SOCIO-LEGAL RESEARCH IN INDIA—A PROGRAMSCHRIFT*

*Upendra Baxi***

I The social setting for advanced legal research in India

1.1 TOO MUCH has been written on legal education and research in India since independence. although there has been some respite after the 1972 University Grants Commission's Poona Seminar on Legal Education. Law teachers revel in the elucidation of the objectives of legal education and of the strategies for legal research. Good ideas on what ought to be done abound. But concern with the factual sub-stratum of legal education and research is conspicuous by its absence. In the absence of such concern, it is not surprising that all talk and some curricular innovation in legal education have yielded so little in terms of better legal education and sustained legal research.

1.2 The generally known though not articulated facts concerning legal education are these. *First*, there has been a phenomenal quantitative expansion of entrants to legal education. *Second*, the bulk of LL.B. and LL.M. education is not whole-time but part-time. *Third*, the bulk of LL.B. education is imparted by law colleges, with poor teaching and library resources. *Fourth*, the number of university departments in law, although on the increase, is comparatively smaller than in other social science fields, and the law departments are generally low-priority items for funding. *Fifth*, mass education in law has meant decline over control of admissions, decline in standards of teaching and evaluation, and a pervasive demoralization of full-time law teachers, whose number is still smaller than that of part-time law teachers. *Sixth*, the expansion of legal education has brought with it the adoption of regional languages as media of instruction and examination in the LL.B. and even LL.M. level.

1.3 All this has led to an overall decline of the status of law teaching and law teachers within the university community and the wider society. This aggravates further the demoralization within the law teaching fraternity. The search for status within the academic community has, not paradoxically, led law teachers to assert their identity through continuing public discussions of the objectives, styles and innovations in legal education. It is, perhaps, true to say that no academic community in India has yielded such a profusion of writings on the desirable reforms in education in its special sphere.

1.4 This then is the brief prologue to the social setting of legal education in India. It is in this setting that the paradox of retarded legal

* Originally published as an occasional monograph in 1975 by the Indian Council of Social Science Research, New Delhi. The permission of the author to reprint is gratefully acknowledged.

** Vice-Chancellor, South Gujarat University, Surat.

research in a country which offers vast and exacting vistas for law/society research has to be understood. To understand, explain, and perhaps remedy this fact, we have to appreciate at the outset conditions necessary for efflorescence of such research. These are, roughly : (*i*) the availability of time for such research, (*ii*) the problem of intellectual equipment, (*iii*) "role" perception, (*iv*) facilities—including funding and institutional auspices—for research, (*v*) the lack of infrastructure scholarly research, and (*vi*) the prospects of interdisciplinary collaboration.

1.5 *The "Time" Factor* : Although law is a postgraduate course, and the curricula of some of the Indian law schools are excitingly experimental, the distinct emphasis in law teaching is on the lawyer's law understood as hornbook or blackletter law. This is in itself paradoxical, given the hypothesis (for which there is considerable support) that most entrants to law schools do not seriously contemplate joining legal profession. Be that as it may, exposition of legal materials (by whatever method) takes most of the classroom time and hopefully substantial time by way of class preparation.

1.6 A handful of law teachers allocate a slice of available surplus time to occasional writing of case-comments and papers. A substantial portion of the surplus time is, however, devoted to setting and evaluating examination papers. This latter is seen to be a worthwhile source of supplementary income, the salaries being not too generous, and on some estimates, rather inadequate. The very same time-money equation leads some law teachers to produce treatises (in English and other regional languages) on substantive law oriented to the student and professional markets. The time left for non-lucrative intellectual pursuits—socio-legal research being one—is thus very minimal.

1.7 *The Problem of Intellectual Equipment* : In a semi-professional tradition of law teaching, ongoing critical examination of the social relevance of law and its processes inside and outside the classroom becomes difficult. In any event, such an exercise demands a sure grounding in jurisprudence—the step-child of the common law culture and of legal curricula in the Indian universities. Jurisprudence, insightfully described as the "lawyer's extraversion", mainly consists of the logical analysis of legal conceptions, the theorising on individual and social justice, and the study of the complex interaction between legal system on the one hand and social and cultural system on the other. Unfortunately, a solitary course in jurisprudence in the Indian law schools usually degenerates in a half-baked exposition of history of Western ideas, whose relevance to the Indian context is only remotely perceived. At best, preoccupation with analytical jurisprudence dominates.

1.8 The lack of adequate grounding in jurisprudence is, we suspect, the principal factor responsible for lack of perception of the intimate relation between the legal, social and cultural systems. In the United States, the realists' assault on "doing" jurisprudence coupled with Roscoe Pound's untiring reiteration of sociological jurisprudence has been the mainspring

of legal sociology, indeed to the extent that readers in legal sociology, scarcely pause to acknowledge their debt to them. The mood, the method, and the message of realist thinking have become a part of the milieu of legal thought and research, and this milieu has in turn substantially affected the development of interdisciplinary exchanges between law on the one hand and social sciences on the other. So long as Indian law teachers regard jurisprudence as a subject which they can dispense with until they have to teach it occasionally, the shortfalls in intellectual equipment for law-society or law-development research are unlikely to be remedied.

1.9 *The Role Perception* : While there has been much animated discussion in India amongst the law teachers as to their law status within the community of law men and community generally, there exists very little self-conscious articulation concerning the role of law teachers in Indian society. Some have thus complained that law teachers rank lowest in the hierarchy of esteem comprising judges, retired judges, law ministers and secretaries, senior lawyers and practitioners with some experience. They point, and not without justification, to the fact that despite a constitutional provision enabling elevation of a jurist to the Supreme Court, no such elevation has taken place. They also stress that, in the common law culture which the Indian judiciary has inherited, the judges do not publicly (in their judgements) acknowledge the contribution that any living Indian scholar may have made to the development of the law. They also point to the low priority given to legal education and the initial disassociation of law from social sciences by a national funding agency for social science research.

1.10 At the same time, judges and governmental policy-makers assign increasingly greater role-responsibilities to law teachers. The law teachers are supposed to inculcate a degree of legal craftsmanship in students ; to help internalization of the notion of the rule of law, to inculcate a critical posture towards the role of law in society and to help realize the potential of law as a tool of "social engineering". The law teachers in India themselves are slowly succumbing to this role-rhetoric.

1.11 But the inner definition of law teachers' role is not easy to ascertain without an empirical study, even if one may derive an external role definition from the above-mentioned platitudinous exhortations. From my personal knowledge, which is no substitute for proper research, I set below some self-perceptions of the role of law teachers in India:

(*i*) A group of law teachers feels that the primary role obligation of an academic lawyer is to renovate and restructure Indian legal education. Institution-building and curricular innovation are cardinal components of this obligation. Some of these are exceptionally able men with a high scholarly potential. Their dedication to what they think is their primary obligation has resulted in a massive "brain drain" from specialized legal research,

(*ii*) Some law teachers feel (and the number is substantial) that their primary vocation is to teach well, to be good teachers. This entails learning from experience in the art of communication and empathising with students. Seriously pursued, their conception of role-obligation leaves little time and inclination for serious and sustained legal research.

(*iii*) A section of law teachers includes those who believe that good teaching entails research and writing effort. Teachers who so believe combine teaching with research by writing treatises and papers in the field of their teaching.

(*iv*) There are a few law teachers who feel their primary role-obligation is to specialize in one subject-area, and to contribute substantially to scholarly literature in their subjects over time.

(*v*) A handful of law teachers exposed to overseas influence, especially American law schools and scholarship, believe their role requires pedagogic innovation as well as off-beat, non-traditional legal writing.

1.12 Legal research and writing remain, however, secondary activities. The obligation to advance the state of knowledge in particular fields by continuing communication of ideas and analyses through articles, monographs and treatises does not seem to figure pre-eminently in the apperceived role obligations. This factor in turn is clearly supported by the lack of many viable scholarly law journals in India and the problems of quality control and competence plaguing such publications.

1.13 *Research Facilities* : The level of research facilities available to a law teacher in India is not conducive to sustained research. The lack of role-facilities generates confusion, conflict as well as ambivalence towards primary role-obligation calling for sustained attempts to contribute to knowledge in the field. A law teacher (unless he be a Dean or Head of the University Department or a Principal of a Law College) gets no typing and duplicating assistance. Very few know how to type, and of these not many can afford a typewriter. Availing the services of a professional typist remains for most of them a luxury. Lack of xerox facilities limits severely the library facilities—especially for journals and books not readily available locally. Holdings of books and journals vary from one law school to another; not too many libraries can afford budgets to meet the demands of advanced legal research.

1.14 Institutional auspices for serious research are available, but not too readily. The Indian Council of Social Science Research holds a major potential on this count; the Indian Law Institute had some programmes to assist scholars from outside Delhi to subsidize advanced research but these have now been abandoned.* Its library is the best in India and perhaps in Asia, but lacks xeroxing facilities** and is of limited

* The programme has been revised, but for the present it is in abeyance due to lack of funding. Eds.

** The xeroxing faeilities have now been made available. Eds.

use to those outside Delhi. The Law-Society Centre of the Institute of Parliamentary and Constitutional Studies offered a ray of hope for the provision of data banks, orientation workshops, specialist seminars, and subsidies for individual research. The Centre's activities are, however, limited to undertaking occasional research projects. There is as yet no centre for advanced legal studies, though the University Grants Commission has approved such centres in other disciplines.

