Contemporary Indian society presents a rather bewildering and bizarre scenario of public power. People wielding public power, and public institutions generally, seem loathe to perform their constitutional and legal duties efficiently and equitably, and the burden of nudging sister public institutions to the performance of their tasks increasingly tends to fall upon the governing institutions of India, and on the judiciary. When vice chancellors fail to manage universities, Courts have to intervene;¹ when the Inspector General of Prisons fails in his duties, the Supreme Court has to intervene;² when the District Magistrates fail to discharge their duties under the Bonded Labour System (Abolition) Act, 1976, the Supreme Court has to take over the implementation of the law;³ when labour laws are not enforced by relevant authorities, appellate judiciary has to ensure modicum implementation.⁴ The examples can be multiplied, but the capital point remains namely, when the executive as governing agency tends to act in lawless ways,⁵ judicial activism becomes necessary to preserve the legitimation of the constitutional political order.

Judicial activism, of the type witnessed through the imposing social action litigation (SAL), commonly miscalled public interest litigation (PIL), has been made possible by the emergence of 'activists', especially after the catharsis of the 1975-1976 emergency.⁶ All kinds of groups now activate courts through
letters treated as writs (epistolary jurisdiction—a unique contribution of Indian jurisprudence to humankind).

The harsh fact, of course, remains that 'activism' and 'activists' thrive on the pathology of public power and breakdown of public institutions and ethics. The greater the carcinogenic growth of despotic public power, the greater the countervailing growth of activism. At least, the contemporary history of India for the last decade testifies to this trend. Social action groups (SAGs)—a term which I had the privilege of introducing in the Indian discourse on new politics—typically shun party-politics. When they begin to be effective at micro or macro levels, deriving legitimacy from the same source, namely the Constitution of India, as political party formations, those occupying public authority try to delegitimate them in a variety of ways. The SAGs, at least the powerful among these, are seen to threaten the bourgeoisie political order, resting on party machines and loyalty to the el supremo. Ideologically, they are combated as 'non-party formations', even by the left ideologues. The liberals tend to treat these formations, especially when they expose the inadequacies of their credo, as uneasy growths of interest-group pluralism. On the ground, all attempts are made to delegitimate SAGs by propaganda (the Indian political establishment would have invented the CIA if it did not exist), surveillance (in the title of law and order), legal and extra legal modes of repression and co-optation. Instead of heeding these voices of dissent, and therefore of sustenance of democracy, the wielders of public power are preoccupied with delegitimizing the SAGs and limiting their effective reach in terms of credible social action. In turn, SAGs tend, out of politics of survival, from time to time to adopt tactics of compromise and co-optation; and thus develop their own pathologies of countervailing power, adding to the already staggering burdens of the impoverished masses of India.

The SAGs-prejudiciary nexus making social action litigation possible, has now reached impressive proportions. The answer of the political establishment to this formation is crystal-clear: 'We shall not be overcome!' So, court orders, even the Supreme Court directions, are not implemented. These orders become necessary in the first place because the State authorities do not behave in accordance with the law and the Constitution is not obeyed. Like everything Indian, even the lawlessness of the Indian State is 'twice-borne'. It is in this context that one needs to look at the possible roles of SAGs in the arena of implementation of labour legislation.

In the organised sector, trade unions (which are, by and large, co-opted by major political parties) present a challenge and an opportunity for SAGs. Trade Unions have primarily focussed on the struggle for security of service, wages and emoluments. There is no adequate empirical literature on how trade unions in India have fostered a working class consciousness, or, in other words, what they have achieved in terms of transformation of the working class as a class-in-itself to class-for-itself. But available literature points to a provenance of 'baby-coolie culture' in the emergence and growth of trade unions. Kurianose Mankottam in a study of TISCO Unionism, has also come to a similar conclusion:

...the Jamshedpur case proves that the Indian labour force is extremely diverse in aspirations and ideology. It lacks homogeneity of structure and interest. The easy availability of labour coupled with a high level of unemployment makes the Indian work force unstable and incoherent in itself. The cross-cutting alliances of caste, regionalism and wage differentials pull industrial workers apart instead of bringing them together as a viable organised group.

In addition, the phenomenon of the company union is not unknown to India. As a member of the second Labour Law Reviews Committee of Government of Gujarat, I was astonished to find verbatim similarity in the representations of the Major Mahajan and Ahmedabad Textile Millowners Association (ATMA)! Gandhiji's call for capital-labour amity could not have been denatured more thoroughly!

Given the objective and subjective conditions (indicated all too briefly here) it is unrealistic to expect that social action would make critical interventions for promotion of working class consciousness. Certainly, the pathologies of trade union leadership and power need to be critiqued and exposed, but this too entails the cost of weakening the trade unions movements, such as they are. SAGs have to ponder new ways of
social action which will encourage articulation of subaltern movements within the trade union formations.

Perhaps, one way to do this is for the SAGs to be active in arenas of legitimate concern of trade union movement, but to which the movement attaches low or no priority. For example, the so-called workers education programmes need attention by social activists, as a potential source of dialogue on the nature and future of working class consciousness in India. Similarly, the entire arena of safety at work and occupational diseases lies virtually unattended by the trade union movement in India. The confiscation of worker's health is considered legitimate in practice, which principle is enshrined in the law repudiate. Bhopal is in the true sense a tragic symbol of our pattern of industrialisation which expropriates workers' health and eventually their lives.

