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Legal Perspective of Poverty in India

Naman Aggarwal^a

^aDr. Ram Manohar Lohiya National Law University, Lucknow, India

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Poverty is a problem related to human rights. Poverty degrades human dignity to too much extent which is an important percept of human rights. The existence of human rights is there to protect the deprivation of human values in the legal context. Therefore, poverty can be seen as a violation of the civil, political, economic, cultural, and social rights of an individual which requires a legal commitment from each of the responsible actors. The Government of India has been doing consistent endeavors for poverty alleviation and the country has achieved certain positive results. But still, we have a long way to alleviate poverty in India. This article focuses upon the legal perspective related to poverty exclusively in the context of India. This article concentrates specifically on the human rights obligations under the Constitution of India. The main purpose of this article is to highlight the legal provisions available at the disposal of the economically weaker section of the society and to suggest some effective courses of action that should be followed.

Keywords: *poverty, poor, law, constitution, human rights.*

INTRODUCTION

Poverty is a dynamic and relative concept. One may be regarded as the poor at one place but may not be regarded as one at another place depending upon the economic wellbeing of that particular area. In general, the person who doesn't have the resources to fulfill his basic needs is considered to be poor but this is the criteria considered in the economic sense.

When we see poverty through the legal lens it is something much more than just money and food. They are being deprived of basic human rights, they are not even aware of their own rights, being exploited by society, face discrimination at various levels in daily life, etc. 223rd Law Commission report in 2009 explicitly mentioned that extreme poverty leads to denial of human rights. Now is the time that India and all other nations across the globe should recognise 'human poverty in place of 'income poverty' which provides a broader perspective.

Aristotle stated that poverty is the father of the crime. Poor persons got trapped in the vicious cycle through which they can be out only with the external force of education and employment. Due to the meager resources available at their disposal they were involved in some kind of petty crime to earn some living and then got confined in the chain of the criminal system. Due to their economic status their rights are barely being recognised which led to the sustenance of the vicious cycle.

WHAT ARE THE HISTORICAL CAUSES FOR POVERTY IN INDIA?

Before the colonial period as well there was prevalent poverty in the Indian sub-continent but the poverty at that time was not absolute poverty. The people don't have the scarcity of basic necessities and essentials like food, cloth, etc. But during the colonial period, the extent of poverty increased by many degrees. The taxes levied by the Britishers upon the poor were proven very detrimental to their economic condition. The poor who weren't able to pay the taxes due to famine, low production, less land availability were forced towards extreme consequences of poverty. The poverty which was limited to just the paucity of luxuries got converted into the scarcity of basic needs.

In the post-independence era, a new class of poor emerge namely 'urban poor'. At that time India was developing at a faster pace and the migration from rural areas to urban areas was at a peak. The people residing in rural areas were migrating in search of jobs and a better standard of living. As more and more people were migrating towards the urban areas the places available for accommodating them started to decline and they were pushed towards the

slum areas. According to an estimate, the approximate level of poverty in India around 1960 is 59%.

CONSTITUTIONAL STATUS OF THE POOR IN THE CONTEMPORARY INDIA

Though the term 'poverty' isn't mentioned in our Constitution and Preamble even once there are various rights guaranteed itself by the constitution to poor and at time Supreme Court also being the interpreter of the sacred book gave various judgements recognising the rights of poor that uphold India as a welfare state. Our constitution makers had concern in their mind regarding the development and upliftment of underprivileged and made provisions regarding the same. Let's discuss some of the provisions present in the constitution currently which either have the roots originally from constitution-makers or through the Supreme Court.

