



GOVERNMENT OF INDIA
LAW COMMISSION OF INDIA

Need for Ameliorating the lot of the Have-nots
—
Supreme Court's Judgments

Report No. 223

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**LAW COMMISSION OF INDIA
(REPORT NO. 223)**

**Need for Ameliorating the lot of the Have-nots
—
Supreme Court's Judgments**

Forwarded to the Union Minister for Law and Justice, Ministry of Law and Justice, Government of India by Dr. Justice AR. Lakshmanan, Chairman, Law Commission of India, on the 30th day of April, 2009.

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Dear Dr. Bhardwaj Ji,

Subject: Need for Ameliorating the lot of the Have-nots –
Supreme Court's Judgments

I am forwarding herewith the 223rd Report of the Law Commission of India on the above subject.

The United Nations Committee on Economic, Social and Cultural Rights defines poverty as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights. Poverty has been and remains a constructed social and economic reality. The poor are not poor simply because they are less human or because they are physiologically or mentally inferior to others whose conditions are better off. On the contrary, their poverty is often a direct or indirect consequence of society's failure to establish equity and fairness as the basis of its social and economic relations. Extreme poverty is denial of human rights.

In a large number of cases, our Supreme Court has considered the scope of article 21 of the Constitution, which assures right to life. To make right to life meaningful and effective, the Supreme Court put up expansive interpretation and brought within its ambit a myriad of rights.

Various laws have been enacted to eradicate poverty: some of them directly deal with them and some of them indirectly. Nevertheless, their tardy implementation makes us lag behind in effectively dealing with the problem.

In spite of the constitutional safeguards and State legislative intervention in favour of the poor and the needy, their socio-economic condition is deteriorating. Social and economic equality still remains a mirage for them.

We are of the view that the Union and the State Governments should accord top priority to implementation of the judgments rendered by our Supreme Court in their letter and spirit in order that the lot of the have-nots is ameliorated.

With warm regards,

Yours sincerely,

(Dr AR. Lakshmanan)

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**Need for Ameliorating the lot of the Have-nots –
Supreme Court’s Judgments**

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CHAPTER I

EXTREME POVERTY: DENIAL OF HUMAN RIGHTS

1.1 The United Nations Committee on Economic, Social and Cultural Rights defines poverty as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights. Poverty has been and remains a constructed social and economic reality. The poor are not poor simply because they are less human or because they are physiologically or mentally inferior to others whose conditions are better off. On the contrary, their poverty is often a direct or indirect consequence of society's failure to establish equity and fairness as the basis of its social and economic relations.¹

1.2 The Universal Declaration of Human Rights proclaims² that everyone is entitled to a standard of living adequate to provide for the health and well-being of oneself and one's family. Moreover, in

¹ *Voice of Justice* by Dr Justice AR. Lakshmanan, Universal Law Publishing Co. Pvt. Ltd., Delhi (2006), page 121

² *Statement to the 49th session of the United Nations Commission on Human Rights*

accordance with the Universal Declaration of Human Rights, International Covenants recognize that freedom from fear and want can be achieved only if everyone enjoys economic, social and cultural rights, in addition to civil and political rights. The increasing disparity between the rich and the poor is a major destabilizing influence in the world. It produces or exacerbates regional and national conflicts, environmental degradation, crime and violence, and the increasing use of illicit drugs. These consequences of extreme poverty affect all individuals and nations. Increasingly we are becoming aware that we are all members of a single human family. In a family the suffering of any member is felt by all, and until that suffering is alleviated, no member of the family can be fully happy or at ease. Few are able to look at starvation and extreme poverty without feeling a sense of failure.

1.3 Every man and woman has the human right to a standard of living adequate for health and well-being, to food, clothing, housing, medical care and social services. These fundamental human rights are defined in our Constitution. On 10 December 1948, the United Nations General Assembly adopted and proclaimed the Universal Declaration of Human Rights “as a common standard of achievement for all peoples and all nations”. Article 1 of the Universal Declaration of Human Rights reads thus:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood.”

1.4 The human right to live in dignity, free from want, is itself a fundamental right, and is also essential to the realization of all other human rights – rights that are universal, indivisible, interconnected and interdependent. The right to be free from poverty includes the human right to an adequate standard of living. Poverty is a human rights violation. The right to be free from poverty includes:

- The human right to an adequate standard of living;
- The human right to work and receive wages that contribute to an adequate standard of living;
- The human right to a healthy and safe environment;
- The human right to live in adequate housing;
- The human right to be free from hunger;
- The human right to safe drinking water;
- The human right to primary health care and medical attention in case of illness;
- The human right to access to basic social services;
- The human right to education;
- The human right to be free from gender or racial discrimination;
- The human right to participate in shaping decisions which affect oneself and one's community.³

1.5 The human right for children includes their development in an environment appropriate for their physical, mental, spiritual, moral and social development.⁴

³ *Supra* note 1, pages 121-122

⁴ *Ibid.*

1.6 Very little attention has been paid to poverty and the extreme poverty in the logic of human rights; the explanation for this is unhappily simple. A poor person hardly exists and can only lay claim, modestly, to 'poor' rights. We have gradually become accustomed to consider the poor person as having exhausted his entitlements. As for the extremely poor, they do not exist at all, at best they may benefit from charity. Even the help they receive is, in most cases, an additional token of exclusion from a society that makes them feel guilty. The public authorities ignore them.