1.15 *Lack of Infra-structure Scholarly Research* : By "Infrastructure" legal research, we mean scholarly analyses and critiques of substantive or "straight law" materials. Most treatises on substantive law are prepared by practitioners and retired judges. Some of these are of exceptionally high quality and have become landmarks in common law literature. Even these, however, remain lengthy expositions of the state of law, occasionally providing critical commentation. The type of contemplative research that a law scholar can provide is for most part missing. Scholarly reworking of the straight law materials—by way of systematic, comparative policy analyses—is imperative. There is virtually no field in which an Indian law teacher cannot today contribute as a pioneer.

1.16 Unfortunately, some bright young law teachers, exposed unevenly to research traditions overseas specially in the United States) are in a mood of going empirical, and denigrate what they call "traditional" legal research. But in the present opinion, law-society research cannot thrive on a weak infra-structure base of doctrinal type analyses of the authoritative legal materials. Legal and policy studies of the state of law provide not merely an assurance of sound understanding, but may also hold promise of needed starting-points for sociological research in India.

1.17 *Prospects for Interdisciplinary Collaboration :* Theoretical and empirical research in social sciences cognate to the law is much more advanced. This fact introduces a degree of disparity, among academic lawyers and social scientists generally. The preoccupation or the inertia of the Indian law teachers has generally also kept them ignorant of the law-relevant social science materials (aside perhaps in criminology).

1.18 Academic lawyers have frequently been exhorted by their own brethren as also by social scientists to adopt an interdisciplinary approach. These exhortations have mostly been unaccompanied by examples of how this is to be done. One result is the misapprehension that the academic lawyers are asked to abdicate their own specializations, and indulge in some kind of esoteric neo-specialization. This, of course, is due simply to the lack of effective communication.

1.19 But it remains true that the exhortations to adopt an interdisciplinary approach have only been addressed to the academic lawyers merely. No serious attempts have been made by other social scientists to understand the discipline and the craft of the law. Nor is there evidence, on the part of social scientists generally, of much understanding of the law and its processes as a structural property of the social system. Social scientists

ought to acquire an understanding of sociological jurisprudence just as academic lawyers must ground themselves in concepts and methods of sociology, economics and political science. Law, as a normative and behavioral reality, is pervasive in society. This was in fact most clearly recognized by the founders of modern sociology like Durkheim, Weber and Marx. Their conceptual elaborations gave some kind of primacy to law as a social variable; but unfortunately, since the early 20s, a gradual disassociation between law and sociology has occurred, leaving criminology as the only meeting ground between the academic lawyers and sociologists. In the United States and some continental European countries, we now witness the emergence of an autonomous discipline called the sociology of law. Effective emergence of such a discipline, of vital policy relevance in developing countries, is possible only within a framework of a truly interdisciplinary communication between lawyers and social scientists, each making special efforts to understand the substantive domains of the other. The ICSSR is fortunately in a strategic position to influence such a salutary development. This, it can do, aside from implementing some of the suggestions made herein, by requiring of all social science research proposals sponsored or approved by it an optimal advertence to law as a social variable.

II The role of ICSSR in the emergence of socio-legal research

2.1 The travails of advanced legal research are distinctive but not atypical. The Report of the Indian Council of Social Science Research Review Committee (1973) also speaks of the state of art in social sciences in the following terms :

> "Much of the current research effort has no relevance to contemporary social and national problems and suffers besides from lack of rigour in its analysis of phenomena and synthesis of facts. It is largely oriented to micro-level research... It is not yet emancipated from its tutelage of western theories and has failed to develop research tools, designs and models of its own appropriate to the Indian situation. Multi-disciplinary and inter-disciplinary research it yet rare. A most encouraging feature, however, is that...the community of Indian social scientists is alive to these defects." (*Report*, 1973 : 62)

This entire set of observations is, *mutatis mutandis*, applicable to the state of juristic research in India, whose "sombre" side has been the main expository concern to us in the first section of this paper. In this overall situation, juristic research must also be the beneficiary of the efforts to transform the social science research landscape. However, it needs stressing that juristic research needs for the optimal development of its present potential somewhat special and sustained attention. This is because of a long period of "benign neglect" of legal education and research in India. The following comparisons must also reinforce the point.

2.2 The total number of university law teachers in India is 435 as against 698 university teachers in Economics, 298 in Psychology, 295 in Geography, 243 in Sociology. The "potential social science manpower" constituted by postgraduate and Ph.D. students in 14 social fields was respectively 42,479 and 2,153 in the year 1959-60. The corresponding figure for postgraduate LL.M. students was 1,278 and Ph.D. enrolments was 126 (which number would also include substantial numbers of teacher-candidates). The total number of national and regional professional associations in social sciences is 60; of these the three largest are Geography (10), Economics (7) and Anthropology (8). Compared to this, there are only six professional associations of which three are national. Of the 659 journals dealing with 15 social science disciplines no discipline (as in 1969) has less than 14 journals to its credit, and most reach a figure of more than 20 journals. On the other hand, the number of academic legal journals in India is only 7; and of these three are in the specialized sphere of international law and relations. As against so many centres of advanced studies in social sciences, law has none.

2.3 The present status of law and legal research is of course aggravated by the comprehensive neglect by social scientists of the law's multiplex, and even pervasive, role in the maintenance of social order and promotion of social change. This cognitive neglect poses an imponderable for the sociology of social sciences in India. This is a theme we have already touched upon (see para 1.18 *supra*) and to which we will need to return when contextual exigencies so require. But a few general observations on the theme are warranted here.

2.4 We must thus note that the belated recognition of legal studies as social scientific by the ICSSR (which of course, is a major breakthrough in the understanding of legal processes at a national research planning level) has, still, however, to yield fruits at the level of everyday social scientific consciousness. The *Report* of the Review Committee for the ICSSR, which seeks to provide a retrospect and a prospect of the status of social science research in India, provides notable testimony of this fact. It has altogether overlooked the inter-connectedness of legal research with social science research ! The contrasts we have drawn in paragraph 2.2 between the comparatively better position of social sciences depends for its statistics on the data in the *Report* of the Review Committee; the comparative profile of the state of legal research had, however, to be put together by the present author!

2.5 The absence of any reference to sustained legal research, and its relevance to theoretical and empirical socio-scientific research, becomes aggravatingly puzzling when one looks at the key priority areas formulated for ICSSR planning. These areas include poverty, scheduled castes and tribes; social unrest and violence; public services and public policy; and the "process of development" (*Report on Social Sciences in India*, 1973 : 126-28). While the conclusions and recommendations refer to economics, political science, public administration and management, sociology,

psychology, geography research, one does not find even a cursory reference to legal research ! It does not even stand identified among "the weaker social sciences" (*Report*, 1973, pp. 5-6). International Relations features as social scientific field; but *not* International Law ! Even if the state of art in juristic research was non-existent (which it *is* not) or embarrassingly poor (which also it is *not*), policy planning for socially relevant research must surely betray a very limited understanding of "social relevance" when it altogether fails to take note of law and legal research.

2.6 This criticism of the *Report* is not meant to be a polemical attack from one who is in the midst of the law teaching fraternity. Rather, the criticism is intended to highlight the fact that despite the insistence on interdisciplinary approaches, social scientists themselves have yet to develop what we call a "community of scientific concern." It augers well for the emergence of such a community that while adopting some of the Review Committee's priority areas for sponsored research programmes, the ICSSR added to it the area "law and social change" which did not find a place in the Committee's recommended list of 12 areas. (See *Decisions of the ICSSR*... 1974 : 17).

2.7 The *Report* only happens to be the latest instance of an ongoing and perhaps deeply entrenched trend of indifference to law and legal research among social scientists generally. A good example of this trend is provided by a series of land reform studies by economists, without the minimal participation by academic lawyers and even minimal advertence to jurisprudential literature. Naturally, many shortcomings in their understanding of the nature of the legal system and of legal processes have retarded or distorted the pursuit of scientific tasks at hand. Thus, very often the legislative intention in agrarian reform measures is identified with preferred economic objectives, instead of being garnered from the text and the structure of the statute. The complexities surrounding the determination of legislative intention and purpose, familiar to jurisprudents, seem not to be appreciated at all. Again, most, if not all the studies, fail to distinguish between evaluation of specific laws on the one hand and of the legal system, of which they form a part, on the other. Nor are the levels of autonomy and of intra-systemic connections between legal system and major social systems borne in mind. Much less is there any advertence to questions of method and concept concerning measurement of legal impact, sufficiently well developed in contemporary jurisprudential literature (Baxi, 1974).

2.8 It would be pointless to multiply instances of this kind. Such instances are not unfamiliar in the relationship between jurisprudence and social sciences in the English-speaking world. Julius Stone has noted a "striking example of the sacrifice of mutual benefit by...lack of communication between social scientists and jurists and jurisprudents in Talcott Parsons' treatment of the family and in particular the parent-child relations". Stone is constrained to note that at "no point in his study

does Parsons refer to the fact that at the Law School of his own university, Sheldon and Eleanor Glueck had published two years before (in 1950) empirically based conclusions which confirmed his own rather deductively-based hypothesis" (Stone, 1966 : 24-26). One can perhaps learn from experience.

