Vol. 3, No. 4 August 2004 ISSN 1811 7023

article 2

2(3). Each State Party to the present Covenant undertakes:

a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

c) To ensure that the competent authorities shall enforce such remedies when granted.

of the International Covenant on Civil and Political Rights

A sister publication of Human Rights SOLIDARITY

About *article 2*

article 2 aims at the practical implementation of human rights. In this it recalls article 2 of the International Covenant on Civil and Political Rights (ICCPR), which reads,

> 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
>
> 3. Each State Party to the present Covenant undertakes:
>
> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> (c) To ensure that the competent authorities shall enforce such remedies when granted.

This is a neglected but integral article of the ICCPR. If a state signs up to an international treaty on human rights, it must implement those rights and ensure adequate remedies for persons whose rights have been violated. Mere talk of rights and formal ratification of international agreements has no meaning. Rights are given meaning when they are implemented locally.

Human rights are implemented via institutions of justice: the police, prosecutors and judiciary. If these are not functioning according to the rule of law, human rights cannot be realized. In most Asian countries, these institutions suffer from grave defects. These defects need to be studied carefully, as a means towards strategies for change.

Some persons may misunderstand this as legalism. Those from countries with developed democracies and functioning legal systems especially may be unable to grasp what it means to live in a society where 'institutions of justice' are in fact instruments to deny justice. As persons from such countries guide the global human rights movement, vital problems outside their experience do not receive necessary attention. For people in many countries, international human rights discourse then loses relevance.

After many years of work, the Asian Legal Resource Centre began publishing *article 2* to draw attention to this vital provision in international law, and to raise awareness of the need to implement human rights standards and provide effective remedies at the local level in Asia. Relevant submissions by interested persons and organisations are welcome.

Contents

FOCUS: THE BELLILIOUS PARK EVICTION, WEST BENGAL, INDIA

Legal games versus the rights of the poor 2
Editorial board, article 2

Not even the right to be heard: A discussion with Kirity Roy on the Bellilious Park eviction 5

Letter to the Mayor of Howrah on the Bellilious Park eviction 11

The shame of Bengal: An unchanged social system 14
V B Rawat, Director, Social Development Foundation, Delhi, India

RULE OF LAW

The rule of law and human rights 17
Basil Fernando, Executive Director, Asian Human Rights Commission, Hong Kong

Victims of crime and the judiciary 20
K C Kamalasabesan, Attorney General, Sri Lanka

"Correctly and quickly"? Thoughts on decisions by the Supreme Court in Burma 26
Min Lwin Oo, Lawyer, Burma Lawyers' Council, Thailand

Urgent Appeals File: Bhikari Paswan—Ten years of waiting for justice in West Bengal end with a funeral 29
Asian Human Rights Commission, Hong Kong & Manabadhikar Suraksha Mancha, West Bengal, India

Legal games versus the rights of the poor

Editorial board, *article 2*

About 700 families living in a place called Bellilious Park, in greater Kolkota, India were forcibly ejected by a rapid action force engaged by the Howrah Municipal Corporation on 2 February 2003. The eviction—but one of many by the authorities in West Bengal during recent years—was briefly reported upon by the local media and then forgotten. The victims, however, can ill-afford to forget: they have since been left to live in absolute squalor; for some, the only escape has been death.

Although initially there was some expectation that the municipality would take steps to rehouse the persons, these hopes were washed away with the coming monsoon, and the evictees have been left to fend for themselves on the fringes of the municipal rubbish dump and other atrocious locations. Residents at the dump site report having frequently seen amputated human body parts, internal organs and dead babies from hospitals, which are dug out by pigs and dogs, and brought into the settlement. Such are the conditions in which these people have been forced to live, thanks to India's legal system.

The predecessors of the park occupants were brought to the park in the first part of the last century; they have lived there since without disruption, building small houses and collecting a few possessions, while cleaning the streets, drains and toilets of the surrounding neighbourhoods. They are Dalits, known in the past as 'untouchables', the lowest stratum of India's caste structure.

Attempts to get legal redress have failed. The law concludes that as the land on which these families had dwelt is under a trust, they have no title to it. The fact that the municipality settled the ancestors of the residents there, in order to keep them apart from caste groups nearly a century ago is of no legal significance.

This edition of *article 2*, focused on the Bellilious Park eviction, in West Bengal, India, complements the July 2004 edition of its sister publication, *Human Rights SOLIDARITY*, published by the Asian Human Rights Commission, 'Life at rubbish dump after Bellilious Park eviction'.

The law allowed the municipality to evict the occupants, on behalf of the trust, without redress. It allowed for massive force to be used to demolish the houses and to ransack the few possessions, such as radios, televisions, furniture and clothes, which the residents had accumulated. The consequences for these families were of no significance for the law. The fact that the park was occupied with the consent of the municipality, also employer of the evicted residents, is likewise of no relevance to the law. No moral obligations are attached to the decision to evict where the law is concerned. On 7 May 2004, a fundamental rights petition moved in the Supreme Court by Kishan Balmiki, a permanent employee of the municipality and victim of the eviction, together with Manabadikar Suraksha Mancha, a local human rights organisation, was rejected.

"The test of genuine social change in any society lies in the extent to which change occurs in its system of entitlements"

The eviction was one of many carried out in West Bengal in recent years where no restitution or rehabilitation was offered to the victims. In each case, the courts have been made a willing instrument of state or municipal authorities intent upon removing thousands of persons, with excessive force, and without regards to the consequences.

It is the nature of the existence of Dalits and other marginalised groups in India and elsewhere in Asia to not have legal titles to anything. They lack title over even the smallest plots of land on which to live until the concerned authorities find some alternative use for it. So what is the meaning of legal title for these persons? Is caste still the principal basis upon which Indian citizens obtain title to land and material objects? Have the years of rhetoric emanating from Indian leaders from Mahatma Gandhi to Swami Vivakananda amounted to nothing other than volumes of sentimental statements?

What about the boasts by government representatives in international forums on human rights that public interest litigation is a great achievement of Indian jurisprudence? No doubt there have been some successes; however, how far have these gone to really challenge and affect change to the principles underlying the country's nocuous social structure? The Bellilious Park case, and others like it taking place all over India, attests to a society where neither democracy nor human rights have had manifest influence on the distribution of resources.

The test of genuine social change in any society lies in the extent to which change occurs in its system of entitlements. Where a society incorporates the dispossessed into this system, they cease to be dispossessed. In particular, this ought to be done where groups have historically suffered outrageous maltreatment at the hands of others, out of recognition that such historical wrongs deserve redress.

The long period of residence by the people in Bellilious Park should have entitled them to some rights over the land upon which they lived. This at least would have obliged the municipality to seek alternative arrangements for them were it determined to press ahead with the eviction. In particular, the

court should have taken into account the fact that the population belongs to a specially scheduled caste under the Constitution of India, and taken into account the fact that they had no other place available to reside. Nothing is so basic to dispossessed people as the place where they live: virtually the only place where they are protected from discrimination. History has made them exceptions, and the law should not ignore history. But, the law as it stands now does ignore history, and applies abstract principles, blind to reality.

"The law and morality have become so completely divorced that social justice has become a non-issue"

The founding fathers of the Constitution of India claimed that they sought to achieve social justice. The early independence movement stressed that independence would be meaningless if social justice was not at the heart of self-rule. However, social justice soon became irrelevant to the new rulers. In fact, the upper castes and traditional elite ruled in a manner no different to their colonial predecessors. The law did not change to accommodate principles of social justice. The rule of the powerful over the weak remained as naked as when the Law of Manu ruled supreme, centuries earlier. The caste system under the Law of Manu stands unrivalled as the most supremely oppressive and brutal system of social control ever devised. It lives on today in events such as that at Bellilious Park on 2 February 2003.

On a few occasions in recent history legal scholars have sought to challenge Indian legal theory and gain greater space for social justice. However, in recent decades these have fallen into dramatic decline; hardly any now exist. Indian intellectuals instead take pride in their country's possession of nuclear arms. A new type of nationalism has gained hold among the Indian intellectual elite. The animal-like treatment of vast numbers of citizens is no longer a concern for them. The law and morality have become so completely divorced that social justice has become a non-issue. Meanwhile, the country claims to adhere to several international treaties on human rights, including the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), while utterly disdaining their provisions.

It is time for a new movement to rise and attack the deep malfunctions in Indian jurisprudence undermining its ability to act for social justice. The Bellilious Park case needs to be canvassed throughout India and globally as an example of the complete failure of the law to act with any semblance of fairness towards the historically dispossessed peoples of India. Common article 2 of the ICCPR and ICESCR requires that all violations of rights should have effective remedies. India as a signatory to both covenants has undertaken to provide for legislative, judicial, administrative and other machinery for the realisation of the rights enshrined in these documents. The rights of the occupants of Bellilious Park under both covenants have been violated wholesale, yet they have been offered no remedies in law. The government of India, as state party to the two international treaties, must be held to account for this failure, both by its own people and by the international community.

Not even the right to be heard: A discussion with Kirity Roy on the Bellilious Park eviction

Please describe a little of the history of Bellilious Park.

In the first part of the nineteenth century, a wealthy European named Isaac Bellilious settled his business in Howrah, and there he established the park that is his namesake, over an area of some 120 bighas [around 40 acres]. At that time, the park was outside the city limits. After he expired, his wife asked the municipality to look after the property, under a trust.

Around the time that the park fell into the hands of the municipality, Howrah was very prosperous, with flourishing industry. The municipality needed cleaners for its streets and neighbourhoods, so it arranged for agents in other parts of the country to send Dalits, so-called 'untouchables', to do this work. They came from places like Delhi, Haryana, Orissa and Andhra Pradesh.

