INDIAN LAWYERS AND POLITICAL MODERNIZATION

Observations in Four District Towns

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THIS PAPER REPORTS SOME preliminary findings on the role of lawyers in the modernization of Indian society. Lawyers in district towns were interviewed for the purpose of discovering what contribution lawyers make to political socialization appropriate to a democratic polity.

The functions of law in society vary to some extent with the nature of the political system and the goals of the society, but, in general, the law serves both as a mechanism of social control and of social change. The political system can be thought of as a process whereby the desires of the members of society are articulated, aggregated and converted into binding decisions. Law provides the context of relative stability within which this political interaction can occur. Constitutional law is the framework of basic rules for participating in the political process. The legal order consists of standards and customary procedures for settling differences. When there is widespread acceptance of and con-

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AUTHOR'S NOTE: *The theoretical questions which stimulated the research reported here were suggested by M. Galanter,* Hindu Law and the Development of the Modern Indian Legal System *(unpublished paper prepared for the annual meeting of the American Political Science Association, 1964) and B. S. Cohn,* Anthropological Notes on Disputes and Law in India, 67 AM. ANTHROPOLOGIST 82-122 (1965). *The field work, carried out in spring-summer 1966, was supported by a Ford Foundation grant administered by the Four-College Committee on Asian and African Studies, Amherst, Massachusetts.*

formity to these fundamental norms, and common expectation about social behavior, there is a basis for coherence in the society beyond the limited bonds of kinship, or of religious, racial, or ideological group identification. Thus, the "rule of law" constitutes an alternative basis of social control to rule by a military-administrative regime or a monopolistic political party that coerces conformity.[1] Such a source for consensual unity seems essential if India, a heterogeneous society, is to build a democracy.

In a country as unevenly developed economically and politically as India, only some strata of the population identify with the goals of the democratic system and the basic norms of political behavior that support it. It can be argued that when individuals secure satisfaction of certain needs within the legal system, they tend to accept the legitimacy of the political system. In other words, as participation in the modern legal system becomes more universal in a developing society and comprehension of procedural norms increases, the stability of structures of authority which rely primarily on social consensus will be increased. The key element in this aspect of the process of building support for a democratic system is the success of the modernizing regime in transforming attitudes and behavior on the part of the broad public. What is sought is a change from a particularistic, hierarchical, and ascriptive consciousness manifested in diverse local customs to a consciousness based on values of personal equality, achievement, rationality, individual dignity and a sense of national identity.

The modern legal system in India, from this sociological standpoint, is an instrument of "tutelary politics" in the hands of the Western-educated elite. The constitution, the apparatus of the courts and the codified Indian common law embody values and norms which support the leadership's conception of a modern democratic welfare state. The extension of a unified hierarchy of courts to all of India, adoption of uniform personal law in the Hindu Code bills[2] and the establishment of a system of local government *(Panchayati Raj)* in the postindependence period mean that important aspects of life are increasingly influenced by the men at the top of Indian society. Localized caste practices, family law, property inheritance, religious endowments—all largely exempt from official intervention before independence—are now, in the in-

1. R. YOUNG, AMERICAN LAW AND POLITICS: THE CREATION OF PUBLIC ORDER 21 (1967).

2. H. L. Levy, *Lawyer-Scholars, Lawyer-Politicians, and the Hindu Code Bill, 1921-56* (included in this issue).

terest of economic growth and social change, quite extensively regulated by the legislation and administration of central and state governments and by the decisions of the courts. How shall we investigate and measure the impact of the legal system on the Indian populace? How widely disseminated are the courts' decisions and how well observed and enforced are the rules embodied in them? Can the courts and lawyers help to inculcate beliefs and habits of political behavior appropriate to "constitutionalism"? In fewer words, what is being taught about the "rule of law," by whom and to whom?

These questions can be approached either from the perspective of the professionals who transmit the modern legal culture—the judicial administrators and legal practitioners—or of those who may receive it—the "clients." On the assumption that the content and image of the law are shaped to a considerable extent by those who purvey it, this paper deals with a small segment of the group which operates the legal system close to the lowest level. District-court lawyers, like district-level political party functionaries, are strategically located in the political system. They form a bridge between urban and rural culture and function as brokers between modern national government and local arenas of political interaction.[3]

A PROFILE OF THE DISTRICT ADVOCATE

Let us begin with a description of the lawyer and his practice in the district arena in order to evaluate later his role in the larger political and social transformation of the Indian people.

The smalltown advocate, practicing a modern profession in a semi-traditional setting, straddles two cultures. The values which he shares

3. Another approach to a better understanding of the confrontation between traditional law-ways and the modern law is to investigate village clients. Systematic description of litigants in district and munsif courts would yield important information on the role of law in Indian modernization. Who comes to the town courts from the village? What does the villager hope to achieve by involving himself with the modern courts? Is the adversary process perceived as a modality for realizing justice? What images of the modern law-givers are carried back to the village?

A project such as is suggested here was planned at the Indian Law Institute, but has not been completed. Sociologists and law students involved are attempting to determine the extent to which modern law notions have penetrated the village and the degree of congruence between the value premises of the new legality and those of customary practice. An interpretation of some early findings was offered by G. S. Sharma, *Changing Perceptions of Law in India* (unpublished paper delivered at the XXVII International Congress of Orientalists, Ann Arbor, August, 1967).

with all middle-class Indians are neither entirely modern nor traditional, but are certainly distinct from those of the Indian peasant. The advocate's social status and style of life are determined by his family background and economic position as well as by his membership in a distinctive professional group. He is at once a member of a national functional elite and an urbanized local elite. To varying degrees lawyers live partly in a traditional caste society and partly in a Westernized setting of social class. This situation creates the opportunity for and the limitation on the lawyer as a cultural broker.

Caste and Class

The majority of advocates now practicing in the district towns surveyed were from middle-class families and from middle and higher castes. Perhaps a third of the fathers and brothers were divided among the categories of lawyers, government officials, or businessmen. Cultivation was the means of livelihood for a majority of the advocates' fathers, and family income was still often derived partly from land ownership.

Advocates and magistrates who are Brahmins and Kayasthas—castes with a tradition of literacy and public service—numerically dominated the courts in the districts under study. There are no accurate statistics, but it is probably correct to say that more Brahmins than members of all other castes combined were practicing in these districts. In Sambalpur, Orissa, seven of eight respondents were Brahmin and an educated guess is that, of 68 advocates registered at the bar, 45 were Brahmins.[4] Non-Brahmin advocates in these rural areas came from cultivating castes. The few lower caste exceptions, like a Barber casteman in Puri, were enabled to become lawyers because their fathers had made cultivation the means to a larger income.

Advocates estimated the caste breakdown of lawyers in Puri as follows: Brahmin—50%, Kanda and Khandait—45%; and Backward Classes—5%. The high percentage of Brahmins practicing law in Sambalpur and Puri is due to the historical predominance of this caste in the public life of the Orissan principalities. In Bhopal, M.P., and in

4. This guess was arrived at with the help of Professor Cora DuBois, Harvard University, who reviewed all the names in the Sambalpur Bar register.