2.9 Suffice it to say that one of the prerequisites of interdisciplinary research is a *community of scientific concern.* To develop a sharing of *mutual* concerns, which only can translate into reality the high ideal of socially relevant policy-oriented research, the ICSSR needs to bring social scientists together more often for an effective dialogue on specific themes. This may be done through metropolitan, regional, national colloquia, symposia, seminars and workshops. Broad theoretical themes such as law and social change need to be eschewed at this juncture; rather specific themes from *within* the key priority areas identified by the *Report*, or adopted by the Council (See *Decisions of the ICSSR on the Recommendations of its Review Committee*...1974 ; 17-18) are to be preferred. The emphasis of these endeavours must be on promoting effective scientific communication on substantive themes on a multidisciplinary basis, which will have a dual advantage of breaking the shackles of unidisciplinarism and eventually fostering interdisciplinarism.

2.10 It is out of interchange of ideas, perspectives, and methods that the fellowship of learning will arise. Fellowship of learning begins with the overcoming of intellectual and social distances between and among the social science specialists. New cognitive styles will emerge within and among disciplines. The academic lawyer, for example, will no longer talk about the "rule of law" merely in terms of the citizens' rights and limitations of state power or in those of processual justice before the courts and tribunals. He will also begin to perceive that ethnographic accounts of indigenous dispute settlement processes offer disturbingly alternate conceptual and societal paths to the attainment of the basic values of "the rule of law". By the same token, the anthropologist will learn to explore more deeply the mechanisms and layers of indigenous justice in the light of the elaborate models of the formal legal system's ways of administering justice (See Baxi, 1974). He may also begin to appreciate, too, that dispute institutions are as worthy of detailed studies which he otherwise reserves to kinship, religion, caste, status or power. This is only one illustration of possible emergence of new cognitive styles but surely it is unnecessary to labour the theme further. It is obvious also that juxtaposition of these matters will enable a richer grasp of social reality through a reciprocal, ongoing expansion of cognitive concerns. A base for the fellowship of social learning would already have been firmly laid by a series of preliminary multidisciplinary exposures advocated in the preceding paragraph. This second development will be a more or less spontaneous outcome of the attainment of a community of scientific concern.

2.11 Attainment of the community of scientific concern and a fellowship of social science learning will be accelerated by planned measures of

institutional linkages and collaboration. There is need for intra-campus and inter-campus linkages between the law and other social science faculties. The ICSSR has already before it the unanimous resolution of its seminar on Law and Social Change (Delhi, 1973) urging the Council to promote on an organized basis short-term "sojourns" by social sciences teachers in law faculties and *vice versa*. Social sciences curricula also need to accommodate orientation courses or specialist seminars in legal sociology, conflict resolution through official and non-official legal systems, legal system and economic growth, law, power, and civil disobedience and other cognate interdisciplinary areas. Efforts should also be made to establish, within a framework of an agenda of socio-legal research, close and working ties with such professional research orgnizations as are available in the field of law, especially the Indian Law Institute.

2.12 Additionally, the ICSSR should consider in what ways the potential of, and for, juristic research can be enhanced in formulating policies aimed at developing "close working relations" with research and policy-formulation agencies (See the *Decisions of the ICSSR*...1974 : 18-22). The fact that there are hardly *any* linkages between the law faculties on the one hand and institutions such as the Planning Commission, Council for Scientific and Industrial Research, Indian Council of Agricultural Research on the other once again betrays a myopic conception of relevance of law and legal research in the elucidation and implementation of the major national tasks and goals. Juristic talent in India must be harnessed to doing its share in the pre-legislative tasks of policy enunciation.

2.13 The community of academic lawyers in India is in need of restoration of its rightful status and role in the process of national development. What is needed is a catalytic intervention by a national agency like the ICSSR to reverse the *attimia* suffered by this community over decades, partly through its collective shortcomings but partly also through continuing and comprehensive indifference by social scientific community to law and legal research, and educational policy planning which has been inhospitable to imaginative experimentation in legal studies.

2.14 Renaissance of juristic thought and research is bound to occur once law and legal processes are related meaningfully to the tasks of national and social development. The ICSSR's sponsored research programme, accompanied by some action on the lines suggested in the preceding paragraphs, should go a long way in assisting the regeneration of legal studies as a social scientific discipline, of vital relevance to a nation pursuing democratic goals in an economy of scarcity.

III Objectives and strategies of the sponsored research programme (SRP)

3.1 The French sociological jurist Maurice Hariou observed (using "sociology" in a generic sense) that "too little sociology leads away from law, but much sociology leads back to it". And Georges Gurvitch rightly

supplemented this statement by observing that "a little law leads away from sociology but much law leads back to it "(Gurvitch, 1947 : 2). The SRP must avoid only one of the extremes : it must avoid "little law" and "little sociology"! In other words, the SRP in its very conception must address itself to academic lawyers *and* social scientists, not just one to the exclusion (partial or total) of the other.

3.2 Accordingly, it is to be emphasized at the outset that the Advisory Committee, if any, set up to process the suggestions made herein (or other suggestions for research) must be a committee of academic lawyers *and* social scientists. Only then would the aspirations articulated so far have a reasonable future.

3.3 The SRP's objectives and strategies must be realistic. The commitments of juristic research are unidisciplinary; those of social science research perhaps a little less so. The SRP, in this situation, must be oriented to generate inter-disciplinary consciousness. Legal research, like social research, is interested in social facts; but the academic lawyer is, at a pinch, more concerned with norms as social facts. He is also, therefore, specially endowed in skills of rigorous analysis through the use, mainly, of "archival" data. The SRP should seek to extend the domain of the academic lawyer's social facts and to add to the stock of his useful skills, the skils of social scientific analysis, particularly those of scientific observation, opinion analysis, and data-collection. By the same token, social scientists should be encouraged through SRP to have a little greater regard for the normative facts of law.

3.4 The overall priority areas adopted by the ICSSR are as follows : (1) poverty and unemployment; (2) scheduled castes and tribes; (3) law and social change; (4) Muslims; (5) government systems and development; (6) education; (7) regional and inter-regional planning; (8) social unrest and violence; (9) studies in urbanization; (10) area studies on Asia; (11) efficiency of investment; (12) political systems and processes: (13) social development; (14) droughts, and (15) aspects of science and technology. (*ICSSR Decisions on Recomendations*, 1974 : 17). The conspectus of research areas in this paper is oriented to some of these priority areas.

3.5 Some of the priority areas, of course, are indeterminate, and some of them appear intractable (e.g. "law and social change"). This is, of course, as it should be at the initial stage of the fixation or research priorities but all this carries a cost. The cost is that the outlines of SRP in any field may seem to diverge from (or conform too much to) whatever any specialist may think should be minimally or optimally covered. We think it best to indicate briefly the research areas elaborated in the rest of this paper, together with an indication of some general considerations supporting them.

3.6 First, we have felt that a sociological understanding of the official and non-official legal systems of the society is essential for almost all the priority areas adopted by the ICSSR. Attempts to gain such an understanding are in themselves valuable for creating a nucleant interdisciplinary

community for sociological research. Also, attempts at social economic "development" through planned change inescapably involve reliance on the official or formal legal systems. Their reach, institutional capacities and biases are therefore important general themes requiring investigation as a matter of basic priority. In as much as the reach of the official or formal legal systems is, in fact, limited or complemented (as the case may be) by informal (non-state) legal (social control) systems, research attention to these also commands a basic priority. Functionally also, this research arena provides "much law" for social scientists and "much sociology" for academic lawyers and is ideal in terms of research manpower training as the points of "take off" for the research are not arcane, as will be seen later, for either social scientists or lawyers.

3.7 Our second major area of proposed research promotion is the study of effectiveness of laws which again is highly conducive to immediate interdisciplinary ventures. And the particular substantive fields preferred for research there also have the advantage of covering some principal priority areas adopted by the ICSSR—in particular, law and poverty-conditions and compensatory discrimination policies for scheduled castes and tribes.

3.8 The third and the last research promotion domain relates broadly to law and social change, but more specifically to alienation, anomie, violence, legitimacy and the rule of law. In a way, we also emphasize study of movements of social change through the law by recourse to "direct action" or civil disobedience.

3.9 The foregoing general indication cannot foreshadow adequately the number of directions of specific enquiries stressed by us or their rather wide-ranging linkages with many of the adopted priority areas for SRP. The amount of work required or entailed in these areas is very substantial indeed compared with the relatively modest range of areas delineated generally so far. But the basic objective of the present author is to enable the emergence of areas of relatively easily *shared concern* between academic lawyers and other social scientists in a manner that will necessarily entail transmission of knowledge, perspectives, skills and cognitive styles across disciplines. Once this happens, widening of the interdisciplinary terrain will, it is hoped, follow more or less spontaneously.

IV The "mapping" of the legal systems

4.1 Legal systems can be conceptualized in three principal ways. *First*, a legal system can be conceived merely as an aggregate of legal norms, as a sum of its parts. In this conception, the typical questions are : what makes a *system* out of a vast and heterogeneous mass of normative materials? By what concepts and criteria can we identify the existence of a legal system ? How is the unity of the system to be established ? *Second*, legal systems can be conceived as systems of social behaviour, of roles, statutes, and institutions, as involving patterned interactions

between the makers, interpreters, breakers, enforcers, and compliers of the norms of law. *Third*, legal systems may be equated with social control systems, involving differential bases of social authority and power, different normative requirements and sanctions, and distinctive institutional complexes. The distinction here is among social control systems supported and/or maintained under the auspices of the state and those under the auspices of non-state groups or associations. Thus, there abound in India a number of indigenous legal systems operating at the "village" or region level with customary norms often in sharp conflict with the nationally proclaimed legal policies and values, often with complementary legal cultures.