Because the people who were brought to work as cleaners were all Dalits, they had to be segregated from caste groups. The municipality decided that the park was a convenient location for them to be accommodated. Before independence in 1947, it erected a building on the parklands to house them, with at least 60 to 70 quarters. It built two more structures later, one in the early 1970s, and another in 1982. All these buildings were standing up until the time of the eviction. By that time, the number of persons in them and nearby dwellings is said to have been over 7000, although our own research suggests there may have been around 5000.

We have gone to the municipal authorities several times and pointed out that they were the ones to erect those buildings, but they have denied it. I personally asked the mayor, "Who erected these buildings?" and showed old photographs, but he said, "I

Kirity Roy is the Secretary of Manabadhikar Suraksha Mancha (Masum), a human rights organisation based in Howrah, West Bengal, India, which has been active in investigating and acting on the Bellilious Park eviction. The interviewer was Nick Cheesman, from the Asian Legal Resource Centre. The interview was conducted in West Bengal during March 2004.

couldn't say." We have not been able to get access to the records that will prove those buildings were erected by the municipal authorities, because they are the custodians of those documents.

"The High Court did a great misdeed by this order, because not one person from the resident community was made aware that the case was going on, and nor was a single one of them ever invited to submit an affidavit to the court"

Meanwhile, the municipality also began using the park as the main dumping ground for Howrah, as it was outside the city limits. In 1987, an environmental group, Ganatantrik Nagarik Samity, filed a writ petition before the Calcutta High Court to the effect that Bellilious Park was being polluted, and should be cleaned. There were three or four respondents, namely, the mayor, the government of West Bengal, and the secretary of municipal affairs.

So for years the only people staying in the area were Dalits, and it was no problem for the municipality to dump rubbish on their doorsteps. But gradually the city expands, middle classes and caste groups move into the area, and they don't want to live next to a dump. So in 1987, this writ comes up, and basically what it is saying is, "Get rid of this dump next to our houses."

Yes. Then the municipality stopped dumping there, and moved its dumping to Vagar. But until now, if you go to Bellilious Park you will find that it is still deeply polluted from the tonnes of rubbish that had been dumped there earlier.

From 1987 to 2002, the writ didn't proceed past a few hearings; it kept coming on the record, but didn't get far. Over this time, the number of respondents grew to 14, from various government departments.

In 2002, the court told the government to give information on the people staying on the land, asking what their legal right was to stay there. In response, the municipality submitted an affidavit that September to the effect that not a single person was staying there legally—it alleged that all were encroachers, and were responsible for polluting the land. In fact, all the residents had mountains of government-issued documents to prove they were legally settled there, including ration cards issued by the Food Department of the state government, municipal employee cards, and voter registration cards. Each of these cards records place of residence as Bellilious Park, even to this day.

Notwithstanding, on September 6 the court gave an interim order. That order does not contain a single word to evict the people from the park. What it stated was trespassers should not be allowed to stay there. However, the order was open to interpretation, and the High Court knew full well how the authorities would interpret the order.

The High Court did a great misdeed by this order, because the affected persons should have had a right to be heard. However, in the entire time this writ petition was in the court, not one person from the resident community was made aware that the case was going on, and nor was a single one of them ever invited to submit an affidavit to the court. After 15 years of this writ

being in the court, how could the judges not have had in mind that, "We should hear from these people before passing this order?" That would be natural justice. But these judges didn't care. Even when the media were reporting the case and they could get independent news from other sources, they ignored it. In fact, the state government has been using court orders to evict people for some time, irrespective of what the order actually stipulates, invariably in the name of beautification. So in this instance, everybody could see the writing on the wall.

"Not only the civil administration and police have defied the principles of the Constitution of India and the rule of law, but the upper judiciary also has been complicit in denying relief to these people"

The same municipal authority that originally located the people at the park, registered them as residing at that address and even built dwellings for them submitted an affidavit that they were illegal occupants. Then there was this court decision, in which the judges must have known full well what would happen, and yet they put everything in the hands of the municipal authorities and the police. What happened between the court decision in September, and the eviction in February 2003?

In November 2002 there was an election. If the eviction were carried out before then, there would be a huge negative reaction during the election period. So they just sat on the order until after the election.

Finally, near the end of January 2003, some police came around and informed people they would be evicted. According to civil law, there are provisions that before an eviction even an illegal occupant has the right to written notice, at least one month in advance, during which time the residents can file a complaint before the magistrate. But here—and not just here, everywhere in West Bengal—no written notice was given, just a public announcement by the police with a loudspeaker on a rickshaw, stating that the people had to leave before February 2.

After the police announcement, some of the residents gathered together with an advocate from the High Court, and on January 30 they moved two petitions. One was filed to become a party to the writ; the other was to get the interim order revoked. This was two days before the eviction, yet the Chief Justice refused to hear them at that time—he said that they would be heard in the course of routine business; no urgency. The demolition went ahead, and the matter finally came to the court on May 16. The advocate stood up, and the Chief Justice said, "Yes, everything is done already, so we have nothing to discuss," and the two petitions were rejected. This is even though the court case is going on. And that is the pity. In this case, not only the civil administration and police have defied the principles of the Constitution of India and the rule of law, but the upper judiciary also has been complicit in denying relief to these people. They didn't even allow the people's right to be heard.

Also, just before the eviction, some trade union leaders for the workers of Howrah Municipal Corporation came and made public speeches to the effect that nobody would be evicted and they would take care of everything.

The police come and tell people they will be evicted, then the union leaders say they won't, so people are confused, and for the most part they don't move their things out or make other preparations. And they had good reason to believe the word of these union leaders, because they are powerful, and close to the municipality. But some of the people there were permanent employees and some temporary, and others, private employees. Were there different reactions among these groups? After all, this was a trade union leader for the municipal employees coming to reassure them, so perhaps the reassurance would have been felt more strongly for some than for others.

Actually, if we go back to the history of the park settlement, all these people are in some way or another connected with the municipality. Now families have expanded, and they are in an area where unemployment is growing. The municipality cannot provide jobs for all of them, so some work elsewhere. But all have their origins as cleaners for the municipality. The grandfather, grandmother, father and mother of a young man may have been doing this work, even if he is pulling a rickshaw, for instance. And of course these union leaders have high political influence, so everybody was reassured by their words, which turned out to be hollow.

They came early, around 6am on the morning of Sunday, February 2. There was a huge police force of over 1000 men. Some were commandos, with modern arms and ammunitions, and balaclavas. The mayor, Superintendent of Police, Deputy Superintendent, and some magistrates were there: they all came out early for the show.

The choice of a Sunday morning was strategic. Everything is closed then. There were no legal avenues for complaint at the time. When you're attacked, your first option is to go to the police, and lodge a complaint. But the police were the ones attacking. The second option is to go to the courts to get an injunction, but these were closed. So the people had no options.

Imagine it. Your family has been living there for around 100 years. You have a brick house, which may have been built by your parents. You have all your possessions handed down over generations. Now you are given a few seconds to clear out. What can you take in a few seconds? Can you take your refrigerator, television, doors and windows, beds and clothing?

"Under our law even if these persons were illegal occupants of this land, which they were not, the police, magistrates and local authorities cannot just evict people without giving them time to remove their belongings; but they did this, and worse"

Under our law even if these persons were illegal occupants of this land, which they were not, the police, magistrates and local authorities cannot just evict people without giving them time to remove their belongings. But they did this, and worse. They brought hundreds of hired labourers to remove people's valuables to a dozen trucks. In fact, they simply stole all the residents' belongings. My simple question all along has been why was there not a single seizure list for the looting of virtually all of the possessions of over 5000 people? These trucks carted away one

load of goods after the next. This was barefaced robbery. And each and every eviction in West Bengal has involved these practices, which means that they are being carried out with a green signal from the government.

"Six people died as a direct consequence of the eviction, some from starvation"

The residents were resettled next to the new dumping ground at Vagar; returned to the rubbish that they were blamed for creating. They stayed there for about one month without any shelter, expecting to be relocated again. When the anticipated relocation never came, they built some semi-permanent structures. But it may be that one day some authority will again come and tell them, "You are illegally occupying this place; get out!"

Six people died as a direct consequence of the eviction, some from starvation. These deaths were preventable, but the persons who died couldn't get proper treatment, partly because of distance to the hospital. There is no health facility, no electricity, and so many mosquitoes and flies at Vagar. Everybody has skin problems, and there are so many TB cases. With the help of Sramajibi Hospital, a local workers' hospital, we are just trying to do a little, and have organised for a doctor from there to visit the Vagar site once a week. But a doctor is needed there daily to address the number of problems, and meanwhile, no services at all are provided in places where smaller groups from the park relocated.

After the eviction, Masum organised two deputations, accompanied by protests, at the offices of the municipal corporation. The first, on June 9, involved some 600 persons, and we submitted a letter to the mayor, Gopal Mukherjee, protesting the eviction. He defended the act, saying that it was legal as it followed a court order, and that the municipality is not obliged to resettle or rehabilitate the victims.