Wardha, Maharasthra, the number of non-Brahmin practitioners was somewhat higher.[5]

It is widely believed that Brahmins and other upper castes are predominant in India's legal profession today. If this is true it would reflect the effect of traditional opportunity structures. There is no evidence, however, that Brahmins and Kayasthas exercise control over the judicial system, and there are indications that in certain regions the recruitment base of the profession is broadening to include men whose families traditionally had lower status occupations.[6] Certainly there were younger men of middle and lower castes with successful practices in the districts I visited. Because getting one's son into the private practice of law establishes an excellent channel of social mobility, men of new affluence and local power may be more eager to have their sons enter the law than those whose privileged positions have been established for a long time and who feel that the earning capacity and prestige of the lawyer have declined since preindependence days. Clients did not appear to choose their advocates according to caste, and it was clearly observed that the profession served all classes of people. A few lower caste lawyers, perhaps for political reasons, claimed that most of their clients were poor people. From the standpoint of the peasant client, identification and contact with the lawyer who is, or was, "one of his own," provides the peasant with a comfortable link to the all-India legal order.

On the subject of their income, the advocates were naturally evasive. The few estimates offered varied widely. At the lower end of the scale, and appearing only at the munsif and Sub-divisional Magistrate's courts in Sambalpur District, three lawyers said they averaged only between Rs300 and Rs500 a month from their practices. One of these indicated, however, that he had settled in the small town of Padampur to manage forty-five acres of family land and I could not determine how much of his time was spent on his practice. Both the others had some income from cultivation. In Wardha, a very young cultivator-caste advocate told me he was earning Rs16,000 yearly, after five and a half years in practice. He drove a new car and fairly exuded success, but prudently kept a candle burning at the foot of the family icon which he kept in

5. Because Bhopal was the capital of a Muslim princely state before independence and has a large Muslim population, several of the more successful senior advocates there were Muslim.

6. T. G. Bastedo, *Law Colleges and Law Students in Bihar* (included in this issue). C. Morrison, *Social Organization at the District Courts: Colleague Relationships Among Indian Lawyers* (included in this issue 1968).

his office. In Bhopal I was informed by a young Muslim lawyer that a senior advocate expected to earn Rs4-6,000 per month. These earnings may be compared to the pay of judicial service officers: in Madras a munsif starts at Rs3,600 per annum and after eight years earns Rs5,400.[7] A district judge in Andhra Pradesh starts at Rs12,000 a year (this is a little higher than in most states). Certainly most advocates expect to earn considerably more than this after five to ten years' practice.

A handful of lawyers in towns I visited appeared to be quite well-to-do, but in these cases the family had inherited large landholdings and continued to cultivate most of them, in spite of land ceilings, under legal arrangements whereby title to the land had been assigned to various members of the family. Only a few advocates owned automobiles —some rode motorscooters—and this is one good reason why advocates do not leave town to go out to the villages for business very often. The homes of advocates were comfortable but modest, unless they were ancestral. All the houses I visited were equipped with radio and fans; some had kitchens with electric appliances. The few bachelors lived in the business district over their offices. A few lawyers owned other urban properties. By Indian standards the country lawyer is comfortably well-off. His way of life is not too different from that of the middle-class Indian professional living in the metropolitan centers, although he complains about his poverty compared to his affluent city cousin. By comparison with village living conditions a few miles away, the advocate lives materially in another world.

Education

The advocates nearly all had earned B.A. degrees from colleges within the state where they presently practiced and had their LL.B.'s from the same or another local university. In a few cases, lawyers also held an M.A. in economics or philosophy and had taught secondary school before getting the law degree. Two of those interviewed were part-time lecturers in the local law college.

Most advocates had, or expected to, put their sons through college, but not with the aim of their becoming lawyers. More often medicine, engineering or some scientific-technical subject leading to a business career were preferred futures for offspring. The cost of education was

7. 1 LAW COMMISSION OF INDIA, FOURTEENTH REPORT: REFORM OF JUDICIAL ADMINISTRATION 194 (1958).

cited as a major reason for limiting the size of the family. (Younger men had two to four children, while older lawyers tended to have much larger families.)

Professional Life

Most of the advocates interviewed were happy to be lawyers and thought they had a bent for this kind of work. A few were disappointed not to be in another profession. There were generational differences among lawyers regarding their interpretations of the status and prestige of the law profession, which will be discussed later.

The advocate's day was fairly full. In the hours of the early morning and again in the evening, he saw clients at an office in his home, often on a veranda, or less frequently at an office in town which was not in the court buildings. From mid-morning until three or four o'clock in the afternoon the courts were in session and the advocate remained there keeping track of the progress of his cases and continuing consultations with his clients. There was time, however, for talk, the newspaper, cups of tea and cards in the "bar room" attached to every court house. Here, amidst a disarray of furniture, were the small library and the records of the local bar council. The atmosphere here was one of geniality, even camaraderie, despite privately expressed complaints about the keen competition for clients and the sometimes sharp political differences among lawyers. Outside the bar room it was my impression that advocates associated mostly with their own families and then with other professionals—advocates, civil servants (but usually not with judicial officers), doctors, and the more prosperous businessmen of the town. Even where management of land was a serious, if part-time, occupation, the advocate maintained his residence in town.

Contact with villagers and interest in their problems was in the main limited to the office. The advocate who maintained contact with "his village" because his own lands were located in it brought in some business from that village. I can only reaffirm what has been noted by others, that most cases involving village litigants related to disputes over land use and conflicts of tenure and title created by the new land reform acts.[8] All advocates had these sorts of village cases and I was unable to make distinctions between the kind of practice the advocate-landlord had and that of the advocate who had no land and never left town.

8. Cohn, *supra* Author's Note, at 104.

Political Activity

Only about half the advocates interviewed were members of some political party and of these about half were in the Congress Party. It would be natural to anticipate progovernment attitudes on the part of most middle-class advocates. Age differentiation, however, played some role in political preferences. Advocates who were active in opposition party work were admitted to the bar after independence. Among the older men (forty-five and up) there was a division between those who abstained from political activity altogether because they felt that Congressmen had been corrupted by power and had lost sight of the ideals of service in their drive for material acquisition and those who supported Congress because there was no feasible alternative. Many of the latter group were critical of what they regarded as the misguided policies propagated by Congress in the name of socialism. It was not difficult to correlate the size of landholdings with the more conservative political preferences.

THE LAWYER'S PRACTICE

Most of the advocates were born in the district where they were in practice. Family connections obviously helped to get a practice started. The usual response to the question of how the lawyer acquired his first clients was that they came to him through friends or relatives. For those not born where they now worked, kinsmen had moved into the district and the advocate settled there upon completion of his LL.B.[9] Family connections seemed to be just as important to city lawyers in starting a practice as they were for their country colleagues. In New Delhi and Calcutta, junior advocates worked in the offices of cousins or uncles until they built up a practice of their own. Most advocates expected to spend some very lean years at the beginning. Several judicial officers told me "frankly" that they were not "risk takers" and had chosen not to face the insecurity of the early years of private practice.

