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LAW, POVERTY AND DEVELOPMENT

Unit – I: Understanding Poverty and Development

i. Poverty:

Poverty is general scarcity, dearth, or the state of one who lacks a certain amount of material possessions or money. It is a multifaceted concept, which includes social, economic, and political elements. Poverty may be defined as either absolute or relative. Absolute poverty or destitution refers to the amount of money necessary to meet basic needs such as food, clothes, etc. It doesn't involve a wider or broader life issues such as inequalities. Relative poverty involve economical status, individual social and cultural needs. After the industrial revolution, mass production in factories made production goods increasingly less expensive and more accessible. Of more importance is the modernization of agriculture, such as fertilizers, to provide enough yield to feed the population. Responding to basic needs can be restricted by constraints on government's ability to deliver services, such as corruption, tax avoidance, debt and loan conditionality's and by the brain drain of health care and educational professionals. Strategies of increasing income to make basic needs more affordable typically include welfare, economic freedoms and providing financial services. Poor people have less access to health and education. They also face malnutrition, hunger and have little or no interference in the society

ii. Relative Dimensions Of Poverty:

Berstein Henry (1992) has identified four dimensions of poverty:

- (1) Lack of livelihood strategies,
- (2) Inaccessibility to resources (money, land, credit),
- (3) Feeling of insecurity and frustrations, and
- (4) In-ability to maintain and develop social relations with others as a consequence of lack of resources.

Three precepts are often used to define poverty:

- (i) The amount of money required by a person to subsist,
- (ii) The life below a 'minimum sub-sistence level' and 'living standard' prevalent at a given time in a given place, and
- (iii) The comparative state of well-being of a few and the deprivation and destitution of the majority in society.

The last approach explains poverty in terms of relativity and inequality. Whereas the first two definitions refer to the economic concept of absolute poverty, the third one views it as a social concept, that is, in terms of the share of the total national income received by those at the bottom. We will explain each of the three views separately.

According to the first view, in terms of a minimum income required for subsistence, poverty has been defined as "an inability to gratify the physiological needs, that is, need for survival, safety and security". These physiological needs are different from the social needs (ego-satisfaction and self-esteem), the need for autonomy, the need for independence, and the need for self-actualisation. The minimum requirements for fulfilling the physiological needs are food and nutrition, shelter, and preventive and protective health care. This requires 'minimum' income (varying from society to society) to buy necessities and avail oneself of basic facilities. Here, 'poverty' is perceived in terms of 'poverty line' which is determined by the prevailing standards of what is needed for health, efficiency, nurturing of children, social participation, and maintenance of self-respect. In practice, however, poverty line is drawn on the basis of the barest minimum desirable nutritional standard of calories intake. In India, poverty line is drawn on the basis of per capita (adult) daily intake of 2,400 calories for the rural and 2,100 calories for the urban areas. On the basis of this, the monthly per capita consumption expenditure can be worked out.

The minimum consumption expenditure in our country, as recommended in 1962 by the Perspective Planning Division of the Planning Commission and calculated on the basis of 1961 prices, was Rs. 100 for a household of five persons in the rural areas and Rs. 125 in the urban areas. This came to Rs. 20 per capita per month in the rural areas and Rs. 25 in the urban areas.

In 1978-79, this was worked out as Rs. 76 for the rural and Rs. 88 for the urban areas, while in 1984-85, the revised poverty line was drawn at a per capita monthly expenditure of Rs. 107 for the rural and Rs. 122 for the urban areas. At 1993-94 price level, a person in a rural area required

an income of Rs. 229 and in an urban area Rs. 264 per month to fulfill his food and other basic requirements.

They can be classified into four sub-groups:

- (i) The destitute (who spent less than Rs. 137 a month at 1993-94 prices),
- (ii) Extremely poor (who spent less than Rs. 161 a month),
- (iii) Very poor (who spent less than Rs. 201 a month), and
- (iv) The poor (who spent less than Rs. 246 a month).

The second view on poverty maintains that poverty has three main aspects of want of material goods or materialistic possessions:

- (i) Those necessary to avoid physical suffering and needed to fulfill the requirements of hunger and shelter, that is, those needed to survive;
- (ii) Those essential to meet human needs of health, that is, to get nutrition and to avoid disease; and
- (iii) Those needed to maintain a minimum subsistence level. In simple terms, this refers to a minimum amount of food intake, adequate housing, clothing, and health care. At the 1993-94 price level, this refers to the ability to spend Rs. 259 a month (per person) in the rural areas and Rs. 294 a month in the urban areas.

Gross and Miller attempted to explain poverty in terms of three factors: income (covert and manifest), assets or material possessions, and availability of services (educational, medical, and recreational). But others have considered the concept of poverty with this perspective elusive. For example, in the United States, out of those families living 'below the poverty level' in

1960, 57.6 per cent had a telephone, 79.2 per cent owned a TV set and 72.6 per cent possessed a washing machine.

The assets or the material possessions, therefore, cannot be the basis of specifying poverty. Likewise, poverty cannot be related to the 'income' factor. If there is an increase in the price level, people may not be able to provide the necessities of life for their family members. Obviously then, poverty has to be related to time and place. The third view defines poverty as a condition of falling below the minimum standards of subsistence appropriate to each society, or "the ab-sence of enough money to secure life's necessities", or "a condition of acute physical want—starvation, malnutrition, disease, and want of cloth-ing, shelter and medical care". The latter is measured by comparing the condition of those at the bottom of the society with the other segments of the population. It is, thus, a matter of subjective definition rather than of objective conditions. Poverty is determined by the standards that exist within a society. Miller and Roby have said that in this ap-proach, poverty is sharply regarded as 'inequality'. From a sociological point of view, this definition is more important in terms of the impact which inequality of income has on the life situation and life chances of the poor. Absolute poverty can be reduced/eliminated by putting money into the hands of the poor but 'inequality' cannot be contained by mov-ing people above a certain relative line. As long as there are people at the bottom of the income scale, they are in some way poor. Such a condition will continue to exist as long as we have social stratification.

Harrington defined poverty with reference to 'deprivation'. According to him, poverty is the deprivation of those minimal levels of food, health, housing, education and recreation which are compatible with the contemporary technology, beliefs and values of a particular soci-ety. Rein identifies three elements in poverty: subsistence, inequality and externality. Subsistence emphasizes provision of sufficient resources to maintain health and working capacity in the sense of sur-vival, and capacity to maintain physical efficiency. Inequality compares the lot of individuals at the bottom layer of stratified income levels with that of the more privileged people in the same society. Their deprivation is relative.

Externality focuses on the social consequences of poverty for the rest of society, apart from the impact on the poor themselves. Socio-logically speaking, the poor are caught up in vicious

circles. Being poor means living in poor neighborhood, unable to send children to schools, low-paying jobs or no jobs at all, and doomed to remain poor forever. Also, being poor means eating poor food, having poor health, accepting low-paid work, and remaining poor forever. Thus, each circle begins and ends with being poor. No wonder, sociologists like Thomas Gladwin give more importance to 'inequality' or the social concept of poverty.

iii. Measures and Determinants Of Poverty:

During the last four decades of planning, the Indian Economy has witnessed a number of changes and the Indian economy stands on a different footing today. However, it is a sorry state of affairs that some of the major basic problems are no less serious today than what they were thirty years back. It may appear paradoxical but it is true that in spite of planned efforts to eradicate the problems of poverty has been increasing in India.

Nearly 50% of our population has been living below the poverty line continuously over a long period. Hence urgent action is necessary to devise an immediate plan of action to remove poverty. The strategy for removal of poverty is not enough. On the basis of past experience and difficulties uncounted in implementations of programmes appropriate steps should be taken to find out suitable alternatives for reducing poverty and inequality.

The major objective of planning should be elimination of poverty instead of giving emphasis on increase in national income.

In order to meet the problem of poverty various measures are to be taken. They are discussed below:

1. Poverty and unemployment are interrelated. Therefore, adequate employment opportunities should be created in rural areas particularly in agricultural sector. In order to eliminate agricultural unemployment it is necessary to improve agriculture in the country. Good seeds, good tools, good manure must be arranged for it if the production is to be increased. The major cause of agricultural unemployment in India is the dependence of

cultivation upon the rains. Thus, there should be a proper and good arrangement of irrigation through minor and major projects.

2. If conditions for marketing agricultural produce do not favor the cultivator, the increase in production will not alleviate the problem of agricultural unemployment. The organisation of the agricultural market will increase the income of the cultivator as well as improve the situation with regard to unemployment.

3. The total impact of land reform on rural formation has been for less than had been hoped for. Effort should be made to remove the loop holes in land legislations in order to make land reform more meaningful and effective additional lands should be redistributed among landless laborers, the marginal sub marginal farmers, so that they will be able to earn more. Effort should be made to provide the landless laborers with maximum of land by making barren land fertile.

4. Animal husbandry and cattle breeding have great potential, not only in unemployment but also in overcoming malnutrition. The government should extend special encouragement for animal husbandry, poultry and fish farming. Necessary training for poultry and dairy farming should be imparted.

5. An improvement in agriculture, not supplemented by any other corrective measure cannot provide employment to the increasing population. Besides the farmer should also get some work during that period of the year when he is not engaged in cultivation. Some of subsidiary industry, such cottage industry like furniture making, weaving, spinning, match, barked and ropes etc, can help to a considerable extent in removing unemployment.

6. In spite of the promise of industrial decentralization which never seems to arrive. There are some areas of small industries which could, in fact, be located in rural areas. A major element in creating employment in rural areas must mean a removal of some small industrial estates into purely rural areas. They will carry their power allocations with them and could then be an element in small scale industrialization in rural areas.

However, this by itself will not be adequate to foster rural industrialization in a dynamic sense. What is required is a new concept of modernization combining Indian Traditional rural artisan skills with power availability and with an appropriate technology. A substantial portion of value added can appear from units set up efficiently in areas where artisans can greatly increase their output by modernization of their technology.

7. There is the need to strengthen all the poverty alleviation programmes, particularly IRDP. All the organization deficiencies in an execution of the programme such as the shortage of technical and expert staff, delays in release of funds and inadequacies in funds, lack of proper co ordination should be removed. It is essential to see that the target groups are not wrongly selected to ensure leakage of benefits to the non poor. Other drawbacks in the programme implementation such as right and non-co-operative attitudes of the officials, corrupt practices in sanctioning of loans should also be taken into consideration.

Efforts are to be made to remove the deficiencies in the implementation of TRYSEM programme such as poor infrastructural support to enable the trainees to follow the pursuits, lack of co-ordination among DIC, banks and Training Institute and lack of follow up to the trained. Govt instead of sticking to only few traditional crafts, new vocations conducive for income generating activities should be selected in order to make TRYSEM and DWCRA programmes more effective. Adequate care is to be taken that while implementing JRY. The ingredient are not missed in it on the whole, for smooth implementation of various programmes the entire administrative set up should be properly co ordinate.

8. The personal disabilities of a person include illness, physical handicap, old age etc and for this the methods suggested are specialized health services, adequate wage provision to maintain health, other social security schemes and new vocational opportunities.

9. The recent increase in population and pressure exercised on the limited resources of the country has brought to the forefront the urgency of the problem of family planning and population control. Thus, family planning or family welfare programmes should be effectively implemented. Adequate awareness about small family norm has to be created among the people and steps should be taken to make it a people programme.

10. There is lack of political and social awakening among the rural people. The programme of poverty alleviation is not so simple as to be successfully solved by the Government, thus there is a great need for political and social awakening. People should be made aware of various programme and benefits of these programmes, so that people at the lowest rung of Rural Society may make substantial progress in making their lives more economically productive.