1.7 Poverty and extreme poverty are not peripheral phenomena confined to this country alone. They are universal. Poverty is increasing everywhere. The phenomenon occurs on a more massive scale in the Least Developed Countries and in countries undergoing rapid structural transformation, but it has equally serious consequences for the victims in rich countries. As we said earlier, poverty is increasing everywhere: Increasing wealth is accompanied by increasing poverty. Poverty renders all human rights inoperative. The violation of right to a reasonable standard of living entails the violation of all the other human rights, since their observance are simply made materially and structurally impossible. Poverty aggravates discrimination since it particularly affects women, the elderly and the disabled. Moreover, the very poor are, in most cases, unable even to discover their own rights and this violation not only affects individuals through and within their precarious day-to-day existence, but it entraps their entire social world over several generations in a spiral from which it is virtually impossible to escape.

Poverty is, undoubtedly, a general phenomenon, a social relation, which as such is subject to law, and whose overall logic needs to be understood. Poverty is a situation of uncertainty, whereas extreme poverty is a spiral of different kinds of uncertainty with each kind aggravating the effects of the others in a circular process that hems the individual completely.

1.8 Fundamentally, a human rights approach to poverty is about the empowerment of the poor, extending their freedom of choice and action to structure their own lives. The international normative framework empowers the poor by granting them human rights and imposing the legal obligations on others. Rights and obligations are required to be supported by a system of accountability, or else they become no more than window dressing. Accordingly, the human rights approach to poverty reduction emphasizes obligations and requires that all duty-holders, including States and intergovernmental organizations, be held to account for their conduct in relation to international human rights. The enjoyment of the right to participate is deeply dependent on the realization of other human rights. If the poor are to participate meaningfully, they must be free to organize without restriction (right to association), to meet without impediment (right to assembly) and to say what they want without intimidation (freedom of expression), they must know the relative facts (right to information) and they must enjoy an elementary level of economic security and the well-being (right to a reasonable standard of living and associated rights). It is less openly recognized that the poor also suffer from a lack of information. Over and over again poor

people mention their isolation from information, information about the programmes of assistance, their rights, contacts about work that affect their lives directly.

1.9 Poverty is indisputably the most potent violation of all human rights, and constitutes a threat to the survival of the greatest numbers of the human population. As poverty has intensified in both rich and poor nations alike, the view of poverty as a human rights and social justice issue has gained increased recognition. The United Nations General Assembly has resolved that extreme poverty and exclusion from society constitute a violation of human dignity (General Assembly Resolution 53/146 on Human Rights and Extreme Poverty adopted December 18 1992). The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights and might, in some situations, constitute a threat to the right to life. A human rights-based approach to poverty views the poor as holding inalienable fundamental rights that must be respected, protected and fulfilled.

1.10 If injustices and discriminations in society are the main reasons for poverty, then as an effective operational mechanism, the human rights-based approach to development demands:

- Participation and transparency in decision-making – this implies making participation throughout the development process a right and the obligation of the State and other actors to create an enabling environment for participation of all stakeholders;
- Non-discrimination – this implies that equity and equality cut across all rights and are the key ingredients for development and poverty reduction;
- Empowerment – this implies empowering people to exercise their human rights through the use of tools such as legal and political action to make progress in more conventional development areas;
- Accountability of actors – this implies accountability of public and private institutions and actors to promote, protect and fulfill human rights and to be held accountable if these are not enforced.

1.11 Human rights are for everyone, as much for people living in poverty and social isolation as for the rich and educated. International law prohibits discrimination in the enjoyment of human rights on any ground, such as ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The term “or other status” is interpreted to include personal circumstances, occupation, lifestyle, sexual orientation and health status. People living with HIV and AIDS, for instance, are entitled to the enjoyment of their fundamental human rights and freedoms without any unjustified restriction.

1.12 Equality also requires that all persons within a society enjoy equal access to the available goods and services that are necessary to fulfill basic human needs. It prohibits discrimination in law or in practice in any field regulated and protected by public authorities. Thus, the principle of non-discrimination applies to all State policies and practices, including those concerning health care, education, access to services, travel regulations, entry requirements and immigration.