At the district level, advocates tended not to specialize and most worked on both the civil and criminal sides. They conformed to a pattern reported all over India and did not form partnerships or firms, although a junior advocate just out of school might be more or less

9. In Bhopal there were several Punjabi Muslim lawyers who had their undergraduate educations in Karachi or Lahore and their LL.B.'s from Aligargh, who had moved south after 1947.

apprenticed to an established advocate. The young lawyer used the office and law books of the older man, helped out with some of his case work and was given some cases where the fees were sure to be low or where some other structural factor eased the competition between the junior and senior advocate. The younger man would at the same time have had his own clients and taken their cases to court.

The great majority of lawyers registered at the bar of the district court practiced almost exclusively at that court. When a case is appealed to the High Court, the district lawyer will recommend to his client two or three advocates located at the seat of the High Court. A few senior advocates with superior reputations travelled several times a month to the High Court to plead their own cases. In Bhopal this would not be a very strenuous burden. But it is arduous, indeed, to journey from Sambalpur to Cuttack, in Orissa.

Although the personal communication network among members of the legal profession at different levels and between districts appeared to be very restricted, most advocates were reasonably well informed by means of the printed word about legal developments in India. Every advocate had a small professional library containing various law report series, copies of acts and regulations, and books on Hindu and Mohammedan law. Many were subscribers to the *All India Reporter* (the most widely used series of unofficial law reports) and felt it essential to read regularly. All seemed well versed on recent decisions of the High Court of the state in which they practiced, and most followed the progress of Supreme Court cases. There was universal complaint about the prolixity of Indian law reports and some lawyers said they preferred the more condensed reports of the local law journal, like the *Cuttack Law Times* in Orissa.

What kind of work does the district lawyer do? Asked to name the sections of the Indian Penal Code most frequently used in their work, advocates cited assault or grievous hurt (323-326), attempt to murder and murder (300-307), rape (376), and kidnapping (366). Regarding offense against property, theft (378-382), robbery and dacoity (390-402), criminal trespass (441-462) and use of false property marks (488) —the latter cases involving villagers—were most frequently cited. From Muslim clients in Bhopal there were complaints of defamation, insult and intimidation. On the civil side, disputes and damage suits over land unsurprisingly made up the greater proportion of the advocate's work. There were also revenue appeals and labor disputes. Several lawyers felt that their work on the civil side was decreasing because of the

number of special administrative or quasi-judicial tribunals, before which lawyers do not appear.

One aspect of the advocate's town work is important in creating in the public mind a sense of political efficacy and in establishing an image of the judiciary as an independent intermediary between government and citizen. This work consists of cases involving either enforcement of government regulations or the accountability of government officials under the law. (There are special sessions courts which are higher than the district courts for the prosecution of important government officers charged in administrative tribunals with corruption or abuses.)

An idea of the work of the district lawyer in the regulation of Indian public life can be obtained from a sampling of the Additional District Magistrate's (Judicial) records in Bhopal during the course of six months in 1966:

A Superintendent of the Arts and Crafts Emporium was acquitted on charges of embezzlement.

A bookseller was convicted of selling obscene books.

Under the Essential Commodities Act:

a kerosene oil dealer was convicted of selling at excessive prices,

a contractor was convicted of "loaning out" cement to his son in excess of authorized amounts.

Under the Food Adulteration Act:

a vendor of milk was fined Rs. 750 for watering the milk up to 25% of the volume,

in another case conviction was upheld where the volume of water in the milk was found to be 65%.

A postal clerk was fined for forgery.

The appointment of a "public analyst" was found to be irregular by reason of lack of proper qualification.

Under Sec. 188, IPC, 32 members of the Assembly (PSP members) were sentenced to seven days imprisonment for holding a demonstration within the prohibited one-half mile radius of the Vidhan Sabha.

Under Rule 42 of the Defense of India Act, a man was sentenced to one year's imprisonment for playing a Pakistani radio broadcast in public. (It was argued that while it would be all right to listen to broadcasts from enemy sources in the privacy of one's own house, the radio played in public was like the publication and distribution of literature of enemy origin and would give aid and comfort to the enemy.)

Representative of Johnson & Johnson of India was convicted of improper labelling of bandaids under the Drugs Act. (Case appealed to High Court.)

The owner of a busline was convicted of overloading.

Links With the Village

The territorial reach of the advocate's practice was estimated to be from thirty to one hundred miles from district headquarters.[10] Although some cases were appeals from lower courts, the bulk of most lawyers' cases had their origins in town. There would often be munsif, tahsil, or subordinate district courts closer to village clients, and the lawyers felt that when villagers came to the district town first it was because they got better legal counsel there and had a better chance of unbiased treatment in the district courts (whose original jurisdiction incorporated that of the lower courts).

Exactly what percentage of the advocate's clientele came from villages could not be determined. In the district towns of Wardha and Sambalpur, lawyers often had peasant clients and, in a few instances, interviewees reported that they dealt mostly with villagers. It is perhaps a sign of an increasing use of government courts that state governments are creating new lower level courts all the time. The Government of Orissa, for example, established another subordinate judge's court in Sambalpur District in the subdivisional town of Bargargh in January 1966, to supplement the existing magistrate's and revenue courts.

The extent to which an intermediary is used to bring cultivators from the village to the lawyers is also impossible to measure with any precision. A number of lawyers asserted that many advocates used the services of touts. A young advocate in Delhi said that competition between lawyers was such that they generally engaged a "gentleman" to go in search of clients and that he got a kick-back of as much as half of the fee. An advocate who practiced in Delhi said that touts were used a great deal and took 35-50% of the lawyer's fee. He had used a tout once and was so stricken with guilt that he "took a vow" never to use one again. Out in the country towns, the use of touts was also attributed to others, although fewer lawyers were certain that the institution was very widespread. Some believed that other lawyers took advantage of

10. Most advocates said that their practice included clients who came from distances of up to 100 miles, but they also said that the average village client lived within a 30-50 mile radius of the district headquarters.

the legal illiteracy of the peasant and that touts brought villagers into town. A Socialist Party advocate in Puri said if "you don't have ten touts you have no practice." [11]

Since I interviewed only lawyers, it was difficult to assess the nature of the relationship between the town advocate and his village client. The advocate, by virtue of his socioeconomic status, his urban sophistication, and his participation in a governmental milieu, stands closer to the world of officials than to the villager. The advocate is, therefore, treated with the respect and deference reserved for political authorities. It is not easy for the villager to discern the differences among legal personnel—that is, among judge, public prosecutor and defense counsel. From this it might be inferred that the relationship of trust between lawyer and client would be difficult to establish.

From the lawyer's point of view there was no problem in understanding his client's situation. Village India represented only an extension of his regular law practice. He explained to his client why it is important for the lawyer to know all the facts and claimed that he got 90 to 95% of the facts from his client. The villager was told about his rights and the court procedures which protect them. Advocates felt that village clients understood these procedures. Whether they appreciated the value premises underlying them was for the lawyer a moot question.

Depending on his education and intelligence, the peasant might have the principle and substance of the law explained to him, although most advocates interviewed felt that villagers, as opposed to townsmen, did not really follow much of this. One advocate told me that among his village clients, "the 50% who are habituated to crime" best understand their rights under law and the procedures of the adversary process! It was the lawyers' impression that the peasant client had "great faith" in his lawyer's professional competence and only rarely questioned the outcome of the trial. Sometimes the lawyer was blamed by a village plaintiff for failure to win a case.