Eradication of poverty needs a multiplied strategy. But as things stand the most important, indeed the central one, has to be the creation of massive wage employment opportunities both on private and public accounts in rural areas. Then other programmes will provide opportunities for the able and the enterprising. It is time resources organisation and skill is directed to this end, if poverty is to be tackled in the decade to come.

iv. *Issues related to Poverty in India:*

One of the sarcasm of technical developing world is the poverty which remains prevalent and uncontrolled. Poverty is old age observable fact suffered by countries at global scale. It is a very indistinct concept with varied implications and facades. Bhalla Surjit stated "there is a rich history of formal definitions of poverty, going back to the mid nineteenth century. It is an attempt to capture the bottom-half of the population, the have-nots, and the poor (2000:1). Traditionally, poverty is defined in terms of one dimensional approach of income and food intake capabilities. Dandekar and Rath determined the minimum acceptable income level in terms of 'nutritional deficiency' (1971). The concept of poverty thus goes beyond income and basic services. People who are under empowered, who are unable to participate in making the decisions, who are deprived of elementary education, health care, nutrition, water and sanitation, employment and wages and who pass many different inabilities and adversities like inequality of asset, unequal distribution, ignorance, corruption, lack of political power, lack of political will, natural calamities, inadequate governance, lack of opportunities of development, inappropriate public policies and programmes, lack of access to entitlements and many hurdles in the wellbeing of human beings are included in the group of poor.

Poverty is a matter of heated debate among academicians and policy-makers. The modern multidimensional approach is characterised with a bigger view and considers poverty as a withdrawal of essential productive assets and opportunities to which every human being should be entitled. According to this approach, defining poverty in terms of consumption expenditure misses the point. Assets and its distribution are major factor. The World Health Organization has described poverty as the greatest cause of suffering on earth. The traditional definition of poverty concerns the inability of a person to realize certain minimum basic level of consumption. The ability to consume, in a market economy, depends on the nominal expenditure and the commodity prices. The level of expenditure depends on the purchasing power, which, to a large extent depends on the income earned. Incomes are earned if jobs are held and, hence, the relationship between employment and the incidence of poverty. According to The World Bank (1990:26) poverty is "the inability to attain a minimal standard of living". The World Bank website on 'Poverty Reduction and Equity' defines poverty in comprehensive manner, saying, "Poverty is hunger. Poverty is lack of shelter. Poverty is being sick and not being able to see a doctor. Poverty is not having access to school and not knowing how to read. Poverty is not having a job, is fear for the future, living one day at a time. Poverty is losing a child to illness brought about by unclean water. Poverty is powerlessness, lack of representation and freedom." Principles of Amartya Sen offer useful alternative to understand poverty. Capability approach to understanding poverty goes beyond income and stresses the whole range of means, available to achieve human capabilities such as literacy, longevity and access to income. From this viewpoint, poverty is seen as the failure of some basic capabilities to function- a person lacking the opportunity to achieve some minimally accepted level of these functionings (Sen Amartya and Dreze Jean, 1999). Allan Cochrane stated that " A crucial aspect of poverty is the way in which it reduces ability of people to participate in the normal lives of their communities with stress being placed on the deprivation which results from the lack rather than low income itself." In bulk of theoretical literature, it is demonstrated that "Individuals, families and groups in population can be said to be in poverty when they lack the resources to obtain the types of diet, participate in the activities and how the living conditions and amenities which are customary or approved in the societies to which they belong" (Peter Townsend, 1979) .There resources are below those commanded by the average individual or

family that they in effect excluded from the normal living patterns, custom and activities. According to Galbraith John Kenneth (1970), poverty may itself be a source of poverty. This is because, it denies the nation from investment, revenues for education or purchasing power for customer product, which in turn, is an incentive to effort. Therefore, poverty continues itself.

Components of rural and urban poverty: Poverty has multivariate nature for which a single variant approach is insufficient. The components that constitutes vector of poverty are in terms of satisfaction and deprivation. There are nine components of poverty that include occupation and employment, income and asset, food, shelter, health, education, demographic features, values, interests and activities, power and politics.

DEVELOPMENT:

i. Perspectives

- a. Evolutionary perspectives-An evolutionary perspective has been UNproposed to explain why humans have personality and individuality. This perspective traces personality and individuality back to when the early humans were learning how to function in complex social groups. Many specialists from different fields have a general agreement that early humans saw themselves as a part of the group to which they belonged, rather than seeing themselves as individuals with independent personalities. In terms of personality at this time, the whole group was identical. A member of the group associated themselves as one with the tribe and therefore the responsibility rested in the group and not the individual. Kropotkin explained the importance of this by stating that because the primitive man identified his existence with the existence of his tribe it has allowed for mankind to reach the remarkable level present today. A small step of differentiation that later led to personality and individuality was the division of labor. This differentiation was necessary in order for the group to function in a much more efficient way. This differentiation became adaptive since it increased the groups functionality. These early humans then continued to develop personality and individuality, which stemmed from their group and the social interactions they encountered. Individual life, and thus individuality and personality essentially arose from collective life. In order to explain some of the variations in human personality and individuality it's possible to look at the evolutionary process of natural selection. Evolution introduced variations of the human mind, natural

selection acted on these by choosing which were the most beneficial and which led to a greater fitness. Since humans are so complex, many opposing personality traits proved to be beneficial in different ways. An example of this is that in some situations a more aggressive personality could be beneficial, yet a more submissive personality could be beneficial in another situation. Another type of selection helps to take on the evolutionary aspect of human personality and individuality. This type of selection is referred to as emotional selection. It considers emotions as the core emergence of humans in the world. The emotions of humans are what have led to the evolution of human personality and individuality. “The ability to adapt to all conditions of life is usually called, ‘intelligence,’ but is founded in the complexity and flexibility of the emotional system. The concept of emotional representation as a way of selectively modeling the environment is the key idea underlying our understanding of human individuality.” With these basic understandings introduced, hopefully it will help make more sense out of the development of personality.

- b. Lifespan perspectives-Classic theories of personality, such as Freud’s tripartite theory, and post-Freudian theory, including developmental stage theories and type theories, have often held the perspective that most personality development occurs in childhood, and that personality is stable by the end of adolescence. As recently as the 1990s, modern personality theorists concurred with William James’ 1890 assertion that, by age 30, personality is “set like plaster”.Currently, lifespan perspectives that integrate theory and empirical findings dominate the research literature. The lifespan perspective of personality is based on the plasticity principle, that personality traits are open systems that can be influenced by the environment at any age.This interactional model of development emphasizes the relationships between an individual and her environment, and suggests that there is a dialectic between continuity and change throughout the lifespan. Large-scale longitudinal studies have demonstrated that the most active period of personality development appears to be between the ages of 20-40. Personality grows increasingly consistent with age and plateaus sometime around age 50, but never reaches a period of total stability.Although change is less likely later in life, individuals retain the potential for change from infancy to old age.
- c. Influencing factors-

Personality traits demonstrate moderate levels of continuity, smaller but still significant normative or mean-level changes, and individual differences in change, often late into the life course. This pattern is influenced by genetic, environmental, transactional, and stochastic factors.

d. Genetics

Twin and adoption studies have demonstrated that the heritability of personality traits ranges from .3-.6, with a mean of .5. Heritability of .5 means that 50% of variation in observable personality traits is attributable to genetic influences. But a given genotype will lead to a certain phenotype only under the right environmental circumstances. In other words, the heritability of a trait may change depending on an individual's environment and/or life events. An example of the way environment can moderate the expression of a gene is the finding by Heath, Eaves, and Martin (1998) that marriage was a protective factor against depression in genetically identical twins, such that the heritability of depression was as low as 29% in a married twin and as high as 51% in an unmarried twin. Ultimately, emerging evidence suggests that genetic and environmental influences on personality differ depending on other circumstances in a person's life.

e. Environmental

With the effects of genetic similarity removed, children from the same family often appear no more alike than randomly selected strangers; yet identical twins raised apart are nearly as similar in personality as identical twins raised together. What these findings suggest is that shared family environment has virtually no effect on personality development, and that similarity between relatives is almost entirely due to shared genetics. Although the shared environment (including features like the personality, parenting styles, and beliefs of parents; socioeconomic status; neighborhood; nutrition; schools attended; number of books in the home; etc.) may have a lasting impact at the extremes of parenting practice, such as outright abuse, most personality researchers have concluded that the majority of "average expectable environments" do not have an effect on personality development.

The weakness of shared environmental effects in shaping personality came as a surprise to many psychologists, and spurred research into nonshared environment, or the environmental influences that make siblings different from one another instead of similar. Nonshared environmental effects encompass the variability in behavioral outcomes that is not explained by genetic and family environmental influences. The nonshared environment may include differential treatment by parents, individually distinct reactions to the shared family environment, peer influences, and experiences that occur outside the family. In adults, nonshared environment also encompasses the unique roles and environments experienced after leaving the family of origin. Further effects of environment in adulthood are demonstrated by findings that different work, marital, and family experiences are associated with personality change, and by the impact of major positive and negative life events on personality.

ii. *Development Index:*

The Human Development Index (HDI) is a composite statistic of life expectancy, education, and income per capita indicators, which are used to rank countries into four tiers of human development

UNIT-II

Constitutional Guarantees for the Poor

a. Equality and Protective Discrimination:

Our society has always been full of inequalities. It was a caste ridden, stratified hierarchical society, and a particular segment of the society had been denied the bare human rights. Their education, wages, living conditions, social status was dictated by the whims of upper strata of society, reducing them to destitution. The economic backwardness brought social awkwardness which consequently made them downtrodden and thus depriving them even of the dignity of life. In a society compartmentalised on caste basis, upper castes controlled the levers of power enabling them to run their whips, prejudicial to the interests of lower segments of the society. Lower castes had to serve the upper castes without having any say and grievance redressal mechanism. This inhumane and barbaric condition perpetuated for centuries, till "we the people" realised the malady impelling the framers of our constitution to think.

Any democratic society faces the challenge of harmonising two essentially contradictory political concepts--one, equality before the law irrespective of religion, caste, creed, race, and gender, and the other, social justice at the cost of the same commitment for equality before the law. Even a developed democracy like the United States is no exception to the rule and has taken recourse to affirmative action to ensure justice for the less privileged sections of the society at the cost of individual merit and equality of all citizens before the law. In India large numbers of people have experienced social discrimination through centuries on account of its peculiar institution called the caste system, efforts have been made to provide redress for these under-privileged sections, through the policy of reservations or quotas for them in jobs, seats in educational institutions and legislatures, and in governmental aid, loans and other developmental assistance.

In all, four under-privileged categories have either received benefits under the scheme or have been seeking such benefits, namely the Scheduled Castes (SCs) and the Scheduled Tribes (STs), the Other Backward Classes (OBCs), the religious minorities or sections thereof, and

lately, the women. This project discusses these categories from a political perspective. Its scope however, is limited to assessing the schemes both under operation as well as under consideration, only at the national level. The experiences of different states have been referred to only occasionally to provide an example or to make a particular point.

Meaning and Background

Protective discrimination is the policy of granting special privileges to the downtrodden and the underprivileged sections of society, most commonly women. These are affirmative action programs, most visible in both the United States and India, where there has been a history of racial and caste discrimination. The practice is most prominent in India, where it has been enshrined in the constitution and institutionalized.

The need to discriminate positively in favour of the socially underprivileged was felt for the first time during the nationalist movement. It was Mahatma Gandhi, himself a devout Hindu and a staunch believer in the caste system, who was the first leader to realise the importance of the subject and to invoke the conscience of the upper castes to this age-old social malady of relegating whole communities to the degrading position of “untouchables”. He also understood the political logic of inducting this large body of people into the political mainstream in order to make the freedom movement more broad based. By renaming these untouchables as “Harijans” (people of God) he tried to give this policy a religious sanction so as not to disturb the traditional sensitivities of the caste Hindus more than was really necessary.