1.13 An essential principle of the international human rights framework is that every person and all peoples are entitled to participate in, contribute to, and enjoy civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized. This means that participation is not simply something desirable from the point of view of ownership and sustainability, but rather a right with profound consequences for the design and implementation of development activities. It is concerned with access to decision-making, and is critical in the exercise of power. The principles of participation and inclusion mean that all people are entitled to participate in society to the maximum of their potential. This in turn necessitates provision of a supportive environment to enable people to develop and express their full potential and creativity.

1.14 States have the primary responsibility to create the enabling environment in which all people can enjoy their human rights, and

have the obligation to ensure that respect for human rights norms and principles is integrated into all levels of governance and policy-making. The principle of accountability is essential for securing an enabling environment for development. Human rights do not simply define the needs of people, but recognize people as active subjects and claim-holders, thus establishing the duties and obligations of those responsible for ensuring that the needs are met. As a consequence, the identification of duty-holders has to feature as an integral part of programme development.

1.15 Law must protect rights. Any dispute about them is not to be resolved through the exercise of some arbitrary discretion, but through the adjudication by competent, impartial and independent processes. These procedures will ensure full equality and fairness to all parties, and determine the questions in accordance with clear, specific and pre-existing laws, known and openly proclaimed. All persons are equal before the law, and are entitled to equal protection. The rule of law ensures that no one is above the law, and that there will be no impunity for human rights violations.

1.16 From the human development perspective, good governance is democratic governance, meaning:

- People's rights and fundamental freedoms are respected, allowing them to live with dignity;
- People have a say in decisions that affect their lives;
- People can hold decision-makers accountable;

- Inclusive and fair rules, institutions and practices govern social interactions;
- Women are equal partners with men in public spheres of life and decision-making;
- People are free from discrimination based on ethnicity, gender, or any other attribute;
- The needs of future generations are reflected in current policies;
- Economic and social policies are responsive to people's needs and aspirations.

1.17 The importance of discrimination in reaching the Millennium Development Goals – based on ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status – cannot be overstated. Discrimination is a form of social exclusion, and often a cause of poverty. In extreme cases, discrimination and exclusion may lead to conflict. Systemic discrimination reduces the ability of individuals to benefit from and contribute to human development.

CHAPTER II

A PETITION ON BEGGARS' HUMAN RIGHTS

2.1 A civil writ petition (No. 117/2000) under article 32 of the Constitution filed by way of public interest litigation challenging the alleged action of the Union of India, Government of NCT of Delhi and the Commissioner of Police, New Delhi, in violating the provisions of the Bombay Prevention of Begging Act 1959, as extended to Delhi, is pending before the Supreme Court. The writ petitioner (Ms Karnika Sawhney), who happened to be a law student of the University of Delhi, undertook a research project on the subject of "Problem of beggars in Delhi". She saw the plight of beggars housed in Beggar Homes who were being deprived of the basic essentials and amenities of life like adequate food, clean water, proper shelter and personal hygiene. According to her, the inmates were leading a mere animal existence with no proper provision of adequate drinking water, bathing, sanitation, food, clothing and clean bedding or hygienic surroundings in the shelter. The inmates also complained of extremely poor medical facilities.

2.2 The writ petition has pointed out that the concept of the right to life and livelihood is a part of the overall constitutional structure and is recognized also by various articles of the Universal Declaration of Human Rights that, *inter alia*, declare the right of every member of society to social security and protection against unemployment and

economic, social and cultural rights indispensable for the dignity and free development of his personality. It is also of significance to highlight here that to combat the problem of beggary a scheme for beggary prevention was formulated and introduced during 1992-93 for the care, treatment and rehabilitation of beggars by the Union Ministry of Social Justice and Empowerment. It is essential to briefly set out its primary objectives which are as follows:

1. Providing facilities for the technical education and vocational training of beggars;
2. To encourage beggars in productive work so as to facilitate their reintegration in the society;
3. Involving voluntary welfare organizations;
4. Mobilizing community resources for training and employment.

2.3 Another scheme of assistance was to provide for establishment of work centres in the existing Beggar Homes for providing vocational training and technical education to the beggars. It is pertinent to note that since the main objective in case of Beggar Homes is the economic rehabilitation together with the physical, psychological and social rehabilitation, it is expected that the allocation of expenditure would reflect the relative importance of these objectives, but when the expenditure pattern of these bodies is examined in this light, it is found that the administrative expenses form predominantly part of the total expenditure.