Many advocates said that they often recommended and tried to achieve settlement out of court, but that in the case of most villagers, by the time the conflict reached the lawyer's office, arbitration efforts

11. It was reported to me in New Delhi that the widespread use of touts and the rise in judicial costs that this created had become a matter of sufficient concern so that certain district bar councils had passed resolutions providing for proceedings whereby persons named as touts by a stipulated number of advocates would be listed and then forbidden to enter court premises. No one vouchsafed an opinion as to how effective such a regulation would be.

had probably failed. Advocates appeared to have a clear understanding of their position as mediators among the citizens and the executive and legislative organs of government representing the public interest, and of their obligations to both sides. Clients in civil suits, I was told, were sometimes turned away if they had no case in law (and sometimes if it was known that the client had no money). In criminal cases, advocates made a point of saying that they accepted clients who admitted their guilt, as well as potential complainants who seemed to have a case, without condoning the activities of either group.

A review of court records in Sambalpur District gave the observer an idea of the difficulties of applying modern rules of law to the complexity of disputes arising from village life. Determining the beginning and end of a conflict to make a single case for court decision out of the network of issues involved was extremely difficult and often seemed somewhat arbitrary. Assault and murder cases stemmed from lineage group quarrels dating back several generations. Statements of witnesses were often highly contradictory. Trespass and theft cases involved records of the permanent *rayati* land settlement and rent schedules and genealogies borrowed from village *patwaris*.

Although judicial officers appeared to adhere faithfully to the law of evidence, lawyers complained of its unsuitability in the rural Indian situation. There was criticism of the too-strict application of rules on presumption, on relevancy and on confessions. Cases of theft were dismissed again and again for lack of material evidence, as in the case of a teenage boy who was accused of stealing utensils from a house from which the residents were absent. The only evidence presented by the prosecution was the testimony of a nine-year-old girl who lived in a neighboring house. Where the prosecution relied on circumstantial evidence in the case of the theft of a woolen suit from a tailor shop (the accused was found in possession of a suit which bore no marks of identification), the District Judge admonished:

> In order to justify the inference of guilt, the incriminating facts must be incompatible with the innocence of the accused, or the guilt of another person, and incapable of explanation upon any other reasonable hypothesis than that of his guilt.[12]

Advocates contended that insistence on trade or manufacturer's marks to identify stolen goods was a notion borrowed from the industrialized

12. The State v. Zia Karim, C.R. Case No. 1400, Sambalpur, 1964.

West and was useless in the Indian situation where homemade goods prevailed. Judicial officers, on the other hand, complained of the bad police work which resulted in frequent acquittals where there was no evidence worthy of the name.

The district court sessions I attended were very well ordered, especially when compared to the hubbub at the courts at Tishazari in Delhi. The proceedings and the records thereof closely followed textbook descriptions of the Criminal and Civil Procedural Codes. At the district level, trials were bilingual. Parties to the dispute were addressed in their own tongue and discourse between magistrates and lawyers was conducted both in English and the regional language. Witness depositions were given orally at the stand, recorded in summary and simultaneously translated by the presiding magistrate, and reread to the witness who attested by signature or thumbprint in the public presence to the validity of the document. Police records, such as the first information report, the "plain paper" first information report lodged by the plaintiff, and the charge sheet, in both the regional language and in English, formed part of the trial documentation.[13]

Several advocates thought that it was poor practice to have the presiding judge keep the record of the proceedings. They sometimes found the reports badly misstating the facts and the law of the case when the judge had not understood the issue. These men thought there should be special court recorders.

The Lawyer and the Village Courts

Modern law has (or may have) a direct impact upon village behavioral norms in the statutory village court—the *nyaya* (or *adalat*) *panchayat*. The degree to which the modern law has in fact penetrated the substantive proceedings of these courts is unknown. Most of the state acts establishing *nyaya panchayats* prohibit the appearance of lawyers before them and stipulate that it is not obligatory upon the *panchas* of the *nyaya* benches to follow the provisions of the Evidence Act and the Procedure Codes.[14] The lawyers' attitudes toward the vil-

13. The independent Government of India has not found it necessary to change all the old forms. Charge sheets require certification by the station officer that male criminal suspects who were not European British subjects do or do not bear marks of whipping. I found one charge sheet, that of a man accused of culpable homicide, where the response was in the affirmative.

14. 2 LAW COMMISSION OF INDIA, *supra* note 7, at 885-95, 914.

lage courts as a forum for the administration of justice ranged from skepticism to downright hostility.

It was admitted that if much of the petty civil and criminal litigation of the munsif and subordinate judges' courts could be handled at the village level this would be very useful, but it was also clear that interviewees feared the reduction in the demand for lawyers' services. I found examples of most of the criticisms of the functioning of *panchayati adalats* contained in the *Law Commission's Fourteenth Report* and enumerated by S. S. Khera:[15] (1) justice should not be administered by an elected body, (2) the public lacks confidence in the *panchayats*, (3) a judge should not have personal knowledge of the case he is hearing, (4) *panchayats* are ridden by factions and are often corrupt and biased, (5) *nyaya panchayats* violate the principle of separation of judicial and executive functions and hence violate the spirit of the Constitution, (6) the *panchas* lack experience and legal training; and are inadequately supervised. In fact, my respondents were not well informed about the work of the *nyaya panchayats*.[16] It was taken as proof of the unworkability of a system which excluded lawyers that not a single case reviewed by the Sub-divisional magistrate in Sambalpur District had been upheld.[17] Evidence offered of the bad effect of electing people's courts was that village touts were winning the *adalati* elections because of their pretended knowledge of law.

The lawyers argued that higher educational and literacy standards should precede the establishment of such a system of people's justice, even though they doubted if a setup which so violated the principle of

15. S. S. KHERA, DISTRICT ADMINISTRATION IN INDIA, 211-12 (1964).

16. In Bhopal I was incorrectly told that the *nyaya panchayats* had been established only in 1963 in Madhya Pradesh and that the Act had not been implemented significantly yet. If the statistics of the Law Commission's FOURTEENTH REPORT are to be trusted, it is true that in Madhya Pradesh and Orissa the volume of business of the *nyaya panchayats* has been lower than in some other states (Vol. II, Table IX, 918-919), but in 1953 there were 1,160 civil suits instituted in village courts in Madhya Pradesh and in 1954, 607 suits. In 1953, *panchayat* courts in Madhya Pradesh disposed of 27,484 criminal cases. See 2 LAW COMMISSION OF INDIA, *supra* note 7 at Tables IV and V, 897-99. In Orissa, lawyers thought the *panchayati adalats* had functioned since 1958. In fact, in 1954 *adalati* courts handled 1,730 criminal proceedings and disposed of 948 civil suits. However, informants in Sambalpur were aware of the jurisdictional limitations on village courts, that munsifs had the power of revision of any civil decision, and that the subdivisional magistrate could cancel or modify the order of the *adalati* courts in a criminal proceeding or order a retrial.