Now just look at what is going on at Bellilious Park. To begin with, the row of shops constructed on the land with municipal approval has not been demolished along with the houses. Also, new constructions are coming up. In 1987, the same year that the writ petition started, the municipality made an agreement with a notorious and influential land developer. This agreement, which was filed in the high court and was a registered deed, included a proposal to build a series of buildings to house the residents in a new part of the park. But now what will you find there these days? The local parliamentarian, Swadesh Chakraborty, has used his development funds, which must be approved by the District Magistrate, to erect a *dobhi ghat* – a place for washer persons to do their work. This was not in any plans. Now, how are they erecting these things? And what is the purpose? Remember that to this day, this land is under a trust body. And the trust simply asked the municipality to look after the land, not take it over. But because of electioneering, to get the votes of a few washer persons, this thing is erected. They are trading off concessions between two downtrodden

communities – Dalits and Dobhis. Meanwhile, the developer is no longer interested in the land. So the whole reason for evicting the people in the first place has been lost.

"The Constitution of India has the right to everything, but in practice, the people have the right to nothing"

What can this eviction tell us about the overall human rights situation in West Bengal?

The international community needs to pay attention to this case, because, as I said, it captures the situation of West Bengal, and indeed, that of India. Look at how the upper castes treat Dalits, for instance. These people have been evicted from the park, but they cannot reside in other areas—nobody will rent accommodation to them. If your last name is Balmiki or Hela, for example, other groups will not allow you to reside with them. So where do they go? What do they do? What is more, Balmiki and Hela are Scheduled Castes, which should receive certificates entitling them to special benefits. Most of the Bellilious Park residents, however, have never received them, as the District Magistrate has not recognised them as Scheduled Castes.

And we can keep on looking. Look at how the police and civil administration conspire against downtrodden communities. Look at the role of the judiciary in all of this. All the authorities are in league—the politicians, the administration and the judiciary. So when people face serious human rights challenges, what can they do? To whom can they turn? The Constitution of India has the right to everything, but in practice, the people have the right to nothing.

We need friends internationally who can stand beside these evicted persons. We need people who can raise their cause. I am talking about assurances of even just a minimum amount of food, housing and health care to live a dignified life. I am talking about us ending this society where till today people are carrying human shit on their heads for work, while the government is talking about sending a man to the moon. These people are not asking for handouts—they are just asking for the right to be able to live life in dignity, with some stability. They would be happy if their children can get some education, if there is no impending danger to their loved ones, if they can get medical care in a hospital when they need it.

Letter to the Mayor of Howrah on the Bellilious Park eviction

9 June 2003

To: The Mayor
Howrah Municipal Corporation
Howrah

Dear Sir,

We, the undersigned organizations, work in different fields of the society among the downtrodden people. We have received complaints and have been informed that on February 2, 2003, thousands of people were forcibly and illegally evicted from a piece of land at Bellilious Park, 129, Bellilious Road, Howrah, by the administration. We have enquired and investigated into the matter and our fact finding teams have found substance in the allegations.

The fact finding teams found that on February 2, 2003, in the morning hours, a large number of people, almost 700 families, were forcibly evicted from Bellilous Park, Howrah, with the active participation of a huge armed police force, a Rapid Action Force consisting of about 500 personnel. Two/three bulldozers were employed to demolish hundreds of brick built houses and related structures, a school building, temples and statues, and thousands of people were rendered homeless in a day. Ambulances and fire brigade teams were present at your insistence to secure a smooth eviction.

The background of the incident is (in short) that an organization namely Howrah Ganatantric Nagarik Samity filed a writ petition in Calcutta High Court in the year 1987 on the issue of pollution in the park, popularly known as Bellilious Park. Under an order passed by the Division Bench of High Court, Calcutta, the Municipal authority was directed to remove the trespassers. Under the garb of the said order thousands of people, the permanent residents who were in legal possession, were evicted by force on February 2, 2003 by the administration without

---

This is the edited text of a letter delivered to the Mayor of Howrah on the occasion of the first protest at the Howrah Municipal Offices subsequent to the Bellilious Park eviction, on 9 June 2003, involving some 600 persons.

giving proper rehabilitation or even any proper notice and opportunity to the residents of the said area... Surprisingly, the residents were evicted, but neither the judiciary, nor the administration, nor the Howrah Municipal Corporation (HMC), nor police gave the residents any opportunity of being heard before the eviction drive. The administration never cared to make any scrutiny or investigate to find out the legal status of the persons/families evicted.

"Gross illegality has been inflicted upon the residents of the park as they were evicted without any prior notice"

We have gathered information that the land of Bellilious Park is not solely government land and property. The facts as disclosed are that thousands of sweepers/scavengers, coming from the Dalit community, were employed at Howrah Municipality hundreds of years ago and they were not allowed to take any rented accommodation in the localities of upper-caste people in the town area... The sweepers used to carry night soil on their heads. The municipal authority itself constructed a two-story quarter in part of the said park. The municipal records reveal that a large number of employees of the Municipal Corporation were residents of the park, and [their families] had been residing there for more than 100 years. It is equally true in respect of other government employees of Railways, Nationalised Banks, Public Sectors etc. A number of residents produced not only ration cards in their names but also Election Commissioner's identity cards, birth and death certificates, service records, etc., all showing the address of the park, 129, Bellilious Road, Howrah, as proof of their legal permanent possession and residence. Some residents even contested elections from this address. The residents have claimed that altogether 7000 people resided there.

It is learnt that the municipality has a development and beautification scheme and it has engaged a private all-famed developer for exploiting the park for commercial purposes. Already there are a number of shopping complexes which have not been affected by the drive of eviction. It proves that you acted in the interest of rich and influential persons and the evicted people were ignored. The people were evicted suddenly without any rehabilitation scheme and there is no plan of any authority for alternative accommodation for the evicted people who were permanently in legal occupation.

All the evicted people belong to the Dalit community. We observed that gross illegality has been inflicted upon the residents of the park as they were evicted without any prior notice... The evicted people got no opportunity to place their case before any authority. It is an accepted position of law that persons in settled possession cannot be evicted without due course of law. The right to life of the citizens of the park, as guaranteed under Article 21 of the Indian Constitution, has been nakedly violated by you in order to secure complete vacant possession of the park. You misinterpreted the term "trespassers" as mentioned in the High Court order, and evicted all persons and ransacked and looted the wealth of the victims.

We observed that the evicted people are living under horrendous conditions at the Belgachia garbage dumping ground, on open streets, under the scorching heat of the sun without shelter and drinking water, in the absence of a minimum sanitary system. The evicted people are forced to live under inhuman conditions due to your illegal actions. The ensuing rainy season will further aggravate the already deteriorating conditions, and there is every possibility of epidemics breaking out. Already four persons have succumbed to death under these inhuman conditions.

"The evicted people are forced to live under inhuman conditions due to your illegal actions"

We strongly protest and condemn this illegal eviction of innocent Dalit people from Bellilious Park. It is a fact that all evictions of common people from their settled possession without any programme of rehabilitation as a precondition are violations of human rights and natural justice...

We demand immediate and proper rehabilitation of the displaced persons/families of Bellilious Park, Howrah, at the same site forthwith, with adequate compensation for the affected families for the illegal acts of eviction...

We shall be constrained to take the matter to any forum both in national and international forums and also to higher legal platforms... if you fail to act as desired...

Yours truly,

Howrah Dalit Forum
Akhil Bharatiya Anusuchit Jati Jubajan Samaj,W.B.State Committee
Yuba Janahit Jana Sakti Shangha
Howrah JatiyaShangha
Khurut Harijan Kalyan Samity
Shelter for Homeless National Forum, Calcutta
Bastibashi Samanya Samity, Khidirpur, Calcutta
Gardenrich Slum Development, Calcutta
The Dalit Association, Howrah
Ambedkar Jagrity Sangha, Howrah
Progotishil Mahilla Samity (Howrah Branch)
Manabadhikar Suraksha Mancha (MASUM)
Kolkata NGO Forum for Street & Working Children

The shame of Bengal: An unchanged social system

V B Rawat, Director,
Social Development Foundation, Delhi, India

Kishan Balmiki is a father of three who works for the Howrah Municipal Corporation, in greater Kolkota, India, as a 'New Reserve Mehtar'. He is aged about 60, and worked as a 'privy cleaner' until 1996, before being promoted. 'Privy cleaner' is a British title, which referred to those carrying human faeces on their heads. Ironically, although all over India, scavengers or sweepers have been given the new name of 'Safai Karmcharis' [cleaning labourers], in 'revolutionary' Bengal, they are still 'privy cleaners'. Since being promoted to New Resident Mehtar, Kishan's main role has been in sewage cleaning.

The majority of sweepers and cleaners in West Bengal are Dalit migrants, who are treated with utter contempt by the Bengali population. Kishan is one of those. His grandparents migrated to Kolkata from Murthal, a place near Sonepat in Haryana. His grandfather and father alike worked with the railways as sweepers. His wife is also a 'privy cleaner'.

This is the caste system in practice: for generations, Kishan's family has been tied to the same occupation, cleaning the debris and faeces of a society that despises them. However, Kishan's daughter, Jayanti, stood first in the high school board examination, and Kishan proudly says that, "I will educate my children and will not allow them to work in this profession."

But Kishan's plans for the future have been disrupted by what happened on the morning of 2 February 2003 at Bellilious Park, Howrah, where they were residents. More than 700 Dalit families were living there up to that morning. Their predecessors were settled there before India's independence. At that time, the Bengalis needed cheap migrant labour to clean their toilets and city, yet none were ready to rent out a house to these people. The municipality therefore constructed separate dwellings for them on the site of Bellilious Park.

By 2003, the neighbourhood was well established. There were two temples, one belonging to Sage Valmiki, and another to Lord Shiva. There was a primary school. There was also a big statue

of Subhash Chandra Bose, the national icon, but definitely not a Dalit icon. The Dalits had asked to erect a statue of their historic leader, Dr B R Ambedkar, but had been refused permission by the authorities.