4.2 Thus, we have three dimensions or aspects of legal systems : first, legal system as a normative/cultural system; second, legal system as a social stytem, and the third, related but distinct from the second, legal system as a congeries of formal/national legal systems under the state auspices and of informal/regional systems under non-state auspices. The traditional division of labour pattern reveals that the first is primarily the domain of academic lawyers; the second, the domain of sociologists and the third that of anthropologists but only so far as it concerns the informal legal systems. The interaction, within the third category, of the formal with informal control systems has been virtually wholly left unattended. The emergence of an autonomous discipline of legal sociology is now slowly transforming this diverse pattern of division of social scientific labour into some sort of inchoate unitarian discipline.

4.3 In India, however, no clear division of social scientific labour has emerged ; much less emergent of course is any kind of hybrid discipline as sociology of law. The only exceptions to this observation are, however, provided by the academic lawyers who have cultivated the normative domain of the law and a few anthropologists who have casually addressed themselves to dispute-settlement in the indigenous contexts (See for review Das, 1973 ; Baxi, 1973 ; Baxi, 1974).

4.4 The Indian academic lawyer operates only at the cybernetic control point of the normative legal system : namely, the appellate court system. No doubt, that system reveals the key points of stress and strain caused mainly by the need to accommodate within a broad and stable normative/cultural framework, the impulses for, and resistance to, normative change and growth. And undoubtedly too the normative output of that system can be attributed a *degree* of impact on the entire normative/cultural system of law. On the other hand, however, the appellate court-system is only the tip of the iceberg of the formal legal system . and the normative output of this system is merely a dot on the tip of this iceberg.

4.5 Accordingly, a rational comprehension of the role of legal systems in social stability and growth demands a more wide-ranging awareness of law as a *social* system. This must be the first major point of departure for any programme of socio-legal research in India. We propose to

characterize this imperative need through the expression "the mapping of the legal systems" in India. "Mapping" exercises, in a broad sense, involve an examination of the spread of the "presence" and impact of legal systems through close studies of their institutions.

4.6 The exercise of mapping calls initially for adoption of new set of concerns, cognate to the existing ones. Thus, even within the confines of the traditional academic lawyer's concerns, we need to transfer our research energies from what he traditionally calls *precedent* in a case to *trends* in decisions (judicial and legislative) ; from single outcomes to the *processes* and *patterns of decision-making*. But this by itself would not liberate the academic lawyer from his common-law-cultural obsession with the appellate court-system. He would, in addition, have to move from the *cognitive out-put* of legal agencies to their *social impact ;* from norms of law to the institutional *settings and processes* of the norm-creating agencies ; from law reports and digests in the library to that "law-stuff" in court rooms, legislative, bureaucratic and lawyer's chambers and to the inter-subjectivities of the beneficiaries and the victims of the administration of justice.

4.7 The tasks of "mapping" legal systems can be formulated with reference to the Formal Legal System(s) (FLS) and to the Informal Control System (s) (ICS). We begin with the FLS.

V "Mapping" of formal legal systems

5.1 The FLS, in its most relevant aspects for the practising and academic lawyer, consists primarily of adjudicatory and law-enforcing (police and correctional services) agencies. The adjudicative institutions encompass not only the court-system but also, of necessity, administrative bodies which are "tribunals" or "quasi-judicial", which increasingly determine the rights and obligations of individuals. The practitioner of law grasps through experience of individual litigious situations, by way of "recipe knowledge", the normative as well as behavioral realities of these aspects of the FLS ; the academic lawyer grasps mostly the normative reality—rules, principles, doctrines, policies, values. The practitioner is also a partner in renovation and preservation of the normative and behavioral reality of these aspects of the FLS; the academic usually awaits the labours of adjudicators and lawyers before he wields his systematizing and evaluative axe. His labours do contribute to the rational development of law ; the academician is more or less in a position of a "remote controller" of the normative reality of law.

5.2 In its sociological comprehension, the FLS is of course more than adjudicatory and enforcement agencies. In this conception, the FLS encompasses *all* institutions of society under the auspices of the state, which are oriented to and engaged in the tasks of maintaining "social control" and of promoting planned or spontaneous social change through the techniques of law-making, law-interpretation and law-enforcement.

This conception will bring into the range of concern the legislative institutions, local self-government units, Panchayats and Nyaya Panchayats, institutions of agrarian and economic development, etc. In this conception, two other mediating institutional systems, not directly under state auspices, will also be included. They are : legal profession and legal education. In this conception, the focus would be on the social context of their organization and functioning of the institutions of the FLS, the patterns of systemic interdependence and functional "criss-crossing" between and among them, assessment of their capabilities to meet their objectives and of their contributions, and relevance, to the maintenance of social organization in terms of social stability, growth, change and social justice.

5.3 The difficulty lies not in the articulation of this wider sociological comprehension of the social systems of law ; but in transmitting it in terms of "everyday" working consciousness of the academic lawyers and social scientists. This would occur, of course, only when some amount of interdisciplinary work becomes widely diffused. The following delineation of research areas may by itself be of some use in this direction.

5.4 The first job towards the sociological comprehension of the FLS is the ascertainment of the profiles of its presence, as indicated by the satistical presence of its agencies and agents in each relevant region. The latter may be designated as "law" regions wherein the "presence" of FLS can be meaningfully related to the available census information and which can be classified on a rural-urban continuum with as much reference as possible to the distinctive demographic, ecological, cultural and socio-economic features of a region. The spread, and the pattern of spread, of the FLS can be initially understood even by a "headcount" of judges, police and correctional officials, personnel of adjudicative institutions of states other than courts, correctional and custodial institutions, etc.

5.5 More collation of such information may seem pointless but it is not. Social demography of the FLS would enable us to perceive important variations in different law-regions in the country. Disparities in investment in the institutions of FLS may strikingly emerge. Some law-regions may turn out to have a higher ratio of say, practitioners or judges or police and correctional staff relative to its population. We may be able thus to identify the "advanced" and "backward" law-regions in the country ; the demography of FLS may itself provide sets of social indicators for social scientific study. Moreover, we may also be enabled to perceive differentials, within each law-region, of the "presence" of the FLS : it would be interesting to find patterns of dispersal of the institutional resources of the FLS in rural, urban, and metropolitan areas within each law-region.

5.6 Social demographic studies of FLS, furthermore, provide crucial background data for scientific understanding and assessment of the contexts of the emergence, provenance and viability of complementary or antithetical indigenous or informal legal (social control) systems. Social

development in the light of the constitutionally proclaimed goals favours a set of adjudicative and societal values. From this standpoint informal control systems, in so far as they espouse radically different values, could be said to present an antithetical social and jural order ; and may be seen to present limits to the pursuit of social development envisaged by the Constitution.

5.7 A further advantage of this type of data collection would be the furnishing of a number of scientific starting-points and control-points, for more advanced legal research. Thus, for example, today our assessments of effectiveness of laws or of law-enforcement processes are based on infirm intuitive or partial commonsense perceptions of the basic constitutive facts of the FLS. This is true not just for the academician but also for the legislator and policy-planner generally. Thus, well-known specialists in criminal law would be hard put to answer simple questions on the number and locations, within their own region of custodial, correctional and police institutions and the size of their personnel. Thus, also, one hears of "delays" in the administration of criminal justice, of investigatory processes. But these complaints are devoid of any factual grasp of the relevant manpower in judiciary or police. Programmes of legal aid are continuously commended at a national or regional scale but without any assessment of the patterns of quantitative dispersal of legal practitioners among and within law-regions. The national expert committee on Legal Aid (Govt. of India 1973), in the useful report, refers to the "human resources of the Bar" for legal aid work without at any stage examining in some, even rough, quantitative terms the pattern of the dispersal of the legal profession ; the only notable, and rather obvious piece of factual information it contains on this score is to remind us of the "absence of lawyers altogether" in the Laccadive and Minicoy Islands : (pp. 24-5, 133). Thus, for example, it would have been worth recalling that the so-called "human resources of the bar" give us, however, only 183 lawyers per one million of the population as against 507 lawyers in U.K., 1595 in U.S.A., 947 in Newzealand, 638 in Australia and 769 in Canada. Analogies of legal services drawn between the "old" common law countries and India become even less meaningful when the lawyer-population ratio is borne in view. Statewide distribution of lawyers reveals startling disparities Whereas the undivided Bombay had 15, 516 lawyers (263 per one million people), Orissa had only 1,321 (75 per one million people) and Assam 911 (76 per one million people). This was the state of affairs in 1958 (Galanter, 1969 : 204-5, 209). One can only conjecture the present position. The Report's nobly conceived programmatic "vistarama of a wider judicare for India" could have moved more effectively towards fulfilment with some solicitude for research in social facts of the FLS.