17. The Law Commission reported that in Madhya Pradesh in 1958, "about 31 per cent cases the orders of the Nyaya Panchayat were quashed by District Judges [sic]." 2 LAW COMMISSION OF INDIA, *supra* note 7, at 1052.

separation of politics and adjudication could ever work. Since the *adalati* were "attached" to the Gram Panchayat and its records of evidence were kept by the Secretary of the Gram Panchayat, it was asserted that there could be no independence of judgment and that partiality in decisions was notorious. People remained ignorant of their right of appeal to the munsif. Judicial officers in Sambalpur felt they should have the exclusive right of supervision and that there should be regular review of the *panchayati adalats'* work.

The place of *panchayati adalats* in the legal order is ill defined. They seem to be neither accepted yet by villagers as appropriate substitutes for the caste or village councils nor are they given any respect or support by the modern law officers and advocates. The extent to which they are used is impossible to calculate since we cannot know how many disputes are still settled by caste and village councils. On the basis of my observations in Sambalpur District and from a perusal of the *Census of India* village surveys and the case studies of other social scientists,[18] it would appear that, like the town courts, the *nyaya panchayats* are as yet a minor agency for the settlement of local disputes. This is least true in cases of property disputes and most true for lineage and caste law conflicts, the latter being very extensively settled by caste councils, with some modification of rules in response to all-India legislation.[19]

What is attempted in the *panchayats* is an adjustment of consensual techniques of conflict resolution to the modern adjudicatory system. Where the arbitration efforts of village elders fail, resort to the state law courts is then officially sanctioned and encouraged. Cases brought before village courts are "compromised" where possible and unanimity is encouraged where decisions must be made in favor of one party. These courts are transitional in that they incorporate a mixture of modern and traditional elements, both with regard to methods and sub-

18. M. C. PRADHAN, THE POLITICAL SYSTEM OF THE JATS OF NORTHERN INDIA (1966).

19. For example, census surveyors of Vilpatti village, Madras (population: 1,127) estimated that only 5% of disputes over minor thefts, property trespass, dowries, adultery, divorce, and "misbehavior" were referred to the regular law courts or even to the police. When cases were referred to the courts it was because the unity of the caste council failed or the decision could not be enforced because one party to the dispute refused to sacrifice his personal interest to the cause of group solidarity. It was reported that even on matters of inheritance, people were not interested in engaging in litigation to get what they felt was their rightful share of property and rarely thought of the law courts even though a munsif's court was only five miles away at Kodaikanal. 9 CENSUS OF INDIA, 1961, pt. VI, *Madras, Village Survey* 5, 74 (1965).

stance. Perhaps the *nyaya panchayat* can tolerate local deviation from official national norms without discredit, where the town courts cannot.

We may conclude that at the lowest levels machinery is established for the integration of local customary law practices and the national standards of the modern legal culture. The flexibility implied in the policy of allowing certain village methods and rules of law to coexist with the lawyers' law of the towns and cities seems sensible in the present Indian situation. Minimal national standards are disseminated. (For example, *nyaya panchayats* do follow simplified procedures based on the Civil Procedure Code and, at the same time, expression of local attitudes and norm preferences is permitted within a national legal framework.) Actually, it is uncertain how far the decisions of village *panchas* depart substantively from decisions made in town courts by officers trained in the law.

When the training periods and the guidance manuals for the elected *panchas,* already instituted in some states, have been extended territorially and numerically there will be even greater displacement of local law ways by authoritative statutory law. I do not think accommodation of the two law cultures is possible in the long run. The value premises of the modern law, the product of competitive, contractual and individualistic culture, are in conflict with the values of the hierarchically-ordered, status-oriented, communal (or organic) society of traditional India. Furthermore, the Westernized law system does not contain the concept of accommodation—the coexistence of conflicting principles at different levels of value. The direction of change of the present multi-level legal situation is away from local diversification toward the common procedures and norms of the modern legal order.[20]

The Lawyer and the Caste Association

An alternative to enforcement by the courts of the officially constituted norms of contemporary India is the voluntary change in customary practice which occurs within the confines of the new caste associations.[21]

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20. M. Galanter, *supra* Author's Note, at 29.

21. For histories of the development of particular caste associations, see O. M. Lynch, *The Politics of Untouchability—A Case Study From Agra, India* (unpublished paper prepared for the Seminar on Social Structure and Social Change, University of Chicago, 1965); L. I. Rudolph, *The Modernity of Tradition—The Democratic Incarnation of Caste in India,* 59 AM. POL. SCI. REV. 975-89 (1965); and L. I. Rudolph and S. H. Rudolph, *The Political Role of India's Caste Associations,* 33 PACIFIC AFFAIRS 5-22 (1964).

The modern voluntary caste association is one of the informal law-making arenas in which lawyers may contribute to social change. A good illustration of the leadership of advocates in this process came to my notice in Sambalpur.

The *gaontia* leadership of the largest cultivating caste in the district —Kultas (or Chasas)—organized a formal caste association (really a federation of *jatis*) in 1921 for purposes of reform of caste practice and social advancement. The early history of the *Kulta Mahasabha* corresponds to that of other castes in India who sought to improve their status as a group by imitating ritual practices and the style of life of higher castes. At the same time, they also attempted to capture the fruits of the new economic and occupational opportunities brought to India by the British. During the years prior to independence, reforms of the Kultas included higher fines for divorce, restrictions on the amount of dowry and on the amount spent on weddings, as well as simplification of the marriage ritual, modification of marriage rules (polygamy was prohibited, as was the custom that the younger brother could marry the elder brother's widow) and the establishment of exclusionist practices for the temples of the Kulta deity. Money collected as fines was to be spent on the development of agriculture, animal husbandry, small businesses and scholarships for Kulta boys.

By the time of independence, Kultas had entered the professions and politics. At the 18th general assembly of the *Mahasabha* in 1959, certain advocates from Sambalpur town proposed and achieved the modification of the untouchability rules of the caste to accord with provisions of the Constitution of India. The enforcement of the new rules of the *Kulta Mahasabha* remains in the hands of the more conservative well-to-do castemen of the village caste *panchayats* (called "village committees" in the modernized terminology of the *Mahasabha* records).[22] Even so, the caste has modernized itself, at first through imitation and then caste legislation, and the norms of social behavior professed at the highest level of Indian society have been passed down to village cultivators in a remote part of rural India.

Evasion of Modern Personal Law

Personal and family law is obviously the area of the law least affected by modern courts and least susceptible to officially-sponsored change.

22. Information on the *Kulta Mahasabha* was supplied by an advocate in Sambalpur, an official of the association. He provided copies of conference reports and resolutions.

When asked about evasion of modern rules of law, the town lawyers almost to a man responded that in the field of personal law there was great hostility and resistance to the social reform legislation of the Government of India. Estimates of the number of family and personal disputes settled out of the court system ran as high as 98% and never lower than 80%. Lawyers who were handling a few cases of maintenance or divorce, and even the occasional suit by a daughter or sister for her share of property under the Hindu Succession Act, said that most of these cases involved townspeople. In town, some men were drawing up wills to avoid the new succession rules for the intestate, but village families were merely ignoring the provisions of the Act.

Widow remarriage and dowry prohibition were regarded as completely ineffectual reforms, except in instances where caste groups were already following practices which accorded with the new rules. The minimum age for marriage was thought to be the one new rule which had brought about some change in practice, but there had been a long history of British encouragement and Hindu reformist efforts in this matter.