2 February 2003 was a normal quiet Sunday morning for the residents of Bellilious Park. Although a few days earlier, police from the Bantra Police station had announced on cycle-rickshaw that all the occupants should quit the place before February 2 or face the consequences, the municipal authority, the main employer, was conspicuously silent. In fact it was not the duty of the police but the municipality to evict these people, and there had been no word from them as to relocation. So the residents carried on like normal, never thinking that the municipal corporation for which they daily go out to work in atrocious heat and filth for a pittance would go so far as to remove them from their houses.

But the municipality had other plans. The park had to be 'cleaned' of the people who spend their days cleaning the filth of others. Hundreds of illegal builders and land-grabbers dominate the area, yet the victim of the municipality's 'beautification' scheme became this 100-year-old community, which works in the most difficult circumstances. So at least 500 of its personnel, along with policemen, bulldozers and local gangsters came that morning, and without any notice started demolishing the houses. Men, women and children begged to save their belongings, but nothing stopped them. The school and temples were razed to the ground, but the statue of Subhash Chandra Bose, which had been imposed upon the neighbourhood, was left intact; houses, schools and temples were destroyed, but this Bengali nationalist icon was not touched. This is the fundamental inhumanity of the caste system: the municipal corporation knew well that if it touched the statue, Bengalis would come onto the streets and protest, however it did not care for its own Dalit employees.

The eviction soon killed people. Kashmira Balmiki, a 74-year-old, died from hunger and illness. His wife did not feel secure in Bengal, and took her son back to Uttar Pradesh. Chander Balmiki, a municipal worker, died from shock and depression. Rupa Hela, a 19-year-old, died from kidney failure and a lack of medical attention. Many others are bound to have died, of whom we are unaware.

Statue of Chandra Bose

Upper caste social activists from Bengal have for a long time talked about land reform. What is the meaning of such words when thousands of people can be ejected from their houses of generations, without any plan for their rehabilitation? What is the meaning of being a 'communist' government if it is tied to caste interests? What is the meaning of being a high court judge, if in passing the order for eviction, the court did not ever raise the question of where the people would go? The evicted people are now living by a railway track and city dump. Their plight is unbearable. They keep the city hygienic, yet they must live in

filth. Let alone international norms for rehabilitation, the Howrah Municipal Corporation did not bother to meet national laws on resettlement and basic standards for human existence.

The Dalits evicted from Bellilious Park want justice. They don't want to be slaughtered at the altar of 'anti' this or 'pro' that. Kolkata has witnessed so many protests against globalisation and communalism, but when it comes to a practical matter like rehabilitating thousands of people evicted from their homes and left to die on the streets, the upper-caste activists are silent. These people are owed an apology, and the means to live their lives in dignity. No ideological fight against imperialism or globalisation will do this. It is a simple matter of basic humanity.

The rule of law and human rights

Basil Fernando, Executive Director,
Asian Human Rights Commission, Hong Kong

Serious problems relating to the rule of law have together become a serious impediment to the realisation of human rights in many countries throughout the globe. In many cases, the judicial system has all but collapsed, despite pretences to the contrary by state representatives. Under such circumstances, mere ratification of the International Covenant on Civil and Political Rights by these states has no meaning. The body of human rights articulated by the Covenant presupposes the basic functioning of institutions to address violations of these rights. Where these institutions are functioning, people have the faith that they may realise these rights. When people lack faith in the institutions needed to ensure the rule of law, work to ensure human rights is in grave peril. When a state with broken institutions ratifies the Covenant, and makes other gestures to give an impression that it is complying with international human rights standards, it will not generate enthusiasm for human rights, but rather, create cynicism about the very idea of human rights protection. Thus, the obligation of the state to respect, protect and fulfil human rights is intertwined with its obligation to maintain the rule of law through credible and trustworthy institutions.

The proper functioning of three institutions in particular is of the utmost importance. Those are the institutions relating to investigations of rights' violations, prosecution of the perpetrators, and punishment of the perpetrators and compensation of victims. Given the serious problems relating to the rule of law prevailing in many parts of the globe today, the workings of these institutions call for closer study if human rights are not to be relegated to mere wishful thinking.

The investigation function belongs to the policing agency. Many studies from various parts of the world highlight various problems prevalent in policing. Some of these are caused by historical events, such as periods of repression when the police function has been confused with the defence function, which pertains to the military. Prolonged civil conflicts, for instance, restrict the

political space in which an independent policing institution may develop. However, there are even more difficult situations, where for various reasons the most common mode of criminal investigation becomes torture, which hinders tremendously the prospect of any human rights standards being achieved. The worst scenario is where policing agencies build close links with criminals. The means by which policing agencies with serious problems can be transformed into law-abiding institutions is therefore a vital matter for human rights defenders to take up.

"In some instances, the powers of prosecutors are so limited that they are unable to intervene in many matters affecting the basic rights of the people; in other cases, the paucity of resources made available renders them unable to carry out their functions"

The prosecuting branch is expected to take up on investigations by the policing institution, but numerous studies of many countries also attest to various problems that prevent this branch from performing its vital role with independence and integrity. In some instances, the powers of prosecutors are so limited that they are unable to intervene in many matters affecting the basic rights of the people. In other cases, the paucity of resources made available to the prosecuting branch renders it unable to carry out its functions in a manner that will convince the public of its capacity to play a serious role in maintaining the rule of law. The worst scenario is where the decision to prosecute or not follows political directives to the branch, or via another agency. Sometimes competition between these key institutions themselves retards the effective functioning of the prosecution. For example, law enforcement agencies or security agencies can under certain circumstances have enormous influence over the prosecuting branch. Whatever the circumstances, the overall effect on the mind of the public is that there is no effective prosecuting agency available to protect basic rights. It follows that any popular impulse to pursue human rights is suppressed.

Like the two preceding agencies, studies from around the world reveal that the judiciary is also very often unable to function as required to maintain the rule of law. In some circumstances, the limitations are constitutional or based on law, for example, where judicial review of the executive is not permitted or highly restricted. However, there are many cases where the independence of the judiciary is retarded by procedural failures. For example, the adjudication of cases may take so long as to militate against the principles of fair trial. Witnesses may suffer serious threats and other forms of violence during such long periods, while complainants may be forced into settlements and thus abdicate their rights. The work of the judiciary can also be hampered by a lack of resources, resulting in shortages of judges, courts, or other facilities needed for its efficient functioning. More troubling still is when there is direct or indirect political control. Studies by the Special Rapporteur on the Independence of Judges and Lawyers have revealed the many impediments to the independent functioning of the judiciary. The limitations of the investigation and prosecution branches mentioned above also undermine the role of the judiciary.

When a state ratifies the International Covenant on Civil and Political Rights, it may be unable to meet its obligations for any of the above-mentioned reasons. In many countries the situation

is so serious that local populations resist attempts at human rights education because there are absolutely no legal safeguards that will allow for them to be realised. In these cases, people may take the law into their own hands. For example, a mob catching an alleged thief takes him to a marketplace and beats him to death. An accidental killing in a road leads not only to the assault or murder of the driver, but also to an attack on the police station responsible for patrolling roads in the vicinity by local residents frustrated at the inability of the police to properly control traffic. Parallel justice systems may evolve, through public opinion or, ostensibly, religious codes and cultural practices, usually with forms of adjudication and punishment deeply offensive to universal standards of human rights. It is not possible to counteract such trends without simultaneously trying to re-establish confidence in the rule of law.

"The effectiveness of subsidiary agencies depends on the minimum proper functioning of the policing, prosecuting, and judicial branches; if proper attention is not paid to the central problems, resources spent on national human rights institutions will be wasted"

Where there are deep problems relating to the rule of law in the three institutions described above, the introduction of subsidiary institutions, such as national human rights commissions in keeping with the Paris Principles, is futile. The effectiveness of subsidiary agencies depends on the minimum proper functioning of the policing, prosecuting, and judicial branches. If proper attention is not paid to the central problems, resources spent on national human rights institutions will be wasted. In fact, it has often been argued by many in different parts of the world that the only purpose these national institutions have is as international propaganda tools for their respective governments. The role of national human rights institutions, therefore, depends upon the credible functioning of the basic agencies intended to protect the rule of law.

Studies by the UN Sub-Commission on Human Rights into the functioning of the police, prosecution, and judiciary in supporting the rule of law and thereby enhancing the promotion and protection of human rights are urgently needed to articulate the actual problems in realising human rights throughout the world. This is even more necessary given the growing divide between more developed countries where the rule of law is guaranteed through a relatively well functioning police system, prosecution branch and judicial system and everywhere else. People in those countries obtain support in their struggles for human rights from this basic foundation of the rule of law, and as a result very often fail to understand what it means to live in a place where the institutions intended to realise the rule of law are themselves impediments. A detailed study into these issues by the Sub-Commission may pave the way to an important exchange between concerned persons from these different backgrounds, thereby allowing the international community to support the development of basic institutions for the rule of law in places where it does not at present exist. In fact, such an effort is imperative if the stated goals of the Sub-Commission, to promote and protect human rights, are to be achieved at all.

Victims of crime and the judiciary

K C Kamalasabesan, Attorney General, Sri Lanka

In the recent past the Department of Attorney General in Sri Lanka has had several workshops, seminars and presentations on the rights of victims of crime. The demand to put in place an effective system designed to ensure that the victim's rights are protected is gathering momentum. At one point in time, a victim was virtually neglected, if not forgotten in the course of the judicial process. He or she was merely a virtual complainant who was regarded as an instrument for the purposes of activating the legal machinery. The state, while assuming the responsibility of dispensing justice, did very little to ensure that a victim's right was protected in the long run. Unfortunately, this was a side effect of the adversarial system that is prevalent in the common law countries.