2.4 The writ petition also states that there is an attitude of indifference, laxity and lack of commitment towards the assigned roles among the officials statutorily empowered with the duty to arrest beggars for protective and corrective custody. The un-arrested female beggars are deprived of access to rehabilitation which the State is required to ensure through the special institutions established under the Act. This degree of laxity nullifies in effect, the presence of the laudatory, rehabilitative provisions in the welfare legislation. As a result, while the institutions exist they hardly serve/cater to the needs of the destitute who continue to beg on the streets.

2.5 The writ petition further states that there is a lack of transparency due to lapse on the part of governmental authorities in observing statutory provisions. There is dire need to establish more beggar institutions in Delhi and other big cities in order to provide proper and clean accommodation, adequate essential facilities and meaningful rehabilitation to the beggars.

CHAPTER III
EXPANSE OF ARTICLE 21 OF THE CONSTITUTION

3.1 Article 21 of our Constitution deals with protection of life and personal liberty and reads thus:

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

3.2 This article, drafted in clear and simple language, has been the subject matter of extensive litigation. Its scope has been expanded over the last 50 years and life and liberty now include education, health and even roads in hilly areas. The article prohibits deprivation of life or personal liberty except according to procedure established by law. In a sense, it corresponds to the Fifth and Fourteenth Amendments to the United States Constitution, the relevant portions of which read:

“Nor be deprived of life, liberty or property without due process of law...” and “... nor shall any State deprive any person of life, liberty or property without due process of law.”

3.3 In *A. K. Gopalan v. State of Madras*⁵, the Supreme Court had given a literal and narrow interpretation to article 21 and refused to infuse the procedure with the principles of natural justice. Three decades later, this view was overruled and it was held that the procedure contemplated under article 21 must answer the test of reasonableness.⁶ Such a procedure should be in conformity with the principles of natural justice. This is an example of the expansive interpretation of the fundamental right.

3.4 Thus, article 21 not only protects life and personal liberty but also envisages a fair procedure.

3.5 The initial view was that article 21 did not include the right to livelihood. The later decisions have categorically held that the right to life includes the right to livelihood. In *Olga Tellis v. Bombay Municipal Corporation*⁷, it was held that the sweep of the right to life conferred by article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means

⁵ AIR 1950 SC 27

⁶ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

⁷ AIR 1986 SC 180

of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life.

3.6 The right to reputation is a facet of right to life under article 21. Adverse remarks by a Commission of Inquiry about a person without hearing him violates principles of natural justice and renders the action *non est* as well as the consequences thereof.⁸

3.7 Economic empowerment through distributive justice for the poor, *dalits* and tribes is an integral part of the right to life, equality and of status and dignity to the poor, weaker sections, *dalits* and tribes. Bonded labourers have to be identified and released and rehabilitated in terms of article 21 read with articles 39, 41 and 42.⁹ Women have right to work with dignity and without sexual harassment. A reasonable residence is an indispensable necessity for fulfilling the constitutional goal in the matter of development of man and should be taken as included in the right to life under article 21.¹⁰ For residence on hilly areas, access to road is access to life itself.¹¹

⁸ *State of Bihar v. Lal Krishna Advani*, (2003) 8 SCC 361; *State of Maharashtra v. Public Concern for Governance Trust*, 2007 (1) SCALE 72

⁹ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802

¹⁰ *M/s. Shantistar Builders v. Narayan Khimalal Totame*, AIR 1990 SC 630

¹¹ *State of Himachal Pradesh v. Umed Ram Sharma*, AIR 1986 SC 847

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3.8 National Human Rights Commission (NHRC) has been formed under the Protection of Human Rights Act 1993. The scheme of this Act is to protect and implement human rights including those envisaged under article 21 and international law.

3.9 The Court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade. This is an area where the Court has been most strict and scrupulous in ensuring observance of the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the Court has not hesitated to strike down the order of detention.

3.10 The expression “personal liberty” in article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under article 19 of the Constitution. The said expression includes the right to go abroad and no person can be deprived of this right except according to the procedure prescribed by law.¹²

3.11 Personal liberty of a person in preventive detention is curtailed. Beyond a point, it would be violative of article 21. The law depriving such liberty, after the judgment in *Maneka Gandhi*¹³, must be right,

¹² *Satwant Singh v. Passport Officer*, [1967]3 SCR 525

¹³ *Supra* note 6

just and fair and not arbitrary, fanciful or oppressive. The Court did not uphold solitary confinement of a prisoner sentenced to death under section 30(2) of the Prisons Act 1894 on the ground that articles 14, 19 and 21 are as much available to a prisoner in a jail, and the liberty to move, mix, mingle, talk and company with co-prisoners cannot be substantially curtailed.¹⁴

3.12 The right to a speedy trial has been held by the Supreme Court to form part or as one of the dimensions of the fundamental right to life and personal liberty guaranteed by article 21.¹⁵ This right is not confined to any particular category of offences. The importance of a speedy trial has been repeatedly emphasized by the Supreme Court in many cases. In *Abdul Rehman Antulay v. R. S. Nayak*¹⁶, the Supreme Court examined consequences of denial of the right to a speedy trial and laid down 11, but in-exhaustive, propositions to serve as guidelines. This decision was held to be correct in *P. Ramachandra Rao v State of Karnataka*¹⁷. The Court, however, held that it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings.