The level of information about the social reform legislation was felt to be very low. (This impression is supported by the surveys conducted in villages by census takers.) Those townsmen and villagers who had been to secondary school had taken courses in "civics" and were taught something about their fundamental rights in the Constitution and had heard a little about the Hindu Code bills. Obviously, knowledge need not be translated into practice. This is especially true of the prohibitions of the Untouchability Offenses Act (1955) where a fairly high percentage of persons, particularly in upper and dominant castes, know about the rules, but have not changed their practices regarding untouchables. No lawyer I met had taken any case or had heard of any prosecution in his district for offense under the UOA.[23]

The lawyers themselves professed adherence to the new norms—except perhaps they planned to give their daughters dowries because of "the social pressure on them" to do so. The small number I asked said that they would arrange the marriage of sons and daughters and that they expected their progeny to marry within their caste, although they would not insist on it.

23. Elsewhere in India prosecutions have taken place, of course. *See* M. Galanter, *Changing Legal Conceptions of Caste* (unpublished paper prepared for the Seminar on Social Structure and Social Change, University of Chicago, 1965).

THE LAWYERS' SELF-EVALUATION

The attitudes of Indian lawyers about their own profession naturally vary with the socioeconomic perspective and the personal ideology of the individual practitioner. Of the forty advocates interviewed, about one-third liked their work unequivocally; another third, with some qualification; and slightly less than a third did not like their profession. In the latter group, advocates may be divided into three groups: (1) the "Gandhians," with a high moral purpose of service to the nation, who saw the profession as self-serving, immoral, and materialistic; (2) the "socialists," Marxists who felt that the law served privileged people but was too expensive and too "capitalist" to work in the interest of the masses; and (3) the "materialists," who had found it "degrading" to accept low fees at the beginning of their careers, and who thought that lawyers worked too hard for too little reward and too little prestige.

Advocates who liked their jobs as well as those who did not stated an order of preference for their sons' careers that put the law in third place. Business or engineering was first, and other professions (especially medicine and civil service) were in second place. Many felt that the status and prestige of the legal profession had declined since the British had departed. This was attributed by "materialists" to the low economic condition of lawyers and to the fact that less well-qualified men had the opportunity to enter the profession now that standards were not so rigorous in school or in the examinations. The "socialists" referred to the fact that national leadership in the freedom struggle had belonged to lawyers who were not in government service, and that the profession had formerly benefited from the enormous prestige of Gandhi, the Nehrus, S. K. Patil, etc. Lawyers were no longer in the forefront of reform, and it was the politicians who were creating the new India. The "socialists" also mentioned the bad effect of colonialism on the moral probity of the Indian character. British occupation was regarded as the cause of the lack of faith in public authority and the lack of pride in citizenship. "Gandhians" saw the decline of the profession as a function of the general decline in the moral fiber of the Indian national character. The corruption and the materialism in the Congress Party had spread to the whole society. The deaths of Gandhi and Nehru, who had given a "high moral tone" to Indian society, contributed to the general deterioration of moral standards.

In contrast to those who were disillusioned with the legal profession, there were the men who liked being lawyers and who vigorously proclaimed the rectitude of the profession. Perhaps the major reason given for an improvement in the legal system since independence was the separation of judicial and executive functions and the enhanced independence of the judiciary. Whether or not the establishment of separate judicial and executive magistrates improved the standing of the profession in the public eye, most advocates felt that the system was the better for the change. There might be some corruption in the courts, but at least the law did not dance to the tune of the government and the politicians.

District lawyers had given little or no thought to the relationship of the law to the social and economic goals of contemporary India.[24] Most accepted as given that the present legal order was brought to India by the British as an instrument of modern society, and since that is what India was, or was becoming, no other legal system was imaginable. That court procedures should be simplified and speeded up, and that court fees should be lower, yes. That the requirements of proof under the Evidence Act needed modification to suit Indian conditions, yes. But that there could be some distinctively Hindu legal order closer to the values of Indian culture was nonsense.

A few, more reflective advocates wanted to discuss the problem they discerned in a legal order which was enforced by the state, but was divorced from "the force of society." Whereas in "former times" Hindu society had enforced its laws through social sanctions, there now was only official sanctioning which carried no social force and people were indifferently obedient to the law. A man would much rather go to jail or even die, it was claimed, than face the miseries of excommunication from his caste or village. Besides this, the magistrates who made decisions were viewed by the populace as foreigners who could not be trusted to learn the truth about a dispute. The advocates who thought of the situation in this way were vaguely hopeful that the development

24. Advocates who were Communists or left-wing Socialists had thought most about the relations between law and society and were the most vocal about deficiencies in the present legal order. In particular, they felt that property rights and law protected the landowning classes and were a British inheritance which had become outdated in a socialist society trying to achieve a revolution in agriculture. It is interesting to note that Communist lawyers perceived no contradiction in their simultaneous advocacy of communism and a democratic legal system since they conceived only of a parliamentary form of communism. Collectivist practices were somehow to be accommodated within a democratic framework.

of *panchayati raj* and the more recent establishment of village courts would revive the old system sufficiently to keep peace in the villages. They at least comforted themselves that it would be harder for villagers to lie to the *pancha* who lived in the village.

Although the lawyers professed adherence to the principles of the modern law system and saw to it that the procedural safeguards for their clients were observed, an outsider could not know if these were understood to be functions of justice or only the ritualized technicalities of an imposed legal order. During the portion of the interview devoted to a self-evaluation by the lawyer, one sensed the conflict imposed on him by the procedural requirements of the modern law on the one hand and certain ideal concepts of Indian social relations on the other. Protection of the rights of the individual requires the lawyer to encourage a confrontation between injured and accused parties and to accept the idea that justice is the product of a decision-making process where one party is right and the other wrong in accordance with the law. But the lawyer knows that the rendering of justice in this way will sometimes mean only a prolongation and strengthening of a dispute since one party may remain dissatisfied. Securing justice for the individual can then have the effect of even greater disruption of community life.

The Indian ideal of communal harmony is based on values of tolerance and accommodation of differences, and on status determined by caste membership, and is supposedly manifested in traditional methods of arbitration and reconciliation used in conflict resolution in Indian villages. Perhaps a desire to be associated with the ideal concept prompted a number of lawyers to make known their efforts to reconcile parties to a dispute and to stress the fact that they often made recommendations for settlements out of court.

The frustrations deriving from the lawyers' situation were expressed in such terms as these: a Kayastha advocate of great repute told me that he was honest and, therefore, not rich. Dishonesty seemed to be inherent in legal practice, and ultimately corrupt work would corrupt the man. (This man wanted to be a professor.) A lower caste lawyer felt that there was a gap between morality and legality and that too often legal principles prevented him from rendering moral justice. A Brahmin advocate (a "socialist") commented that judicial principles were less the determinants of the outcome of a trial than the prestige and wealth of a client. The law was not a profession where you could remedy society's ills. He preferred to help people by working in the

Congress Party. A corporation lawyer in Delhi (a "Gandhian") told me that "there was not much scope for the truth" in Indian litigation. This was because of the technical insistence of the law on "corroboration of testimony" and the pressure on opposing parties to make the most secure cases possible. Respect for the truth could result only from an improvement in the moral character of men. Attempts to impress witnesses with the necessity for telling the truth by stressing either the secular or religious sanctity of the oath would have no effect in the present situation.