5.8 Moving away from courts and constables, we find an alarming ignorance concerning facts of legislative institutions and processes. We do not have organized information on turnover, in number and type, of legislative enactments in different states ; of time-lags between initiation of

bills, their passage through the House, the intervening work of joint select committees, and the time-lags between passage and the gubernatorial or the Presidential assent to the bills. Much less do we have any information on the quantity of amending and repealing legislation, or of the private member's bills. Political scientists and lawyers should even go back to some unfashionable sources for inspiration. Herbert Spencer counted in 1812, much before the emergence of our present infatuation with "empiricism", that in the parliamentary sessions in 1870-72 "there has been repealed, separately or in groups, 650 Acts, belonging to the present reign, above many of the preceding reigns" (Spencer, 1894 : 118).

5.9 Nor do we have (although useful beginnings have been made in this direction by political scientists) much data on the social profiles of national and state legislators. One would have thought that political scientists and constitutional lawyers who often proclaim the failure in evolution of constitutional conventions would at least have thought of ascertaining facts such as civic education, understanding of the constitution, levels of linguistic proficiency of our legislators. Political scientists and lawyers should be able, in the light of social facts about legislators and legislative activity, to assess the relevance of the Westminster model of parliamentary system more or less embodied in our Constitution.

5.10 In some areas, legal scholars have themselves the need for organized factual information. Thus, while "the jurisdictional territory" covered by administrative adjudicatory bodies is "very expansive and touches upon many aspects of human activity" no one "knows for sure as to how many of these exist as no comprehensive study of these bodies has yet been attempted in India" (Jain & Jain, 1973 : 132). This acknowledged shortfall in information, in an area of phenomenal expansion of the FLS, underlines further the need for precise ascertainment of its institutions.

5.11 The SRP can make valuable, and rather easy, beginnings in this area. Most of the basic information would be available in government and public documents, although a lot of it would have to be reorganized and refined. In some areas, rather specific efforts may be necessary. We do not think that the financial outlay required for this nation-wide data-hunt will be very heavy. Nor will questions of method, approach or organization prove very complex. The theoretic and policy payoffs of a body of scientific data on the "presence" of the FLS are, as emphasized earlier, of a very high order.

VI Mapping the FLS : the court system

6.1 The common law culture, which we continue to share, is highly court-centred. Judges, lawyers, law teachers and students are, by and large, accustomed to be indifferent to the state of law in legislative gestation and to its career outside the courtroom. The tradition of taught law (Roscoe Pound rightly used to say that "taught law is tough law") and of the Bar and the Bench which regards, again by and large, all other

aspects save the doctrines of the law as "given" is principally responsible for the excessive preoccupation with the court system. Concern of law men with justice has also been mostly a history of concern with justice under the law. All this has naturally led to identification of law with merely one aspect, however, eminent, of if—namely the normative/cultural aspect (see *supra para* 4.4).

6.2 By the same token, social scientists have, somewhat understandably, regarded law as a very arcane technology and discipline. The concerns of law teachers have naturally seemed far removed from those of the economist, the political scientist, the anthropologist and the sociologist. The fields of discourse, and cognitive styles, of the appellate court decisions have appeard alien to social scientists. Their work in India for the last quarter century has therefore altogether surrendered the social scientific grasp of the law (understood as norm-productive operation of the court-system) as a property of social-structure. All this, of course, does not enable us to comprehend why social scientists themselves did not explore the institutions of the legal systems and social aspects of legal processes, as has happened elsewhere. The diffusion of the very conception of law as a normative mass, one suspects, is only one, even if a major, reason for this neglect.

6.3 Be that as it may, the specialized misidentification of "law" with the court-system in its normative productivity cannot be washed away. But it could be slowly transformed by a strategy of sponsored social scientific reserch to a concern with these aspects of the court-system which could make the preoccupation with the normative system itself sociologically more meaningful. In the process, the field of law can also be tranformed, slowly but surely, into a multidisciplinary domain. It is with this objective that we give much importance to the court-system in our proposals for sociological research in law. Even though this way of proceeding may not be congenial, realistic research strategies require us to start from where we are, rather, than from where we ought to be.

6.4 In what follows, we use the term "court-system" globally, distinguishing (for example) "civil" sector of the system from the "criminal" sector only when exigencies of context so require. It needs also to be stressed that by and large we indicate general areas of study, and not specific research proposals.

6.5 The courts are typically passive institutions. They are passive in the sense that they cannot of their own at all perform social "stability" or "change" tasks; the courts need activation of their jurisdiction by litigants or state officials. The initiative to achieve the court-system is, theoretically, available to each and every person in the realm and is, practically only moderately exercised. Yet we do not have any scientific comprehension of *who* activates the court-system, for *which* problems it is usually activated, for what *purposes* it is activated, and what *results* arise from such activation. All we know at a sufficiently sophisticated level is what norms are used in the process of activation and redressal of grievan-

ces or disputes by the court-system. This kind of knowledge, *without more*, comprehensively obstructs and even distorts in many directions our understanding of legal processes and the role of law in society.

6.6 *Recourse Patterns* : The first question "who activates the court-system" directs us to investigate whether the initiation of litigation (making of claims or initiating a prosecution) is merely random or a patterned activity. By nature of things not all *social* claims (or prosecutions for crimes) will reach the court-system; only *some* will reach. It is, therefore, imperative to find out recourse-patterns : they may even hold a key to the understanding of "the character and impact of the judicial process" (Galanter, 1974 : 3). If some social actors come more often than others as claimants before the court, and some others never or rarely so come, then we have a formulation of the problem of uneven or discrepant utilization of the resource of judicial intervention in social conflict resolution. We have also, simultaneously, an understanding of the attributes (of indentity, organization, legal competence, resources of time, money and manpower) which are associated with those who frequently have recourse to courts as against those who have it infrequently or rarely or not at all.

6.7 In the administration of criminal justice, the pattern of recourse is, of course, clearly established by the dominance of state agencies in the prosecutorial initiative in major criminal matters. This partern historically established is socially visible too. Yet we lack organized information about the typical *conditions* under which this prosecutorial initiative is exercised or the frequency of this exercise for various categories of offences, and the social actors over or against *whom* this initiative is typically exercised. A comparative profile of socio-economic attributes of those accused of various offences in different law-regions may be one way of developing a typology of the *subjects* of the exercise of the prosecutorial initiative; and may highlight deeply disturbing *unevenness* in the reach and effects of the administration of criminal justice. Some information concerning the socio-economic background of apprehended juvenile delinquents in 1971 shows that of the 96,144 juveniles whose socio-economic data was available, more than 80 per cent were in lower-income group families (income below Rs. 150/- p.m.), 35.2 per cent juveniles arrested belonged to scheduled caste and tribes, and only 2.1 per cent of the juveniles arrested were above matric/higher secondary, 53.4 per cent of them being altogether illiterate. Out of 1,03,419 juveniles apprehended, 83548 were sent to courts. 19.9 per cent were imprisoned, 1.4 per cent sent to adult jails, 1.1 per cent to reformatories and borstals, 2.2 per cent to schools and institutions, 5.8 per cent restored to guardians. 30.5 per cent cases were pending; and 36.9 per cent juveniles were either acquitted or ' otherwise disposed of" (Government of India, 1974: 46-58). These figures of law enforcement, one suspects, cannot entirely be explained by simple correlations between socio-economic status and delinquency.

6.8 But our system of criminal law also allows ample room for private prosecutions for a number of offences. Also, a large number of offences could also be "compounded" before the courts. The prosecutors have also the power to withdraw prosecution. The judge is empowered to convict an accused who pleads guilty. Patterns of private prosecution, compounding, and self-judgment (guilty plea) also need to be investigated.

6.9 But we know even less of the recourse-patterns in the civil courts. Confining ourselves for the moment merely to civil courts of general jurisdiction we need to explore the range of their users, by devising a typology of the parties, at various levels of the civil court system (district court, subordinate judge's court, munsiff's court). Perhaps, a series of small, self-contained studies could be made, by way of a beginning in this direction, of the small causes court, involving pecuniary claims upto Rs. 2,000. Who makes what claims ? It should be recalled here that the Fourteenth Report of the Law Commission (1958 : 17) estimated that nearly 80 per cent of civil suits instituted in 1954 involved claims of Rs. 500 or less. The corresponding 1964 position is that such suits represent nearly 73 per cent of the workload of the civil court-system. Obviously, studies of recourse pattern, and workload, of the small causes courts are of as much importance as those of the Supreme Court of India.

6.10 As we move from those courts meant for small causes and "small" men to the higher levels of the civil court-system, it would be interesting to verify the hypothesis (which has been validated in some very recent American Studies) that plaintiffs in civil courts of general jurisdiction are "predominantly business or governmental units while defendants are overwhelmingly individuals" (Galanter, 1974; Warner, 1974 : 423-5). [The ratio of men-women plaintiffs and the SES (socio-economic-status) differentials among types of plaintiffs could also be explored].

6.11 Whether or not one agrees with the view that the centre of adjudicatory gravity is shifting or has shifted to administrative adjudicatory agencies from the formal court-system, it is essential to include some of the major administrative adjudicative institutions within any "recourse pattern" probing. Disregarding fine distinctions between administrative "tribunals" and other administrative adjudicatory bodies, it would be scientifically rewarding and socially relevant to examine typology of litigants before a few selected tribunals/bodies. Perhaps, it would thus be most rewarding to initiate studies of adjudicatory bodies on labour law (under the Industrial Disputes Act, 1947) or rent control laws.