3.13 Unnecessary handcuffing of under-trial prisoners would be against article 21.¹⁸ In *Sheela Barse v. Union of India*¹⁹, the Supreme Court deprecated detention of children in jails.

¹⁴ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494

¹⁵ *Hussainara Khatoon v. State of Bihar*, 1979 Cri.L.J. 1036 (SC); *Raghubir Singh v. State of Bihar*, 1987 Cri.L.J. 157 (SC)

¹⁶ AIR 1992 SC 1701

¹⁷ (2002) 4 SCC 578

¹⁸ *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526

¹⁹ AIR 1986 SC 1773

3.14 The right to education also flows from article 21. Article 21A was, however, inserted in the Constitution by the Constitution (Eighty-sixth Amendment) Act 2002 specifically making the right to education as a fundamental right. However, this is not an absolute right. Its content and parameters should be determined in the light of the directive principle contained in article 41 of the Constitution. The right to education in the context of the said directive principle means:

- (a) Every child has a right to free and compulsory education until the age of 14 years;
- (b) After the age of 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development.

3.15 In *Malak Singh v. State of Punjab*²⁰, the Supreme Court held that the right to privacy is implicit in article 21. It has been held that surveillance, if intrusive, so seriously encroaches on the privacy of a citizen as to infringe his fundamental right to personal liberty guaranteed by article 21 and the freedom of movement guaranteed by article 19(1) (d). Surveillance must be to prevent crime. The right to privacy in terms of article 21 has been discussed in various other cases.

3.16 In *Mr. "X" v. Hospital "Z"*²¹, the Supreme Court held that disclosure by the hospital or the doctor concerned to the persons

²⁰ (1981) 1 SCC 420

²¹ (2003) 1 SCC 500

related to the girl who intended to marry, of information that her fiancée had been suffering from HIV (+) did not involve violation of article 21 in the context of his right to privacy. Right to privacy is not absolute.²²

3.17 Illegal detention and custodial torture are recognized as violation of the fundamental rights of life and personal liberty guaranteed under article 21. To begin with, only the following reliefs were being granted in the writ petitions under article 32 or 226:

- (a) Direction to set at liberty the person detained, if the complaint was one of illegal detention;
- (b) Direction to the Government concerned to hold an inquiry and take action against the officers responsible for the violation;
- (c) If the enquiry or action taken by the department concerned was found to be not satisfactory, to direct an inquiry by an independent agency, usually, the Central Bureau of Investigation.

3.18 Compensation for violation of article 21 or “constitutional tort” was for the first time awarded by the Supreme Court in *Rudul Shah v. State of Bihar*²³, and later in *Sebastian M. Hongray v. Union of India*²⁴ and *Bhim Singh v. State of Jammu and Kashmir*²⁵. The law was crystallized in *Nilabati Behera v. State of Orissa*²⁶ and *D.K. Basu*

²² *Mr. “X” v. Hospital “Z”*, (1998) 8 SCC 296

²³ (1983) 4 SCC 141

²⁴ AIR 1984 SC 1026

²⁵ AIR 1986 SC 494

²⁶ (1993) 2 SCC 746

*v. State of W. B.*²⁷, where the Court observed that the award of compensation is a remedy available in public law based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply.

3.19 Construction of dams results in dislocation of thousands of persons. Rehabilitation of people who have been ousted from their homes is a logical corollary to article 21. Rehabilitation is not only about providing food, clothes and shelter, but includes support to rebuild means of livelihood and ensuring necessary amenities of life.

3.20 Our Supreme Court is one of the first courts to develop the concept of the right to healthy environment as a part of the right to life under article 21. The responsibility of the State to protect the environment is now a well-accepted notion in all countries. It is this notion that, in international law, gave rise to the principle of “state responsibility” for pollution emanating from within one’s own territories. This responsibility is clearly enunciated in the Stockholm Declaration of the United Nations Conference on the Human Environment (1972), to which India is a party. Thus, there is no doubt about the fact that there is a responsibility bestowed upon the Government to protect and preserve the tanks, which are an important part of the environment of the area.²⁸ Hygienic environment is an integral facet of the right to a healthy life and it would be impossible to live without a humane and healthy environment.²⁹

²⁷ (1997) 1 SCC 416

²⁸ *Intellectuals Forum v. State of A. P.*, AIR 2006 SC 1350

²⁹ *T. N. Godavarman Thirumalpad v. Union of India*, (2002) 10 SCC 606

3.21 The right to life under article 21 has been interpreted to also include the right to health of workmen.³⁰ The health and strength of a worker is an integral facet of his right of life. In *Murli S. Deora v. Union of India*³¹, the Supreme Court after considering the harmful effects that smoking has on non-smokers, gave directions to ban smoking in public places, namely, (1) auditoriums, (2) hospital buildings, (3) health institutions, (4) educational institutions, (5) libraries, (6) court buildings, (7) public offices, and (8) public conveyances, including railways. The language used gives the impression that the list of places is exhaustive. Airports, for example, are not included, although they are impliedly included.