The Constitution of independent India which largely followed the pattern of the Government of India Act, 1935, made provisions for positive discrimination in favour of the Scheduled Castes and Scheduled Tribes (SCs & STs) which constituted about 23% of the divided India's population. Besides reserving parliamentary seats for them they were given advantages in terms of admission to schools and colleges, jobs in the public sector, various pecuniary benefits for their overall development, and so on. The constitution indeed guaranteed the fundamental right of equality of all citizens before the law but it also categorically laid down that nothing in the constitution “shall prevent the State from making any special provision for the advancement of

any socially and educationally backward classes of citizens or for the Schedules Castes and the Scheduled Tribes”.

Some of the constitutional provisions which aimed at positive discrimination are:

Article 17: Abolition of “untouchability” and making its practice in any form a punishable offence.

Article 46: Promotion of educational and economic interests.

Article 16 and 335: Preferential treatment in matters of employment in public services.

330d 332: Reservation of seats in the Lok Sabha and State Assemblies.

b. Right to Basic Needs and Welfare:

Constitutional Courts are forums of principles. Development of constitutional law takes place when jurisprudential expansion of the contours of the rights enumerated in Part III of the Constitution and Part IV of the Constitution is undertaken. The article 21 of the Indian Constitution ensures right to basic needs and welfare of the poor people under following main heads:

i. Right To Work

Article 41 of the Constitution provides that “the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.” Article 38 states that the state shall strive to promote the welfare of the people and article 43 states it shall endeavor to secure a living wage and a decent standard of life to all workers. One of the contexts in which the problem of enforceability of such a right was posed before the Supreme Court was of large-scale abolition of posts of village officers in the State of Tamil Nadu in India. In negating the contention that such an abolition of posts would fall foul of the DPSP, the court said:

It is no doubt true that Article 38 and Article 43 of the Constitution insist that the State should endeavor to find sufficient work for the people so that they may put their capacity to work into

economic use and earn a fairly good living. But these articles do not mean that everybody should be provided with a job in the civil service of the State and if a person is provided with one he should not be asked to leave it even for a just cause. If it were not so, there would be justification for a small per-centage of the population being in Government service and in receipt of regular income and a large majority of them remaining outside with no guaranteed means of living. It would certainly be an ideal state of affairs if work could be found for all the able-bodied men and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But we are today far away from that goal. The question whether a person who ceases to be a government servant according to law should be rehabilitated by being given an alternative employment is, as the law stands today, a matter of policy on which the court has no voice.

But the court has since then felt freer to interfere even in areas which would have been con-sidered to be in the domain of the policy of the executive. Where the issue was of regulariz-ing the services of a large number of casual (nonpermanent) workers in the posts and tele-graphs department of the government, the court has not hesitated to invoke the DPSP to direct such regularization. The explanation was:

Even though the above directive principle may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. It is urged that the State cannot deny at least the minimum pay in the pay scales of regu-larly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labor. The Government cannot take ad-vantage of its dominant position, and compel any worker to work even as a casual laborer on starvation wages. It may be that the casual laborer has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that state. The Government should be a model employer. We are of the view that on the facts and in the circumstances of this case the classifica-tion of employees into regularly recruited employees and casual employees for the purpose of paying less than the

minimum pay payable to employees in the corresponding regular cadres particularly in the lowest rungs of the department where the pay scales are the lowest is not tenable . . . It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance.

In *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161, a PIL by an NGO highlighted the deplorable condition of bonded laborers in a quarry in Haryana, not very far from the Supreme Court. A host of protective and welfare-oriented labor legislation, including the Bonded Labour (Abolition) Act and the Minimum Wages Act, were being observed in the breach. In giving extensive directions to the state government to enable it to discharge its constitutional obligation towards the bonded laborers, the court said:

The right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity, but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation, for inaction on the part of the State in securing implementation of such

legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State.

Thus the court converted what seemed a non-justifiable issue into a justifiable one by in-voking the wide sweep of the enforceable article 21. More recently, the court performed a similar exercise when, in the context of articles 21 and 42, it evolved legally binding guide-lines to deal with the problems of sexual harassment of women at the work place.

The right of workmen to be heard at the stage of winding up of a company was a contentious issue. In a bench of five judges that heard the case the judges that constituted the majority that upheld the right were three. The justification for the right was traced to the newly inserted article 43-A, which asked the state to take suitable steps to secure participation of workers in management. The court observed:

It is therefore idle to contend 32 years after coming into force of the Constitution and particularly after the introduction of article 43-A in the Constitution that the workers should have no voice in the determination of the question whether the enterprises should continue to run or be shut down under an order of the court. It would indeed be strange that the workers who have contributed to the building of the enterprise as a centre of economic power should have no right to be heard when it is sought to demolish that centre of economic power.

ii. *Right To Shelter*

Unlike certain other ESC rights, the right to shelter, which forms part of the right to an adequate standard of living under article 11 of the ICESCR, finds no corresponding expression in the DPSP. This right has been seen as forming part of article 21 itself. The court has gone as far as to say, “The right to life . . . would take within its sweep the right to food . . . and a reasonable accommodation to live in.” However, given that these observations were not made in

a petition by a homeless person seeking shelter, it is doubtful that this declaration would be in the nature of a positive right that could be said to be enforceable. On the other hand, in certain other contexts with regard to housing for the poor, the court has actually refused to recognize any such absolute right.

In *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545 the court held that the right to life included the right to livelihood. The petitioners contended that since they would be deprived of their livelihood if they were evicted from their slum and pavement dwellings, their eviction would be tantamount to deprivation of their life and hence be unconstitutional. The court, however, was not prepared to go that far. It denied that contention, saying:

No one has the right to make use of a public property for a private purpose without requisite authorization and, therefore, it is erroneous to contend that pavement dwellers have the right to encroach upon pavements by constructing dwellings thereon . . . If a person puts up a dwelling on the pavement, whatever may be the economic compulsions behind such an act, his use of the pavement would become unauthorized.

Later benches of the Supreme Court have followed the *Olga Tellis* dictum with approval. In *Municipal Corporation of Delhi v. Gurnam Kaur*, (1989) 1 SCC 101 the court held that the Municipal Corporation of Delhi had no legal obligation to provide pavement squatters alternative shops for rehabilitation as the squatters had no legal enforceable right. In *Sodan Singh v. NDMC*, (1989) 4 SCC 155 a constitution bench of the Supreme Court reiterated that the question whether there can at all be a fundamental right of a citizen to occupy a particular place on the pavement where he can squat and engage in trade must be answered in the negative. These cases fail to account for socioeconomic compulsions that give rise to pavement dwelling and restrict their examination of the problem from a purely statutory point of view rather than the human rights perspective.

Fortunately, a different note has been struck in a recent decision of the court. In Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, (1997) 11 SCC 123 in the context of eviction of encroach-ers in a busy locality of Ahmedabad city, the court said:

Due to want of facilities and opportunities, the right to residence and settlement is an illusion to the rural and urban poor. Articles 38, 39 and 46 mandate the State, as its economic policy, to provide socio-economic justice to minimize inequalities in income and in opportunities and status. It positively charges the State to distribute its largesse to the weaker sections of the society envisaged in Article 46 to make socio-economic justice a reality, meaningful and fruitful so as to make life worth living with dignity of person and equality of status and to constantly improve excellence. Though no person has a right to encroach and erect structures or otherwise on foot-paths, pavements or public streets or any other place reserved or earmarked for a public purpose, the State has the constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful.

iii. Right To Health

The right to health has been perhaps the least difficult area for the court in terms of justifiability, but not in terms of enforceability. Article 47 of DPSP provides for the duty of the state to improve public health. However, the court has always recognized the right to health as being an inte-gral part of the right to life. The principle got tested in the case of an agricultural laborer whose condition, after a fall from a running train, worsened considerably when as many as seven government hospitals in Calcutta refused to admit him as they did not have beds vacant. The Supreme Court did not stop at declaring the right to health to be a fundamental right and at enforcing that right of the laborer by asking the Government of West Bengal to pay him compensation for the loss suffered. It directed the government to formulate a blue print for primary health care with particular reference to treatment of patients during an emergency.

In *Consumer Education and Research Centre v. Union of India* (1995) 3 SCC 42 the court, in a PIL, tackled the problem of the health of workers in the asbestos industry. Noticing that long years of expo-sure to the harmful chemical could result in debilitating asbestosis, the court mandated com-pulsory health insurance for every worker as enforcement of the worker's fundamental right to health. It is again in PIL that the court has had occasion to examine the quality of drugs and medicines being marketed in the country and even ask that some of them be banned.

A note of caution was struck when government employees protested against the reduction of their entitlements to medical care. The court said:

No State or country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizens including its employees. Provi-sion on facilities cannot be unlimited. It has to be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. The principle of fixation of rate and scale under the new policy is justified and cannot be held to be violative of article 21 or article 47 of the Constitution.

iv. *Right To Education*

Article 45 of the DPSP, which corresponds to article 13(1) of the ICESCR, states, "The State shall endeavor to provide, within a period of ten years from the commencement of this Con-stitution, for free and compulsory education for all children until they complete the age of fourteen years." Thus, while the right of a child not to be employed in hazardous industries was, by virtue of article 24, recognized to be a fundamental right, the child's right to educa-tion was put into the DPSP in part IV and deferred for a period of ten years.

The question whether the right to education was a fundamental right and enforceable as such was answered by the Supreme Court in the affirmative in *Mohini Jain v. State of Karnataka* (1992) 3 SCC 666. The correctness of this decision was examined by a larger bench of five judges in *Unnikrishnan J.P. v. State of Andhra Pradesh*, (1993) 1 SCC 645. The occasion was the challenge, by private medical and engineering colleges, to state legislation regulating the charging of “capitation” fees from students seeking admission. The college management was seeking enforcement of their right to business. The court expressly denied this claim and proceeded to examine the nature of the right to education. The court refused to accept the nonenforceability of the DPSP. It asked:

It is noteworthy that among the several articles in Part IV, only Article 45 speaks of a time-limit; no other article does. Has it no significance? Is it a mere pious wish, even after 44 years of the Constitution? Can the State flout the said direction even after 44 years on the ground that the article merely calls upon it to endeavor to provide the same and on the further ground that the said article is not enforceable by virtue of the declaration in Article 37. Does not the passage of 44 years—more than four times the period stipulated in Article 45—convert the obligation created by the article into an enforceable right? In this context, we feel constrained to say that allocation of available funds to different sectors of education in India discloses an inversion of priorities indicated by the Constitution. The Constitution contemplated a crash programme being undertaken by the State to achieve the goal set out in Article 45. It is relevant to notice that Article 45 does not speak of the “limits of its economic capacity and development” as does Article 41, which inter alia speaks of right to education. What has actually happened is more money is spent and more attention is directed to higher education than to—and at the cost of—primary education. (By primary education, we mean the education which a normal child receives by the time he completes 14 years of age.) Neglected more so are the rural sectors, and the weaker sections of the society referred to in Article 46. We clarify, we are not seeking to lay down the priorities for the Government—we are only emphasizing the constitutional policy as disclosed by Articles 45, 46 and 41. Surely the wisdom of these constitutional provisions is beyond question.

The court then proceeded to examine how this right would be enforceable and to what extent. It clarified the issue thus:

The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. By saying so, we are not transferring Article 41 from Part IV to Part III—we are merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21. We cannot believe that any State would say that it need not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State.

More caution followed. The court's apprehension clearly was that recognition of such a right might open the flood gates for other claims. It clarified:

We must hasten to add that just because we have relied upon some of the directive principles to locate the parameters of the right to education implicit in Article 21, it does not follow automatically that each and every obligation referred to in Part IV gets automatically included within the purview of Article 21. We have held the right to education to be implicit in the right to life because of its inherent fundamental importance. As a matter of fact, we have referred to Articles 41, 45 and 46 merely to determine the parameters of the said right.

