

DISCUSSION

The discussion of S.N. Jain's paper began with an examination of the question of whether "legal repression" conformed to standards or merely constituted force. It was proposed that extra-legal violence by the state had been institutionalized in India.

One participant remarked that S.N. Jain's presentation was objective and conscientious, but that a profile of the problem should be perceived in terms of its development over time. In the context of the role of police violence against prisoners, it was noted that the violence is a function of the structure of the organization which trains and employs the police. It was also noted that while at the higher levels of the justice system there is a degree of flexibility, at the lower levels, including lower courts and the police, an understanding of the legal rules is seldom sought. One participant pointed out that India had recently begun to highlight the role of voluntary associations in serving to correct the shortcomings of society. Indeed, another continued, the ability to realize the potential of such associations is a strength in any society.

To these comments S.N. Jain responded by noting that when police are repressed, it is usually by all levels of the system. He contended that the police are often conspicuously deprived freedom of expression and may react with violence against prisoners. S.N. Jain also commented that the norms of the High Courts would more likely be carried out at lower levels (i.e., at the level of the police) if the police force itself was more highly literate and more properly trained.

An American participant commented on the implementation of norms throughout the legal system which are articulated by the Supreme Court. Intermediate institutions may be necessary to carry out this implementation process. One of the ways of improving the human rights aspects of the criminal justice system is to provide appointed counsel to defendants. In the case of India, he asked, could such a system be successful? Would such a system likely be pursued?

An Indian Member of Parliament replied that at present, there is no legal aid provided before trials.

Another participant commented that the problem is not simply one of procedure. What is actually at issue is the universal problem of implementation. If police are powerful, then abuse of that power appears to occur. This abuse can only be regulated through greater public awareness and information and through better training and placement of persons within the system. Only through knowledgeable persons working within the organizational structure can the problem be recognized and effectively eliminated.

In the discussion of difficulties in implementation, the case of adjudicatory law was mentioned. Adjudicatory law is also very difficult to prosecute. The violence associated with federal rulings on the issue of enforced bussing is an example of how adjudicatory law is peripheral to bringing about change. In the case of prisoners, there is much need for access to counsel or ombudsmen. The burden of cost for these services, particularly in the United States, is an immovable obstacle.

Another participant remarked that S.N. Jain's paper constituted an indictment of the police system and judicial process as a whole. S.N. Jain was asked about the extent to which the lower courts were capable of articulating the norms of the Supreme Court. He answered that the lower courts were hardly affected by the Supreme Court and that they never "waste their time" finding out what the recent rulings of the higher courts have been. Thus, these rulings do not filter down through the judicial system.

An Indian participant commented that the ministries within the Indian government had made efforts to communicate with the courts and the police, but that intra-system communications are often very "complex." Another participant stated that there were great differences between the instrumental and communicative rationalities of the legal system. The fact that S.N. Jain has no answers for those problems is a statement in and of itself.

S.N. Jain summarized that discussion and noted that though pronouncements of the problems at hand are made, nothing is done. Meanwhile, he said, we fail to correctly evaluate the strength of each group which operates within and influences the legal system because we are not looking at them in terms of their relative "bargaining endowments." He perceives the crisis in the courts as stemming from the inability of groups with similar interests to consolidate their "bargaining endowments."

He also insisted that we question the purpose of the criminal justice system. Power in the criminal justice system is intricately related to the possession of *land* in the political economy. We seem to be less concerned with these substantive issues, Jain remarked. Addressing the question of civil liberty and the loss of individual psychological control under an interrogation situation is actually asking about the "turn-around capacity down there" that is, the ability of lower institutions to articulate the demands of those above them. Jain suggested that law in India is practiced within the framework of the private market economy and is apt to be supported by private interests. Finally, he made note of the impossibility of carrying out vital changes with only the assistance of voluntary agencies and barefoot lawyers operating on shoestring budgets.

One discussant asked whether the police, who do not appear to be committed to human dignity, would be willing to engage in a dialogue on "change" or whether they would be more interested in debunking such a

discussion. He asked whether S.N. Jain, having made clear the difficulty the police have in expressing their views, had shifted his own values.

S.N. Jain responded that there had not been a shift in his values, that he supported "fairness" but not "over-fairness" to both individuals and institutions. As he sees it, the issue of police brutality and its resolution is not merely a question of implementing change, but also a problem to be seen in the context of society as a whole. In India to date, there has only been concern with the judicial branch ameliorating the violence; the police have been neglected. Despite some progress "on paper", Jain's own studies of the situation revealed little professionalization of the police. S.N. Jain also noted that the police have no legal force for their defense, and that the police should also be considered in the "legal aid and counsel" picture. In any case, the reality of the Indian defendant was the denial of access to counsel during investigation.

Another Indian participant denied the claim that police do not have access to counsel. He insisted that the legal aid situation was not so bleak. As a member of a legal aid society, he contended that both the police and defendants exercised their rights and that those rights were enforced by the courts. A large problem, he said, is that little trust can be vested in the magistracy. This is because the magistracy and police share the same perspective. In many lower courts, in fact, the influence of the police is great, and the judiciary cannot assert its power. Another problem, he continued, is the "cordial relationship between police and many criminals." There are many cases of deliberate non-handcuffing of people in order to facilitate their escape. Indeed, there is a great need for more young lawyers who can aid in the implementation of superior court norms.

An American participant reiterated the limitations of bringing about change via the adjudicatory process. He noted that the courts are limited in their access to information and limited in the scope of the remedies they can choose. When legislation is passed, the court uses it for the future and not, at least in theory, to affect past decisions. In effect, however, the impact of legislation is both retroactive and prescriptive. In response, a participant stated that courts in capitalist societies can be retroactive and prescriptive, but that this is not the case in all societies.

The discussion concluded with some comments on the course of research into police violence in the United States. This research began with Wesley's article (in the 1930's) and continued with a succession of studies which indicated that police operate in stereotypical roles once they decide that the suspect is a "bad lot". Skolnick's book, *Justice Without Trial*, suggested that the police ensure that suspects are sufficiently harassed because they feel that punishment will not occur as a result of the court process. Studying the same police department 20 years later, Skolnick found that the police were aware of the issues raised in his book, had learned to speak the "language of law", and were increasingly aware of how to use that

language to bring deserving criminals to "book." This was a good example, within the context of the police, of the assimilation of an understanding of the system creating a more positive role in aiding the process of bringing criminals to justice. Another participant noted that this was also a good example of how far applied research could go as part of the police formulation process, and that research of this kind was essential in creating monitoring and regimentation systems.