The increase in the crime rate and the need to project a system in which the rule of law prevails are factors that have brought about the situation where the society is compelled to contemplate and provide measures towards the protection of such victims. The percentage of victims is on the increase. So are the numbers of victims who have suffered what may be termed secondary victimization. This expression came into being due to the victims not only undergoing suffering and hardship at the hands of the principal offender but also being harassed and subjected to severe inconvenience at the hands of the state machinery and in the course of judicial proceedings. Against this background, the reaction of the society to re-think along the lines of affording more protection to the victim has been inevitable. It is no exaggeration to say that the National Centre for Victims' Rights has been acting as an effective catalyst in this process.

I have earlier asserted that it is the responsibility of the state to protect and safeguard the property and person of every citizen, and that whenever a crime is committed it would mean that the state has failed to effectively discharge its responsibility. Thus, the role of the state is of paramount importance. In practical terms, this means not merely the passing of legislation in parliament but also the formulating of appropriate safeguards by the judiciary and the prosecutors, and to some extent the defence

attorneys, in the absence of legislation designed to protect victims. How can this be achieved? It is appropriate at this stage to refer to Resolution 40/34 of the United Nations General Assembly, which recognised "that the victims of crime and the victims of abuse of power, and also frequently their families and others who aid them are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardships when assisting in the prosecution of offenders", and the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Last year this was considered and recalled at the Commonwealth Law Ministers Conference, and the members expressed their commitment to the Basic Principles and agreed that member countries would give consideration to the national implementation of measures designed to give practical effect to the said principles.

"Time and again I receive letters from victims and witnesses seeking information, complaining of delays and also requesting information regarding the present position of a case"

One of the main proposals set down in the Commonwealth Conference in respect to the judiciary was that its members, and other relevant persons, should participate in training programmes on addressing the needs and legal interests of victims of crime. I for my part do not believe that the members of our judiciary need be told the importance of protecting a victim. Yet, it is possible to set down procedures that would reduce the harassment and inconvenience a victim often undergoes in the course of legal proceedings.

The existing laws contain several provisions that afford the accused a fair trial. The Constitution of Sri Lanka in article 13 contains specific provisions. There are no specific provisions in the Constitution that make direct reference to victims of crime. However, provisions in Chapter VI dealing with Directive Principles of State Policy and Fundamental Duties could be interpreted as provisions that would ensure the protection of victims of crimes. Unfortunately the directive principles are not enforceable in a court of law; although they could be adverted to in Fundamental Rights Applications in cases where the provisions pertaining to Fundamental Rights are interpreted. It is therefore necessary to examine and explore possibilities of protecting the victim's rights within the existing legal framework.

It is a well-known fact that there is a heavy workload in our courts. This has contributed largely towards the postponement of cases. Time and again I receive letters from victims and witnesses seeking information, complaining of delays (these complaints are directed towards my officers) and also requesting information regarding the present position of a case. In the high court the state assigns counsel to represent the accused. A victim does not enjoy this facility. Section 260 of the Code of Criminal Procedure Act enables an aggrieved party to retain counsel to watch his or her interest. The prosecutor is often precluded from dealing directly with the victim, who is invariably a witness. The net result is that the victim is not kept informed of the progress of the case from the beginning to the end.

"We do not have an effective system in place that permits victims to make representations at bail hearings, postponements, plea bargaining, and withdrawal of cases by the prosecution"

One of the important suggestions made at the Commonwealth Conference was to allow victims and witnesses to be on-call for court proceedings. At times this may prove to be difficult due to the heavy trial roll and unexpected postponements. However, judges and prosecutors must consider this issue seriously, and wherever possible introduce a procedure by which the evidence of witnesses is recorded on a specified date. Day to day hearings in the high courts could, at least to a certain degree, ensure that their evidence is taken without delay. A common complaint is that victims are not kept informed of the progress of the investigation and the trial. In so far as the high courts are concerned, this could be overcome by the judge, with the assistance of the state counsel, identifying the victim or representative on the very first day on which a case comes up in court, and informing the person to be present in court on all dates. This may not be possible where the victim is not available or is a witness, in which event he or she may be requested to name a representative who will then be in a position to ascertain the progress of the case. The registrar of the court could also be instructed to inform such persons at the end of the day of the current situation.

It was also suggested that separate waiting rooms be established for the prosecution and defence witnesses. In our country this may cause logistical problems. But the reality is that it is undesirable to have them in one room, particularly since they may have to remain there for long periods. In Sri Lanka, a single witness room has not posed serious problems. However, issues such as this must be resolved on a case by case basis.

The utilisation of court time is an important aspect in ensuring justice and fair play. Unfortunately, in our courts, due to the heavy roll, there are delays in trials being taken up. The members of the judiciary and the bar should work towards easing the congestion in our courts by ensuring that all participants fully and responsibly utilise court time.

We do not have an effective system in place that permits victims to make representations at bail hearings, postponements, plea bargaining, and withdrawal of cases by the prosecution. Notwithstanding Section 270 of the Code of Criminal Procedure Act, invariably such applications and steps are taken without the knowledge of the victim. Even though the judge in the discharge of his functions acts within the law and has regard to the circumstances of each case, at least in plea bargaining the state counsel should work out a channel through which he could communicate with the victim and then address the judge on the relevant issues. On the other hand, even if it is not possible in every case, at least in certain categories of cases, the judge may ascertain the views of the victim or any other person who is connected to the victim, before considering the sentence. The court may in an appropriate case require the state counsel to make available a victim impact statement prior to sentencing.

With regard to offences relating to property, or where any property of the victim is the subject matter of the case, the court should consider giving substantial weight to the victim's interest in the speedy return of such property. As far as possible, steps should be taken to restore the property to the victim pending trial, with the necessary conditions regarding the production of the same, if required.

"State counsel should be sensitised to the fact that public interest should specifically take into consideration the views of victims"

I would suggest that to facilitate the court to safeguard the interest of the victim, the state counsel should be sensitised to the fact that public interest should specifically take into consideration the views of victims. The prosecutor could also be vested with the ultimate responsibility of informing the victim or the representative of the status of the case. In addition, the prosecutor should:

a. Bring to the attention of the court the views of the victims of violent crime on bail applications, postponements, plea bargaining, and sentencing;

b. Take steps against accused persons who harass, threaten, injure or intimidate victims and witnesses;

c. In consultation with the judge, work out an on-call system for witnesses, where practicable, to ensure that victims do not waste time unnecessarily in court;

d. Establish procedures to ensure the prompt return of victims' property and, as far as possible, do away with the need for the actual physical evidence to be produced in court;

e. Establish and maintain links with victims support structures; and,

f. Be sensitised to the trauma and need for wellbeing of victims of serious crimes.

There is no doubt that due consideration should be given at governmental level to the development of an effective mechanism to assist the victims. This may take time. However, the main stakeholders in this exercise are the police, judiciary and Attorney General's Department. These institutions should be sensitive to the obvious imbalance between the protection of the rights of the victims and the protection of the rights of the accused person, and therefore make a concerted effort to correct this imbalance.

Appendix: Letter by the Asian Human Rights Commission to the Attorney General of Sri Lanka on protection for persons who make complaints of torture against security officers

13 July 2004

Hon. Mr. K. C. Kamalasabesan
Attorney General
Attorney General's Department
Colombo 12
SRI Lanka

Fax: +94 11 2 436 421
Email: attorney@sri.lanka.net (or) counsel@sri.lanka.net

Dear Mr. Kamalasabesan

Re: Protection for persons who make complaints of torture against security officers

The Asian Human Rights Commission (AHRC) is seriously concerned about the increase in repeat complaints by several persons who had earlier made complaints of torture by police officers. We cite just a few cases:

1. Saman Priyankara, who made a complaint of having had boiling hot water poured on him by an officer of the Matale Police station, on July 7 made a further complaint that he was rearrested and brutally tortured, causing several injuries, including the loss of hearing in one ear. In the same incident, his brother was also assaulted and his wife is complaining of nightly death threats over the telephone.

2. Tissa Kumara, who was allegedly tortured and whose mouth was spat into by a TB patient forced to do so by an officer of the Wellipena Police, has also made complaints of death threats after his release on bail, and is now having to live outside his village.

3. Chamila Bandara, who made allegations of torture against the Unkumbura Police, has been living away from his home for more than one year, and is unable to return. His family too has been forced to flee their village.

4. Michael Anthony (Tony) Fernando, a well-known victim, also lives in constant fear of being attacked, having narrowly escaped an attempted kidnapping, the culprits of which have not been found.

In fact, every complainant whose complaint is being investigated either through the disciplinary process of the police or by a Special Investigations Unit conducting inquiries under the Convention against Torture Act (No. 22 of 1994) is exposed to serious dangers and threats. It is well known that in many instances such complainants succumb to such threats and enter into compromises due to fear.

In November 2003, the UN Human Rights Committee (HRC) examined Sri Lanka's Periodic Report and observed in its findings the absence of witness protection. Human rights will have very little meaning until people who suffer from violations can make complaints without fear and are offered protection by the state after making such complaints.

Judging from recent cases, it can be observed that the officers who face such complaints virtually instigate many others and openly defy the higher authorities, particularly if the persons holding such high authority take a strict view of discipline. Given the fact that many such inquiries into torture allegations are now proceeding, it is quite likely that such defiance of authority will also continue. One way of demonstrating such defiance is to attack the victims who are making such complaints.