6.12 Finally, without being exhaustive, a very important area of investigation for recourse-patterns is furnished by the guaranteed fundamental right to constitutional remedies for the enforcement of the fundamental rights under Article 32 of the Constitution. Who or which type of petitioner has most frequently invoked the intervention of the Supreme Court and for enforcement of which fundamental rights? Even if

social profiles of such citizens may not be adequately available, a mere quantitative analysis of activation of the Article 32 jurisdiction is of compelling urgency. It would enable us to quantify one part of the workload of the Supreme Court and to that extent determine whether it is overburdened by this recourse. More importantly, we may know the rights most often claimed to have been violated and, therefore, in need of instant judicial protection and support. This would also enable us to determine (*a*) the degree of diffusion of what may be called "constitutional consciousness" in the citizenry and (*b*) the type of persons who are able to more or less, "appropriate" the principal agency of constitutional judicial review of governmental action. The social debate over whether the court is prone to protect rights to property over rights to personal liberty may also be clarified if it is discovered that the salient recourse pattern leaves the court with no other alternative.

6.13 The discernment of recourse patterns, whether at systemic or sub-systemic levels of the court-system, will enable us to pursue meaningfully the *problem of non-recourse*. What happens to parties' legal positions and relations when they do *not* have (either intentionally or through disabilities) recourse to the court-system? Several factors may help us explain non-recourse : (*a*) lack of awareness that the dispute has legal aspects; (*b*) inability, despite such awareness, to activate the court-system, arising from economic disability or from the lack of competent professional legal services or from remoteness from courts and cumbersomeness of its procedures ; (*c*) disenchantment or alienation from the court-system; (*d*) culture-specific disincentives to recourse to court-system; (*e*) availability of *other* modes of dispute settlement through local informal control systems or negotiation *inter partes*; (*f*) a high tolerance of dispute-behaviour.

6.14 Discovery of recourse-patterns will thus enable us to understand other relevant factors "explaining" non-recourse. It will also lead us to a greater comprehension of the types of individuals or organizations who are the primary "users" and "beneficiaries" of the court-system. We will also be enabled to perceive levels of "legal competence" of individuals and organizations. Power-differentials (economic ability, organizational complexity, access to legal services) among court-activators will also become evident. Reasons for the exuberance of normative activity in certain areas, as compared with normative dormancy in others, will also be effectively grasped. Propensities of the judicial system towards certain parties to disputes may also become more visible.

6.15 *Judicial Workload and Litigation Flow* : The second question "For what *problems* is the court-system activated ?" directs us *first* to the quantum and pattern of the workload of the courts and *second* to the flow of litigation through the hierarchy of courts. On both these aspects, we lack organized or scientifically useful data, though we have some rudimentary information in various government reports, publications and a wealth of informed opinion in Bar and Bench, which is awaiting scientific

exploitation. Let us turn to the specific areas for study in each of the two above-stated aspects.

6.16 *Judicial Workload :* The *first* question here is : how many cases are filed, and eventually decided, by courts in each layer of the hierarchy of courts? *Second,* what statistical norms emerge for the period necessary for the diposal of a case? The time-periods will naturally vary according to the position of a court in the hierarchy, and the categories of litigated subject-matters. It is worth observing here that the notion of "delay" in judicial disposal simply does not make scientific sense in the absence of statistical norms concerning time-consumption for the disposal of various categories of the litigated subject-matters. What we routinely and somewhat unthinkingly mean by "delay" (except of course in gross situations) is also, be it stressed, a direct function of the normativity of the legal system, i.e. disposal of litigated subject-matter is governed by a host of procedural and substantive norms oriented to the doing of justice. In this sense, consumption of time ("delay" in lay parlance) is a structural property of the FLS.

6.17 *Third,* are certain norms of judicial disposal laid down for subordinate judiciary by the state High Courts? If so, how are those related to the quantum of the workload? Are these disposal norms also related to the available judicial manpower? Do these norms work?

6.18 *Fourth,* does the workload of various courts on various matters lend itself to any kind of *pattern*? What matters are more frequently brought before the courts? Can we work out for any court-system under study charts of "most litigated" to "least litigated" subject-matters? Perceptive scholars (e.g. Sharma, 1964) have stressed, for example, the lack of civil actions for personal injury in tort law, despite the fairly rapid industrialization processes in India. Similarly noteworthy is the relative "lack" of litigation in areas such as consumer protection, environmental protection, professional negligence, etc.

6.19 *Fifth,* once we discern variations in workload patterns, explanatory explorations become crucial. Why are certain problems brought before courts most and others least? Is the pattern of workload related to the pattern of court-activators? Are the "least litigated" matters indicative of lack of litigious capability, initiative or stakes? Are there substantive and procedural difficulties associated with taking of such matters to court? Is it in the interests of society to maintain the existing patterns of judicial workload? If not, what measures are needed to rectify the "appropriation" of the court-system by certain social groups for certain subject-matters?

6.20 *Sixth,* the workload and pattern profile of the court-system should also yield indicators of "efficiency" of courts in their tasks of settling disputes, or resolving social conflicts, and lead to policy-proposals, based on scientific assessment concerning expansion, re-structuring or functioning of the court-system.

6.21 *Litigation Flow* : From the time of the initial move activating the court-system to its ultimate disposal by the High or Supreme Court,

litigation flows "through a decisional system containing multiple points of potential termination" (Howard, 1973: 33). The flow of litigation from trial to appellate courts, from appellate to High Courts, and often from High Courts to the Supreme Court of India is an important uncharted area of study. Such a study is of undoubted importance, since it could indicate areas of convergence and conflict within the court-system, and illustrate the range and type of disputed matters over which such convergence and conflict are displayed. Study of these matters would also show the measure of deference shown, and prestige enjoyed by the highest court in the country and/or of the particular state. Since all these are variable matters, one should be enabled to perceive the relation between the Supreme Court and the High Courts varying between different periods of time.

6.22 Is the Supreme Court more supportive of High Court determinations—or less ? Does it sustain more High Court outcomes/decisions or less ? How does the Supreme Court act for example, in its exercise of powers under Article 132 (2)* of granting of special leave to appeal despite a refusal by a High Court to do so on the ground that the case involves "a substantial question of law as to the interpretation of this constitution"? How often, in respect to what matters, and how frequently with regard to each High Court, has the court exercised this power ? Some questions need to be asked in respect to the court's power under Article 136 to grant in its discretion, "special leave to appeal from any judgment, decree, determination, sentence, or order in any cause or matter passed or made by any court or tribunal in the territory of India." (The measure of deference towards the Supreme Court shown by the High Courts can also be studied by asking how each High Court has interpreted the binding quality of the Supreme Court judgments under Article 141 of the Constitution).

6.23 A related, and equally important, aspect is the discernment of the patterns of appeals made to the Supreme Court of India. Aside from the review/commutation of death sentences imposed by the High Court upon reversing an acquittal by the lower court [Article 134 (1) (*a*)], wide leeways exist to activate the Supreme Court's appellate jurisdiction. In what matters have parties sought to invoke this jurisdiction ? In which matters have they failed to activate it ? What kinds of petitioners have sought to activate the court in appeal with what results ? (Similar studies need to be made for the activation of the High Court appellate jurisdiction).

6.24 *The Purpose of Court Recourse :* The *problems* for which the court-system is activated may not in *all* cases adequately reflect the *purposes* for which it is activated. The initiation and pursuit of litigation is properly viewed as an aspect of an ongoing social interaction and as an aspect of rational (and non-rational) strategies of conflict. In other words one does not always go to courts in search of a legal settlement of disputes

* Repealed by the Constitution (Forty-fourth) Amendment Act 1978.

or resolution of normative disagreements.

6.25 Some types of court-recourse can be better understood as being of symbolic, rather than instrumental, nature. The dichotomy is useful provided it is used discerningly (Gusfeld, 1967 : 175). Certainly, court-recourse is symbolic when the laws under whose auspices it takes place are pre-eminently symbolic, such as the prosecutions under the Untouchability (Offences) Act, 1956. A symbolic legislation is one which exhorts attitudinal or value changes. Its emphasis is on education or ideology propagation rather than on routine legal implementation. Symbolic court-recourse, in such cases, means infrequent and broadly ineffective exercises of prosecutorial initiatives by state agencies.

6.26 There is another dimension of symbolic court-recourse. We may speak of symbolic court-recourse when the litigant's objective is merely the act of initiating litigation rather than its fully-fledged pursuit. Here the act(s) of initiating litigation are also acts of symbolic communication to the adversary by the plaintiff. The nature, contents, and effect of such communication depends of course on the parties in their socio-cultural locations. Symbolic court-recourse may thus communicate the willingness of one party to risk the publicization of a "private" conflict or dispute. Or, the court-recourse may symbolize the asymmetry in the adversaries' relative power-positions, by highlighting cultural, technological and economic access of the adversary to the FLS. Symbolic court-recourse may *itself be an exercise in sanctioning-process* when the cultural factors disfavour, or even stigmatize, an individual's role as a defendant in the FLS. It may contribute substantially to our understanding of law as a social system to attempt further conceptual elaboration of these matters, followed by empirical investigations.

6.27 Aside from symbolic recourse patterns, it is well known that often parties have recourse to courts not with a view to obtain decisive judicial intervention but with a view to arrive, perhaps through thus enhanced bargaining capacity, to a negotiated settlement of disputes. In such out-of-court settlement, the machinery of the administration of justice is appropriated for the ostensibly private ends of a resourceful litigant. Whether or not such a happening is desirable, there is need for a thorough study of the volume, frequency, the nature, and causes of such uses of the court-system.