- **Article 21**¹ - Article 21 provides the right to life and personal liberty which scope has been expanded by the SC in landmark judgement **Maneka Gandhi v. Union of India**,² (1978). In the judgement the court observed that "the fundamental rights conferred in Part III of the Constitution are not distinctive nor mutually exclusive.' Any law depriving a person of his personal liberty has to stand a test of one or more of the fundamental rights conferred under Article 19³. When referring to Article 14,⁴ 'ex hypothesis must be tested. The concept of reasonableness must be projected in this procedure"⁵. The court also by providing a liberal interpretation in the said judgement, had set a benchmark for coming generations to seek their basic rights whether or not explicitly mentioned under Part III of the constitution. Today courts recognise various rights under the ambit of Article 21.⁶ One such right is the **Right to Livelihood**

¹ Constitution of India, art 21

² *Maneka Gandhi v Union of India* AIR 1978 SC 597

³ Constitution of India, art 19

⁴ Constitution of India, art 14

⁵ Akella Poornima, 'Maneka Gandhi v Union of India, 1978 AIR 597, 1978 SCR (2) 621' (*ipleaders*, 23 December 2019) <<https://blog.ipleaders.in/maneka-gandhi-v-union-of-india/>> accessed 07 October 2021

⁶ *Ibid*

recognised in the judgement of the **Board of Trustees of the Port of Bombay v Dilipkumar Raghavendranath Nadkarni**.⁷

- **Article 39A**⁸ – This article provides the right to legal aid and equal justice. The state shall ensure that there is equal delivery of justice and the judicial and legal system should promote justice, not based on opportunity and irrespective of economic and political might, by suitable legislation or scheme or through any other way.
 - The proceedings in the court matter require payment of court fees and the fees to be paid to the skilled lawyer as well. The poor cannot afford the substantial expenses out of their pocket. This led to the poor being out of the judicial system and denied fair trial and remedies. To counter this a provision was added in Article 39⁹ of the Constitution of India through 42nd Constitution Amendment (1976)¹⁰ by Indira Gandhi which provided free legal aid to the poor people who cannot afford counsel for arguing their case. This amendment puts the onus upon the State and obliged it to make sure that every person is being provided the opportunity to be represented before the court. Thus, justice cannot be denied to any citizen on the basis of economic status.
 - Further, in **Sheela Barse vs State of Maharashtra**,¹¹ judgement, the court observed that ‘Legal assistance to a poor or indigent accused whose life is in jeopardy is not only mandated by Article 39A but also by articles 14 and 21’¹².
- **Article 15**¹³ and **16**¹⁴ – Under Article 15 and 16 of COI, the Constitution empowers the state to make certain provisions for the backward class and sections of the society.

⁷ *Board of Trustees of the Port of Bombay v Dilipkumar Raghavendranath Nandkarni* [1983] 1 SCR 328

⁸ Constitution of India, art 39A

⁹ Constitution of India, art 39

¹⁰ Constitution (Forty-Second) Amendment Act 1976

¹¹ *Sheela Barse v State of Maharashtra* AIR 1983 SC 378

¹² B Cube Law Associates, ‘Sheela Barse – v– State of Maharashtra – A Study’ (*B Cube Law Associates*, 18 July 2020) <<https://medium.com/@bcubelawassociates/sheela-barse-v-state-of-maharashtra-a-study-ea6c90cc175a>> accessed 08 October 2021

¹³ Constitution of India, art 15

¹⁴ Constitution of India, art 16

- The Constitutional (One Hundred and Third) Amendment Act, 2019¹⁵ amended Articles 15 and 16 and inserted clauses 15(6)¹⁶ and 16(6)¹⁷ in Part III of the Constitution.
- Clause 15(6) enables the State to make provisions in the interest of economically weaker sections in educational institutions either aided or unaided private institutions, except the minority institutions mentioned under article 30(1)¹⁸. The act further capped the upper limit of EWS reservation to 10%, which means that the ceiling is being put upon the educational institutions to reserve 10% of the total seats for this section.
- Clause 16(6) further enables the state to provide reservations in appointments to them and this provision also has a ceiling of 10% in addition to an existing reservation.
- **Article 38¹⁹, Article 41²⁰, Article 46²¹, and Article 47²²** – All these articles mentioned in Part IV of the Constitution i.e. Directive Principles of State Policy (DPSPs) direct the state to make provisions for the poor and marginalised sections of the society.
 - Article 38 mentions that the state shall strive to promote the welfare of the people by securing and ensuring social, economic, and political justice and by minimising inequalities in income, status, facilities, and opportunities.
 - Article 41 provides for securing the right to work, to education, and to public assistance by the State in cases of unemployment, old age, sickness, and disability.
 - Article 46 states that the State should promote the educational and economic interests of the weaker sections particularly of backward classes and economically weaker sections.