In fact, the court had broken new ground in the matter of justifiability and enforceability of the DPSP. The decision in Unnikrishnan has been applied by the court in formulating broad parameters for compliance by the government in the matter of eradication of child labor. This it did in a PIL where it said:

Now, strictly speaking a strong case exists to invoke the aid of Article 41 of the Constitution regarding the right to work and to give meaning to what has been provided in Article 47 relating to raising of standard of living of the population, and Articles 39 (e) and (f) as to non-

abuse of tender age of children and giving opportunities and facilities to them to develop in a healthy manner, for asking the State to see that an adult member of the family, whose child is in employment in a factory or a mine or in other hazardous work, gets a job anywhere, in lieu of the child. This would also see the fulfillment of the wish contained in Article 41 after about half a century of its being in the paramount parchment, like primary education desired by Article 45, having been given the status of fundamental right by the decision in Unnikrishnan. We are, however, not asking the State at this stage to ensure alternative employment in every case covered by Article 24, as Article 41 speaks about right to work “within the limits of the economic capacity and development of the State”. The very large number of child labor in the aforesaid occupations would require giving of job to a very large number of adults, if we were to ask the appropriate Government to assure alternative employment in every case, which would strain the resources of the State, in case it would not have been able to secure job for an adult in a private sector establishment or, for that matter, in a public sector organization. We are not issuing any direction to do so presently. Instead, we leave the matter to be sorted out by the appropriate Government. In those cases where it would not be possible to provide job as above mentioned, the appropriate Government would, as its contribution/grant, deposit in the aforesaid Fund a sum of Rs.5000/- for each child employed in a factory or mine or in any other hazardous employment.

The court, while recognizing the importance of declaring the child’s negative right against exploitation and positive right to education, chose a pragmatic approach when it came to enforceability. Earlier the court would have shrugged off the whole issue as not being within its domain. That has now changed as is clear from the recent trend of cases.

v. *Protection To Minorities And Weaker Section Of Society*

Needless to say protection to minorities and weaker section of society has been the main plank on which we have tried to usher in the economic revolution. Some of the rights of minorities have found a place of pride among the fundamental rights. Article 43 directs the state to secure to all workers, by legislation, economic organization, or in any other way, a living wage;

conditions of work ensuring a decent standard of life, and the full enjoyment of leisure and social and cultural opportunities. Article 47 imposes as a primary duty to raise the level of nutrition and the standard of living of its people. On the basis of these articles some of the social and labour legislation has been enacted. Article 39A provides for equitable justice and free legal aid by suitable legislation. Article 43A stipulates the participation of workers in the management of industries. Article 46 specifically lays down that the state 'shall promote with special care the educational and economic interest of the weaker sections of the people, and, in particular, of the schedule castes and the schedules tribes, and shall protect them from social injustice and all forms of exploitations.'

c. Abolition of Untouchability and Protection of Civil Rights

Article 17 abolishes the untouchability and its practice in any form is made punishable under the law. This was the article which was adopted with the cries of "Mahatma Gandhi ki Jai". Though, this article does not create a right, yet it is a lease of rescue to the 1/6th of Indian population from perpetual subjugation, humiliation & disgrace of centuries. To incorporate the article in the constitution as one of the most unambiguous articles of the constitution was the best way to eradicate this evil. To, further strengthen the constitutional provision in Article 15 and Article 17, the parliament of India enacted the Untouchability (offences) Act in 1955. This act was further amended and renamed in 1976 as Protection of Civil Rights Act, 1955. This act lays down that whatever is open to general public (or Hindus) should be open to the members of the scheduled castes. No shopkeeper can refuse to sell them, no person may refuse to render any service to any person on the ground of untouchability. The act made provision for imprisonment and fine.

Civil rights are a class of rights that protect individuals' freedom from infringement by governments, social organizations and private individuals, and which ensure one's ability to participate in the civil and political life of the society and state without discrimination or repression.

Civil rights include the ensuring of peoples' physical and mental integrity, life and safety; protection from discrimination on grounds such as race, gender, national origin, colour, sexual

orientation, ethnicity, religion, or disability; and individual rights such as privacy, the freedoms of thought and conscience, speech and expression, religion, the press, assembly and movement.

Political rights include natural justice (procedural fairness) in law, such as the rights of the accused, including the right to a fair trial; due process; the right to seek redress or a legal remedy; and rights of participation in civil society and politics such as freedom of association, the right to assemble, the right to petition, the right of self-defense, and the right to vote.

Civil and political rights form the original and main part of international human rights. They comprise the first portion of the 1948 Universal Declaration of Human Rights (with economic, social and cultural rights comprising the second portion). The theory of three generations of human rights considers this group of rights to be "first-generation rights", and the theory of negative and positive rights considers them to be generally negative rights.

d. *Right to Development*

“The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.” (Article 1.1, Declaration on the Right to Development)

“The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.” (Article 1.2)

Sources for the Right to Development

The right to development was proclaimed in the Declaration on the Right to Development, adopted in 1986 by the United Nations General Assembly (GA) in its resolution 41/128. This right is also recognized in the African

Charter on Human and Peoples' Rights and the Arab Charter on Human Rights and re-affirmed in several instruments including the 1992 Rio Declaration on Environment and Development, the 1993 Vienna

Declaration and Programme of Action, the Millennium Declaration, the 2002 Monterrey Consensus, the 2005 World Summit Outcome Document and the 2007 Declaration on the Rights of Indigenous Peoples.

The right to development was first recognized in 1981 in Article 22 of the African Charter on Human and Peoples' Rights as a definitive individual and collective right. Article 22(1) provides that: "All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind."

The right to development was subsequently proclaimed by the United Nations in 1986 in the "Declaration on the Right to Development," which was adopted by the United Nations General Assembly resolution 41/128. The Right to development is a group right of peoples as opposed to an individual right, and was reaffirmed by the 1993 Vienna Declaration and Programme of Action.

The concept of the Right to Development is controversial, with some commentators disputing whether it is a right at all. The meaning of the right to development has been elaborated in a number of sources.

The right to development is now included in the mandate of several UN institutions and offices.

The Preamble of the Declaration on the Right to Development states "development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom."

The Vienna Declaration and Programme of Action

The Vienna Declaration and Programme of Action states in Article 10 "The World Conference on Human Rights reaffirms the "right to development", as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental

human rights. As stated in the Declaration on the Right to Development, the human person is the central subject of development. While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights. States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development. Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favorable economic environment at the international level."

The Rio Declaration

The Rio Declaration on Environment and Development, also known as Rio Declaration or the G.R.E.G, recognizes the right to development as one of its 27 principles. Principle 3 of the Declaration states "The right to development" must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."

Declaration on the Rights of Indigenous Peoples

The Declaration on the Rights of Indigenous Peoples recognizes the right to development as an indigenous peoples' right. The declaration states in its preamble that the General Assembly is "Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests."

Article 23 elaborates "Indigenous peoples have the right to determine and develop priorities and strategies for exercising their "right to development". In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions."

UNIT -3

CRIMINAL JUSTICE SYSTEM AND THE POOR:

a. Treatment of poor by police

Although the police are tasked with battling India's most pressing problems—including armed militancy, terrorism, and organized crime—a lack of political commitment and investment by the state has left the police overstretched and ill-equipped. There is just one civil police officer for every 1,037 Indian residents, far below Asia's regional average of one police officer for 558 people and the global average of 333 people. Police infrastructure is crumbling. Decaying, colonial-era police stations and posts across India are stocked with antiquated equipment and lack sufficient police vehicles, phones, computers, and even stationery. A severe police staffing shortage is compounded by additional demands on an already stretched force. Police are routinely diverted to protect "VIPs"—usually politicians, businesspeople, and entertainment figures. Senior police officials frequently use low-ranking staff as orderlies and even as personal family servants.

The police structure in India is based on a colonial law that did not provide the lower ranks, usually local recruits, with operational authority or advanced professional training.

Inexplicably, that system continues six decades after the end of British rule in India.

Constables, the bottom rank, make up as much as 85 percent of the Indian police, but for the most part they are not trained to investigate crime complaints. Junior and low-ranking police are frequently demoralized due to degrading working and living conditions. Police are under constant stress due to the statutory requirement that they be available for duty 24 hours a day, seven days a week—a grueling reality for the police we interviewed, many of whom said they were hardly ever permitted a day off and some of whom, living in barracks, literally had not been given time to see their families for weeks.

Police say they are exhausted and have no time for exercise or recreation. The Director General of Police in Uttar Pradesh boasted to Human Rights Watch,

b. *Inability to get bail*

Justice as we know was a right fundamental to all, but its fallacy is evident, as money now results in its fall. Objectively analyzed the criminal jurisprudence adopted by India is a mere reflection of the Victorian legacy left behind by the Britishers. The passage of time has only seen a few amendments once in a while to satisfy pressure groups and vote banks. Probably no thought has been given whether these legislations, which have existed for almost seven decades, have taken into account the plight and the socio-economic conditions of 70% of the population of this country which lives in utter poverty. India being a poverty stricken developing country needed anything but a blind copy of the legislations prevalent in developed western countries.

The concept of bail, which is an integral part of the criminal jurisprudence, also suffers from the above stated drawbacks. Bail is broadly used to refer to the release of a person charged with an offence, on his providing a security that will ensure his presence before the court or any other authority whenever required.

Bail, in law, means procurement of release from prison of a person awaiting trial or an appeal, by the deposit of security to ensure his submission at the required time to legal authority. The monetary value of the security, known also as the bail, or, more accurately, the bail bond, is set by the court having jurisdiction over the prisoner. The security may be cash, the papers giving title to property, or the bond of private persons of means or of a professional bondsman or bonding company. Failure of the person released on bail to surrender himself at the appointed time results in forfeiture of the security. The law lexicon defines bail as the security for the appearance of the accused person on which he is released pending trial or investigation.

Courts have greater discretion to grant or deny bail in the case of persons under criminal arrest, e.g., it is usually refused when the accused is charged with homicide.

What is contemplated by bail is to "procure the release of a person from legal custody, by undertaking that he/she shall appear at the time and place designated and submit him/herself to the jurisdiction and judgment of the court."

A reading of the above definition make it evident that money need not be a concomitant of the bail system. As already discussed above, the majority of the population in rural India, lives in the thrall of poverty and destitution, and don't even have the money to earn one square meal a day. Yet, they are still expected to serve a surety even though they have been charged with a bailable offence where the accused is entitled to secure bail as a matter of right. As a result, a poor man languishes behind bars, subject to the atrocities of the jail authorities rubbing shoulders with hardened criminals and effectively being treated as a convict.

c. Problems of Poor Under trials

Criminal Law of India is a replica of colonial times. It is hostile to the poor and the weaker sections of society. The law still serves and protects the needs of the haves and ignores the have-nots. Such biasness has resulted in rich people escaping law and the jail is more often full of the unprivileged class of society. The hierarchy of courts and with appeals after appeal have led to a situation where the poor cannot reach the temple of justice due to heavy cost of its access. In other words one can state that granting justice at a higher cost indirectly means the denial of justice. Such circumstances lead to a clear violation of the Supreme Court judgement which held, legal aid to a poor is a constitutional mandate not only by virtue of Article 39A but also Articles 14, 19, 21 which cannot be denied by the government.

As understood by a layman an, 'undertrial' is a person who is currently on trial or who is imprisoned on remand whilst awaiting trial. As defined in the Oxford Dictionary, 'A person who is on a trial in a court of law'. The 78th Report of Law Commission also includes a person who is in judicial custody on remand during investigation in the definition of an 'undertrial'.

Analyzing the criminal jurisprudence adopted by India is a mere reflection of the Victorian legacy left behind by the Britishers. The passage of time has only seen a few amendments once in a while to satisfy pressure groups and vote banks. Probably no thought has been given whether these legislations, which have existed for almost seven decades, have taken into account the plight and the socio-economic conditions of 70% of the population of this country which lives in utter poverty. India being a poverty stricken developing country needed anything but a blind copy of the legislations prevalent in developed

According to the 78th report of the Law Commission as on April 1, 1977, of a total prison population of 1,84,169, as many as 1,01,083 (roughly 55%) were under-trials. For specific jails, some other reports show: Secunderabad Central Jail- 80 per cent under-trials; Surat-78 per cent under-trials; Assam, Tripura and Meghalaya-66 per cent under-trials.