3.22 An accused who cannot afford legal assistance is entitled to free legal aid at the cost of the State. This right is part of the fair, just and reasonable procedure under article 21. The court must inform the accused of his right to be represented by a lawyer through legal aid and at the expense of the State. Failure to do so will vitiate his trial and his conviction can be set aside.³²

3.23 In *Jolly George Varghese v. Bank of Cochin*³³, the question of putting a person in prison in execution of a money decree, who did not have the necessary means to pay the debt, was considered by the Supreme Court. The Court while dealing with the issue harmonized section 51 of the CPC with the International Covenant on Civil and Political Rights. Article 11 of the Covenant provides that “no

³⁰ *C.E.S.C. Limited v. Subhash Chandra Bose*, (1992) 1 SCC 441

³¹ (2001) 8 SCC 765

³² *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401

³³ AIR 1980 SC 470

one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation". The Court held that a simple default to discharge the debt is not enough to detain a person in prison. There must be some element of bad faith beyond mere indifference to pay. If the judgment-debtor once had the means but now has not or if he has money now on which there are other pressing claims, he should not be cast in prison as the same would be violative of the spirit of article 11 of the Covenant as well as article 21 of the Constitution.

3.24 Public interest litigation is a strategic arm of the legal aid movement, intended to bring justice within the reach of the poor masses, who fall within the low-visibility area of humanity. Public interest litigation is brought before the court not for the purpose of enforcing the rights of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantageous position should not go unnoticed and un-redressed.

3.25 In *Bandhua Mukti Morcha v. Union of India*³⁴, the Supreme Court held that the writ petition under article 32 by way of public interest litigation by a public-spirited organization on behalf of persons belonging to socially and economically weaker sections complaining violation of their human rights on being forced to serve as bonded labourers, was maintainable. According to the Court, a public interest litigation is not in the nature of an adversary litigation

³⁴(1984) 3 SCC 161

but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. Certain directions were given by the Court to the governments and other authorities with a view to improve the life conditions of the poor workers of the stone quarries and ensure social justice to them so that they may be able to breathe the fresh air of social and economic freedom.

3.26 Though article 24 of the Constitution prohibits employment of children below the age of 14 years in any factory or mine or in any other hazardous employment, it is a hard reality that due to poverty child is driven to such employment. The Supreme Court in another case bearing the above title³⁵ directed the Government of India to, *inter alia*, evolve the principles and policies for progressive elimination of employment of the children below the age of 14 years in all employments.

3.27 Conceptually, *parens patriae* theory is the obligation of the State to protect and take into custody the rights and privileges of its citizens for discharging its obligation. The Constitution makes it imperative for the State to secure to its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert and secure their rights, the State must come into picture and protect and fight for the rights of the citizens. Therefore, the State can be activated and approached to effectively come on the scene

³⁵ *Bandhua Mukti Morcha v. Union of India*, AIR 1997 SC 2218

and take over the claims of the victims of a disaster to protect their human rights.³⁶

3.28 A newspaper carried a report about the non-payment of wages to a large number of employees in different public undertakings. The report also indicated that several employees died due to starvation or committed suicide owing to acute financial crisis. A writ petition was filed by a lawyer on the basis of the said news. In *Kapila Hingorani v. State of Bihar*³⁷, the Supreme Court interfered with the matter in public interest and held that there is failure to perform the constitutional duties by the State in controlling the functions of the public sector companies. In such circumstances, the Court would not hesitate to lift the corporate veil when corporate personality is found to be opposed to justice, convenience and interest of the revenue or workman or against public interest.³⁸

3.29 To help the poor litigants, article 39A of the Constitution provides, *inter alia*, that the State shall provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Invoking the said article and the Universal Declaration of Human Rights, the Supreme Court held that it is the duty of the State to provide *amicus curiae* to defend an indigent accused. The Court also held that he would be meted out with unequal defence, if, as is common knowledge, a youngster from the Bar who has either a little experience or no experience is assigned to defend him and, therefore, it is high time

³⁶ *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613

³⁷ (2003) 6 SCC 1

³⁸ *Ibid.*, pages 19-20

that senior counsel practising in the court concerned should volunteer to defend such indigent accused as a part of their professional duty.³⁹

3.30 Poverty is indisputably the most potent violation of all human rights and constitutes a threat to the survival of the greatest numbers of the human population. Dr. A. P. J. Abdul Kalam stated at the Human Rights Day function on 10.12.2002:

“People, who are economically or socially in the lower strata, are vulnerable to human rights exploitation by those who are in the higher strata. One way to reduce this exploitation is to narrow this divide. In our country, about 300 million people are below the poverty line. After five decades of progress, the aspirations of people are rightly mounting that India should become a developed country. This is the second vision for the nation.”