¹⁵ Constitutional (One Hundred and Third) Amendment Act 2019

¹⁶ Constitution of India, art 15(6)

¹⁷ Constitution of India, art 16(6)

¹⁸ Constitution of India, art 30(1)

¹⁹ Constitution of India, art 38

²⁰ Constitution of India, art 41

²¹ Constitution of India, art 46

²² Constitution of India, art 47

- Article 47 directs the state to raise the level of nutrition and the standard of living to improve public health.²³

LEGAL EMPOWERMENT OF ECONOMICALLY WEAKER SECTIONS OF SOCIETY

Legal empowerment involves the process of systemic change while protecting the poor and enabled to take the help of the law to protect their rights and interest as citizens. Legal empowerment leads to legal reforms which improve the economical and legal condition of an individual which further helps in the break away from the trap of poverty. Some of the important steps that can be taken for this purpose are

- Systemise the access to legal services so that the poor will become more aware of the law and to utilise them more aptly and wisely.
- Make sure that the courts and tribunals respect and take into consideration the rights of poor individuals.
- Establish a surveillance system over the police to ensure that they don't exploit poor individuals and instead help them.
- Ownership of the land in itself is a kind of human right. Poverty will reduce by a major extent when the weaker sections have visible rights over their land and other assets in the most functional and transparent manner. If the government of India makes sure that the 'right to land is being made available to every individual then the problem of slum dwellers will come to an end by a wide margin as the main reason for residing in a slum is related to income level. The living standard of the people will enhance as well.
- Unskilled labourers who mostly belong to the economically weaker sections majorly work in the unorganized sector. They didn't get the basic income, necessary workplace safety equipment, proper working conditions, etc. The State should ensure that the laws it made will strictly be enforced in the unorganised sector as well.

Apart from empowering the poor, the government should take certain actions to change the system as well. The state can take the following actions:

²³ *Ibid*

- First of all the government should change the way how it functions. The government should try to curb corruption from the grassroots level. The rich people by bribing the government officials take the advantage of their position and poor people suffer because of this.
- The government should also emphasise the 'right to education which will have a multiplier effect for the poor.
- Government should also launch various awareness camps and programs for making the poor acquainted with their legal rights so that their exploitation can be curbed. Until the poor don't recognise their rights themselves, they cannot be safe in the society as the people with money and some knowledge of the law can overpower them.

CONCLUSION

Poverty and law are so interdependent and interlinked on each other. The poor people, arguably the most deprived section of the society in terms of access to their needs and education mostly form part of the vicious cycle of legal proceedings and crime. They got trapped between the riches of the rich section of society and the rags of our legal system. Poverty like the pandemic is a universal issue and not one State on its own can reduce it to a significant extent.²⁴ The international community and organisations should come and work together to create a synergy, to make some impact at the ground level. There are various lives that spend countless nights in prison even without committing any crime, shouldn't we take the initiative to stop this?

Poverty is a denial of opportunities and choices and a violation of human dignity as well. According to Sen, 'being poor does not mean living below an imaginary poverty line, such as an income of two dollars a day or less. It means having an income level that does not allow an

²⁴ Inter-American Development Bank, 'Amartya Sen and the thousand faces of poverty' (*Inter-American Development Bank*, 1 July 2001) <<https://www.iadb.org/en/news/webstories/2001-07-01/amartya-sen-and-the-thousand-faces-of-poverty%2C9286.html>> accessed 10 October 2021

individual to cover certain basic necessities, taking into account the circumstances and social requirements of the environment. Furthermore, many of the factors are interconnected'²⁵.

²⁵ *Ibid*