Under these circumstances we earnestly request you to take some special measures to protect the persons who make complaints and to let the public know about such measures. The immediate suspension of officers undergoing disciplinary inquiries, or at least the transfer of such persons away from the relevant police stations, is one possible measure. However, if serious incidents are to be avoided, the means to make complaints about attempts to harm complainants and have them speedily addressed is essential.

It is the duty of the state to protect those who make complaints against state officers. This duty includes the granting of compensation for injuries caused as a consequence of making such complaints.

The AHRC kindly requests that a special protection mechanism be made available to deal with the protection of persons who make allegations or torture against state officers.

Thank you.

Yours sincerely,

Basil Fernando
Executive Director

"Correctly and quickly"? Thoughts on decisions by the Supreme Court in Burma

Min Lwin Oo, Lawyer,
Burma Lawyers' Council, Thailand

It is human nature that nobody will be satisfied with losing. Humans will not miss the opportunity to go to the ends of the earth and sky if they can get there. So too in criminal cases, if a party is dissatisfied with the decision and order of a lower court, they will appeal to the upper courts one by one for an amendment. In Burma, a person dissatisfied with the decision of a township court can appeal to a district and division court, and from there, to the Supreme Court. If dissatisfied with the Supreme Court decision, one can apply for a special appeal.

The upper courts must assess whether the decisions of the lower courts are in accordance with the law, and correct them where there are errors of judgment. However, if the Supreme Court is itself making more and more wrong decisions, it causes anxiety among the public, and undermines the rule of law. It is not enough to point out that nobody is without errors; it is the duty of the courts, above all the Supreme Court, to ensure that errors are minimised. A Burmese humour magazine joked that if a doctor does wrongly, he is reborn into existence six planes below our own, but if a lawyer makes an error, he is reborn into existence six planes above; a funny joke, but it also warns of the weighty responsibility owed by lawyers. That said, if lawyers err, it is still possible for the highest courts to correct them. However, if the highest judges in the land err, it is a bad situation that can not be easily remedied.

To minimise errors of judgment, it was written into the 1947 Constitution that Supreme Court judges in Burma must have a minimum of 15 years' experience as advocates in that court before taking up their positions. The reasoning behind that

This is an adapted version of an article that originally appeared in the *Journal of Constitutional Affairs*, no. 14, December 2002, published by the Burma Lawyers' Council, Thailand, translated and edited for English by Nick Cheesman, Asian Legal Resource Centre.

clause was that only such persons would have developed the ability to assess and decide cases. However, under the 1974 Constitution, when it was decided that the 'people's courts' should be presided over by the people, to become a judge one did not even require legal training. Most judges were just handpicked from among the Burma Socialist Programme Party membership, and most in the upper courts came from military backgrounds. As a result, a functioning and developed legal system was at once tossed on the scrap heap; years of case law were ruined. When the socialist era ended in 1988, these personnel were again changed by the new regime; the members of the Supreme Court were again chosen without regard to legal qualifications or experience. The consequence of this situation has been a growing number of special appeals against decisions by the Supreme Court.

"Lengthy delays in concluding cases are being caused by incompetent judges giving dissatisfactory rulings"

At the hands of the current regime, enacted law has also become ambiguous, thereby posing danger to the basic rights of citizens. Take for instance the 1993 Narcotics Drugs and Psychotropic Substances Law, which does not prescribe a life sentence for any offence, but instead allows sentencing of 'unlimited periods' of imprisonment. Whereas a life sentence is a period of around 20 years, an unlimited period can mean one day, one year, ten years or whatever. Hence, the making of laws and passing of sentences has also lost clarity and exactitude under this administration, and as a result it has created confusion in the courts. In a recent drug case arising from the Shan State Court (Taunggyi District), the accused was charged with violating section 19(a) of Narcotics Drugs and Psychotropic Substances Law (possessing, transporting, transmitting and transferring a narcotic drug or psychotropic substance for the purpose of sale). The section carries a penalty of a minimum ten years' imprisonment, and no maximum limit. On appeal to the Supreme Court, the court gave a life sentence, even though the law does not provide for one (*Union of Myanmar vs Aung Myint [a.k.a.] Archin [and others] 2001; SC Law Reports, pp. 38–41*). In fact, it seems as if the court is not even reading the regulations in many instances. Looking through the Supreme Court published case records of important decisions during 2001, one sees that—remarkably—out of 15 rulings listed, special appeals against erroneous decisions were allowed in ten cases. In this manner, lengthy delays in concluding cases are being caused by incompetent judges giving dissatisfactory rulings.

One of those ten cases related to the circumstances under which an offender could be released on bail, a matter that is established in the court house and relevant police station, in accordance with section 497(1)(2) of the Penal Code. The court can find within its reasoning grounds for the giving of bail in cases where it is not possible for the police to do so. The case in question arose at the police station of South Okkalapa Township, in the suburbs of Rangoon, during 1999 (First Information Report No. 648/1999), and involved one Aung Soe Win, charged under section 406 of the Penal Code with criminal breach of trust.

> "A Burmese citizen going to the Supreme Court today can do no more than to put a loss down to fate, and atonement for sins from past lives, as it appears that these factors, rather than the law, are responsible for any given outcome"

However, section 406 is a non-bailable offence at the police station, bailable only upon consideration of the court. The bailors of the accused, U Aung Kyi and U Than Lwin, in order to get him out of custody, had Deputy Superintendent U Htay Win open the case under section 514. Finally, as if scribbling numbers up on a blackboard, a bail bond was issued under section 420 for cheating, which is also a bailable offence at the police station. It is not known how much it cost the two guarantors two arrange this with the police.

Trouble arose when the accused, who might have had more experience with the police than he let on, immediately skipped bail and was nowhere to be found, subsequently missing his hearing date. The two bailors were brought before the court in his stead and—in accordance with the judicial maxim—"correctly and quickly" ordered to pay 200,000 Kyat (US$200) each out of a fine of 400,000 Kyat. The case made its way to the Supreme Court on appeal, which reduced the amount of the penalty from 200,000 Kyat to 100,000 Kyat. The bailors were still not satisfied, and made a special appeal to the Supreme Court (*U Aung Kyi [and others] vs Union of Myanmar; 2001 Special Criminal Appeal No. 27; Law Reports, pp. 113–119*). The appeal was accepted, and the judges held on this occasion that only the Officer in Charge of a police station is able to grant bail for a non-bailable offence of this nature, and not his subordinates. However, the court did not indicate in whose presence the bail bond could be issued. Anyhow, the judges of the Supreme Court found that in this case the bail bond was not issued legally in the first instance, and annulled the earlier orders for payment of fines.

Readers can conclude for themselves where the mistakes lie in the above judgment. Suffice to say that it seems to encourage a police officer to give a little 'help' to a citizen in exchange for a bribe where and when he wants to do so. The case speaks to the problem defined throughout this article: the ambiguity eroding all aspects of the Burmese judicial system, which arises first from staffing the judiciary with incompetents; and second, from the replacement of developed case law and legislation with deliberately ambiguous regulations and decision-making. Under the circumstances, what else can be expected than erroneous judgments and victimised petitioners and defendants? A Burmese citizen going before the country's Supreme Court in the years after 1947 could at least rely upon the judges having the constitutional prerequisite 15 years of experience as advocates in the same institution, upon which to base their judgments and minimise errors. The current administration seems to have concluded that a constitution is not even necessary for the running of a country, let alone the functioning of its courts. As a consequence, the same citizen going to the Supreme Court today can do no more than to put a loss down to fate, and atonement for sins from past lives, as it appears that these factors, rather than the law, are responsible for any given outcome.

Urgent Appeals File: Bhikari Paswan—Ten years of waiting for justice in West Bengal end with a funeral

Asian Human Rights Commission, Hong Kong &
Manabadhikar Suraksha Mancha, West Bengal, India

On Wednesday, 28 July 2004, the Calcutta High Court took a short time to announce a decision on a matter that had stood before India's courts for a decade: it granted leave to prosecute police officers allegedly responsible for the forced disappearance of Bhikari Paswan in 1993. The following day, Bhikari's father, who had struggled for ten years to obtain justice, died. He had been in a coma since shortly before the court gave its decision.

The father, Lakhichand Paswan, will never know what officially happened to his son after he saw Additional Superintendent of Police (ASP) Harman Preet Singh and three of his men take Bhikari away in the early hours of 31 October 1993. He will never know where the body of his son was discarded. He was robbed of that knowledge, and the right to see the perpetrators punished, not by weaknesses in the case, but by an utterly callous and corrupted system.

Bhikari had been working as a labourer at a local jute mill during a time of serious industrial unrest. The mill workers were going virtually unpaid, and between October 18 and 21 a series of violent attacks occurred at the houses of politicians and

This article is the compilation of a number of documents on the case of Bhikari Paswan. See further: *Disappearance of Bhikari Paswan: Trials and tribulations* (Masum, 2003); INDIA: Father dies after ten years of waiting for justice for his son (UA-103-2004, 18 August 2004); Ten years of waiting for justice in West Bengal end with a funeral (AS-23-2004, 3 August 2004); India's judiciary slammed for delaying case for over 10 years (AHRC-PL-57-2004, 3 August 2004). All documents except for the first are available on the AHRC website. Interested persons in India can obtain the first by contacting Masum at (033) 2650 8700.

Lakhichand Paswan

complacent union leaders. On the night of October 21, police opened fire on a group of protesters, injuring three. In the ensuing melee, a constable was fatally injured.