To be sure, the lack of integrity felt by many advocates to be inherent in the profession was often attributed to the overcrowding of the legal profession, low fees, and the temptations presented by the low pay of the magistrates. Competition among lawyers for clients led to dishonest practices like coaching of witnesses, petty bribery of lower court officials and spurious pleading. But it was the sense of alienation from the higher values of Indian society which seemed to this observer to be more fundamental in creating the lawyers' self-image.[25]

CONCLUDING REMARKS

In his professional role as well as in his private life, the man who is engaged in the private practice of law at the district level is not likely to be an active agent of social and political change. By and large, district advocates are members of India's small but growing middle class and are, therefore, likely to be the beneficiaries of the present social and economic order. They are a politically and ideologically heterogeneous group, but the great majority are not seeking radical change in their society.

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25. Of course, many of the dilemmas implied in the lawyers' responses are not peculiar to the Indian legal profession. But the lawyers' attitudes toward themselves may reflect what others think of them. Arthur Von Mehren makes the point:

> In societies in which the law in the books does not reflect fairly accurately the community's accepted and operative values, the lawyer tends to be looked upon as a manipulator. Individuals turn to law and to lawyers when their behavior and their values are not those that are generally accepted. The law and the lawyer provide official sanction and support for such deviant behavior. . . . The politician, the economist, and the engineer remake the society; the lawyer tends to be looked upon as a kind of manipulator or fixer who, in many ways, fails to represent society's basic values and attitudes.

A. Von Mehren, *Law and Legal Education in India: Some Observations*, 78 HARV. L. REV. 1180-89 (1965).

Moreover, graduates of Indian law schools, whether they are in private practice or in the judicial service, have been trained to apply the law, not to create policies or invent agencies designed to facilitate the modernization of Indian life. Even in matters related to the legal profession, the advocates are not interested in innovation. They are complacent about the law school curriculum and have few ideas about reforming the court system and the law. These lawyers are technically competent men with a limited range of social and professional contacts and a limited ability to see beyond the horizons of their present situation. Young lawyers who recently have been recruited from lower caste ranks have ties to village life and capabilities which would be useful in developing agencies to coordinate the adjudicatory process in the villages and the town courts, but these men are too concerned with consolidating their new status to risk ventures into reformism.

Nonetheless, district lawyers are critical links between the modern and traditional cultures in India. Compared to their rural clients, the advocates are men of modern outlook. Without indices of rationalism, secularism, and democratic approach, one can only assert, on the basis of observation, that the lawyers have these qualities to a considerable extent. Some advocates participate in semitraditional associations, but help to give them a modern cast. The relative modernity of the lawyers does not mean that they will serve as models of the new man in India. The scope of their activity and contact is too restricted for their way of life to be communicated to the villagers who come to town. There are severe limits on the lawyer's office and the town court as arenas where men who know only the social ways of the village can gain a new awareness of themselves as individuals and as members of a larger national society.

To argue that the district lawyer's function as a cultural broker is limited is not to deny its importance. But to conceive of the lawyer's role in the development of Indian society only in terms of networks of personal interaction is to take too narrow a view of his function. Lawyers are among Professor Shils's "sober, task-oriented, professionally responsible stratum of the population" [26] who utilize skills which have great significance for the sociopolitical modernization of India. By virtue of their membership in a functional group, lawyers directly and indirectly help to transform the attitudes and beliefs of the Indian people about public authority.

26. A. Beteille, *Elites, Status Groups, and Caste in Modern India,* in INDIA AND CEYLON: UNITY AND DIVERSITY 242 (Philip Mason ed. 1967).

In the first place, the lawyers are a force for the conservation of constitutional government. They are guardians of the modern legal order because they have a vested interest in its perpetuation (including apparently those lawyers who vote Communist), and they act to stabilize the existing political system. The lawyers maintain institutions where individual grievances can be rectified and social conflict is reduced. The state law courts are available to village Indians as alternative machinery for dispute settlement. In time, the use of the modern courts will become more widespread and the legitimacy of the entire legal-political system will be enhanced.[27]

Secondly, within the profession lawyers maintain a network of communication whereby common concepts for the governance of India, in a common language at present, are circulated through a national court system. When public policies decided by justices of the Supreme Court in New Delhi can be disseminated rapidly and widely throughout the country, there is another factor operating to create national unity. By participating in the court system, transmitting court information to the newspapers, and communicating within their middle-class sector, lawyers broadcast and defend both the substance and the form of the judicial process.

Finally, the legal profession, functioning in a democratic framework, facilitates the extension of the essential and auxiliary norms of political democracy. The lawyer shares in a judicial system where the basic process is predicated upon principles of individual merit and equal treatment under law, and upon voluntary contractual, as opposed to status, relationships. The lawyer also lends his support to other elements of a democratic system because they are important to the functioning of his profession—the civil rights of free speech, a free press and freedom of assembly. Whether any of these are the accepted values underlying the advocate's own social relationships, or are held by him to be intrinsic to his work, or whether these norms are at present transmitted to any great degree to the illiterate peasant who comes occasionally to the town court is of less importance than the lawyer's role in their maintenance in the public order.

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27. This assertion rests on two related assumptions which may not be realized: 1) that use of the urban state courts or their country relatives—the *nyaya panchayats*—will engender expectations of individual and group satisfaction, and 2) that institutional legitimation results when individuals in conflict situations achieve satisfaction in the courts. Where the effect of the adversary mode of adjudication is to aggravate complicated hostilities in village communities, Indians may prefer to adhere to more traditional arbitral tribunals using consensual techniques to settle their quarrels. The modern

APPENDIX I

A note on the field research. In the spring of 1966 I talked with perhaps eighty advocates and came away with forty more or less completed questionnaires, after a half dozen trial runs in New Delhi. The interviews were conducted according to the following schedule:

Town or City	Population	Number of Advocates in District	Number Interviewed
*Bhopal, M.P. (Sehore District)	185,374	100	10
Indore, M.P.	394,941		3
*Wardha, Maharashtra (Wardha District)	49,113	50	6
*Sambalpur, Orissa	38,915	68 (town) 120-130 (district)	8
Bargargh, Orissa	15,375	30 (subdivision)	3
Padampur, Orissa	Under 5,000	7 pleaders 5 mukhtars	2
Bhubaneswar, Orissa	38,211		3
*Puri, Orissa (Puri District)	60,815	70	5

* The four towns of my title.

The advocates were easy to interview. They were usually rather pleased to have been sought out and were accommodating and quite full in their disclosures. Their accessibility was another matter. Hours of a day can be consumed in arranging an appointment, locating the advocate (try finding an address like "Inside Itwara" in the tangle of lanes in the old quarter of Bhopal), and waiting for his appearance, all of which suggests that the lawyer, except through the intervention

goal of justice for the individual citizen may not be felt to be as important as the cohesion and dignity of the group. There are, of course, other structural sources of modernization at work simultaneously in India—the electoral and party system, industrialization and rural community development—which also appear to produce internalized changes in the individual's conception of the political self. Thus, changes in the economic, political and social realms should tend to support the modern legal culture; but we know, too, that modernization processes can mean disruption of community life and individual alienation and we certainly cannot anticipate value changes which will result in the automatic legitimization of contemporary institutions of public authority in India. For a full and excellent discussion of the problems of social change generated by the coexistence of dual legal cultures in India, see L. I. RUDOLPH and S. H. RUDOLPH, THE MODERNITY OF TRADITION, Part III (1967).

of an intermediary, may be quite inaccessible to the Indian villager. The interviews themselves presented different problems.