The National Crime Records Bureau of the Government of India, in Chapter VI of its report dealing with the number of prisoners undertrials in various prisons across the country, has released some shocking details. It reported that thousands of undertrials had been incarcerated for a period of five years or more, and in fact in states including developed states like Punjab and Delhi, a large number of prisoners were under-trials. In Bihar, 30.4 % of the prisoners incarcerated had not been convicted and yet they languished in jails for years, sometimes for periods longer than the period for which they would have to serve, if convicted.

The figures get even more distressing if one studies the number of prisoners incarcerated for more than one but less than five years in different prisons across India. In Uttar Pradesh and Bihar alone, the number of prisoners detained for a period of between two and five years, without having been convicted of any offence was 7310. The number of such prisoners languishing in other jails in different parts of the country constitutes a figure several times the figure for the two states mentioned above.

Examining the Central Jail (Tihar), some more disquieting figures come to light. In 1993, out of the 7200 prisoners housed in the Central Jail Complex (called the Tihar Jail), only 900 prisoners had actually been convicted of any crime. Seven out of every eight prisoners in Tihar Jail consisted of those who had not been convicted of any offence, which amounts to close to 90% of all inmates. Even more shockingly, out of the 280 women prisoners, only 20 had been convicted. Thus, 260 out of 280 prisoners were languishing in jail when the law presumed them to be innocent. It is difficult to think of a justification for this woeful failing of our criminal justice system, but solutions may be sought, and the first place to which one's attention is directed is the criminal law in the country, specifically the Criminal Procedure code, which is the backbone of the criminal justice system in the country.

In one of the landmark judgements, the Supreme court with great frankness in *Shri Rama Murthy v. State of Karnataka* went so far to cite that state had 193,240 people incarcerated of which 137,838 undertrials that justice would be served by simply were releasing the latter. In the 2000's the Supreme Court had also continued to emphasize on the need to protect the undertrial prisoners.

In 2010 the chief justice of India vigorously made this point, adding that "all trial judges have done an excellent job in maintaining a high disposal of cases." However a look at the number of undertrial prisoners would show that much is desired to be achieved. The 2010 Indian government data in the regard of undertrial gives a hopeless situation. While, the numbers have drastically increased to 50,000, there are several who languish in the jail even without being produced before the magistrate once.

One of the reasons for this is, as already mentioned above, is the large scale poverty amongst the majority of the population in our country. Fragmentation of land holdings is a common phenomenon in rural India. A family consisting of around 8 - 10 members depend on a small piece of land for their subsistence, which also is a reason for disguised unemployment. When one of the members of such a family gets charged with an offence, the only way they can secure his release and paying the bail is by either selling off the land or giving it on mortgage. This would further push them more into the jaws of poverty. This is the precise reason why most of the undertrials languish in jail instead of being out on bail.

The criminal justice delivery system in India saw more than 0.2 million undertrial prisoners being neglected in jail for many years, in many cases it exceeded the maximum sentence for the crime which they had committed. Lack of coordination between the Centre, Judiciary & State Governments & also because they did not have anyone to stand as guarantors nor assets to furnish as bail bonds, the poor continued to suffer in prisons. There have been cases where the amount of bail is disproportionately high. One such case even went to the Supreme Court.

i. Abuses faced in jail:

The Constitution of India, the Universal Declaration of Human Rights and the Standard Minimum Rules for Treatment of Prisoners clearly specify the standards of treatment with

prisoners on trial. But realities in jails transmit an entirely different tune. Given Below are some challenges that every under-trial prisoner goes through in Indian jails.

Prison violence –

Prisons are often dangerous places for those they hold. Group violence is also endemic and riots are common. In Sao Paulo, Brazil, on 2nd October 1992, at least 111 people were killed and 35 wounded by military police who were called in the House of Detention after scuffle broke out between two gangs of prisoners allegedly over payment for marijuana. In a three day riot and standoff in the Chappra District prison in Bihar towards the end of March 2002 6 prisoners died in the shootout that occurred when commandos of the Bihar Military Police were called in to quell the riots. Meek and first time offenders are tortured and made to do all the menial tasks. Failure to comply sees them sleeping in front of smelly and overflowing toilets in the night. The worst form of Prison violence was witnessed in *Khatri v. State of Bihar* where the police had blinded 80 suspected criminals by puncturing their eyes by needles and dousing them by acid. In fact in the case *Sunil Batra v. Delhi Administration* that the court had already issued a writ directing the authorities that the prisoners shall not be subjected to physical mishandling by jail officials and they should be given adequate medical and health facilities

Criminalizing effect of a prison –

With hardened criminals being around and in the absence of scientific classification methods to separate them from others, contamination of first time, circumstantial and young offenders into full-fledged criminals occurs very frequently. It is an often given quote, 'prisons are Universities of crime where people go in as under-graduates and come out with PhDs. in crime.'

Health problems –

Most of the prisons face problems of overcrowding and shortage of adequate space to lodge prisoners in safe and healthy conditions. Most of the prisoners found in prisons come from socio-economically disadvantaged sections of the society where disease, malnutrition and absence of medical services are prevalent. When such people are cramped in with each other in

unhealthy conditions, infectious and communicable diseases spread easily. A sample study conducted by the National Human Rights Commission of India in early 1998 revealed that 76% of deaths in Indian prisons were due to the scourge of Tuberculosis.

Mentally ill prisoners –

Though miniscule, mentally ill prisoners constitute another percentage of population, which is largely ignored and forgotten by both the outside world and those inside. But given the nature of the illness and prevailing social attitudes, they form the most hapless victims of human rights violations. Even for a normal person, prolonged incarceration might lead to a mental breakdown, the atmosphere being such. Many, on the verge of such collapse, do attempt suicide. Sir Alexander Patterson while giving evidence before the Select Committee in 1930 stated – “...I gravely doubt whether an average man can serve more than ten continuous years in prison without deterioration.”

Drug abuse –

After Murder, Attempt to murder and other serious anti-personal offences, people booked under anti-drug laws constitute a substantial percentage of the prison population. Being in prison and cut off from the free world, sees and increased desperation to get the banned substances to satisfy their addiction to drugs. This also increases the danger of fresh prisoners being inducted into drug abuse since ‘prison is an environment where there is a captive, bored, largely depressed population eager for some release from the grim everyday reality.’

Effect on the families of prisoners –

Those imprisoned are unable to look after their families. In the absence of the main bread winner, the family is many a time forced into destitution with children going astray. This combined with the social stigmatization that they face, leads to circumstances propelling children towards delinquency and exploitation by others. It is an inexorable circle. The problems become acute when they belong to the socio-economically marginalized and exploited sections of the society. The dominant class does not fail and loose time in taking advantage of this situation to exploit the remaining family members to the fullest possible

extent. This can take the form of rape or forced prostitution of the prisoner's wife and or his daughters.

Specific problems faced by under-trial prisoners:

The Right to Speedy Trial - as recognised by the Supreme Court in Hussainara Khatoon vs. Home Secretary, Bihar is violated due to protracted delays. This delay is due to all kinds of reasons such as –

- a. Systemic delays.
- b. Grossly inadequate number of judges and prosecutors.
- c. Absence or belated service of summons on witnesses.
- d. Presiding judges proceeding on leave.
- e. Remands being extended mechanically due to lack of time and patience with the presiding judge.
- f. Inadequacy of police personnel and vehicles which prevents the production of all prisoners on their due dates.
- g. Many a times, the escorting police personnel merely produces the remand papers in the courts instead of actually producing the prisoner in front of the magistrate. This practice is widely reported, notwithstanding the strict requirement of the law in section 167(2)(b) of the Criminal Procedure Code, 1973 which says that – 'No Magistrate shall authorize detention in any custody under this section unless the accused is produced before him.'

Right to bail

It is denied even in genuine cases. Even in cases where the prisoner was charged with bailable offence, they are found to rot in prisons due to exorbitantly high bail amount. The spirit of the Supreme Court in *Moti Ram & others vs. State of Madhya Pradesh* is violated constantly. The Law Commission analysed this in detail in its 78th report on congestion on undertrials.

It is also important to point out that the system of giving bail which is mentioned in sections 436 to 450 in the Code of Criminal Procedure, 1973 is also unjust. This is because according to the provisions of the code a person released on bail is required to execute a personal bond and bond of security for a certain amount of money. As a result the poor who cannot afford to avail surety have to suffer in jail till the case is over.

Some of the judges even at the High Court level are not following the guidelines laid down by the Supreme Court on bail and grant of the same is dependent upon the attitude of each judge. Standards cannot become prisoners of the whims and fancies individuals. Authority is to be exercised with responsibility.

Large number of persons including women and children are detained under Section 109 of the Criminal Procedure Code provides for failure to furnish requisite security for keeping good behaviour. The police usually pick them up “because the number of cases had to be brought up to the specified figure”. The authorities refuse to release them without bail whereas the standing law on Section 110 says that you cannot ask for bail from such persons, only the history ticket is required.

In the absence of a system, that takes a proactive role in providing legal services to prisoners their right to effective Legal Aid is also violated due to politicisation of legal aid schemes as many lawyers are hired on political consideration who get a fix salary without the pressure of disposing off cases at the earliest.

Even today, the order of Dr. A.S. Anand – former Chief Justice of India on holding Special Courts in Jails for prisoners involved in petty offences and willing to confess to their guilt is not being implemented at least in Madhya Pradesh. If implemented by the High Court and followed judiciously, it can bring lot of succour.

d. Working of free legal aid schemes

What are Legal Services

Legal services include the rendering of any service in the conduct of a case or legal proceeding before any court/ authority/ tribunal and the giving of advice on a legal matter. Legal services ensure that the people get the information, advice and legal help. These are provided by way of:

- i. Providing advocates at state expense,
- ii. Paying court fee on behalf of the eligible persons,
- iii. bearing expenses regarding preparation of documents,

Legal Awareness

The main goal of the legal services authority Act is to secure justice to the weaker sections of the society, particularly to the poor, downtrodden, socially backward, women, children, handicapped etc.,. Steps are needed to be taken to ensure that nobody is deprived of an opportunity to seek justice merely for want of funds or lack of knowledge. To ensure this, proper legal awareness has to be created among our people by making them legally literate and legally educated. The idea behind the spread of legal information is to legally empower people before the need to seek legal aid arises. Secondly, if the need for legal aid does arise then at least the people armed with newly acquired legal information, and can use the information in the best possible way.

Legal Aid

Providing legal aid to the poor and the weaker sections of the society is one of the directive principles of state policy. The Legal Services Authorities Act, 1987 provides for constitution of legal services authorities. These bodies have the responsibilities of providing free and competent legal advice and representation to the weaker sections of the society who are threatened to their life, liberty, property or reputation, and who are not able to pay for it. Though legal aid has not been described as a Fundamental Right in the Constitution, yet, the rulings laid down by the Supreme Court from time to time, especially in respect of the nature and scope of Article 14 and Article 21, have made legal aid almost a Fundamental Right for the poor and the needy. The concepts of equality before law and “protection to life and personal liberty” established by law”, though guaranteed by the constitution, would not, in effect be available to the poor. To make such concepts a reality, the Supreme Court has interpreted Article 14 and Article 21, read with or without Article 39A, to introduce and to amplify the scope of legal aid and made it in effect, a Fundamental Right (1986 S.C. 1991).

"Legal Aid Counsel" scheme which was conceived and introduced by Hon. Dr. Justice A.S. Anand when His Lordship was the Executive Chairman, NALSA has been well received all over the country. Legal Aid Counsel has been provided in most of the courts of the Magistrates in the country to provide immediate legal assistance to those prisoners who are not in a position to engage their own counsel. They are aimed at ensuring that no one suffers injustice on account of ignorance or lack of means. The presence of Legal Aid Counsel in the court would ensure that the constitutional and legal rights of such persons are safeguarded.