At Bhadreswar Police station, a list of 22 names was drawn up on the First Information Report of the constable's death (Case No. 239/93), among them, that of Bhikari. It was at about 12:30am on October 31 that ASP Singh and his men entered Bhikari's house and took him away from his wife, Lalti Devi, his father, and other witnesses. Investigations by local groups have concluded that he was taken to Telinipara police outpost, where he was severely tortured, after which he was taken by jeep to Dharampur outpost, under the Chuchura Police station, where he died. His body has never been recovered.

Lakhichand Paswan spent all his available energy approaching everyone from the Chief Minister of West Bengal to the lowliest administrators at the state government offices trying to find out about his son. His efforts attracted the attention of the media, opposition parties and human rights groups. Bhikari's wife and father then submitted a habeas corpus petition to the Calcutta High Court (No. 15487[W] 1993). On 8 June 1994 the court ordered the central Criminal Bureau of Investigation "to investigate the matter and report whether Bhikari Paswan was at all arrested or taken into the custody of the police on the aforesaid date". The Government of West Bengal appealed against the decision in the Supreme Court, but it was upheld.

A year later, on 12 June 1995, the Bureau submitted its report to the effect that, "Bhikari Paswan was indeed picked up by the police party from his residence on the night of 30/31-10-1993 at about 12-30am. His where-abouts since then are not known." The report also indicated that "the statements of the police officers, drivers and the [District] Magistrate, Hooghly are inconsistent with the records" kept at the police stations. In other words, police records were fabricated to cover up the crime and the stories of various officers and officials became confused in their tangled efforts to throw off the investigators. In fact, an officer of the Central Forensic Science Laboratory earlier invited to examine a carbon copy of the Report had already concluded that Bhikari's name had been deliberately obliterated by another name being written over the top (CFSL No. 94/D-998, dated 28 September 1994).

So, as far back as 1995 senior police investigators concluded that ASP Singh and his subordinates took Bhikari from his house that night in October: there was no question about the complicity of state agents; the questions that remained related only to what happened afterwards. Why was it then, that nobody was immediately arrested and charged? Because the Indian judicial system responded to the urgent needs of the case by snaring it in technicalities and further enquiries, while the perpetrators and their accomplices further tampered with documentary evidence and harassed the family, along with other witnesses and supporters. The police went so far as to lodge fake criminal

charges against Bhikari in various courts, alleging that he had beaten his wife days after the abduction had taken place, even producing women to play the role of the abused wife. On at least one occasion, bombs were thrown at the house of a human rights defender closely involved in the case, and his family threatened.

Rather than immediately ordering the arrest of the perpetrators on the basis of the report it had commissioned, the Calcutta High Court proceeded at leisure with the writ before it. Finally, in March 1998, it effectively turned it into a ball that could be bounced endlessly from court to court, by directing the Chief Judicial Magistrate of Alipur to investigate the case, under a procedure allowed for by sections 200 and 202 of the Criminal Procedure Code. The magistrate opened the case on May 11 (Case No. C-1046/1998), and on September 15 issued summons against the four accused police, Samar Dutta, Swapan Namhata, Harman Preet Singh and Satya Prasad Banerjee, under sections 364/120B of the Indian Penal Code, for conspiracy, and abduction with intent to murder.

"The accused policemen were not only not suspended but were promoted, demonstrating the contempt held by the state authorities for the serious charges against them"

All of the accused subsequently obtained bail, although the sections under which they were charged were non-bailable offences. Local human rights group Manabadhikar Suraksha Mancha (Masum) submitted a protest letter to the courts against the granting of bail, and also repeatedly called for the accused to be suspended from their official duties, but with no effect. In fact, in the interim period, the accused policemen were not only not suspended but were promoted, thereby demonstrating the contempt held by the state authorities for the serious charges against them. Harman Preet Singh was sent abroad for a policing mission in Mozambique before being made a Superintendent of Railway Police, and then Deputy Inspector General. Satya Prasad Banerjee was made Deputy Superintendent, while Samar Dutta was promoted to Officer-in-Charge of a police station.

In 2000, the case was passed to the District & Sessions Judge, Alipur, who in turn delivered it to the Additional Sessions Judge of the Vith Court, with the intention that a date should be fixed for trial. However, rather than proceed at that juncture, in April 2000 the judge referred the matter back to the Calcutta High Court on two technicalities: one pertaining to jurisdiction, the second, asking whether the government sanction was required to try Harman Preet Singh, who is an Indian Police Service officer. Masum has observed, however, that the action of the judge in referring the matter back to the high court could have been motivated only by a special intent to protect the accused, as the original order of the high court was sufficient to begin the proceedings. It was not, therefore, any business of the judge to raise further enquiries as to the legitimacy of the case.

The case lay at the doorstep of the high court until only through the gigantic efforts of human rights advocates and Bhikari's family the case finally saw the light of day in October 2003, when a special bench was called to consider it "immediately". Nine months later, the bench has held that government permission

Urgent Appeals File
(UA-103-2004)

PHOTO: TIMES OF INDIA

Harman Preet Singh

is not required to prosecute Singh, as 'kidnapping was not among his official duties as a police officer'. Thus it has taken the Indian judiciary ten years to decide a matter that any informed person with an iota of common sense would have resolved in a few minutes.

It is too late. A chief witness in the case, Bhikari's father, is now dead. With his passing, the congratulatory note struck by reports of the court's decision is made nonsense. What meaning can ten years of such deliberations have, in view of this old man's death? The perpetrators of the case knew well that Lakhichand was ailing. They knew well that without income and other means for prompt and effective medical treatment, he could not survive long enough to outlast their legal manoeuvres. They knew well that no state agency would come to his assistance. What meaning can the proceedings against these men now have in the absence of Lakhichand Paswan? After ten years, the court's decision is a victory only for the accused.

Although Bhikari is now dead, the real victims have lived on. Lakhichand himself died after a momentous struggle that left him without even having the satisfaction of knowing that the case would proceed to court. Meanwhile, he and his wife had taken care of their three grandchildren after Bhikari's mother remarried. Among the three, the oldest is Ajay. He is a first class student who, if he had been born to a family of means, would have many opportunities for further study ahead. Unfortunately, being in the care of his destitute grandmother, and ignored by a state whose agents were responsible for the destruction of his family, he can ill-afford to nurse dreams of a bright future. Other members of the family are daily hungry and sick; Bhikari's sister is suffering from acute tuberculosis.

And there are yet other victims. From the list of 22 names on the original First Information Report, Bhikari is not the only one to have gone missing. According to Masum, at least four of the other persons listed on that Report have been murdered, their dead bodies turning up in different parts of the country, over the last ten years.

So what has the National Human Rights Commission of India and its state-level counterparts done in cases like this? What has the West Bengal Human Rights Commission done, for example, to recommend that where state officers are the alleged culprits the hearings be expedited, rather than obstructed? What obligations does Justice Shyamal Kumar Sen, its chairperson, owe to Bhikari's family? Shouldn't a primary duty of these human rights commissions be to intervene on behalf of the children of such persons, to ensure that the state will at least provide for their health and schooling? Justice Sen and his colleagues need not wait decades until a court passes judgment: that Bhikari was last seen in the hands of the police is an admitted fact. The West Bengal Human Rights Commission should today take steps to

ensure that a small amount of government money is directed towards the needs of Ajay, his brother and sister, and other immediate family members deprived of his income.

The West Bengal Human Rights Commission has still other obligations. It should direct strong attention towards this case, to ensure that the hearings now proceed without any further delays. And the court case is no impediment to the Commission itself conducting an enquiry into why the courts have been unable to reach a satisfactory conclusion within a reasonable period of time. It is also its duty, and that of its sister organisations around the country, to expose and loudly criticise such delays that make a mockery of all claims to a great tradition of judicial independence in India. The Asian Human Rights Commission has on numerous occasions pointed out that across India, and indeed all of South Asia, thousands of court cases are wilfully neglected or obstructed while witnesses and material evidence are lost. The practices contributing to this state of affairs amount to a gross violation of human rights, yet they are treated as if a matter of mere administrative or bureaucratic inefficiency, rather than one of ineptitude and corruption.

India is a party to the International Covenant on Civil and Political Rights, however, it has not ratified its First Optional Protocol, and neither, the UN Convention against Torture. It is in Bhikari's case and others like it that the significance of these international standards becomes apparent. If India were a party to the protocol, Lakhichand could have approached the UN Human Rights Committee on the ground that the delay in domestic procedure amounts to exhaustion of local remedies; likewise, the UN Committee against Torture. This would at least have brought some international pressure to bear on the lethargic and negligent authorities in West Bengal, and may have resulted in an instruction to render much-needed support to the victim's family. It is absolutely the obligation of India's human rights commissions to do everything within their powers to ensure that the government ratifies these documents and adheres to their standards without delay. While too late for Lakhichand Paswan, this step would at least extend the possibility of some justice within the lifetimes of other victims and their families, if not from the Indian judiciary.

"The AHRC has on numerous occasions pointed out that across India, and indeed all of South Asia, thousands of court cases are wilfully neglected or obstructed while witnesses and material evidence are lost"

Urgent Appeals File
(UA-103-2004)

Letter by Manabadhikar Suraksha Mancha to the Chief Justice of the Supeme Court of India on the case of Bhikari Paswan

13th October, 2003

To
The Hon'ble Chief Justice of India,
Supreme Court,
New Delhi

Sub: Unholy Nexus/alliance of the accused persons in Sessions Case No. 22 (3) 2000 now pending before 6th Addl. Dist. Judge, Alipore, Kolkata, West Bengal with the judicial officers-- apprehension thereof

Hon'ble Sir,

The victim, Bhikari Paswan, was abducted on 30/31st October 1993 at midnight by named police officers posted at Bhadreswar Police Station area in the District of Hooghly, West Bengal and the higher police officials of the district. Initially, there was refusal by the police and the administration to register any criminal case. There was a long legal battle, and the CBI was directed by the Division Bench of the High Court to enquire and report and the proceeding before the High Court culminated in passing into certain directions, directing the CJM Alipur, South 24 Parganas, to enquire and to take steps in accordance with law with a clear direction that the court of competent jurisdiction will be the court of CJM, Alipur , South 24 Parganas. The matter was sent after enquiry by the CJM to the District & Sessions Judges Court, South 24 Parganas and the latter took cognizance under section 193 of the CrPC and thereafter transferred the matter for trial before the court cited under subject above.