1. *Communication.* Although all advocates in India have knowledge of English—legal education in India is conducted entirely in English and English is still the working tool of the profession and the official language of the courts (down to the district level)—English is not usually the language of the advocates' everyday life. At work, advocates discussed problems with each other in a mixture of English and the regional language. With me, communication was often strained: expressions were misunderstood and interviewees professed not to follow my "accent" (the reverse was certainly true). It was often helpful to present a printed copy of the questionnaire to the advocate during the interview. Even then, common language did not always bridge cultural barriers or differences in conceptualization.

2. *Role of the interviewer.* Gerald Berreman has written perceptively (and alarmingly) of the "participant observer" that "the nature of his data is largely determined by his identity as seen by his subjects." [28] There was a question in the minds of some of the advocates interviewed about the purpose of my work. I was not helped by the fact that my arrival in India coincided with a renewed interest on the part of Indian intellectuals and politicians in the American CIA, stimulated apparently by a series of articles appearing in the *New York Times* in April 1966. The suspicion, actual and potential, attached to my presence in town was mostly dissipated through conversation and also by being introduced among the advocates by one of them who was respected (although that could carry its own burdens). In Sambalpur, access was complicated by the fact that I simultaneously conducted research on a second project—a study of the election of the opposition Member of the Lok Sabha from Sambalpur District. This work often put me in the very different company of lower caste and dissident members of society. Although their impression of lawyers and the work of the courts was valuable, I had to guard against full acceptance of their disclosures—for example, probably exaggerated estimates of the corruption in officialdom. I at least tried to remain aware of the possible effect of my divided affiliations on the responses of individuals in both groups. I believe that somehow I was assigned the correct status of

28. G. D. BERREMAN, BEHIND MANY MASKS (Society for Applied Anthropology Monograph No. 4, 1962).

outside observer, albeit a partial participant, and that I was by and large a neutral factor in the interviewees' calculations. In a few places where the political situation created by opposition campaign tactics became tense, I deliberately sought a balancing element by associating myself with Congressmen and administrative officers.

Beyond these obstacles lay the barrier of the protection of the respondent's image of himself as it was presented to the observer. Since educated Indians tend to be sensitive to discrepancies between Western textbook models of democratic government and their own developing system, the Indian advocate probably exaggerates his adherence to the "officially accredited values of the society"—in this instance of the modern democratic legal culture of which he is a major representative. My identity as an American professor of political science—hence, a representative of the "correct" set of values projected by my respondents—reinforced the difficulty of penetrating what Berreman refers to as "backstage regions" of behavior and thought. With some advocates I had the time and opportunity to become a "neutral confidante," but with others I am sure the screen of "impression management" remained unpenetrated and that my data suffer from the resulting distortions.

3. *Privacy.* Lack of privacy further complicated the interviews. Conversations conducted in the court "bar rooms" were sometimes attended by several Indian "participant observers" who did not hesitate to correct or interpret the responses of the interviewee. In the lawyer's office, clerical help, clients, and that general assortment of kinsmen and friends surrounding most Indians were often present in the room. Halfhearted attempts by the advocate or by me to achieve privacy were futile. Casual remarks made subsequent to the interview in a coffee house or during a meal were sometimes corrective and often more revealing than the interview response.

APPENDIX II

A QUESTIONNAIRE FOR LAWYERS

CONDUCTED BY: PROF. PETER ROWE
Dept. of Gov't
Smith College
Northampton, Mass.
U.S.A.

NAME: .....

ADDRESS: ..... DATE: .....

LOCATION OF INTERVIEW: .....

AGE: ..... CASTE: .....

EDUCATION: Pre-legal .....

Legal .....

PROFESSIONAL LIFE:

Did you want to be a lawyer? .....

Did *you* decide on a legal career? .....

Your parents decide? .....

Are there other lawyers in your family? .....

What is your Father's work? .....

Your brothers' work? .....

Have you tried other work? .....

Did you consider other alternatives? .....

Have you income from other sources? .....

Non-legal work? .....

Are you a member of a firm? ..... Have partners? .....

How many years have you been in practice? .....

Are you a member of a political party? .....

Which? .....

Why did you decide to locate here? .....

How did you get your first clients? .....

Do you get more of one type of case than another? .....

How do your clients find you? .....

Do people come to you for other kinds of advice? .....

Non-legal advice? .....

Do you sometimes recommend settlement out of court? .....

Often? .....

Are many of your cases appealed? .....

Do you have non-professional assistance? .....

Have you ever used touts? .....

What courts do you practice in most? .....

How many advocates are practising in this District? .....

EVALUATION OF PROFESSIONAL EXPERIENCE AND LEGAL SYSTEM TODAY:

Has being a lawyer turned out like you expected? .....

Are you glad you are a lawyer? .....

If not, what would you prefer? .....

Would you want your son to be a lawyer? .....

What else? .....

Are you better off than your Father when he was your age? .....

Do you think the present legal system works well? .....

Poorly? ..... Needs change? .....

What kind of changes? .....

Make it simpler? ..... Less expensive? .....

More Indian? ..... More socialist? .....

More Hindu? .....

More stress on conciliation? .....

Is the system better since Independence? .....

Would you say corruption is increasing? .....

Decreasing? .....

Have you had any problem with false testimony? .....

Other lawyers preparing witnesses in advance? .....

Has legal profession improved in quality since Independence? ..... Declined? ..... Same? .....

Are courts as good? ..... Worse? .....

Conducted all right? .....

What do you think of some of the recent social reform legislation? .....

Have you any professional contact with:

Hindu Marriage Act? .....

Hindu Succession Act? .....

Untouchability Offenses Act? .....

Zamindari Abolition Acts? .....

Do you subscribe to any law journals? .....

What books in your office? .....

Do you ever have time to read the AIR or the SCR? .....

Are your records kept in English? .....

Regional language? .....

CHARACTERISTICS OF CLIENTS:

What class of persons come to you chiefly? .....

Their occupations? .....

Economic status (income)? .....

Their caste? .....

From how far away do they come? .....

Do you ever turn away clients? .....

For what reasons? .....

How do you determine your fee? .....

Do your clients understand the principle of law in their cases? .....

Do you often explain the procedures involved in the case? .....

Do they understand why they won or lost a case? .....

Do you feel that many disputes are settled according to local custom which is contrary to the modern law? .....

Do you feel that there is much evasion of the modern law (especially personal law)? .....

If they are literate, have your clients been taught anything in school about fundamental rights? .....

Articles 14, 15 or 16, for example? .....

Have they heard of the Hindu Code bills? .....

Do they know what a writ is? .....

Do you think anything can be done about the problem of perjury? .....

Should there be a different oath in the court? .....

In your opinion, have court decisions ever been changed because the local custom is different from the modern law? .....