other institutions indirectly associated with it. These include educational institutions such as universities that still largely adhere to knowledge regimes and pedagogic norms suggested by the State. Research on justice in these institutions can become restraining.

Fortunately, the politics of the State has also resulted in the emergence of various non-State actors engaging with different realities of justice in their own geo-political contexts. These are various public social organisations, trusts, and peoples' movements and are rich sources of information. While these institutions lay bare the various realities of justice and the question of civil liberties, these also show the ways to engage with issues of in/justice. Most of these movements and peoples' organisations provide a perspective from the subaltern. In many places where political movements have been strong – such as Nagaland, Manipur, Assam, Tripura, Andhra Pradesh, Jharkhand, Chattisgarh etc. – movements and organisations of peoples are fertile grounds for research. A few examples of such organizations and institutions are listed in the annexure.

Nevertheless, it is also important to use the institutions of the State for the purpose of research. While providing a key to the State's understanding of justice, these also provide an opportunity for documentation, as information in the public realm in the Indian context still remains elusive, particularly in the so called politically sensitive or high security areas. Despite being institutions of the State, the academia has enjoyed a certain privilege, which in turn has allowed many institutions and academics to have out of the box perspectives. Moreover resources that these institutions generate become strategically important, if not indispensable, for research on justice.

Any engagement with issues of justice – be it research and/or campaign – would entail intense strategising. This would include primary information on realities and experiences of justice. Institutions can be identified and can be collaborated with. However, as individuals or institutions make effort towards an engagement, the crucial task would be to do justice to the very idea and the process of engagement. Perhaps the way is to free minds, ideas and institutions, as the old anarchist saying goes.

Examples of organisations for collaborations on issues of justice located in Northeast India:

1. **The Morung Foundation for Indigenous Rights and Just Peace**: A trust in Nagaland that works on indigenous issues, militarisation, human rights and public health including HIV/AIDS. The trust also runs an English daily called *The Morung Express* and is one of the most progressive dailies of the region.

2. **Manab Adhikar Sangram Samiti (MASS)**: Assam's only human rights advocacy organisation, MASS has been fighting against militarisation and human rights abuses in the Assam along with lending solidarity and support to various other human rights groups in the region.

3. **The Citizens' Forum of Garo Hills**: This organisation is a collective of civil society, students' and church organisations in the Garo Hills struggling against human rights abuses and for social, political, educational and environmental justice.

4. **Anunachal Citizens' Rights**: It is the only organisation in Arunachal Pradesh vocal in its struggle for social and environmental justice. This organisation is also spearheading the movement against big dams in the state and in the Northeast.

5. **Institute of Tai Studies**: Situated at Moran in eastern Assam the institute works on historiography of Tai peoples and their neighbours. The studies move away from prescribed texts and the institute encourages more radical forms of thinking of the past and connections between peoples.

6. **Naga Peoples Movement for Human Rights (NPMHR)**: The oldest human rights organisations in the region, NPMHR is a good source of research and documentation on issues of justice and has connections with most of the peoples' movements. It has also kept the voices of the people of Nagaland alive in the face of severe State oppression.

7. **North East Peoples Initiative for Peace, Justice and Demilitarisation (NEPI)**: With the secretariat situated in Guwahati, NEPI is a collective of peoples' movements and organisations making an effort to bring together peoples and movements in the region to collectively address issues of peace, justice and militarisation.

8. **Committee for Human Rights, Manipur**: It is one of the oldest civil liberties organisations in Imphal, mainly working on legal issues and has excellent contacts with civil society organisations in the region.

9. **Freedom Project, Shillong**: An alternative media group documenting issues related to civil liberties, environment, freedom of expression and right to information and bringing these issues to the public domain.

10. **Department of History, Tripura University**: Individuals from the department such as Dr. Sukhendu Debbarma has been working on issues pertaining to the indigenous peoples of Tripura. He has good linkages with the civil society movements in the region and has worked on issues of conflict, militarisation and autonomy.

Discrimination against women – ethnographic investigation / Amrita Mishra Patel

There are seven major areas of discrimination against women in India: malnutrition, poor health, and lack of education, overwork, lack of skill, maltreatment, and powerlessness. According to Amartya Sen, inequality between women and men can take very many different forms. Indeed, gender inequality is not a homogeneous phenomenon, but a collection of disparate and interlinked problems. The types of inequalities are – mortality inequality, nationality inequality, basic facility inequality, special opportunity inequality, ownership inequality, and household inequality.

Thus even after nearly 60 years of independence, 10 Five Year Plans, hundreds of policies and programmes offering a variety of special facilities to the underprivileged ranging from scheduled castes and tribes to women, in matters of education, employment, housing, etc. social justice is far from a reality 53% of the population are under the poverty line i.e. unable to spend even a dollar a day on bare necessities. A mere 16% of households enjoys the 'luxury' of electricity, drinking water and toilet facilities. This percentage is 3.9% if only rural households are taken into consideration 71% of our women are illiterate. Rural health care is a sham and almost non-existent. There persists maternal and infant mortality. Then there is the problem of the millions of the educated unemployed.

India is ranked 127th out of 177 countries in the 2004 Human Development Report with an Human Development Index (HDI) value of 0.595 the HDI Index focuses on three measurable dimensions of human development: living a long and healthy life, being educated and having a decent standard of living. It combines measures of life expectancy, school enrolment, literacy and income to allow a broader view of a country's development than income alone.

The Gender-related Index (GDI), introduced in 1995, measures achievements in same basic dimensions as in HDI but captures inequalities in achievements between women and men. It is HDI adjusted downward for gender inequality. The greater the gender disparity in basic human development, the lower is a country's GDI relative to HDI. The GDI value for India is 0.572 and it is ranked 103. The GDI value for Sri Lanka, the best performer in the South Asian region, was 0.738 and for Norway, the best performer in the world, it was 0.955.