We are enclosing herewith a copy of the judgement reported in CLJ for your ready reference and to enable you to appreciate the matters in controversy and the direction of the High Court in its proper and correct perspective.

The High Court delivered its judgement as far back as on 5 March 1998. Even after the judgement of the High Court the trial has not commenced as yet. On 3 March 2000 under Memo No. 59 the judicial officer being in the court cited under the subject above reportedly asked for certain clarifications from the Registrar, Appellate Side, High Court, Calcutta and interestingly, the Registrar, Appellate Side is also sitting tight over the matter. The Vlth ADJ court also sent the entire case record to the Registrar General, AS, High Court, Calcutta, and from April 2000 at least 17 days scheduled for Sessions trial have gone in vain.

We apprehend an unholy nexus/alliance of the accused and the judicial officers and such an apprehension is broadly based on the following reasons:

1. Because the court cited under the subject above had no business to ask for any clarification from the High Court when the directions of the Division Bench of the High Court were sufficient for the said court to start the trial.

2. Because even assuming that the court cited under the subject above was justified in seeking clarification from the High Court, it was duty incumbent upon the Registrar to provide the court below with the clarifications sought expeditiously, but that has not been done as yet.

May we, therefore, pray for your kind intervention in the matter so that the culprits are booked and the trial is started forthwith.

Thanking you,

(KIRITY ROY)
Secretary
Manabadhikar Suraksha Mancha (MASUM)

Press release by the Asian Human Rights Commission on the case of Bhikari Paswan (AHRC-PL-57-2004)

India's judiciary slammed for delaying case for over 10 years

(Hong Kong, August 3, 2004) The Asian Human Rights Commission (AHRC) on Tuesday lashed out at India's judiciary for delaying a case of forced disappearance for more than 10 years and thus denying the right of the victim's father, who died last week, to see the perpetrators punished.

The Hong Kong-based regional group called on the National Human Rights Commissions of India and its state-level counterparts, especially in West Bengal, to intervene and condemn such delays in the dispensation of justice, which are common in the country.

The AHRC was reacting to a long-awaited decision by the Calcutta High Court on last Wednesday that it allowed the prosecution of those police officers allegedly responsible for the disappearance of Bhikari Paswan in 1993.

Bhikari, a jute mill worker, was abducted by the then additional superintendent of police Harman Preet Singh and three other men in the early hours of October 31, 1993. He was reportedly taken to a police outpost in Telinipara, West Bengal, where he was tortured to death. But his body has not yet been found.

The victim's father, Lakhichand Paswan, who witnessed the capture of Bhikari, died on the next day after the High Court gave its decision that government permission was not required to prosecute Singh, now a deputy inspector general, as kidnapping was not among his official duties as a police officer.

"Thus it has taken the Indian judiciary ten years to decide a matter that any informed person with an iota of common sense would have resolved in a few minutes," the AHRC said in a statement.

"It is too late. A chief witness in the case, Bhikari's father, is now dead," it noted.

"He (the father) was robbed of...the right to see the perpetrators punished, not by weaknesses in the case, but by an utterly callous and corrupted system," the AHRC said.

The Indian judicial system was criticised for entangling the case in technicalities, rather than dealing with its urgent needs, before delivering it to the doorstep of the state's high court.

"It lay there for years, through disinterest and the machinations of the perpetrators, who have since been promoted to positions of authority, rather than being suspended and properly investigated as should have been the case," the AHRC said.

The human rights group has repeatedly pointed out that across India, indeed all of South Asia, thousands of court cases are "wilfully neglected or obstructed" while witnesses and material evidence are lost.

"The practices contributing to this state of affairs amount to a gross violation of human rights, yet they are treated as if a matter of mere administrative or bureaucratic inefficiency, rather than one of ineptitude and corruption," the group said.

India's human rights commissions, at both national and state levels, should expose and strongly denounce such delays in justice that "make a mockery of all claims to a great tradition of judicial independence" in the country, it said.

The West Bengal Human Rights Commission, in particular, must ensure that the hearings of Bhikari's case proceed without any further delays, the AHRC urged.

The rights commissions in India also have the obligation to do "everything within their powers" to ensure that the government ratify and adhere to the First Optional Protocol of the International Covenant on Civil and Political Rights and the United Nations Convention against Torture at once.

If India were a party to these international rules and standards, the father of Bhikari could have approached the U.N. mechanism for remedies, the AHRC said. "This would at least have brought some international pressure to bear on the lethargic and negligent authorities in West Bengal, and may have resulted in an instruction to render much-needed support to the victim's family."

The Asian Human Rights Charter on enforcement of rights and the machinery for enforcement (www.ahrchk.net/charter)

15.1 Many Asian states have guarantees of human rights in their constitutions, and many of them have ratified international instruments on human rights. However, there continues to be a wide gap between rights enshrined in these documents and the abject reality that denies people their rights. Asian states must take urgent action to implement the human rights of their citizens and residents.

15.4.a The judiciary is a major means for the protection of rights. It has the power to receive complaints of the violation of rights, to hear evidence, and to provide redress for violations, including punishment for violators. The judiciary can only perform this function if the legal system is strong and well-organized. The members of the judiciary should be competent, experienced and have a commitment to human rights, dignity and justice. They should be independent of the legislature and the executive by vesting the power of their appointment in a judicial service commission and by constitutional safeguards of their tenure. Judicial institutions should fairly reflect the character of the different sections of the people by religion, region, gender and social class. This means that there must be a restructuring of the judiciary and the investigative machinery. More women, more under-privileged categories and more of the Pariahs of society must by deliberate State action be lifted out of the mire and instilled in judicial positions with necessary training. Only such a measure will command the confidence of the weaker sector whose human rights are ordinarily ignored in the traditional societies of Asia.

15.4.b The legal profession should be independent. Legal aid should be provided for those who are unable to afford the services of lawyers or have access to courts, for the protection of their rights. Rules which unduly restrict access to courts should be reformed to provide a broad access. Social and welfare organizations should be authorised to bring legal action on behalf of individuals and groups who are unable to utilize the courts.

15.4.c All states should establish Human Rights Commissions and specialized institutions for the protection of rights, particularly of vulnerable members of society. They can provide easy, friendly and inexpensive access to justice for victims of human rights violations. These bodies can supplement the role of the judiciary. They enjoy special advantages: they can help establish standards for the implementation of human rights norms; they can disseminate information about human rights; they can investigate allegations of violation of rights; they can promote conciliation and mediation; and they can seek to enforce human rights through administrative or judicial means. They can act on their own initiative as well on complaints from members of the public.

15.4.d Civil society institutions can help to enforce rights through the organization of People's Tribunals, which can touch the conscience of the government and the public. The establishment of People's Tribunals emphasizes that the responsibility for the protection of rights is wide, and not a preserve of the state. They are not confined to legal rules in their adjudication and can consequently help to uncover the moral and spiritual foundations of human rights.

In this issue of *article 2*

Focus: The Bellilious Park eviction, West Bengal, India

Editorial board, article 2

- Legal games versus the rights of the poor

V B Rawat, Director, Social Development Foundation, Delhi, India

- The shame of Bengal: An unchanged social system

And

- Not even the right to be heard: A discussion with Kirity Roy on the Bellilious Park eviction
- Letter to the Mayor of Howrah on the Bellilious Park eviction

Rule of law

Basil Fernando, Executive Director, Asian Human Rights Commission, Hong Kong

- The rule of law and human rights

K C Kamalasabesan, Attorney General, Sri Lanka

- Victims of crime and the judiciary

Min Lwin Oo, Lawyer, Burma Lawyers' Council, Thailand

- "Correctly and quickly"? Thoughts on decisions by the Supreme Court in Burma

Asian Human Rights Commission, Hong Kong & Manabadhikar Suraksha Mancha, West Bengal, India

- Urgent Appeals File: Bhikari Paswan—Ten years of waiting for justice in West Bengal end with a funeral

ISSN 1811702-3

Printed on recycled paper

article 2 is published by the Asian Legal Resource Centre (ALRC) in conjuction with *Human Rights SOLIDARITY*, published by the Asian Human Rights Commission (AHRC).

ALRC is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. ALRC seeks to strengthen and encourage positive action on legal and human rights issues at local and national levels throughout Asia.

ALRC invites submissions to ***article 2*** by interested persons and organisations concerned with implementation of human rights standards in the region.

For further details, email the editor: editor@article2.org

Back issues of *article 2* available online:

www.article2.org

Annual Subscription Fee*

Hong Kong HK$250
Asian Countries US$35
Outside Asia US$50

*Subscription fee includes 6 issues of *article 2* and 6 issues of *Human Rights SOLIDARITY*

Asian Legal Resource Centre
Floor 19 , Go-Up Commercial Building
998 Canton Road, Mongkok, Kowloon
Hong Kong SAR, China
Tel: +(852) 2698-6339
Fax: +(852) 2698-6367
E-mail: editor@article2.org
Website: www.article2.org