We do not have sufficient accumulation of experience to devise even an activist agenda of critical interventions in the arenas of worker education and worker safety. But it is clear that in any such agenda awareness of the emancipatory potential of the law should feature prominently. The existing law, however imperfect and difficult of implementation, proclaims standards and entitlements, full consciousness of which is an important component of a struggle for its implementation and its eventual reformulation. The existing law seeks to discipline capitalists. Unlike Karl Marx who celebrated the introduction of ten hours law as a magna carta for labour, we have to find and indeed create occasions to celebrate the implementation of the existing laws.

It is this understanding of the agenda of struggle over implementation which will dialectically bring us closer to their reformulation. The horror, for example, of the schedule of the Workman's Compensation Act providing a tariff of compensation in terms of the differential in rupee value on loss of limbs, will catch our consciousness more vividly. So will the pathology of the Employees' State Insurance Scheme.

In a sense, the agenda for activist struggle in the domain of the unorganised labour is partly defined by the plethora of state legislations, but the terrain of the struggle, of course, differs. The struggle for enforcement of minimum wages or for effective abolition of bonded labour becomes more than a struggle to enforce the law which exists; rapidly, and at an accelerating scale, it becomes merged in a struggle against the lawlessness of the Indian State, which allows sustained repression of movements for minimum wages promised to the toiling masses by the very State law itself. The State resorts to direct repression by perceiving the movements to be threats to law and order or as 'naxalite' movements. Even the CRPF is often called in to quell the demands of bidi workers for a meagre raise of a few paisa in collecting the leaf or rolling bidis (Baxi, 1985). But more often the state plays the role of a hostile bystander; it refuses to admit or recognise as such the lawless repression (criminal activities) by the landlords and their militia against SAGs who endeavour to realise the promises of the law.

The terrain is different when the SAGs seek to marshal judicial activism as an instrument of pressure on the executive to implement the law. Social action through litigation has thus created a possibility where the SAGs encounter the State in adverse relations, but in which the State cannot use directly legal or extra-legal repression on the activists. The executive disinclined to implement the law, or to maintain the equilibrium of the local relations of dominance has to evolve a whole variety of second order strategies, such as dilatoriness in carrying out the order of the court or projecting a misleading appearance of compliance (following the maxim that the 'paper endures everything'), or to eventually pack courts with 'non-activist' justices. The social action litigation processes often succeed dramatically when an activist court is inclined to innovate and follow through as the success story of the Gujarat High Court's handling, involving the South Gujarat University in the administration of justice (SGU; 1985). Even with courts not so well disposed, social action litigation making dramatic, but essentially simple demands for enforcement of the law as it stands, has reasonable immediate short-term prospects of success. Be that as it may, the capital point here is the strategy itself: creation of high visibility pressure for implementation of the law assisting the more conscientious among the bureaucrats and politicians, successful avoidance of martial exercise of State power against activists, and promotion of dialogue among the State, activists and people.

A different terrain is involved in SAG activism which seeks to
manipulate bureaucratic contingency. Here the principal strategy is to build a network of sympathetic bureaucrats who will assist, with low visibility, the struggle for implementation at micro-levels. Sympathetic officials, and they do exist in this land of miracles, help avoid confrontations and potential for overt repression; they also assist the SAGs in building their credibility in the local areas of operation. But this operation of empathy may in turn generate new dependencies; it may also make the SAGs virtual extensions of development bureaucracy and may eventually retard whatever potential there might be for self-reliant, participatory development of the impoverished. If there is a long-term danger of not overcoming when one walks thus hand-in-hand, there is the short-term advantage of amelioration and legitimation of activism at grass roots level.

The most difficult terrain is, of course, for the very brave activists, whom I respect, who endeavour to create consciousness of oppression as a real operative, historic basis for struggle for liberation. The fashioning of the new future for the impoverished through their own rejection of passivity and through revolutionary praxis is a heroic endeavour. Condemnation of this as left-adventurism by the high priest of Marxism or as extremism by the high priest of the establishment which does not show the poverty of revolutionary impulse but poverty of mind and sensibility on the part of those who arrogate themselves to the judgement seat, and thus to distort history. Negation of subalternation is seen by such SAGs as a foundational prerequisite for any struggle for justice and rights.

The casualties on this terrain are very high, so high indeed that even the Doordarshan through its Sunday regional films and special telefilms is compelled to document these, despite its attempted closure of the PIJ in Gujarat. The power of the State manifests itself with all the gory splendour of its rawness: and bullets on both sides are the ultimate result, making the status quo ante, at each step, bloodier than ever before and therefore also more precarious in the eye of history. This process goes on in India, bypassing the majestic obligations to organise the landless poor (for their betterment) undertaken by the Government of India as an internationally binding legal obligation under the ILO Convention 141, which it is constitutionally enjoined to observe in letter and in spirit.

Thus, there are a whole variety of ways, revolutionary and non-revolutionary, for activism in the domain of organised and unorganised labour. Even the non-revolutionary paths have a high potential of achievement. The dominant formations have, of course, their ways of characterising even the non-revolutionary ways (the first terrain) as insurrectionary moves. But, fortunately, imaginative use of legal processes is adequate to unmask this type of labelling. What is more, such uses provide admirable foil to overt repression through force. The function of the Indian Constitution to act both as a shield and as a sword to those who espouse the cause of the impoverished is thus partially fulfilled. What we now need is the critical mass of SAGs, in this domain to unfold the meaning of decolonisation and the promise of freedom.

REFERENCES