Successive governments have attempted to meet the basic needs of women by spending large sums of money on various subsidies, a variety of employment generation and poverty alleviation schemes. While these schemes have created a huge distributive bureaucracy only a small percentage of the sums sanctioned actually reach the intended recipient groups. They have bred corruption on a massive scale. A phenomenal amount of resources are wasted, destabilising public finances, harming economic development and burdening future generations.

The proposed study should attempt to investigate on some of the indicators given using an ethnographic approach. Using an ethnographic research technique, within an interpretive framework, the study can seek to understand gender relations in the context of social justice in a particular society or a region. Using interviews and observation, the research can be carried out continuously over a period. Ethnographic strategies and narrative analyses can be used as descriptive and discursive tools to explore the social condition of women within everyday life and under conditions of social injustice, mistrust, and religious and political conflicts. Carefully

designed field encounters can help reveal how women face discrimination in all forms – social, economic, legal etc.

Mapping people's notions in the ethics of justice / Samir Kumar Das

While much of the philosophical literature on justice is devoted to the task of finding out intuitively or logically appropriate principles that the states should follow in course of their actions, there have been attempts particularly during the last twenty-five years at translating at least some of these principles into concrete 'parameters', 'indices' or 'criteria' on the basis of which state actions can be judged, evaluated and most importantly, ranked along a continuous hierarchy of states. A distinction is therefore made between justice as a concept and people's notions of justice. It is argued that much of what we describe as people's notion of justice is articulated through such traditional and customary institutions as, caste, ethnicity, community, village etc. Insofar as we find no problem in criticizing such recently issued community verdicts as on the Imrana case, the case of lesbian marriage in Madhya Pradesh, the love marriage within the same blood group that was considered as 'a marriage between siblings' and therefore incestuous or the case of a Muslim husband who was forced to divorce his wife in West Bengal for having inadvertently uttered 'teen talaq' while being asleep and dreaming, what we essentially do is keep our 'justice' separate from their 'justice'.

The problem is that we do not have any mutually agreed way to determine the *justiciablity* of either of these two ethical discourses. Sourcing ethicality to any of the existing and apparently self-contained ethical discourses of the society, like, caste, ethnicity, community or village, will commit the same error of formulating its normative principles in a maximal way.

In the midst of all this, existing ethnographic researches on the subject seem to focus on how people negotiate their way between these two mutually incompatible discourses of justice and wherever necessary, play one off against another while maximizing their interests thereby taking advantage of the prevailing legal pluralism. People, according to this stream of researches, are seen more as power-seeking beings than as justice-seeking agents. What they do is informed not so much by any ethical consideration, but by the imperative of negotiating power on an everyday basis. Most of the ethnographic researches focus on how our lived experience makes it imperative on our part to combat and negotiate the power that these principles exercise on us. Since this genre of researches is not predicated by the question of normative principles, this should be considered as ethnography of power, and not as one of justice.

We would do well not to repeat any of the three streams of researches underlined above. I propose that our ethnographic researches should rather focus on the way people seek to grapple, negotiate and come to terms with these principles – determined *a priori* for them either by the Constitutionally and legally established ethical system or by the traditional and customary ones or even by a combination of both. These negotiations imply constant improvisations and modifications on or even transformations in these principles.. 'Pragmatic rules' are pitched as modes of reconciliation between the *a priori* principles and the imperatives of our lived experience. An extreme view however holds that the 'descension' of these principles into the level of lived experiences of everyday ultimately implies their 'destruction'.

Seldom have the existing ethnographic researches serve as useful pointers to the peoples' notions of justice and the social processes of their articulation. We propose to locate these notions at the

site of social practice. Practice, as we know, is like a game in which it is not enough to know the rules or principles in order to win it. It requires much more than this. We should be interested in that part of practice that escapes 'theorization effect', that is to say, the effect of these abstract and *a priori* principles and yet is construed by them as justice. People's ethicality thus consists not in the formulation of maximal principles, but in the enunciation of certain rules shaped through highly contingent social practices that escape the effect of these principles. It is the remainder that refuses to be absorbed by any of the established ethical systems circulating in the society. Why does this area deserve special research attention? One, as we have already pointed out, while a lot has been said about the established discourses, researches on these *fluid* practices have received very little though sketchy attention. Two, it also enables us to address in reasonably meaningful terms the apparently irresolvable contradiction between justice per se and people's notions of justice. Why should we be terribly interested in people's notions in a research agenda on justice like this, unless we are able to show how they have a bearing on what justice per se means to us? If practice is where justice is generated as a remainder, there is certainly a history or may I say, many histories of such generation. It is important that we are able to place practice in a historical perspective and find out the social processes whereby people's notions about justice get transcended into justice that are not meant to be exclusive to them –without falling prey to the overarching principles that philosophers, community leaders and texts of sacred books and laws enunciate for them.

Three, practice serves as the point of contact between them and shows the inadequacy of the maximally defined principles. This also makes it necessary for them to constantly ask for stretching the realm of principles and thereby opens up a new kind of popular politics that extends beyond the settings of the government. My own fieldwork suggests that politics of the marginal groups is increasingly being marked by scepticism towards the established civil society institutions and public sphere. Never before in the history of these spaces has the schism between governance and popular politics been so sharp as it is today. That 'beyond', to my mind, can never be measured through such concept as, 'political society', the political significance of which does not seem to stand on its own right but on its ability to mediate with the civil society and vice versa. 'Political society' as a conceptual category bears hardly any significance without such mediations. At one level, it serves as a pointer to the expanding horizon of justice. But at another level, it provides a gateway to our understanding of civil society and public sphere.

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