3.31 Another former President of India, Mr. Zail Singh, had suggested that no person in the country should be allowed to have more than one house, as a measure of reducing economic disparities and ensuring proper distribution of prosperity. Permitting one house per person, the extra houses could be given to the needy who should be facilitated to pay for them in instalments. Equal protection of the laws is not a formal declaration but a dynamic actualization. So, to create conditions of life where social and economic disabilities do not deny equal justice in the enjoyment of basic facilities is the task of the legal system. Articles 14, 15 and 39A, read together, mean nothing less, nothing else. The right to life, preserved in article 21,

³⁹ *Kishore Chand v. State of Himachal Pradesh*, (1991) 1 SCC 286

has the same broad élan, viewed in the benign light of the Preamble which assures to all citizens liberty, equal opportunity, fraternity and the dignity of the individual. There is need to brain-scan article 21 because judicial illusion raises false expectation and the Court, viewed as a whole, being stuffed with artists of the Establishment, may give a jolt when the right to life is pressed seriously, disturbing the status quo conscience of the robed brethren. Article 21 which has incarnated as the last hope of the least and the lost of our countrymen, is a proud heritage of the judicial revolution midwived by the Supreme Court in all innocence. Its anatomy is in two parts. First, a basic assumption that everyone has a right to life and personal liberty, too fundamental to be negotiable. Second, this basic postulate of liberty may be truncated or annihilated if the power to do so is duly legislated. No cannibal legislation can do away with life or personal liberty regardless of humanism and realism.

3.32 In the words of Justice V.R. Krishna Iyer, what is guaranteed by this fundamental right is not mere animal existence nor vegetable survival but rightful opportunity to unfold the human potential and share in the joy of creative living.

3.33 In *Veena Sethy v. State of Bihar*⁴⁰, the Supreme Court was considering the cases of mentally sick prisoners languishing in jail for nearly two or three decades. Some of them were acquitted being of unsound mind. Some under-trial prisoners of unsound mind regained sanity long before, but no steps were taken to commence proceedings against them. In view of the inordinately long

⁴⁰ (1982) 2 SCC 583

incarceration already suffered by them without justification, the Supreme Court ordered all of them to be released forthwith by providing necessary funds for meeting expenses of their journey to their respective native places as also for maintenance for a period of one week. The above case was filed by way of public interest litigation by the Free Legal Aid Committee, Bihar, by addressing a letter to a Judge of the Supreme Court, drawing the Court's attention to unjustified and illegal detention of certain prisoners in the Central Jail, Hazaribagh, for almost two or three decades. Treating this letter as a writ petition, the Supreme Court issued notice to the State of Bihar for the purpose of ascertaining facts and after giving opportunity to the State to file the counter affidavit, the Supreme Court held that if the poor are allowed to languish in jails without the slightest justification, the rule of law would become meaningless for the rule of law does not exist merely for those who have the means to fight for their rights and very often for perpetuation of the status quo which protects and preserves their dominance and permits them to exploit large sections of the community but it exists also for the poor and the down-trodden, the ignorant and the illiterate who constitute the large bulk of humanity in this country. 3.34 The Supreme Court thus held that it is the solemn duty of the Court to protect and uphold the basic human rights of the weaker sections of the society.

3.35 The case of *Supreme Court Legal Aid Committee v. Union of India*⁴¹ arose under the Legal Services Authorities Act, 1987. Chapter III of the Act providing for constitution of High Court Legal Services Committee, etc. had not been extended to all the States

⁴¹ (1998) 5 SCC 762

and Union territories as rules under section 28 of the Act had not been framed by many States and Union territories nor were made regulations under section 29A. The Supreme Court directed the States and Union territories to make rules and regulations as well as constitute various Committees within two months.