6.28 *Nyaya Panchayats and Village Courts* : The Nyaya Panchayats and Village Courts, under statutory auspices, must also be viewed as aspects of the court-system of the FLS. Even sociologists studying village societies have almost completely ignored Nyaya Panchayats and Village Courts, although Village Courts in some parts of India, have been functioning for a considerable length of time. In Madras, for example, Village Courts have been functioning since 1889 under the Village Courts Act, 1888. Yet, in the present writer's knowledge, no sociological study of the working of the courts has yet been made. Nor have been legal scholars enthused by the only sponsored study, the *Report of the Study*

Team of Nyaya Panchayats published in 1962. Since then there have been one or two state reports but they (or the institutions) have not been thought worthy of study either by lawmen or social scientists.

6.29 It is imperative to redress this cumulative neglect in social science scholarship. We must find answers to the following questions : How many Nyaya Panchayat and Village Courts are there ? What are their patterns of functioning and workload ? How do they resolve conflicts ? What are the justice-qualities in their decisional processes and outcomes ? What are their relations with the "formal" legal system ? What are the attitudes and perceptions of the village people to these systems ? What methods of evaluation are adopted by various governments to assess the functioning of these institutions ? What, if any, have been the salient structural and jurisdictional changes in these institutions over the years ? Have these institutions supplemented or supplanted other indigenous dispute institutions ? Have these institutions been carriers of the values of the FLS ?

6.30 Obviously, most of these studies will have to be region-specific and will entail a degree of field-work. and considerable degree of cultural empathy. An overall sociological understanding of the communities where these institutions function will be necessary. It goes without saying that linguistic proficiency will also be essential. The ICSSR should activate its regional centres in promoting research in this area. For far too long concern with justice in India has meant justice of the (broadly) court-systems in urban areas, to which a very substantial number of Indian populace has little or no access. Scholarship must return to their problems, even as we proudly celebrate the silver jubilee of our Constitution.

VII Mapping the informal social control system (ICS)

7.1 The study of dispute institutions in society has been, and remains, a major item on the agenda of sociology of law. Juristic preoccupation with the official legal systems has generally led to the belief that other dispute institutions are wayside relics, conceivably of marginal importance, to the study of law in society. Indeed, the general tendency has been to subsume studies of non-official dispute institutions under the rubric of "cultural" or "legal" anthropology, an exotic field for a few specialists which a busy judge, lawyer or legislator finds of little immediate relevance.

7.2 And even "legal" anthropology has yet to win recognition in India as an integrated discipline. Dispute-resolution institutions and processes figure, but only incidentally, in ethnographic accounts. Their significance to social stability and change is perceived only occasionally. Tribal ethnography has also generally overlooked the significance of dispute institutions and processes (ICSSR, 1972 : 31-133, 258-61 ; Veena Das, 1973). Even when some preoccupation with these is visible,

opportunities for systematic investigation appear to have been surrendered (Baxi, 1973). India does not have any studies of the type presented by E. Adamson Hoebel (1954), Max Gluckman (1965 ; 1967), Paul Bohannan (1957), A.L. Epstein (1964) to mention only a few landmarks in legal anthropology. The fact that leading Indian universities continue to fall back upon Sir Henry Maine's seminal works for post-graduate legal education is not just a testimony to obsolete legal curricula but it is also a sad commentary on the state of art in the field.

7.3 It is essential that the ICSSR encourage, as a matter of high priority inter-disciplinary studies of one basic aspect of the ICS in India, namely the indigenous dispute institutions existent under non-state or social auspices. These institutions are, broadly speaking, to be found in "rural" and/or "tribal" areas. The justification supporting this recommendation for research-promotion is as under.

7.4 The persistence of indigenous systems of dispute-handling sets some very real limits to directed social change along the lines of the constitutionally desired social order. This would certainly be the case insofar as these systems derive legitimation from belief systems which are *not* congruent with the belief systems investing the national/state legal systems (FLS) with legitimacy (see e.g., R.S. Freed, 1972 : 423-35). Planned social change through the instrumentality of law must keep these limits in full view and if so *desired* must progress with more rational strategies, especially through the creation of supportive structures, to overcome these limits. By the same token, scientific delineation of the areas of compatability and of conflict between the ICS and FLS should enable precisely the development of rational strategies for planned change.

7.5 The main research tasks in this area are as follows. *First*, we need to identify (as closely as possible) the existent ICS in each law region. Social demography of the ICS is no less important than that of the FLS. *Second*, detailed ethnographical sample or pilot studies of ICS in each law region need to be undertaken. These studies must at least descriptively identify the structure, process, norms, values and efficacy of the ICS. *Third*, such studies must yield findings on the nature of interaction between the ICS and FLS at cultural, social and political levels. Are these relations neutral or complementary or conflicting? To what extent are the justice-values of both ICS and FLS compatible?

VIII Effectiveness of legal direction and control as an aspect of planned social change

8.1 Post-independence India is characterized by the talismanic use of the law-making technique in the handling of problems of social change. The quality of law-making is, however, diverse and variable. Some laws are made after mature consideration and detailed enquiry; they are assured of supportive structures (administrative, enforcement, public opinion). But, of necessity, a large number of legislations are characterized by short

gestation periods, little or no pre-legislative social enquiry and feeble supportive structures. Moreover, some laws are clearly symbolic gesturings or rituals, intended to serve social functions different from controlling behaviour through coercive implementation.

8.2 Obviously, we need to understand scientifically the pre-requisites of effectiveness or "impact". Considerable conceptual elucidation of the notions of "effectiveness" and "impact" is the first, and a grasp of methods of measurement of "effectiveness" or "impact" is the second, among the prime preliminary tasks (see Baxi, 1974). Effectiveness/impact has to be determined by reference not merely to the declared policies of the legislation but also by reference to its unintended consequences. Measures of effectiveness/impact will also vary according to the initial decision to regard a law "symbolic" or "instrumental", a task full of hazards. If it is an "instrumental" legislation that we wish to evaluate, the evaluation has at least to take account of both "enforcement" and compliance without enforcement. Once again considerable conceptual clarifications of these latter would become imperative. Since "effectiveness/impact" obviously involves time-dimension, intervening variables (e.g. judicial decisions, amendments, administration) will have to be borne in view. Similarly, in terms of method, recourse to such sophisticated techniques such as time-series (or interrupted time-series) may also become necessary.

8.3 In any event, this area is the more promising in terms of the transmission of inter-disciplinary skills and a coalescence of interests of the lawyer and social scientist. While any listing of priority areas would be debatable, we propose that the SRP promote research at least in the following aspects, which have relevance to the areas delineated generally by the ICSSR for the current plan period :

(1) agrarian reform laws, with special reference to the conditions of landless labourers or agriculture labour generally;
(2) anti-untouchability law and related legal measures of "compensatory discrimination" (reservation in schools, employment, legislatures);
(3) legal measures directed to the amelioration of the plight of the scheduled tribes;
(4) anti-poverty legal measures (beggary laws, minimum wages Act, contract labour Act, beedi workers Act etc.)
(5) administration of food and drugs adulteration Acts.

8.4 To be sure, there are other equally crucial areas for "impact" research in the fields of labour, corporation and tax laws. But the areas indicated above are among the least explored (on an inter-disciplinary basis, we hasten to add), and are of pivotal importance for the attainment of socially desired order proclaimed by the Constitution. The ICSSR should, however, undoubtedly assist *laissez-faire* research in the other areas, not specified herein.

IX Anomie, alienation, legitimacy, violence and social change through the law by direct action

9.1 The programme for sponsored research has so far not touched on the basic aspects of the legitimacy of legal and political orders and diverse forms of challenges confronting them. The bases of legitimacy of the legal and political order are formally articulated in the Constitution as amended by the exercise of the constituent power by the Parliament and the Supreme Court. To the extent that the legal and political orders fail to uphold the constitutional values and to attain the constitutionally desired social transformation, they will lose legitimacy. By the same token, the constitutional bases of legitimation may themselves be in the peril of replacement.

9.2 There are rich traditions of sociological thought dealing with "anomie", "alienation", "legitimacy", "violence" and "direct action". One prime task is to relate these to ponderings on the Indian legal and political orders. There is no pressing need to worry about how these matters may be made more amenable to empirical research in the Indian context. It would be enough to generate and diffuse consciousness of these conceptions and their high relevance to any understanding of the dynamics of legal and political order.

9.3 Thus, for example, it is necessary to reflect on the question : In what sense does the legal order contribute to alienation? Alienation may here be understood in terms of five meanings distilled by Seeman : "powerlessness", "meaninglessness", "normlessness", "isolation" and "self estrangement" (Seeman, 1959). The question may also be fruitfully reversed : "In what ways can (or does) legal order alleviate alienation?"

9.4 Similarly, little or no effort is made to integrate theoretical perspectives on "anomie" in the Indian literature on social deviance. Whether we view anomie in Durkheimian terms as entailing "overweening ambition" and breakdown or regulatory norms or in Mertonian terms as disjunction between "cultural goals" and "socially structured opportunity" or merely in terms of "differentials in the availability of illegitimate means", a vast range of Indian materials on criminology needs theoretical perspectives generated by "anomie" theorizing. The relevance of anomic behaviour and emergence of anomic associational groups to the bases of legitimacy of legal and political order in India needs contemplation.