Whom to contact for legal aid and services:

A nationwide network has been envisaged under the Act for providing legal aid and assistance.

- National Legal Services Authority
- State Legal Services Authority
- District Legal Services Authority
- Taluk Legal Services Committees

6.4 National Legal Services Authority

The central government shall constitute a body to be called the National Legal Services Authority to exercise the powers and perform the functions conferred on, or assigned to, the central authority under this act. It is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services. It also disburses funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programmes. The Central Authority shall consist of a)

The Chief Justice of India who shall be the Patron-in-Chief,

b) A serving or retired Judge of the Supreme Court to be nominated by the President,

in consultation with the Chief Justice of India, who shall be the Executive

Chairman; and

c) Such number of other members possessing such experience and qualifications as may prescribed by the central government to be nominated by that government in consultation with the Chief Justice of India.

6.5 Supreme Court Legal Services Committee

The Central Authority shall constitute a committee to be called the Supreme Court Legal Services Committee for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the central authority:

(a) Lay down policies and principles for making legal services available under the provisions of this Act,

(b) Frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act,

(c) Utilize the funds at its disposal and make appropriate allocations of funds to the state authorities and district authorities,

(d) Take necessary steps by way of social justice litigation with regard to consumer Protection, environmental protection or any other matter of special concern to the

Weaker sections of the society,

(e) Organize legal aid camps, especially in rural areas, slums or labour colonies,

(f) Encourage the settlement of disputes by way of negotiations, arbitration and Conciliation,

(g) Undertake and promote research in the field of legal services with special Reference to the need for such services among the poor,

(h) To do all things necessary for the purpose of ensuring commitment to the Fundamental duties of citizens under Part IVA of the Constitution.

State Legal Services Authority

In every state a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA), and to give legal services to the people and conduct Lok Adalats in the state. State Legal Services Authority is headed by the Chief Justice of the State High Court who is its Patron-in-Chief. A serving or retired judge of the High Court is nominated as its Executive Chairman.

Functions of the state authority:

The state authority shall perform all or any of the following functions namely:

- a) Give legal services to persons who satisfy the criteria laid down under this Act,
- b) Conduct lok adalats, including lok adalats for high court cases,
- c) Undertake preventive and strategic legal aid programs, and
- d) Perform such other functions as the state authority may, in consultation with the central authority, fix by regulations.

UNIT – IV

IMPOVERISHMENT OF WOMEN, CHILDREN AND DISABLED PERSONS

a. Deprivations of women under family laws

"You can tell the condition of a Nation by looking at the status of its Women." Jawaharlal Nehru, Leader of India's Independence movement, and India's first Prime Minister.

So, how is women's status in India? Today's India offers a lot of opportunities to women, with women having a voice in everyday life, the business world as well as in political life. Nevertheless India is still a male dominated society, where women are often seen as subordinate and inferior to men. This gender bias is the cause that India is fighting for; therefore, in the following we will focus on the wrongs rather than on the rights. This doesn't mean that there aren't a lot of positives to report on, and we will cover some of those in the "Indian women on the rise" section. However, even though India is moving away from the male dominated culture, discrimination is still highly visible in rural as well as in urban areas, throughout all strata of society. While women are guaranteed equality under the constitution, legal protection has a limited effect, where patriarchal traditions prevail.

i. India's Patriarchal Traditions

Dowry Tradition

Much of the discrimination against women arises from India's dowry tradition, where the bride's family gives the groom's family money and/or gifts. Dowries were made illegal in India in 1961, however the law is almost impossible to enforce, and the practice persists for most marriages. Unfortunately, the iniquitous dowry system has even spread to communities who traditionally have not practiced it, because dowry is sometimes used as a means to climb the social ladder, to achieve economic security, and to accumulate material wealth. The model used to calculate the dowry takes the bridegroom's education and future earning potential into

account while the bride's education and earning potential are only relevant to her societal role of being a better wife and mother. The bridegroom's demand for a dowry can easily exceed the annual salary of a typical Indian family, and consequently be economically disastrous especially in families with more than one or two daughters.

Women as a Liability

The Indian constitution grants women equal rights to men, but strong patriarchal traditions persist in many different societal parts, with women's lives shaped by customs that are centuries old. Hence, in these strata daughters are often regarded as a liability, and conditioned to believe that they are inferior and subordinate to men, whereas sons might be idolized and celebrated.

There are a couple of reasons, why men might be regarded an asset for a family: Considered capable of earning money Carry on the family line Able to provide for their aging parents Bring a wife (and with this a capable domestic helper) into the family Play an important role in death rituals in Hindu religion, which ensure, that the soul is released from the body and can go to heaven. On the other hand, there are a couple of reasons why women might be regarded more of a liability for a family: Not considered capable of earning money Seen as economically and emotionally dependent on men While they help with domestic duties during childhood and adolescence, they go to live with their husband's family after marriage, which means less help in the household of their originating family, and most importantly loss of money due to the dowry tradition.

This might explain why the birth of a daughter may not always be perceived as equally blissful as the birth of a son, and why "May you be blessed with a hundred sons" is a common Hindu wedding blessing.

ii. Discrimination against Women

It should be noted that in a vast country like India - spanning 3.29 million sq. km, where cultural backgrounds, religions and traditions vary widely - the extend of discrimination against women also varies from one societal stratum to another and from state to state - some areas in India being historically more inclined to gender bias than others. There are even communities

in India, such as the Nairs of Kerala, certain Maratha clans, and Bengali families, which exhibit matriarchal tendencies, with the head of the family being the oldest woman rather than the oldest man. However, many Indian women face discrimination throughout all stages of their life, beginning at (or even before) birth, continuing as an infant, child, adolescent and adult. The stages can be divided in following sections:

Before Birth / As an Infant

As a Child

After Marriage

As a Widow

Discrimination against Women: Before Birth / As an Infant

India is one of the few countries where males outnumber females; the sex ratio at birth (SRB) – which shows the number of boys born to every 100 girls - is usually consistent in human populations, where about 105 males are born to every 100 females.

There are significant imbalances in the male/female population in India where the SRB is 113; there are also huge local differences from Northern / Western regions such as Punjab or Delhi, where the sex ratio is as high as 125, to Southern / Eastern India e.g. Kerala and Andhra Pradesh, where sex ratios are around 105. Though “prenatal sex discrimination” was legally banned in 1996, the law is nearly impossible to enforce and is not even familiar to all Indian families. Hence, the preference for a male child persists, quite often out of mere practical, financial concerns, because the parents might not be able to afford the marriage dowry for (another) daughter. This leads to some of the most gruesome and desperate acts when it comes to gender discrimination:

Selective abortions

Murdering of female babies

Abandonment of female babies

Prenatal tests to determine the sex of the fetus were criminalized by Indian law in 1994, but the above mentioned imbalances in the sex ratio at birth, clearly point to gender selective abortions. While abortion is officially illegal in India there are some exceptions to this rule such as the failure of contraceptive device used by a couple; if the woman was raped; or if the child would suffer from severe disabilities. In total 11 million abortions take place annually and around 20,000 women die every year due to abortion related complications.

Discrimination against Women: As a Child

Nutrition & Health

As a child, girls are often treated differently from male children in terms of nutrition and health care; where limited food or financial resources are available, the insufficient means are prone to be allocated unevenly in favour of the male offspring.

This imbalance results in insufficient care afforded to girls and women, and is the first major reason for the high levels of child malnutrition. This nutritional deprivation has two harmful consequences for women:

1. They never reach their full growth potential
2. Anaemia

Both consequences are risk factors in pregnancy, complicating childbearing and resulting in maternal and infant deaths, as well as low birth weight infants.

iii. Education

India's constitution guarantees free primary school education for both girls and boys up to age 14. This has been repeatedly reconfirmed, but primary education in India is not universal, and often times not seen as really necessary for girls. Their parents might consider it more important, that they learn domestic chores, as they will need to perform them for their future husbands and in-laws. Another disincentive for sending daughters to school is a concern for the protection of their virginity. When schools are located at a distance, when teachers are male, and when girls are expected to study along with boys, parents are often unwilling to expose

their daughters to the potential assault on their virginity, that would ultimately result in an insult to the girl's family's honor.

This results in one of the lowest female literacy rates in the world.

Literacy Rate for Women: 54%

Literacy Rate for Men: 76%

As a comparison, female literacy per 2009: Pakistan: 60%, Peru: 89%, Indonesia: 93%.

Mothers' illiteracy and lack of schooling directly disadvantage their young children. Low schooling translates into poor quality of care for children, consequently in higher infant and child mortality and malnutrition, because mothers with little education are less likely to adopt appropriate health-promoting behaviors, such as having young children immunized.

Social sector programmes e.g. “Sarva Shiksha Abhiyan” (Education for Everyone) are promoting girls' education to equalize educational opportunities and eliminate gender disparities, but these initiatives will take time to unfold their whole effect.

iv. Child Marriages

The Prohibition of Child Marriage Act 2006 bans marriage below age 18 for girls and age 21 for boys, but some 80 % of Indians live in villages where family, caste and community pressures are more effective than any legislature. According to UNICEF's "State of the World's Children 2009" report, 47% of India's women aged 20–24 were married before the legal age of 18, with 56% in rural areas. The report also showed that 40% of the world's child marriages occur in India.

Why does it happen?

Financial Benefit

As outlined above, due to the dowry tradition women are prone to be a (financial) burden for their families, thus seen as a liability.

If the match is made at an early age, the dowry is usually much lower, as the dowry is calculated on the future husband's societal status and education, which – obviously – would be much lower at an early age.

Common Hindu phrase: “The younger the groom, the cheaper the Dowry”

In addition marrying off girls at an early age, ensures, that they marry as virgins, thus protecting the girl's and their family's honour.

Historical Origins

Child marriages started during the invasions of Northern India around 1,000 years ago, when unmarried girls were raped by invaders.

To protect their women from abuse, family members began marrying their daughters at young ages.

Religious origin

Copying the myth that the goddess Parvati had decided to marry god Shiva when she was only eight, girls were married off as young as eight or nine years old.

Girls between 15 and 19 are twice as likely to die of pregnancy-related reasons as girls between 20 and 24. Girls married off as children sometimes stay in their parents' house until puberty, but it is just as common, that they move in with their husband and in-laws right after marriage. In that case, many child wives are inclined to experience domestic violence, marital rape, deprivation of food, and lack of access to information, healthcare, and education. Thus, the vicious cycle of illiteracy and abuse is likely to be continued and passed on to their own daughters.

v. *Discrimination against Women: After Marriage*

There is mainly a bias towards men and their superiority in marital relationships: while women ought to be respected, protected and kept happy by their husbands – their happiness being vital for the prosperity, peace and happiness of the whole family – they should also be kept under

constant vigilance, since they cannot be completely trusted or left to themselves. Whereas as a child a girl is supposed to remain in the custody and care of her parents, after marriage she becomes the property and responsibility of her husband, who is supposed to take care of her and keep her in his custody.

Under the existing cultural and social ethos of India a married girl / woman is no longer considered to be part of the family of her birth, instead she has become part of the family of the groom. Hence, after marriage the woman leaves her parental home and lives with her husband's family, where she is required to assume all household labour and domestic responsibilities.

In certain parts of Indian society, women are conditioned from birth to be subservient not only to their future husbands, but also to the females in their husband's family especially, their mother-in-law. Accordingly, the surrounding society mandates a woman's obedience to her husband and her in-laws. Any disobedience would bring disgrace to both, the wife herself and her originating family, and might lead to the woman being ostracized and neglected by her very own family and in her own home.