3.36 The decision in *Suthendraraja v. State*⁴² reflects difference of opinion amongst Judges in regard to the sentence of death awarded to Nalini in the Rajiv Gandhi assassination case. K. T. Thomas, J. partly dissented from the majority view and altered her sentence to life imprisonment. After referring to the Constitution Bench judgment in *Bachan Singh v. State of Punjab*⁴³ which narrowed down the scope for awarding death sentence to the extremely restricted radius of “rarest of rare cases” in which the alternative lesser sentence of imprisonment for life is unquestionably foreclosed, he observed:

‘In a case where a Bench of three Judges delivered judgment in which the opinion of at least one Judge is in favour of preferring imprisonment for life to death penalty as for any particular accused, I think it would be a proper premise for the Bench to review the order of sentence of death in respect of that accused. Such an approach is consistent with Article 21 of the Constitution as it helps saving a human life from the gallows and at the same time putting the guilty accused behind the bars for life. In my opinion, it would be a sound proposition to make a precedent that when one of the three Judges refrains from awarding death penalty to an accused on stated reasons in preference to the sentence of life imprisonment that fact can be regarded sufficient to treat the case as not falling within the narrowed ambit of “rarest of rare cases when the alternative option is unquestionably foreclosed”.

⁴² (1999) 9 SCC 323

⁴³ (1980) 2 SCC 684

... I may add as an explanatory note that the reasoning is not be understood as a suggestion that a minority opinion in the judgment can supersede the majority view therein. In the realm of making a choice between life imprisonment and death penalty the above consideration is germane when the scope for awarding death penalty has now shrunk to the narrowest circle and that too only when the alternative action is “unquestionably foreclosed”.’

3.37 *Zahira Habibulla H. Sheikh v. State of Gujarat*⁴⁴ relates to the communal riots in Gujarat, popularly known as “Best Bakery Case”. In this case, the Supreme Court observed:

“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. ... Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial. ... Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law.”

3.38 The Supreme Court in *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde*⁴⁵ observed:

‘Article 21 of the Constitution assures right to life. To make right to life meaningful and effective, this Court put up expansive interpretation and brought within its ambit right to education, health,

⁴⁴ (2004) 4 SCC 158

⁴⁵ 1995 Supp (2) SCC 549

speedy trial, equal wages for equal work as fundamental rights. Articles 14, 15 and 16 prohibit discrimination and accord equality. The Preamble to the Constitution as a socialist republic visualizes to remove economic inequalities and to provide facilities and opportunities for decent standard of living and to protect the economic interest of the weaker segments of the society, in particular, Scheduled Castes i.e. Dalits and the Scheduled Tribes i.e. Tribes and to protect them from “all forms of exploitations”. Many a day have come and gone after 26-1-1950 but no leaf is turned in the lives of the poor and the gap between the rich and the poor is gradually widening on the brink of being unbridgeable. ... Lest Fundamental Rights in Chapter III would remain teasing illusions to the poor, disadvantaged and deprived sections of the society, the disadvantaged cannot effectively exercise their fundamental rights. Society, therefore, must help them to enjoy freedom accorded in Chapter III on Fundamental Rights.’

CHAPTER IV

CONCLUSION AND RECOMMENDATION

4.1 Various laws have been enacted to eradicate poverty: some of them directly deal with them and some of them indirectly.

4.2 The Code of Civil Procedure 1908 has some provisions for the poor. Order XXXIII CPC deals with suits by indigent persons, defence by an indigent person as well as free legal services to indigent persons. Appeals by indigent persons are dealt with under Order XLIV CPC.

4.3 Section 304 of the Code of Criminal Procedure 1973 enables legal aid to accused at State expense in certain cases. Chapter XXXIII CrPC, *inter alia*, provides for release of an indigent accused person on executing a personal bond instead of taking bail, if he is unable to furnish surety.

4.4 Various labour laws, including the Minimum Wages Act 1948 providing for minimum wage for the means of livelihood, Workmen's Compensation Act 1923, Maternity Benefit Act 1961, Payment of Bonus Act 1965, Equal Remuneration Act 1976, Bonded Labour System (Abolition) Act 1976, Child Labour (Prohibition and Regulation) Act 1986, the Indian Penal Code prohibiting buying or disposing of any person as a slave, habitual dealing in slaves, selling or buying of minors for purposes of prostitution or illicit intercourse and unlawful compulsory labour (sections 370 to 374) are but a few examples in the direction of alleviating the lot of the poor. There are many others. Nevertheless, their tardy implementation makes us lag far behind in effectively dealing with the problem.

4.5 In spite of the constitutional safeguards and State legislative intervention in favour of the poor and the needy, their socio-economic condition is deteriorating. Social and economic equality still remains a mirage for them.

4.6 We are of the view that the Union and the State Governments should accord top priority to implementation of the judgments rendered by our Supreme Court in their letter and spirit in order that the lot of the have-nots is ameliorated.

4.7 We recommend accordingly.

(Dr Justice AR. Lakshmanan)
Chairman

(Prof. Dr Tahir Mahmood)
Member

(Dr Brahm A. Agrawal)
Member-Secretary