9.5 Related to all this, but also somewhat distinct, is the problem of violence in relation to political and legal order. The latter articulates conditions and extent of permissible violence and structures its exercise. On the other hand, the story of the law has always been one of constant struggle to appropriate unto itself *all* the forms of legitimate violence. In other words, we need to think about the shifting boundaries of permissible and proscribed violence in Indian society, of the capabilities and responses of legal political orders to inter-group and intra-group violence, and of the viability of the legal-political ideological controls over the

deployment of permissible violence by the agents of law and order. It is also noteworthy that violence appears to be a more effective means of interest articulation in a society committed to constitutional democracy, assigning high priority to freedom of speech and expression and association.

9.6 Jurisprudents and political scientists working in relative, if regrettable, isolation have repeatedly emphasized the point that one of the major functions of law or political decision making is the satisfaction of human demands. Roscoe Pound continued to refine and reiterate, throughout his long lifetime of dedication to sociological jurisprudence, his view of law as an instrument of maximum satisfaction of *de facto* human demands, with least friction and waste (Pound, 1959). Almond and Powell (1966) similarly attribute a key role to the notion of demand at a perhaps more sophisticated conceptual level when they describe the process of making human demands as "interest articulation" which, to them, is a "first functional step in the political conversion process." These theorists have, in their own ways, naturally assigned greater conceptual and research emphasis to institutional interest groups taking only marginal (and occasionally disparaging) note of the process of the formulation of demands by groups through direct action. To some political scientists such demand-formations amount to no more than "spontaneous penetrations into the political system from the society" to be treated as the output of "anomic interest groups" not worthy of serious study while they remain such, for their potential for "scccessful interest articulation" stands minimized by the great competition from "numerous organized groups". (Almond and Powell, 1966; Kothari, 1970). For the jurisprudent, the problem of "direct action" is agonizingly intertwined with the intractable problems of justification of civil disobedience and opposition to an unjust law. Neither approach comes to grips with the problematics of the relationship between direct action and socio-legal change.

9.7 By direct action we mean recourse to the "extra-constitutional modalities of articulation of human demands. (Baxi, 1967). Familiar examples of such techniques are demonstrations, processions, strikes, (and in the Indian context) fasting, *dharna*, *gherao*, and the recent "land-grab" movements in some states. A study of the direct action patterns at various levels seems to be crucial to the understanding of the problems of institutionalization of the democratic order and values envisioned by the Indian Constitution (Baxi, 1967) as indeed it has now become imperative for the viablility of democratic order in the United States (Skolnick, 1970).

9.8 More simply, but less accurately, direct action may be viewed as an "unconventional" modality of interest aggregation (Almond and Powell, 1966). The multiple ambiguities of this characterization are worth pondering upon. Direct action may be viewed as "unconventional" in the sense that such behaviour is supposed not to have attained legitimacy

in comparisons with other modalities of formulating demands. But this is a presumption, not a verified conclusion. Second, it may be thought that such assertion of demands is relatively infrequent meriting therefore the verdict of unconventionality; but in the Indian situation only the novice will accept this proposition as true, and in the United States and other Western democracies it is becoming progressively vulnerable. Finally, (without being exhaustive) direct action may be regarded as "unconventional" simply because its cognizance at a systematic level is difficult and may threaten the neat symmetry of political or juristic theories. But the unconventionality then arises not from the subject matter but from inability or the unwillingness of the theorist concerned to accommodate it in a given conceptual framework.

9.9 Initially, studies in this field should focus on direct action only in so far as it involves explicit demands for social change through law, as when the demands are directed to the creation or modification of new or existent legal rules and regimes or to the more efficient functioning of the legal system and its parts. This somewhat arbitrary cut-off point does not of course preclude the future broadening of the enquiry into the wider arena of political decision-making and inter- or even intra-group relations. The wider aspects of the outcomes of direct action whether in terms of political mobilization, socialization or communication may need then to be considered.

9.10 Our first task will be to quantify the incidence of direct action at the national level with a view to ascertain whether it has been an important agency of demand-inputs in the political system. An allied task will be to classify statewise the incidence of direct action, with a view to studying regional differences and correlations in terms of types, organization, governmental management, and outcomes of direct action. One hypothesis here is that direct action behaviour is preeminently an urban phenomenon. Another is that the incidence of such behaviour will be greater in those urban centres in which the seat of the government of the States or of the Union is located.

9.11 Direct action may be classified with reference to two principal dimensions. Direct action may be peaceful or may involve use of force *by* or *against* those participating in such action. Direct action may also be lawful or law-infringing. It would seem obvious that when direct action involves impermissible use of force *by* participants it is law-infringing, notwithstanding the social and cultural ambivalence (naturally shared by the legal system) concerning the use of force.

9.12 However, it remains an open (and hitherto unexplored) question whether use of force *by* the direct action participants can in some cases be regarded as the permissible self-defensive use. Peaceful direct action, on the other hand, would routinely be lawful, though the legal status of most varieties of law-infringing direct action remains unclear. This latter aspect raises immediately questions of constitutional interpretation and relatively distantly those of moral justification, including the problems of

justification of lawbreaking. Suppose that the State or the Union enacts a law making fasting unto death or for a specified period a criminal offence. Direct action participants resorting to this modality will be committing a breach of this law with the ostensible, and as yet legally untested assertion that this law infringes the right to free speech, fasting being a kind of communication falling with the protection of the constitutional guarantee. Other examples abound. Our main tasks in this area will be to quantify the prevalent forms of direct action and to hypothesize concerning legality and legitimacy of some of them.

9.13 The "non-studies" of direct action may well be content to subsume such behaviour-patterns under general categories such as "anomic" behaviour (Almond and Powell, 1966) or "agitational politics" (Kothari, 1970). Studies of direct action must take into account problems associated with internal organization, leadership, elite-formation, participation, recruitment, structural and ideological constraints, socialization, internal factions, and longevity of direct action groups, for all these have a direct bearing on the outcomes of direct action, and consequently upon legal and political systems. A simple focus on the leadership, mobilization and participatory role of members of parliamentary or state legislatures gives rise to several important hypotheses, such as the following :

(*a*) Legislators' participation in direct action processes is more conducive to "successful" outcomes;

(*b*) the social and cultural acceptance of forms of direct action is significantly related to the frequency of participation by the elected legislators;

(*c*) the efficiency of the governmental management of direct action movements is partly a function of the composition of the direct action groups, and particularly of the participation of legislators in such groups;

(*d*) the use of force *by* or *against* the participants in direct action varies according to role and function of the legislator participants;

(*e*) participation by legislators in direct action programmes has a feedback effect upon their behaviour in the legislative chambers, which might partly explain the chronic difficulties of Indian legislatures in enforcing the rules of legislative procedures;

(*f*) contrary to the common belief, the creation of "direct action constituencies" by the legislator participation in such activities tends to strengthen the legitimacy of the democratic order, specially when the outcomes can be rated "successful".

9.14 A study of "outcomes" of direct action is also necessary. Preliminary to the canvassing of the range of outcome-dimensions is the clarification of the sequential or phasal analysis of the outcomes. An outcome analysis must take into account the entire situation in which direct

action occurs. One way to do it is to keep in mind the pre-outcome, the outcome and the post-outcome phases, individually in relation to each specific direct action movement under study and cumulatively in relation to the totality of such movements studied. An outcome analysis must at least advert to the following levels :

(*i*) *The level of articulation of demands :* Are the demands specific or diffused? Do the demands summon politically feasible or utopian action directed to legal change? Is the articulation of demands preliminary, reiterative, or consolidative ? Correspondingly, is the articulation intended to be (or has merely the effect of) symbolic input in the demand structure?

(*ii*) *The level of the justification of the form of direct action :* On what criteria, if any, the recourse to a particular form of direct action is explained or explainable ? What are the apperceived coercion-potentials of various forms of direct action ?

(*iii*) *The level of decision making on the demands thus articulated :* The responsive decisional outcomes may be traced along a spectrum consisting of : symbolic affirmation or denial of the demands by the governmental decision-makers; adoption of the demands by the non-governmental legislative decision-makers; affirmative or negative governmental decision on demands; perpetuation of *status quo* or institutionalization of deadlock in decision-making (e.g., cow-slaughter situation).

(*iv*) *The level of the organization of the direct action group :* Do the groups tend to moderate or escalate demands upon satisfaction or non-satisfaction ? Do they tend to become fully institutionalized pressure groups? What is the impact upon the direct action groups of the range of the decisional responses described in (*iii*) above.

9.15 A study along these lines deserves the highest research priority and the claims it would make on scholarly and extra-scholarly resources will be amply justified by the overall results. In its initial stages, the research may be purely archival. Many valuable sources include national newspaper files, legislative debates, judicial and governmental records and police records (this latter presenting imponderables of access). On the whole, a researcher in this area is likely to be greeted by *embarrassment de riches* rather than by the dearth of materials.

Other methods such as on-the-scene observation, survey, interviewing, and even participatory observation (this latter involving two-fold risks of annihilation, extinction as a human being, and extinction as uninvolved scientific observer) come in as important auxiliaries. These methods can be more relevant for the contemporary and future incidents of recourse to direct action.

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