Discrimination against Women: As a Widow

Indian government has enacted numerous laws to protect widow's rights, including prohibitions against traditional practices for which India has been discredited, such as the burning of widows (Sati). Whereas in India's contemporary culture, especially in the modern urban middle-class, these societal norms have given way to a more righteous conduct, the enforcement of the law continues to be challenging, where there are regional, religious or caste variants of family law, which tend to escape government jurisdiction. Hence, a widow is still seen as a liability in some part of the Indian society, which might result in her being abandoned by her in-laws. As her originating family is often unable or unwilling to take her back as well, she might be left on her own, without any education, skills, or financial assistance. Instead, she is subjected to many restrictions, and might be required to shave her head permanently, or to wear white clothes for the rest of her life; thus, stigmatized, she is not allowed to enter in any celebration e.g. weddings, because her presence is considered to be inauspicious. Moreover, a widow might face trouble securing her property rights after her husband's death, nor be allowed

to remarry, disregarding at what age she became a widow. As the described discrimination against widows is likely to occur in the same societal surroundings as the above mentioned child marriages, this might lead to child or teenage widows, who are bound to be isolated and ostracized for the rest of their life.

Discrimination against Women: For Inheritance

While in the educated, urban middle class women's rights continue to improve, there remains a strong bias against gender equality in those societal parts of India, where patriarchal traditions prevail. Consequently, in these strata any inheritance of a deceased husband or father would be passed down to the oldest son, while his wife or daughters would not receive any financial benefit. There are laws in place to ensure legal protection for women's right to inheritance, but the enforcement of the law is challenging, when the woman is refused her right by the family, and when she is not confident or educated enough to claim her right.

Having looked at the status of women in India, we come back to the previously quoted statement from Jawaharlal Nehru "You can tell the condition of a Nation by looking at the status of its Women." The concluding questions are: which nation can claim to be a free and prosperous society, where half of its population is being oppressed? And which striving nation can afford to oppress half of its population? Obviously, the answer to that question is: none! Sustainable and long-term development is not possible without the participation and empowerment of women, only if they participate in the economic and societal development, the full potential of a society of India's society will be unfolded.

b. Problems of women workers in organized and unorganized sectors

A woman is identified as a mother, a wife, a daughter-in-law or a daughter but never as an independent person. To be born as a woman means to inhabit, from early infancy to the last day of life, a psychological world that differs from the world of the man. Much of the exasperation and discrimination in woman's life stems from this fact. The overall picture is one of greater disadvantage for women workers in general and those belonging to unorganized sector in particular. As a matter of fact, the problem of female worker is the index of the status of Indian

labour in both organized and unorganized sectors. As is known, such protections are only available in the organized sector. In general, organized sector employment has been falling (22,000 jobs were eliminated in organized sector in the 9 years ending March 2008, and the organized sector workforce reduced from 8.48 lakhs in March 1999 to 8.26 lakhs in March, 2008).⁴ In other words, the sector where conditions of work are likely to incorporate some of the special needs of women is shrinking. This is notwithstanding the fact that women workers in the organized sector have been increasing in numbers. Women workers in India's organized sector rose from 1.21 lakhs in 2001 to 1.25 lakhs in 2005 (the last year for which figures have been provided in the public domain).⁵ What is becoming increasingly clear is that the increasing weight of the unorganized sector that is contributing to making the overall employment environment is more hostile to women. Any discussion regarding the problems associated with the women labour has many aspects, such as economic, political, psychological, sociological and legal etc. The employment in the organized sector requires certain minimum qualifications and most of these educated women workers are drawn from middle classes and richer sections, a very few women from lower class would get chance in these jobs. The National Commission on Labour describes some characteristics and constraints of unorganized sector, namely: (a) casual nature of employment; (b) ignorance and illiteracy; (c) small size of establishment with low capital investment per person employed; (d) scattered nature of establishments; and (e) superior strength of the employers operating singly and in combination. Almost 400 million people (more than 85% of the working population in India) work in unorganized sector and of these about 120 million are women. According to an estimate, by the National Commission on Self-Employed Women (1988a), of the total number of women workers in India, about 94 percent are in the informal or unorganized sector whereas just 6 percent are in the organized or formal sector. Thus there is no exaggeration in saying that the unorganized sector in India is the women's sector. However, the plight of women in this sector is miserable as they work for extremely low wages, with a total lack of job security and social security benefits, working hours are long and working conditions are unsatisfactory. According to census 2011, women constitute 48.46 percent of the total population in India and about 25.67 percent of female population is designated as workers. Two National Labour Commissions, along with several

other international and national commissions, committees and conferences in the last 50 years have documented the socio-economic conditions of workers in the unorganized sector in India. The Arjun Sengupta Committee report is a stark reminder of the huge size and poor conditions in this sector. The National Commission for Enterprises in the Unorganized Sector (NCEUS), has extensively profiled the unorganized sector and unorganized employment in its report, „The Challenges of Employment in India-An Informal Economy Perspective“ (April, TRANS Asian Research Journals <http://www.tarj.in> 184 A Publication of TRANS Asian Research Journals AJMR Asian Journal of Multidimensional Research Vol.1 Issue 3, August 2012, ISSN 2278-4853 2009) and suggested the measures that are considered necessary for enhancing competitiveness of the unorganized sector in the emerging global environment and generation of large scale employment opportunities on sustainable basis. The most significant finding is that the economy will experience a greater degree of informalisation of employment that will increase the already high share of informal workers from 91.8% to 93.9% by 2016-17.

The most important features of unorganized sector are that most of the women labourers are appointed as contract labourers. Studies conducted in several parts of the country indicate the awful conditions of the women workers in this sector. They continue to face discrimination and marginalization both subtle and blatant and do not share the fruits of development equally. Ignorance, traditional bound attitudes, illiteracy, lack of skills, seasonal nature of employment, heavy physical work of different types, lack of job security, lack of a comprehensive legislation to cover these workers in unorganized sector and competition in employment are resultant deprivation of real wage. Wages in the unorganized sector are arbitrarily fixed, often without regard to the minimum wage legislations, which adversely affect the income of the wage workers in general, and women workers in particular. In the informal sector, wage workers constituted 36% and the remaining 64% were self-employed. Average wage of men and women workers are Rs. 75 and Rs. 45 respectively which is much less than the wage of Mahatma Gandhi National Rural Employment Guarantee Programme (MGNREGP) i.e. Rs.100. Another dimension of this wage result shows the existence of gender bias in unorganized sector in terms of wage level. The higher level of unemployment and under-employment among women leads us to conclude that their proportion below the poverty line is likely to be higher than men. Women who are drawn from rural areas are unskilled labourers. The life of unorganized sector

worker is very tough. They are exploited in many ways. The exploitation is not only carried on the class lines but also on the lines of male domination over females. Sexual harassment is common but unarticulated due to fear of loss of employment. Despite the advances women have made in many societies, women's concerns are still given second priority almost everywhere. Their contribution is not given due credits. Women workers in unorganized sector lag behind the males in terms of level and quality of employment. There are still cases where women workers are deprived of the benefits and amenities like equal remuneration vis-à-vis their male counterparts, maternity benefits, proper child care services and indifferent attitude of the employers towards women workers. Research shows that women and girls, who tend to work harder than men, are more likely to invest their earnings in their children, are major producers as well as consumers and shoulder critical, life sustaining responsibilities without which men and boys could not survive, much less enjoy high levels of productivity. Such women, when they have to perform dual role of both outside employment in harsh and hostile working conditions and manage their homes, come across problems, which needs a loud hearing. The major problems they face are poverty, lack of access to education and inadequate healthcare facilities. Living in abject poverty, most workers in the unorganized sector barely manage a subsistence existence. The rising costs of private healthcare and the systematic dismantling of the public health system in these times of liberalization are a major reason for the huge indebtedness of households in the unorganized sector. There is a pressing need to provide insurance, especially health insurance cover to the workers. Several factors responsible for their plight are indifferent attitude of the employers towards women workers, their weak bargaining power and in many cases the women workers themselves being unaware of their rights. From the close study, it can be easily estimated that the women working in unorganized sector are living a life far below from satisfaction. It is not that there are no statutory provisions to ensure fair working conditions for women in India. In fact, the Constitution of India provides equal rights and opportunities to both the genders. In addition, there are specific provisions for protection and welfare of working women in many of the labour laws. Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) is a major step in the direction of providing security of employment to rural workers. One of the successes of MGNREGA is that, on average the participation of women in the programme is higher than the stipulated minimum

requirement of 30%. Women constitute 46% of the beneficiaries in 2007-08. Although the Government is seized of the situation, yet it continues to remain a problem area due to non-availability of reliable statistical data and other information pertaining to working, living and socio-economic conditions of women workers. The first enquiry for studying socio-economic conditions of women worker was undertaken by Labour Bureau in the year 1953 and a report titled "The Economic and Social Status of Women Workers in India" was brought out.

c. Child labour

"Out of school children comprise the workers and non workers. In our view they together signify a measure of deprivation among children and can be considered as a potential labour pool always being at the risk of entering the labour force" - NCEUS, 2007

India is sadly the home to the largest number of child labourers in the world. The census found an increase in the number of child labourers from 11.28 million in 1991 to 12.59 million in 2001. M.V. Foundation in Andhra Pradesh found nearly 400,000 children, mostly girls between seven and 14 years of age, toiling for 14-16 hours a day in cottonseed production across the country of which 90% are employed in Andhra Pradesh. Child Labour in India 40% of the labour in a precious stone cutting sector is children. NGOs have discovered the use of child labourers in mining industry in Bellary District in Karnataka in spite of a harsh ban on the same. In urban areas there is a high employment of children in the zari and embroidery industry.

Poverty and lack of social security are the main causes of child labour. The increasing gap between the rich and the poor, privatization of basic services and the neo-liberal economic policies are causes major sections of the population out of employment and without basic needs. This adversely affects children more than any other group. Entry of multi-national corporations into industry without proper mechanisms to hold them accountable has lead to the use of child labour. Lack of quality universal education has also contributed to children dropping out of school and entering the labour force. A major concern is that the actual number of child labourers goes un-detected. Laws that are meant to protect children from hazardous labour are ineffective and not implemented correctly.

A growing phenomenon is using children as domestic workers in urban areas. The conditions in which children work is completely unregulated and they are often made to work without food, and very low wages, resembling situations of slavery. There are cases of physical, sexual and emotional abuse of child domestic workers. The argument for domestic work is often that families have placed their children in these homes for care and employment. There has been a recent notification by the Ministry of Labour making child domestic work as well as employment of children in dhabas, tea stalls and restaurants "hazardous" occupations.

According to HAQ: Centre for child rights, child labour is highest among scheduled tribes, Muslims, scheduled castes and OBC children. The persistence of child labour is due to the inefficiency of the law, administrative system and because it benefits employers who can reduce general wage levels. HAQ argues that distinguishing between hazardous and non hazardous employment is counter-productive to the elimination of child labour. Various growing concerns have pushed children out of school and into employment such as forced displacement due to development projects, Special Economic Zones; loss of jobs of parents in a slowdown, farmers' suicide; armed conflict and high costs of health care. Girl children are often used in domestic labour within their own homes. There is a lack of political will to actually see to the complete ban of child labour.

Bonded child labour is a hidden phenomenon as a majority of them are found in the informal sector. Bonded labour means the employment of a person against a loan or debt or social obligation by the family of the child or the family as a whole. It is a form of slavery. Children who are bonded with their family or inherit a debt from their parents are often found in agricultural sector or assisting their families in brick kilns, and stone quarries. Individual pledging of children is a growing occurrence that usually leads to trafficking of children to urban areas for employment and have children working in small production houses versus factories. Bonded labourers in India are mostly migrant workers, which opens them up to more exploitation. Also they mostly come from low caste groups such as dalits or marginalised tribal groups. Bonded child labourers are at very high risk for physical and sexual abuse and neglect sometimes leading to death. They often are psychologically and mentally disturbed and have not learnt many social skills or survival skills.

In 2000 the ILO estimated 5.5 million children had been forced in labour in Asia, while the Bonded Labour Liberation Front placed 10 million bonded children in India alone. In 1998 the government of India labelled bonded child labour as a marginal problem with only 3000 or so cases. A survey in Tamil Nadu in 1995 found 125,000 bonded child labourers in the state alone. Child bonded labour in India is mostly in the agricultural sector but has in recent times been moving into other sectors as well such as beedi-rolling, brick kilns, carpet weaving, commercial sexual exploitation, construction, fireworks and matches factories, hotels, hybrid cottonseed production, leather, mines, quarries, silk, synthetic gems, etc. Child Labour in India

Child labour in India is addressed by the Child Labour Act, 1986 and National Child Labour Project.

d. Approaches to disability and rights of the disabled persons

Persons with disabilities face discrimination and barriers that restrict them from participating in society on an equal basis with others every day. They are denied their rights to be included in the general school system, to be employed, to live independently in the community, to move freely, to vote, to participate in sport and cultural activities, to enjoy social protection, to access justice, to choose medical treatment and to enter freely into legal commitments such as buying and selling property.

A disproportionate number of persons with disabilities live in developing countries, often marginalized and in extreme poverty.

The protection guaranteed in other human rights treaties, and grounded in the Universal Declaration of Human Rights, should apply to all. Persons with disabilities have, however, remained largely 'invisible', often side-lined in the rights debate and unable to enjoy the full range of human rights.

In recent years, there has been a revolutionary change in approach, globally, to close the protection gap and ensure that persons with disabilities enjoy the same standards of equality, rights and dignity as everyone else.

The Convention on the Rights of Persons with Disabilities, which was adopted in 2006 and entered into force in 2008, signalled a 'paradigm shift' from traditional charity-oriented, medical-based approaches to disability to one based on human rights.

Former UN High Commissioner for Human Rights, Louise Arbour, said, "The celebration of diversity and the empowerment of the individual are essential human rights messages. The Convention embodies and clearly conveys these messages by envisaging a fully active role in society for person with disabilities."

The international framework

The Convention and its Optional Protocol

The Convention on the Rights of Persons with Disabilities offers sufficient standards of protection for the civil, cultural, economic, political and social rights of persons with disabilities on the basis of inclusion, equality and non-discrimination. It makes clear that persons with disabilities are entitled to live independently in their communities, to make their own choices and to play an active role in society.

The Optional Protocol on the Convention came into force at the same time as the Convention. It gives the Committee of experts additional capacities. The Committee can accept and examine complaints filed by individuals, and where there is evidence of grave and systemic violations of human rights, it can launch inquiries. The Convention and its Optional Protocol received immediate and wide support from the international community. Their adoption has been welcomed as evidence of a real commitment to a truly inclusive and universal human rights framework.

The Committee of experts

The Committee on the Rights of Persons with Disabilities (CRPD), a group of 18 independent experts (currently, most of them persons with disabilities), oversees promotion and implementation of the Convention. The experts are nominated by individual countries and then elected by the States that have ratified the Convention. All States are obliged to report regularly to the Committee on how the rights embodied in the Convention are being implemented in each

of their countries. The Committee in turn, makes comments and suggestions for further progress, based on each of the reports. Civil society organizations and national human rights institutions also contribute to the reviews.

The Committee is responsible for interpreting the Convention, and to that purpose issues General Comments, which offer clarification and guidance on specific articles.

The Special rapporteur on the rights of persons with disabilities

The Human Rights Council, by its resolution 26/20 created the Special Procedure of the Special Rapporteur on the rights of persons with disabilities. The Special Rapporteur has the mandate to, among others, research and gather information on violations of the rights of persons with disabilities, recommend on how to better promote and protect their rights, and to provide technical assistance to that purpose. The Special Rapporteur reports to the Human Rights Council, and cooperates with the Conference of States Parties to the Convention on the Rights of Persons with Disabilities and the Commission for Social Development. Ms. Catalina Devandas Aguilar (Costa Rica) was appointed as the first Special Rapporteur on the rights of persons with disabilities in 2014.

e. Right to education and dignity

Education is the most potent mechanism for the advancement of human beings. It enlarges, enriches and improves the individual's image of the future. A man without education is no more than an animal.

Education emancipates the human beings and leads to liberation from ignorance. According to Pestalozzi, education is a constant process of development of innate powers of man which are natural, harmonious and progressive. It is said that in the Twenty First Century, 'a nation's ability to convert knowledge into wealth and social good through the process of innovation is going to determine its future,' accordingly twenty first century is termed as century of knowledge .

The significance of education was very well explained in case of Brown V Board of Education , in following words: "It is the very foundation of good citizenship. Today, it is principal instrument in awakening the child to cultural value, in preparing him for later professional training and in helping him to adjust normally to his environment. "It is said that child is the future of nation.

The quality of education of the child will determine the quality of life in nation. As it is well illustrated in following words:

"In ancient shadows and twilights Where childhood had strayed, The world's great sorrows were born And its heroes were made. In the lost boyhood of Christ was betrayed. " Both at national and International levels efforts are being made to educate more and more people as education contributes in the development of the society which is consistent with the dignity of the human being.

International cooperation related to what is now called 'the right to education' has a more limited history. A private organisation, the International Bureau of Education, was established in Geneva in 1924 and was transformed into an inter-governmental organization in 1929 as an international coordinating centre for institutions concerned with education. A much broader approach was chosen, however with the establishment of UNESCO in 1945. United Nations, on 10th December, 1998 adopted Universal Declaration of Human Rights. The Preamble to the UDHR stated that: every individual and organ of society...., shall strive by teaching and education to promote respect for these rights and freedoms...." In accordance with the Preamble of UDHR, education should aim at promoting human rights by importing knowledge and skill among the people of the nation states.

Article 26 (1) of UDHR proclaims that: Every one has a right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

Article 26 (2) states that Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; It

shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for maintenance of peace. Further, Article 26 (3) provides that parents have a prior right to choose the kind of education that shall be given to their children."

The right to education has also been recognized by the International covenant on Economic, Social and Cultural Rights. Article 13 states that,; The states parties to the present covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and sense of its dignity, and shall strengthen the respect for human right and fundamental freedoms.... Article 13 further provides that the states Parties to the present covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received on completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

During the general discussion by the committee on Economic, Social and Cultural Rights on the right to education (1998), an agreement was reached that four elements define its core content:

- (1) No one shall be denied a right to education;

(2) Everyone is entitled to basic (primary) education in one form or another; this includes basic education for adults. Primary education must be compulsory and free. No one may withhold a child from primary education. A state has an obligation to protect this right from encroachment by third persons;

(3) The minorities have the right to be taught in the language of their choice, in institutions outside the official system of public education. UNESCO has adopted a number of normative documents, conventions and recommendations ensuring the enjoyment of the right to education for everyone.

The best known among these is the Convention against Discrimination in Education, which was adopted on 14th December 1960 by the General Conference and which entered into force in 1962. The role of international organisation regarding the implementation of the right to education is just not limited to the preparation of documents and conducting conferences and conventions but it also undertakes the operational programmes assuring, access to education of refugees, migrants, minorities, indigenous people, women and the handicaps. India participated in the drafting of the Declaration and has ratified the covenant; Hence India is under obligation to implement such provisions.

The Founder Fathers of the nation recognizing the importance and significance of right to education made it a constitutional goal, and placed it under chapter IV Directive Principle of State Policy of the Constitution of India. Article 45 of the Constitution requires state to make provisions within 10 years for free and compulsory education for all children until they complete the age of 14 years.

Further Article 46 declares that the state shall promote with special care the educational and economic interests of the weaker section of the people.... It is significant to note that among several Articles enshrined under Part IV of the Indian Constitution, Article 45 had been given much importance as education is the basic necessary of the democracy and if the people are denied their right to education then democracy will be paralyzed; and it was, therefore, emphasized that the objective enshrined under Article 45 in Chapter IV of the Constitution should be achieved within ten years of the adoption of the Constitution. By establishing the

obligations of the state the Founder Fathers made it the responsibility of coming governments to formulate a programme in order to achieve the given goals, but unresponsive and sluggish attitude of the government to achieve the objective enshrined under Article 45 belied the hopes and aspirations of the people. However, the Judiciary showed keen interest in providing free and compulsory education to all the children below the age of fourteen years.

In case of *Mohini Jain V State of Karnataka*, the Supreme Court held that right to education is fundamental right under Article 21 of the Constitution.

The right to education springs from right to life. The right to life under Article 21 and the dignity of the individual cannot fully be appreciated without the enjoyment of right to education. The Court observed:

Right to life is compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the fully range of conduct which the individual is free to pursue. The right to life under Article 21 and the dignity of the individual cannot be assured unless

it is accompanied by the right to education. The State Government is under an obligation to provide educational facilities at all levels to its citizens.

In case of *Unni Krishan V State of Andhra Pradesh* the Supreme Court was asked to examine the decision of *Mohini Jain's* case. In the present case the Apex Court partly overruled given in the *Mohini Jain* case. The Court held that, the right to education is implicit in the right to life and personal liberty guaranteed by Article 21 and must be interpreted in the light of the Directive Principle of State Policy contained in Articles 41, 45 and 46.

The Apex Court, however, limited the State obligation to provide educational facilities as follows.

(i) Every Citizen of this Country has a right to free education until he completes the age of fourteen years;

(ii) Beyond that stage, his right to education is subject to the limits of the economic capacity of the state.

Further the Supreme Court in *M.C. Mehta V State of Tamil Nadu* the Supreme Court observed that, to develop the full potential of the children they should be prohibited to do hazardous work and education should be made available to them. In this regard the Court held that, the government should formulate programme offering job oriented education so that they may get education and the timings be so adjusted so that their employment is should not be affected. Again in *Bandhua Muti Morcha V Union of India*, Justice K. Ramaswamy and Justice Sagir Ahmad, observed, illiteracy has many adverse effects in a democracy governed by rule of law. Educated citizens could meaningfully exercise his political rights, discharge social responsibilities satisfactorily and develop spirit of tolerance and reform.

Therefore, education is compulsory.., compulsory education is one of the states for stability of democracy, social integration and to eliminate social evils." The Supreme Court by rightly and harmoniously construing the provision of Part III and IV of the constitution has made right to education a basic fundamental right.

The Government of India by Constitutional (86th Amendment Act) Act, 2002 had added a new Article 21A which provides that "the state shall provide free and compulsory education to all children of the age of 6 to 14 years as the state may, by law determine". And further strengthened this Article 21A by adding clause (K) to Article 51-A which provides who is a parent or guardian to provide opportunities for education to his child or ward between the age of 6 and 14 years. On the basis of Constitutional mandate provided in Article 41, 45, 46, 21A and various judgments of Supreme Court the Government of India has taken several steps to eradicate illiteracy, improvement the quality of education and make children back to school who left the school for one or the reasons. Some of these programmes are National Technology Mission, District Primary Education Programme, and Nutrition Support for Primary Education, National Open School, Mid- Day Meal Scheme, Sarva Siksha Abhiyan and other state specific initiatives. Besides, this several states have enacted legislation to provide free and compulsory

primary education such as- the Kerala Education Act 1959, the Punjab Primary Education Act 1960, the Gujarat Compulsory Primary Education Act 1961, U.P. Basic Education Act 1972, Rajasthan Primary Education Act 1964, etc.

However, the Constitution of India and Supreme Court have declared that the education is now a fundamental right of the people of India, but it does not speak about millions of children who are in the age group of 0-5 years. It is needed that the Constitution should again be amended and the children of age group of 0 -5 years should be included; as by the time the child reaches the age of 6 years he/she gets in to the child labour due to the poverty. Moreover the Constitution only ensures that the state shall provide primary education to the children up to the age of 14 years, and the secondary and higher education is contingent and conditional upon the economic capacity of the state. The right to education will be meaningful only and only if the all the levels education reaches to all the sections of the people otherwise it will fail to achieve the target set out by our Founder Father to make Indian society an egalitarian society

Text Books:

1. Law, Poverty and Development – Upendra Baxi
2. State and Poverty in India – Atul Kohli
3. The Poverty Question (Search for Solution) – Yogesh Atal
4. Poverty, Rural Development and Public Policy - Amarendra